EUROPEAN COMMISSION
DG Competition

CASE M.7758-HUTCHISON 3G ITALY / WIND / JV

(Only the English text is authentic)

MERGER PROCEDURE
REGULATION (EC) 139/2004

Article 8(2) Regulation (EC) 139/2004
Date: 01/09/2016

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EUROPEAN
COMMISSION

Brussels, 1.9.2016
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COMMISSION DECISION

of 1.9.2016

**declaring a concentration to be compatible with the internal market
(Case M.7758 – HUTCHISON 3G ITALY / WIND / JV)**

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COMMISSION DECISION

of 1.9.2016

declaring a concentration to be compatible with the internal market
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(Only the English text is authentic)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to the Agreement on the European Economic Area, and in particular Article 57 thereof,

Having regard to Regulation (EC) No 139/2004 of 20.1.2004 on the control of concentrations between undertakings[1], and in particular Article 8(2) thereof,

Having regard to the Commission's decision of 30 March 2016 to initiate proceedings in this case,

Having regard to the opinion of the Advisory Committee on Concentrations[2],

Having regard to the final report of the Hearing Officer in this case[3],

Whereas:

1. INTRODUCTION

(1) On 5 February 2016 the European Commission (the "Commission") received a notification of a proposed concentration pursuant to Article 4 of Regulation (EC) No 139/2004 ("the Merger Regulation") by which Hutchison Europe Telecommunications S.à.r.l ("HET", Luxembourg) and VimpelCom Luxembourg Holdings S.à.r.l ("VIP", Luxembourg) acquire within the meaning of Article 3(1)(b) of the Merger Regulation joint control of a newly-created joint venture (the "JV", Luxembourg) by way of contribution to the JV of their respective business activities in Italy.[4]

2. THE OPERATION AND THE CONCENTRATION

(2) HET is an indirect wholly owned subsidiary of CK Hutchison Holdings Limited ("Hutchison"). Hutchison is a multi-national group headquartered in Hong Kong and listed on the Hong Kong Stock Exchange Limited. Hutchison has five core

1 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.

2 OJ C ...,...200. , p....

3 OJ C ...,...200. , p....

4 Publication in the Official Journal of the European Union No C 58, 13.02.2016, p. 40.

businesses: ports and related services, retail, infrastructure, energy, and telecommunications.

(3) In Italy, Hutchison operates through its indirect wholly owned subsidiary, H3G S.p.A. ("H3G"). H3G is active in Italy as a mobile network operator ("MNO"), offering mobile telecommunications services under the "3" brand, including 2G, 3G and 4G services.

(4) VIP is an indirect wholly owned subsidiary of VimpelCom Ltd ("VimpelCom").[5] VimpelCom is an international telecommunications company headquartered in Amsterdam and traded on the NASDAQ Global Select Market. VimpelCom's largest shareholders are LetterOne Holdings S.A. and Telenor East Holding II AS. VimpelCom provides voice and data services through a range of traditional and broadband mobile and fixed technologies in 14 countries under several different brands.

(5) In Italy, VimpelCom operates through its indirect wholly-owned subsidiary WIND Telecomunicazioni S.p.A. ("WIND"). WIND is active in Italy as an MNO, offering mobile telecommunications services under the "WIND" brand, including 2G, 3G and 4G services. In addition, WIND also offers fixed telecommunications services (including fixed-line voice, broadband and data services) in Italy under the "Infostrada" brand.

(6) HET and its subsidiary H3G as well as VIP and its subsidiary WIND will hereafter be collectively referred to as the "Parties".

(7) On 6 August 2015, VimpelCom, VIP, Hutchison and HET entered into a Contribution and Framework Agreement and a Shareholders' Deed by which they agreed to contribute their respective Italian telecommunication businesses H3G and WIND to the JV[6] (the "Transaction"). Upon completion of the Transaction, H3G and WIND would be 100% indirectly-owned subsidiaries of the JV, which, in turn, would be controlled by HET and VIP and, ultimately, by Hutchison and VimpelCom.

(8) After the Transaction, HET and VIP would each hold 50% of the shares in the JV, would have equal voting rights in the JV and equal rights to appoint members of the JV's board of managers. Accordingly, following the Transaction, both of HET and VIP would exercise joint control over the JV.

(9) The Transaction consists of the acquisition of joint control by HET and VIP over the JV (to which the Parties contributed their businesses with an established market presence) and, therefore, constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

3. UNION DIMENSION

(10) In 2014 the undertakings concerned had a combined aggregate world-wide turnover of more than EUR 5 000 million. The calculation is based on the turnover figures of Cheung Kong Holdings Limited ("CKH") and Hutchison Whampoa Limited ("HWL"), two companies that are currently wholly owned by Hutchison, as well as

5 VimpelCom Luxembourg Holdings S.à.r.l. is a direct wholly owned subsidiary of VimpelCom Amsterdam B.V., which in turn is a direct wholly owned subsidiary of VimpelCom Limited.

6 Hutchison 3G Italy Investments S.à.r.l., which is presently a wholly-owned subsidiary of HET, is the corporate entity to which the Parties will contribute their business activities and will survive, upon completion of the Transaction, as JV.

those of VimpelCom (CKH/HWL: EUR 36 711 million; VimpelCom: EUR 15 502.5 million).[7] Each of these undertakings had a Union-wide turnover in excess of EUR 250 million in 2014 (CKH/HWL: EUR [15000-20000] million; VimpelCom: EUR 4 636 million), but they do not achieve more than two-thirds of their aggregate Union-wide turnover within one and the same Member State.

(11) The Transaction therefore has a Union dimension within the meaning of Article 1(2) of the Merger Regulation.[8]

4. THE PROCEDURE

4.1. General procedure

(12) Based on a market investigation, the Commission raised serious doubts as to the compatibility of the Transaction with the internal market and adopted a Decision to initiate proceedings pursuant to Article 6(1)(c) of the Merger Regulation on 30 March 2016 (the "Article 6(1)(c) Decision").

(13) On 20 April 2016, the Parties submitted a request for a five-day extension of the second phase proceedings. The Parties submitted their written comments to the Article 6(1)(c) Decision on 21 April 2016 (the "Reply to the Article 6(1)(c) Decision").

(14) Throughout its investigation, the Commission sent several requests for information ("RFIs") to the Parties and to third party market participants. Information was also provided to the Commission at several meetings with the Parties and with third parties. The Commission also analysed internal documents of the Parties and data from the Parties and some third parties. The Commission also conducted a customer survey via an external survey company.

(15) On 6 June 2016, the Parties submitted commitments pursuant to Article 8(2) of the Merger Regulation in order to address the competition concerns identified by the Commission.

(16) On 8 June 2016, the Commission adopted a decision pursuant to the third sentence of the second subparagraph of Article 10(3) of the Merger Regulation, extending the Phase II proceedings by a total of 15 working days.

(17) On 5 July 2016, the Parties submitted revised commitments pursuant to Article 8(2) of the Merger Regulation in order to address the competition concerns identified by the Commission, which were then amended by further set of commitments submitted on 18 July 2016.

(18) The Advisory Committee discussed a draft of this Decision on 17 August 2016 and issued a favourable opinion.

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7 Turnover calculated in accordance with Article 5 of the Merger Regulation.

8 Prior to 3 June 2015, Hutchison indirectly owned only […]% of HWL. On 3 June 2015, Hutchison and HWL completed a reorganisation as a result of which Hutchison acquired indirectly the […] % of the shares of HWL it did not own. HWL's shares were then delisted from the Hong Kong Stock Exchange and parts of its business were spun off to a separately listed company. An alternative basis to calculate the EU dimension is therefore the pro forma figures of Hutchison for the year 2014, that is to say as if the reorganisation had taken place on 1 January 2014. The Parties have also provided these figures for Hutchison (EUR [30000-35000] million worldwide, EUR [15000-20000] million Union-wide). The Commission has jurisdiction on the basis of Article 1 and Article 3(1)(b) of the Merger Regulation under both sets of figures.

4.2. Referral request

(19) On 25 February 2016, the Italian competition authority (Autorità Garante della Concorrenza e del Mercato, "AGCM") requested, on the basis of Article 9(2)(a) of the Merger Regulation, a referral of the Transaction from the Commission to AGCM (the "Referral Request").

(20) In the Referral Request, AGCM argued the conditions of Article 9(2)(a) of the Merger Regulation are met with respect to a number of distinct telecommunications markets in Italy.

(21) With regard to the first requirement of Article 9(2)(a), AGCM claimed that the Transaction would lead to both non-coordinated and coordinated effects on (i) the retail market for mobile telecommunications services and (ii) the wholesale market for mobile telecommunications services.

(22) As regards unilateral effects, AGCM pointed to the fact that the Parties are two important and aggressive competitive forces, that they are each other's closest competitor, and that their removal would lessen competition on the retail and wholesale mobile markets. In AGCM's view, such conclusion is supported by an analysis of the diversion ratios based on the mobile portability data, which suggest that H3G would be WIND's closest competitor.

(23) As regards coordinated effects, AGCM argued that the Transaction would lead to the creation of a collective dominant position by the three MNOs in the Italian market, taking into account: (i) the high level of concentration and lack of competitive pressure by mobile virtual network operators ("MVNOs"); (ii) the transparency and homogeneity of products; and (iii) the symmetry of market shares and presence of deterrence mechanisms.

(24) Additionally, with respect to the wholesale market, AGCM claimed that the Transaction may also raise conglomerate effects, as it would remove H3G, the only MNO that is not a fixed operator. The JV may thus have the incentive to foreclose wholesale access to its mobile network to rival fixed operators seeking to offer mobile services. In AGCM's view, this would also worsen the competitive conditions in the retail markets for mobile services with adverse effects on consumers' welfare.

(25) With regard to the second requirement of Article 9(2)(a), AGCM referred to the Commission's decisional practice of defining mobile markets as national in scope. Therefore, according to AGCM, since the relevant Italian retail and wholesale telecommunications markets have a national dimension, they would constitute distinct markets.

(26) After the Commission adopted the Article 6(1)(c) Decision on 30 March 2016, AGCM did not send a reminder pursuant to Article 9(5) of the Merger Regulation. The Referral Request is therefore deemed to have been withdrawn by AGCM.

5. THE ITALIAN MOBILE TELECOMMUNICATIONS SECTOR

(27) The following Sections provide a description of the Italian mobile telecommunications sector, including its key metrics (Section 5.1), the status of technological development (Section 5.2), customer switching (Section 5.3), the operators providing mobile services (Section 5.4), the allocation of mobile spectrum (Section 5.5) and an overview of the telecommunication infrastructure and agreements between MNOs, including the network sharing and national roaming agreements currently in place (Section 5.6).

(28) The description is largely based on data from the Italian telecommunications regulatory authority, Autorità per le Garanzie nelle Comunicazioni ("AGCOM"). AGCOM publishes reports covering the Italian telecommunications sector on a yearly basis.[9] The most recent yearly report available is dated 5 July 2016 and covers the 2015 calendar year.[10] AGCOM also publishes quarterly updates on key developments in the telecommunications sector.[11] The most recent quarterly report available relates to the first quarter of 2016.[12]

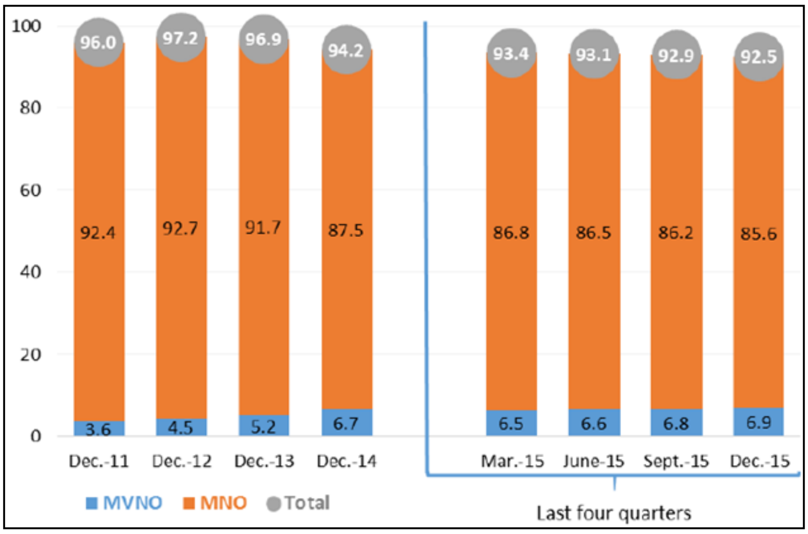
5.1. Key metrics

5.1.1. Mobile telecoms penetration and mobile revenues

(29) The Italian mobile telecommunications sector is characterised by a high mobile penetration rate, with 158 mobile SIM cards per 100 inhabitants in 2014 (compared to a Union average of 134 mobile SIM cards),[13] indicating that several mobile customers in Italy have more than one SIM card.

(30) The total number of mobile SIM cards is, however, declining. As shown by Figure 1 below, as of December 2015, there were 92.5 million SIM cards in Italy, down from 94.2 as of December 2014. The total number of mobile subscriptions in Italy decreased for the first time in 2013, after constantly growing in the previous years. Figure 1 also shows that the total number of mobile lines accounted for by MVNOs collectively has been increasing since 2011, although this increasing trend appears to have slowed down in 2015.

Figure 1: Evolution of number of mobile lines of MNOs and MVNOs (million)



Source: AGCOM, Quarterly report No. 1/2016, page 8 [ID 2328]

9 AGCOM's annual reports are available at http://www.agcom.it/relazioni-annuali and http://www.agcom.it/annual-report.

10 AGCOM's 2016 Annual Report, Chapter 2 ("L'assetto e le prospettive del settore delle comunicazioni in Italia"), 7 July 2016, available at: http://www.agcom.it/documents/10179/5103421/Cap_II_RELAZIONE+ANNUALE+2016/247ddbe7-de01-4a0e-b49a-8f744a121309 [ID 2328].

11 AGCOM's quarterly reports are available at http://www.agcom.it/osservatorio-sulle-comunicazioni.

12 AGCOM's Quarterly Report No. 1/2016, available at: http://www.agcom.it/documents/10179/2154593/Allegato+6-4-2016/e17e2d92-160d-4b77-9202-9469cc990d14 [ID 2328].

13 Commission' calculation based on Eurostat and EU Digital Agenda Scoreboard data.

(31) As can be seen in Figure 2 below, in 2015, the Italian telecommunications sector accounted for EUR 31 900 million, 1.5% less than in 2014. Revenues from mobile services In Italy accounted for EUR 15 800 million, almost half of the total revenues in the Italian telecommunications sector.

Figure 2: Breakdown of revenues in the Italian telecommunications sector (EUR million)

	2014	2015	Var. % 2014/2015
Telecomunicazioni	**32.404**	**31.915**	**–1,5**
Rete fissa	*16.561*	*16.154*	*–2,5*
Rete mobile	15.843	15.761	*–0,5*

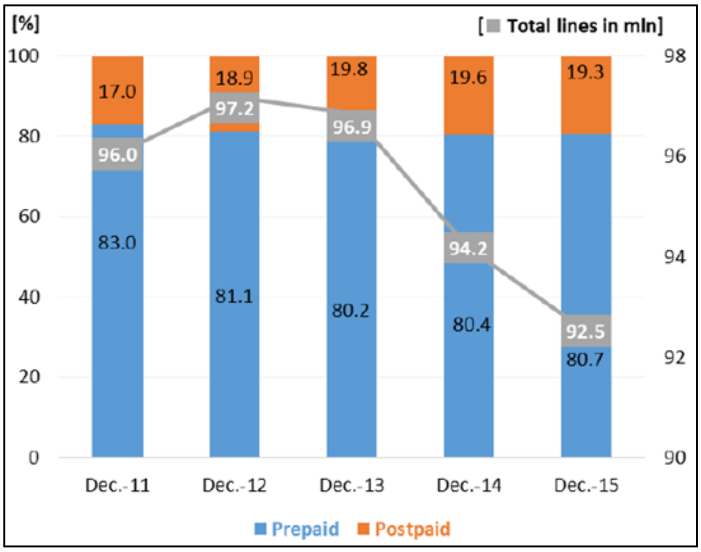
Source: AGCOM, Annual Report 2016, page 55 [ID2327]

5.1.2. Importance of different mobile market segments

5.1.2.1. Prepaid and postpaid plans

(32) As of December 2015, prepaid SIMs accounted for 80.7% of all SIM cards in Italy, with postpaid SIMs accounting for only 19.3%. The predominance of prepaid services in Italy can be largely explained by tax related reasons. Postpaid contracts are subject to a tax ("Tassa di concessione governativa") of EUR 5.16 and EUR 12.90 per month for private and business customers respectively.[14] Accordingly, prepaid tariffs are generally more attractive for customers. Figure 3 below illustrates the evolution in the number of prepaid and postpaid mobile lines in Italy between December 2011 and December 2015. It shows that the proportion of prepaid customers has been slightly decreasing since December 2011, although it remains very high.

Figure 3: Evolution of prepaid and postpaid mobile lines (million)



Source: AGCOM, Quarterly report No. 1/2016, page 10 [ID 2328]

(33) Due to the tax on postpaid tariffs, the distinction between prepaid and postpaid tariff plans has become increasingly blurred in Italy, with mobile operators offering tariffs

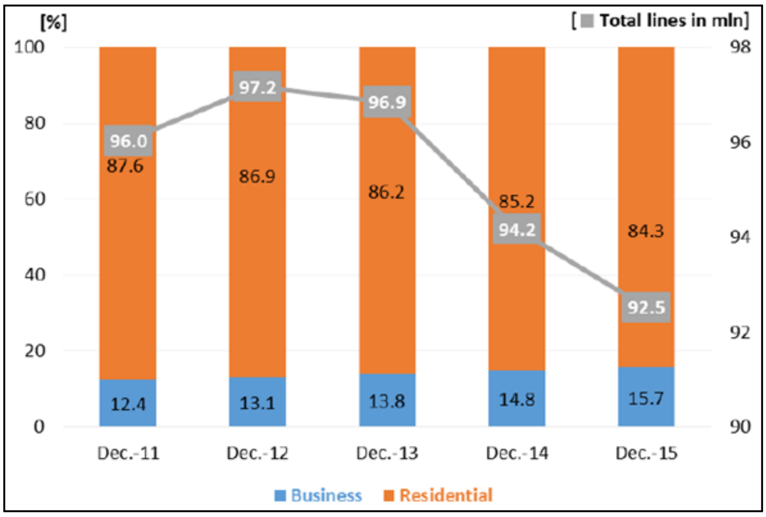
14 See Article 21 of the Annex to Decreto del Presidente della Repubblica Italiana ("Decree of the president of the Italian Republic") of 26 October 1972, No. 641, available at http://www.tuttocamere.it/files/tabelle/TCG_Tariffa_2014.pdfhttp://www.agcom.it/osservatorio-sulle-comunicazioni. [ID 2329].

that are technically prepaid (as customers are required to pay before using the service), but have typical postpaid features. In particular, the majority of prepaid plans include a bundle of voice, SMS and mobile data traffic. Moreover, prepaid plans are often automatically and directly charged on the credit card or bank account of the subscriber, and are subject to binding periods when handsets are included.

5.1.2.2. Private and business customers

(34) As of December 2015, private (in other words residential) mobile lines accounted for 84.3% of all mobile lines in Italy, while business lines accounted for the remaining 15.7% of mobile lines. Figure 4 below illustrates the evolution in the number of private and business mobile lines in Italy over the last years, indicating that the proportion of business lines has been slowly increasing.

Figure 4: Evolution of number of private and business mobile lines (million)



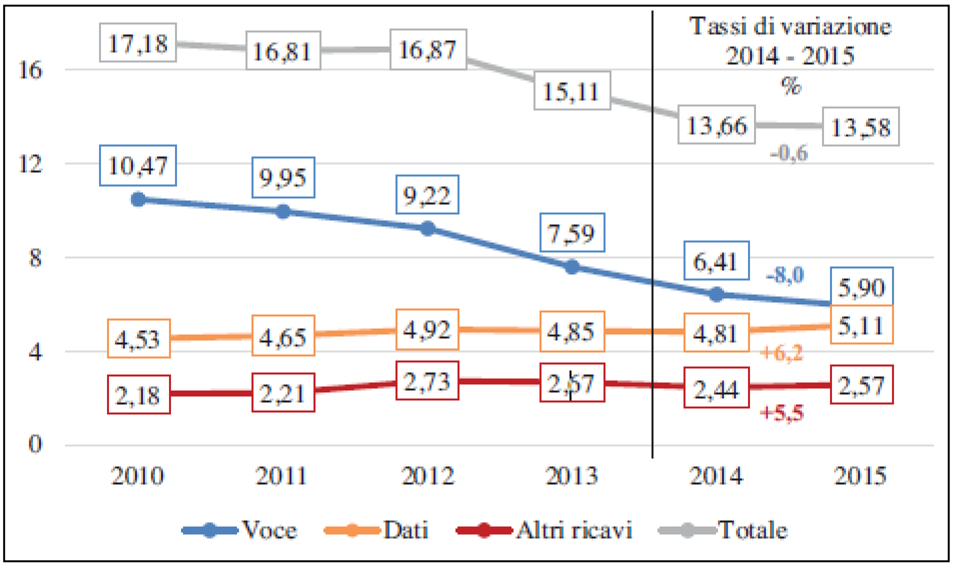
Source: AGCOM, Quarterly report No. 1/2016, page 9 [ID 2328]

5.1.2.3. Voice, SMS and data services

(35) In 2015, revenues from data services accounted for 37% of total mobile revenues, while voice revenues accounted for 43.4% of total mobile revenues. By way of comparison, in 2010, data revenues and voice revenues represented, respectively, 26% and 61% of total mobile revenues. AGCOM estimates that between 2010 and 2015 revenues from mobile voice services decreased by 43%, whereas revenues from mobile data increased by 13% over the same period.[15] The increasing relevance of data revenues over voice revenues is illustrated in Figure 5 below, which shows the evolution of revenues from voice, data and other mobile segments from 2010 until 2015.

15 AGCOM, Annual Report 2016, page 68, available at http://www.agcom.it/documents/10179/5103421/Cap_II_RELAZIONE+ANNUALE+2016/247ddbe7-de01-4a0e-b49a-8f744a121309 [ID2327].

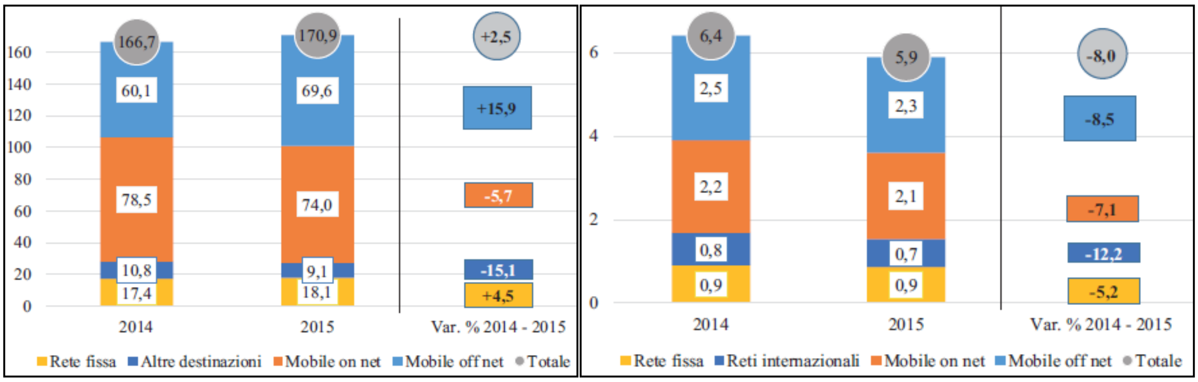
Figure 5: Evolution of revenues from mobile voice, mobile data and other mobile services



Source: AGCOM, Annual report 2016, page 69 [ID 2327]

(36) Despite the declining importance of voice revenues as part of total mobile revenues, the total number of voice minutes increased by almost 2.5% between 2014 and 2015, as can be seen from the left side of Figure 6 below. This increase can mainly be attributed to a 15.9% growth in mobile off net traffic[16] during the same period. The growth in mobile off net traffic was, in turn, facilitated by the reduction in mobile termination rates ("MTR") to EUR cent 0.98 per minute, which AGCOM introduced as of July 2013. As can be seen from the right side of Figure 6 below, revenues from mobile voice services continued to decline compared to 2014 (-8%).

Figure 6: Mobile voice traffic by volume (billion minutes) and by revenues (EUR billion)



Source: AGCOM, Annual report 2016, pages 69 and 70 [ID 2327]

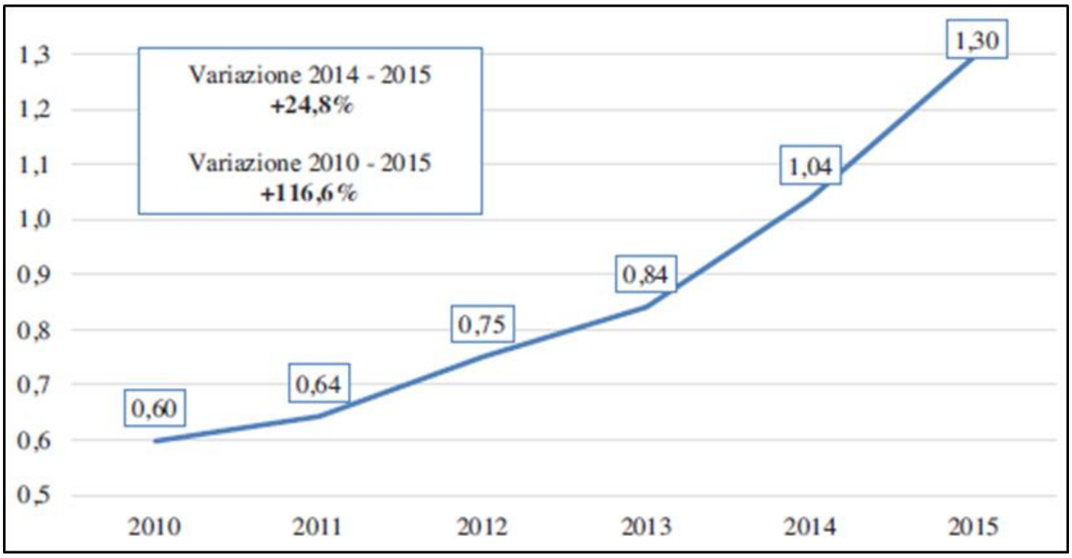
(37) AGCOM figures on data traffic reveal a clear trend towards higher consumption of data, which, according to AGCOM, is mainly due to the spread of social networks and the greater use of mobile handsets and tablets. Total data traffic exceeded 730 petabytes in 2015, representing a 45% increase compared to 2014.[17] Monthly data

16 The term "On-Net" is used when a customer's call or message originates from that customer's MNO's network and terminates to another mobile number that resides with the same MNO. It does not matter if the person the customer is calling is using the home network or is abroad roaming with a different provider. The term "Off-Net" is used when the call or message is made to a different network, that is when a customer on an MNO network makes a call or sends a message to a number that resides with a different MNO.

17 AGCOM, Annual Repost 2016, page 70 [ID 2327].

traffic increased by 24.8% from 2014 to 2015 (exceeding 1 GB per month) and by 116.6% from 2010 to 2015, as illustrated in Figure 7 below. AGCOM also notes that in 2015 the number of SIMs used also to exchange mobile data has increased, surpassing the number of SIM cards used only for voice traffic.[18]

Figure 7: Average monthly data traffic (GB/month)



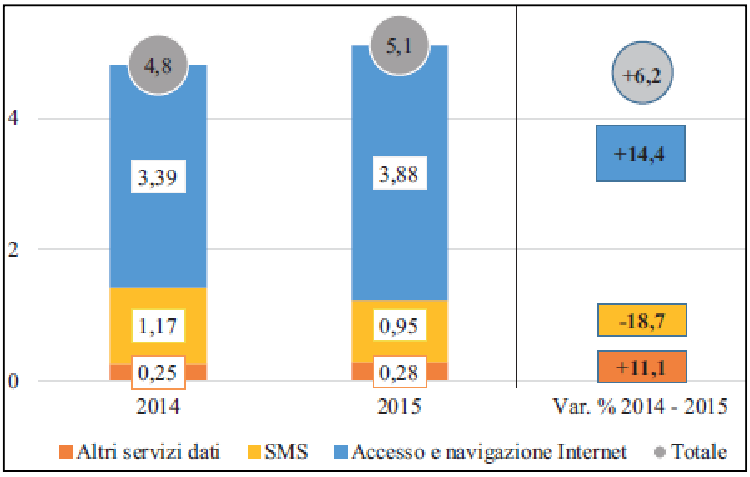
Source: AGCOM, Annual report 2016, page 70 [ID2327]

(38) Cisco data forecast that in Italy mobile data traffic per user is likely to reach 6 587 megabytes per month by 2020, up from 1 199 megabytes per month in 2015, a CAGR of 41%.[19] In addition, according to Cisco estimates cited by the Parties, data consumption is expected to increase eight fold by 2019.[20] The market investigation conducted in the present case confirmed that the demand for data has grown sharply in the last 3 years and it is expected to further grow in the next years.[21]

(39) As can be seen from Figure 8 below, revenues from mobile internet data services grew by 14.4% from 2014 to 2015, accounting for the largest part (76%) of total mobile data revenues in 2015. By contrast, SMS revenues experienced a strong decline (by 18.7%) from 2014 to 2015 and only accounted for around 19% of total mobile data revenues in 2015. On a more extended time period, AGCOM notes that revenues from internet mobile data have increased over the years, from 2005 to 2015. In 2005, revenues from SMS were three times more than revenues from other mobile data (mainly mobile internet data). In 2010, revenues from these two services were equivalent. In 2015, revenues from other mobile data (mainly mobile internet data) were four times the revenues from SMS.[22]

[18] AGCOM, Annual Repost 2016, page 70 [ID 2327].
[19] VNI Mobile Forecast Highlights, 2015-2020, Italy, available at: http://www.cisco.com/assets/sol/sp/vni/forecast_highlights_mobile/index html#~Country [ID 2589].
[20] Form CO, Section 6, paragraph 304.
[21] Responses to Questionnaire Q1 to MVNOs of 8 February 2016, question 36.
[22] AGCOM, Annual Repost 2016, page 71 and Figure 2.1.23 [ID 2327].

Figure 8: Revenues from mobile data by segment (EUR billion)

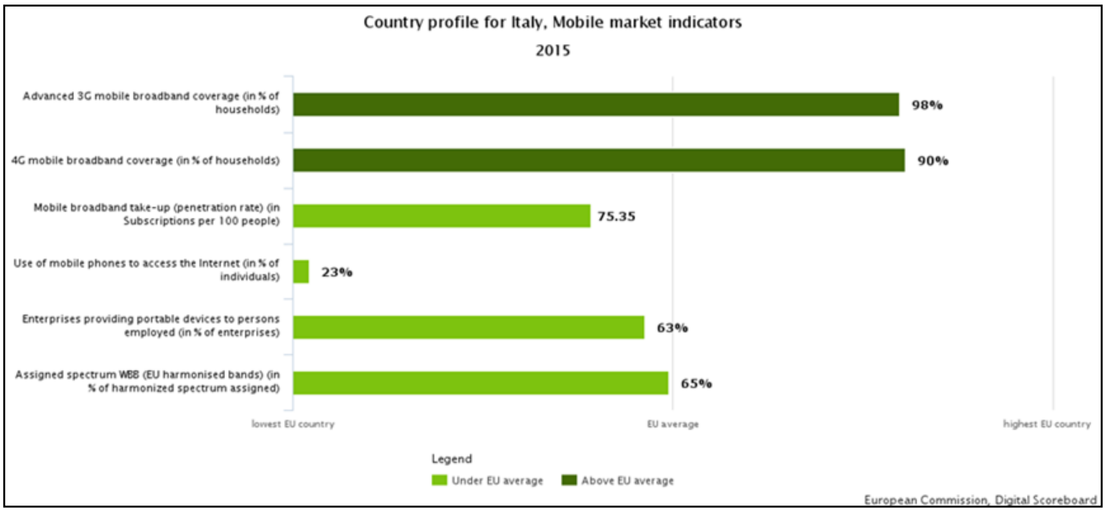


Source: AGCOM, Annual report 2016, page 71 [ID 2327]

5.2. Technological development

(40) As shown by Figure 9 below, 3G coverage in Italy was 98.3% as of December 2015, slightly above the Union average of 97.6%. LTE/4G coverage was 90%, above the Union average of 86%. Mobile broadband penetration was 75%, in line with the Union average of 75%.[23]

Figure 9: Country profile for Italy, mobile market indicators (2015)



Source: EU Digital Agenda Scoreboard

(41) In Italy, the roll-out of 4G started in 2012 and rapidly reached a large coverage in the metropolitan cities. The first operator to commercially launch 4G in Italy was Vodafone in October 2012, followed by TIM in November 2012.

(42) According to the data provided by the Parties in Table 1 below, the networks of Vodafone and TIM enjoy the widest 4G coverage (91% and 86%, respectively), followed by H3G ([…]%) and WIND ([…]%).

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[23] Data accessible from http://digital-agenda-data.eu/ and http://ec.europa.eu/digital-agenda/en/download-scoreboard-reports.

Table 1: 2G, 3G, 4G coverage and number of sites in Italy, 2015[24]

	WIND	TIM	Vodafone	H3G
2G coverage	[redacted]	99.8%	99.8%	[redacted]
3G coverage		>96.0%	99.8%	
4G coverage		86.0%	>91.0%	
4G Plus (number of municipalities)	0	258	>600	0
Number of sites	[redacted]	17,200	17,900	[redacted]
Of which LTE sites		>7,000	>12,000	

Source: Form CO, Section 6, Figure 36 and Table 58.

(43) As regards 4G subscriptions, as of Q2 2015, Vodafone was the leading operator with 2.8 million 4G subscriptions in Italy,[25] followed by TIM with 2.7 million 4G subscriptions,[26] while H3G had […] 4G users in April 2014 and WIND had less than […] active 4G users as of June 2015. The results of the market investigation carried out in the present case indicate that respondents generally expect demand for 4G services in Italy (and the number of subscribers having access to 4G services) to increase in the next two to three years. In particular, TIM expects 4G SIMs to account for 45% of the retail mobile market by 2018.[27]

(44) The increase in 4G subscriptions may be driven, among other things, by the increasing uptake in smartphones. According to Asstel[28] data presented in Figure 10Figure 10 below, smartphones accounted for around 77% of terminal sales in 2014 in Italy, a 315% increase since 2010.[29]

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[24] Figures for TIM and Vodafone are as of October 2015. Figures for H3G are as of August 2015. Figures for WIND relate to H1 2015.

[25] Vodafone Italy press release; VODAFONE ITALIA: BILANCIO 2014-2015; 19 May 2015 available at: http://www.vodafone.it/portal/Vodafone-Italia/Chi-siamo/Obiettivi-e-risultati/corporate-risultati-finanziari [ID 2335].

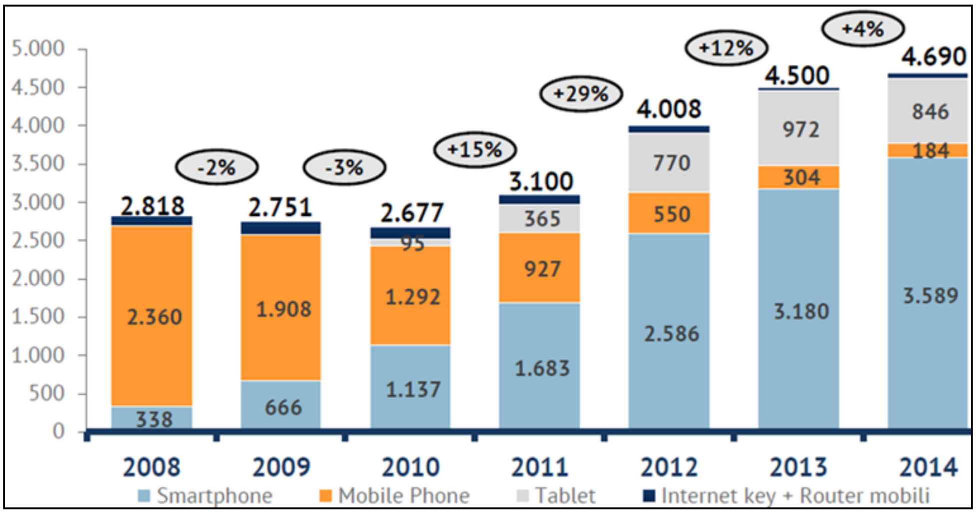
[26] TIM's Investor Presentation, 2Q 2015, available at: http://www.telecomitalia.com/content/dam/telecomitalia/en/archive/documents/investors/Presentations/Investor_Relations/2015/2Q2015-Presentation-slides.pdf. [ID 2334].

[27] Responses to Questionnaire Q1 to MVNOs of 8 February 2016, question 35.3. Responses to Questionnaire Q4 to MNOs of 8 February 2016, question 11.3.

[28] ASSTEL is the non-profit Italian official Employers Association of the telecommunication operators (fixed, mobile, internet). It represents and supports the interests of the telecommunications operators in relation to Union works rules and to technical and economic issues. See www.asstel.it.

[29] Asstel, Rapporto sulla filiera delle Telecomunicazioni in Italia, Edizione 2015, p. 84, available at http://www.asstel.it/wp-content/uploads/2015/07/Rapporto-Asstel-Telecomunicazioni-2015.pdf [ID 2330]

Figure 10: Telecommunication terminals market by product type (revenue in EUR billion)



Source: Asstel, Annual report 2015[ID 2330]

5.3. Customer switching

(45) In Italy, the "Bersani Decree"[30] of 2007 provides that mobile operators are prohibited from imposing a penalty on customers for switching before the end of a commitment/contract period. Customers are therefore permitted to terminate a subscription at any point in time[31] and to do so without penalties. Termination charges are admissible only to the extent that they are directly linked to the termination costs incurred by the mobile operator.

(46) The Bersani Decree does not prevent operators from making handset or other discounts conditional on a commitment period. In this case, the customer remains free to switch subject to repayment of outstanding instalments or repayment of a discount to a base tariff.

(47) When switching, consumers have the right to keep their mobile telephone number. The facility that enables consumers to keep their mobile telephone number whilst switching provider is a centralised mobile number portability ("MNP") system, which all operators must use to process mobile number porting requests. The MNP system was introduced in Italy in 2001 and is currently regulated by AGCOM's resolutions No. 147/11/CIR and No. 651/13/CONS. These two resolutions cap the total MNP period (including the realisation period and the activation period)[32] to one working day.

(48) Based on a survey presented in 2014 by the Electronic Communications Committee of the Conference of Postal and Telecommunications Administrations ("CEPT"), the average time required to port a mobile number in Italy is 8 working hours.[33]

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30 Decree No. 7 of 31 January 2007, converted into Law No. 40/2007.

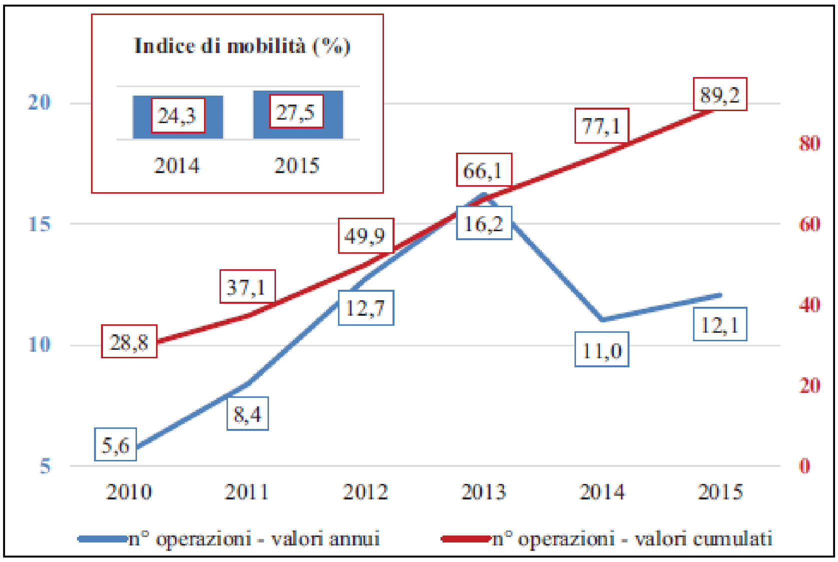
31 See AGCOM's Guidelines on the application of the Bersani Decree, paragraph 12.

32 The activation period starts with the customer requesting the number portability to the recipient operator and ends with the activation of the new-SIM and the update of the number portability databases. The realization period starts with the recipient operator asking to the donor operator to activate the procedure and ends with the update of the number portability databases.

33 See CEPT's Number Portability Implementation in Europe, available at: http://www.cept.org/files/5466/documents/Number%20Portability%20Impementation%20in%20Europe%20-%20based%20on%20a%20survey%20of%20CEPT%20member%20countries%20-%20March%202014.pdf [ID 2331].

(49) AGCOM's resolutions on MNP have largely impacted the number of portings in recent years. As shown by Figure 11 below, the annual volume of ported numbers has been growing significantly since 2010, with a peak of 16.2 million ported lines in 2013 alone (which accounted for 17.7% of all active lines in 2013). Only after 2013 did the annual volume start declining, although there has been a slight increase again in 2015. The "mobility index"[34] indicates indeed that a reduction in the number of operations was registered in 2014. According to AGCOM, the shift compared to 2013 is due to the slowdown of the "price war" between mobile operators.[35]

Figure 11: MNP operations (million) and mobility index (%)



Source: AGCOM, Annual report 2016, page 77 [ID 2327]

5.4. Mobile telecommunications services providers in Italy

5.4.1. MNOs

(50) There are four MNOs active in Italy, which are described in the following recitals. In Italy, two essential inputs are necessary in order to be active as an MNO: the authorisation to use spectrum band(s) for mobile telecommunications[36] and a mobile network.[37] The MNOs' spectrum holdings are described in Section 5.5, while their network infrastructure arrangements are described in Section 5.6.

5.4.1.1. TIM

(51) TIM is the formerly state-owned incumbent and was founded in August 1994 through the merger of five companies: SIP, Iritel, Telespazio, Italcable and Sirm.

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34 Ratio between all the lines donated/acquired through the use of the MNP service in the year and the corresponding total average customer base (net of m2m).

35 AGCOM's 2015, "Dynamics in the communications sector in Italy and Europe" available at: http://www.agcom.it/annual-report.

36 The Italian legislation implemented the EU regulatory framework for electronic communications in the Electronic Communications Code (Legislative Decree No. 259/2003, known as "Codice delle comunicazioni elettroniche"), which provides for a specific authorisation schemes for radio frequencies. Spectrum allocation takes the form of the grant of individual rights of use obtained on the basis of a public, transparent, non-discriminatory and proportionate procedures.

37 A mobile network is composed of a number of macro radio access network sites, essentially a mast with an antenna and a radio-frequency system, linked to a core network by backhaul connections. Each macro radio access network site covers a limited area and has a maximum capacity.

(52) TIM is the market leader in the provision of retail mobile services in Italy with a market share in 2014 of 33% in terms of revenues and of 32% in terms of subscribers, and more than 30 million subscribers as of the first half of 2015. TIM also provides MVNOs with wholesale access to its mobile network.

(53) TIM's mobile network is based on the 2G, 3G and 4G technologies. As of the third quarter of 2015, TIM's 4G network reached 4493 cities covering 86% of the Italian population. TIM expects its network to reach a coverage of above 95% by 2017. TIM has announced a EUR 5 billion innovative investment plan for the period 2015-2017, of which EUR 0.9 billion would be dedicated to Long-Term Evolution ("LTE"), commonly marketed as 4G, and its mobile network.[38]

(54) TIM is also active in the provision of fixed telephony and fixed internet services, with approximately 7 million fixed internet customers and 12 million fixed voice subscribers. As of the third quarter of 2015, TIM's next generation access network ("NGN") reached 40% of the Italian population and, according to TIM's 2015-2017 plan, it is expected to cover 75% of the Italian population by 2017, as a result of an investment of EUR 2.9 billion.

5.4.1.2. Vodafone

(55) Vodafone Italy was formed in 1994 with the name of Omnitel as the first alternative to the market leader TIM. In 2001, Omnitel was acquired by Vodafone and in 2003 it changed its name to Vodafone Italy ("Vodafone"). Vodafone delivers mobile and fixed telecommunications services to consumers, businesses, as well as the Italian government, and provides MVNOs with wholesale access to its network.

(56) Historically, Vodafone has been focused on the provision of mobile telecommunications services. It started to provide fixed services in 2006 launching its "Vodafone Casa" package, including both voice and internet fixed services. To reinforce its position in the fixed services market, Vodafone acquired Tele2 in 2007. In 2013, Vodafone started providing fiber to the home ("FTTH") services in Milan with speeds up to 300 Mbps.

(57) Vodafone was the first operator to offer 4G services in Italy in October 2012. In February 2014, it was also the first operator to test the LTE-advanced technology with download speeds over 225 Mbps. In November 2013, Vodafone launched its Spring programme raising its investment to EUR 3.6 billion, with the objective to reach 90% of the population with its 4G network and connect 6.4 million premises with fibre connection. As of 2015, Vodafone provided FTTH services in 136 cities and its 4G network was available in over 5400 cities, 600 of which offer a download speed of over 225 Mbps.

(58) Vodafone's revenues as of March 2015 were EUR 5.2 billion, of which EUR 0.9 billion originated from the provision of fixed services. Vodafone's revenues declined by 9.7% compared with the previous year. Vodafone's revenue trend has been improving in the last quarters (The first quarter -16.1%, the second quarter -9.7%, the

[38] TIM Group, FY 2014 Preliminary Results & 2015-2017 Plan Outline, Slide 15, available at: http://www.telecomitalia.com/content/dam/telecomitalia/en/archive/documents/investors/Presentations/Investor_Relations/2015/SlideFY2014Preliminary.pdf. [ID 2333].

third quarter -7.4%, the fourth quarter -3.7%) due to its performance in the 4G, business and fixed internet market segments.[39]

5.4.1.3. WIND

(59) WIND was founded in 1997 as a joint-venture between France Telecom, Deutsche Telekom and ENEL. ENEL became WIND's sole shareholder in 2003. WIND started its fixed services operations in 1998 and its mobile services operations in 1999. In 2001, WIND acquired INFOSTRADA, the then leading Italian fixed-line telecommunications operator by number of subscribers after the incumbent TIM. WIND was acquired by Weather Investments in 2005, and subsequently by the VimpelCom Group in 2011.

(60) As of December 2015, WIND was the third largest operator in the retail market for mobile telecommunication services, with 21.1 million customers, and the second largest operator in the fixed voice service market with 2.8 million customers (of which 2.2 million were also fixed internet service customers). In 2015, WIND's revenues from mobile services accounted for approximately EUR […]. WIND is also active in the provision of wholesale access to its mobile network to MVNOs.

(61) WIND operates 2G, 3G and 4G networks in Italy. Based on the information provided by the Parties, WIND owns the […]of the 4G networks in Italy, covering […]% of the Italian population. In order to reach […] of the Italian population by 2019, WIND has planned an investment of EUR […] for the next years.[40] This investment is higher than the one announced by TIM (EUR 0.9 billion) and H3G (EUR […]) for their respective mobile networks.[41]

5.4.1.4. H3G

(62) H3G is the smallest MNO active in the Italian mobile market. It started its operations in 2003 by offering 3G services and subsequently launched LTE services in 2012. As of half of 2015, H3G had around 10 million subscribers and a market share of [10-20]% both in terms of subscribers and in terms of value. In 2014, it had revenues for approximately EUR 1.4 billion.

(63) Contrary to the other MNOs active in Italy, H3G does not have a 2G network, but relies on a roaming agreement with TIM to ensure coverage in areas not covered by its own 3G and 4G networks. H3G's 3G network covers […]% of the Italian population and through the HSPAP technology it is able to provide data services at the speed of 42 Mbps. H3G's 4G network currently consists of […] LTE-enabled sites (out of […] sites in total). As mentioned in recital (61), H3G plans to invest an additional EUR […] in the period 2016-2018, aiming to reach […]% 4G coverage by 2019.

(64) H3G is the only MNO which is not active in the fixed voice and internet services markets, as it does not own a fixed network.

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39 Vodafone Italy press release; VODAFONE ITALIA: BILANCIO 2014-2015; 19 May 2015 available at: http://www.vodafone.it/portal/Vodafone-Italia/Chi-siamo/Obiettivi-e-risultati/corporate-risultati-finanziari [ID 2335].

40 Form CO, Section 6, Table 58.

41 Figures on Vodafone's planned investments in the mobile sector are not available. The EUR 3.6 billion investments announced by Vodafone include investment in both its fixed and mobile networks.

5.4.2. Other mobile telecommunications services providers, including MVNOs

(65) While MNOs own their mobile network, there are other mobile operators in Italy which offer mobile telecommunications services without having ownership of a network. These players are known as MVNOs.

(66) MVNOs obtain access to a host MNO's mobile network through a wholesale access agreement and use the host MNO's network to provide retail mobile services to end customers. There are different types of MVNOs. So-called "full MVNOs" typically do not have radio network access or spectrum, but own some of the core infrastructure, issue their own SIM cards, have network codes, a database of customers and back-office functions to manage customer relations. So-called "light MVNOs" or "partial MVNOs" do not own any network infrastructure and rely entirely on the infrastructure of the host MNO to provide retail services. Light MVNOs are also known as enhanced service providers ("ESPs"). Branded resellers are companies that do not autonomously provide any retail mobile telecommunications services but merely resell the SIM cards and services of an MNO under their own brand on behalf of the host MNO.[42] In this Decision, unless otherwise specified, the Commission will refer to the different types of MVNOs (excluding branded resellers) collectively as "MVNOs".

(67) In addition, MNOs provide wholesale access to Mobile Virtual Network Enablers ("MVNEs") and Mobile Virtual Network Aggregators ("MVNAs"). MVNEs and MVNAs are not retail mobile operators, as they do not offer services to end customers, but rather suppliers of network enablement platforms and intermediary wholesale access services to MVNOs.[43] They facilitate MVNO entry in the market, especially for small MVNOs. An MVNE is a company that provides network infrastructure and related services, such as network subsystems, business support systems, provisioning, administration, and operations support systems to MVNOs. This enables MVNOs to offer services to their own customers with their own brands. A related type of enabler is an MVNA, which is an aggregator of MVNOs. An MVNA has its own master wholesale access agreement with an MNO, in addition to all the necessary infrastructure and hosted systems. An MVNA enables an MVNO to operate in a much shorter time and at a lower cost, as the MVNO relies on the wholesale access agreement of an MVNA, without having to negotiate a wholesale agreement with an MNO.

(68) In the following recitals, the Commission will first describe the main MVNOs operating in Italy, and then illustrate the regulatory regime relevant for the provision of mobile telecommunications services by MVNOs.

5.4.2.1. Main MVNOs active in Italy

(69) According to the Parties, there are currently 16 MVNOs active in the Italian retail market for mobile telecommunications services. As of 2014, MVNOs accounted for

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[42] For this reason, in the competitive assessment of this Decision the market shares of branded resellers are not accounted for separately, but attributed to their respective MNO, as branded sellers do not operate autonomously on the retail market for mobile telecommunications services. In any event, as further explained in recital (174) the market presence of branded resellers in the Italian retail market for mobile telecommunications services is very limited.

[43] Therefore, for the purposes of this Decision, MVNAs and MVNEs are not included in the reference to "MVNOs".

[5-10]% of the retail mobile market in terms of subscribers, and [0-5]% in terms of revenues.[44]

(70) MVNOs started operating in Italy only as of 2007. The first MVNOs to launch were PosteMobile, Carrefour 1 Mobile, Coop Voce and BT Italia. Table 2 below shows the largest MVNOs active in Italy by number of subscribers in 2014.

Table 2: Largest MVNOs listed by subscriber number and market shares in the retail mobile market (2014)

Name of MVNO	Type of MVNO	Host mobile network	Launch date	Approximate number of subscribers	Market shares by subscribers
PosteMobile	ESP	Vodafone	Nov 2007	[…]	[0-5]%
	Full MVNO	WIND	Jul 2014		
Fastweb	ESP	H3G	Jun 2008	[…]	[0-5]%
Coop Voce	ESP	TIM	Jun 2007	[…]	[0-5]%
Lycamobile	Full MVNO	Vodafone	Jan 2014	[…]	[0-5]%
ERG Mobile	ESP	Vodafone	Apr 2009	[…]	[0-5]%
Daily Telecom	ESP	Vodafone	Apr 2008	[…]	[0-5]%
DIGI Italy	ESP	H3G	Oct 2010		
	Full MVNO	TIM	Mar 2016		
Tiscali Italia	ESP	TIM	Mar 2009		
Carrefour 1 Mobile	ESP	Vodafone	Jun 2007		
BT Italia	ESP	Vodafone	Dec 2007		
	Full MVNO	TIM	Jul 2014		
Green ICN	ESP	WIND	Jun 2011		

Source: Form CO, Section 6, Table 18

a) PosteMobile

(71) PosteMobile is a full MVNO. It is a subsidiary of Poste Italiane, the former state-owned monopoly, which provides postal services, postal savings, communication, logistics and financial services. PosteMobile relies on the distribution network of Poste Italiane of nearly 13 000 post offices. PosteMobile offers 2G, 3G and 4G services, as well as additional services such as m-payments, m-banking, m-commerce and financial services associated with the banking business of Poste Italiane (30% of PosteMobile's customers have enabled such services).

[44] Form CO, Annex 18.

(72) Since July 2014, PosteMobile is hosted on the network of WIND. Previously, PosteMobile was hosted on Vodafone's network as an ESP. PosteMobile did not yet migrate all its customers from Vodafone to WIND's network. As a result, some of PosteMobile's customers are currently on WIND's network while the others are still on Vodafone's network.

b) Fastweb

(73) Fastweb S.p.A. ("Fastweb") is an ESP hosted on H3G's network. It is the Italian subsidiary of the Swisscom group. Fastweb is mainly active in the provision of fixed voice and fixed internet services. It is the third largest operator in the fixed internet market after TIM and WIND, with a subscribers market share of 14.8%.

(74) Fastweb offers 2G and 3G (but not 4G) mobile services to private customers. It has a market share of 0.9% in term of subscribers and focuses on offering mobile services to its fixed voice and internet customers.

(75) At the beginning of 2016, Fastweb announced that it would leave H3G to migrate to the mobile network of TIM and that it would upgrade to full MVNO.[45]

c) Other MVNOs

(76) *Coop Voce* is an ESP hosted on TIM's network. It is part of COOP Italia, one of the largest Italian cooperatives systems, which represents one of the largest supermarket chains in Italy. Coop Voce offers mobile services to both private and business customers. Coop Voce has a market share of 0.7% in terms of subscribers.

(77) *Lycamobile* is a United Kingdom-based company operating in many Member States. It focuses on international calls and its customer target are communities with ties to other countries. In Italy, Lycamobile operates as a full MVNO and is hosted on Vodafone's network. It has a market share of 0.6% in terms of subscribers.

(78) *ERG Mobile* is an ESP hosted on Vodafone's network. It is a subsidiary of TotalErg, a joint venture between Total and Erg to distribute and market petroleum products. Erg Mobile relies on TotalErg's broad distribution network. It has a subscriber market share of 0.4% in terms of subscribers.

(79) Other MVNOs active in Italy include BT Italia (Full MVNO), DIGI Italy (full MVNO), Carrefour 1 Mobile (ESP), Tiscali Italia (ESP) and Daily Telecom (ESP), which together have a market share by subscribers of 0.7% in terms of subscribers.

5.4.2.2. Regulatory regime regarding MVNOs

(80) Relevant regulation concerning MVNOs may typically include, on the one hand, requirements that MVNOs have to comply with in order to operate as a mobile services provider and, on the other hand, obligations imposed upon MNOs to facilitate market entry of MVNOs.

(81) As regards regulatory requirements for MVNO entry, in Italy, MVNO entry is subject to the MVNO obtaining a general authorisation from the Ministry for Economic Development (Ministro dello Sviluppo Economico, "MiSe") pursuant to Article 25 of the Electronic Communications Code.[46]

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45 See http://www.mvnonews.com/fastweb-mobile/ [ID 2337].

46 Legislative Decree No. 259 of 1 August 2003, "Codice delle comunicazioni elettroniche" (*Gazzetta Ufficiale* n. 214 del 15 settembre 2003 - Supplemento Ordinario n. 150).

(82) Under the European Regulatory Framework, the general authorisation for communications providers to provide communications networks and services may be subject to the conditions specified in the Annex to the Authorisation Directive. In Italy, AGCOM, as established in the Electronic Communications Code, is responsible for setting the conditions for the provision of telecommunication services. These conditions include, for example, rules on billing to domestic and small business customers, arrangements for number portability between communications networks, and rules for the adoption and use of telephone numbers.

(83) Hence, from a legal perspective, a new entrant planning to be active as a MVNO needs to negotiate a wholesale access agreement with an MNO and to comply with the Electronic Communications Code and the conditions set by AGCOM and MiSe.

(84) As regards obligations on MNOs to facilitate MVNO entry, currently in Italy there are no regulatory obligations upon MNOs to grant wholesale access to MVNOs.[47]

5.5. Spectrum holdings

(85) In Italy, MiSe and AGCOM are responsible for the management of spectrum radio frequencies for mobile telecommunications. MiSe adopts the national plan for radio frequencies distribution ("Piano nazionale di ripartizione delle frequenze"). AGCOM is responsible to allocate the frequencies for use in mobile communications.

(86) The radio spectrum is divided into sections called bands. Different bands have different characteristics when it comes to coverage and data speeds. In general, frequencies below 1000 MHz enable an operator to offer a good geographic coverage and indoor penetration, while higher frequencies have the advantage of high speeds for data communication.

(87) The current spectrum allocation mainly reflects the outcome of two auctions that took place in 2011 (concerning the awarding of rights to use the 800, 1800, 2100 and 2600 MHz frequency bands) and in 2015 (concerning 1400 MHz frequency band, so-called L-band). Table 3 below provides an overview of the current frequency holdings of the four MNOs in Italy and the respective dates at which the rights to use the licenses will expire.

Table 3: Current allocated spectrum in Italy and license expiry dates

[…]

Source: Form CO, Section 6, Table 21

(88) As shown by the Table above, most of the licenses will not expire until 31 December 2029 (after which they may be renewed by the licensee). In particular, most of the frequency bands that may enable a new MNO entrant to offer 4G services (that is, 800 MHz, 1,400 MHz, 1,800 MHz and 2,600 MHz) will not be available before the end of 2029.Table 4 below provides an overview of the spectrum holdings allocated to the MNOs, also including the technology for which they are primarily used (2G, 3G, 4G).

[47] AGCOM resolution No. 544/00/CONS of 1 August 2000.

Table 4: Frequency holdings of the four MNOs in Italy (in MHz)

	WIND	H3G	TIM	Vodafone	Primary use
800 MHz FDD	20	-	20	20	4G
900 MHz FDD	20	10	20	20	3G, 2G
1,400 MHz SDL	-	-	20	20	4G
1,800 MHz FDD	30	30	40	40	4G, 2G
2,100 MHz FDD	30	30	30	30	3G
2,100 MHz TDD	5	5	5	5	3G
2,600 MHz FDD	40	20	30	30	4G
2,600 MHz TDD	-	30	-	-	4G
Total MHz	145	125	165	165	

Source: Form CO, Annex 13

(89) In the 2011 spectrum auction, TIM, Vodafone, WIND and H3G all obtained licenses in the 2600 MHz spectrum band. WIND was the only operator not acquiring licenses in the 1800 MHz bands. H3G is the only operator without spectrum in the 800 MHz bands, which is usually used for 4G, in particular for 4G indoor coverage. In the 2011 auction, TIM, Vodafone and WIND spent, respectively, EUR 1.26, 1.26 and 1.12 billion to acquire spectrum, while H3G spent EUR [300] million.

(90) Mobile operators have been authorised to partially refarm the 900 and 1800 MHz bands in 2014[48], taking into account the need to ensure continuity of GSM services. At the same time, following the requests by TIM and Vodafone pursuant to a 2007 law and a public consultation, their GSM licences in the 900 and 1800 MHz bands, which were due to expire in January 2015, were extended until June 2018, in line with the expiry date of the third GSM licence held by WIND.

(91) In December 2015, AGCOM established the procedures and rules to assign the frequencies on the 3600–3800 MHz bands for terrestrial electronic communications services in order to allocate different kinds of lots for urban and rural coverage.[49] These bands, in particular as regards the urban lots, are likely to be deployed for small cells and for handsets which use LTE Time-Division Duplex ("TDD") and complement existing networks to improve those networks' capacities.

5.6. Mobile telecommunications infrastructure and agreements between MNOs

5.6.1. Background to network sharing

(92) A mobile network includes a large number of radio base station sites. Each of them has a mast on which there are antennas as well as a base transceiver station system. The antennas and transceiver station equipment are the main elements of the Radio Access Network ("RAN") equipment. This equipment transmits and receives voice and data signals between the masts and subscribers' devices. Radio base station sites

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48 Spectrum refarming is the reallocation of frequency bands from one application or licensed service to another. For example, the 900 MHz and 1800 MHz bands that have historically been allocated for 2G mobile services in Italy have been refarmed to guarantee their use for new generations of mobile technologies, including both third generation 3G (using UMTS technology) and fourth generation 4G (using LTE technology).

49 AGCOM decision No. 659/15/CONS of 1 December 2015, available at: http://www.agcom.it/documents/10179/3485599/Delibera+659-15-CONS/b6dc88ed-4cc8-43b7-bbec-e55ed1f8dad9?version=1.0.

are either linked to their respective controller nodes (for 2G and 3G) or directly to the core network (for 4G) via a backhaul transmission connection,[50] which consist of copper, microwave or fibre links. To ensure sufficient capacity in the connection between the mobile site and the core network, mobile networks are increasingly making use of fibre backhaul.

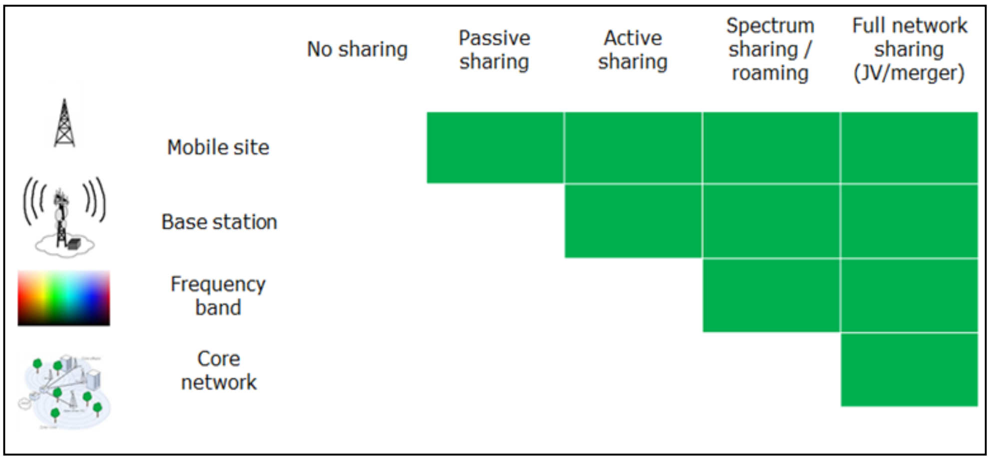
(93) MNOs can roll out their network by themselves, independently from other MNOs, or together with other MNOs through a network sharing agreement.

(94) In a network sharing agreement, MNOs agree to share some of the network elements in order to reduce costs and improve coverage and capacity. The degree of integration within network sharing agreements varies depending on whether: (i) the MNOs only share their site infrastructure ("passive sharing" or "site sharing"); (ii) they also share the RAN equipment at the sites ("active sharing"); (iii) they also share their spectrum ("spectrum sharing"); or (iv) they also rely on the same core network ("full network sharing").

(95) In particular, passive sharing involves sharing the basic infrastructure, such as masts, cabins and sometimes antennas and power supplies ("passive infrastructure"), as well as the cost of the site itself (rent and rates). Active sharing involves also sharing the RAN equipment ("active equipment"), meaning the base transceiver station and the controller nodes (for 2G and 3G), or the base transceiver station (for 4G) in addition to the passive infrastructure. Transmission (backhaul to the MNOs' core networks) may also be shared under passive or active sharing agreements. It is also possible for MNOs to integrate further and share spectrum.

(96) Figure 12 below provides an overview of the different forms of network sharing.

Figure 12: Extent of sharing under different forms of network sharing



Source: Commission's decision of 28 May 2014 in case M.6992 – Hutchison 3G UK/Telefónica Ireland, Figure 8

(97) Network sharing can provide substantial CAPEX[51] and OPEX[52] cost savings in achieving a certain level of coverage and capacity, and also can make it economically

[50] Mobile backhaul provides connectivity between the radio access network and the mobile core network and is supplied using several media (for example fibre and microwaves) and technologies (for example time division multiplexing ("TDM") and Ethernet).

[51] Capital expenditures are funds used by a company to acquire or upgrade physical assets such as property, industrial buildings or equipment. It is often used to undertake new projects or investments by the company.

[52] Operating Expense is a category of expenditure that a company incurs as a result of performing its normal business operations.

viable to extend coverage to less densely populated rural areas. By reducing costs and improving returns on capital, network sharing also allows for further network investments that might not otherwise be undertaken. Network sharing can also speed up network deployment, as the human resources required are shared between two MNOs.

(98) More specifically, passive sharing allows for a substantial decrease in the costs of building, operating and maintaining passive assets for each of the MNOs. Sharing sites reduces the overall number of sites required, allowing for significant OPEX cost savings on rent, rates, power and maintenance, in addition to reducing the CAPEX in acquiring and developing sites and masts.

(99) Active sharing gives rise to further CAPEX cost savings associated with the roll out of a piece of RAN equipment for multiple operators,[53] as well as OPEX savings from maintaining less RAN equipment in total.

5.6.2. Network sharing in Italy

(100) In Italy, all MNOs are engaged in passive sharing agreements. No MNO in Italy is currently engaged in active sharing, spectrum sharing or full network sharing.

(101) Passive sharing agreements enable MNOs to broaden their network coverage with significant CAPEX and OPEX savings. H3G currently shares […] sites with […] (out of which […] are LTE sites), […] sites with […] (out of which […] are LTE sites) and around […] sites with […] (out of which around […] are LTE sites).[54]

(102) In March 2015, WIND sold 90% of the shares in its subsidiary Galata to the Spanish group Cellnex. Galata is a tower business consisting of 7 377 towers together with the relevant functions, employees and related contracts. As a consequence of the divestiture, WIND now has access to sites mainly through third party infrastructure operators. Other than Galata, WIND is hosted on […] of […]'s sites (out of which […] are LTE sites), […] of […]'s sites (out of which […] are LTE sites), […] of […]'s sites (out of which […] are LTE sites) and it is additionally hosted on […] sites of other third party operators such as […] and the […].[55]

(103) Lastly, TIM and Vodafone signed in 2007 an agreement to share their existing and future passive infrastructures. The agreement covered 9 860 of the two operators' sites and it was open to potential interested third parties.[56]

(104) In the remainder of this Decision, the Commission will refer to "network sharing agreements" or "NSAs" as those agreements whereby MNOs are sharing more than just their passive infrastructure, thus including agreements for (i) active sharing, (ii) spectrum sharing, or (iii) full network sharing.

5.6.3. National roaming in Italy

(105) H3G and TIM have in place a national 2G roaming agreement to enable H3G to provide 2G services to its customers, given that H3G lacks a 2G network.

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[53] The cost of a piece of RAN equipment for a single operator is more than half the cost of a multiple operator RAN equipment ("MORAN").

[54] Form CO, Section 8, paragraphs 326 and 327.

[55] Form CO, Section 8, paragraph 328.

[56] Vodafone, News release, Vodafone Italia and Telecom Italia announce Site Sharing Agreement for Radio Access Network, 12 November 2007, available at: http://www.vodafone.it/res/attachments/pdf/2007_11_12_eng.pdf. [ID 2605].

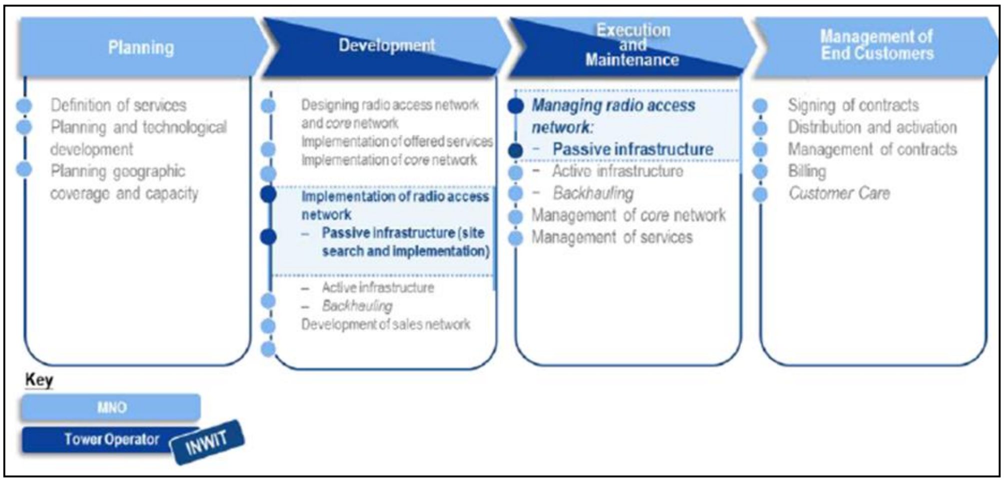
5.6.4. *Mobile communication towers in Italy*

(106) An essential part of passive infrastructure are communication towers, on which public communication network operators such as MNOs and other network operators place active equipment which is used to transmit data to enable mobile and other network services.

(107) Some mobile communication towers are owned by the MNOs, which use them primarily for their own network purposes. Other mobile communication towers are owned and managed by independent wireless infrastructure providers, known as "TowerCos", such as Cellnex, Rai Way and Ei Towers.

(108) TowerCos develop, acquire and operate communications towers, providing the passive infrastructure needed for telecommunications and media services to be provided to end users. Figure 13 below summarizes the activities carried out by TowerCos.

Figure 13: TowerCos' activities within MNOs value chain



Source: INWIT Interim Report at September 30, 2015

(109) Among the TowerCos operating in Italy, Cellnex is currently the largest independent operator of wireless communications infrastructure in Italy with approximately 7 700 sites,[57] operated through its subsidiaries Galata and TowerCo. Rai Way is a subsidiary of RAI, Italy's state-owned television and radio broadcaster, and manages over 2 300 sites across Italy, of which approximately 1 800 are directly owned.[58] Ei Towers' activity consists of managing a portfolio of approximately 2 800 infrastructures, of which 2 300 broadcasting sites and approximately 500 mobile sites.[59] Rai Way and Ei Towers mainly provide coverage and signal for TV and radio broadcasting through broadcasting towers, while Cellnex is mainly active in the mobile telecommunication market.

(110) The largest operator by number of sites managed in Italy is Infrastrutture Wireless Italiane S.p.A. ("INWIT"), which is controlled by TIM. INWIT manages approximately 11 500 towers, with widespread distribution throughout Italy.[60]

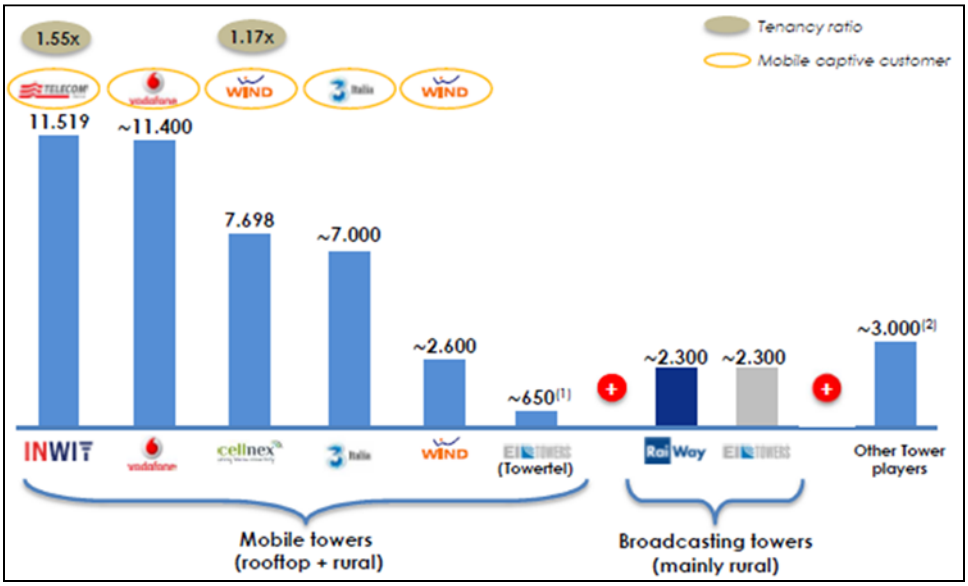
(111) In Italy, approximately 20.7% of the passive wireless infrastructure is under the control of the TowerCos. The remaining 79.3% remains under the control of the

57 See https://www.cellnextelecom.com/en/cellnex-italia/.
58 See http://www.raiway.it/index.php?lang=EN&cat=121.
59 See http://www.eitowers.it/azienda/art/eng/10/overview.shtml?id=2&mv=6.
60 See http://www.inwit.it/en/about-us/company-profile.

MNOs.[61] This percentage may change, since INWIT may become independent in the next months. TIM, which controls 60% of INWIT, with the rest floated in the Milan stock market, is currently engaged in the sale of a 45% stake in the company.[62]

(112) Figure 14 below provides an overview of the different companies operating communication towers in Italy and the respective number of sites managed.

Figure 14: Tower companies in Italy and number of towers



Source: Rai Way Industrial Plan presentation, Investor Day, 29 September 2015

(113) INWIT is the largest operator by number of sites and it is also the operator with the highest tenancy ratio, which corresponds to the number of tenants per site. In 55% of its sites, INWIT hosts at least another MNO other than TIM. TIM is INWIT's main customer accounting for approximately 80% of INWIT's sales. The other customers of INWIT are the other MNOs: Vodafone, WIND and H3G.

6. RELEVANT MARKETS

6.1. Analytical framework

(114) Market definition is a tool to identify and define the boundaries of competition between firms.[63] It has both a product and a geographic dimension.

(115) A relevant product market comprises all those products and services which are regarded as interchangeable or substitutable, by reason of the products' characteristics, their prices and their intended use.[64] In determining the relevant product market, the Commission assesses demand substitution by determining the range of products which are viewed as substitutes by the consumers.[65] Demand-side substitutability is the focus of the Commission's assessment when defining the relevant markets. The Commission may also take into account supply-side

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61 Presentamos Cellnex Telecom, Conferencia de Prensa, 24 April 2015, slide 11, available at: https://www.cellnextelecom.com/content/uploads/2015/05/Cellnex-Telecom_PressConference_v9-v1.pdf. [ID 2612].

62 See http://www.corrierecomunicazioni.it/tlc/38226_inwit-avvio-alla-vendita-del-45 htm [ID 2588].

63 Commission Notice on the definition of relevant market for the purposes of Community competition law ("Market Definition Notice"), OJ C 372, 09.12.1997, paragraph 2.

64 Market Definition Notice, paragraph 7.

65 Market Definition Notice, paragraph 15.

substitutability, namely when its effects are equivalent to those of demand substitution in terms of effectiveness and immediacy.[66] This is the case when suppliers are able to switch production to the relevant products and market them in the short term without incurring significant additional costs or risks in response to small and permanent changes in relative prices.

(116) The relevant geographic market comprises the area in which the undertakings concerned are involved in the supply and demand of products or services, in which the conditions of competition are sufficiently homogeneous and which can be distinguished from neighbouring areas because the conditions of competition are appreciably different in those areas.[67]

(117) It is within the analytical framework set out in recitals (114) to (116) that the Commission considered the definitions of the relevant markets to assess the Transaction.

6.2. Retail mobile telecommunications services

(118) MNOs and MVNOs provide retail mobile telecommunications services to end users, that is to say subscriptions enabling them to access public mobile telecommunications networks. Such access allows end users to make voice calls, send and receive text messages and use mobile data.

(119) The following Sections examine the relevant product and geographic market definition in relation to a possible market for the provision of retail mobile telecommunications services in Italy. This market is also referred to as "retail mobile market".

6.2.1. Product market definition

6.2.1.1. Parties' view

(120) The Parties consider that there is one single overall product market for retail mobile telecommunications services. Hence, the Parties submit that no distinction should be made between prepaid and postpaid services or according to the type of customer, for instance between private customers and business customers. Likewise, the Parties submit that it is not appropriate to sub-divide the market for retail mobile telecommunications services neither on the basis of the type of technology used in the mobile networks (such as 2G, 3G and 4G), nor on the basis of the type of service (voice, SMS, MMS and data).

(121) As regards the distinction by type of service, the Parties submit that, given recent developments, the question arises whether so-called Over The Top ("OTT", such as Viber, WhatsApp or Skype) services form part of the same product market for retail mobile telecommunications services. According to the Parties, OTT messaging and voice services are increasingly seen by customers as an alternative to traditional mobile voice and SMS services. However, the Parties submit that this question can be left open, insofar as the impact of OTT services can be taken into account as part of the competitive assessment of the retail market for mobile telecommunications services.

(122) Further, the Parties submit that bundled offers including a mobile component, that is, dual-play (fixed / mobile), triple-play (mobile / fixed / internet) and quad-play (fixed

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66 Market Definition Notice, paragraph 20.

67 Market Definition Notice, paragraph 7.

/ mobile / internet / television) are playing an important role in competition in Italy and are poised to have an ever-increasing role following new entry and expansion of fixed-line players into the mobile market. The Parties submit that competition from such multiple play offers is a relevant factor which should be taken into account in assessing the effects of the Transaction. However, the Parties submit that the question whether multiple play bundles with a mobile component constitute a separate product market can be left open, given that there is no overlap between the Parties' activities in this segment, as H3G only provides mobile services. Indeed, H3G does not offer fixed / mobile bundles in Italy.

(123) Finally, the Parties submit that recent technological developments are blurring the formerly clear distinction between mobile and fixed telecommunications services. This is in particular because fixed-line services are increasingly providing wireless connectivity. Therefore, customers tend to use Wi-Fi hotspots inside and outside the home, instead of a mobile connection. However, public Wi-Fi hotspots are not yet very developed in Italy. Moreover, with the roll out of 4G services, mobile data services are available at high-speed. However, the Parties submit that mobile and fixed services in Italy still constitute distinct product markets, although the competitive dynamics on both markets are significantly affected by the diminished distinction between fixed and mobile offerings from a demand perspective.

(124) In conclusion, the Parties submit that, in line with the Commission's decisional practice regarding mobile telecommunications services,[68] the relevant product market should be defined as a single product market for retail mobile telecommunications services to end customers.

6.2.1.2. Commission's assessment

a) Retail fixed vs mobile telecommunications services

(125) Consistent with its previous decisional practice in the mobile telecommunications sector,[69] the Commission considers that mobile telecommunications services constitute a separate market from fixed telecommunications services. Indeed, among other things, mobile services provide end users with different functionalities from those offered by fixed services, in particular with the ability to communicate on the go.

(126) This conclusion is supported by the results of the market investigation. The majority of respondents stated that fixed and mobile services are complementary rather than substitutable.[70] In the respondents' view, this is because there are still important differences in terms of functionality between the two services, one being stationary and the other allowing communications "on-the-move".[71] A respondent also stated that only around 10% of the overall voice traffic from mobile is directed to fixed lines, which suggests that customers tend to prefer using fixed telephony for fixed-to-

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[68] The Parties refer to Commission decision of 2 July 2014 in case M.7018 – *Telefónica Deutschland/E-plus*, recitals 30 *et seq*; Commission decision of 28 May 2014 in case M.6992 – *Hutchison 3G UK/Telefónica Ireland*, recital 141; Commission decision of 1 March 2010 in case M.5650 – *T-Mobile/Orange*, recitals 20 *et seq.*; Commission decision of 27 November 2007 in case M.4947 – *Vodafone/Tele2 Italy/Tele2 Spain*; Commission decision of 24 September 2004 in case M.3530 – *TeliaSonera/Orange*; and Commission decision of 16 September 2003 in case M.3245 – *Vodafone/Singlepoint*.

[69] Commission decision of 2 July 2014 in case M.7018 – *Telefónica Deutschland/E-Plus*, recital 64.

[70] Responses to Questionnaire Q4 to MNOs of 8 February 2016, question 3. Responses to Questionnaire Q1 to MVNOs of 8 February 2016, question 27.

[71] BT Italia's response to Questionnaire Q1 to MVNO of 8 February 2016, question 27.1 [ID 512].

fixed calls and mobile telephony for mobile-to-mobile calls.[72] Moreover, with respect to data services, one respondent pointed out that the average data usage over fixed broadband is significantly higher than that of mobile customers.[73]

(127) The Commission also considers that mobile telecommunications services constitute a separate market from public Wi-Fi services. Indeed, according to a strong majority of respondents to the market investigation,[74] mobile telecommunications services cannot be substituted with public Wi-Fi services. Most respondents to the market investigation explained that the current density of public Wi-Fi networks in Italy is too limited to consider these services a credible substitute to mobile telecommunications services.[75] Moreover, while public Wi-Fi networks offer unlimited traffic, mobile services are typically subject to limited data allowances.[76]

(128) Mobile telecommunications services can be offered in combination with fixed services, such as fixed-line telephony and fixed-line internet access, as well as TV services. Combined offerings of these services are sometimes referred to as dual, triple or quadruple play offers (depending on the number of offers included in the package), or collectively as multiple play offers. In previous decisions, the Commission has so far left open the question as to whether a separate market for multiple-play offers comprising, that is fixed internet access, fixed telephony and TV (triple play) or fixed internet access, fixed telephony, TV and mobile services (quadruple play), should be defined.[77]

(129) From a demand-side perspective, as also noted by the Parties,[78] in Italy the demand for multiple play bundles including a mobile component has been, until recently, rather limited. Indeed, the market investigation carried out in the present case indicates that the number of customers purchasing mobile services as part of a fixed-mobile bundle from the MNOs currently accounts for a small percentage of the total number of mobile customers in Italy.[79] Furthermore, one respondent provided estimates based on a third party's study, showing that as of November 2015 fixed-mobile bundle penetration amounted to around 9.6% of the total fixed broadband subscriptions in Italy, which corresponds to only around 1.5% of the total number of subscribers of mobile telecommunications services.[80] The limited presence of fixed-mobile bundles in Italy is also confirmed by data regarding WIND: only […]% of WIND's mobile pre-paid private subscribers (who account for […]% of WIND's total mobile subscribers)[81] subscribed to a fixed-mobile bundle as of September 2015.[82]

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72 PosteMobile's response to Questionnaire Q1 to MVNO of 8 February 2016, question 27.1 [ID 835].

73 BT Italia's response to Questionnaire Q1 to MVNO of 8 February 2016, question 27.1 [ID 512].

74 Responses to Questionnaire Q4 to MNOs of 8 February 2016, question 5. Responses to Questionnaire Q1 to MVNOs of 8 February 2016, question 29.

75 Responses to Questionnaire Q4 to MNOs of 8 February 2016, question 5 Responses to Questionnaire Q1 to MVNOs of 8 February 2016, question 29.1.

76 Fastweb's response to Questionnaire Q1 to MVNOs of 8 February 2016, question 29.1 [ID 707].

77 Commission decision of 4 February 2016 in case M.7637 – *Liberty Global/BASE Belgium*, recitals 96 and 98; Commission decision of 19 may 2015 in case M.7421 – *ORANGE/JAZZTEL*, recitals 86 and 91; Commission decision of 2 July 2014 in case M.7018 – *Telefónica Deutschland/E-Plus*, recital 59; Commission decision of 21 October 2011 in case M.5900 – *LGI/KBW*, paragraph 186; Commission decision of 13 February 2010 in case M.5734 – *Liberty Global Europe/Unitymedia*, paragraph 48.

78 Form CO, Section 6, paragraph 324.

79 Confidential information from the Commission’s market investigation.

80 Fastweb's response to Questionnaire Q1 to MVNOs of 8 February 2016, question 33.2.1 [ID 707].

81 Form CO, Section 6, Table 2.

Based on the information collected in the present case, it therefore appears that customers still mostly purchase mobile services separately in Italy.[83]

(130) Furthermore, the estimates obtained in the market investigation concerning the evolution of the number of customers purchasing mobile services as part of a fixed-mobile bundle in the next years suggest that, while fixed-mobile bundles may increase in the future, customers will still continue to mostly purchase mobile services on a standalone basis, separately from fixed services.[84]

(131) From a supply-side perspective, the market investigation shows that, while three of the four MNOs offer multiple play bundles including a mobile component,[85] H3G and the majority of the MVNO respondents do not offer such bundles.[86]

(132) In light of the above, the Commission considers that, for the assessment of the effects of the Transaction, the relevant market includes all mobile subscriptions regardless of whether they are included or not in a fixed-mobile bundle. Moreover, the Commission considers that it is not necessary to define a separate product market for multiple play offers including a mobile component, as this would not change the competitive assessment. Indeed, if fixed-mobile bundles were to be a separate market, the Parties' activities would not overlap in that hypothetical market (as only WIND offers such bundles). The Commission will nevertheless take into consideration the possible impact of fixed-mobile convergence in its competitive assessment when analysing the competitive position of H3G.

b) Segmentations within retail mobile services

(133) In previous decisions, the Commission did not further divide the market for retail mobile telecommunications services to end customers by type of technology (2G, 3G and 4G), by type of service (voice, data, SMS) or by type of end-user (private and business customers). The Commission therefore assessed previous cases on the basis of a single market for the retail provision of mobile telecommunications services to end customers.[87]

(134) In line with the approach adopted in its previous decisions, the Commission has assessed whether the same considerations remain valid in relation to the retail provision of mobile telecommunication services in Italy.

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82 Form CO, Section 6, Table 30. The proportion is higher for post-paid private customers ([…]%), for SoHo business customers ([…]%) and SME business customers ([…]%), although it is still relatively limited.

83 According to Eurobarometer data, the proportion of households with a bundle service package including mobile telephony in 2014 did not exceed 8% of Italian households, while in 2015 this percentage increased to 25% (see, respectively, http://ec.europa.eu/public_opinion/archives/ebs/ebs_414_fact_it_en.pdf and http://ec.europa.eu/information_society/newsroom/image/document/2016-22/eb_ecommunications_and_the_digital_single_market_it_en_15849.pdf [ID 2332]). The apparent inconsistency between the Eurobarometer data and the results of the market investigation carried out in the present case can be explained by the fact that the Eurobarometer data are not limited to fixed-mobile bundles, but also include bundles of mobile voice and mobile data services (without fixed services).

84 Confidential information from the Commission’s market investigation.

85 Responses to Questionnaire Q4 to MNOs of 8 February 2016, question 9.

86 Responses to Questionnaire Q1 to MVNOs of 8 February 2016, question 33.

87 Commission decision of 2 July 2014 in case M.7018 – *Telefónica Deutschland/E-Plus*, recitals 31 to 55; Commission decision of 28 May 2014 in case M.6992 – *Hutchison 3G UK/Telefónica Ireland*, recital 141; Commission decision of 12 December 2012 in case M.6497 – *Hutchison 3G Austria/Orange Austria*, recital 58.

i. Type of technology (2G, 3G and 4G)

(135) In previous decisions, the Commission did not define separate markets for retail mobile telecommunications services according to the network technology used (2G, 3G or 4G) in view of the limited customer differentiation between different types of technologies and the fact that, in those cases, all MNOs offered a combination of mobile services over networks using all technologies.[88]

(136) The Commission notes that the same considerations also apply to the present case. The services provided to end customers (voice, SMS, data) are the same irrespective of the network technology used. Moreover, all MNOs (accounting for 93% of all mobile subscribers in Italy) as well as some MVNOs offer 4G services in parallel with 2G and 3G services to end users.[89] Further, customers are served with all types of technology with no distinction: importantly, customers moving from an area of coverage by one type of network technology to another will experience continuity in the mobile services available to them.

(137) Therefore, in line with its previous decisions, for the assessment of the effects of the Transaction, the Commission considers that the retail market for the provision of retail mobile telecommunications services should not be segmented according to the type of technology.

ii. Voice, SMS and data services

(138) In previous cases, the Commission considered that it would not be appropriate to define separate markets for voice services, SMS/MMS services and data-only services, due to the fact that all mobile providers offer all these types of services to their customers.[90]

(139) In the present case, the Commission notes that, in Italy, voice communication, SMS/MMS and data services are often provided together in the same mobile subscription. In particular, all four MNOs, as well as MVNOs, offer data services as part of their offering of mobile services to customers. In addition, while data services are also provided on a standalone basis, a large majority of respondents to the market investigation consider that a provider of data/voice bundles could start offering data-only subscriptions within a reasonable time frame and without incurring significant additional costs and viceversa.[91] The respondents pointed out that the network used for these services is the same and that the decision whether to offer data-only subscriptions is purely commercial.[92]

(140) Accordingly, it does not appear appropriate to segment the market between voice, SMS and data services, as all these services are normally provided jointly to end users. Therefore, in line with previous decisions, for the assessment of the effects of

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88 Commission decision of 1 March 2010 in case M.5650 – *T-Mobile/Orange*, recital 24 (with respect to 2G and 3G); Commission decision of 26 April 2006 in case M.3916 – *T-Mobile Austria/tele.ring*, recital 18 (2G and 3G); Commission decision of 12 December 2012 in case M.6497 – *Hutchison 3G Austria/Orange Austria*, recitals 43 to 46 (2G, 3G and 4G); Commission decision of 2 July 2014 in case M.7018 – *Telefónica Deutschland/E-Plus*, recitals 46 to 50.

89 Responses to Questionnaire Q1 to MVNOs of 8 February 2016, question 35.

90 Commission decision of 2 July 2014 in case M.7018 – *Telefónica Deutschland/E-Plus*, recitals 53 to 55.

91 Responses to Questionnaire Q4 to MNOs of 8 February 2016, question 14. Responses to Questionnaire Q1 to MVNOs of 8 February 2016, question 38.

92 Responses to Questionnaire Q4 to MNOs of 8 February 2016, question 14. Responses to Questionnaire Q1 to MVNOs of 8 February 2016, question 38.

the Transaction, the Commission considers that no separate markets should be defined for the provision of voice, SMS/MMS and data services.

(141) As regards substitutability between OTT services and retail mobile services, respondents to the market investigation expressed mixed views.

(142) As regards messaging services, a majority of respondents considered OTT instant messaging as substitutable to SMS.[93] However, respondents noted that such substitutability is limited, since OTT instant messaging requires a smartphone with a data connection and is not used by all customers.[94]

(143) As regards voice services, respondents to the market investigation acknowledged the increase in terms of penetration and usage of Voice Over IP services provided by OTT applications, but also highlighted the limitations of these services, notably concerning their reliability (quality of service, speech path delays, emergency calls management).[95]

(144) In any event, almost all respondents to the market investigation explained that, in order to use OTT messaging and voice, a data connection (be it fixed or mobile) is always needed.[96]

(145) Therefore, the Commission considers that, for the purpose of the assessment of the effects of the Transaction, OTT services cannot be considered part of the same product market as retail mobile telecommunications services. Indeed, OTT services cannot substitute mobile telecommunications services, as OTT services rely on mobile telecommunications (data) services (and fixed broadband services) to function. As they depend on data services to function and voice, SMS and data services are part of the same market, OTT services cannot substitute retail mobile telecommunications services. Moreover, the Commission considers that the out-of-the-market constraint exerted by OTT services, in particular on messaging, is not relevant for the assessment of the effects of the Transaction, given that OTT services rely on data services to function, but do not provide themselves those data services, which are sold by MNOs. As illustrated by the figures contained in Section 5.1.2.3 above, competition in the mobile market in Italy is increasingly "data centric", that is to say based on sale of data packages, which are used by OTT services, who do not sell data packages in competition with MNOs.

iii. <u>Prepaid and postpaid services</u>

(146) Prepaid services require payment before service use, while postpaid services are charged after service use.

(147) In its past decisional practice, the Commission has found that the distinction between prepaid and postpaid services is becoming blurred due to the development of different types of offers.[97] The Commission has also found that postpaid services are

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[93] Responses to Questionnaire Q4 to MNOs of 8 February 2016, question 6. Responses to Questionnaire Q1 to MVNOs of 8 February 2016, question 30 and 30.1.

[94] Responses to Questionnaire Q4 to MNOs of 8 February 2016, question 6. Responses to Questionnaire Q1 to MVNOs of 8 February 2016, question 30.1.

[95] Responses to Questionnaire Q4 to MNOs of 8 February 2016, question 7. Responses to Questionnaire Q1 to MVNOs of 8 February 2016, question 31 and 31.1.

[96] Responses to Questionnaire Q4 to MNOs of 8 February 2016, question 8. Responses to Questionnaire Q1 to MVNOs of 8 February 2016, question 32 and 32.1.

[97] Commission decision of 12 December 2012 in case M.6497 – *Hutchison 3G Austria/Orange Austria*, recitals 38 and 39; Commission decision of 1 March 2010 in case M.5650 – *T-Mobile/Orange*, paragraph 21.

often combined with handset promotions, whereas prepaid services are not.[98] Finally, the Commission has concluded that both types of services are part of the same market in view of supply-side substitution.[99] However, in its previous decisions, the Commission has also analysed the effects of transactions on the segments for postpaid and prepaid services.[100]

(148) In the present case, most respondents declared that prepaid and postpaid services are substitutable on the supply side.[101] One respondent explained that a company offering only prepaid or postpaid services could start offering the other type of services without incurring significant additional cost, as the network used for both services is the same.[102] Also, another respondent confirmed that from a demand perspective, the distinction between prepaid and postpaid services in the Italian market is very blurred, since the majority of prepaid packages offered are fixed periodic fee allowances including a bundle of minutes, SMSs and GBs of data traffic.[103] In addition, respondents pointed out that certain features which are generally associated with postpaid contracts often also apply to prepaid contracts in Italy. For example, prepaid users are often automatically and directly charged on their credit card or bank account and some operators impose binding periods of up to 30 months on prepaid contracts, especially when a smartphone handset is included in the plan.[104]

(149) Therefore, in line with its previous decisions, for the assessment of the effects of the Transaction, the Commission concludes that prepaid and postpaid services do not constitute separate product markets, but rather market segments within an overall retail market for the provision of mobile telecommunications services.

iv. SIM only and handset subscriptions

(150) In Italy, mobile services are either offered as SIM-only services ("SIMO") or, less often, in combination with a handset ("handset subscriptions").

(151) In the present case, the market investigation indicates that, from a supply-side perspective, all the MNOs and also the main MVNOs (that is, Fastweb and PosteMobile) offer both SIMO and handset subscriptions.[105]

(152) Therefore, the Commission considers that SIMO and handset subscriptions do not constitute separate product markets, but rather market segments within an overall retail market for the provision of mobile telecommunications services.

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[98] Commission decision of 12 December 2012 in case M.6497 – *Hutchison 3G Austria/Orange Austria*, recital 40.

[99] Commission decision of 28 May 2014 in case M.6992 – *Hutchison 3G UK/Telefónica Ireland*, recital 143; Commission decision of 12 December 2012 in case M.6497 – *Hutchison 3G Austria/Orange Austria*, recital 41; Commission decision of 2 July 2014 in case M.7018 – *Telefónica Deutschland/E-Plus*, recital 39.

[100] For example, see Commission decision of 2 July 2014 in case M.7018 – *Telefónica Deutschland/E-Plus*.

[101] Responses to Questionnaire Q4 to MNOs of 8 February 2016, question 17. Responses to Questionnaire Q1 to MVNOs of 8 February 2016, question 41.

[102] BT Italia's response to Questionnaire Q1 to MVNOs of 8 February 2016, question 41.1. [ID 512]

[103] Fastweb's response to Questionnaire Q1 to MVNOs of 8 February 2016, question 41.1. [ID 707]

[104] Responses to Questionnaire Q1 to MVNOs of 8 February 2016, question 41.1.

[105] Responses to Questionnaire Q4 to MNOs of 8 February 2016, question 21. Responses to Questionnaire Q1 to MVNOs of 8 February 2016, question 43.

v. Private and business customers

(153) Providers of mobile telecommunications services normally offer subscriptions directed at private customers and other subscriptions directed at business customers. While subscriptions for private customers are generally offered both in the form of prepaid and postpaid services, subscriptions for business customers tend to be mostly postpaid.[106]

(154) In its decisional practice, the Commission has found that private and business customers present differences from the demand side.[107] However, in previous cases, the Commission did not identify separate markets for the provision of retail mobile telecommunications services to private customers and to business customers, mainly due to supply-side substitutability considerations.

(155) In the present case, the market investigation suggests that there are differences between the mobile services provided to business and private customers in view of the different requirements of those two customer groups. The vast majority of respondents among MNOs and MVNOs have stated that business customers' demand for mobile telecommunications services is partly different from that of private customers.[108] In particular, according to some respondents, differences may exist in terms of distribution channel, contract duration, inclusion of additional services (e.g. IT services) and customer care.[109] Moreover, in order to be eligible for a business customer subscription, customers are required to provide certain documents, notably a VAT registration number.[110] One respondent explained that business customers often require dedicated procedures for purchasing orders, request personalised offers, dedicated customer care and technical development and support services.[111]

(156) Additionally, most respondents among MNOs and MVNOs explained that they further segment their business customer base according to the size of the company into small office/home office ("SoHo"), small-medium enterprise ("SME") and large enterprise customers.[112] This is the case for almost all respondents, even if they all use different thresholds to categorise these companies, with some relying on the number of SIMs used by the company and others relying on the number of the company's employees or its turnover.[113] In particular, the responses to the market investigation suggest that the services provided to larger business customers tend to differ from those provided to smaller business customers in terms of distribution channel, post-sale customer support, inclusion of additional services, and customer care.[114] For example, while small/medium business customers tend to purchase

106 TIM's response to RFI 48 [ID 1732].

107 Commission decision of 1 March 2010 in case M.5650 – *T-Mobile/Orange*, paragraph 21; Commission decision of 12 December 2012 in case M.6497 – *Hutchison 3G Austria/Orange Austria*, recitals 34 and 35; Commission decision of 28 May 2014 in case M.6992 – *Hutchison 3G UK/Telefónica Ireland*, recital 149; and Commission decision of 2 July 2014 in case M.7018 – *Telefónica Deutschland/E-Plus*, recitals 34 and 35.

108 Responses to Questionnaire Q6 to MVNOs of 2 May 2016, question 17; TIM's response to RFI 48 [ID 1732] and Vodafone's response to RFI 49 [ID 1539].

109 Responses to Questionnaire Q4 to MNOs of 8 February 2016, question 25.1. Responses to Questionnaire Q1 to MVNOs of 8 February 2016, question 45.1.

110 Responses to Questionnaire Q4 to MNOs of 8 February 2016, questions 26 and 26.1. Responses to Questionnaire Q1 to MVNOs of 8 February 2016, questions 46 and 46.1.

111 PosteMobile's response to Questionnaire Q6 to MVNOs of 2 May 2016, question 17.1 [ID 1354].

112 Responses to Questionnaire Q1 to MVNOs of 8 February 2016, question 45.1.

113 Responses to Questionnaire Q6 to MVNOs of 2May 2016, question 19.

114 Responses to Questionnaire Q4 to MNOs of 8 February 2016, question 25.1; Responses to Questionnaire Q4 to MNOs of 8 February 2016, question 45.1.

mobile services on the basis of pre-designed standard tariffs, the tariffs for large business customers are predominantly determined through tenders or individual negotiations.[115] In addition, larger business customers have more need of "collaboration" services, data exchange and interactions between their own fixed network infrastructure and mobile devices than smaller realities organizations have.[116]

(157) Respondents among business customers also generally agreed that demand for mobile services from businesses is distinct from the demand of private customers. Respondents explained that this is due to the specific needs of business customers, and their larger size and complexity.[117] Additionally, business customers also suggested that, for the same reasons, a further distinction may be drawn depending on the size of the business customers, for example, between SoHo and large business customers.[118]

(158) However, from a supply-substitutability perspective, a majority of MNO and MVNO respondents stated that a company offering mobile services only to private customers could start serving business customers within a reasonable time frame and without incurring significant additional costs.[119] This appears to be the case especially for the provision of mobile services to small business customers, such as SoHo and SME customers, as those customers' needs are similar to those of private customers, and can be served through the same infrastructure. Thus, a mobile provider that only supplies private customers would be able to start serving small business customers without significant additional investments. Conversely, it appears that more significant investments and efforts are required in order for a mobile provider offering retail mobile services to private customers to start offering services to larger business customers, as the latter have more specific requirements, such as a high-quality service in terms network planning, coverage and design, customer assistance, value-added services, convergent services, personalised offers and other ad hoc functionalities.[120]

(159) In light of the above findings, the Commission considers that, within the Italian retail mobile market, from a demand-side perspective different customers groups can be identified in view of their different requirements and needs, that is to say private customers and business customers. Among the business customers, a further distinction could potentially also be drawn between large and medium-small business customers, so as to take into consideration their differences in size, requirements and purchasing mechanisms. From a supply-side perspective, it appears that providers of mobile services to private customers could easily start providing services to small business customers and viceversa. However, the ability of providers of mobile services to private and small business customers to switch and start providing services to large business customers could not clearly be established, in light of the specific requirements of the latter customer group.

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115 WIND's reply to Commission RFI No. 47 of 26 April 2016, question 2.8; H3G's reply to Commission RFI No. 46 of 26 April 2016, question 2.8; TIM's reply to Commission RFI No. 48 of 26 April 2016, question 2.8, [ID 1468].

116 Tiscali's Response to Questionnaire Q6 to MVNOs of 02 May 2016, question 21 [ID 527].

117 Responses to Questionnaire Q2 to business customers of 8 February 2016, question 9.

118 Responses to Questionnaire Q2 to business customers of 8 February 2016, question 10.

119 Responses to Questionnaire Q4 to MNOs of 8 February 2016, question 28. Responses to Questionnaire Q1 to MVNOs of 8 February 2016, question 48.

120 Responses to Questionnaire Q6 to MVNOs of 2May 2016, question 21; Fastweb's response to Questionnaire Q1 to MVNOs of 8 February 2016, question 48.1 [ID 707].

(160) In any event, for the purpose of this Decision, the question whether different customer groups belong to separate markets is not material to the Commission's competitive assessment. Indeed, should business customers, or only large business customers, be considered a separate market, this market would not be affected by the Transaction, as the Parties' activities, and in particular H3G's activities, in this market would be limited. On the contrary, affected markets would arise regardless of whether private customers are considered a separate market or part of an overall retail market, including small and large business customers. This is because business customers account for only 15.7% of mobile lines of the overall retail market for the provision of mobile telecommunications services in Italy (see Section 5.1.2.2 above).

(161) The Commission therefore concludes that the relevant market for the purpose of this Decision is the overall retail market for the provision of mobile telecommunications services to all end customers.

c) Conclusion on product market definition

(162) In light of the above findings the Commission concludes, for the assessment of the effects of the Transaction, that there is an overall product market for the retail provision of mobile telecommunications services. Nonetheless, to the extent that it is relevant for the purposes of the competitive assessment in this Decision, the Commission will also assess whether the Transaction would have a specific negative effect in a particular market segment which would be capable of affecting competition in the overall market.[121]

6.2.2. Geographic market definition

6.2.2.1. Parties' view

(163) The Parties submit that the retail market for mobile telecommunications services is national in scope and corresponds to the territory of Italy.

6.2.2.2. Commission's assessment

(164) According to the Commission's established practice, the retail market for mobile telecommunications services is national in scope.[122] The market investigation in the present case has not provided any suggestions that the Commission should depart from its previous decisions. Indeed, the telecommunications infrastructure of Italy is independent from that of other Member States and mobile telecommunications services in Italy (as well as in other Member States) are subject to a national regulatory regime.

(165) In the present case, a strong majority of respondents agreed that the market for mobile telecommunications services is national in scope and limited to the territory of Italy.[123] Respondents explained that licenses to MNOs and to MVNOs are granted on a national basis and that marketing and pricing policies are also developed at national level.[124]

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121 See Commission decision of 2 July 2014 in case M.7018 – *Telefónica Deutschland/E-Plus*, recital 71.

122 Commission decision in case M.6497 – *Hutchison 3G Austria/Orange Austria,* recital 73; Commission decision in case M.5650 – *T Mobile/Orange UK*, paragraphs 25 and 26; Commission decision of 28 May 2014 in case M.6992 – *Hutchison 3G UK/Telefónica Ireland*, recital 164; and Commission decision of 2 July 2014 in case M.7018 – *Telefónica Deutschland/E-Plus*, recital 74.

123 Responses to Questionnaire Q4 to MNOs of 8 February 2016, question 77 and 77.3. Responses to Questionnaire Q1 to MVNOs of 8 February 2016, question 51. Responses to Questionnaire Q2 to business customers of 8 February 2016, question 14.

124 Responses to Questionnaire Q1 to MVNOs of 8 February 2016, question 51 and 51.1.

(166) Therefore, the Commission considers that the retail market for mobile telecommunications services is national in scope, that is to say limited to the territory of Italy.

6.3. Wholesale services for access and call origination on mobile networks

(167) On the wholesale market for access and call origination, MNOs sell access to their mobile network and the ability to make calls and exchange data traffic. MNOs that own mobile networks constitute the supply side, whereas MVNOs (which do not own a mobile network and thus seek access to one or more of the MNO networks in order to provide their mobile retail services) constitute the demand side of this market.[125] The type of service sold can be different depending on the type of customers. For example, a light MVNO would require more services from the host MNO, compared to a full MVNO, as the former does not own any network infrastructure. MNOs typically provide network access and call origination jointly to MVNOs.

(168) The following Sections examine the relevant product and geographic market definition in relation to a possible market for the wholesale provision of access and call origination on mobile networks in Italy. This market is also referred to as "wholesale mobile market".

6.3.1. Product market definition

6.3.1.1. Parties' view

(169) The Parties submit that the Transaction should be assessed on the basis of an overall wholesale market for network access and call origination on mobile networks. The Parties consider that MNOs are able to host all types of wholesale access seekers, and that the wholesale market for access and call origination should be regarded as one overall product market, without any sub-divisions as regards access provided to different types of MVNOs, such as full MVNOs or light MVNOs.

6.3.1.2. Commission's assessment

(170) In previous decisions,[126] the Commission defined a single wholesale market including both access and call origination services on mobile networks, on the ground that MNOs generally supply these services jointly to MVNOs and both services are essential for MVNOs to be able to provide retail mobile communication services to end users.

(171) In the *Telefónica Deutschland/E-Plus* decision, branded resellers were not considered active on the demand-side of the wholesale market. Instead, the Commission considered that sales achieved by branded resellers in the German retail market were to be attributed to the MNO, whose products were distributed by the relevant branded reseller.[127]

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125 MNOs may also sell access to their network to Mobile Virtual Network Aggregators ("MVNAs"), which act as intermediaries for several smaller MVNOs, see recital (67) above.

126 Commission decision of 2 July 2014 in case M.7018 – *Telefónica Deutschland/E-Plus*, recitals 77 to 79; Commission decision of 28 May 2014 in case M.6992 – *Hutchison 3G UK/Telefónica Ireland*, recital 156; Commission decision of 12 December 2012 in case M.6497 – *Hutchison 3G Austria/Orange Austria*, recitals 61 to 63; Commission decision of 1 March 2010 in case M.5650 – *T-Mobile/Orange*, paragraphs 27 to 30; Commission decision of 27 November 2007 in case M.4947 – *Vodafone/Tele2 Italy/Tele2 Spain*, paragraph 15.

127 Commission decision of 2 July 2014 in case M.7018 – *Telefónica Deutschland/E-Plus*, footnote 39 and recital 255.

(172) The market investigation in the present case has not provided any indication that the Commission should depart from its previous practice of defining a wholesale market for mobile access and call origination as a single product market. The scope of wholesale access granted by MNOs to MVNOs includes access to the mobile network, voice calls, SMS and data.[128]

(173) There are some differences in the scope of services that the different types of wholesale customers (full and light MVNOs) buy from MNOs. Because of these differences, full MVNOs will have to invest in more network elements than light MVNOs. Differences between different types of wholesale access in terms of the level of investment the access seeker needs to undertake, and the level of product differentiation that wholesale products allow for, may warrant a definition of separate wholesale markets for these wholesale products. Nonetheless, the Commission notes that, from an MNO's perspective, the different types of wholesale access imply only a different degree of participation in the activities related to the provision of retail mobile telecommunications services by MVNOs and that all the MNOs in Italy have the technical ability to perform such activities. Indeed, WIND, TIM and Vodafone all provide, or have provided, wholesale access to both full MVNOs and light MVNOs (see Table 2 above). Similarly, while H3G currently only provides wholesale access to light MVNOs, it would also be able to provide wholesale access to full MVNOs, as full MVNOs require wholesale services that are more limited in scope than light MVNOs.

(174) The Commission also notes that, as explained in recital (66) above, branded resellers in Italy do not buy wholesale access to a network, but essentially act as distribution/marketing agents of MNOs. Branded resellers limit themselves to marketing mobile telecommunications services on behalf of MNOs using their own brand and their own distribution channels. Based on data provided by the Parties, the Commission estimates that branded resellers in Italy have a very limited number of subscribers (less than 10 000 in total).[129]

(175) In view of the foregoing, the Commission considers that there is a distinct wholesale market for access and call origination on mobile networks, which includes voice, SMS and data traffic.

6.3.2. Geographic market definition

6.3.2.1. Parties' view

(176) The Parties submit that the wholesale market for access and call origination is national in scope, i.e. limited to the territory of Italy.

6.3.2.2. Commission's assessment

(177) In previous cases, the Commission considered the wholesale market for access and call origination to be national in scope due to regulatory barriers stemming from the fact that licenses granted to MNOs are generally national in scope.[130]

(178) The market investigation has not provided any suggestions that the Commission should depart from its previous practice of defining the wholesale market for mobile

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128 Replies to Questionnaire Q1 to MVNOs of 8 February 2016, question 3.

129 Form CO, Section 6, Table 18.

130 See Commission decision of 12 December 2014 in case M.6497 – *Hutchison 3G Austria/Orange Austria*, recitals 74 to 77 with further references.

access and call origination as national in scope.[131] The wholesale market corresponds to the dimension of the MNOs' networks, which are limited to national borders given that the licenses are granted to MNOs on a national basis.

(179) Based on the foregoing, the Commission considers that the wholesale market for access and call origination on public mobile networks is national in scope, that is to say limited to the territory of Italy.

6.4. Wholesale international roaming services

(180) In order for a provider of retail mobile services to be able to provide its end customers with telecommunication services outside their home country, it must enter into agreements with providers of wholesale international roaming services, which are primarily active in other national markets. Roaming agreements can be concluded with a preferred foreign operator which offers tailor-made service conditions, as can be seen in particular in the creation of international roaming alliances. Wholesale roaming services are thus upstream to the retail market for mobile telecommunications services.

6.4.1. Product market definition

6.4.1.1. Parties' view

(181) The Parties submit that the relevant product market is the wholesale market for international roaming, without need for further distinctions.

6.4.1.2. Commission's assessment

(182) International roaming is a service allowing mobile subscribers to make and receive calls, to send and receive text messages and to use other data services when abroad.

(183) In previous decisions, the Commission has defined a separate wholesale market for international roaming services comprising both terminating calls and originating calls.[132] For originating calls while roaming, the foreign or visited mobile network is used to make phone calls when abroad and a wholesale roaming charge is paid by the home network to the visited network. For terminating calls, the call is routed by the home network to the visited mobile network and the home network pays for the international carriage of the call and the normal termination charge to the visited network. Demand for wholesale international roaming services comes first from foreign mobile operators who wish to provide their own customers with mobile services outside their own network and also downstream from subscribers wishing to use their mobile telephones outside their own countries.[133]

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[131] Replies to Questionnaire Q1 to MVNOs of 8 February 2016, question 51. See also replies to Questionnaire Q4 to MNOs of 8 February 2016, question 31. See also replies to Questionnaire Q3 to suppliers of 8 February 2016, question 6. See also replies to Questionnaire Q2 to business customers of 8 February 2016, question 14.

[132] Commission Decision of 12 December 2012 in Case COMP/M.6497 - *Hutchison 3G Austria/Orange Austria*, recital 64 and Commission Decision of 1 March 2010 in Case COMP/M.5650 - *T-Mobile/Orang*e, recital 32.

[133] Commission Decision of 2 July 2014 in Case COMP/M.7018 - *Telefónica Deutschland/E-Plus*, recitals 92-97; Commission Decision of 28 May 2014 in Case COMP/M.6992 - *Hutchison 3G UK/Telefónica Ireland*, recital 158; Commission Decision of 12 December 2012 in Case COMP/M.6497 - *Hutchison 3G Austria/Orange Austria*, recital 65; Commission Decision of 1 March 2010 in Case COMP/M.5650 - *T-Mobile/Orange*, recital 33. See also Cases COMP/M.4748 - *T-Mobile/ Orange Netherlands*, COMP/M.4034 - *Telenor/Vodafone Sverige* and COMP/M.5148 - *Deutsche Telekom/OTE*.

(184) On the basis of the information before it, the Commission has not found reasons to depart from its prior product market definition of wholesale roaming services. For the purposes of this Decision, the Commission therefore considers that the relevant product market is the wholesale market for international roaming services, comprising both terminating calls and originating calls.

6.4.2. Geographic market definition

6.4.2.1. Parties' view

(185) The Parties submit that the wholesale market for international roaming is national in scope, i.e. limited to the territory of Italy.

6.4.2.2. Commission's assessment

(186) Given that wholesale international agreements can be concluded only with companies which have an operating licence in the relevant country and licences to provide mobile services are restricted to a national territory, the Commission has in previous cases decided that the wholesale market for international roaming services is national in scope.[134] The market investigation in the present case has not provided any suggestions that the Commission should depart from this previous practice.

(187) Thus, for the purposes of this Decision and on the basis of the information before it, the Commission retains its previous geographic market definition and considers that the wholesale market for international roaming services is national in scope.

6.5. Wholesale services for mobile call termination

6.5.1. Product market definition

(188) Call termination services are provided when calls originate from one mobile network and terminate on another mobile network. For such calls, the mobile operator on whose network the call terminates, routes the call and connects it to the called party.

(189) Call termination is thus the service provided by network operator B to network operator A whereby a call originating in operator A's network is delivered to the user in operator B's network. Call termination allows users of different mobile networks to communicate with one another.

(190) In order for an MNO to be able to deliver calls upon a different mobile network, it must purchase wholesale termination services on those other networks. Mobile network operators provide wholesale mobile call termination services to one another on the basis of interconnection agreements, upstream of the provision of retail mobile telecommunication services to end customers[135].

6.5.1.1. Parties' view

(191) The Parties submit that the relevant product market is the wholesale market for mobile call termination. The parties rely on the product market definition established by the Commission in its previous decisions, according to which each individual

[134] Commission decision of 2 July 2014 in Case M.7018 - *Telefónica Deutschland/E-Plus*, recital 100; Commission decision of 12 December 2012 in Case M.6497 - *Hutchison 3G Austria/Orange Austria*, recital 78; Commission decision of 1 March 2010 in Case M.5650 - *T-Mobile/Orange*, recital 35.

[135] Commission Decision of 2 July 2014 in Case COMP/M.7018, paragraph 84; Commission Decision of 12 December 2012 in Case COMP/M.6497 - *Hutchison 3G Austria/Orange Austria*, paragraph 68; Commission Decision of 1 March 2010 in Case COMP/M.5650 - *TMobile/Orange*, paragraph 36

mobile network constitutes a separate market for the provision of wholesale call termination[136].

6.5.1.2. Commission's assessment

(192) In its previous decisions, the Commission has found that there are no substitutes for wholesale call termination on each individual mobile network, since the operator transmitting the outgoing call can reach the intended recipient only through the operator of the network to which that recipient is subscribed. Therefore, each individual mobile network constitutes a separate wholesale market for call termination.

(193) The information before the Commission does not provide any indication that it would be warranted for the Commission to depart from its previous practice for defining the relevant market in the present case.

(194) For the purposes of this Decision, on the basis of the information before it, the Commission considers that the relevant product markets are the wholesale market for call termination on the mobile network of H3G and the wholesale market for call termination on the mobile network of WIND.

6.5.2. Geographic market definition

6.5.2.1. Parties' view

(195) The Parties submit that each wholesale market for call termination should correspond to the dimensions of the operator's network and therefore are limited to the national borders of Italy.

6.5.2.2. Commission's assessment

(196) In its previous decisions, the Commission has defined wholesale market for call termination as national in scope.[137] The information before the Commission does not provide any indication that it would be warranted for the Commission to depart from its previous practice for defining the geographic market in the present case. For the purposes of this Decision, the Commission therefore concludes that the wholesale markets for call termination on mobile networks are national.

6.6. Wholesale services for call termination on fixed networks

(197) As set out in recital (188), call termination is the wholesale service provided by network operators that allows users of different networks to communicate with each other.

(198) Call termination is thus the service provided by a fixed network operator B to a mobile network operator A whereby a call originating in operator A's mobile network is delivered to the user in operator B's fixed network. Call termination allows users of mobile networks to make calls on fixed networks.

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[136] Commission decision of 2 July 2014 in Case M.7018 - *Telefónica Deutschland/E-Plus*, recital 89; Commission decision of 20 September 2013 in Case M.6990 - *Vodafone/Kabel Deutschland*, paragraphs 236-238; Commission decision of 3 July 2012 in Case M.6584 - *Vodafone/Cable & Wireless*, paragraph 47; Commission decision of 1 March 2010 in Case M.5650 - *T-Mobile/Orange*, paragraph 37.

[137] Commission decision of 2 July 2014 in Case M.7018 - *Telefónica Deutschland/E-Plus*, recital 91; Commission decision of 3 July 2012 in Case M.6584 - *Vodafone/Cable & Wireless*, recital 48; Commission decision of 1 March 2010 in Case M.5650 - *T-Mobile/Orange*, recital 38.

6.6.1. Product market definition

6.6.1.1. Parties' view

(199) The Parties do not take a view on the product market definition for wholesale services for call termination on fixed networks.

6.6.1.2. Commission's assessment

(200) In its previous decisions, the Commission established that each individual fixed network constitutes a separate wholesale market for call termination.[138]

(201) The information before the Commission does not provide any indication that it would be warranted for the Commission to depart from its previous practice for defining the relevant market in the present case.

(202) For the purposes of this Decision, on the basis of the information before it, the Commission therefore considers that the relevant product market is the overall wholesale market for call termination on the fixed network of each single fixed operator.

6.6.2. Geographic market definition

6.6.2.1. Parties' view

(203) The Parties do not take a view on the geographic market definition for wholesale services for call termination on fixed networks.

6.6.2.2. Commission's assessment

(204) The Commission considered in its previous decisions that the geographic scope of each wholesale market for call termination should correspond to the dimensions of the operator's network, which is limited to national borders due to regulatory barriers.[139]

(205) The information before the Commission does not provide any indication that it would be warranted for the Commission to depart from its previous practice for defining the geographic market in the present case. For the purposes of this Decision, the Commission therefore concludes that the wholesale markets for call termination on fixed networks are national in scope.

6.7. Wholesale services for fixed backhaul

(206) Backhaul services are the connections between the antennae in a mast and the switches in the core network and are used to ensure the proper functioning of a mobile network. Backhaul are general wired connections based on either (i) fibre optic cables or (ii) copper cables. Backhaul providers are primarily fixed operators who are able to provide fibre optic or copper cables from their fixed network. TIM, Fastweb, Infracom, Metroweb and WIND are the current providers of backhaul services in Italy.

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138 Commission decision of 20 September 2013 in Case M.6990 - *Vodafone/Kabel Deutschland*, recital 117; Commission decision of 3 July 2012 in Case M.6584 - *Vodafone/Cable & Wireless*, recital 23; Commission decision of 1 March 2010 in Case M.5650 *T-Mobile/Orange*, recital 37.

139 Commission decision of 20 September 2013 in Case M.6990 - *Vodafone/Kabel Deutschland*, recital 121; Commission decision of 1 March 2010 in Case M.5650 - *T-Mobile/Orange*, recital 38.

6.7.1. *Product market definition*

6.7.1.1. Parties' view

(207) The Parties take the view that there is no need to define a separate product market for the provision of backhaul services in Italy in the present case, as the Transaction does not raise concerns on this market irrespective of the precise product market definition.

6.7.1.2. Commission's assessment

(208) In previous cases, the Commission has left open the product market definition for backhaul services.[140] While in its recommendation on market definitions in the electronic communication sector of 2007, the Commission considered a separate market for backhaul services,[141] according to its most recent draft recommendation on market definitions in the electronic communications sector and the accompanying explanatory note, the Commission does not consider it essential to define access to backhaul services as a separate market.[142]

(209) In the present case, the question of the exact product market definition for wholesale services for fixed backhaul can be left open, as the Transaction does not raise competition concerns under any possible product market definition.

6.7.2. *Geographic market definition*

6.7.2.1. Parties' view

(210) The Parties do not take a view on the geographic market definition for wholesale services for fixed backhaul.

6.7.2.2. Commission's assessment

(211) The Commission holds that there is no need to decide on the exact geographic scope of the market, as the Transaction does not raise competition concerns under any possible geographic market definition.

6.8. Affected markets

(212) In this Section, the Commission identifies those markets that would be affected by the Transaction, either horizontally or vertically,[143] for the purpose of the competitive assessment.

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140 Case COMP/M.6990 – *Vodafone/Kabel Deutschland*, recital 148; Case COMP/M.6584 – *Vodafone/Cable & Wireless*, recital 30.

141 No. 6 in Annex to 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, Official Journal of the European Union L 344/65.

142 Commission Staff Working Document published 24 January 2014, available online at: http://ec.europa.eu/digital-agenda/en/news/draft-revised-recommendation-relevant-markets.

143 A market is horizontally affected when "two or more of the parties to the concentration are engaged in business activities in the same relevant market and where the concentration will lead to a combined market share of 20 % or more". A market is vertically affected when "one or more of the parties to the concentration are engaged in business activities in a relevant market, which is upstream or downstream of a relevant market in which any other party to the concentration is engaged, and any of their individual or combined market shares at either level is 30 % or more, regardless of whether there is or is not any existing supplier/customer relationship between the parties to the concentration" See Point 6.3 of Annex 1 to Commission Regulation No 802/2004 of 21 April 2004 implementing Regulation (EC) No

(213) The retail market for the provision of mobile telecommunications services in Italy and its possible segments, as well as the wholesale market for the provision of access and call origination on mobile networks in Italy, are horizontally affected by the Transaction, since the JV's share on each of these markets would exceed 20%.

(214) Furthermore, the upstream wholesale market for access and call origination on mobile networks is vertically linked to the downstream retail market for mobile telecommunications services, as MVNOs require wholesale access to the mobile network of an MNO in order to operate at the retail level. Therefore, the retail market for the provision of mobile telecommunication services in Italy (and its possible segments) and the wholesale market for the provision of access and call origination services on mobile networks in Italy are also vertically affected by the Transaction, as the JV's market share would exceed 30% on each of those markets.

(215) However, in this Decision, the Commission will not carry out a separate assessment of the potential effects of the Transaction on the vertical relationship between the retail market for mobile telecommunications services and the wholesale market for access and call origination services. The potential vertical effects of the Transaction will be discussed as part of the horizontal assessment of the wholesale market for access and call origination services on mobile networks.

(216) With respect to the wholesale market for international roaming services, the Parties both provide wholesale roaming services in Italy. According to the Parties' estimates based on 2014 data, the JV would have a market share of [20-30]%.[144] The market is thus horizontally affected by the Transaction.

(217) Moreover, in the European Economic Area, outside of Italy, entities of the Hutchison group provide wholesale roaming services and retail mobile services in Austria, Denmark, Ireland, Sweden and the United Kingdom. End customer roaming offers are part of the typical retail offers of MNOs.[145] The Italian retail mobile communications market is therefore vertically linked to each of the foreign national wholesale markets for international roaming services where other Hutchison entities are active. The JV's market share on the retail mobile market in Italy would exceed 30%. Hence, the wholesale international roaming markets in Austria, Denmark, Ireland, Italy, Sweden, and the United Kingdom and the Italian retail mobile market are vertically affected by the Transaction.

(218) However, the Commission notes that the market for wholesale international roaming activities is subject to sector-specific Union regulation, which prevents mobile operators from refusing access to their network and from charging excessive termination fees.[146] Under the Roaming Regulation, MNOs must meet all reasonable

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139/2004 on the control of concentrations between undertakings, OJ L 133, 30.4.2004, p.1 consolidated version.

144 Form CO, Section 6, Table 95.

145 Commission Decision of 12 December 2012 in Case COMP/M.6497 - *Hutchison 3G Austria/Orange Austria*, recital 64; Commission Decision of 1 March 2010 in Case COMP/M.5650 - *T-Mobile/Orange*, recital 161.

146 Regulation (EU) No 531/2012 of the European Parliament and of the Council of 13 June 2012 on roaming on public mobile communications networks within the Union (OJ L 172, 30.6.2012, pp. 10–35 (the "roaming Regulation"); amended by Regulation (EU) No 2015/2120 of the European Parliament and the Council of 25 November 2015 laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services and Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union, OJ L 310, 26.11.2015, p. 1–18.

requests for wholesale roaming access (Article 3 Regulation (EU) No 531/2012 and Article 7 Regulation (EU) No 2015/2120) and MNOs are bound by the price cap imposed by the Roaming Regulation on the wholesale prices that MNOs can charge from their roaming customers. Key obligations under the regulation include an obligation to meet all reasonable requests, an obligation to publish a reference offer, caps on wholesale and retail charges (for calls, SMS messages and data services), and transparency and information requirements The Roaming Regulation therefore effectively prevents MNOs from refusing access to their respective network and from charging excessive termination fees.

(219) After the Transaction, the JV's wholesale roaming activities will continue to be subject to ex-ante Union regulation. Furthermore, the market investigation did not raise specific concerns regarding wholesale roaming services. Therefore, the Commission considers that the horizontal and vertical overlaps between the Parties' activities on the wholesale market for international roaming in Italy, and in the markets of the other Member States mentioned in recital (217), created by the Transaction would not lead to a significant impediment of effective competition. For that reason, the wholesale market for wholesale international roaming services is not further discussed in this Decision.

(220) As far as the wholesale services for mobile call termination are concerned, since each mobile network constitutes a separate market for the provision of wholesale call termination, there is no horizontal overlap between the Parties' activities on this market, as each Party is active on a its own separate mobile network. However, the provision of wholesale services for mobile call termination is upstream to the retail market for mobile telecommunications services, since MNOs need to ensure an end-to-end connection to their subscribers who make a call terminating on the mobile network of another MNO.

(221) Each of H3G and WIND provides wholesale call termination services on its mobile network in Italy to other MNOs. Those wholesale services are thus vertically linked to retail mobile telecommunications services in Italy. Each of H3G and WIND has a share of 100% on its own mobile network. Therefore, the retail market for mobile telecommunications services in Italy and each of the markets for call termination on the networks of H3G and WIND are vertically affected by the Transaction.

(222) However, in Italy the provision of wholesale mobile call termination services is regulated ex-ante by AGCOM. Pursuant to its latest decision on the definition of relevant markets, the identification of SMP operators and the imposition of regulatory obligations, AGCOM imposed upon the four Italian MNOs, including H3G and WIND, several obligations as regards wholesale access for mobile termination, including access obligations, use of network resources, non-discrimination, transparency, price control and cost accounting.[147]

(223) Therefore, the Commission considers that the Transaction would not significantly impede effective competition on the affected wholesale markets for mobile call termination services, given that such markets are subject to the full ex-ante regulation by AGCOM, and will continue to be so after the Transaction. Therefore, the

[147] Delibera AGCOM N. 497/15/CONS of 10 September 2015, "mercato della fornitura all'ingrosso del servizio di terminazione delle chiamate vocali su singole reti mobili (mercato n. 2 della raccomandazione della Commissione europea n. 2014/710/UE): definizione del mercato rilevante, identificazione delle imprese aventi significativo potere di mercato ed eventuale imposizione di obblighi regolamentari".

wholesale markets for call terminations services on mobile networks are not further discussed in this Decision.

(224) With respect to the wholesale markets for call termination on fixed networks, those markets are upstream to the retail market for mobile telecommunications services, since MNOs must ensure that a call originating on a mobile network terminates on a fixed operator's fixed network. Given that fixed network operators have a 100% market share on fixed call termination services on their own network, WIND has a market share on fixed call termination services on its own network of 100%. That market is thus vertically affected with respect to the retail market for mobile telecommunications services, on which the Parties are active.

(225) However, the market of wholesale call termination services on fixed networks in Italy is subject to ex-ante regulation by AGCOM. Pursuant to its decision on the definition of relevant markets and the imposition of regulatory obligations, AGCOM imposed upon the fixed network operators (including WIND), several obligations as regards wholesale access for termination on fixed network, including access obligations, use of network resources, non-discrimination, transparency, price control and cost accounting.[148] Such market will remain regulated after the Transaction.

(226) Therefore, the Commission considers that the Transaction would not significantly impede effective competition on the affected wholesale market for call termination on WIND's fixed network, given that such markets are and will continue to be subject to the ex-ante regulation by AGCOM. Therefore, the wholesale market for call termination services on fixed networks is not further discussed in this Decision.

(227) With respect to wholesale services for fixed backhaul, the Parties' activities do not overlap, as only WIND has a fixed network. There is a vertical link between WIND's activities in the provision of wholesale services for fixed backhaul and the activities of H3G in the retail mobile market. These markets would be vertically affected by the Transaction, as the JV's market share on the retail mobile market would be above 30%. However, the Commission considers that the Transaction is unlikely to lead to vertical input foreclosure or customer foreclosure concerns. According to the Parties, WIND's activities in the provision of wholesale services for fixed backhaul amounted to a total value of EUR […], […]. This accounts for a *de minimis* proportion of the overall wholesale market for the provision of fixed backhaul.[149] H3G acquires the majority of backhaul services from […] ([…]%), while WIND's sales account for only […]% of H3G's purchase of backhaul services by WIND.[150] Consequently, if WIND's sales to H3G of fixed backhaul services (which accounted for […]) accounted for only […]% of H3G's purchases, they also constitute a minimal proportion of the overall market for the purchase of backhaul services. Therefore, it is unlikely that the Transaction would lead to a significant impediment of effective competition on these affected markets, as the JV would lack the ability or

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148 Delibera AGCOM n. 179/10/CONS of 28 April 2010, "Mercati dei servizi di raccolta e terminazione nella rete telefonica pubblica fissa (mercati nn. 2 e 3 della Raccomandazione della Commissione Europea n. 2007/879/CE): identificazione ed analisi dei mercati, valutazione di sussistenza del significativo potere di mercato per le imprese ivi operanti ed individuazione degli eventuali obblighi regolamentari".

149 According to the Parties, which refer to AGCOM's decision Delibera N. 412/15/CONS (available at https://www.agcom.it/documents/10179/2409164/Delibera+412-15-CONS/01b85fa8-697c-4a63-b0fe-117d476eb68c?version=1.0), the overall value of the market for fixed backhaul services in Italy was of EUR 64 million by gross revenues .in 2012 (Table 1 of AGCOM's decision). See Parties' reply to Commission RFI 69 to WIND of 2 August 2016.

150 Section 6 to the Form CO, paragraphs 180 and 181.

incentive to engage in input foreclosure or customer foreclosure with respect to the provision of wholesale services for fixed backhaul. Therefore, the wholesale market for services for fixed backhaul is not further discussed in this Decision.

(228) In the following Sections, the Commission will therefore carry out its competitive assessment with respect to the Italian retail market for mobile telecommunications services and the Italian wholesale market for the provision of access and call origination on mobile networks, which are both horizontally affected by the Transaction.

7. COMPETITIVE ASSESSMENT

7.1. Analytical framework

(229) Under Article 2(2) and (3) of the Merger Regulation, the Commission must assess whether a proposed concentration would significantly impede effective competition in the internal market or in a substantial part of it, in particular through the creation or strengthening of a dominant position.

(230) In this respect, a merger may entail horizontal and vertical effects. Horizontal effects are those deriving from a concentration where the undertakings concerned are actual or potential competitors of each other in one or more of the relevant markets concerned. Vertical effects are those deriving from a concentration where the undertakings concerned are active on different or multiple levels of the supply chain. A concentration may involve both types of effects. In such a case, the Commission will appraise horizontal and vertical effects in accordance with the guidance set out in the relevant notices, that is to say the Horizontal Merger Guidelines[151] and the Non-Horizontal Merger Guidelines.[152]

(231) The Horizontal Merger Guidelines distinguish between two main ways in which mergers between actual or potential competitors on the same relevant market may significantly impede effective competition, namely non-coordinated and coordinated effects.

(232) The Horizontal Merger Guidelines describe horizontal non-coordinated effects as follows: "*A merger may significantly impede effective competition in a market by removing important competitive constraints on one or more sellers who consequently have increased market power. The most direct effect of the merger will be the loss of competition between the merging firms. For example, if prior to the merger one of the merging firms had raised its price, it would have lost some sales to the other merging firm. The merger removes this particular constraint. Non-merging firms in the same market can also benefit from the reduction of competitive pressure that results from the merger, since the merging firms' price increase may switch some demand to the rival firms, which, in turn, may find it profitable to increase their prices. The reduction in these competitive constraints could lead to significant price increases in the relevant market.*"[153]

[151] Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings ("Horizontal Merger Guidelines"), OJ C 31, 05.02.2004.

[152] Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings ("Non-Horizontal Merger Guidelines"), OJ C 265, 18.10.2008, paragraph 7.

[153] Horizontal Merger Guidelines, paragraph 24.

(233) Therefore, under the substantive test set out in Article 2(2) and (3) of the Merger Regulation, also mergers that do not lead to the creation or the strengthening the dominant position of a single firm may create competition concerns. Indeed, the Merger Regulation recognises that in oligopolistic markets, it is all the more necessary to maintain effective competition.[154] This is in view of the more significant consequences that mergers may have on such markets. For this reason, the Merger Regulation provides that "*under certain circumstances, concentrations involving the elimination of important competitive constraints that the merging parties had exerted upon each other, as well as a reduction of competitive pressure on the remaining competitors, may, even in the absence of a likelihood of coordination between the members of the oligopoly, result in a significant impediment to effective competition*".[155]

(234) Similar wording is also found in paragraph 25 of the Horizontal Merger Guidelines, which explains that "*mergers in oligopolistic markets involving the elimination of important competitive constraints that the merging parties previously exerted upon each other together with a reduction of competitive pressure on the remaining competitors may, even where there is little likelihood of coordination between the members of the oligopoly, also result in a significant impediment to competition*."[156]

(235) The Horizontal Merger Guidelines list a number of factors which may influence whether or not significant horizontal non-coordinated effects are likely to result from a merger, such as the large market shares of the merging firms, the fact that the merging firms are close competitors, the limited possibilities for customers to switch suppliers, or the fact that the merger would eliminate an important competitive force. That list of factors applies equally regardless of whether a merger would create or strengthen a dominant position, or would otherwise significantly impede effective competition due to non-coordinated effects. Furthermore, not all of these factors need to be present to make significant non-coordinated effects likely and it is not an exhaustive list.[157] Finally, the Horizontal Merger Guidelines describe a number of factors, which could counteract the harmful effects of the merger on competition, including the likelihood of buyer power, entry and efficiencies.

(236) A merger in a concentrated market may also significantly impede effective competition due to <u>horizontal coordinated effects</u> where, through the creation or the strengthening of a collective dominant position, it increases the likelihood that firms are able to coordinate their behaviour and raise prices, even without entering into an agreement or resorting to a concerted practice within the meaning of Article 101 TFEU. A merger may also make coordination easier, more stable or more effective for firms that were already coordinating before the merger, either by making the coordination more robust or by permitting firms to coordinate on even higher prices.[158]

(237) To assess whether a merger gives rise to horizontal coordinated effects, the Commission should examine, first, whether it would be possible to reach terms of

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154 Merger Regulation, recital 25.

155 Merger Regulation, recital 25.

156 Horizontal Merger Guidelines, paragraph 25. See also Commission decision of 2 July 2014 in case M.7018 – *Telefónica Deutschland/E-Plus*, recital 113; Commission decision of 28 May 2014 in case M.6992 – *Hutchison 3G UK/Telefónica Ireland*, recital 179; Commission decision of 12 December 2012 in case M.6497 – *Hutchison 3G Austria/Orange Austria*, recital 88.

157 Horizontal Merger Guidelines, paragraph 26.

158 Horizontal Merger Guidelines, paragraph 39.

coordination and, second, whether the coordination would be likely to be sustainable.[159]

(238) As regards the possibility of reaching terms of coordination, coordination is more likely to emerge in markets where it is relatively simple to reach a common understanding on the terms of coordination.[160] Coordination may take various forms, including keeping prices above the competitive level, or dividing the market, for instance by customer characteristics or by allocating contracts in bidding markets.[161]

(239) As regards the sustainability of coordination, three conditions are necessary for coordination to be sustainable. First, the coordinating firms must be able to monitor to a sufficient degree whether the terms of coordination are being adhered to. Second, discipline requires that there is a credible deterrent mechanism that can be activated if deviation is detected. Third, the reactions of outsiders, such as current and future competitors not participating in the coordination, as well as customers, should not be able to jeopardise the results expected from the coordination.[162]

(240) Moreover, in examining the possibility and sustainability of coordination, the Commission should specifically consider the changes that the Transaction brings about.[163] The reduction in the number of firms in a market may in itself be a factor that facilitates coordination.

(241) To assess whether a concentration determines a significant impediment of effective competition pursuant Article 2(3) of the Merger Regulation, the Commission must compare the competitive conditions that would result from the concentration with the conditions that would have prevailed without the concentration.[164] While normally the competitive conditions existing at the time of the merger constitute the relevant comparison for evaluating the effects of a merger, in some circumstances the Commission may take into account future changes to the market that can "*be reasonably predicted*".[165] On the basis of paragraph 9 of the Horizontal Merger Guidelines it is for the Commission to show the existence of a significant impediment to effective competition in the market considering reasonably predictable future changes.

(242) The foreseeable development of competitive conditions could lead to the conclusion that a significant impediment of effective competition is not a consequence of the concentration, since the competitive structure of the market would in any event deteriorate to at least the same extent without the concentration. This can be the case for example if one of the merging parties is a failing firm.[166] It is for the Parties to provide in due time all the relevant information necessary to show that it can be reasonably predicted that a deterioration of the competitive structure would have occurred in the absence of the concentration.[167]

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159 Horizontal Merger Guidelines, paragraph 42.
160 Horizontal Merger Guidelines, paragraph 41.
161 Horizontal Merger Guidelines, paragraph 40.
162 Horizontal Merger Guidelines, paragraph 42.
163 Horizontal Merger Guidelines, paragraph 42.
164 Horizontal Merger Guidelines, paragraph 9.
165 Horizontal Merger Guidelines, paragraph 9.
166 See by analogy the Horizontal Merger Guidelines, paragraphs 89-91.
167 See by analogy the Horizontal Merger Guidelines, paragraph 91.

7.2. Analysis of the Parties' internal documents – "Market repair" as one of the driving rationales of the Transaction

(243) The review of the Parties' internal documents and of other third-party documentary sources has revealed a large amount of evidence regarding the intended rationale and expected effects of the Transaction. This evidence essentially indicates that one of the driving rationales of the Transaction, for the Parties and the telecom industry, is the achievement of "market repair" in the Italian mobile market. In this context, "market repair" can be described as an overall reduction of the level of competition and stabilisation of the mobile market through an increase in mobile prices and a reduction in churn among mobile operators, leading to higher industry-wide profits.

(244) Accordingly, before carrying out its competitive assessment of the impact of the Transaction on the retail and wholesale mobile markets, in this Section the Commission describes the available documentary evidence concerning the "market repair" rationale of the Transaction.

(245) For this purpose, the Commission first examines the Parties' internal documents indicating that VimpelCom/WIND and Hutchison/H3G considered "market repair" as one of the main rationales of the Transaction (respectively, Section 7.2.1 and Section 7.2.2). Subsequently, the Commission considers the Parties' internal documents indicating that "market repair" would also benefit the other two MNOs, Vodafone and TIM, […] (Section 7.2.3). The Commission then reviews the public statements of TIM and Vodafone suggesting that they were in favour of market consolidation in general and of the Transaction specifically (Section 7.2.4). Finally, the Commission will consider the views expressed by financial analysts, which also suggest that market repair is a significant component of the Transaction, bringing value to both the Parties and the competing MNOs (Section 7.2.5).

7.2.1. Market repair - VimpelCom

(246) VimpelCom and WIND have strategically considered, discussed and pursued the possibility to achieve "market repair" in the Italian mobile market, in particular through some form of market consolidation, in the years prior to the Transaction, as early as 2012. The relevant internal documents of VimpelCom and WIND are presented in chronological order in the following recitals.

(247) […].[168] […].

(248) […].[169][…].[170] […].

(249) […].[171][…].

(250) […].[172] […].[173]

(251) […].[174]

(252) […].[175] […]. [176] […].

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[168] VimpelCom internal document, […].

[169] VimpelCom internal documents, […].

[170] VimpelCom internal documents, […].

[171] VimpelCom internal document, […].

[172] VimpelCom internal documents, […].

[173] VimpelCom internal documents, […].

[174] VimpelCom internal documents, […].

VimpelCom internal documents, […].

[175] VimpelCom internal documents, […].

(253) […].[177]

(254) […]. [178]

(255) […].[179]

(256) […]. These comments suggest that VimpelCom considered that competition in the Italian retail mobile market was too fierce, making the case for consolidation. […]. A subsequent slide of the same presentation then refers to several analyst reports, which mention that consolidation would lead to market repair.[180]

(257) […].[181] […].[182]

(258) […].[183]

(259) […]. [184]

(260) […].[185] […].[186]

(261) […],[187] […].[188][…].[189][…].[190]

(262) In the same month, a VimpelCom internal presentation on the Transaction shows again that one of the deal rationales is that it […].[191]

(263) […].[192]

(264) […].[193] […].[194][…].[195]

(265) […] [196]

(266) […].[197]

(267) […].[198]

(268) […].

(269) […].[199] Figure 15 below reproduces […].

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176 VimpelCom internal documents, […].
177 VimpelCom internal documents, […].
178 VimpelCom internal documents, […].
179 VimpelCom internal documents, […].
180 VimpelCom internal document, […].
181 VimpelCom internal document, […].
182 VimpelCom internal documents, […].
183 VimpelCom internal document, […].
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193 VimpelCom internal documents, […].
194 VimpelCom internal documents, […].
195 VimpelCom internal documents, […].
196 VimpelCom internal documents, […].
197 VimpelCom internal documents, […].
198 VimpelCom internal documents, […].
199 VimpelCom internal documents, […].

Figure 15: […]

[…]

Source: VimpelCom internal document, […].

(270) […]. [200]

(271) […].[201]

(272) […]. [202] […].[203][…].[204]

(273) […]. [205]

(274) […] [206]

(275) […]. "[207]

(276) […].[208] […].

(277) […].[209] […].[210][…].[211]

(278) […].[212]

(279) […].[213]

(280) […].[214] […][215][…].

(281) Based on the VimpelCom and WIND internal documents reviewed in the above recitals, the Commission concludes that VimpelCom and WIND consider that the Transaction would allow achieving market repair in the Italian mobile market, resulting from a lower level of competition. In particular, VimpelCom not only discussed the Transaction's market repair rationale, but also calculated and quantified the value of market repair it expected from the Transaction.

7.2.2. Market repair - Hutchison

(282) The Commission's review of the Parties' internal documents indicates that also Hutchison and H3G internally discussed, analysed and assessed the potential benefits of "market repair" stemming from consolidation in the Italian retail mobile market, and particularly from a merger between H3G and WIND. The relevant internal documents of Hutchison and H3G are analyzed in chronological order in the following recitals.

(283) […].[216]

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200 VimpelCom internal documents, […].
201 VimpelCom internal documents, […].
202 VimpelCom internal documents, […].
203 VimpelCom internal documents, […].
204 VimpelCom internal documents, […].
205 VimpelCom internal documents, […].
206 WIND internal documents, […].
207 VimpelCom internal documents, […].
208 VimpelCom internal document, […].
209 VimpelCom internal documents, […].
210 VimpelCom internal documents, […].
211 VimpelCom internal documents, […].
212 VimpelCom internal document, […].
213 WIND internal documents, […].
214 […].WIND internal document, […].
215 The churn would be at 20-22% instead of 31% and 35% achieved by WIND and H3G absent the Transaction.

(284) […][217] […],[218][…].[219] […].[220] […].

(285) […].[221]

(286) […].[222]

(287) […]. .[223] […].[224]

(288) […].[225] […].[226]

(289) […] the calculation of the Transaction's synergies was shared with Hutchison's […].[227][…].[228][…].[229]

(290) […].[230][…].[231]

(291) […].[232]

(292) […].[233][…].[234] […].[235] […].[236]

(293) […].[237] […].[238]

(294) […].[239] […].[240] […]. Figure 16 below […].

Figure 16: […]

[…]

Source: […]

(295) […].[241] […].[242]

(296) […].[243]

(297) […].[244] […]. The position taken in these two calls on revenue synergies […].[245]

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216 H3G internal document, […]., See also […].
217 H3G internal document, […].
218 Goldman Sachs ("GS") is an investment bank which worked for H3G and Hutchison as financial advisor during its negotiations with WIND and VimpelCom.
219 H3G internal document, […].
220 H3G internal document, […].
221 Hutchison internal documents, […].
222 H3G internal documents, […].
223 Hutchison internal documents, […].
224 H3G internal document, […].
225 H3G internal document, […].See also […].
226 Form CO, Section 6, paragraph 580.
227 Hutchison internal document, […].
228 Hutchison internal document, […].
229 Hutchison internal documents, […].
230 […]. H3G internal document, […].
231 […]. H3G internal document, […].
232 […]: H3G internal document, […].
233 H3G internal document, […].
234 H3G internal document, […].
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240 H3G internal document, […].
241 H3G Internal document, […].
242 H3G internal document, […].
243 H3G internal document, […].

(298) […].

(299) The Commission also notes that just a few months later, […], in a report discussing the valuation of TIM's share, suggested to buy TIM shares since it was "[…]" and a possible market improvement with a combination of H3G and WIND.[246]

(300) In subsequent internal analyses of synergies from the Transaction, consistently with the decision taken in the conference calls with […] mentioned in recital (297) above, […].[247]

(301) In a subsequent presentation on synergies sent to […], […].[248]

(302) The Commission however notes that, in a subsequent internal presentation to H3G's […], revenues synergies […].[249] […].

(303) […].[250]

Table 5: […]

[…]

Source: H3G internal document, […]

(304) This H3G analysis of synergies described in the previous recital should not be regarded as only an internal working document. […],[251][…].[252] […].[253]

Figure 17: Synergies analysis carried out by […]

[…]

Source: Hutchison's internal document,

(305) Furthermore, in addition to the documentary evidence specific to the Italian market presented above, the Commission notes that Hutchison's internal documents show that Hutchison has […].

(306) […].[254]

(307) […].

Figure 18: Synergies: Market repair – […]

[…]

Source: H3G's internal document,

(308) Based on the Hutchison and H3G internal documents reviewed in the above recitals, the Commission therefore considers that Hutchison and H3G also consider the Transaction as a means to achieve "market repair", resulting from a lower level of competition in the Italian mobile market. In particular, Hutchison and H3G not only

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244 H3G internal document, […].
245 H3G internal document, […].
246 […].
247 H3G internal document, […].
248 H3G internal document, […].
249 H3G internal document, […].
250 H3G internal document, […].
251 Temasek is an investment company based in Singapore, for additional information please see http://www.temasek.com.sg/abouttemasek. […].
252 Hutchison internal documents, […].
253 Hutchison internal documents, […].
254 Hutchison internal document, […].

discussed the Transaction's market repair rationale, but also calculated and quantified the value of market repair they expected from the Transaction.

7.2.3. TIM and Vodafone benefits from market repair

(309) Based on its review of the Parties' internal documents, the Commission also notes that the benefits of market repair stemming from the Transaction, which each of the Parties discussed and quantified, are not limited to the Parties, but would affect also the other MNOs active in Italy. […].

(310) […]. [255] […].

(311) […].[256]

Figure 19: […]

[…]

Source: H3G's internal document, […]

(312) […].[257]

(313) […].[258][…].

(314) […]. [259]

(315) […].[260] […].[261]

(316) […].[262] […].

(317) […].[263][…].[264][…].[265]

(318) […].[266][…].

(319) […].[267][…].[268][…].

(320) […].[269]

(321) […]. [270]

(322) […].[271] […].[272] […]. [273]

(323) […].[274] […]. [275]

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255 VimpelCom internal documents, […].
256 Hutchison internal document, […].
257 VimpelCom internal documents, […].
258 VimpelCom internal documents, […].
259 […]. WIND internal documents, […].
260 VimpelCom internal documents, […].
261 VimpelCom internal documents, […].
262 […]. VimpelCom internal documents, […].
263 VimpelCom internal documents, […].
264 See recitals (269) and (271) above.
265 VimpelCom internal documents, […].
266 VimpelCom internal document, […].
267 […]. WIND internal documents, […].
268 […]. WIND internal documents, […].
269 VimpelCom internal document, […].
270 VimpelCom internal document, […].
271 VimpelCom internal document, […].
272 VimpelCom internal document, […].
273 VimpelCom internal document, […].
274 VimpelCom internal document, […].

(324) […].[276]

(325) […].[277] […]. [278]

(326) The Commission considers that the Parties' internal documents presented in the above recitals are illustrative in several respects. First, they show that the Parties considered and assessed that the Transaction's "market repair" effects, resulting from a lower level of competition, would benefit not only themselves, but also their competitors TIM and Vodafone. In this context, the Parties also proceeded to calculate and measure the specific value of those market repair benefits for their competitors. Second, […]. Further indications of TIM and Vodafone's supportiveness towards the Transaction and mobile consolidation in Italy can be found in several of these companies' public statements, which are analysed in the following Section.

7.2.4. MNOs' public statements on consolidation in the Italian mobile market

(327) In the following recitals, the Commission reviews the public statements made by TIM and Vodafone, as well as those of VimpelCom, throughout the recent years in relation to the Italian mobile market. The analysis of these public statements shows that the three MNOs have been displaying a positive attitude towards consolidation in the Italian market in general and to the H3G/WIND merger in particular. These statements are presented in chronological order.

(328) In their statements, all MNOs expressed the desire for stability in the market, especially regarding the issue of price, and voiced the idea that this stability is best achieved by means of consolidation. The MNOs also welcomed the news regarding a possible merger between H3G and WIND. This positive attitude towards the Transaction has found further substance as the companies also openly confirmed their willingness to be active in order to facilitate such consolidation.

(329) During a conference call with investors in 2013, Mr. Franco Bernabé, TIM's CEO at the time, and Mr. Marco Patuano, former COO and CEO of TIM, stated that *"the most effective way to stabilize* [the] *market is through a reduction in the number of player"*, that TIM has *"tried more than once to perform market consolidation"*, that *"the number of infrastructural players for Italy shouldn't exceed three"* and that TIM *"will continue to pursue any concrete opportunity that should become available on the* [consolidation] *front"*.[279]

(330) This position was reaffirmed by Mr. Patuano in November 2013 during an earning call in which he said that *"the Italian market is not big enough for four players"* and that TIM has *"tried many times to be the accelerator of the project"* but *"learned that* [it is] *not the right one to do it"* because *"the better combination is the one that ends with a more symmetric position among the remaining three players"*. However, Mr. Patuano added that *"if this move materializes [TIM] could be available to help the*

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275 VimpelCom internal document, […].

276 […]. WIND internal documents, […].

277 WIND internal document, […]. See also, […].

278 WIND internal document, […].

279 TIM's Conference Call 1H 2013 Results - Q&A, dated 2 August 2013, available at: http://www.telecomitalia.com/content/dam/telecomitalia/en/archive/documents/media/transcripts/2013/Transcript-ConferenceCall-1H2013-Results.pdf [ID 2576].

deal to happen".[280] This last declaration has been confirmed by the National Secretary of SLC-CGIL, who in November 2013 told the Corriere delle Comunicazioni that TIM's CEO Patuano told SLC-CGIL that TIM *"is available to be a facilitator of the merger"*.[281]

(331) Mr. Paolo Bertoluzzo, former CEO of Vodafone Italy, also expressed hope for a consolidation in the market in September 2013, when he told the Corriere delle Comunicazioni that "*a healthy consolidation that rewards those who by long-term prospects, is wishful"*.[282] This statement was echoed by Mr. Gianluca Pasquali, Vodafone's strategy director, who indicated to the Corriere delle Comunicazioni in October 2013 that *"Vodafone is the most ready of competitors, in Italy, to ride the consolidation phenomenon"*, which is *"obviously seen in a positive way"*.[283]

(332) This line of declarations continued throughout the year 2014 as well. In February 2014, the CEO of Vodafone Vittorio Colao was asked whether he would be willing to facilitate consolidation in *Italy* by for instance *"buying spectrum, buying towers and things like that"* in case there was a merger or merger proposal between Wind and Hutchison. Mr. Colao replied that *"rationally and at the right price levels, yes"*.[284] In November 2014, Mr. Colao further stated in the same context that *"quite frankly, everybody knows us, when contributions or roles will be needed, we'll be there"* and that Vodafone *"would clearly do everything to have a better industry structure"*.[285]

(333) TIM's CEO Mr. Patuano repeated in March 2014 that TIM is *"more than favourable to any consolidation given the fact that <u>we can help the consolidation to happen</u>"* and that if it would happen TIM *"will be there"*. Mr. Patuano explained that TIM *"cannot be the ones who drive the consolidation because the consolidation in order to be effective has to rebalance the market and not create a giant and keeping another player which remains much smaller"*, but added that TIM was *"more than open minded to participate"* in the consolidation process either *"with frequency"*, or *"with some assets"*, or *"eventually with other parts that can determine synergies with our*

280 Telecom Italia's CEO Discusses Q3 2013 Results – Earning Call Transcript, dated 8 November 2013, available at: http://seekingalpha.com/article/1825402-telecom-italias-ceo-discusses-q3-2013-results-earnings-call-transcript [ID 2570].

281 M. Azzola: "*Patuano - prosegue Azzola - ci ha detto che Telecom è disponibile a essere un soggetto facilitatore della fusione*", dated 22 November 2013, available at: http://www.corrierecomunicazioni.it/tlc/24472_fusione-wind-3-azzola-telecom-pronta-a-comprare-frequenze.htm [ID 2559].

282 P. Bertoluzzo: "Ad esempio chiedendosi se in un Paese come l'Italia non siano troppi quattro operatori mobili infrastrutturati. È auspicabile un sano consolidamento che premi chi si da prospettive di lungo periodo", 30 September 2013, available at: http://www.corrierecomunicazioni.it/tlc/23396_bertoluzzo-il-nostro-futuro-si-giochera-sulla-qualita htm [ID 2562].

283 G. Pasquali: "*E Vodafone è più pronta dei concorrenti, in Italia, a cavalcare il fenomeno del consolidamento che ridarà nuova forza alle telco europee". Journalist: "Si avvicina un consolidamento per le telco europee. Come lo vedete?" G. Pasquali: "Ovviamente lo vediamo in modo positivo*", dated 29 October 2013, available at: http://www.corrierecomunicazioni.it/tlc/23958_pasquali-vodafone-pronti-al-consolidamento htm [ID 2561].

284 Vodafone Q3 2013-14 Interim Management Statement, dated 06 February 2014, page 24, [ID 1600].

285 Vodafone Half year Results - Analyst and Investor conference, dated 11 November 2014, available at: https://www.vodafone.com/content/dam/vodafone/investors/financial_results_feeds/half_year_30september2014/t_halfyear2014.pdf [ID 2580].

business".[286] In August 2014, Mr. Patuano also stated that he *"wishes a consolidation in the market"*.[287]

(334) In March 2014, VimpelCom's former CEO Mr. Jo Lunder stated during an earning conference call that *"market consolidation is something we are in favour"* and was part of VimpelCom's *"general philosophy"*. Moreover, he added that VimpelCom *"has achieved a certain size in Italy now that will lead to more focus on the right price level and profitability margins going forward rather than subscriber growth"* and *"pricing in the market has been more rational and more disciplined"* which Mr. Lunder *"would expect to continue"*.[288]

(335) The point that a merger between H3G and WIND would be beneficial for the other competitors is also indicated by the fact that TIM's share prices went up in June 2014, after rumours about a resumption of merger talks between H3G and WIND,[289] and then decreased again in July 2014 after press rumours about the difficulties that H3G and WIND were facing in carrying out the planned merger.[290]

(336) In another earnings conference call in August 2014, Mr. Lunder confirmed after a question that VimpelCom is "generally in favor of end market consolidation" and that "the Various remedies that [have been] seen in the recent approvals should not preclude an end market consolidation" since "end market consolidation still be worth it regardless of those particular remedies".[291] A similar statement followed in November 2014 when Mr. Lunder specified that "*of course [VimpelCom is] continuing to explore value adding transactions and generally [is] very much in favor of the market consolidations*".[292]

(337) In February 2015, TIM's then CEO Mr. Patuano also indicated that a merger between H3G and WIND would be able to facilitate market repair, affirming that *"I have a couple of good bottles of champagne in my refrigerator in just in case, I will not be part of the consolidation but I think that, most of us are willing to consider this possibility. […] the benefits of being three players is that, the situation we have today two of us working for quality and two of us are still working for price, I think will be over and I think it's better to have three players are working on quality all*

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286 Telecom Italia's CEO Discusses Q4 2013 Results – Earning Call Transcript, dated 7 March 2014, available at: http://seekingalpha.com/article/2076173-telecom-italias-ceo-discusses-q4-2013-results-earnings-call-transcript [ID 2552].

287 TIM Conference Call 1H 2014 Results – Q&A, available at: http://www.telecomitalia.com/content/dam/telecomitalia/en/archive/documents/media/transcripts/2014/Transcript%20-%20First%20Half%202014%20Financial%20Results.pdf [ID 2575].

288 VimpelCom's CEO Discusses Q4 2013 Results – Earnings Call Transcript, dated 6 March 2014, available at: http://seekingalpha.com/article/2072463-vimpelcoms-ceo-discusses-q4-2013-results-earnings-call-transcript?all=true&find=VimpelCom%27s%2B%28VIP%29%2B%2Bq4%2B2013, [ID 2554].

289 Reuters Italia, Telecom Italia in deciso rialzo dopo indiscrezioni su 3 Italia-Wind, dated 4 June 2014, available at: http://it reuters.com/article/italianNews/idITL6N0OL1IM20140604 [ID 2564].

290 Reuters Italia, SINTESI-Telecom Italia, Telefonica muove sperando in meno vincoli in Brasile, dated 17 July 2014, available at: http://it reuters.com/article/itEuroRpt/idITL6N0PS2Z220140717?sp=true [ID 2567].

291 VimpelCom's CEO Jo Lunder on Q2 2014 results – Earnings Call Transcript, dated 6 August 2014, available at: http://seekingalpha.com/article/2389745-vimpelcoms-vip-ceo-jo-lunder-on-q2-2014-results-earnings-call-transcript, [ID 2554].

292 VimpelCom's CEO Jo Lunder on Q3 2014 results – Earnings Call Transcript, dated 12 November 2014, available at: http://seekingalpha.com/article/2675065-vimpelcoms-vip-ceo-jo-lunder-on-q3-2014-results-earnings-call-transcript?all=true&find=VimpelCom%27s%2B%28VIP%29%2B%2Bq4%2B2013 [ID 2554].

investing".[293] Mr. Patuano also added that *"the second wave of value creation would come from the consolidation of this market, and the consolidation of this market will be – will come, it's a matter of time"*.[294] This motivation is also showed by TIM's CFO Piergiorgio Peluso, who expressed the will to *"to be very rational […] to benefit from possible consolidation among the various operators"*.[295]

(338) In the same month Mr. Lunder reinforced his positive attitude towards market consolidation and stated: "*we think this is the way to go, whether it's method sharing arrangements or fully consolidation opportunities, we are in favour of trying to do that*". Additionally, he repeated the point about VimpelCom moving "*more in the direction of focusing on value, focusing cash flows and not so much anymore focusing on subscriber and revenue market share*".[296]

(339) Moreover, TIM's Executive President Giuseppe Recchi and CEO Marco Patuano indicated in separate interviews with Reuters that a joint venture between 3 Italy and Wind on mobile telephony *"is expected by the markets"*, could be useful to promote investment in the network[297], that "*the news of the merger H3G/WIND can only improve domestic margins"*[298] and that *"the integration between 3 and Wind Italy, from that point of view, can only bring benefits"*.[299]

(340) Vodafone's CEO Vittorio Colao also expressed his concern about the pricing situation and identified consolidation as the solution for the problem. In May 2015 he stated: "*It is a market that is showing signs of improvement but, until you have in the market offers below the line that are so distant from the above one, it's unstable. […]. It is essential that this situation, at some point, gets reduced. […]. Everything goes back to consolidation – Wind, Hutch and the whole thing."*[300]

293 Tim Group FY 2014 Preliminary Results & 2015-2017 Plan Outline, dated 20 February 2015, available at: http://www.telecomitalia.com/content/dam/telecomitalia/en/archive/documents/investors/Presentations/Investor_Relations/2015/SlideFY2014Preliminary.pdf [ID 2333].

294 Telecom Italia's CEO Marco Patuano on Q1 2015 Results – Earnings Call Transcript, dated 9 May 2015, available at: http://seekingalpha.com/article/3163066-telecom-italias-ti-ceo-marco-patuano-on-q1-2015-results-earnings-call-transcript [ID 2552].

295 Telecom Italia's CEO Marco Patuano on Q1 2015 Results – Earnings Call Transcript, dated 9 May 2015, available at: http://seekingalpha.com/article/3163066-telecom-italias-ti-ceo-marco-patuano-on-q1-2015-results-earnings-call-transcript [ID 2552].

296 VimpelCom's CEO Jo Lunder on Q4 2014 results – Earnings Call Transcript, dated 25 February 2015, available at: http://seekingalpha.com/article/2950586-vimpelcoms-vip-ceo-jo-lunder-on-q4-2014-results-earnings-call-transcript?all=true&find=VimpelCom%27s%2B%28VIP%29%2B%2Bq4%2B2014 [ID 2554].

297 G.Recchi: "E' una cosa che i mercati si aspettano", in Reuters Italia "Wind-2 Italia, mercati si aspettano jv, può *aiutare investimenti – Recchi", dated* 18 May 2015, available at: http://it.reuters.com/article/itEuroRpt/idITL5N0Y947420150518 [ID 2565].

298 M. Patuano: "La notizia della fusione 3 Italia-Wind può solo migliorare margini domestici", in Reuters Italia "BRIEF-Telecom, fusione 3 Italia-Wind può solo migliorare margini domestici – AD", dated 7 August 2015, available at: http://it.reuters.com/article/itEuroRpt/idITL5N10I1SW20150807 [ID 2566].

299 Reuters, Telecom Italia cerca soluzione concordata per richieste danni da 4 miliardi euro, in Reuters Italia "BRIEF-Telecom, fusione 3 Italia-Wind può solo migliorare margini domestici – AD", dated 7 August 2015, available at: http://it reuters.com/article/businessNews/idITKCN0QC1BK20150807 [ID 2568].

300 Vodafone Group Preliminary Results – Analyst and Investor Conference Call, dated 19 May 2015, available at: https://www.vodafone.com/content/dam/vodafone/investors/financial_results_feeds/preliminary_results_31march2015/tr_prelim2015.pdf [ID 2579].

(341) In August 2015, the new CEO of VimpelCom, Mr. Jean-Yves Charlier, answered to a question referring to the market in general and to the Italian market in particular that VimpelCom is "*looking at bringing back the markets [to] just three players [...] because [...] long-term that's the better model in terms of shareholder value creation on one dimension but also in terms of being able to long-term deploy the appropriate infrastructure and LT[E] type infrastructure in those type of countries*".[301]

(342) Finally, also in August 2015, Mr. Patuano, CEO of TIM, stated that "*referred to in-market consolidation [...] the environment is already becoming much more rational*" and that "*in-market consolidation on mobile will offer its support to an already much improved context*".[302]

(343) These statements provide further indications that that one of the main rationales of the Transaction is "market repair", resulting from a lower level of competition, not only for the Parties, but also for the other two MNOs TIM and Vodafone, who even expressed their availability to contribute to the realisation of the Transaction.

7.2.5. Analyst reports on consolidation and benefits from market repair

(344) In the following recitals, the Commission reviews analyst reports analysing the impact of Italian mobile consolidation on TIM's share value. These reports further suggest that the Transaction would lead to "market repair", resulting from less competition on the market.

(345) In an analysis of October 2015, Deutsche Bank ("DB") considered that P&L synergies could be achievable only if some revenue synergies were included. In particular, DB foresaw an increase of prices in the order of 5% to achieve similar synergies at run-rate.[303] In a previous report of 2015, DB considered that in case of mobile consolidation, TIM's EBITDA would increase by approximately 5% as a result of: "*1) more moderate mobile price falls:*" assuming "*TIM's ARPU would bottom at E12.5 in 2014 and then increase to E13 in 2015, E14.1 in 2016 and E15 in 2017); and 2) reduced line loss as fixed to mobile migration intensity would soften.*"[304] In addition, in October 2014, DB highlighted that "*following press articles suggesting* [...] *that consolidation in Italian mobile is pushed back by difficulties in negotiations between Wind and 3 Italia (Il Sole), T.I.'s share price has been wiped out of all benefits from M&A scenarios and trades at 12% discount to our "nothing happens" scenario valuation per share*".[305] A similar impact analysis, already performed by DB in mid-2014, estimated a positive effect of 0.27 EUR per share on TIM's share value from the fact of being a passive beneficiary to the mobile consolidation in Italy, accounting for approximately 36% of TIM's share value at the time, as shown in Figure 20 below.

301 VimpelCom's CEO Jean-Yves Charlier on Q2 2015 Results - Earnings Call Transcript, dated 6 August 2015, available at: http://seekingalpha.com/article/3411976-vimpelcoms-vip-ceo-jean-yves-charlier-on-q2-2015-results-earnings-call-transcript?all=true&find=VimpelCom%27s%2B%28VIP%29%2B%2Bq2%2B2015, [ID 2554].

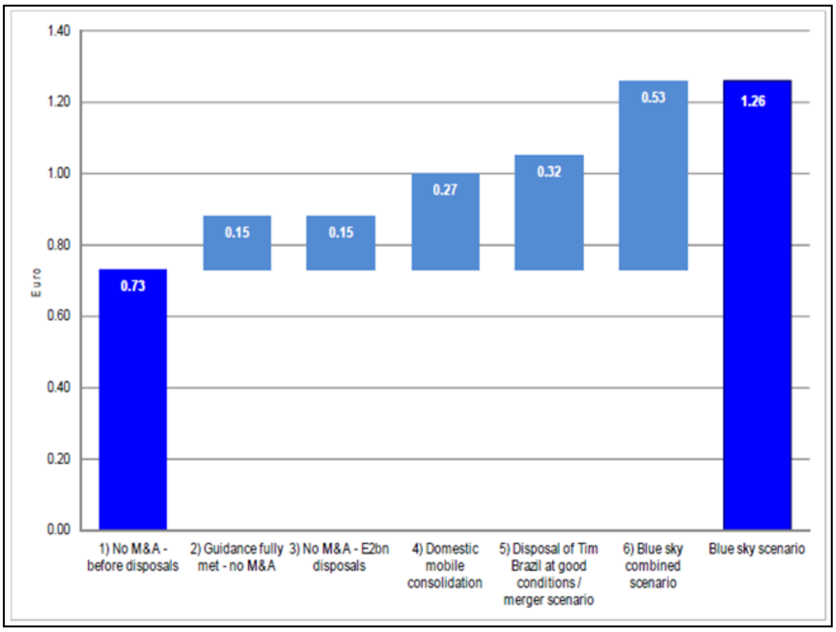
302 Telecom Italia's CEO Marco Patuano on Q2 2015 Results - Earnings Call Transcript, dated 7 August 2015, available at: http://seekingalpha.com/article/3420226-telecom-italias-ti-ceo-marco-patuano-on-q2-2015-results-earnings-call-transcript?all=true&find=telecom%2Bitalia%2Btranscript, [ID 2552].

303 Annex 13.140 to the Form CO, dated October 2015, slides 42 and 43 [ID 286-146].

304 Annex 13.15 to the Form CO, dated February 2015, page 15 [ID 319-162].

305 Annex 13.19 to the Form CO, dated October 2014, page 1 [ID 319-166].

Figure 20: TIM's valuation by DB (August 2014)



Source: Form CO, Annex 13.21, August 2014, slide 16

(346) In July 2014, when analysing TIM's share value, ICBPI also considered that a consolidation in the market would bring significant benefit. In particular it highlighted that a "*WIND-[H]3[G] merger would accelerate slowdown of competitive pressures*". The analysts further considered that "*M&A opportunities constitute a catalyst for the Italian business. In this regard, the most important aggregation would be between Wind and 3 Italia. The merger between the third and fourth Italian mobile operator would reshape the competitive profile of the market, which is characterized by the presence of <u>three similar sized operators, with a little convenience to adopt aggressive pricing policies</u> Wind and 3 Italia, over the past 5 years, have gained market share, focusing on particularly aggressive offers (Wind with voice-data bundles and 3 Italia with discount policies on devices). The Wind-3 Italia aggregated company would not be convenient to adopt the same kind of marketing strategies that are likely to be guided by the need to favour margin growth and cash generation*" (emphasis added). The analysts assume an increase of revenue of 10% mainly driven by price effect, delivering an additional EBITDA of approximately 478 million EUR.[306]

(347) In the same month, Goldman Sachs, which at that time was working as an advisor for H3G, also considered that "the domestic outlook could improve significantly if 3 Italia and Wind Italy are closer to a merger of their mobile businesses (sources: La Repubblica, Bloomberg, July 16) which results in a deal in the near term, in our view" and suggest to buy TIM shares. [307] In a more detailed report Goldman Sachs indicated that […].[308]

(348) Another analyst, JP Morgan, considered that *"[TIM] has been proactive in leading market repair*" and this is due to its "*demonstrative willingness to match any competitor excesses during 2013, clearly signaling to its rivals that there is little*

306 Annex 13.22 to the Form CO, dated July 2014, page 37 [ID 319-170].
307 Annex 13.22 to the Form CO, dated 9 July 2014, page 43 [ID 319-170].
308 […]

point in destroying the market in order to gain small percentages of incremental market share".[309]

(349) Already in 2013, DB was indicating how mobile consolidation would have benefited TIM and how: "*should numbers 3 and 4 in Italian mobile merge, [TIM]'s 2016 EBITDA could increase >E300m as a result of a) more moderate mobile price falls: we assume Tim's ARPU would bottom at E12.7 in 2014 and reach E13.6 by 2016 (Iliad's ARPU today)*". DB also highlights how "*3 Italia is perceived as the only disruptive player by the other three operators, which have all moved to more rational pricing since September 2013*" in addition DB indicates that TIM would play its part acquiring excess spectrum and towers while Vodafone could facilitate the transaction acquiring Infostrada.[310] In a previous report, DB analysed how "*Ti[m]'s aggressive move last Summer was the correct one as it brought the main 3 players to rationality. Hutchison is only one not following but the other 3 players are not too concerned*" (emphasis added).[311]

(350) In an analysis of April 2013 discussing a potential acquisition of Telco's shares in TIM by H3G, DB considered that H3G "is *likely to seek market repair*" and that in another scenario "*should 3 Italia [H3G] merge with or buy Wind, implications for TI[M] would still be positive for the market repair implications of moving to three players from four*". It further considered that "*consolidation would help the market arrest its declining path, in particular as historically 3 Italia [H3G] has been a disruptive player (handset subsidies first, then by far the lowest prices in the market in the contract space, and more recently its aggressive entrance in the pre-paid space combined with improved network quality)*" (emphasis added).[312]

(351) The benefits of market repair, consolidation and removal of H3G as a competitor in the market are also discussed in other analyst reports discussing the Italian mobile telecommunication market presented hereafter.

(352) RBC Capital highlighted that: "*Despite optimism on a recovery in the Italian wireless market late last year, revenue growth trends remain extremely negative. The optimism was stimulated by the three largest operators: Vodafone, TI and Wind Italy, all of which increased entry-level mobile offers. However, challenger operator Hutch continues to undercut the pricing of the main three, and continues to win market share*". In relation to the competitive environment the same analysts stated that: "*The company [WIND] does concede that the environment is extremely competitive, but it's holding its market share. In terms of pricing, Hutch continues to set floor, while Wind is slightly higher*". Thus, showing how H3G is perceived in the market as disruptive and how it prevents the three other operators to converge to a revenue growth path.[313]

(353) HSBC in mid-2015 in a report analysing the Italian Telecom market providing feedback from HSBC Italian field trip stated that "*operators show no appetite for pricing focused competition*" and that they "*continue to see TI[M] as a key passive beneficiary of in-market consolidation and reiterate our Buy rating*". While on the market dynamics it considers that "*now the market has gone back to its natural pricing equilibrium with TIM and Vodafone displaying a 15% premium versus WIND*

[309] Annex 13.22 to the Form CO, dated 9 July 2014, page 79 [ID 319-170].
[310] Annex 13.27 to the Form CO, dated 10 December 2013, pages 1 and 3 [ID 319-175]
[311] Annex 13.29 to the Form CO, dated 19 November 2013, page 1 [ID 319-177].
[312] Annex 13.45 to the Form CO, dated 18 April 2013 pages 20, 22 and 23 [ID 322-195].
[313] Annex 13.64 to the Form CO, dated 14 May 2015, pages 5 and 16 [ID 319-216].

and a 40-50% premium versus the smaller network operator; all the operators we met with signalled their intention to maintain this equilibrium and that they had no appetite to attract customers by pricing down" (emphasis added).[314]

(354) Bank of America – Merrill Lynch ("BoA") discussing the Italian market considers that "*Hutch [H3G is] more aggressive again, [there are] too many competitors*".[315] In a successive report, BoA considered that: "*Three [H3G] and Wind have very poor LTE coverage on a global comparison (source: Opensignal) and hence price aggressively. Consolidation may refocus on strategy on creating a strong quality 3rd network operator*". In particular "*market repair largely dependent on Three & Wind: The #3 and #4 operators are the discounters in the market for relatively poor network quality (4G coverage is low for both on Opensignal data). At the extreme is the Three prepay plan giving 4GB of data for EUR 8 (with mins & texts every 6 months from 200 each initially). The approval of consolidation may refocus efforts to develop a third, quality network operator and lead to more rational pricing*" (emphasis added).[316]

(355) NSR in a report on WIND of mid 2015 stated that "*management are confident that 2015 will "remain rational" and expect no repeat of 2013's damaging price war, though there will be tactical campaigns. Wind itself seems content that at close to 30% residential share in a four player market it can focus more on maximising value from increasing data usage and cost and efficiency measures. However, we would be cautious of assuming that the market will be rational from now on – TIM wants to regain the initiative and is doing well, Hutch remains competitive and Vodafone is yet to see the full benefit from 'Project Spring'". In relation to its investment, it considered that "Capex remains around 16% of revenues and we think will remain in a similar range as 4G coverage and capacity is progressively rolled out to match customer demand and usage patterns*" (emphasis added).[317]

7.2.6. Conclusion

(356) The Commission concludes that the Parties' internal documents illustrated and discussed above show that the Parties view the Transaction as a means to achieve "market repair" in the Italian retail mobile market, resulting from a lower level of competition. Furthermore, the Parties have discussed, calculated and assessed the value and effects of the Transaction's market repair effects in several instances and internal documents. Those calculations and assessments show that the Transaction would bring market repair benefits not only to the JV, but also to its competitors, TIM and Vodafone. These internal documents also show that TIM and Vodafone have been willing to support the Parties to achieve this result. Finally, they show that the Parties have contemplated and pursued the sale of certain assets of the JV to either of TIM or Vodafone in order to re-distribute the value of market repair. The overview of the public statements made by TIM and Vodafone in recent years on the state of the Italian mobile market also shows that TIM and Vodafone view in-market consolidation in Italy as a means to achieve market repair, have been supportive of the Transaction, and have expressed their availability to assist the Parties. These findings are further confirmed by the review of the analyses made by analyst reports on the Italian mobile market.

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[314] Annex 13.66 to the Form CO, dated 11 June 2015, pages 1 and 5 [ID 322-218].

[315] Annex 13.62 to the Form CO, dated February 2015 [ID 322-214].

[316] Annex 13.73 to the Form CO, dated 09 October 2015, pages 4 and 10 [ID 322-226].

[317] Annex 13.114 to the Form CO, dated 09 June 2015, page 24 [ID 322-127].

(357) This documentary evidence corroborates and supports the Commission's findings that the Transaction would lead to both horizontal non-coordinated and coordinated effects on the retail market for mobile telecommunication services in Italy. The Commission will carry out its assessment of each of these theories of harm in the following Section with respect to the retail market for mobile telecommunications services.

7.3. Retail market for mobile telecommunications services

(358) As mentioned in recitals (3) and (5), the Parties are both active on the Italian retail market for mobile telecommunications services. On this market other active players include the other two MNOs, Vodafone and TIM, and various MVNOs.

(359) In the following sections, the Commission will first analyse: (i) the market shares of the Parties and their competitors on the Italian retail market for mobile telecommunications services and its possible segments; (ii) the concentration levels of the retail mobile market, before and after the Transaction; (iii) the importance of various completive parameters for customers on the Italian retail mobile market; and (iv) the importance of 4G as a competitive parameter on the Italian mobile market (section 7.3.1).

(360) Subsequently, the Commission will analyse whether the Transaction is likely to lead to horizontal non-coordinated effects and horizontal coordinated effects on the retail market for mobile telecommunications services (sections 7.3.2 and 7.3.3 respectively).

7.3.1. Market structure and competitive parameters

7.3.1.1. Market shares

(361) According to the Horizontal Merger Guidelines,[318] market shares constitute useful first indications of the market structure and of the competitive importance of the market players. Furthermore, the Horizontal Merger Guidelines explain that the larger the market share, the more likely a firm is to possess market power.[319] Also, the larger the addition of market share (or "increment") brought by the Transaction, the more likely it is that a merger will lead to a significant increase in market power. Post-merger market shares are calculated on the assumption that the post-merger combined market share of the parties is the sum of their pre-merger market shares. Although market shares and additions of market shares only provide first indications of market power and increases in market power, they are normally important factors in the competitive assessment.

(362) The Parties have provided market shares for the retail market for mobile telecommunications services and for several of its possible segmentations, both in terms of revenues and subscribers.[320] These market shares of the retail market for mobile telecommunications services pre- and post-Transaction are set out in the following recitals.

(363) Table 6 below provides the market shares in the Italian retail market for mobile telecommunications services at provider level of the Parties, of the other two MNOs,

[318] Horizontal Merger Guidelines, paragraph 14.

[319] Horizontal Merger Guidelines, paragraph 27.

[320] To calculate the market shares, the Parties relied on their own market estimates to compute market shares at sub-segment levels. The Parties noted that there may be certain discrepancies with the market shares calculated by AGCOM, because of differences in assumption or methodology (Form CO, section 6, footnote 330).

and of the MVNOs, in terms of revenues and subscribers for 2013, 2014 and 2015. Market shares at network level[321] of the four MNOs for 2013 and 2014 are provided in Table 7 below.

Table 6: Market shares in retail market for mobile telecommunications services at provider level (by revenues and subscribers) (2013, 2014, 2015)

Mobile operator	Market share by revenues			Market share by subscribers		
	2013	2014	2015	2013	2014	2015
WIND	[20-30]%	[20-30]%	[20-30]%	[20-30]%	[20-30]%	[20-30]%
H3G	[5-10]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%
JV (H3G + WIND)	**[30-40]%**	**[30-40]%**	**[30-40]%**	**[30-40]%**	**[30-40]%**	**[30-40]%**
TIM	[30-40]%	[30-40]%	[30-40]%	[30-40]%	[30-40]%	[30-40]%
Vodafone	[30-40]%	[30-40]%	[30-40]%	[30-40]%	[20-30]%	[20-30]%
MVNOs[322]	[0-5]%	[0-5]%	[0-5]%	[5-10]%	[5-10]%	[5-10]%

Source: Form CO, Annex 18 and Parties' reply to RFI 58

Table 7: Market shares in retail market for mobile telecommunications services at network level (by revenues and subscribers) (2013, 2014)

Mobile operator	Market share by revenues		Market share by subscribers	
	2013	2014	2013	2014
WIND	[20-30]%	[20-30]%	[20-30]%	[20-30]%
H3G	[5-10]%	[10-20]%	[10-20]%	[10-20]%
JV (H3G + WIND)	**[30-40]%**	**[30-40]%**	**[30-40]%**	**[30-40]%**
TIM	[30-40]%	[30-40]%	[30-40]%	[30-40]%
Vodafone	[30-40]%	[30-40]%	[30-40]%	[20-30]%

Source: Form CO, Annex 18 and Parties' reply to RFI 58

(364) Additionally, the Parties provided market shares for several segments of the retail market for mobile telecommunications services. Table 8 and Table 9 below illustrate the market shares at provider level of the Parties and their competitors for the last three years in the prepaid and postpaid segments of the retail market respectively.

321 Market shares at network level are the shares computed by allocating to each MNO the subscribers of the MVNOS hosted on their respective networks.

322 The market share of MVNOs includes two branded resellers, Auchan and Rabona, see Form CO, Section 6, footnote 331 to table 72, despite that branded resellers do not provide mobile services independently of their host MNOs. However, given the small number of subscribers of these branded resellers (see recital (174) above), this does not affect the Commission's analysis.

Table 8: Market shares in the prepaid segment of the retail market for mobile telecommunications services at provider level (by revenues and subscribers) (2013, 2014, 2015)

Mobile operator	Market share by revenues			Market share by subscribers		
	2013	**2014**	**2015**	**2013**	**2014**	**2015**
WIND	[20-30]%	[20-30]%	[20-30]%	[20-30]%	[20-30]%	[20-30]%
H3G	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[10-20]%
JV (H3G + WIND)	**[30-40]%**	**[30-40]%**	**[30-40]%**	**[30-40]%**	**[30-40]%**	**[30-40]%**
TIM	[30-40]%	[30-40]%	[30-40]%	[30-40]%	[20-30]%	[20-30]%
Vodafone	[30-40]%	[30-40]%	[30-40]%	[30-40]%	[20-30]%	[20-30]%
MVNOs	[0-5]%	[0-5]%	[0-5]%	[5-10]%	[5-10]%	[5-10]%

Source: Form CO, Annex 18 and Parties' reply to RFI 58

Table 9: Market shares in the postpaid segment of the retail market for mobile telecommunications services at provider level (by revenues and subscribers) (2013, 2014, 2015)

Mobile operator	Market share by revenues			Market share by subscribers		
	2013	**2014**	**2015**	**2013**	**2014**	**2015**
WIND	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%
H3G	[10-20]%	[20-30]%	[20-30]%	[10-20]%	[10-20]%	[10-20]%
JV (H3G + WIND)	**[20-30]%**	**[30-40]%**	**[30-40]%**	**[20.30]%**	**[20.30]%**	**[20.30]%**
TIM	[30-40]%	[30-40]%	[30-40]%	[40-50]%	[40-50]%	[40-50]%
Vodafone	[30-40]%	[30-40]%	[30-40]%	[20-30]%	[20-30]%	[20-30]%
MVNOs	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%

Source: Form CO, Annex 18 and Parties' reply to RFI 58

(365) Table 10 and Table 11 below provide the market shares at provider level of the last three years for the overall private segment and for the overall business segment of the retail market.

Table 10: Market shares in the private segment of the retail market for mobile telecommunications services at provider level (by revenues and subscribers) (2013, 2014, 2015)

Mobile operator	Market share by revenues			Market share by subscribers		
	2013	**2014**	**2015**	**2013**	**2014**	**2015**
WIND	[20-30]%	[20-30]%	[20-30]%	[20-30]%	[20-30]%	[20-30]%
H3G	[5-10]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%
JV (H3G + WIND)	**[30-40]%**	**[30-40]%**	**[30-40]%**	**[30-40]%**	**[30-40]%**	**[30-40]%**

TIM	[20-30]%	[30-40]%	[30-40]%	[20-30]%	[20-30]%	[20-30]%
Vodafone	[30-40]%	[20-30]%	[20-30]%	[30-40]%	[20-30]%	[20-30]%
MVNOs	[0-5]%	[0-5]%	[0-5]%	[5-10]%	[5-10]%	[5-10]%

Source: Form CO, Annex 18 and Parties' reply to RFI 58

Table 11: Market shares in the business segment of the retail market for mobile telecommunications services at provider level (by revenues and subscribers) (2013, 2014, 2015)

Mobile operator	**Market share by revenues**			**Market share by subscribers**		
	2013	**2014**	**2015**	**2013**	**2014**	**2015**
WIND	[5-10]%	[5-10]%	[5-10]%	[10-20]%	[10-20]%	[10-20]%
H3G	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%
JV (H3G + WIND)	**[10-20]%**	**[10-20]%**	**[10-20]%**	**[10-20]%**	**[10-20]%**	**[10-20]%**
TIM	[40-50]%	[40-50]%	[30-40]%	[50-60]%	[50-60]%	[50-60]%
Vodafone	[30-40]%	[30-40]%	[40-50]%	[20-30]%	[20-30]%	[30-40]%
MVNOs	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%

Source: Form CO, Annex 18 and Parties' reply to RFI 58

(366) Furthermore, the Commission notes that in the mobile telecommunications sector market shares based on existing subscribers capture the competitive strength of market participants only to a certain degree, in particular because recent trends may not be properly reflected.[323] This is because customers may be bound to long-term contracts, which means that, at any given time, only a fraction of the total customer base is actually contestable. At any given moment, competition occurs only in respect of those contestable customers and entirely new customers (those who are not yet subscribers of mobile telecommunication services at all). Consequently it may take some time before trends in winning new business are reflected in the market shares. Therefore, shares of contestable customers are an informative preliminary element in order to form a view on the likely dynamics in the market for the years following the Transaction.

(367) However, market shares in terms of contestable customers are difficult to obtain. This is because the set of contestable customers includes not only customers that decide to switch operator and which are usually reported as gross adds but also those customers who (actively) decide to either stay in their existing contract or who switch to another tariff but stay with the same MNO.

(368) If shares of contestable customers cannot be reliably derived, an alternative (although imperfect) measure that captures the current competitive strength of market

[323] Commission decision of 2 July 2014 in case M.7018 – *Telefónica Deutschland/E-Plus*, recital 244, Commission decision of 12 December 2012 in case M.6497 – *Hutchison 3G Austria/Orange Austria*, recitals 164 to 170.

participants is to consider gross adds market shares.[324] Market shares based on gross adds are generally used in the telecommunications industry and are calculated on the basis of the respective number of new subscribers acquired in a year by each operator without deduction of the subscribers who leave. Table 12 below provides the market shares of the Parties and of the main MVNO, PosteMobile, in terms of gross adds for the overall retail market for mobile telecommunications services for 2014.

Table 12: Market shares by gross adds in overall retail mobile market (2014)

Mobile Operator	Market share by gross adds
WIND	[20-30]%
H3G	[10-20]%
JV (H3G + WIND)	**[40-50]%**
TIM	[20-30]%
Vodafone	[20-30]%
PosteMobile	[0-5]%

Form CO, section 7, Table 5

(369) Based on the information illustrated in the Tables above, namely the market shares of 2015, the Commission considers that the JV would have a sizeable market share in the overall retail market for mobile telecommunications services post-Transaction, as well as in several of its segments.

(370) In the overall retail market for mobile telecommunications services, post-Transaction the JV would have a market share (at provider level) of [30-40]% by revenues and [30-40]% by subscribers The JV would thus become the largest MNO in terms of subscribers, and the largest in terms of revenues, on par with TIM.

(371) The JV's market share would be even higher in certain segments of the market. For instance, in the prepaid segment, the JV would be the largest mobile operator, with a share of [30-40]% in terms of subscribers and [30-40]% in terms of revenues (on par with TIM). As noted in section 5.1.2.1 above, prepaid services account for almost 80% of the overall retail market in terms of subscribers. Therefore, the JV would become the market leader in the most important segment of the Italian retail market in terms of subscribers.

(372) In the postpaid segment, the JV would have a market share of [30-40]% by revenues and [20-30]% by subscribers, which would make it the largest operator in terms of revenues (on par with Vodafone), and the third largest in terms of subscribers, closely behind Vodafone. In the overall segment for private customers, the JV would have a market share of [30-40]% in terms of revenues and [30-40]% in terms of subscribers, making it the market leader. As noted in section 5.1.2.2 above, most mobile customers in Italy are private customers, as more than 80% of the mobile lines are private lines.

[324] Commission decision of 2 July 2014 in case M.7018 – *Telefónica Deutschland/E-Plus*, recital 246, Commission decision of 12 December 2012 in case M.6497 – *Hutchison 3G Austria/Orange Austria*, recital 170.

(373) When considering market shares in terms of gross adds, mentioned in Table 12 above, the JV would have a market share post-Transaction of [40-50]%, making it the market leader, ahead of TIM and Vodafone. In addition, at network level the JV would reach gross adds share of more than [40-50]%.

(374) The Commission also computed the market shares using the data provided by the Parties and by other market participants.[325] Based on the Commission's market reconstruction of 2015,[326] in the private segment the JV's market share based on subscribers would be [30-40%] at provider level and [40-50%] at network level. The JV would have a higher gross adds share of [40-50%] at provider level and [40-50%] at network level. In the business segment, the JV would reach a market share in terms of subscribers of [10-20%] at provider and of [10-20%] at network level. In terms of gross adds, in the business segment the JV would have a market share of [20-30%] at provider level and of [20-30%] at network level.

(375) Based on the above market share data, the Commission considers that the Transaction would significantly strengthen the JV’s market shares in the overall retail market for mobile telecommunications services and in various segments thereof, particularly in the prepaid and private segments.

7.3.1.2. Concentration levels

(376) The overall concentration level in a market may also provide useful information about the competitive situation. In order to measure concentration levels, the Commission often uses the Herfindahl-Hirschman Index ("HHI"). The HHI is calculated by summing the squares of the individual market shares of all the firms in the market. The HHI gives proportionately greater weight to the market shares of larger firms. Although it is best to include all firms in the calculation, lack of information about very small firms may not be important because such firms do not affect the HHI significantly. While the absolute level of HHI can give an initial indication of the competitive pressure in the market post-merger, the change in the HHI (also known as the delta) is a useful proxy for the change in concentration directly brought about by the merger.[327] In a market where the post-merger HHI is no more than 1000, the Commission is unlikely to identify horizontal competition concerns.[328] Likewise, if the post-merger HHI is between 1000 and 2000 and the delta is below 250, the Commission is unlikely to identify horizontal competition concerns, except where special circumstances are present.[329]

(377) In this Section, the Commission analyses the concentration levels, before and after the Transaction, of the retail market for mobile telecommunications services, as well as of its possible segments, on the basis of the market share data provided by the Parties and illustrated in Section 7.3.1.1.[330]

325 The data include all the MNOs, PosteMobile and Fastweb.

326 The data cover the period until December 2015 (included), thus covering the full calendar year 2015.

327 Horizontal Merger Guidelines, paragraph 16.

328 Horizontal Merger Guidelines, paragraph 19.

329 Horizontal Merger Guidelines, paragraph 20.

330 As regards the market shares of MVNOs, the Parties provided the separate market shares in terms of subscribers of the various MVNOs (see Table 2 above), but not in terms of revenues, nor for most of the possible segments of the retail market. In calculating the HHIs for the overall retail market and for its segmentations, the Commission therefore considered the overall market share of the MVNOs on the retail market. While this approach may slightly increase the calculated concentration levels, the Commission notes that this increase would not be significant, given that the largest MVNO,

(378) The market share information illustrated in Section 7.3.1.1 indicates that the Italian retail market for mobile telecommunications services is a highly concentrated market, and that the Transaction would increase its level of concentration.

(379) According to the market shares of Table 6 above, the four MNOs in 2015 accounted for [90-100]% of the overall market in terms of revenues, and for [90-100]% in terms of subscribers. The pre-merger HHI in the overall retail market for mobile telecommunications services, based on the 2015 market shares by revenue at provider level, is [2000-3000], which indicates that the market is already highly concentrated pre-merger. Table 13 below sets out the HHI levels before and after the Transaction, and the change in HHI level brought by the Transaction, for the overall retail market for mobile telecommunications services, as well as for its possible segmentations, based on the 2015 market shares in terms of the relevant revenues and subscribers illustrated in Table 6, Table 8, Table 9, Table 10 and Table 11 above (overall retail, prepaid, postpaid, private and business).

Table 13: HHI on retail mobile market and its segments (based on 2015 market shares at provider level)

Market/Segment	HHI pre-Transaction	HHI post-Transaction*	Change in HHI
Overall retail			
Subscribers	[2000-3000]	[2000-3000]	[500-1000]
Revenues	[2000-3000]	[3000-4000]	[0-500]
Prepaid segment			
Subscribers	[2000-3000]	[2000-3000]	[500-1000]
Revenues	[2000-3000]	[3000-4000]	[0-500]
Postpaid segment			
Subscribers	[3000-4000]	[3000-4000]	[0-500]
Revenues	[2000-3000]	[3000-4000]	[500-1000]
Private segment			
Subscribers	[2000-3000]	[2000-3000]	[500-1000]
Revenues	[2000-3000]	[3000-4000]	[500-1000]
Business segment			
Subscribers	[3000-4000]	[3000-4000]	[0-500]
Revenues	[3000-4000]	[3000-4000]	[0-500]

Source: Commission's calculation on the basis of Parties' market share data

(380) The post-Transaction HHI on the overall retail market would be considerable, namely [2000-3000] based on subscriptions and [3000-4000] based on revenues.

PosteMobile, accounts for about half of the MVNOs in terms of revenues and subscribers. Additionally, this approach does not affect the calculation of the change in HHI brought by the Transaction.

Likewise, in the overall private segment, the HHI would amount to [2000-3000] based on subscribers and [3000-4000] based on revenues after the Transaction. Considering the overall business segment, the post-Transaction HHI would also be substantial and amount to [3000-4000] based on subscribers and [3000-4000] base on revenues. The change in HHI pre- and post-Transaction on the overall retail market would also be considerable, namely [500-1000] based on subscriptions and [0-500] based on revenues. Likewise, in the overall private segment, the HHI would increase by [500-1000] based on subscribers and by [500-1000] based on revenues. Regarding the overall business segment, the change in HHI represents [0-500] based on subscribers and [0-500] based on revenues.

(381) In respect of the prepaid segment of the market, the post-Transaction HHI would be particularly high: [2000-3000] based on subscribers and [3000-4000] based on revenues, with an increase of [500-1000] and [0-500] respectively. In respect of the postpaid segment, the HHI post-Transaction would be of [3000-4000] in terms of revenues and [3000-4000] in terms of subscribers, with an increase of [500-1000] and [0-500] respectively.

(382) In the present case, the very high values referred to in recitals (380) and (381) above suggest that the Transaction significantly increases the level of concentration and leads to a highly concentrated market post-Transaction.[331]

(383) Based on the above, the Commission considers that the Transaction would significantly strengthen the JV's position in the overall retail market for mobile telecommunications and in various segments thereof, which are already very concentrated and which, post-Transaction, would become even more concentrated.

7.3.1.3. Competitive parameters

(384) In this section, the Commission discusses the current importance of different parameters of competition on the Italian retail market for mobile telecommunications services, on the basis of the Parties' view and the results of the Commission's investigation.

a) Parties' view

(385) The Parties argue that the most important competitive parameters on the Italian market are non-price related. In the Parties' view, network quality and network coverage are particularly important, and are the main drivers of a consumer's choice of mobile provider. Furthermore, given the surge of mobile data usage, network quality and coverage will become more relevant in the future, as they are increasingly necessary for offering customers high quality data services.

(386) In the Reply to the Article 6(1)(c) decision, the Parties further argue that network quality and network coverage are already today more important than price as competitive parameters on the Italian retail mobile market, and their importance will increase in the future.

b) Commission's assessment

(387) In the course of its phase I market investigation, the Commission asked market participants, namely MNOs and MVNOs, to assess the importance of various parameters of competition in the retail mobile market in Italy.

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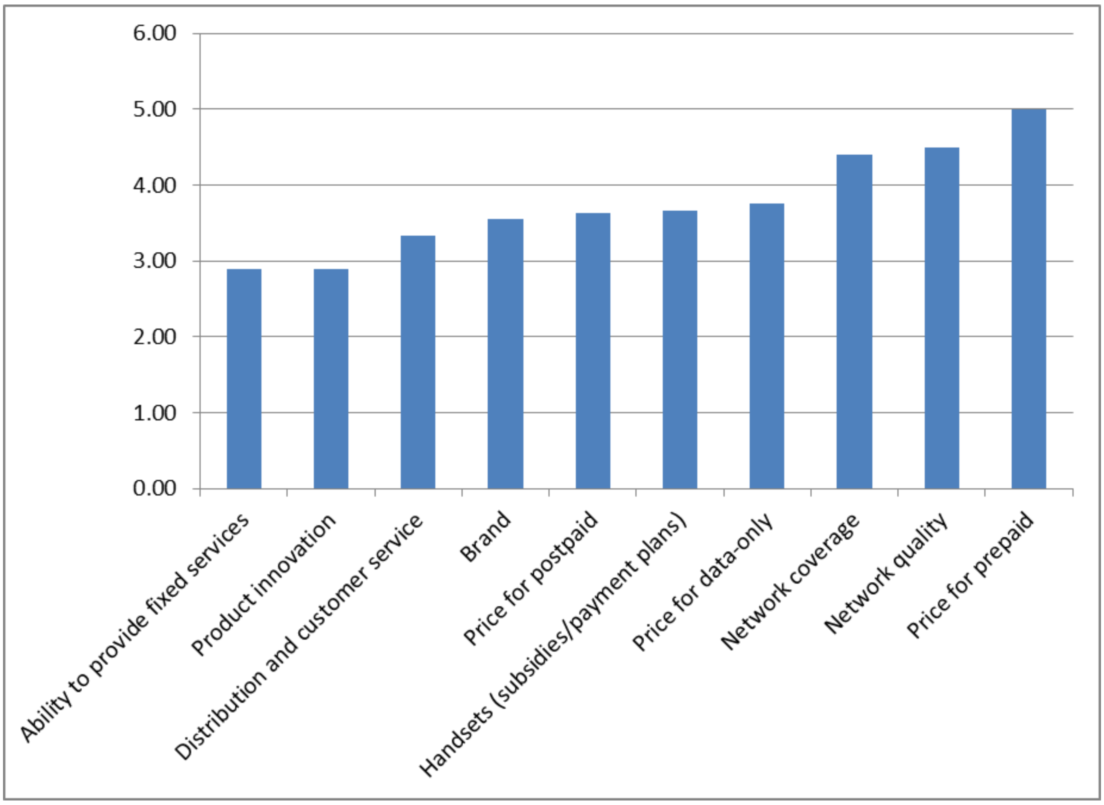
331 Horizontal Merger Guidelines, paragraphs 20 and 21.

(388) In particular, MNOs and MVNOs were asked to rate the current importance of the various competitive parameters for a retail private customer's choice of mobile provider. Rating had to be provided on a 5-point scale ranging from very unimportant (1) to very important (5) for each parameter. Figure 21 below shows the relative importance of those different competitive parameters, on the basis of the average of the ratings provided by MNOs and MVNOs respondents to the phase I market investigation.

Figure 21: Relative importance of different competitive parameters in the Italian retail market mobile market (for a private customer)



Source: Responses to Questionnaire Q1 to MVNOs of 8 February 2016, question 52, and Q4 to MNOs of 8 February 2016, question 32

(389) As can be seen from the figure above, when asked to rate the importance of certain parameters of competition from the perspective of a private customer, respondents among MNOs and MVNOs, on average, regarded price for prepaid services as the most important competitive factor. Network quality and network coverage received the second and third highest ratings, respectively. Price-related parameters such as price for data-only, handset subsidies/payment plans and price for postpaid also received an important score (above 3.5). Distribution and customer service, product innovation (, additional services, technology upgrades) and the ability to provide fixed services were regarded as the least important parameters.

(390) When asked the same question, business customers on average also gave the highest rating to prices for postpaid and data-only contracts (and to a lesser extent price for prepaid services). Network quality and network coverage were rated slightly less, or the same as price for postpaid and data-only.[332]

[332] Responses to Questionnaire Q2 to business customers of 8 February 2016, question 15.

(391) The Commission also asked MVNOs and MNOs to rank competitive parameters in order of importance from the perspective of a private customer choosing a provider of retail mobile telecommunications services. MNOs and MVNOs were asked to rate the current importance of seven competitive parameters, from the most important (7) to the least important (1). The competitive parameters to be ranked were: price, network quality and coverage, brand, handset subsidies/payment plans, product innovation, ability to provide fixed services and distribution and customer service. Most MNOs and MVNOs responding to the Commission's market investigation indicated price overall as the most important competitive factor, followed by network quality and coverage.[333]

(392) Most respondents to the market investigation also indicated that in the next two to three years, the importance of network quality and network coverage for private customers would increase. Those respondents also indicated that the importance of price for prepaid and postpaid would remain the same, whereas the importance of price for data-only services would decrease.[334]

(393) In the course of its in-depth investigation, the Commission further investigated the importance of price, network coverage and network quality as present and future competitive parameters on the Italian retail market for mobile telecommunications services. In particular, the Commission reviewed the Parties' customer surveys, including those annexed to the Form CO.

(394) The Parties have regularly carried out surveys related to customers' satisfaction. In these surveys, customers were asked the reasons why they chose one operator over the other[335] or why they decided to switch away from their original operator to another one.[336] All these surveys show that the two most important criteria for customers choosing an MNO or switching to another MNO are in general price and network, price being almost always by far the first reason for a customer to choose the mobile services of an MNO over those of another MNO.

(395) […]. […],[337] [SUMMARY OF SURVEY CONDUCTED BY H3G IN DECEMBER 2013 CONCERNING CUSTOMERS' CHOICE OF MNO].[338]

(396) [SUMMARY OF SURVEYS CONDUCTED BY VIMPELCOM IN 2012 AND 2013 CONCERNING REASONS FOR CUSTOMER RECOMMENDATIONS OF MNO].[339]

(397) [SUMMARY OF H3G SURVEY ON CUSTOMER SATISFACTION AND CHOICE OF MNO IN 2014].[340]

(398) The Parties' surveys regarding the reasons why customers decided to switch away from their operator to another one also emphasise the importance of price. For

333 Responses to Questionnaire Q1 to MVNOs of 8 February 2016, question 53, and Q4 to MNOs of 8 February 2016, question 33.

334 Responses to Questionnaire Q1 to MVNOs of 8 February 2016, question 54, and Q4 to MNOs of 8 February 2016, question 34.

335 H3G internal document […].

336 H3G internal document […]. Wind internal document […]. VimpelCom internal document […]. VimpelCom internal document […]. VimpelCom internal document […].

337 H3G internal document […].

338 H3G internal document […]

339 VimpelCom internal document […].

340 H3G internal document […]

instance, [SUMMARY OF H3G SURVEYS FROM 2014 AND 2015 RELATING TO REASONS FOR CUSTOMERS LEAVING H3G].[341] [342] [343] [344] [345]

(399) The Parties' consumer satisfaction surveys also confirm the importance of price for consumers.[346] […].

(400) Furthermore, another customer survey dated September 2015, submitted by Fastweb, showed that 48% of respondents indicated price as the reason for considering switching MNO, 38% indicated tariffs that better fit their needs, and 21% indicated better network coverage.[347] This survey also suggests the prominence of price as a factor for consumers choosing retail mobile services.

(401) The Commission also notes that the results of its own customer survey indicate that price is the most important parameter of competition for customers choosing retail mobile services in Italy.[348]

(402) In light of the above, the Commission therefore considers that price, in particular price for prepaid services, remains the most important competitive parameter on the Italian retail market for mobile telecommunication services, closely followed by network quality and network coverage. For the purposes of this Decision, the Commission will carry out its competitive assessment of the Transaction in the light of these findings.

7.3.1.4. Importance of 4G coverage as a competitive parameter

a) Parties' view

(403) According to the Parties, the importance of network quality and coverage for Italian customers has risen significantly in recent years and is expected to increase even further. This makes network investments even more crucial to enable MNOs to continue competing effectively in the market.

(404) The Parties explain that H3G and WIND are currently lagging behind TIM and Vodafone in terms of rollout of 4G network. According to the Parties' information presented in Table 1 above, Vodafone is the market leader in LTE outdoor coverage in Italy with its LTE network extending to over 91% of the population. TIM's LTE outdoor coverage extends to 86% of the population. By contrast, H3G's and WIND's LTE outdoor coverage extends to […]% and […]% of the population respectively. In relation to indoor LTE coverage the Parties indicate that the gap is similar with WIND and H3G covering respectively […]% and […]% of the Italian population while TIM and Vodafone have already a nationwide coverage of 64% and 75%. [349]

(405) The Parties argue that already today there is a network performance gap among the different MNOs in Italy, with customers of TIM and Vodafone experiencing better average download speeds than customers of H3G and WIND.[350] Furthermore,

[341] H3G internal document […].
[342] VimpelCom internal document […].
[343] VimpelCom internal document […].
[344] H3G internal document […].
[345] […]. H3G internal document […].
[346] VimpelCom internal document […]. Wind internal document […].
[347] Fastweb's response to Questionnaire Q1 to MVNOs of 8 February 2016, question 52.2 [ID 707].
[348] See SWG's Survey on behalf of the European Commission, Annex D to this Decision, question 11, slides 13 to 16.
[349] Form CO, Section 6, Table 58.
[350] Form CO, Section 6, paragraphs from 548 to 552.

network performance is considered a key parameter of competition, as is proven by the fact that, most of the customers leaving H3G and WIND in 2015 cited network performance issues (either as network quality and coverage) as principal reason for their dissatisfaction.[351] In the Reply to the Article 6(1)(c) Decision, the Parties add that the Commission underestimates the importance of LTE and network quality for competition.[352]

b) Commission's assessment

(406) In order to assess the Parties' claim on their inability to meet customers' data requirements needs today and in the next years due to their lack of 4G coverage, which is discussed below in the context of the competitive assessment in Sections 7.3.2.1 b) and 7.3.2.2 b) and in the assessment of the efficiencies in Section 7.5.4, the Commission firstly has to assess whether an increase in data traffic is expected in Italy in the coming years and, if so, whether this higher demand is expected to be served mainly by 4G technology.

(407) As regards data traffic, as explained in Section 5.1.2.3 above, it appears that customers' demand for data is indeed expected to increase in the next years. However, the higher forecasted data demand would not necessarily be served mainly by 4G technology. In order to assess the actual benefit of a wider 4G network, the Commission has to assess the likely evolution of 4G demand in the next years. Based on its findings, the Commission notes the following.

(408) Firstly, as of today and as discussed in Section 5.2 above, only a fraction of Italian consumers is currently using 4G services. This finding is further supported by the Parties' internal documents. Figure 22 below shows that, as of June 2015, 4G accounted for approximately […]% of WIND's total data volume and it was expected to account for only […]% by the end of 2015.

Figure 22: […]

[…]

Source: WIND internal document, […]

(409) In relation to H3G, based on the data provided in the Form CO, as of April 2015 approximately […]% of its subscribers ([…]) had an LTE device but only […]% of them ([…]) were actually active LTE users.[353]

(410) The above data are confirmed by a survey prepared by Nielsen for WIND, according to which, as of June 2015, 4G devices accounted for only […]% of the total devices, while most of the devices in the market ([…]%) were still 3G. In particular, the survey shows that the data traffic of customers with a 4G device (for instance customers using at least once LTE/4G) as of June 2015 occurred mainly on a 3G network ([…]%) while a much smaller portion of traffic was on a 4G network ([…]%).[354]

(411) When analysing the data traffic of the four MNOs by technology, the Nielsen survey confirms that TIM and Vodafone are ahead in relation to customers' 4G usage, but also that the Parties' gap with TIM is of approximately […]% while the one with Vodafone is of less than […]%. In addition, Figure 23 clearly shows that, for all

351 Form CO, Section 6, paragraphs from 554 to 560.
352 Parties' Reply to the Article 6(1)(c) Decision, paragraph 105.
353 Form CO, Section 6, paragraph 566.
354 VimpelCom internal document […].

MNOs, 3G is currently the technology that is by far the most used technology by customers in Italy.

Figure 23: Data traffic of mobile operators in Italy by technology

[…]

Source: WIND internal document, […].

(412) The Nielsen survey further shows that WIND and H3G are not lagging behind TIM and Vodafone in the overall data segment since their respective average consumptions are in line with those of the two other MNOs. In particular, Figure 24 below shows that H3G's customer are the most data hungry customers with an average consumption of […] GB/month, approximately […] GB/month more than the other MNOs, while WIND's consumption is in line with the one of the other two MNOs.

Figure 24: Data traffic of mobile operators in Italy – MB/month/SIM

[…]

Source: WIND's internal document, […].

(413) Second, in the coming years, the Commission acknowledges that the number of users of 4G services is likely set to increase. Respondents to the market investigation generally expect demand for 4G services, as well as the percentage of subscribers having access to 4G services in Italy, to increase in the next two to three years.[355] In particular, one MNO expects 4G SIMs to increase from 15% to 45% of the market by 2018[356] while one MVNO submitted that 4G connections could increase up to 53% of the total by 2023.[357] Based on the information provided in response to the market investigation by other mobile operators, it therefore appears that a significant amount of customers would still be served through 2G/3G technologies.[358] Those projections are in line with the data provided by the Parties where they expect 4G SIM penetration to be at […]% by 2020.[359]

(414) Even if 4G is expected to grow, it is not expected to account for the majority of the connections before 2019, meaning that most of the customers would still be served by other technologies (2G/3G) in the coming years. This is further supported by a WIND internal document discussing the potential synergies from network sharing agreements ("NSAs"). Based on the Parties' data, 4G data traffic is expected to overtake 3G only by […] when 4G data would account for […]% of the traffic, thus, confirming that a large part of their customers (3G) would still be served by 3G technologies.[360]

(415) In the Reply to the Article 6(1)(c) Decision, the Parties claim that the data presented above are not reliable since they are based on a document of 2012.[361] The Commission notes that similar estimates are confirmed from more recent analyses. First, an internal document of April 2014 realised by H3G shows that […].[362]

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355 Responses to Questionnaire Q1 to MVNOs of 8 February 2016, question 35.3. Responses to Questionnaire Q4 to MNOs of 8 February 2016, question 11.3.

356 See TIM's response to Questionnaire Q4 to MNOs of 8 February 2016, question 11.3.1. [ID 814]

357 See PosteMobile's response to Questionnaire Q1 to MVNOs of 8 February 2016, question 35.3.1.

358 Confidential information from the Commission's market investigation.

359 Form CO, Section 6, Figure 48. See also Reply to the Article 6(1)(c) Decision, paragraph 49.

360 VimpelCom internal document […].

361 Parties' Reply to the Article 6(1)(c) Decision, paragraph 42.

362 H3G internal document, […].

Second, based on WIND's traffic forecasts for the period 2016-2020, by […] most of the mobile voice traffic would be on 3G while 4G data consumption will overtake 3G data traffic by […] when WIND would have covered over […]% of the population, as shown in Table 38 and the Parties' coverages gap will be narrower. [363]

(416) In addition, after a field trip with investors in Italy in mid-2015, HSBC concluded that […].[364]

(417) Therefore, for the purposes of the present case, the Commission considers that as of today the major part of mobile customers in Italy use 3G networks. The Commission acknowledges that 4G services would likely have a growing relevance in the Italian mobile market in the coming years. In light of this growing relevance, the Commission will assess the ability and incentive of each of H3G and WIND to develop their respective 4G networks in the future absent the Transaction in Sections 7.3.2.1 b) and 7.3.2.2 b) respectively. The Commission will also assess the impact of the Transaction on the roll-out of 4G by the JV in Section 7.5.4 below.

7.3.2. Horizontal non-coordinated effects

(418) In the following, the Commission will assess whether the Transaction is likely to lead to horizontal non-coordinated effects in the overall retail market for the provision of mobile telecommunications services in Italy, as well as in the segments thereof.

(419) At the outset, the Commission notes that, as explained in recitals (233) and (234), under the Merger Regulation and paragraphs 24 and 25 of the Horizontal Merger Guidelines, the elimination of competition between two merging firms, together with a reduction of competitive pressure on the remaining competitors, may give rise to a significant impediment of effective competition resulting from horizontal non-coordinated effects in oligopolistic markets, in particular if they feature a limited number of players and particularly high barriers to entry, where the merging firms exert an important competitive constraint on each other and on the remaining competitors.

(420) As recalled in recital (235), the Horizontal Merger Guidelines list a number of factors which may influence whether significant horizontal non-coordinated effects are likely to result from a merger. That list of factors applies equally regardless of whether a merger would create or strengthen a dominant position, or would otherwise significantly impede effective competition due to non-coordinated effects. Those factors are illustrated in paragraphs 27 and following of the Horizontal Merger Guidelines, and include: the large market shares of the merging firms, the fact that the merging firms are close competitors, the limited possibilities for customers to switch suppliers, or the fact that the merger would eliminate an important competitive force. Paragraph 26 of the Horizontal Merger Guidelines clarifies that not all of these factors need to be present to make significant non-coordinated effects likely and that this should not be considered an exhaustive list.[365] The presence of these factors may though have an impact on the degree of horizontal non-coordinated effects arising from the transaction.

(421) With respect to the factor of market shares, mentioned in paragraph 27 of the Horizontal Merger Guidelines, the findings illustrated in Section 7.3.1.1 above

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363 VimpelCom internal document, […].
364 Form CO, Annex 13.66.
365 Horizontal Merger Guidelines, paragraph 26.

indicate that post-Transaction the JV would have a sizeable market share in the overall retail market for mobile telecommunications services, of [30-40]% by revenues and [30-40]% by subscribers at provider level (recital (370) above). Therefore, post-Transaction the JV would become the largest MNO in terms of subscribers, and the largest in terms of revenues, on par with TIM. The JV would have even higher market shares in specific segments of the retail market, including the prepaid segment, as illustrated in recital (371). As discussed in Section 7.3.1.2, on the basis of the market share information available, it appears that the Transaction would also result in the further concentration of an already concentrated market.

(422) The following Sections provide the Commission's findings and analysis with respect to the other non-exhaustive factors listed by the Horizontal Merger Guidelines, whose presence is indicative of whether significant horizontal non-coordinated effects are likely to result from a merger.

(423) In Section 7.3.2.1 the Commission will first assess the competitive constraint exerted by H3G on the Italian retail mobile market before and in the absence of the Transaction. Subsequently, Section 7.3.2.2 analyses the competitive constraint exerted by WIND on the Italian retail mobile market before and in the absence of the Transaction.

(424) Subsequently, the Commission will evaluate the closeness of competition between the Parties in Section 7.3.2.3. In Section 7.3.2.4, the Commission will assess the competitive conditions which would likely emerge on the retail mobile market following the Transaction. The Commission will evaluate the likely behaviour of the JV after the Transaction (Section 7.3.2.4 a)), as well as the likely reactions of the remaining competitors, both MNOs (Section 7.3.2.4 b)) and MVNOs (Section 7.3.2.4 c)), to analyse whether post-Transaction the JV would still be an important competitive constraint, and whether its competitors would continue competing on the market as before the Transaction. The Commission will then assess the existence of barriers to entry on the market (Section 7.3.2.4 d)) and of countervailing buyer power (Section 7.3.2.4 e)). Section 7.3.2.4 f) also includes the Commission's quantitative analysis of the extent to which the elimination of competition between the Parties would generate an incentive to increase prices for the JV post-Transaction.

(425) Finally, Section 7.3.2.5 contains the conclusion of the Commission's assessment of non-coordinated effects on the retail market for mobile telecommunications services.

7.3.2.1. Assessment of the competitive constraint exerted by H3G

a) The competitive constraint exerted by H3G before the Transaction

i. <u>Parties' view</u>

(426) The Parties claim that H3G does not play a unique and irreplaceable role in the competitive process. Therefore, the fact that it will no longer operate on a stand-alone basis will not result in the removal of an "important competitive force" within the meaning of the Horizontal Guidelines.

(427) The Parties explain that H3G is a sub-scale operator and that is has a less developed and competitive network than its competitors. These two limitations hinder H3G's ability to compete. Because of its limited scale, H3G is unable to generate sufficient funds to finance the required network investments.[366] In turn, the inability to improve its network further limits H3G's competitiveness, given the importance of network

[366] Form CO, Section 6, paragraph 749.

quality and coverage in the Italian market. Because of these combined shortcomings in its scale and network, H3G is therefore unable to compete efficiently against its competitors. Furthermore, notwithstanding its traditional focus on data centric customers, H3G has been unable to satisfy the increasing demand for data by Italian consumers, due to its disadvantaged network.[367] Finally, H3G is the only MNO unable to offer fixed and mobile bundles, which further limits its competitiveness.[368]

(428) The Parties conclude that for these reasons, H3G cannot be considered to exert an important competitive constraint on the market and that it does not have more of an influence on the competitive process than its market share would suggest.[369]

(429) In the Reply to the Article 6(1)(c) Decision, the Parties argue that H3G cannot be qualified as an important competitive force. First, the Parties claim that the Commission's market investigation only shows that H3G is "perceived" as being price-aggressive, without any factual verification of this price aggressiveness. Furthermore, the Parties argue that price aggressiveness in itself is not sufficient to qualify a market player as an important competitive force. Second, the Parties argue that any apparent depiction of H3G as a price aggressive player is not a sign of strength, but actually reflects the weakness of H3G's network, which forces it to offer its lower quality services at a cheaper price. In this respect, any assessment of H3G's pricing behaviour should also take into account the importance of network quality and coverage for consumers, and H3G's weakness in this respect. Third, the Parties claim that the responses to the market investigation and the Parties' internal documents cited in the Article 6(1)(c) Decision are not supportive of a finding of H3G as an important competitive force. Finally, the Parties reiterate that H3G suffers from its lack of scale and its inability to offer fixed services, which limit its competitiveness.

ii. Commission's assessment

(430) The Horizontal Merger Guidelines state that some firms have more of an influence on the competitive process than their market share would suggest. A merger involving such a firm may change the competitive dynamics in a significant anticompetitive way, in particular in a market that is already concentrated.[370]

(431) In this respect, paragraph 37 of the Horizontal Merger Guidelines makes the example of a firm that is a recent entrant on the market, and is expected to exert significant competitive pressure in the future. However, this is just one situation where a merger may lead to significant non-coordinated effects by removing an important competitive force.

(432) For instance, a firm whose commercial behaviour triggers dynamics of competition by competing aggressively, constraining competitors and driving prices down, may also qualify as an important competitive force. For a firm to constitute an important competitive force, it is not strictly necessary that it qualifies as the "maverick". A firm constitutes an important competitive force where it contributes, substantially and consistently, to the competitive process on the market, based on parameters such as price, quality, choice and innovation.

[367] Form CO, Section 6, paragraph 750.
[368] Form CO, Section 6, paragraph 751.
[369] Form CO, Section 6, paragraphs 748 and 752.
[370] Horizontal Merger Guidelines, paragraph 37.

(433) Against this background, in the following Sections the Commission will consider whether H3G qualifies as an important competitive force on the Italian retail market for mobile telecommunications services.

(434) H3G was the last MNO to enter the Italian retail mobile market, in 2003. It is currently the smallest MNO in Italy, with around 10 million subscribers and a market share of [10-20]% as of 2015. In 2014, H3G had revenues of approximately EUR […].

(435) A first indication that H3G has a greater influence on the Italian retail mobile market than the one suggested by its market share is provided by H3G's gross adds of the past three years. As explained in recital (368) above, market shares based on gross adds are generally used in the telecommunications industry and are calculated on the basis of the respective number of new subscribers acquired in a year by each operator without deduction of the subscribers who leave. Table 12 above showed that in 2014 H3G had a market share by gross adds of [10-20]%, as opposed to its [10-20]% market share in terms of subscribers in the same years (see Table 6 above). As mentioned in recital (374) above, the Commission has also computed the market shares using the data provided by the Parties and by other market participants. The Commission computed market shares both in terms of subscribers and in terms of gross adds. Table 14 below reproduces H3G's market shares for the years 2013, 2014 and 2015 in various segments of the retail mobile market, both in terms of subscribers and gross adds, on the basis of the Commission's market reconstruction.

Table 14: H3G's market share by subscribers and by gross adds in the private, prepaid private, postpaid private and business segments of the Italian retail mobile market (2013, 2014, 2015)

Segment	Market share	2013	2014	2015
Private	By subscribers	[5-10]%	[10-20]%	[10-20]%
	By gross adds	[10-20]%	[10-20]%	[10-20]%
Prepaid private	By subscribers	[5-10]%	[5-10]%	[5-10]%
	By gross adds	[10-20]%	[10-20]%	[10-20]%
Postpaid private	By subscribers	[40-50]%	[40-50]%	[40-50]%
	By gross adds	[40-50]%	[40-50]%	[30-40]%
Business	By subscribers	[5-10]%	[5-10]%	[5-10]%
	By gross adds	[5-10]%	[10-20]%	[10-20]%

Source: Commission's reconstruction of market share data

(436) As can be seen from the Table above, the comparison of the subscriber market shares and gross adds shares across several segments of the retail mobile market provides a first indication that H3G is an important competitive force in the Italian retail market for mobile telecommunications services, which has a greater influence than that suggested by its market share. For instance, H3G's market share by gross adds has consistently been higher than its market share by subscribers in the private segment (which accounts for 80% of the retail mobile market in Italy, as mentioned in Section 5.1.2.2), as well as in the prepaid private segment. The Commission also notes that over the last three years, H3G's market share has grown, both in terms of subscribers and in terms of gross adds.

(437) The fact that H3G has consistently had higher gross adds market shares than its nominal market shares indicate that H3G is able to attract a far greater share of new subscribers than its market share would suggest.

(438) Since its entry in the Italian retail mobile market, H3G has consistently pursued an aggressive commercial strategy to gain customers and market shares, by offering aggressively-priced retail mobile services. H3G's behaviour has led to generally lower prices in the Italian retail mobile market, with the other MNOs reacting to H3G's offers by lowering their own tariffs and offers, innovating and competing aggressively. This has been confirmed by the market investigation and the Parties' internal documents, which the Commission will analyse in turn in the Sections below.

(439) With respect to the Parties' argument that H3G suffers from a lower level of network quality and coverage against its competitors, which weakens its competitive position (and is actually the reason for its lower prices), at the outset the Commission notes the following.

(440) First, as explained in Section 7.3.1.3, in the Italian retail mobile market price still remains the most important competitive parameter, closely followed by network quality and network coverage.

(441) Second, the Commission notes that H3G's claimed weakness with respect to network quality and network coverage relates specifically to 4G. With respect to 2G, H3G benefits from a roaming agreement with TIM.[371] With respect to 3G, H3G has a highly developed 3G network (see Figure 25 below). With respect to 2G and 3G, H3G is thus substantially on par with its competitors in terms of indoor and outdoor network coverage,[372] whereas it is in a weaker position with respect to its 4G network as illustrated in Figure 25 below.

371 With respect to 2G, the Commission also notes that 2G-only subscriptions are becoming less common in Italy. According to data provided by the Parties (See Form CO, Annex 38), the number of 2G subscriptions has been shrinking continuously over the last years. In 2012 there were approximately […] 2G subscriptions, representing almost half, ([...]%), of all subscriptions in Italy ([…], excluding machine-to-machine subscriptions). In 2015, the number of 2G subscriptions has decreased to approximately […] ([…]% of all subscriptions, which were […]). Furthermore, given the increase in demand for mobile data services and use of smartphones, mentioned in Section 5.1.2.3 above, the share of 2G phones can be expected to continue to decrease. The expected decline in 2G subscribers is also confirmed by WIND's projection that the share of 2G handsets in WIND's network will decrease from […]% in 2015 to […]% in 2020 (See Parties' response to the Commission's document additional questions of 18 January 2016 on the second draft Form CO, submitted 28 January 2016, question 5.2.). This decrease of 2G subscriptions would limit any alleged disadvantage for H3G of not having a 2G network.

372 The Commission further observes that H3G's claimed disadvantage of not having its own 2G network is also reduced as H3G invests in its own 3G and 4G network. In that respect, H3G recently announced that it will terminate its national roaming service on TIM's 2G network in some geographical areas as a result of the improvements of its network, in particular the increased capacity, and indoor and outdoor coverage (see Fastweb's reply to RFI n. 36 of 19 April 2016, question 10 [ID 1601]; see also statement by H3G available at: http://www.androidiani.com/offerte-2/3-italia-conferma-spegnimento-roaming-284901 [ID 2587]).

Figure 25: Indoor and outdoor population coverage of the four MNOs per type of network (2G, 3G, 4G) (H1 2015)

[…]

Source: Form CO, Section 6. Figures 36 and 37[373]

(442) Therefore, the assessment of H3G's perceived weakness stemming from network coverage and quality, and of any consequent limitations to its ability to compete or operate on the retail mobile market vis-à-vis the other MNOs, pertains strictly to the state of its 4G network.

(443) Third, notwithstanding its claimed weakness with respect to network quality and coverage (which, as mentioned, relates specifically only to 4G), H3G has nonetheless competed aggressively and influenced competition in the Italian retail mobile market, as will be explained in the Sections below. Therefore, it does not appear that H3G's claimed current limitations with respect to 4G network have hindered its competitive role and behaviour on the market pre-Transaction.

(444) Fourth, as was explained in Section 7.3.1.4 b) above, 4G usage in Italy is still limited, and most mobile data traffic relies on 3G. Therefore, given the current and expected importance of 4G in Italy, H3G's less developed 4G network does not appear to be a decisive factor that inevitably limits its ability thus far to effectively compete on the retail mobile market and influence dynamics of competition.

(445) Finally, as also noted in Section in Section 7.3.1.4 b) above, the importance of 4G in the Italian mobile market is likely to gradually increase in the next years. However, as will be further discussed in Section 7.3.2.1 b) below, even if 4G mobile services (and their network quality and coverage) are poised to have a growing relevance in the near future, H3G's competitive position would not be affected by its existing smaller 4G network coverage, as absent the Transaction H3G would have the ability and incentive to complete the roll-out of its 4G network and close the current gap with TIM and Vodafone, thus remaining able to compete effectively in the future absent the Transaction.

Market investigation

(446) In the course of its phase I market investigation, the Commission asked market participants, namely MNOs and MVNOs, several questions to assess H3G's competitive behaviour in the Italian retail mobile market.[374]

(447) First, the Commission asked market players to rate the competitive position of the four MNOs in relation to each of a series of various competitive parameters. MVNOs gave to H3G (in some instance, together with WIND) the highest score with respect to the parameter of prices for prepaid, postpaid and data-only services offered to private customers, confirming that H3G has, alone or together with WIND, the best offering of mobile services in terms of price. With respect to this parameter, H3G

373 Additionally, the Commission also notes that in the first half of 2015, H3G has further increased its 4G coverage, reaching 50% of the population. See http://www.mondo3.com/3-italia/cs/2015-08-25-bilancio-semestrale.html [ID 1471].

374 In the Reply to the Article 6(1)(c) Decision, paragraph (164), the Parties, refer to paragraph (244) of the Article 6(1)(c) Decision and appear to claim that the Commission in its phase I market investigation asked market participants whether H3G is an important competitive force. The Commission asked several questions to market participants, and on the basis of those replies it made its preliminary assessment that H3G is an important competitive force. However, the Commission did not directly ask market participants whether H3G should be qualified as an important competitive force.

was rated more positively than Vodafone and TIM.[375] TIM also acknowledged H3G's strength with respect to price offering for prepaid, postpaid and data-only services to private customers.[376] Business customers also indicated that H3G is particularly valued in terms of the pricing of their mobile services.[377]

(448) Second, the Commission asked which had been the most aggressive mobile operator as regards price in the last three years, by means of a rating on a one to five point scale. MVNOs gave the highest scores to H3G, ahead of Vodafone and TIM.[378] Fastweb explained its evaluation by stating that H3G's prices were "clearly the lowest in every year considered, even in presence of similar voice and traffic allowances, while Wind's were almost always the second lowest".[379] TIM also identified H3G as the most aggressive MNO in terms of pricing in the past three years prior to the Transaction, together with WIND.[380]

(449) More specifically, MVNOs indicated that in the two years prior to the Transaction, a prominent feature of H3G was its aggressive pricing behaviour.[381] One respondent among MVNOs explained that "*H3G has been the price leader on the market for over two years. In 2013, H3G launched very low-price offer, initiating a price war […] the customer segment most important to H3G is the residential one, and it is particularly on this area of the market that H3G has competed aggressively on price, both in the prepaid and postpaid segment*".[382] Another MVNO explained that H3G's prices "have consistently been the lowest available in the market for the past 2 years when compared against competing offers of other MNOs".[383] Respondents also emphasised that H3G has been a particularly aggressive player with respect to its handset policy, which included strong subsidies. One respondent explained that in the course of 2012-2013, H3G offered a strong handset subsidy, which successfully attracted customers, who purchased a subsidised handset through H3G rather than from the other MNOs.[384] Conversely, respondents also commented that H3G had a weaker position with regard to the quality and coverage of its network. However, some respondents pointed to the fact that the shortcomings of H3G's network in this respect are less evident when considering larger Italian urban areas, where H3G's network is more developed, and is thus closer to that of Vodafone and TIM in terms of coverage and quality.[385]

(450) MNOs responding to the market investigation also emphasised that, in the two years prior to the Transaction, H3G was very aggressive in terms of pricing of its services. Vodafone explained that H3G moved to building a reputation as a brand increasingly focused on reducing prices, and that H3G "has continued to focus on payment plans and subsidies to provide customers with the top smartphones for a relatively low price".[386] Vodafone also acknowledged that H3G has improved its coverage and speed in the larger cities as regard 4G. TIM also indicated that H3G had been the

[375] See responses to Questionnaire Q1 to MVNOs of 8 February 2016, question 65.
[376] See response of TIM to Questionnaire Q4 to MNOs of 8 February 2016, question 45 [ID 814].
[377] See responses to Questionnaire Q2 to business customers of 8 February 2016, question 16.
[378] See responses to Questionnaire Q1 to MVNOs of 8 February 2016, question 64.
[379] Fastweb's response to Questionnaire Q1 to MVNOs of 8 February 2016, question 64.1 [ID 707].
[380] See response of TIM to Questionnaire Q4 to MNOs of 8 February 2016, question 44.1 [ID 814].
[381] See responses to Questionnaire Q1 to MVNOs of 8 February 2016, question 67.1.
[382] PosteMobile's response to Questionnaire Q1 to MVNOs of 8 February 2016, question 67.1 [ID 835].
[383] Fastweb's response to Questionnaire Q1 to MVNOs of 8 February 2016, question 67.1 [ID 707].
[384] Fastweb's response to Questionnaire Q1 to MVNOs of 8 February 2016, question 67.5 [ID 707].
[385] See responses to Questionnaire Q1 to MVNOs of 8 February 2016, questions 67.2 and 67.3.
[386] Response of Vodafone to Questionnaire Q4 to MNOs of 8 February 2016, question 47.5 [ID 882].

operator with the most competitive prices, particularly as regards all inclusive prepaid and postpaid offers, and standalone and lock-in data offers. TIM also highlighted H3G's weaker network.[387]

(451) Third, the Commission asked market players to indicate what had been the main changes and innovations in the Italian retail market for mobile telecommunications services. H3G was indicated by respondents as an innovative and disruptive player, particularly as regards the launch of tariff plans. As examples of relevant innovations in the past years, MVNOs responding to the market investigation mentioned, among others, the launch of innovative tariff plans, including those of H3G.[388] For instance, Fastweb mentioned the introduction by H3G in 2013 of "ALL-IN" prepaid offers (which included a 50% discount on the tariff plans of competitors), which, in its view, led to a price drop of mobile tariffs in the course of Summer 2013.

(452) The results of the in-depth market investigation substantially confirmed the Commission's findings that H3G was consistently the MNO with the most aggressive commercial strategy in the years prior to the Transaction. More specifically, the Commission asked market participants, namely MNOs and MVNOs, which MNO had priced its tariff plans most aggressively, that is, its offers were the cheapest compared to the similar tariff plans of competing MNOs. Most respondents to the market investigation indicated that H3G was the MNO that had the most aggressively priced retail mobile services in each of 2013, 2014 and 2015.[389]

(453) For 2015, most respondents among MVNOs indicated that H3G had been the most price-aggressive MNO, and pointed to tariffs such as "FREE", "ALL IN Extra" and Super Internet Plus.[390] One respondent explained that "*when the unlimited tariff plan was launched H3G priced this plan at €25/month. Moreover smartphone and tablet offer propositions were very cheap. Wind launched this tariff plan at €29/month while Vodafone and Tim were positioned at about €39-40 month*".[391] Also for 2014, respondents among MVNOs pointed to the tariff plans of H3G and, in some instances, to those of WIND.[392] PosteMobile explained that "*the most aggressive tariff plan has been the All in Smart tariff from H3G, which included 200 minutes + 200 SMS + 2GB for 8€ per month […] In terms of data only, Three's Super Internet Extra is the most aggressive tariff plan presented in 2014, focussed [sic] on medium user; the plan offers 3GB in 4g per 5€ per month*".[393] Responses for 2013 also confirmed that in 2013 H3G was the most price-aggressive MNO.[394]

(454) When responding to the same question, TIM also confirmed that H3G has been the most aggressive mobile player on the Italian retail mobile market. TIM also commented that H3G's aggressive position is the same in several segments, and has remained substantially unchanged since 2013.[395]

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387 Response of TIM to Questionnaire Q4 to MNOs of 8 February 2016, question 47.1 [ID 814].

388 See responses to Questionnaire Q1 to MVNOs of 8 February 2016, question 62.

389 See responses to Questionnaire Q6 to MVNOs of 2 May 2016, question 3 and following subquestions.

390 See responses to Questionnaire Q6 to MVNOs of 2 May 2016, questions 3.1 and following subquestions.

391 BT Italia's response to Questionnaire Q6 to MVNOs of 2 May 2016, question 3.1.1 [ID 1351]

392 See responses to Questionnaire Q6 to MVNOs of 2 May 2016, questions 3.2 and 3.2.1.

393 PosteMobile's response to Questionnaire Q6 to MVNOs of 2 May 2016, question 3.2.1 [ID 1354].

394 See responses to Questionnaire Q6 to MVNOs of 2 May 2016, questions 3.3 and 3.3.1

395 "H3G risulta fra gli MNO l'operatore con i prezzi più competitivi del mercato su: - offerte prepagate e post pagate «Tutto incluso»: i prezzi delle offerte "FULL" e "ALL IN" sono decisamente più competitivi rispetto ai competitors. Per le seconde, anche grazie al meccanismo che premia la

(455) Respondents among MVNOs also provided examples of how H3G's behaviour forced its competitors to react. When asked to indicate instances where an MNO's aggressively priced tariff plan pushed the other MNOs to lower their own similar tariff plans, respondents among MVNOs pointed to examples of H3G's disruptive conduct. For 2015, PosteMobile mentioned that "*2015 started with aggressive rates by H3G ('All Inclusive' range plans); in the second half of 2015 all operators (with the exception of H3G) have gradually increased the prices of entry level plans , stabilizing at around €15*".[396] For 2014, BT Italia explained that when H3G (and WIND) launched cheap data-only bundles "*the whole industry reacted lowering the price of data bundles*".[397] PosteMobile pointed to the fact that "*at the end of 2014 Vodafone was compelled to reduce the All Inclusive entry level bundle pricing from €14.90 to €10 to increase the competitiveness of the offer (while remaining on a very limited data bundle of 100MB) against H3G and Wind, respectively charging 8 and 10€ per month*".[398] For 2013, both PosteMobile and Fastweb mentioned that H3G's aggressive tariffs triggered a price war.[399] Fastweb in particular explained that "*in the period 2012-2013 Wind and, especially, H3G, launched a number of aggressive tariff plans in the Italian market, undercutting competitors´ prices and offering aggressive subsidies for the purchase of high-tier handsets, especially Apple devices. This triggered a "price war", which, according to a Wind´s public presentation, started in the second quarter of 2013 when TIM and, subsequently, Vodafone, responded to Wind's strategy by lowering their price and/or increasing the traffic allowance of their offers ("TIM directly attacked WIND lowering its price, adding You&Me unlimited, 1000 SMS and increasing the internet size bucket to 2GB" and "[Vodafone] reacted aligning its offer to TIM" (1)). This provoked a further reaction from Wind, which further lowered price and calls/SMS cap and increasing internet allowance to 2 GB as well*".[400]

(456) To further illustrate that H3G offered the most competitive mobile tariffs, one respondent to the market investigation provided an overview of the prices of some representative retail mobile packages of the four MNOs offered in the month of November of each year, from 2013 to 2015. The respondent chose those retail mobile tariffs that were comparable to its own mobile tariffs, and which all included similar bundles of voice/SMS/data, in order to rely on objective benchmarks when comparing the prices of the selected tariffs, and to compare services of similar offering. The respondent's submission is reproduced in Figure 26 below.

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permanenza, raddoppio minuti ed SMS ogni 6 mesi; - offerte dati sia stand-alone che lock-in (con abbinamento del prodotto). Anche sulle tariffe internet stand alone è presente il meccanismo che premia la permanenza: l'offerta «Superinternet extra» prevede un GIGA in più ogni 6 mesi, fino a 12 mesi. Rispetto al 2013, periodo in cui le offerte risultano meno confrontabili in termini di contenuto, il posizionamento non subisce sostanzialmente variazioni. Anche per quanto riguarda il segmento business, H3G è l'operatore sempre posizionato, nel periodo 2013-2015 sui prezzi più bassi relativamente ai piani tariffari nazionali." TIM's response to Questionnaire Q7 to MNOs of 2 May 2016, question 3.1.1 [ID 1704].

396 PosteMobile's response to Questionnaire Q6 to MVNOs of 2 May 2016, question 4.1 [ID 1354].

397 BT Italia's response to Questionnaire Q6 to MVNOs of 2 May 2016, question 4.2 [ID 1351].

398 PosteMobile's response to Questionnaire Q6 to MVNOs of 2 May 2016, question 4.2 [ID 1354].

399 See responses to Questionnaire Q6 to MVNOs of 2 May 2016, questions 4.3 and 4.3.1.

400 Fastweb's response to Questionnaire Q6 to MVNOs of 2 May 2016, question 4.3.1 [ID 1521].

Figure 26: Fastweb's comparison of MNOs' retail mobile tariffs for residential customers (2013-2015)

	TIM		Vodafone		Wind		H3G	
2015	Special Voce+Dati	Special Large	Flexi Start	Flexi Maxi	All inclusive	Magnum	ALL-IN 400 extra	ALL-IN 800 extra
	500 min 3 GB	3000 min 5 GB	400 min 100 SMS 3 GB	1000 min 200 SMS 5 GB	500 min 500 SMS 3 GB	unl min unl SMS 4 GB	400 min 400 SMS 4 GB	800 min 800 SMS 4 GB
	27.1 €	40 €	26 €	34 €	19.5 €	29 € (*)	10 €	12 €
2014	Special Start	Special Large	Scegli Voce Pers	Scegli Voce	All Incl. Plus	All Incl. Plus	ALL-IN 400	ALL-IN One
	600 min 600 SMS 1 GB flat	1500 min 1500 SMS 1 GB flat	500 min 500 SMS 1.1 GB	1000 min 500 SMS 2.1 GB	500 min 1000 SMS 2 GB flat	unl min 1000 SMS 2 GB flat	400 min 400 SMS 2 GB	unl min unl SMS 2 GB
	19 €	29 €	18 €	28 €	20 €	35 €	10 €	20 €
2013	Special Medium	Unlimited	Smart 500	Relax Semplice	Big	Unlimited	All in Medium	Top Infinito
	500 min 500 SMS 1 GB flat	unl min unl SMS 1 GB flat	500 min 500 SMS 1 GB	unl min unl SMS 2 GB	550 min 550 SMS 1 GB flat	unl min unl SMS 2 GB flat	400 min 400 SMS 2 GB	unl min unl SMS 20 GB
	15 €	40 €	14.90 €	44 €	13 €	29 €	8 €	30 €

Source: Fastweb's response to Questionnaire Q6 to MVNOs of 2 May 2016, question 3[ID 1521]

(457) As can be seen from the respondent's submission reproduced in Figure 26 above, H3G offered the same, if not more, amount of voice/SMS/data at a cheaper price than the other MNOs, consistently in every year. Fastweb also provided a more extensive analysis of H3G's tariffs, which shows that H3G was the most price aggressive MNO also in 2012 and 2011.[401] Additionally, the above comparison also illustrates how H3G has decreased its prices for mobile services in the Italian retail mobile market over the years, while contemporaneously increasing the amount of voice/SMS/data offered in its packages, whereas other MNOs have not done the same, but actually taken the opposite approach. For instance, in 2014 Vodafone offered "Scegli Voce Pers" for EUR 18, which included 500 minutes of voice, 500 SMS and 1.1 GB of mobile data. In 2015, Vodafone's "Flexi Start" consisted of 400 minutes of voice, 100 SMS and 3 GB of mobile data for EUR 26, thus, less voice and more SMS/mobile data, at a higher price. Conversely, in 2014 H3G's corresponding tariff, "All-In 400", consisted of 400 minutes voice/SMS and 2GB of mobile data for EUR 10. In 2015, H3G's "All-In Extra" maintained the price of EUR 10, and included 2 more GB of mobile data. Furthermore, every six months the amount of voice/SMS included in the package doubled.

(458) Furthermore, in the course of the in-depth market investigation the Commission also asked market participants to indicate the most successful tariffs (in terms of impact on the market and customer acquisition) of each MNO in the retail mobile market and its segments for each of 2013, 2014 and 2015.[402] An overview and comparison of the most successful tariffs for each MNO in every year indicated by the most relevant responses to this question also illustrates that H3G's mobile services were offered with comparatively more voice/SMS/data and at a cheaper price than those of the other MNOs. Table 15 to Table 17 below summarise the replies provided by Fastweb, PosteMobile and Tiscali on the most successful tariffs of the four MNOs in the Italian retail mobile market in the past years, as well as their main features.

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[401] See Fastweb's position paper of 15 December 2015, Table 4, page 26 [ID 757].

[402] See Questionnaire Q6 to MVNOs of 2 May 2016, question 2 and following subquestions.

Table 15: Fastweb's overview of the most successful tariff plans of MNOs in the Italian mobile market (2013-2015)[403]

2015				
	TIM	Vodafone	WIND	H3G
Prepaid[404]	EUR 15: 500 min, 500 SMS, 1GB	EUR 10: 400 min, 400 SMS, 100 MB	EUR 12: 500 min, 500 SMS, 1GB	10 EUR: min unlimited, SMS unlimited, 2GB
Postpaid	EUR 40: min unlimited, SMS unlimited, 4GB	EUR 34: min unlimited, SMS unlimited, 3 GB	EUR 24: min unlimited, SMS unlimited, 2 GB	EUR 20: min unlimited, SMS unlimited,4GB
Data only plans	EUR 30: 20 GB	EUR 20: 15 GB	EUR 19: 14 GB	EUR 20: 30 GB
2014				
	TIM	Vodafone	WIND	H3G
Prepaid	EUR 15: 200 min, 200 SMS 1GB	EUR 14,9: 200 min, 200 SMS 1GB	EUR 12: 250 min, 250 SMS 1GB	EUR 10: 400 min, 400 SMS 2 G
Postpaid	EUR 40: min unlimited, SMS unlimited, 2GB	EUR 29: min unlimited, SMS unlimited, 100 MB	EUR € 29: min unlimited, SMS unlimited, 2 GB	EUR 15: min unlimited, SMS unlimited,1GB
Data only plans	EUR 30: 10 GB	EUR 30: 15 GB	EUR 15: 10 GB	EUR 14: 15 GB
2013				
	TIM	Vodafone	WIND	H3G
Prepaid	EUR 10: 400 min, 1000 SMS, 1GB	EUR 10: 400 min, 1000 SMS, 1GB	EUR 10: 400 min, 400 SMS, 1GB	EUR 6: 400 min, 400 SMS,1GB
Postpaid	EUR 39: min unlimited, SMS unlimited, 1 GB	EUR 40: min unlimited, SMS unlimited, 2GB	EUR 29: min unlimited, SMS unlimited, 2 GB	EUR 10: 400 min, 400 SMS,2 GB
Data only plans	EUR 34: 10 GB	EUR 30: 15 GB	EUR 20: 10 GB	EUR 14: 15 GB

Source: Fastweb's response to Questionnaire Q6 to MVNOs of 2 May 2016, question 2 and following subquestions [ID 1521]

403 In its response Fastweb explained that it selected the MNO's tariffs that were most advertised, as these appeared to be reasonably the ones with most appeals to consumers. See Fastweb's response to Questionnaire Q6 to MVNOs of 2 May 2016, questions 2.1, 2.2 and 2.3 [ID 1521].

404 In its response Fastweb explained that, since the Italian retail mobile market is predominantly a prepaid market, it considers that the tariff plans it indicated for the prepaid segment are also applicable to the overall retail mobile market. See Fastweb's response to Questionnaire Q6 to MVNOs of 2 May 2016, questions 2.1, 2.2 and 2.3 [ID 1521].

Table 16: PosteMobile's overview of the most successful tariff plans of MNOs in the Italian mobile market (2013-2015)

2015				
	TIM	Vodafone	WIND	H3G
Retail mobile market	TIM special Limited edition: Monthly bundle including 200 Minutes+200 SMS+500MB at EUR 15 per month	Flexi Start: Monthly bundle including 400 Minuti+100 SMS+1GB at EUR 15 per month	ALL Inclusive limited edition: Monthly bundle including 250 Minutes+250 SMS+1GB at EUR 9 per month	ALL IN 200: Monthly bundle including 200 Minutes+200 SMS+2GB at EUR 9 per month
2014				
	TIM	Vodafone	WIND	H3G
Retail mobile market	TIM Special: Monthly bundle including 200 Minutes +200 SMS+500MB at EUR 15 per month	Smart 200: Monthly bundle including 200 Minutes +200SMS +1GB at EUR 14.9 per month	All Inclusive: Monthly bundle including 200 Minutes+200 SMS+1GB at EUR 10 per month	ALL IN SMALL: Monthly bundle including 200 Minutes+200 SMS+2GB at EUR 8 per month
2013				
	TIM	Vodafone	WIND	H3G
Retail mobile market	TIM Special: Monthly bundle including 400 Minutes + 1000 SMS + 2GB at EUR10 per month	Vodafone Special: Monthly bundle including 400 Minutes + 1000 SMS + 2GB at EUR 10 per month	All Inclusive Fresh: Monthly bundle including 120 Voice+ 120 SMS+1GB at EUR 6 per month	ALL IN: Monthly bundle including 120 Voice+120 SMS+1GB at EUR 4 per month

Source: PosteMobile's response to Questionnaire Q6 to MVNOs of 2 May 2016, question 2 and following subquestions [ID 1354]

Table 17: Tiscali's overview of the most successful tariff plans of MNOs in the Italian mobile market (2013-2015)

2015				
	TIM	Vodafone	WIND	H3G
Retail mobile	TIM Special Extra: 1000min/3GB at EUR 10	Vodafone Special 1000: 1000min/1000sms/2GB at EUR 10	All Inclusive 1000 1000min/1000/3GB at EUR 9	All-IN 200 Extra: 200min/200sms/4GB at EUR 8
Prepaid	TIM Special Extra: 1000min/3GB at EUR 10	Vodafone Special 1000: 1000min/1000sms/2GB at EUR 10	All Inclusive 1000 1000min/1000/3GB at EUR 9	All-IN 200 Extra: 200min/200sms/4GB at EUR 8
Postpaid	TIM Special unlimited: Unlimited calls/sms	Relax: Unlimited calls/sms (national)+3GB at	WIND Magnum 4 Giga: Unlimited calls/sms	FREE Unlimited PLUS: Unlimited calls/sms

	(national)+4GB at EUR 40	EUR 34	(national)+4GB at EUR 29	(domestic and international) + 8GB + Smartphone at EUR 35
Data only plans	Internet Large: 5 GB at EUR 10	Giga Start: 5 GB at EUR 10	Open Internet 6 GB: 6GB at EUR 9	Super Internet 3 GB: 3GB at EUR 5
2014				
	TIM	Vodafone	WIND	H3G
Retail mobile	TIM Special Start: 400min/200sms/1GB at EUR 15	Smart 200: 200min/200sms/1GB at EUR 14.9	ALL INCLUSIVE: 250min/250sms/2GB at EUR 12	All-IN 400: 400min/400sms/2GB at EUR 10
Prepaid	TIM Special Start: 400min/200sms/1GB at EUR 15	Smart 200: 200min/200sms/1GB at EUR 14.9	ALL INCLUSIVE: 250min/250sms/2GB at EUR 12	All-IN 400: 400min/400sms/2GB at EUR 10
Postpaid	Tim Special Unlimited 2014: Unlimited calls/sms (national)+3GB at EUR 40	RELAX Classic: Unlimited calls/sms (national)+2GB at EUR 36	All Inclusive Unlimited: Unlimited calls/sms (national)+2GB at EUR 29	Top Unlimited: Unlimited calls/sms (national)+1GB at EUR 30
Data only plans	Giga Internet: 3GB at EUR 10	Internet Large: 5GB at EUR 20	Open Internet 6 GB: 6GB at EUR 14	Super Internet 3 GB: 3GB at EUR 5
2013				
	TIM	Vodafone	WIND	H3G
Retail mobile	TIM Special: 400min/1000sms/2GB at EUR 10	Vodafone Special: 400min/1000sms/2GB at EUR 10	400min/400sms/1GB 6€: 300min/300sms/2GB at EUR 7	All-in Medium: 400min/400sms/1GB at EUR 6
Prepaid	TIM Special: 400min/1000sms/2GB at EUR 10	Vodafone Special: 400min/1000sms/2GB at EUR 10	400min/400sms/1GB 6€: 300min/300sms/2GB at EUR 7	All-in Medium: 400min/400sms/1GB at EUR 6
Postpaid	Tutto Compreso Unlimited: Unlimited calls/sms (domestic)+2GB at EUR 59	Relax: Unlimited calls/sms (domestic+EU)+5GB at EUR 59	All Inclusive Unlimited: Unlimited calls/sms (domestic)+2GB at EUR 29	Top Sim Infinito: Unlimited calls/sms (domestic)+20GB at EUR 30
Data only plans	Internet Large: 5GB at EUR 20	Mobile Internet: 1 GB at EUR 12	Internet No Stop: 1Gb at EUR 5	Super Internet 3 GB: 3GB at EUR 5

Tiscali's response to Questionnaire Q6 to MVNOs of 2 May 2016, question 2 and following subquestions [ID 527]

(459) A comparison of the MNOs' tariffs provided by Fastweb indicates that H3G had the most convenient price for a similar package of voice/SMS/data over the last years. For instance, as can be seen from Table 15, in the prepaid segment H3G consistently offered a greater amount of voice/SMS/data than its competitors. In 2015, H3G offered unlimited voice and SMS with 2 GB of mobile data for EUR 10, whereas for

a similar or higher price TIM offered 500 minutes of voice, 500 SMS and 1 GB of data (for EUR 15); Vodafone offered 400 minutes of voice, 400 SMS and 100 MB of data (for EUR 10); and WIND offered 500 minutes of voice, 500 SMS and 1 GB of data (for EUR 12). The same observation can be made for the postpaid and data-only segments of 2015, as well as for the tariff plans of 2014 and 2013.

(460) The tariffs indicated by PosteMobile and Tiscali, provided in Table 16 and Table 17 respectively, also suggest the same conclusion. The tariffs indicated by Tiscali suggest that H3G offered a larger package of voice/SMS/data at a cheaper price both in prepaid and postpaid, particularly in 2014 and 2013.

(461) TIM did not provide an overview of the most successful tariff plans of the other MNOs, but only indicated its own most successful tariffs.[405] However, a comparison of those TIM tariffs with the tariffs of H3G indicated by TIM as examples of H3G's aggressiveness on the market[406] also highlights how H3G's offering is cheaper than that of TIM. For instance, for 2015 TIM mentioned its "Gamma TIM Special" plan, which included from 600 to unlimited voice/SMS and 1GB to 3GB of mobile data, at a price range of EUR 19 - 49. By comparison, for the same year TIM pointed to H3G's "FULL Unlimited", which offered unlimited voice/SMS and 4 GB of mobile data. For 2013, TIM's "Gamma TIM Special" included a range of 200-600 voice/SMS and 1 GB of mobile data for a price of EUR 15-20; in 2013, H3G's "ALL-IN SMALL" for EUR 10 included 200 minutes of voice, 200 SMS and 2 GB of mobile data, thus a comparable entry level amount of voice/SMS and more mobile data, for a lower price.[407]

(462) Therefore, the Commission considers that the responses to the market investigation indicate that H3G has been an aggressive operator on the retail mobile market, fostering competition in the market and constraining other MNOs with its behaviour. The responses to the market investigation have also indicated that H3G has been the most price-aggressive MNO, whose tariffs and mobile offerings have been cheaper and more comprehensive than those of its competitors.

Parties' internal documents

(463) The review of the Parties' internal documents also portrays H3G as a commercially aggressive player, whose behaviour on the retail mobile market has been particularly disruptive and has stimulated competition among mobile operators in Italy over the years, constraining the other MNOs.

2012

(464) H3G has mainly focused on […].[408] Another H3G internal document explains that […].[409] […].[410] […].

(465) As regards the postpaid segment, […].[411]

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405 TIM's response to Questionnaire Q7 to MNOs of 2 May 2016, question 2 and following subquestions [ID 1704].

406 TIM's response to Questionnaire Q7 to MVNOs of 2 May 2016, question 3 and following subquestions [ID 1704].

407 For 2014. TIM indicated its convergent offer "TIM Smart", which cannot be compared to H3G's mobile only offer.

408 H3G internal documents […].

409 H3G internal document [...].

410 H3G internal document […].

411 H3G internal document […].

(466) An indication of the impact of H3G's 2012 postpaid promotions is provided […].[412] [...].[413]

Figure 27: Benchmark of H3G's 2012 postpaid tariffs for SIM-only and for Iphone 5

[…]

Source: H3G internal document […]

(467) Furthermore, when commenting on its performance for 2012, H3G noted [...].[414]

Figure 28: Competitors' reactions on the postpaid segment in 2012

[…]

Source: H3G's internal document, […]

(468) Additionally, in 2012 H3G also offered competitive tariffs in the prepaid segment, with its "new black" and "super black" prepaid tariffs, which compared favourably against similar offers of competitors, and to which the latter reacted with price cuts to their existing prepaid tariffs or with new tariff offers (such as Vodafone's "smart 250"), […].

Figure 29: Benchmark of H3G's prepaid tariffs against competing MNOs (2012)

[…]

Source: H3G's internal documents, […]

(469) Therefore, H3G not only acted on the market as an aggressive player, offering cheap mobile tariffs, both in the prepaid and postpaid segments, but its behaviour forced its competitors to react by lowering their own mobile offers.

(470) [...].[415] This is indicative of the fact that competitors had to launch new products and services because of the competitive environment fostered by H3G in the retail mobile market.

(471) In the reply to the Article 6(1)(c) Decision, the Parties explained that H3G's launch of prepaid all-inclusive tariffs in 2013 (which one respondent to the phase I market investigation described as triggering a price war, see recital (449) above) was only a response to the launch of the "Vodafone Relax" postpaid tariff.[416] However, the Commission notes […]:[417] […].

2013

(472) […].[418] […].[419]

(473) Another H3G internal document […].[420] These statements indicate that H3G's low pricing does not stem from the necessity to offer its services at a cheaper price because of its poor network, as claimed by the Parties. Rather, it is the result of a precise commercial choice aimed at gaining customers and increasing market share, through aggressive retail offers.

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412 H3G internal document […].
413 H3G internal document […].
414 H3G internal document […].
415 H3G internal document, […].
416 Parties' Reply to the Article 6(1)(c) Decision, paragraph 166.
417 H3G internal document, […].
418 H3G internal document, […].
419 H3G internal document, […].
420 H3G internal document, […].

(474) […].

Figure 30: H3G's assessment of its new all-inclusive prepaid tariffs for 2013 and comparison against those of its competitors

[…]

Source: H3G internal document, […]

(475) Hence, at the beginning of 2013 H3G proceeded to launch its aggressively priced prepaid tariffs, labelled "All-In", which sparked a "price war" on the Italian retail mobile market. The three prepaid tariffs consisted of an entry level tariff, a mid level tariff, and a high level prepaid tariff (initially referred to as "Black 120", "Black 240", and "Black 400"respectively), all of which included a certain amount of voice/SMS/data traffic at a competitive price. The three tariffs were then launched on the Italian retail mobile market as "All-In small", "All-In medium" and "All-In large". Indications of the development and effects of the subsequent price war can be found in several sources, which corroborate the image of H3G as an aggressive mobile player, whose cheaply priced offers forced competitors to lower their own prepaid tariffs.

(476) […].

Figure 31: H3G's benchmark of its all inclusive prepaid tariffs against those of competing MNOs – entry level, mid level and high level (2013)

[…]

Source: H3G internal documents, […]

(477) As can be seen from Figure 31 above, […]. VimpelCom's internal documents from the same period […].[421]

(478) […].[422]

(479) Following the launch of the "All-In" tariffs, […].[423] […].[424] […].[425] […].

Figure 32: MNOs' new prepaid tariffs against H3G's "All-In Medium" and "All-In Large" (2013)

[…]

Source: H3G internal document, […]

(480) […].[426] […].[427]

(481) The overall effects of H3G's […] "All-In" strategy on […] mobile services in the first half of 2013 are clearly shown in the internal slide reproduced in Figure 33 below.

Figure 33: H3G's internal assessment of the effects of its "All-In" promotion (2013)

[…]

Source: H3G's internal document, […]

(482) As can be seen from Figure 33 above, […].

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421 VimpelCom internal document, […].
422 H3G internal document, […].
423 H3G internal document, […].
424 H3G internal document, […].
425 H3G internal document, […].
426 H3G internal document, […].
427 H3G internal document, […].

(483) Subsequent internal documents […].[428] […].[429]

(484) WIND's internal documents also profile H3G as an […] in 2013. […].[430] […].[431] […].[432]

(485) The effects of H3G's "All-In" summer promotion on the dynamics of competition on the Italian retail mobile market are illustrated in […].

Figure 34: Effects on prepaid tariffs on the Italian retail mobile market (2013)

[…]

Source: H3G's internal document, […]

(486) As can be seen from Figure 34 above, […].[433]

(487) […].

Figure 35: prepaid tariff evolution in the retail mobile market in 2013

[…]

Source: See H3G internal document, […]

(488) […].[434]

(489) […].

Figure 36: Evolution of prices and services in the prepaid and postpaid segments for private customers in the Italian retail mobile market, September 2012 – July 2013

[…]

Source: H3G's internal document, […]

(490) As can be seen from Figure 36 above, […]. The […] thus indicate that H3G significantly influenced the retail mobile market and […]. This is indicative of the fact that H3G was able to influence the competitive process in the Italian retail mobile market more than what its market share would suggest.

(491) A similar assessment of the impact of H3G's actions on retail mobile competition in Italy can be found in […].[435]

(492) The effects of the price war were acknowledged as reducing mobile tariffs as much as 50% year on year. A comparative study between MNOs' tariffs of March 2013 against those of 2012 noted that all MNOs had significantly reduced their prices, and introduced mobile services with unlimited packages of voice and SMS.[436] The disruptive impact of the price war was also […].[437] […].[438]

(493) [...].[439] […].[440]

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428 H3G internal document, […].
429 H3G internal document, […].
430 VimpelCom internal document, […].
431 VimpelCom internal document, […].
432 VimpelCom internal document, […].
433 H3G internal document, […].
434 H3G internal document, […].
435 H3G internal document, […].
436 Studio SuperMoney, reported in http://www.corrierecomunicazioni.it/tlc/20343 tariffe-cellulari-giu-del-50-in-un-anno htm [ID 1671].
437 H3G internal document, […].
438 H3G internal document, […].
439 H3G internal document, […].

(494) The aligned change of behaviour of the three other MNOs after the 2013 price war is also acknowledged in WIND's internal documents. In its 20-F filing for 2013, when explaining the activities of WIND, VimpelCom commented that "[f]*ollowing the very intense competitive environment witnessed in the summer of 2013, some aggressive promotions of certain operators were discontinued in the fall of 2013*".[441] However, […].[442] […].

(495) Public statements by the other two MNOs, TIM and Vodafone, also suggest that those competitors reverted to a less aggressive behaviour. For instance, in its Q1 2014 results, TIM commented that "[a]*fter 2013 aggressive summer campaign, mobile Italian market moved back to rationality on 3G: all the main operators reduced volumes in the «entry level pricing» offers*".[443] This slide suggests that, after the 2013 price war, TIM was not inclined to compete through further lowering of prices. In the transcript of the presentation of the Q1 2014 results, TIM commented in the opening remarks that the Italian retail mobile market was experiencing an "*improved and more rational context", characterized by "the holding of an overall positive trend in market repricing*".[444]

(496) Similarly, when commenting the aftermath of the 2013 price war in Italy, Vodafone also showed an unwillingness to carry out further aggressive price competition. For instance, in discussing its preliminary results for 2014, Vodafone mentioned "successful [sic]" price increases and stated that in the Italian market, "*we will have to respond to the tactical price moves of some of our competitors to discourage further deterioration of the structural pricing of the market*".[445] In a subsequent document, Vodafone also commented that it "*carried out quite a lot of price increases in the last times… we're trying to be as disciplined, as analytic as we can*".[446]

(497) Furthermore, the Commission notes that TIM, in replying to the market investigation's question concerning instances of an MNO launching an aggressive tariff plan to which other MNOs reacted, highlighted for 2014 that, as of September 2013, the market had undergone a rationalization process. TIM explains that itself, WIND and Vodafone reduced the volumes for the entry level tariffs and increased

440 H3G internal document, […]. Furthermore, […].

441 A Form 20-F is an SEC filing submitted to the US Securities and Exchange Commission used by certain foreign private issuers to provide information. VimpelCom's 2013 Form 20-F, filed on 15 May 2014, available at http://www.vimpelcom.com/PageFiles/6205/VIP20F2013.pdf, p.57 [ID 1666].

442 VimpelCom internal document, […].

443 TIM public document, "1Q 2014 Results", 13 May 2014, slide 18, available at: http://www.telecomitalia.com/content/dam/telecomitalia/en/archive/documents/investors/Presentations/Investor_Relations/2014/Slide-1Q-2014.pdf. [ID 2602].

444 Telecom Italia Group 1Q2014 presentation by Marco Patuano and Piergiorgio Peluso, 13 May 2014, transcript, available at: http://www.telecomitalia.com/content/dam/telecomitalia/en/archive/documents/media/transcripts/2014/MP-PGP-May-13-2014-speech-1Q14.pdf. [ID 2599].

445 Vodafone Group Preliminary Results Analyst and Investor Conference Call, 20 May 2014, pp. 5-6., available at: https://www.vodafone.com/content/dam/vodafone/investors/financial_results_feeds/preliminary_results_31march2014/t_prelim2014.pdf. [ID 2610].

446 Vodafone Group Plc Analyst and Investor Conference Call, 5 February 2015, pp. 5-6, available at: https://www.vodafone.com/content/dam/vodafone/investors/financial_results_feeds/ims_quarter_31december2014/t_ims_31december2014.pdf. [ID 2608].

the prices of the mid-level tariffs.[447] Notably, H3G is not mentioned by TIM as part of this market trend.

(498) Therefore, after the events of the price war, the other MNOs decided to revert to a more "rational" market behaviour.[448] […].[449] […].[450] […].

(499) […].[451] Therefore, H3G remained the cheapest MNO on the market even after the end of the price war and the change of behaviour of the other MNOs. Furthermore, H3G's continued aggressive commercial behaviour, not aligned to that of the other MNOs, maintained or triggered competitive pressure from TIM, Vodafone and WIND.

(500) […].[452] […],[453] […].

Figure 37: H3G Iphone 5S pricing strategy for end of 2013

[…]

Source: H3G internal document, […]

2014

(501) […].[454] […][455] […].[456] […].[457] […].[458] […].[459]

(502) […].

Figure 38: H3G's expected evolution of the prepaid segment of the Italian retail mobile market for Q1 2013

[…]

Source: H3G internal document, […]

(503) […].[460] Consequently, throughout 2014 H3G continued to exert competitive pressure on the other MNOs, […].

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447 "*Da settembre 2013 si assiste ad un processo di razionalizzazione dei prezzi che proseguirà nel 2014: TIM, VODA e WIND riducono i volumi (min, sms, data) inclusi nei piani entry level (10€) e aumentano i piani mid level (500 min, 500 SMS, 1Gb) fino a 13-15€*". TIM's response to Questionnaire Q7 to MVNOs of 2 May 2016, question 4.2.1 [ID 1704].

448 A further indication of the fact that in 2014 the Italian retail mobile market experienced a less competitive environment can be found in AGCOM's 2015 annual report, where AGCOM notes that "*[t]he reduction in the number of [MNP] operations in 2014 seems, in particular, to demonstrate a deceleration in the 'price war' that has featured the operator's business strategies in recent years, and which has reduced the tendency to change to a new operator , as confirmed by the index of mobile number portability operations*." AGCOM Annual Report 2015, "The Communications sector in Italy – Chapter II: Dynamics in the communications sector in Italy and Europe", p.82, available at: http://www.agcom.it/annual-report.

449 H3G internal document, […].

450 H3G internal document, […].

451 H3G internal document, […].

452 H3G internal document, […].

453 H3G internal document, […].

454 H3G internal document, […].

455 H3Ginternal document, […].

456 H3G internal document, […].

457 H3G internal document, […].

458 H3G internal document, […].

459 H3G internal document, […].

460 H3G internal document, […].

Figure 39: Benchmark of H3G tariffs against the standard and underground tariffs of competing MNOs (2014)

[…]

Source: H3G internal documents, […]

(504) […].[461] The slide is illustrative in three respects. First, it shows that H3G's behaviour had indeed been aggressive and disruptive, influencing competition in the market, and was still capable of triggering competitors' reactions. Second, […]. Third, […]. This is indicative of the fact that H3G was indeed capable, and remained capable, of influencing competitive dynamics on the retail mobile market more than what its market share would suggest. Furthermore, the slide also shows that […]. […].

(505) […].[462]

(506) […].[463]

(507) […].[464] […].[465] […].[466]

Figure 40: […]

[…]

Source: H3G's internal document, […].

(508) In the Summer of 2014, H3G also launched a new "All-In" tariff, the "All-In ONE", which included unlimited voice and SMS, in addition to 2 GB of mobile data. This prepaid tariff […].[467]

Figure 41: H3G internal benchmark of mobile tariffs in June 2014

[…]

Source: H3G internal document, […]

(509) H3G's continued aggressive behaviour in 2014, unaligned with that of the other MNOs, was noted, among others, by TIM's CEO Marco Patuano, who publicly commented that the only MNO who continued to be irrational in 2014 and offer excessively discounted prices was H3G.[468] H3G's CEO Vincenzo Novari publicly replied to such statement arguing that H3G's conduct was by no means irrational, but in line with its "challenger" position on the market, which is indicative a H3G's consistent commercial aggressiveness on the retail mobile market.[469] In another interview from the same period, H3G's CEO also explained that H3G would

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461 H3G internal document, […].

462 H3G internal document, […].

463 VimpelCom internal document, […].

464 H3G's internal document, […]. […].

465 H3G's internal document, […].

466 H3G's internal document, […].

467 See H3G internal document, […].

468 *"[A]vverto un atteggiamento più razionale rispetto al passato, che sta caratterizzando le strategie dei tre player principali del mercato; vedo solo H3G verso un atteggiamento irrazionale, poiché' propone uno sconto certamente eccessivo"*, statement by Marco Patuano, TIM CEO, available at http://www.corriere.it/notizie-ultima-ora/Economia/Telecom-Patuano-tranne-H3G-competitor-piu-razionali-tariffe/06-08-2014/1-A_013973059.shtml [ID 1672].

469 "*Peraltro, anche al primo anno di economia si studia che gli operatori "challangers" [sic] devono essere aggressivi sui prezzi ed i leader devono fare il contrario*", statement by Vincenzo Novari, H3G CEO, 7 August 2014, available at http://www.corrierecomunicazioni.it/tlc/29201_novari-noi-irrazionali-telecom-in-difficolta-non-sposti-l-attenzione-su-altro htm [ID 1670].

continue offering discounted mobile services in order to grow and reach profitability, which meant achieving a 15 million customer base. Novari also added that given the saturation level of the Italian retail mobile market, the only means to gain market shares was to offer more attractive prices or more innovative services, in order to win over consumers from other mobile operators.[470] In commenting H3G's results for 2014, H3G's CEO also explained that the key elements behind H3G's positive annual performance were its "value for money" offering and its aggressive commercial strategy.[471] This further confirms H3G's purposefully aggressiveness and disruptive behaviour for the Italian market.

(510) WIND's internal discussions […].[472] […].[473]

(511) H3G's persistence in offering its mobile services at lower prices than the other MNOs maintained competition in the Italian retail mobile market in the course of 2014. […].[474] These […] are illustrative of the fact that H3G exercised a competitive constraint on the behaviour of the other MNOs, forcing them to compete more vigorously.

2015

(512) […].[475] […].

(513) […].[476] […]

(514) […].

Figure 42: H3G's benchmark for "All-In" 2015

[…]

Source: H3G internal document, […]

(515) In 2015, H3G's behaviour indeed triggered the reactions of its competitors. […].[477] […].[478] This […] is indicative of the fact that H3G's behaviour influenced its competitors, and forced more aggressive competition. […].

Figure 43: prepaid competitive evolution in H1 2015

[…]

Source: H3G internal document, […]

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470 "*Fino a quando non raggiungeremo una posizione di redditività. Oggi siamo a break even operativo con 10 milioni di clienti, dobbiamo arrivare a 15 milioni e siccome siamo in un mercato saturo, con 90 milioni di Sim (1,5 per ogni italiano), l'unica via è strappare clienti agli altri operatori, con prezzi più attraenti o con proposte più innovative*". Interview to Vincenzo Novari, H3G CEO, 8 September 2014, available at http://www.repubblica.it/economia/affari-e-finanza/2014/09/08/news/novari_prezzi_troppo_bassi_per_fare_margini_a_tre_servono_5_milioni_di_utenti_in_pi-95238535/ [ID 1690]

471 "*Se 3 Italia conquista mercato quando tutti i concorrenti ne perdono, lo deve alla sua capacità innovativa, alla strategia del value-for-money, cioè la massima valorizzazione della spesa della clientela, alla leadership nel mondo dell'Internet mobile e ad una strategia commerciale aggressiva che ha premiato l'azienda e dato beneficio ai consumatori*", statement by Vincenzo Novari, H3G CEO, 5 March 2015, available at http://www.corrierecomunicazioni.it/tlc/33015_3-italia-da-record-nel-2014-best-performer-con-clienti-e-ricavi-in-aumento.htm [ID 1689] .

472 VimpelCom internal document, […].

473 VimpelCom internal document, […].

474 H3G internal document, […].

475 H3G internal document, […].

476 H3G internal document, […].

477 H3G internal document […].

478 H3G internal document […].

(516) Another H3G internal slide further illustrates the continued pressure put by H3G on other MNOs throughout the years, as well as its price aggressiveness. […].

Figure 44: H3G internal document: "bundle prices evolution"

[…]

Source. H3G Internal document, […]

(517) Subsequent H3G internal presentations further outline H3G's […] in view of the Summer 2015, both on prepaid and postpaid. […].[479] This […] are a further indication that H3G's actions were disruptive and were expected to trigger reactions from competitors.

(518) With respect to postpaid, in the Summer of 2015 H3G launched the "FREE" plan, which was the […]. The plan consisted of three tariffs, "Free top 300" for EUR 30, "Free top unlimited" for EUR 35 and "Free top unlimited plus" for EUR 40. "Free top 300" included 300 minutes of voice, 300 SMS and 2GB of mobile data, whereas "Free top unlimited" and "Free top unlimited plus" both included unlimited voice/SMS, and 4GB or 8 GB of mobile data respectively.[480] All three tariffs included 4G mobile data at no additional charge. The specific feature of "FREE" was that consumers were entitled to upgrade their smartphone to a newer model after 15 months, for no additional charge.

(519) H3G's actions triggered again reactions by the other MNOS, […].[481] […].

Figure 45: MNOs' reactions to H3G's "ALL-In" and "FREE" Summer launches (2015)

[…

Source: H3G internal document, […]

(520) […].

Figure 46: H3G's assessment of prepaid segment of the retail mobile market in Summer 2015

[…]

Source: H3G internal document, […]

(521) […].[482] […].[483]

(522) An overview of the competitive landscape of the Italian retail mobile market in 2015 is provided in […]. […].[484] This […] is indicative that H3G's commercial behaviour pushed the other MNOs to react and compete more vigorously. Therefore, not only was H3G an aggressive player, but its behaviour had an influence on the competitive dynamics of the retail mobile market. Furthermore, it also illustrates that TIM and Vodafone, while being depicted by the Parties as the quality, premium mobile operators of the market, are still constrained by H3G's disruptive behaviour, and are forced to adopt strongly discounted below the line offers, such as the ones reproduced in Figure 47 below.

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479 H3G internal document […].
480 H3G internal document […
481 H3G internal document […].
482 H3G internal document […].
483 H3G internal document […].
484 H3G internal document […].

Figure 47: Above the line and below the line offers of the four MNOs in the Italian retail mobile market (2015)

[…]

H3G internal document, […]

(523) Furthermore, […] is also illustrative of the fact that H3G continued to compete against TIM and Vodafone, to counter their offers. For instance, […].[485] Therefore, H3G continued to agitate the competitive landscape of the retail mobile market, not only by offering competitive offers that exerted pressure on the other MNOs, but also by […]. […].[486]

(524) Furthermore, the Parties' internal consumer satisfaction surveys, carried out through the years, […].[487] […].[488] […].[489] […],[490] […].[491]

(525) […].[492] Similar statements can be found in several other VimpelCom internal documents from 2015.[493]

(526) Finally, the Commission notes that also the tariffs gathered by the Parties for the purpose of the Parties' Merger Simulation study, which concern the period of November 2015, show […].[494]

2016

(527) H3G continued launching aggressive tariffs in the course of 2016. For instance, in March 2016 H3G extended its "FREE" scheme to the prepaid segment. In the prepaid version, a customer would be entitled to change his selected smartphone (which included top-tier Iphone and Samsung Galaxy devices) every 12 months, and could choose between three tariffs, "FREE 400", "FREE unlimited" and "Free Unlimited Plus".[495]

(528) H3G's competitive role and influence on the Italian retail mobile market has also been acknowledged by other EU telecoms regulators. For instance, a 2016 study prepared by OFCOM qualifies H3G as a "disruptive firm" on the Italian market, and explains that "*[t]he evidence in Italy indicates that Three [H3G] has been disruptive by offering innovative deals and competing aggressively with other MNOs. It has a market share consistent with that of a disruptive firm, which makes it need to act aggressively to gain sufficient scale to compete with larger operators. Recently, evidence has suggested that Three [H3G]and Wind have led a price war in Italy*".[496]

Conclusion on Parties' internal documents

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485 H3G internal document […].

486 H3G internal document […].

487 VimpelCom internal document, […]. Wind internal document, […]. Wind internal document, […]. Wind internal document, […]. Wind internal document, […].

488 VimpelCom internal document, […].

489 VimpelCom internal document, "[…] Wind internal document, […]. Wind internal document, […]. Wind internal document, […].

490 VimpelCom internal document, […].

491 VimpelCom internal document, […].

492 VimpelCom internal document, "[…]; See also VimpelCom internal document, […].

493 VimpelCom internal document, […]; "[…].

494 Compass Lexecon presentation, […]. […].

495 See http://www.tre.it/tariffe/piani-voce-free-ricaricabili.

496 OFCOM, "A cross-country econometric analysis of the effect of disruptive mobile pricing", 15 March 2016, p.29, available at: http://stakeholders.ofcom.org.uk/market-data-research/other/cross-media/disruptive-firms-econometrics/ [ID 1995].

(529) Therefore, based on the review of the Parties' internal documents, the Commission considers that in the years prior to the Transaction H3G has been the cheapest and most aggressive MNO on the retail mobile market. The Parties' internal documents also show that H3G's behaviour is not a consequence of a competitive weakness, but rather a specific choice of H3G, which aims to grow in the market and acquire shares and customers from other MNOs through a purposefully aggressive commercial behaviour. Finally, the Parties' internal documents show that H3G's actions have triggered, fostered and enhanced competition in the market. In particular, H3G has continuously and consistently launched new and aggressive tariffs and mobile services, which have sparked competitors' reactions and constrained other MNOs' behaviour.

Analyst Reports

(530) H3G has also been described as an aggressive player, whose behaviour has sparked completion, in analyst reports throughout the years.

(531) In 2012, H3G's aggressive behaviour on the retail mobile market in Italy was mentioned in several analyst reports:

- In the March 2012 report 'Overview of the Italian Telecoms market' prepared by Deutsche Bank, it is stated that regarding smartphone tariffs "Tim tariffs are only cheaper than Vodafone's, compared to Wind and 3 Italia they are more expensive".[497] This indicates that, conversely, H3G was cheaper than TIM and Vodafone.
- Bank of America Merrill Lynch's report of 18 July 2012 'European Telecoms – 2Q 12 Preview' claims that "*Competition remains intense (with two challengers, Wind and 3)*".[498]
- Espirito Santo Investment Bank noted in its report 'Fundamental Insight – Telecom Services' of 19 July 2012 that *"Wind and H3G price at a significant discount to TIM and Vodafone*"[499] and further that *"Pricing in […] Italy is already relatively low versus the MTR, illustrating that competition over the last decade since the launch of H3G has been effective in bringing prices down*".[500]
- In a report of 3 August 2012 'Markets Research – Telecom Italia', Deutsche Bank refers to the fact that "*Mobile suffered in June due to the aggressiveness of one player*",[501] which is understood as being H3G.
- Bank of America Merrill Lynch issued a report on 3 September 2012 'Industry Overview - European Telecoms' in which it is stated that WIND and H3G are "*two aggressive challengers*".[502]

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497 Deutsche Bank, "Overview of the Italian Telecoms market", March 2012, slide 44, [Annex 13.145 to the Form CO].

498 Bank of America Merrill Lynch "'European Telecoms – 2Q 12 Preview", 18 July 2012, slide 37, [Annex 13.79 to the Form CO].

499 Espirito Santo Investment Bank, "Fundamental Insight – Telecom Services", 19 July 2012, slide 5, [Annex 13.92 to the Form CO].

500 Espirito Santo Investment Bank, "Fundamental Insight – Telecom Services", 19 July 2012, slide 11, [Annex 13.92 to the Form CO].

501 Deutsche Bank, "Markets Research – Telecom Italia", 3 August 2012, slide 3, [Annex 13.54 to the Form CO].

502 Bank of America Merrill Lynch "Industry Overview - European Telecoms", 3 September 2012, slide 13, [Annex 13.71 to the Form CO].

- Deutsche Bank prepared a report on 31 October 2012 "Global Market Research – Wind Telecom" in which it reported that "*All operators still very disciplined on handset subsidy with the exception of 3*",[503] thus referring to the fact that, while the other MNOs were reverting to more rational pricing, H3G continued to compete aggressively.

(532) In 2013, several analyst reports suggest that H3G was a disruptive player on the mobile market in Italy.

- Deutsche Bank's report "Markets Research – Italian Telecoms" of 12 June 2013 explains that "Aggressively entering 3 Italia's post paid space, it somehow caused 3 Italia's first time ever aggressive move in the pre-paid arena, Wind's reaction, etc"[504], that "3 Italia's commercial activity is starting to hurt competitors, mainly Wind, but potentially TI and Vodafone"[505], and further that "*historically 3 Italia has been a disruptive player (handset subsidies first, then by far the lowest prices in the market in the contract space, and more recently its aggressive entrance in the pre-paid space combined with improved network quality)*".[506]
- In the report "Overview of the Italian Telecoms markets" of September 2013, Deutsche Bank further considered that "*H3G still aggressive willing to gain ground*".[507]
- In a report entitled "European Q2 13 results round-up" of 17 September 2013, NewStreet Research explained that "*Telecom Italia's decision to response to Wind and 3's price promotion on pre-pay mobile has caused a worsening domestic trend*"[508] and further that "[…] *a price war in Italy that has been driven by Wind and Hutchison*".[509] This report further confirms the competitive role played by H3G in the Italian retail mobile market.
- In Deutsche Bank's report "Markets Research – Telecom Italia" of 19 November 2013, H3G is further depicted as being the only maverick and aggressive player on the market, since the price war "[…] *brought the main three players to rationality. Hutchison is only one not following*".[510]

(533) H3G's position as an aggressive mobile player was confirmed by analyst reports in 2014.

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503 Deutsche Bank, "Global Market Research – Wind Telecom", 31 October 2012 , slide 3, [Annex 13.53 to the Form CO].

504 Deutsche Bank, "Markets Research – Italian Telecoms", 12 June 2013, slide 4, [Annex 13.43 to the Form CO].

505 Deutsche Bank, "Markets Research – Italian Telecoms", 12 June 2013, slide 23, [Annex 13.43 to the Form CO].

506 Deutsche Bank, "Markets Research – Italian Telecoms", 12 June 2013, slide 26, [Annex 13.43 to the Form CO].

507 Deutsche Bank, "Overview of the Italian Telecoms market", September 2013, slide 25, [Annex 13.141 to the Form CO].

508 NewStreet Research , "European Q2 13 results round-up", 17 September 2013, slide 202 [Annex 13.121 to the Form CO].

509 NewStreet Research , "European Q2 13 results round-up", 17 September 2013, slide 207 [Annex 13.121 to the Form CO].

510 Deutsche Bank, "Markets Research – Telecom Italia", 19 November 2013, slide 1 [Annex 13.29 to the Form CO].

- In a report of January 2014 "Overview of the Italian Telecoms market", Deutsche Bank noticed that "*3 reduced both underlying price and promo of all their post paid offers*".[511]

- In the "Italian Telecoms Sector overview" reports prepared by Deutsche Bank in March and September 2014, H3G was perceived as "*still aggressive*".[512]

- In a report issued by ICBPI on 9 July 2014 "Equity Research – Initiation of Coverage – Telecom Italia", H3G and Wind were viewed as two aggressive players, as it was stated that "*The price-competition of the two smaller operators has resulted in rather aggressive bundled offers*"[513] and further that "*Wind and 3 Italia, over the past 5 years, have gained market share, focusing on particularly aggressive offers*".[514] As regards H3G specifically, it "*continues to offer the best low end value with E9 per month SIM only products*".[515]

- Redburn in "European Telecoms - How Deflation Ends" of 4 August 2014 describes H3G as one of the "*marginal price setters in the top five EU markets*"[516] and one of the European "*mavericks on price*".[517]

- In the "Overview of the Italian Telecoms market' report prepared by Deutsche Bank in October 2014, H3G is described as being "*still aggressive*".[518]

(534) In 2015, documentary evidence from the analyst reports shows that H3G was still an aggressive player:

- In the "Italian Telecoms Sector overview" reports prepared by Deutsche Bank in March, July and October 2015, H3G is perceived as "*still aggressive*".[519]

- Bank of America Merrill Lynch in its report of 6 February 2015 "Vodafone Group - Q3 review/update" stated that "*Hutch more aggressive again, too many competitors*".[520]

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511 Deutsche Bank, 'Overview of the Italian Telecoms market', January 2014, slide 29 [Annex 13.136 to the Form CO].

512 Deutsche Bank, "Italian Telecoms Sector overview", March 2014, slide 27, [Annex 13.138 to the Form CO]; Deutsche Bank, "Overview of the Italian Telecoms market", September 2014, slide 26 [Annex 13.142 to the Form CO].

513 ICBPI, "Equity Research – Initiation of Coverage – Telecom Italia", 9 July 2014, slide 13 [Annex 13.22 to the Form CO].

514 ICBPI, "Equity Research – Initiation of Coverage – Telecom Italia", 9 July 2014, slide 37 [Annex 13.22 to the Form CO].

515 ICBPI, "Equity Research – Initiation of Coverage – Telecom Italia", 9 July 2014, slide 155 [Annex 13.22 to the Form CO].

516 Redburn, "European Telecoms - How Deflation Ends", 4 August 2014, slide 21 [Annex 13.135 to the Form CO].

517 Redburn, "European Telecoms - How Deflation Ends", 4 August 2014, slide 85 [Annex 13.135 to the Form CO].

518 Deutsche Bank, "Overview of the Italian Telecoms market", October 2014, slide 25, [Annex 13.18 to the Form CO].

519 Deutsche Bank, "Italian Telecoms Sector overview", March 2015, slide 31 [Annex 13.14 to the Form CO]; Deutsche Bank, "Italian Telecoms Sector overview", July 2015, slide 33 [Annex 13.137 to the Form CO]; Deutsche Bank, "Italian Telecoms Sector overview", October 2015, slide 33 [Annex 13.140 to the Form CO].

520 Bank of America Merrill Lynch, "Vodafone Group - Q3 review/update", 6 February 2015, slide 1 [Annex 13.62 to the Form CO].

- In the report "European High Yield Companies" of 26 February 2015, JP Morgan refers to "[…] *the aggressive 2013 summer promotions, largely driven by H3G"*[521] and it also explains that H3G adopts *"aggressive price plans"*.[522]
- RBC Capital Markets issued a report on 14 May 2015 "Equity Research - VimpelCom Ltd." in which it explained that "*challenger operator Hutch continues to undercut the pricing of the main three, and continues to win market share*" and further that "*In terms of pricing, Hutch continues to set floor*".[523]
- In Bank of America Merrill Lynch's report of 13 July 2015 "European Telecoms – Q2 preview", it is stated that "During the quarter, price rationality was initially stable but deteriorated into quarter end with aggressive promotions from 3 Italia".[524]
- Bank of America Merrill Lynch in its report of 9 October 2015 "Industry Overview - European Telecoms" stated that "*Three continues to be aggressive and has led to more promotions at TI*"[525], that "*Three and Wind* […] *price aggressively*"[526], and further that "*The #3 and #4 operators are the discounters in the market"*.[527]

(535) Therefore, the Commission considers that the analyst reports analysed in the previous recitals indicate that H3G has behaved as an aggressive and competitive player on the Italian retail mobile market in the years prior to the Transaction, fostering competition and constraining other MNOs.

Assessment of Parties' arguments with respect to H3G's limited scale and lack of a fixed network infrastructure

H3G's lack of scale

(536) In the Reply to the Article 6(1)(c) Decision, the Parties argue that H3G is constrained by its small scale, which excludes that it can be qualified as an important competitive force. In this respect the Commission notes the following.

(537) First, the Commission's findings from the in-depth investigation illustrated above show that H3G has consistently competed aggressively on the Italian retail mobile market, through numerous aggressive commercial initiatives, tariffs and offerings.

(538) Second, those same findings show that H3G has significantly influenced the dynamics of competition in the retail mobile market. In particular, through its market behaviour H3G has continuously constrained and influenced its competitors, which have all reacted to H3G's actions, most notably by lowering their prices or increasing the content of their offerings to counter H3G's initiatives. Vodafone, TIM and

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521 JP Morgan, "European High Yield Companies", 26 February 2015, slide 291 [Annex 13.99 to the Form CO].

522 JP Morgan, "European High Yield Companies", 26 February 2015, slide 294 [Annex 13.99 to the Form CO].

523 RBC Capital Markets, "Equity Research - VimpelCom Ltd.", 14 May 2015, slide 16 [Annex 13.64 to the Form CO].

524 Bank of America Merrill Lynch "'European Telecoms – Q2 preview", 13 July 2015, slide 16 [Annex 13.75 to the Form CO].

525 Bank of America Merrill Lynch "Industry Overview - European Telecoms", 9 October 2015, slide 1 [Annex 13.73 to the Form CO].

526 Bank of America Merrill Lynch "Industry Overview - European Telecoms", 9 October 2015, slide 4 [Annex 13.73 to the Form CO].

527 Bank of America Merrill Lynch "Industry Overview - European Telecoms", 9 October 2015, slide 10 [Annex 13.73 to the Form CO].

WIND, which are all larger players than H3G, have in several instances been forced to react to H3G's aggressive commercial behaviour, notwithstanding the limits to H3G's scale. Therefore, irrespective of its claimed limited scale, H3G has acted as an important competitive force on the retail mobile market, and can be qualified as such.

(539) Furthermore, the Commission notes that several parameters show that H3G has performed successfully on the market, notwithstanding the claimed constraint of its scale.

(540) For instance, […].[528] […].[529] […].[530]

(541) Thus, in 2012 and 2013 H3G achieved a positive MNP and high gross adds, notwithstanding its limited scale. This achievement illustrates that H3G, in addition to acting aggressively on the market and influencing competition among MNOs, was effective in attracting customers.

(542) Further indications of H3G's positive performances on the market can be found in the annual reports of AGCOM. In its 2014 Annual Report on the state of the Italian retail mobile market in 2013, when commenting on the dynamics of mobile number portability, AGCOM noted that in 2013 H3G had "*considerably increased its capacity to attract customers from other operators*" and had "*sustained substantial growth as recipient (+6.9%) and it is the only operator which has improved its balance in 2013 between lines lost and gained compared to the corresponding value of 2012*".[531] Therefore, H3G not only triggered a "price war" in 2013, which, as discussed in recitals (475)-(492) above, had an impact on competitive dynamics, but also achieved a meaningful return in terms of customer attraction.

(543) Other H3G internal documents further outline H3G's positive performance, as opposed to that of its competitors, through the period 2012 - 2014. […].[532] […].[533] […]. All these parameters are illustrative of the fact that H3G not only acted aggressively on the retail mobile market and competed effectively against the other MNOs, but also won customers from its competitors and achieved positive results.[534]

(544) H3G performed positively also in the overall year 2014, when it registered a year-on-year 4% growth of its customer base, and maintained a positive MNP performance of 350 000 customers, whereas its competitors had a negative MNP balance.[535] […].

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528 H3G internal document, […].

529 As mentioned in recitals (435) to 0, gross adds provide a useful indication of the influence a mobile operator has on the market, beyond its nominal market share.

530 H3G internal document, […].

531 AGCOM Annual Report 2014, "The Communications sector in Italy", p.103, available at: http://www.agcom.it/annual-report.

532 H3G internal document, […].

533 H3G internal document, […]. Net adds are the number of new subscribers (gross additions) net of the lost subscribers and can be used as a relevant measure of an operator's competitive strength. The Commission therefore has used information on net adds from the Parties' internal documents for descriptive purposes in this Section. Conversely, net adds are not relevant for the type of quantitative analysis performed in Section 7.3.2.4 f) below, as that analysis uses gross adds as a measure of quantities, that is, the equivalent of what would be the sale volumes in a standard consumer good industry. By contrast, net adds do not provide a relevant proxy for the "sales made by the operator" (which is the measure needed in the modelling) because they also account for the lost customers.

534 For service revenues and net adds, see also […].

535 H3G results for 2014, see http://www.mondo3.com/3-italia/cs/2015-03-05-bilancio-h3g-2014.html [ID 2592].

Figure 48: H3G's performance in 2014

[…]

H3G internal document, […]

(545) Thus, as can be seen from the figure above, […]. This is a further indication of H3G's successfulness, as well as of its competitive role on the Italian retail mobile market, as H3G constrained the other MNOs, and attracted customers. […]. This is indicative of the fact that […] and that H3G affected and constrained these MNOs.[536] […], as can be seen in Figure 49 below.

Figure 49: H3G's quarterly mobile service revenues (Q1 2014 – Q1 2015)

[…]

Source: H3G internal document, […]

(546) In its Annual Report of 2015, AGCOM also registered that in 2014 H3G had further increased its market share compared to 2013 by 0.9% and by 1.2% in the residential segment.[537] In the Reply to the Article (6)(1)(c) Decision, the Parties commented that this finding by AGCOM is illustrative of a "marginal growth" by H3G.[538] However, while H3G's performance may appear minimal, it should be noted that H3G's performance was the best compared to the other MNOs in the same year in the overall retail market, as TIM grew by only 0.4%, WIND by 0.1%, and Vodafone experienced a reduction of its market share by 2.2%. Also as regards the residential segment, H3G's 1.2% growth of market share was the best among MNOs. Therefore, while H3G's growth in market share may not be high in absolute terms, it is significant compared to the market performances of its competitors, and indicative of H3G's successfulness. In addition, as explained in Section 5.1.1, the Italian mobile market is highly saturated, with 158 mobile SIM cards per 100 inhabitants.

(547) H3G's positive performance is also reported in the Parties' internal documents discussing the Transaction. […].[539] […].[540]

(548) Further indications of H3G's successful commercial performance were provided by Fastweb. First, Fastweb explained that, as of the second half of 2012 and until Q3 2014, H3G consistently achieved the largest gain of customers using the MNP service, whereas other MNOs performed negatively, as can be seen from Figure 50 below. Second, in an economic submission of 19 May 2016, Fastweb illustrated that in the last four years prior to the Transaction, H3G outperformed competitors in terms of mobile service revenues growth, as reproduced in Figure 51 below.

536 H3G internal document, […].

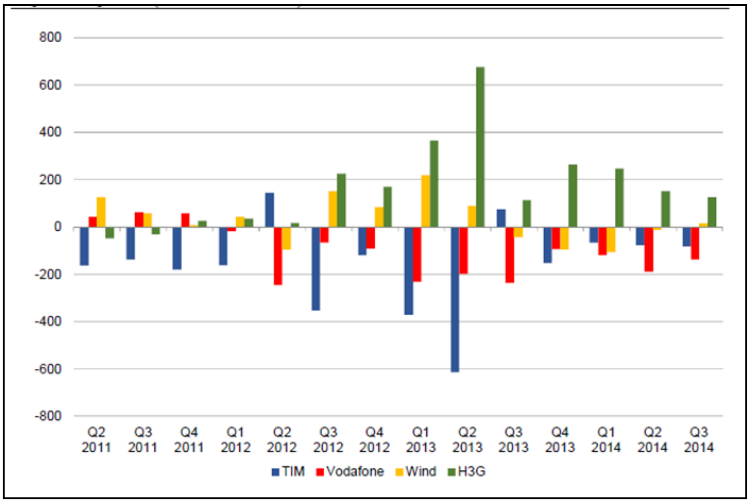
537 AGCOM Annual Report 2015, "The Communications sector in Italy – Chapter II: Dynamics in the communications sector in Italy and Europe", p.79, available at http://www.agcom.it/annual-report.

538 Reply to the Article 6(1)(c) Decision, paragraph (169).

539 H3G internal document, […].

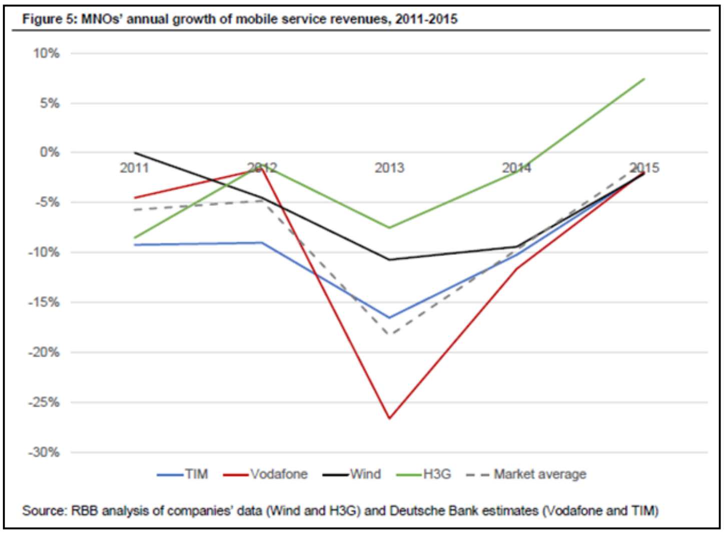
540 H3G internal document, […].

Figure 50: Difference between lines gained and lost by MNOs through MNP service, Q2 2011 – Q3 2014 (thousands of lines)



Source: Fastweb's position paper of 15 December 2015, Figure 3 page 27 [ID 757].

Figure 51: MNOs' annual growth of mobile services revenues (2011 - 2015)



Source: Fastweb submission of 19 May 2016 prepared by RBB Economics, "WIND/H3G: the counterfactual to the proposed transaction", p.16 and figure 6 [ID 1581]

(549) Fastweb's economic submission also reiterates that H3G has been more successful than its competitors in attracting customers. In particular, the submission notes that the proportion of MNP users switching to H3G among mobile users increased from 11.2% in 2012 to 21.3% in 2015. These proportions of MNP users have always been larger than H3G's market shares.[541] The Commission notes that these figures are indicative not only of H3G's positive performance, but also of its impact on the market and its competitors.

(550) H3G continued to perform positively in 2015. In its results for the first semester of the year, H3G registered a further increase of its customer base and mobile service revenues.[542] These positive results were confirmed in H3G's announcement of its

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541 Fastweb submission of 19 May 2016 prepared by RBB Economics, "WIND/H3G: the counterfactual to the proposed transaction", pp.16-17 and table 4 [ID 1581].

542 H3G results for H1 2015, available at [http://www.mondo3.com/3-italia/cs/2015-08-25-bilancio-semestrale html](http://www.mondo3.com/3-italia/cs/2015-08-25-bilancio-semestrale.html) [ID 1741].

performance results for 2015, where it reported a further increase in customer base, which lead to a market share of 11.8%, as well of its mobile services (+7%).[543] These results were more positive than those announced by the TIM and Vodafone for 2015. For instance, TIM reported a decrease in its mobile services revenues of 2%,[544] whereas Vodafone reported a decrease of revenues (mobile and fixed together) of -0.8% (though the revenues trend was acknowledged as improving).[545] AGCOM's "Communications markets monitoring" report also noted that in 2015 H3G was the only MNO that had an improvement of its market share compared to the previous year in the residential segment, whereas TIM and Vodafone's market shares decreased.[546]

(551) AGCOM's Annual Report of 2016 also shows that H3G's performance followed the positive trend set in the previous years. In 2015, H3G had increased its market share compared to 2014 by 0.7%. In this year as well, H3G's performance was the best compared to the other MNOs in the same year in the overall retail market, as both TIM and Vodafone lost market shares, by respectively 0.1% and 0.8% and WIND grew by only 0.3%.[547] In the residential segment, H3G's 0.7% growth of market share was second best among MNOs, with WIND taking the lead with 0.9% increase.[548] AGCOM has also noted that, in 2015, H3G had a positive net donating-recipient balance, whereas those of its competitors in the same period were unchanged or negative.[549] Thus, H3G's growth in market share remained significant compared to the market performances of its competitors, and is indicative of H3G's success in competing and acquiring customers in 2015.

(552) Therefore, in light of the factors illustrated in recitals (540) to (551) above, the Commission considers that, notwithstanding its claimed limited scale, H3G has behaved aggressively on the retail mobile market, affecting dynamics of competition. Furthermore, H3G has also performed positively in the market, by steadily attracting customers, increasing its market share and revenues. In Section 7.3.2.1 b) below, the Commission will assess whether H3G would continue to compete effectively absent the Transaction, and would not be constrained by its scale.

H3G's lack of a fixed infrastructure

(553) In the Form CO and the Reply to the Article 6(1)(c) Decision, the Parties argue that H3G has been unable to compete effectively on the Italian retail mobile market, as it is the only MNO not providing fixed telecommunications services in Italy. In the Parties' view, H3G's inability to provide fixed telecommunications services together

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543 H3G results for 2015, see http://www.mondo3.com/3-italia/cs/2016-03-17-risultati-2015-crescita-aumento-clienti-ricavi-h3g.html [ID 1740].

544 TIM financial results for 2015, available at http://www.telecomitalia.com/tit/it/archivio/media/comunicati-stampa/telecom-italia/corporate/economico-finanziario/2016/preliminary-results-at-31-december-2015-approved.html [ID 1742].

545 Vodafone financial results as of 31 March 2016, available at http://www.vodafone.it/portal/Vodafone-Italia/Chi-siamo/Obiettivi-e-risultati/Risultati-Finanziari/Risultati-finanziari-dal-2007#19 [ID 1745].

546 AGCOM, "Communications markets monitoring System" 1/2016, slide 9, available at http://www.agcom.it/documents/10179/2154593/Allegato+6-4-2016/e17e2d92-160d-4b77-9202-9469cc990d14 [ID 2328].

547 See AGCOM Annual Report 2016, section 2 "L'assetto e le prospettive del settore delle comunicazioni in Italia", pages 73 and 75, and Figure 2.1.28 [ID 2327].

548 See AGCOM Annual Report 2016, "L'assetto e le prospettive del settore delle comunicazioni in Italia", page 73 [ID 2327].

549 AGCOM, Quarterly Report No. 1/2016, p.12 [ID 2328].

with mobile services, in a market where convergent fixed-mobiles services are of growing relevance, has limited H3G's competitiveness. With respect to this argument, the Commission notes the following.

(554) First, H3G has operated as a mobile-only player in Italy since its entry. This is consistent with the overall group strategy of Hutchison, which operates in several Member States as a mobile-only operator.[550] In this context, H3G has competed aggressively against the other MNOs active in the Italian retail mobile market, which were all able to offer fixed-mobile services. Indeed, notwithstanding its lack of fixed services, H3G was able to operate aggressively and affect the dynamics of competition on the retail mobile market, as outlined in the recitals above. In particular, H3G enacted a price war in 2013, which forced the other MNOs to modify their offerings and react, and in the subsequent years H3G continued to constrain its competitors' mobile offerings through its commercial behaviour.

(555) Second, as was explained in recitals (129) to (130) above, the information collected in the course of the phase I market investigation has indicated that the current number of customers purchasing mobile services as part of a fixed mobile bundle from the same mobile operator amounts to only a small percentage of the total number of mobile customers in the Italian market. That data suggests that most customers in Italy purchase mobile services separately from fixed services. Therefore, a mobile-only operator has access to a large customer base to whom to offer its standalone mobile services. That same information also suggests that in the future, while fixed-mobile bundles may increase, customers will still continue to mostly purchase mobile services on a standalone basis, separately from fixed services.

(556) Third, despite not being able to offer fixed services, H3G was able to attract customers from its competitors in the last years, in a saturated retail mobile market and notwithstanding the absence of a fixed offering. This is shown, among others, by H3G's positive performance in terms of gross adds, net adds, MNP balance and mobile services revenues from 2012 to 2015, as described in recitals (540) to (551) above. Against this background, it is noteworthy that H3G was able to attract customers from all rival MNOs, which, on the other hand, offered a fixed component.

(557) In particular, in the years 2012 to 2015, […]. Furthermore, as mentioned in recitals (544), (545) and (547), and in Figure 48 above, over the same period […]. Thus, it does not appear that H3G's competitive role on the retail mobile market and its ability to compete and attract customers was affected or limited by its inability to offer fixed-mobile services.

Figure 52: H3G's MNP performance between 2012 and 2015

[…]

Source: H3G internal documents, […]; H3G internal document, […]

(558) Fourth, the results of the phase I market investigation also did not indicate that the lack of a fixed offering limited H3G's ability to compete on the retail mobile market. Half of the respondents to the phase I market investigation took the view that the ability to provide fixed telecommunication services and TV services is not essential in order for a mobile provider to compete effectively on the retail market for mobile

550 The only exception is Ireland, where Three Ireland has a limited fixed-line activity following the acquisition of Telefónica Ireland in 2014. See Form CO, section 6, footnote 243.

telecommunications services.[551] While it is correct that the other half of respondents took the opposite view and found that the ability to provide fixed telecommunications services is essential for mobile providers to compete effectively,[552] this is not in itself conclusive to the argument that a fixed network is essential for a mobile operator to compete, nor to whether H3G's ability to compete was reduced because of this lack. However, the Commission notes that, while respondents were equally divided as to the issue of the essentiality of a fixed network for a mobile provider, they also rated the ability to provide fixed telecommunications services as one of the least important competitive parameters for private customers choosing a mobile operators, as was illustrated in Section 7.3.1.3 above.

(559) Furthermore, respondents also explained that mobile-only players have been able to compete effectively on the Italian retail mobile market. For instance, Vodafone commented that "*[i]n Italy, so far mobile stand-alone companies have been able to compete effectively in mobile telecommunication market. Despite the fact that in the last 12 months fixed-mobile multi-play offers have been launched, they have had so far little impact on the mobile market*".[553] PosteMobile also commented that "*[t]oday, the ability to provide fixed telecommunication services (fixed broadband, fixed telephony) and/or TV services seems not essential in order for mobile providers to compete effectively on the retail mobile telecommunications market. Around three quarter of the residential customer base in Italy is composed of pre-paid customers. Pre-paid customers, which a number of MVNOs and MNOs who do not have a fixed network target, would not be interested in an offer bundling mobile with other services, as they do not wish to commit to a contract and prefer paying as they go.*"[554]

(560) In its replies to the phase I market investigation, Fastweb commented that fixed-mobile services will increase in importance in the future.[555] However, Fastweb also explained that *"[f]or a mobile operator, the necessity to be integrated essentially depends on the competitive positioning that an MNO intends to pursue and which customer needs they decide to target. On one side, mobile providers may target customers who are and will continue to be exclusively interested in mobile services and which represent sizeable market segments (single with no kids, etc.) In this case, it is more important for a mobile-only operator to offer mobile video/TV services than fixed-line services. Moreover, several successful examples of mobile-only operators exist in Europe, including H3G in Denmark, Play in Poland and Yoigo in Spain. On the other side an MNO may position as a FMC provider and in this case fixed-line capabilities become essential (even through a commercial partnership)*".[556]

(561) Therefore, the Commission considers that, while the importance of fixed-mobile services in Italy may indeed increase in the future, the market investigation was not conclusive as regards the essentiality of fixed services for a mobile player to compete effectively, and has not given indications that a mobile-only operator such as H3G has been or is unable to compete on the retail mobile market.

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551 See responses to Questionnaire Q1 to MVNOs of 8 February 2016, question 55; replies to Questionnaire Q4 to MNOs of 8 February 2016, question 35.

552 Parties' Reply to the Article 6(1)(c) Decision, paragraph (173).

553 Vodafone's response to Questionnaire Q4 to MNOs of 8 February 2016, question 35.1 [ID 882].

554 PosteMobile's response to Questionnaire Q1 to MVNOs of 8 February 2016, question 55.1 [ID 835].

555 Fastweb's response to Questionnaire Q1 to MVNOs of 8 February 2016, questions 54, 65 and 78.1 [ID 707].

556 Fastweb's response to Questionnaire Q1 to MVNOs of 8 February 2016, question 55.1 [ID 707].

(562) Finally, internal documents of the Parties related to the Transaction indicate […].

(563) For instance, […],[557] […]. […].[558]

(564) […].[559]

(565) Other internal documents show that […]. For instance, […].[560] […]. […].[561]

(566) Hutchison […]. However the Commission notes that […].

(567) In light of the above, the Commission therefore considers that the inability to offer fixed telecommunications services in combination with mobile services has not hindered H3G's ability to compete on the retail mobile market, nor does it undermine the qualification of H3G as an important competitive force.

iii. Conclusion

(568) In light of the findings illustrated above, the Commission concludes that H3G has been an aggressive player on the Italian retail mobile market, whose behaviour has had an impact on dynamics of competition. In particular, throughout the years H3G has consistently been the cheapest and most commercially aggressive MNO on the market, as is reflected in the responses to the market investigation, the Parties' internal documents, and third party reports. This behaviour is not due to an alleged weakness of H3G's network, but is the result of a conscious business approach to compete aggressively in order to acquire market shares. Furthermore, H3G's behaviour and competitive mobile services have constantly exerted a competitive constraint on the other MNOs, fostering competition on the retail market. H3G has thus had an influence on the competitive dynamics of the Italian retail mobile market that goes beyond its market share, which leads to qualify it as an important competitive force. Furthermore, H3G's position and role in the retail mobile market as an important competitive force has not been undermined by H3G's claimed limits of scale or lack of fixed offerings.

(569) The Commission therefore considers that pre-Transaction H3G has acted as an important competitive force on the Italian retail mobile market.

b) The likely competitive constraint exerted by H3G absent the Transaction

(570) As set out in Section 7.3.2.1 a), the Commission considers that H3G is currently an important competitive force in the Italian retail mobile market. In this Section, the Commission will assess the likely competitive constraint that H3G would exert absent the Transaction, in particular whether H3G would have the ability and incentive to continue competing in the Italian retail mobile market as before the Transaction.

i. Parties' view

(571) In the Parties' view, as customers transition to 4G/LTE and increase their data usage,[562] it is essential for each of H3G and WIND to fill the current 4G network gap with TIM and Vodafone in order to remain competitive on the market. This is all the

557 Hutchison internal document, […].
558 Hutchison internal document, […].
559 Hutchison internal document, […].
560 Hutchison internal document, […].
561 VimpelCom internal document, […].
562 The Parties argue that a higher LTE penetration is expected in the next years, with LTE SIM cars being expected to account for 40% of total SIM cards by 2019. Form CO, paragraphs 561 to 567.

more important given the increasing prominence and relevance of 4G for Italian consumers (see Section 7.3.1.4 a) above).

(572) However, the Parties claim that, absent the Transaction, neither H3G nor WIND would have the ability to finance the much needed investments in 4G network. Without the Transaction, there would thus be a gap between the investment abilities of TIM and Vodafone (on the one hand) and H3G and WIND (on the other hand).[563] This investment gap would translate in a 4G network performance gap between the market leaders TIM and Vodafone and each of H3G and WIND. This in turn would lead to an irreversible bifurcation of the market: TIM and Vodafone would become the unchallenged market leaders because of their superior 4G networks, whereas H3G and WIND would become second tier players, unable to satisfy the demand of a significant proportion of customers in the future data centric market, which requires a highly-developed 4G network.[564]

(573) Following this bifurcation, Vodafone and TIM would thus be able to win customers from the Parties based on the increased demand for high quality data services, whereas H3G and WIND would be marginalised and unable to effectively compete, given their weaker 4G networks. Furthermore, the Parties argue that their inability to meet customers' data requirements with their less developed 4G networks would further restrain their ability to generate sufficient funds required for carrying out necessary network investments.[565] In the Reply to the Article 6(1)(c) Decision, the Parties add that data driven customers would become increasingly exposed to a duopoly of TIM and Vodafone, which would have less incentives to compete, given the deterioration of the competitive positions of H3G and WIND. [566]

(574) Therefore, in the Parties' view, as a consequence of the aforementioned lack of investments in the 4G network and of the bifurcation of the Italian mobile market, the competitive position of both H3G and WIND would deteriorate against TIM and Vodafone, leading to a reduction of competition on the market even absent the Transaction.

(575) With respect to the situation of H3G specifically, the Parties argue that, absent the Transaction, H3G would not have the ability to finance investments in its 4G network (and would thus suffer from the aforementioned investment and 4G network gap, leading to a weakening of its competitive position) for several reasons.

(576) The Parties submit that H3G is trapped in a vicious circle in which it cannot build a competitive network due to the financial implications of having small scale, and cannot build scale because of the prohibitive costs to improve its network (both as

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563 The Parties submit that, already in recent years, H3G and WIND suffered from this investment gap. For instance, TIM and Vodafone's mobile CAPEX were significantly higher than those of H3G and WIND, and this trend is expected to continue in the next years. The Parties are also the operators with the weakest investment plans in the market, as WIND and H3G invest […] and […] of CAPEX in their mobile network respectively. By contrast, TIM is expected to invest EUR 2.3 billion in its mobile network and Vodafone is expected to invest EUR 2.6 billion for its fixed and mobile network. See Table 4, Reply to the Article 6(1)(c) Decision.

564 Form CO, Section 6, paragraphs 565, 575 and 745. In the Reply to the Article 6(1)(c) Decision, the Parties further argue that their low LTE penetration is evidence that the market is increasingly bifurcating and that the gap between the Parties and TIM and Vodafone is widening. See Parties' Reply to the Article 6(1)(c) Decision, paragraphs from 40 to 54.

565 Form CO, Section 6, paragraphs from 561 to 567.

566 Parties' Reply to the Article 6(1)(c) Decision, paragraph 24

higher quality and wider coverage), thus affecting its ability to compete in the next years.

(577) First, the Parties submit that, with a market share of approximately [10-20]% both by subscribers and revenue, H3G is sub-scale in a market where scale economies play an essential role since fixed costs related to the management of the network are high and independent of the number of customers using the network. The Parties provide an analysis from external consultants[567] showing that a hypothetical 10% increase in H3G's subscriber base would reduce costs per subscriber by […]% in the short term and at least […]% in the long term.

(578) Second, H3G's business is, according to the Parties, persistently loss-making and financially unsustainable on a stand-alone basis. In particular, since H3G's FCF[[568] […].

(579) Third, the Parties also claim that the reason why H3G invests much less than the market leaders is because: (i) its investment are less profitable compared to those of TIM and Vodafone, which are able to monetise their investments much more quickly and easily; and (ii) it cannot fund the required investment due to negative FCF. As a result, the Parties submit that H3G's network is inferior and lagging behind the networks of TIM and Vodafone. In particular, H3G's LTE network has […]% outdoor coverage compared to […]% for TIM and […]% for Vodafone and H3G is the only operator that does not have valuable 800 MHz spectrum which is required for efficient geographic coverage and in particular for comprehensive indoor LTE coverage.

(580) Fourth, the Parties claim that Hutchison would not increase the level of funding of H3G since (i) it has already invested approximately EUR […] in 12 years; (ii) the return of any additional funding is highly uncertain.[569] In order to prove the conflict between Hutchison and H3G related to investment decision, the Parties refer to previous instances where H3G requested an approval to increase its CAPEX budget and […].[570]

(581) Additionally, in the Reply to the Article 6(1)(c) Decision the Parties claim that the Commission should not rely to internal business plans when analysing H3G's financial position, […].[571]

(582) Lastly, the Parties claim that H3G's competitive disadvantage is further accentuated by its lack of fixed-line network and, thus, the company is vulnerable to the shift towards converged products.

ii. <u>Commission's assessment</u>

(583) At the outset, the Commission notes that, based on its findings illustrated in Section 7.3.1.4 b) above, as of today the major part of mobile customers in Italy use 3G networks. The Commission acknowledges that 4G services are likely to have a

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567 H3G internal document, "[…].

568 FCF is calculated as the difference between (i) the EBITDA generated by a business on the one hand and (ii) interest and tax paid, working capital movements and its capital expenditure (CAPEX) on the other.

569 In particular, the Parties submit that cash-flow considerations are a major factor in Hutchison's policy regarding the allocation of CAPEX budgets.

570 Form CO, Section 6, paragraphs 433 to 446.

571 Parties' Reply to the Article 6(1)(c) Decision, paragraphs from 121 to 123 and related figure 7 at page 37.

growing relevance in the Italian mobile market in the coming years. This uptake of the importance of 4G appears to be gradual. In this Section, the Commission will assess the Parties' claims concerning H3G's ability and incentive to develop its 4G network in the coming years absent the Transaction.

(584) According to the Horizontal Merger Guidelines, mentioned in recitals (241) and (242), the Commission, in order to evaluate the effects of a merger, conducts its analysis "*by comparing the competitive conditions that would result from the notified merger with the conditions that would have prevailed without the merger*".[572]

(585) Therefore, in most cases the competitive conditions existing at the time of the merger constitute the relevant comparison for evaluating the effects of the merger. In such a case, the Commission takes into account the situation that exists at the time when the Commission reviews the merger. However, in some circumstances the Commission may take into account future changes to the market that "*can be reasonably predicted*".[573]

(586) In the case at hand, the relevant point of comparison is the situation where H3G would continue to operate in the market as a separate entity. The Parties argue that, absent the Transaction, H3G would, for several reasons, not have the ability to invest in the development of its 4G network. This lack of investments would accentuate H3G's 4G network gap vis-à-vis its competitors TIM and Vodafone, leading to a market bifurcation. This would lead in turn to a deterioration of H3G's competitiveness because of its inability to meet customers' needs, particularly as regards mobile data. Therefore, in the Parties' view, absent the Transaction H3G would not continue to be an important competitive force on the market, and there would be a lessening of competition.

(587) The Parties do not raise a formal "failing firm defence" within the meaning of paragraphs 89-91 of the Horizontal Merger Guidelines, that is, they do not argue that absent the Transaction H3G would exit the market, and that there would be no less anti-competitive alternative to the Transaction.

(588) The Parties claim that it can be reasonably predicted that, absent the Transaction, the competitive constraint exercised by H3G on the market would decline substantially.[574] Therefore, the Commission understands the Parties' view to be that any loss of competition identified by the Commission by considering "*the competitive conditions existing at the time of the merger*" (i.e. the status quo) would significantly overstate any identified likely future loss of competition caused by the Transaction. Rather, in the Parties' view, the competitive effects of the Transaction should be compared against the competitive conditions of the Italian retail mobile market that would result in light of H3G's inability to invest in its network and consequent bifurcation of the market, which would lead to a loss of competition.

(589) Against this background, the Commission will assess whether, absent the Transaction and in light of the "*future changes to the market that can be reasonably predicted*" (namely, the claimed investment gap and market bifurcation as regards 4G), the competitive position of H3G would deteriorate to a point that it would be unable to compete effectively, with a consequent loss of competition on the retail mobile market absent the Transaction.

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572 Horizontal Merger Guidelines, paragraph 9.
573 Horizontal Merger Guidelines, paragraph 9.
574 Parties' Reply to the Article 6(1)(c) decision, paragraph 30.

(590) In carrying out is assessment, the Commission considers that the relevant comparison scenario for H3G should be (i) the pre-merger operational and financial performance of H3G; (ii) H3G's best estimates of the future performance of its telecommunication business in the absence of the Transaction, as captured in its pre-merger forward-looking projections, and (iii) possible alternative steps that could reasonably have been taken by H3G to maintain or strengthen the competitiveness of its business, other than the planned JV.

(591) The Commission has investigated whether the competitive constraint currently exerted by H3G in the retail market for mobile telecommunications services in Italy, detailed in Section 7.3.2.2 a) of this Decision, would continue in the future absent the Transaction, in particular whether H3G would continue to have the ability and the incentive to be an important competitive force in the market in absence of the Transaction.

(592) To perform this assessment the Commission has considered the Parties' internal documents, and it has assessed H3G's financial position and planned network investments in the next years. The Commission's findings are set out in the following recitals.

(593) In addition, the Commission also asked MNOs and MVNOs in its market investigation to assess how the competitive position of H3G would evolve in the next two to three years absent the Transaction in the retail market for mobile telecommunications services. The majority of respondents answered that they do not expect that H3G's competitive position would change in the next years absent the Transaction.[575]

H3G has been an effective competitor before the Transaction even with a more limited scale than its competitors and without a fixed offering

(594) At the outset, in relation to the Parties' argument on H3G's alleged lack of critical scale, the Commission notes, on the basis of its findings,[576] that H3G has been able to exercise a significant competitive constraint in the Italian market notwithstanding this alleged weakness, competing aggressively on the market. Furthermore, as illustrated in recitals (539) to (550) above, H3G has been the most successful mobile player in terms of net adds, MNP and market share growth in recent years.[577]

(595) The Commission also notes that H3G's argument concerning lack of critical scale effectively amounts to H3G claiming that its average total costs are higher, since the large fixed costs which characterise the mobile market need to be recovered over a smaller subscriber base (compared to larger rivals). However, the Parties are not claiming that H3G faces significantly higher variable costs than its competitors. H3G is therefore not at a disadvantage compared to its competitors in terms of price competition. The Commission notes that H3G's levels of contribution and incremental margins are high (in the order of […]% - see Annex A), and similar to those achieved by WIND. This means that incremental customers captured by H3G make a significant contribution to the recovery of H3G's fixed costs, providing incentives to compete for additional customers. This is consistent with the evidence that H3G is a particularly aggressive price competitor in the Italian market.

575 Responses to Questionnaire Q1 to MVNOs of 10 February 2016, question 68. Responses to Questionnaire Q4 to MNOs of 8 February 2016, question 48.

576 See Section 7.3.2.1 0 above.

577 See AT Kearney presentation entitled "Project Caesar Augustus" - 1st all day meeting with Regulatory Advisors (April 4th, 2015), pages 11-12 [Filename 003901708.00001.pdf], [ID 1150-172].

(596) H3G's aggressive commercial policy is also witnessed by its marketing expenditure, which represents a significant share of total costs and a higher percentage of revenues than the other MNOs in Italy.[578]

(597) There is also no evidence that […]. This is shown by H3G's […], as well as by H3G's behaviour throughout 2015, as discussed in Section 7.3.2.1 a) above.

(598) With respect to the claim that H3G's competitive position would deteriorate absent the Transaction because of its inability to offer fixed services, the Commission notes that, as discussed in Section 7.3.2.1 a) above, H3G has been able to compete aggressively on the Italian retail mobile market notwithstanding the absence of a fixed offering. As explained in Section 6.2.1.2 a) above, the information collected in the course of the phase I market investigation has indicated that the current number of customers purchasing mobile services as part of a fixed mobile bundle from the same mobile operator amounts to only a small percentage of the total number of mobile customers in the Italian market. That same information also suggests that in the future, while fixed-mobile bundles may increase, customers will still continue to mostly purchase mobile services on a standalone basis, separately from fixed services. A mobile-only operator would thus have access to a large customer base to whom to offer its standalone mobile services. Therefore, it is unlikely that absent the Transaction H3G's competitiveness would be deteriorated because of the lack of a fixed offering.

H3G's current and future financial performance

(599) The Parties' claim in relation to H3G is different from the one of WIND. The Parties are not claiming that H3G is financially constrained by debt, or that it is a failing firm. The alleged limitations to H3G's ability to invest are not related to debt, but rather to H3G's difficulty to generate a positive FCF mostly due to its alleged lack of critical scale. H3G has no significant debt with third parties and its activity has been supported by its parent company Hutchison, which invested around EUR […] to date into H3G.[579]

(600) The Commission notes that in a market characterised by very high barriers to entry, such as the Italian retail mobile market (see Section 7.3.2.4 d) below), any late entrant, such as H3G (which entered the market after TIM, Vodafone and WIND) has first to acquire spectrum holdings, then to deploy a nation-wide network and then to acquire a sufficient customer base. These steps are lengthy and the new entrant may have to endure a significant period of losses before becoming profitable. Therefore, it should be expected that the latest entrant in the market would only gradually achieve profitability. However, new entrants who have reached a break-even point and who become established players are likely to be profitable for a significant period of time.

(601) The Commission considers that H3G's financial results, taking into account its current profitability and its business plans, do not correspond to the Parties' presentation of H3G as a player whose competitiveness will be significantly and increasingly undermined absent the Transaction.

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578 A study by Professor Corrado Gatti, submitted by Fastweb [ID 1383], describes H3G as spending 20% of its revenues in marketing costs (against 7% for WIND and 5% for TIM) and argues that, reducing those costs from 20% to 15% (still well above levels incurred by competitors) would represent savings for EUR 96 million, increasing EBITDA margin by 17% and allowing breaking even already in 2014. Discussion on break-even will follow.

579 Form CO, Section 6, paragraph 394 and Parties' Reply to the Article 6(1)(c) Decision, paragraph 125.

(602) On the contrary, H3G has been EBIDTA positive for a number of years,[580] and […].[581]

(603) The Parties claim that the forecasts included in H3G's business plans are of an "aspirational" character and should not be relied upon by the Commission in its assessment., However, the Commission notes that […]. This is also indicated by the Figure contained at page 37 of the Reply to the Article (6)(1)(c) Decision, reproduced below as Figure 53. […].

Figure 53: Comparison between H3G past business plans' forecasts and actual performance for the period 2006-2015 […]

[….]

Source: Compass Lexecon based on H3G's data (reproduced from Figure 7 of the Reply to Article 6(1)(c decision […]

(604) On the basis of the H3G's latest budget meeting notes,[582] the Commission notes that […]. […][583] […].[584] […].[585]

(605) Figure 54 below […].[586] […].

Figure 54: Comparison between H3G forecasts in business plans 2014-2016 forecasts for years 2015-2018 (FCF, EBITDA and CAPEX)

[…]

Source: Commission elaboration on H3G data

(606) Based on the above Figure, the following considerations can be made with respect to H3G's expected future FCF, EBITDA and CAPEX.

(607) Concerning FCF, it is worth noting that […].

(608) Concerning EBITDA, in addition to having been EBITDA positive for a number of years, […].

(609) Concerning CAPEX, […].

(610) As also described in recitals to (732) to (739) below, the […][587] further shows that H3G would remain as a viable competitor in the Italian market in the next years. […].

(611) In conclusion, the Commission considers that H3G will be able to generate positive FCF and EBITDA in the Italian market. In other words, […].

(612) On the basis of the findings mentioned above, the Commission considers that […].

Absent the Transaction, H3G will have the ability and incentive to invest in the deployment of its 4G network

(613) The Commission notes that, in light of […], H3G will be able to continue to invest in its mobile network, thus narrowing the LTE coverage gap with the market leaders.

(614) As shown in Table 18 below,[588] […].

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580 Form CO, Annex 27.
581 See […].
582 See […].
583 See […].
584 It should be noted that […].
585 See "[…].
586 […].
587 See […]. […].

Table 18: LTE coverage and related gaps, all MNO operators, 2015-2019 (expected)

	LTE coverage				**Gap to leader**			
	outdoor		**indoor**		**outdoor**		**indoor**	
	2015	2019	2015	2019	2015	2019	2015	2019
TIM	[…]%	[…]%	[…]%	[…]%	[…]%	[…]	[…]%	[…]%
Vodafone	[…]%	[…]%	[…]%	[…]%	[…]	[…]	[…]	[…]
WIND	[…]%	[…]%	[…]%	[…]%	[…]%	[…]%	[…]%	[…]%
H3G	[…]%	[…]%	[…]%	[…]%	[…]%	[…]%	[…]%	[…]%
JV		[…]%		[…]%				[…]%

Source: data for 2015 from Figure 8 and 9, Form CO Section 6, and expected 2019 data from paragraph 112, Form CO Section 9 (where outdoor data for TIM and Vodafone in the text read as "near comprehensive")

(615) The figures presented in Table 18 above concerning indoor coverage were estimated by H3G on the basis of the methodology described in footnote 280 of Form CO (Section 6). It is important to highlight that those figures, especially those referring to indoor coverage, are based (as acknowledged in that same description included in the Form CO) on H3G estimations and, in some cases, limited or missing data (concerning, for instance, projections for TIM and Vodafone's indoor coverage). The indications drawn from those figures should therefore not be taken as fully reliable.

(616) H3G therefore appears […].

(617) Concerning H3G's incentives to invest, the Parties argue that H3G lacks such an incentive because of its negative past performance. However, the Commission notes that past losses, which amount to "sunk costs" incurred by the shareholder, are not relevant to assess future incentives to invest and compete. It is the prospect of future profit that governs incentives to invest. As noted above, H3G's latest financial forecast are positive, and project a positive and growing level of FCF over the next 2-3 years, which suggest that H3G will have the incentives to invest, even absent the Transaction. Given the expected increasing importance of 4G (claimed by the Parties), it should also be expected that H3G would have the incentive to continue in the development of its 4G network in order to fill the existing network gap with its competitors.

(618) In addition in the market investigation the Commission also asked to MNOs, MVNOs and technology suppliers whether H3G would have the incentive and the ability to invest in its mobile network. Most of the respondents to the market investigation consider that H3G, absent the Transaction, would have the incentive and the ability to invest in its 4G networks.[589]

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588 For outdoor data, see also AT Kearney presentation "Project Caesar Augustus" - 1st all day meeting with Regulatory Advisors (April 4th, 2015), page 55 [Filename 003901708.00001.pdf], [ID 1150-172].

589 Responses to Questionnaire Q1 to MVNOs of 8 February 2016, question 91. Responses to Questionnaire Q4 to MNOs of 8 February 2016, question 73. Responses to Questionnaire Q3 to Suppliers of 8 February 2016, question 14.

Alternatives to the JV

(619) In addition to the above considerations, the Commission notes that, should H3G aim to accelerate its 4G network coverage and reduce its network capital expenditures, based on the available evidence, it would be able to rely on alternatives to the Transaction. H3G may for instance consider entering into NSAs with WIND.[590]

(620) The Parties' internal documents […].[591] […].

(621) NSAs appear to be an option capable of delivering significant financial benefits to both WIND and H3G. This is further proven by the fact that Hutchison […][592] and VimpelCom […]. [593]

(622) In addition, as further discussed in Section Section 7.5.4.2. c) , the Commission considers that NSAs between the Parties should be considered as a potential less anticompetitive alternative to the Transaction, delivering sizeable cost synergies comparable to those related to the Transaction. This alternative is discussed in detail in the context of the Parties' efficiency claims, as it is also relevant to the assessment of whether the efficiencies claimed by the Parties are merger-specific).

iii. Conclusion

(623) In the light of the above, the Commission concludes that, absent the Transaction, H3G is likely to have the ability and the incentive to continue being an important competitive force in the market for retail mobile telecommunications services in Italy.

c) Conclusion on the competitive constraint exerted by H3G

(624) In light of its findings illustrated in the previous Sections, the Commission concludes that H3G has been an important competitive force on the Italian retail mobile market before the Transaction, and would continue being an important competitive force absent the Transaction.

7.3.2.2. Assessment of the competitive constraint exerted by WIND

a) The competitive constraint exerted by WIND before the Transaction

i. Parties' view

(625) The Parties claim that WIND does not play a unique and irreplaceable role in the competitive process and therefore the fact that it will no longer operate on a stand-alone basis will not result in the removal of an "important competitive force" within the meaning of the Horizontal Guidelines.

(626) This is because WIND has been and is highly indebted. WIND's high level of debt constrains its ability to invest in its network, which in turn results in inferior network quality compared to TIM or Vodafone. This limits WIND's ability to compete.[594] In particular, the Parties argue that WIND's network limitations prevent it from being an important competitive force and that it cannot be considered to be pricing aggressively but rather, its low prices are a reflection of the network quality gap with Vodafone and TIM. The Parties conclude that for this reason, WIND cannot be considered to exert an important competitive pressure on the market and there is

590 For the definition of NSAs, see recital (104) above.
591 See WIND internal document, […]. See also WIND internal documents, […].
592 Form CO, Section 7, paragraphs 381 to 422.
593 VimpelCom internal documents[…].
594 Form CO, Section 6, paragraphs 744 and 745.

nothing to suggest that WIND's influence on the market is understated by its market share.[595]

(627) In the Reply to the Article 6(1)(c) Decision, the Parties reiterated these arguments and noted that the evidence of WIND being "second place" to H3G in terms of price-aggressiveness and cheapness is not indicative of being an important competitive force.

ii. <u>Commission's assessment</u>

(628) The Horizontal Merger Guidelines state that mergers in oligopolistic markets involving the elimination of important competitive constraints that the merging parties previously exerted upon each other together with a reduction of competitive pressure on the remaining competitors may, even where there is little likelihood of coordination between the members of the oligopoly, result in a significant impediment to competition. The Merger Regulation clarifies that all mergers giving rise to such non-coordinated effects shall also be declared incompatible with the common market.[596]

(629) The following recitals consider: (i) WIND's performance in comparison with other market players; (ii) WIND's past and current financial performance; (iii) the role of WIND's pricing in the market; and (iv) WIND's more recent performance in the market.

WIND has performed well on the market

(630) The evidence reviewed by the Commission indicates that WIND has been performing well in the context of the Italian market, outperforming the competition with regard to a number of KPIs, in particular, net adds and customer satisfaction.

(631) As mentioned in recital (60), WIND is currently the third largest MNO in Italy, with 21.1 million customers, and the second operator in the fixed voice service market, with 2.8 million customers, of which 2.2 million were also fixed internet service customers. When looking at each of the different market share methodologies (see Table 6- Table 10 above), it can be seen that WIND has overall maintained a steady market share in the period 2012 – 2015. A WIND presentation for FY2014 also shows that WIND's customer base has steadily increased over the years.[597]

(632) Based on data provided by the Parties, WIND has positive net adds during the period 2012 to Q1 2015, in particular compared to TIM and Vodafone which have had significant decreases in net adds over the same period:

[595] Form CO, Section 6, paragraph 743.
[596] Horizontal Merger Guidelines, paragraph 25.
[597] VimpelCom internal document, […].

Table 19: Net Adds Q1 2012 - Q1 2015

MNO	Net Adds
TIM	[…]
VODAFONE	[…]
WIND	[…]
H3G	[…]

Source: H3G Data submitted in response to Commission RFI 19[ID 00950-14800][598]

(633) This solid performance is reflected in the internal documents of WIND. A presentation illustrating the results for the financial year […] shows that WIND's aggressive commercial strategy has allowed it to consistently […] its customer share up to the end of […], […] both in customer base and net adds.[599] Similar results are recorded in the equivalent presentations reporting on […],[600][…],[601] and […].[602] While in these later documents, WIND's performance in terms of customer base and net adds were reported to be declining, WIND was still performing […] of the market and materially […] TIM and Vodafone.

(634) WIND internal documents […]."[603]

(635) In the context of WIND's refinancing in 2014, the materials prepared again highlight the key areas in which WIND had been performing well and outperforming the market. […]".[604] […].[605]

(636) Multiple WIND internal documents highlight that WIND's […] scores are better than those of its competitors, see for example Figure 55. This slide, as well as other VimpelCom presentations[606] also show that WIND has a far higher […] than other Italian MNOs.

Figure 55: WIND's assessment of its performance […]

[…]

Source: WIND Internal document: […].

(637) WIND's strong performance is also recognised in the documents of other players on the market. […] H3G internal document emphasises WIND's competitive strength,.[607] This strong performance is also recognised in the internal documents of Vodafone and TIM.

(638) Moreover, WIND's strong performance is documented by third parties, with market analysts reviewing WIND's performance favourable: "*Wind is gaining market shares and outperforming its main competitors, thanks to its "value for money"*

598 This trend is also reflected in the market reconstruction undertaken by the Commission.
599 VimpelCom internal document, […].
600 VimpelCom internal document, […].
601 VimpelCom internal document, […].
602 VimpelCom internal document, […].
603 VimpelCom internal document, […].
604 VimpelCom internal document, […].
605 VimpelCom internal document, […].
606 VimpelCom internal document, […].
607 H3G internal document, […].

positioning";[608] "*The operational environment in Italy remains challenging; however, we continue to be impressed with Wind's ability to increase market share and maintain EBITDA margins*";[609] and "*Wind continues to outperform the incumbents in terms of net additions.*"[610]

(639) On the basis of above evidence of WIND's strong operational performance until at least 2015, the Commission considers that WIND has exerted an important competitive constraint on the market.

WIND has been performing well financially

(640) The Commission considers that WIND has been performing well financially, despite its high level of leverage, which is consistent with it being competitive player on the Italian retail mobile market.

(641) First, WIND's operational performance has been strong in recent years; in 2015 it had revenues of EUR 4.4 billion, amounting to a net profit of EUR 428 million. In particular, WIND had the highest EBITDA margin (40%) of the Italian mobile market; Figure 56 below compares the EBITDA margin reported by the four MNOs between 2010 and 2014, showing that Wind's operating performance is on par with competing MNOs in Italy over this period.

Figure 56: Fastweb's comparison of MNO's reported EBITDA margins 2010 - 2014

Table 1: MNOs' reported EBITDA margins, 2010-2015

MNO	2010	2011	2012	2013	2014	2015
TIM Italy	46.8%	48.3%	48.5%	47.2%	45.7%	n/a
Vodafone Italy	47.2%	46.2%	44.4%	40.3%	35.7%	n/a
Wind	38.6%	38.1%	38.0%	39.0%	38.9%	37.7%
Wind (mobile only)	45.4%	44.6%	43.7%	42.7%	41.7%	40.4%
H3G	22.6%	5.8%	12.5%	12.4%	11.7%	15.1%

Source: RBB analysis of companies' public financial records.

Notes: 1) Vodafone's financial year ends the 30th of March. As a consequence, the timeframe underlying Vodafone's figures does not coincide with the timeframe of the other MNOs; 2) Since TIM and Vodafone do not disclose the relevant breakdown, in order to allow a consistent comparison of the EBITDA margins across MNOs, the figures in the table consider both mobile and fixed-line EBITDA margins.

Source: Fastweb's Submission "Wind/H3G: The Counterfactual to the Proposed Transaction" Submitted 19 May 2015, page 4 [ID 1581]

(642) This strong performance has been consistent. In an internal presentation comparing the results of WIND with its competitors in 2013, it can be seen that all players had a YoY decrease in mobile revenues but that the decrease for WIND was materially less than for the other players […] with a materially better performance delta compared to these players.[611] Similar results are recorded in the equivalent presentations reporting on 1H 2014,[612] FY 2014,[613] and 1H 2015.[614] In the internal VimpelCom document

608 ODDO Securities Analysis – "*WIND TELECOMUNICAZIONI*" dated 18 September 2013, page 1 [Filename RFI20_0488557.pdf], [ID 1071-10539].

609 Barclays Securities: "Subject: European HY Research: Wind - Outperforming the peer group" dated 7 August 2013 [Filename RFI20_0477815.msg], [ID 1065-9587].

610 JP Morgan: "Europe Credit Research - 12 January 2015" [Filename RFI20_0550628.pdf], [ID 1061-18604]

611 VimpelCom internal document, […].

612 VimpelCom internal document, […].

613 VimpelCom internal document, […].

comparing the performance of the four MNOs for the full year 2014, it can be seen that WIND's value share of mobile revenues consistently grew FY12 – FY14. […].[615] […].[616]

(643) These good results continued into the first quarter of 2016. WIND's revenues from mobile data increased by 13%, the number of clients using mobile data also increased by 6.4% and the company is also experiencing an ARPU improvement.

(644) Second, WIND's indebtedness is not related to operations but pre-exists VimpelCom's acquisition of WIND in 2011. […].[617] […].[618]

Figure 57: […]

[…]

Source: VimpelCom internal document, […]

(645) Third, WIND's financial indebtedness does not appear to have impacted its ability to compete on the market in the past. Whilst it is correct that WIND is significantly leveraged, this has been the case since at least 2011. During this time, WIND's high leverage did not prevent it from achieving impressive operational results, as shown by the high level of EBITDA its margins, outpacing its competitors with regard to a number of KPIs (as described above in recitals (630) to (639)), consistently maintaining / increasing its market share, and significantly investing in recent years.

(646) In addition to the EUR 1.1 billion it invested in the 2011 spectrum auction, WIND made significant infrastructure investments in particular: almost EUR 780 million in 2015 to improve its mobile and fixed network (reversing the decreasing trend of the previous years). These investments allowed WIND to reach a coverage of 56% of the Italian population with 4G, an increase of 21% in only one calendar year. These results seem to show WIND's ability to invest in network quality at the levels deemed necessary.[619]

(647) Fastweb has provided information on the residual between WIND's EBITDA and net finance expenses, compared with its CAPEX (including spectrum acquisition) for the period 2011 - 2015 as a proxy for the cash flows it has available for investment. During the observed period, the residual has consistently maintained above €900 million, which is in line with WIND's 2012 CAPEX spend and higher than WIND's 2013 CAPEX spend (the declared investment objective of the Company over next years). Fastweb argues that this indicates that operating profits would likely be sufficient for WIND to maintain the 2013 levels of investment without the need to raise any additional debt.

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614 VimpelCom internal document, […].

615 VimpelCom internal document, […].

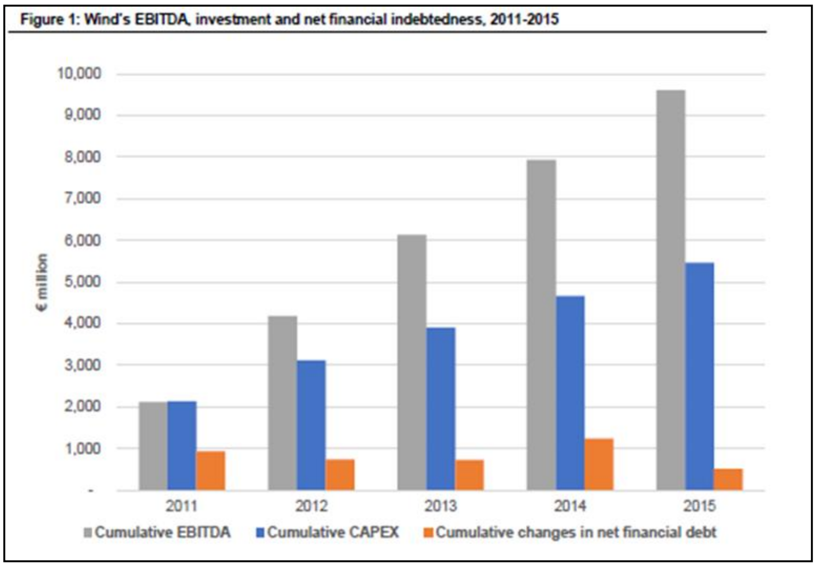
616 VimpelCom internal document, […].

617 […].

618 VimpelCom internal documents, […].

619 See WIND's press release "Un 2015 positivo per WIND", available at: http://www.windgroup.it/it/media/comunicati/comunicato/article/un-2015-positivo-per-wind/?no_cache=1&cHash=504345938eaf1ac0e0f77846fd651c00 [ID 580].

Table 20: Fastweb's analysis of Wind's EBITDA, investment and net financial indebtedness (2011-2015)



Source: Fastweb's Submission "Wind/H3G: The Counterfactual to the Proposed Transaction" Submitted 19 May 2015 [ID 1581]

(648) Internal WIND documents show that […].[620]

(649) A full analysis of WIND's ability to compete in the future, absent the Transaction, is provided below in Section 7.3.2.2.b).

WIND's pricing in the market

(650) The results of the market investigation depict WIND as the second most aggressive and best value for money MNO, after H3G, indicating that it acts as a significant competitive constraint in the Italian retail market.

(651) During the Phase I market investigation, the Commission requested respondents rate the four MNOs in relation to various competitive parameters, including price. MVNOs gave WIND the second-highest score after H3G with respect to the parameter of prices for prepaid, postpaid and data-only services offered to private and business customers. In some instances, respondents among MVNOs placed WIND on par with H3G.[621] TIM also ranked WIND's competitive position as regards price for prepaid and data-only on par with H3G.[622]

(652) Respondents to the Phase I market investigation also indicated that WIND has also been a very aggressive mobile operator, though not as aggressive as H3G. When asked to indicate which mobile operator had been the most aggressive as regards price in the three years prior to the Transaction, respondents among MVNOs placed WIND just after H3G (and sometimes on par with H3G) in terms of price aggressiveness on a one to five point scale, generally ahead of Vodafone and TIM.[623] As mentioned in recital (448) above, Fastweb explained that WIND's tariffs were almost always the second lowest after those of H3G.[624] TIM also rated WIND's price aggressiveness on par with that of H3G.[625]

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620 VimpelCom internal document, […].

621 See responses to Questionnaire Q1 to MVNOs of 8 February 2016, question 65.

622 Response of TIM to Questionnaire Q4 to MNOs of 8 February 2016, question 45 [ID 814].

623 See responses to Questionnaire Q1 to MVNOs of 8 February 2016, question 64.

624 Fastweb's response to Questionnaire Q1 to MVNOs of 8 February 2016, question 64.1 [ID 707].

625 Response of TIM to Questionnaire Q4 to MNOs of 8 February 2016, question 44 [ID 814].

(653) Additionally, respondents to the Phase I market investigation among MVNOs commented that in the two years prior to the Transaction, WIND was also an aggressive player on the retail market for mobile telecommunications services with respect to pricing and tariffs. Respondents indicated that WIND, while not being as aggressive as H3G, was cheaper than both Vodafone and TIM.[626] One respondent explained that "*for retail mobile offers, Wind and H3G's are generally each other's closest competitors, and they have generally followed similar paths in the past years in terms of plans and prices, though H3G generally is more aggressive on pricing. For data-only offers with 2-5GB for example, Wind has generally offered the second lowest prices on the market, following H3G […] Wind also lowered its prices on average for these offers between 2014 and 2015. Wind is also particularly strong in the residential and prepaid market segments, where its market shares have been increasing in the past years*."[627] The same respondent also emphasised WIND's innovative role in the market in terms of services and technology in the recent past, in particular with regard to the prepaid market segment.[628] MNOs also indicated that, in the years prior to the Transaction, WIND was quite competitive on prices, though not as aggressive as H3G. TIM commented that WIND "*has been quite competitive on prices, positioning its offers as 'no frills'*"; Vodafone also commented that WIND was affordable, though not the cheapest MNO, and that its brand is perceived as "*as affordable and value for money*".[629]

(654) WIND's aggressive tariffs and price offers were also mentioned by respondents to the Phase I market investigation as examples of innovative services.[630] One MVNO mentioned WIND's "Best Price" option of 2013 as a significant innovation, together with H3G's of "ALL-IN" prepaid offers in the same year.[631] Another respondent commented that the main innovation in the Italian market was the transformation of tariff plans from "usage-based SIM" to "flat" offers. Such respondent indicated that WIND had been the first operator to introduce these flat offers.[632]

(655) The results of the in-depth market investigation confirmed the Commission's findings that after H3G, WIND has been the most aggressive and best value for money player on the market in terms of pricing.

(656) Specifically, the Commission asked market participants, namely MNOs and MVNOs, which MNO had priced its tariff plans most aggressively; as discussed above in Section 7.3.2.1 a), the majority of respondents identified H3G as pricing its tariff plans most aggressively, however the majority also identified WIND and those that did not identify H3G, identified WIND as the player that had offered the most aggressively priced tariffs.[633] For example, in 2015, of the nine responses to the specific question, seven identified H3G as offering the most aggressively priced tariffs but with six identifying WIND as offering aggressively priced tariffs either in addition to, or instead of, H3G.

(657) The Commission also asked market participants during the in-depth market investigation to indicate the most successful tariffs (in terms of impact on the market

[626] See responses to Questionnaire Q1 to MVNOs of 8 February 2016, question 70.
[627] PosteMobile's response to Questionnaire Q1 to MVNOs of 8 February 2016, question 70.1 [ID 835].
[628] PosteMobile's response to Questionnaire Q1 to MVNOs of 8 February 2016, question 70.6 [ID 835].
[629] See responses to Questionnaire Q4 to MNOs of 8 February 2016, question 50.
[630] See responses to Questionnaire Q1 to MVNOs of 8 February 2016, question 62.
[631] Fastweb's response to Questionnaire Q1 to MVNOs of 8 February 2016, question 62 [ID 707].
[632] TWT's response to Questionnaire Q1 to MVNOs of 8 February 2016, question 62 [ID 587].
[633] See responses to Questionnaire Q6 to MVNOs of 2 May 2016, question 3 and following sub-questions.

and customer acquisition) of each MNO in the retail mobile market and its segments for each of 2013, 2014 and 2015.[634]

(658) Table 15 to Table 17 above summarise the replies provided by Fastweb, PosteMobile and Tiscali on the most successful tariffs of the four MNOs in the Italian retail mobile market in the past years, as well as their main features. An overview and comparison of these most successful tariffs for each MNO shows that in general, WIND's offerings are priced slightly above H3G but that WIND prices far more aggressively than TIM and Vodafone.

(659) In response to the 6(1)(c) Decision, the Parties argue that their prices are not a reflection of competitive strength but of a low quality product offering, in the case of WIND because of a network gap with TIM and Vodafone. This argument however is not supported by WIND internal documents. As noted above at recital (646), WIND has been making significant investments in its network in recent years. Moreover, network is only one parameter of competition; it is documented that WIND has extremely high customer satisfaction and NPS scores as detailed above at recitals (634) - (637) which has contributed to its success on the market.

(660) […].[635] This directly contradicts the Parties' claims that WIND is forced to price low to account for poor network quality.

WIND's more recent performance in the market

(661) The Parties argue that WIND's performance in the recent past has been declining, in particular due to poor network quality. The Commission considers that WIND has continued to be extremely successful on the market despite its indebtedness and that its statements regarding its in ability to compete because of a network quality gap are overstated.

(662) Respondents to the Phase I market investigation acknowledged that WIND's main weakness is the quality and coverage of its network.[636] Similarly to H3G, respondents to the Phase I market investigation rated WIND's network less favourably than that of TIM and Vodafone.[637]

(663) Moreover, WIND's internal documents […][638] […].[639]

(664) The Commission considers however that WIND has continued to be an important competitive constraint on the market.

(665) First, the bulk of the evidence on the Commission's file shows that WIND has continued to perform well on the market for example continuing to achieve higher customer satisfaction scores and far above average net adds. That WIND remains a competitive player is reflected in internal VimpelCom documents, […],[640] […].[641] […].[642]

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634 See Questionnaire Q6 to MVNOs of 2 May 2016, question 2 and following sub-questions.

635 WIND Internal email, […].

636 See responses to Questionnaire Q1 to MVNOs of 8 February 2016, question 63; replies to Questionnaire Q4 to MNOs of 8 February 2016, question 43; replies to Questionnaire Q2 to business customers of 8 February 2016, question 19.

637 See responses to Questionnaire Q1 to MVNOs of 8 February 2016, question 65; replies to Questionnaire Q4 to MNOs of 8 February 2016, question 45; replies to Questionnaire Q2 to business customers of 8 February 2016, question 16.

638 VimpelCom internal document, […].

639 VimpelCom internal document […].

640 VimpelCom internal document, […].

(666) Second, there is evidence to suggest that it could have been a WIND strategy to compete less aggressively, rather than an inability to compete effectively due to poor network quality. For example, in 2013 the then VimpelCom CEO stated: "*the fact now that we have been seeing a price increase in the fourth quarter has led to lower gross adds, churn is stable and as a result of that [inaudible] and then we have seen historically those are difficult – <u>we are seeing more benefits from maybe monetizing our subscriber base by having additional price levels offered rather than focusing too much on subscriber growth and revenue growth</u>. So I think we have achieved a certain size in Italy now that will lead to more <u>focus on the right price level and profitability margins going forward rather than subscriber growth</u>.*"[643] (emphasis added). This is further evidenced in WIND internal documents such as the one illustrated in Figure 58 below, […].

Figure 58: Slide showing WIND strategy […]

[…]

Source: VimpelCom internal document, […]

(667) Third, as described above, at recitals (387)-(402), whilst network quality is an important parameter of competition, price is the most important.

(668) Fourth, WIND's network is not considered to be materially inferior to its competitors' for the purposes of competing today. Respondents to the market investigation noted that WIND has been investing to enhance and improve its network. One respondent explained that "*Wind has good 2G and 3G network coverage of close to 100% and 4G network coverage of 56% in terms of population*".[644] Another added that: "*Wind has started to significantly invest in its network in the past years, with the aim of enhancing both its network coverage and quality. This is evidenced by the recent company statements and financial reports.*"[645] […].[646]

(669) As detailed above at recitals (642)-(645), WIND's positive financial performance is allowing it to invest in the development of its network. In an investor transcript call regarding VimpelCom's Q4 2014 results, VimpelCom's CFO Andrew Davies commented on WIND that "*in terms of 4G coverage by the end of the year, I would estimate that 50% to 60% population coverage by end of 2015. I think we are really sort of at par with our two main competitors there, we actually will see of them in terms of providing data services and I think also you will see some interesting more digital offerings coming out of Italy as I spoke about during my presentation this morning, so we feel good about our technology, it will open strategy in Italy and we think we invest enough to be abele [sic] to keep our position an [sic] maintain a strong competitor*."[647]

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641 VimpelCom internal document, […].

642 VimpelCom internal document, […].

643 VimpelCom's (VIP) CEO Jo Lunder on Q4 2013 Results - Earnings Call Transcript, available at: http://seekingalpha.com/article/2072463-vimpelcoms-ceo-discusses-q4-2013-results-earnings-call-transcript [ID 2554].

644 Fastweb's response to Questionnaire Q1 to MVNOs of 8 February 2016, question 70.3, [ID 707].

645 PosteMobile's response to Questionnaire Q1 to MVNOs of 8 February 2016, question 70.3, [ID 835].

646 VimpelCom internal document, […].

647 "VimpelCom's (VIP) CEO Jo Lunder on Q4 2014 Results - Earnings Call Transcript", available at: http://seekingalpha.com/article/2950586-vimpelcoms-vip-ceo-jo-lunder-on-q4-2014-results-earnings-call-transcript?all=true&find=VimpelCom%27s%2B%28VIP%29%2B%2Bq4%2B2014 [ID 2554].

(670) WIND invested in its network EUR 172 million in its network in Q1 2016 reaching a nationwide 4G coverage of 58%.[648] WIND's current performance in the mobile market and in the data mobile segment does not support the Parties' claims that WIND should not be able to be competitive in the mobile data market segment due to its network quality gap. Furthermore, as explained in Section 7.3.1.4 above, 4G currently has a limited relevance in the Italian mobile market.

(671) Given these factors, the Commission considers that despite some isolated comments in more recent VimpelCom documents, it is clear that WIND has continued to play an important role on the Italian mobile market placing an important competitive constraint on all the other players.

iii. Conclusion

(672) Following its in-depth investigation carried and the assessment of the arguments brought forward by the Parties in the Reply to the Article 6(1)(c) Decision, the Commission concludes that WIND exerts an important competitive constraint on the Italian retail mobile market.

b) The likely competitive constraint exerted by WIND absent the Transaction

(673) As set out in Section 7.3.2.2 a), the Commission considers that WIND exerts a competitive constraint on the Italian retail mobile market. In this Section, the Commission will assess the likely competitive constraint that WIND would exert absent the Transaction, in particular whether WIND would have the ability and incentive to continue competing in the Italian retail mobile market as before the Transaction.

i. Parties' view

(674) The Parties argue that, absent the Transaction, the competitive position of WIND would deteriorate to a point where WIND would no longer exert the competitive constraint it has exercised before the Transaction.

(675) As was illustrated in recitals (571) to (574) above, the Parties claim that network investments are crucial for both H3G and WIND in order to develop their respective for 4G networks, and fill the performance gap they suffer against TIM and Vodafone. In the absence of these investments, the network gap vis-à-vis TIM and Vodafone, would increase, leading in turn to a market bifurcation, where TIM and Vodafone would become the unchallenged market leaders with superior 4G networks, whereas H3G and WIND would become second tier players, unable to satisfy the demand of a significant proportion of customers in the future data centric market.

(676) In this scenario, WIND's competitiveness would deteriorate, because of its inability to meet customers' needs, particularly as regards mobile data. Therefore, absent the Transaction, WIND would not continue to exert a competitive constrain on the market, and there would be a lessening of competition

(677) The Parties submit that WIND, absent the Transaction, would not be able to invest to improve its 4G network (both as higher quality and wider coverage) since it would be financially constrained by: (i) a high level of financial indebtedness; (ii) revenues and margins being mostly absorbed by servicing the high debt, thereby limiting WIND's ability to finance new projects; (iii) contractual covenants which restrict its

[648] See WIND's press release "Solido inizio di anno per WIND", available at http://www.windgroup.it/it/media/comunicati/comunicato/article/solido-inizio-di-anno-per-wind/?no_cache=1&cHash=82a9f1e7e5f1ccdbc8a6a692101b373e

ability to source further financing; and (iv) WIND's owner VimpelCom faces very limited incentives to provide financial support to WIND ("debt overhang").[649]

(678) First, the Parties submit that WIND is highly indebted since it has at the end of 2015, approximately EUR 9.9 billion of net debt which is equal to 5.9 times its EBITDA.[650]

(679) Second, […].

(680) Third, […].

(681) Lastly, the Parties claim that […].[651]

ii. Commission's assessment

(682) At the outset, the Commission notes that, based on its findings illustrated in Section 7.3.1.4 b) above, as of today the major part of mobile customers in Italy use 3G networks. The Commission acknowledges that 4G services are likely to have a growing relevance in the Italian mobile market in the coming years. This uptake of the importance of 4G appears to be gradual. In this Section the Commission will assess the Parties' claims concerning WIND's ability and incentive to develop its 4G network in the coming years absent the Transaction.

(683) With respect to the Parties' arguments concerning WIND's position absent the Transaction, the Commission will carry its assessment under the same framework applied to H3G, illustrated in recitals (584) to (589) above. In particular, the Commission notes that, also with respect to WIND, the Parties are not raising a "failing firm defence" within the meaning of paragraphs 89-91 of the Horizontal Merger Guidelines, that is, they do not argue that absent the Transaction WIND would exit the market, and that there would be no less anti-competitive alternative to the Transaction.[652] Rather, as for H3G, they claim that it can be reasonably predicted that, absent the Transaction, the competitive constraint exercised by WIND on the market would decline substantially.

(684) In carrying out is assessment, the Commission considers that the relevant comparison scenario for WIND should be (i) the pre-merger operational and financial performance of WIND; (ii) WIND's best estimates of the future performance of its telecommunication business in the absence of the Transaction, as captured in its pre-merger forward-looking projections, and (iii) possible alternative steps that could reasonably have been taken by WIND to maintain or strengthen the competitiveness of its business, other than the planned JV.

(685) The Commission has investigated whether, absent the Transaction, WIND would continue exerting the important competitive constraint in the retail market for mobile telecommunications services in Italy detailed in Section 7.3.2.2. a) of this Decision, in particular whether WIND would have the ability and incentive to continue investing in the development of its network in order to be able to compete. To

649 The "debt overhang" issue identifies a situation where the value of debt is so high that profits would mostly be devoted to servicing debt, leaving to equity holders only a limited upside from any investment, thereby significantly reducing their incentive to invest.

650 The net debt, considering an intercompany loan of EUR 1.1 billion to WIND's shareholder, would be reduced to EUR 8.8 billion and result equal to 5.3 times its EBITDA. See page 17 of WIND presentation "Positive Momentum - Full Year 2015 Results" of 18 February 2016 (on https://www.windgroup.it/fileadmin/reports/results_presentations/2016/it/WIND_FY_2015.pdf).

651 Reply to the Article 6(1)(c) Decision, paragraphs from 90 to 97.

652 See, for example, in the Reply to the Article 6(1)(c) decision, paragraph (24): "The Parties are not claiming that WIND will be unable to compete or will be marginalised".

perform this assessment, the Commission has considered the Parties' internal documents, and has assessed WIND's standalone financial position and planned network investments for the next years. The Commission's findings are set out in the following recitals.

(686) The Commission demonstrates below that WIND would significantly decrease its debt (from recital (688) to (702)) and improve its network (from recital (706) to (728)) in the next years resulting in an improvement of several financial ratios. Based on its standalone plan, those improvements will be realised by relying only on WIND's business performance (from recital (729) to (731)). WIND will continue gaining market shares and, thus, it will not be marginalised (from recital (732) to (746)). Finally, the market investigation indicates that VimpelCom would likely support WIND in case it would be needed (from recital (747) to (769)).

(687) In addition the Commission also asked MNOs and MVNOs during its the market investigation to assess how the competitive position of WIND would evolve, with respect in the next two to three years absent the Transaction in the retail market for mobile telecommunications services to private customers in Italy. Most of the respondents do not expect that WIND's competitive position would change in the next years absent the Transaction.[653]

WIND has recently refinanced its debt and is expected to decrease its debt over the next years on a stand-alone basis

(688) The Commission considers that, taking into account its current profitability and its business plans, WIND would have the ability and incentives to reduce its debt in the next two to three years and further.

(689) Regarding WIND's debt, Figure 57 above shows the solid FCF delivered by WIND in the past. The Commission considers that in recent years WIND’s situation has improved in a number of aspects, and that in the next years WIND should be able to reduce the amount of its financial liabilities. Firstly, the gross debt has been reduced in 2014-2015 as a result of a number of measures including sale of assets (the sale of towers), two waves of debt renegotiation and the repayment of an intercompany loan from its shareholder for EUR 500 million.[654] This debt renegotiation generated a significant reduction of related costs for annual interest payments which dropped from 9.3% to 5.6%[655] (a saving of approximately EUR 340 million).[656] Secondly, the

653 Responses to Questionnaire Q1 to MVNOs of 10 February 2016, question 71.
Responses to Questionnaire Q4 to MNOs of 8 February 2016, question 51.

654 See WIND's submission, "WIND 2014 Refinancing Overview" of 28 April 2016 [Filename CO-#26761428-v1-WIND_2014_refinancing.pdf], [ID 1306].

655 Parties' Reply to the Article 6(1)(c) Decision, paragraph 71.

656 This was publicly estimated to approximately EUR 340 million ("Il 2015 ha visto WIND completare il processo di rifinanziamento avviato nel 2014 che porta ad un risparmio complessivo annualizzato sugli interessi di circa 340 milioni di euro", see press release of 17 February 2016 on http://www.windgroup.it/it/media/comunicati/comunicato/article/un-2015-positivo-per-wind/?no_cache=1&cHash=504345938eaf1ac0e0f77846fd651c00 [ID 580]). Based on published figures (WIND presentation "Positive Momentum - Full Year 2015 Results" February 18th, 2016 on https://www.windgroup.it/fileadmin/reports/results_presentations/2016/it/WIND_FY_2015.pdf) the overall reduction in financial expenses reported on page 16 of the presentation appears even more impressive (from EUR 1.385 billion in 2014 to EUR 526 million in 2015, which is even lower than the figure of EUR 633 million included in Annexes 27 and 28.5 to the Form CO. See also, Deutsche Bank 19th Annual European Leveraged Finance Conference, 3 June 2015, available at: http://www.windgroup.it/fileadmin/reports/presentations/2015/it/DB_-_European_HY_conf_London_2015.pdf

"wall of maturities" has been postponed by 3-4 years (from 2017 to 2020-2021). Thirdly, a part of debt previously posted in "delicate" instruments (high-yield notes and PIK notes), has been converted in less risky types of loans, indicating a positive appraisal by investors of WIND overall situation. This finding is also supported by the analysis of net financial expenses and cost of debt financing between 2010 and 2015, with the ratio between net financial expense and net indebtedness decreasing to 7.2% in 2015.[657]

(690) The debt refinancing and the significant saving in annual interest expenses had a positive impact on WIND's financial results and on the expectation on WIND's debt repayment. In addition, the interest saving had a positive impact on WIND's profitability which, in turn, is expected to significantly improve over the next years with WIND reaching a net profit of EUR […] in 2016 and of EUR […] by 2019. [658]

(691) According to WIND's own standalone business plan[659] by 2019 there would be a reduction of the debt from EUR […] to EUR […] (corresponding to a reduction of the ratio between debt and EBITDA to […]). In terms of net financial indebtedness, the ratio would be even lower with a reduction to 2019 from EUR […] to EUR […] (corresponding to a reduction of the ratio between net financial indebtedness and EBITDA to […]).[660] Table 21 below provides a representation of the development of the two ratios based on data provided by WIND. [661]

Table 21: Debt / EBITDA evolution based on WIND's estimates

Total Debt / EBITDA	**2014**	**2015**	**2016**	**2017**	**2018**	**2019**
Total Debt	[…]	[…]	[…]	[…]	[…]	[…]
Net Financial Indebtedness / EBITDA	[…]	[…]	[…]	[…]	[…]	[…]
Net Financial Indebtedness	[…]	[…]	[…]	[…]	[…]	[…]
EBITDA	[…]	[…]	[…]	[…]	[…]	[…]
Total Debt / EBITDA	[…]	[…]	[…]	[…]	[…]	[…]

Source: WIND's internal document, […]

(692) The Parties in their Reply to the Article 6(1)(c) Decision claim that in assessing the impact of WIND's, the Commission fails to take into account WIND's financial position in relation to its competitors and other MNOs.[662] In their submission, the Parties provide a sample of four telecom operators with a net-debt to EBITDA ratio between 2.4x and 4.7x. Based on Table 21 above, the Commission considers that

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657 Fastweb's submission, "WIND/H3G: The Counterfactual to the Proposed Transaction", RBB Economics, 19 May 2016, Figure 3 [ID 1581].

658 VimpelCom internal documents, […].

659 VimpelCom internal document, […].

660 As already highlighted, EUR 1.1 billion intercompany loan should be deducted from this figure, reducing absolute figure and ratio to EBITDA correspondingly.

661 The calculation is based on Annexes 27 and 28.5 which provide WIND's plan relating to the reduction of its debt on a standalone basis, see Form CO paragraph 502. Annexes 27 and 28.5 include provisional results for 2015. The Commission in the RFI n.42 and RFI n.59 asked for updated plans. WIND in its reply to RFI n.58, question 2, responded that it "*has not developed any business plan subsequent to the one provided to the Commission in Annex 27*".

662 Parties' Reply to the Article 6(1)(c) Decision, paragraph 72.

WIND's financial position is expected to improve and be in line with other telecom peers since its ratios of total debt to EBITDA and net financial indebtedness to EBITDA by 2019 are expected to decrease to […] and […].

(693) The relevance of the refinancing is supported also by statement made by WIND and VimpelCom's management to the public, by VimpelCom and WIND's internal documents and by the reactions of analysts in the market.

(694) In presenting VimpelCom's fourth quarter results of 2013, VimpelCom CEO stated that "*we have a **very good company** in Italy. We have a **very strong management team** there. We have outperformed the market and competitors for years, as you all know by now, with the refinancing we did. We also strengthened our position financially, not only operationally. So what we've done in Italy now is just to make sure that we have a position that is strong enough to stand on our own feet and compete on a standalone basis if necessary. So that's the starting point. […] And for that reason, we have right now a strong company in Italy, we have a **strong financial position after the refinancing***" (emphasis added).[663]

(695) In 2014, it was considered that the "*Italian business is **strong and fully self-financing**.[…]WIND refinanced approximately EUR 8 billion of debt in 2014, delivering substantial interest savings and debt maturity improvement. An initial refinancing in April was followed by a further refinancing in July, which together achieved approximately **USD 0.4 billion in annual interest savings**. WIND's improved capital structure and enhanced cash flow are expected to facilitate a deleveraging trajectory in the medium term*" (emphasis added).[664] VimpelCom's CFO in relation to WIND's 4G coverage gap with WIND and Vodafone considered that "*we feel good about our technology, it will open strategy in Italy and we think we invest enough to be able to keep our position an maintain a strong competitor*".[665]

(696) Discussing internally WIND's 2014 refinancing, […].[666]

(697) VimpelCom's Group Treasury Director, commenting the first round of WIND's refinancing stated that "[…]".

(698) In an investor presentation, DB considered that "[…]" (emphasis added). In the same presentation […].[667] […]".[668]

(699) The Parties in the Form CO and in the Reply to the Article 6(1)(c) Decision further consider that WIND's high debt to equity ratio should be considered as an indication of WIND's overall financial health.[669]

(700) In order to understand the relevance of the debt to equity ratio, the Commission asked to WIND whether this ratio has been used in any of WIND's financing

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663 VimpelCom's (VIP) CEO Jo Lunder on Q4 2013 Results - Earnings Call Transcript, http://seekingalpha.com/article/2072463-vimpelcoms-ceo-discusses-q4-2013-results-earnings-call-transcript?all=true&find=VimpelCom%27s%2B%28VIP%29%2B%2Bq4%2B2013 [ID 2554].

664 VimpelCom's Annual report 2014, available at: http://www.vimpelcom.com/Global/Files/Reports/2014%20Annual%20Report.pdf [ID 2578].

665 VimpelCom's (VIP) CEO Jo Lunder on Q4 2014 Results - Earnings Call Transcript, http://seekingalpha.com/article/2950586-vimpelcoms-vip-ceo-jo-lunder-on-q4-2014-results-earnings-call-transcript?all=true&find=VimpelCom%27s%2B%28VIP%29%2B%2Bq4%2B2014 [ID 2554].

666 VimpelCom internal document, […].

667 VimpelCom internal document, […].

668 WIND internal document, […].

669 Parties' Reply to the Article 6(1)(c) decision, paragraph 71. See also, Section 6, Form CO, paragraphs from 479 to 486.

agreements or in their negotiations and to provide any WIND's or VimpelCom's benchmark analysis using the debt/equity ratio with other Telecom peers. WIND replied that debt-to-equity ratios are not referred to in the covenants contained in the financing agreements and it did not provide any document using the debt/equity ratio with other Telecom peers. [670]

(701) The Commission has doubts on the reliability to use the debt to equity as an indication of WIND's overall financial since, first, this ratio has not been used by WIND and VimpelCom internally as indicative of WIND's financial health and second, this ratio is based on an accounting measure of equity that may substantially differ from equity market value. In any case, the Commission analysed how the ratio would evolve over the next years based on WIND's standalone business plan.

Figure 59: Evolution of WIND's financial ratios over the next years

[…]

Source: Commission's calculations based on […]

(702) Figure 59 above shows that, due to its positive operational performance, WIND's financial performance is expected to significantly improve. The debt to equity ratio by 2019 is expected to decrease from […] to less than […]. This is a result both of a reduction in the value of debt (from EUR […] in 2015 to EUR […] in 2019), and an increase in the book value of equity (from EUR […] in 2015 to approximately EUR […] in 2019 – an increase of […]). Similarly, also the debt to revenue ratio is expected to decrease to […] slightly above the results of the peers provided by the Parties in the Reply to the Article 6(1)(c) Decision.

WIND's leverage is partially the result of a significant dividend paid in 2014

(703) The Commission also notes that […].

(704) The Parties in their Reply to the Article 6(1)(c) Decision claim […].[671][…].

(705) In 2014 […][672],[…].[673][…].[674][…].

WIND has adopted a "fast follower" strategy, and its network quality gap is expected to reduce over the next years

(706) The Commission considers that WIND's network assets would allow it to continue being an important competitive constraint on the market for the foreseeable future (including for the next two to three years).

(707) WIND is expected to significantly invest in the next years with a mobile CAPEX of EUR […] in the period 2016-2018.[675] In relation to 4G, the Commission further considers that WIND already made a significant part of the investments necessary to rollout an efficient 4G network by investing over 1 billion EUR to acquire its 4G spectrum in 2011. In fact, the investment realised to acquire the spectrum is higher than the overall WIND's 4G CAPEX investment realised and planned in the years

670 Reply to the Commission RFI n.42 of 3 May 2016, questions 5.b and 6 [ID 1307].
671 Parties' Reply to the Article 6(1)(c) decision, paragraph 69.
672 See WIND's reply to RFI 55 of 3 May 2016, Annex 1.1, page 53 [ID 1479].
673 See WIND's reply to RFI 55 of 3 May 2016, question 1. [ID 1478].
674 […].
675 Parties' response to the Article 6(1)(c) decision, Table 4.

2011-2019 to cover […]% of the Italian population with 4G and […]% of the population with LTE-advanced which provide superior speed. [676]

(708) In addition, WIND itself considers that, through their investment in the 2011 auction, it "is at the same level as Vodafone and Telecom Italia in terms of spectrum resources" and moreover "WIND will be the only operator in Italy able to deploy LTE maximum performances ([…]) having 20MHz@2600MHz".[677]

(709) In the market investigation the Commission also asked MNOs, MVNOs and suppliers to assess whether WIND would have the incentive and the ability to invest in their mobile network. Most of the respondents to the market investigation consider that WIND, absent the Transaction, would have the incentive and the ability to invest in its 4G network. In particular, Fastweb considers that WIND has already the necessary spectrum to complete its 4G network and that its gap with TIM and Vodafone is due to its "technology follower" strategy where WIND upgrades sites only when customer demand increases or site traffic has reached saturation.[678]

(710) The documentary evidence further shows that WIND is a "technology follower" in relation to its investment in the network, implying that it undertakes the necessary investment when deemed necessary by market conditions. This strategy allows WIND to act as a significant competition constraint on its rivals.

(711) In fact, regarding the "level of investment deemed necessary" to maintain an appropriate network coverage, it is useful to mention the views expressed by WIND to market investors[679] in 2014 "*that in the* ***largely prepaid, non-subsidised Italian mobile market, 4G/LTE is not yet a significant differentiator****. At this stage,* ***Wind views the 4G race by incumbents (TIM and Vodafone) as a marketing exercise, not as a major driver of customer behaviour****. Wind currently has a mix of investments in HSPA+ and LTE (utilising its 800MHz spectrum), focused on delivering the best average speeds to subscribers rather than the maximum speeds achievable on 4G/LTE. [...] Wind does not feel under pressure to accelerate its 4G rollout and expects significant equipment (capex) savings by delaying expenditure until 4G becomes a significant selling factor in Italy [...]* ***Wind is prepared for a 4G rollout when justified by consumer demand***" (emphasis added).

(712) […].

Figure 60: […]

[…]

Source: VimpelCom\s internal document, […]

(713) The document clearly indicates […][680][…]. [681]

(714) In another document […].[682]

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676 WIND invested in the period 2012-2019 approximately EUR 600 million in 4G. See, WIND's reply to RFI 62, question 1 [ID 1709].

677 VimpelCom internal document, […].

678 Responses to Questionnaire Q1 to MVNOs of 8 February 2016, question 90; Responses to Questionnaire Q4 to MNOs of 8 February 2016, question 72; Responses to Questionnaire Q3 to Suppliers of 8 February 2016, question 13.

679 HSBC Italian Telecoms "Feedback from our Italian field trip: supportive of consolidation case", June 2015" [Annex 13.66 to the Form CO].

680 VimpelCom internal documents, […].

681 VimpelCom internal document, […].

682 […]. VimpelCom internal document, […]

(715) In light of its "fast follower" approach, in a document sent to investors, WIND ensured that its business plan […].[683]

(716) In another internal document […].[684] This evidence illustrates both the strong operational performance of WIND, and its willingness to keep adopting an effective rollout strategy.

(717) This approach is further confirmed by even more recent internal documents from 2016. […].[685][…].

(718) Based on the group strategy, WIND network investments follow demand and its customers' data needs in the market. For this purpose in May 2015, WIND realised a […][686][…]. [687]

(719) In order to evaluate market demand, two main inputs are analysed: (i) device penetration; and (ii) data traffic by technology. In relation to device penetration, the report shows that, as of March 2015, the main handsets of WIND's customer base are […], as shown in Figure 61 below. […] device penetration is expected to increase over the next years and to reach […]% by […].

Figure 61: WIND's device penetration […]

[…]

Source: WIND's internal document, […].

(720) […]. [688]

(721) On the basis of its "fast follower strategy" and the expected growth in 4G data demand, the network coverage gap between WIND and the other MNOs active in Italy is expected to reduce over the next years. […][689]. […]. […][690] […][691],[…].

(722) […], [692] […]. This indicates that WIND would be able to invest in additional LTE coverage if this were to become critical for its commercial performance. Section 7.5.4 includes a more in-depth analysis of the possible evolution of the network quality gap between WIND and the other MNOs active in Italy.

(723) […].[693]

(724) The Commission considers that, since WIND's overall 4G investment to achieve population coverages respectively of […]% for 4G and […]% for 4G-advanced by 2019 is of approximately EUR […], the additional investment to further improve LTE coverage should not be prohibitive and likely lower than the investment already planned to cover […]% of the population. In addition, as discussed in the recital above, WIND planned to reach an additional […]% 4G coverage in 2016 by

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683 VimpelCom internal document, […]

684 VimpelCom internal document, […]

685 VimpelCom internal document, […]

686 VimpelCom internal document, […]

687 […]. Please see, VimpelCom internal document, […]

688 VimpelCom internal document, […]

689 Please note that WIND indoor coverage is based on Parties' submission. TIM's and Vodafone's future coverages are based on Parties' estimates. See footnote 280, Form CO. "Future indoor coverage values are dependent on TIM and Vodafone’s strategic plans.H3G […] has estimated that, in 2018, indoor coverage for TIM and Vodafone will respectively be […]% and […]%.

690 VimpelCom internal document, […]

691 VimpelCom internal document, […]

692 […] , see VimpelCom internal document, […]

693 Reply to the Commission RFI n.55 of 3 May 2016, question 9 [ID 1478].

investing additional EUR […], indicating that the cost of increasing coverage from […]% to […]% of the Italian population is not excessive. The additional EUR […] corresponds to […]% of WIND's 2016 planned mobile spent and approximately […]% of its 2016 EBITDA.

WIND's 4G planned investment follow its customers' demand

(725) WIND's fast follower approach is further confirmed by analysing the data on WIND's mobile Capex.

(726) Figure 62 below shows that […].[694]

Figure 62: WIND's mobile CAPEX spent […]

[…]

Source: Commission's calculations based on WIND's Reply […]

(727) […].

(728) As explained above at recitals (619) to (620), similar to H3G, should WIND aim to accelerate its 4G network coverage and reduce its network capital expenditures, the available evidence indicates that it would be able to rely on alternatives to the Transaction. WIND may for instance consider entering into NSAs with H3G.[695]

WIND would be able to finance its network investments in the next years

(729) Based on the evidence described in the recitals above, the Commission considers that WIND is able to close its network gap with other MNOs active in Italy and that WIND's business performance in the recent years has been positive. In addition, the evidence indicates that WIND's debt is sustainable, and expected to decrease over the next years.

(730) […].

Figure 63: […]

[…]

Source: Commission's calculations based on […]

(731) […]. […][696].

WIND's business plans do not suggest that it is likely to be marginalised in the next years

(732) WIND's standalone business plan indicate that, absent the Transaction, WIND would achieve a positive financial performance over the next years, reducing its debt whilst at the same time being able to finance the investment required to expand its 4G network in line with the evolution of consumers' demand in the market.

(733) The fact that WIND would remain as a viable competitor in the Italian market is further shown by the analysis of WIND's standalone plans used to calculate the synergies of the Transaction.

(734) […].[697]

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694 VimpelCom internal document, […]

695 For the definition of NSAs, see recital (104) above.

696 […].

697 […].

(735) Figure 64 below shows how H3G's and WIND's mobile revenues are expected to […].

Figure 64: […]

[…]

Source: Commission's calculations based on […]

(736) The fact the number of subscribers SIM, the ARPU and the turnover assumed by the Parties is expected to growth at the same level in both stand-alone and combined scenario, indicates that, absent the Transaction, the Parties are not expecting to be marginalised. Moreover, their ability to gain market share would not change with the Transaction. WIND and H3G would, absent the Transaction, be able to gain market shares and together account for […] of mobile subscribers. The fact that, by combining the two companies, no beneficial effect is expected in terms of market shares gain, indicate that under this scenario the Parties' competitiveness would be the same with or without the Transaction.

(737) In Scenario 2, the synergy plan assumes that, absent the Transaction, there would be an increasing gap in network quality between H3G and WIND, on one hand, and TIM and Vodafone on the other. In this scenario, the Parties' standalone share of the market is expected to be flat, also suggesting no significant reduction in the competitive pressure exercised by the Parties.

(738) Under this second senario, the JV's market share is expected to be […] higher respect to the sum of WIND's and H3G's standalone.[698] It should be highlighted that in this scenario, the JV's net debt to EBITDA would be at […],[…] higher respect to the one expected by the Parties in Scenario 1[699] and only […]lower than the debt to EBITDA ratio of WIND's standalone.

(739) The Parties consider that the two scenarios are based on different assumptions regarding the economic development of the Italian market and that no decision was formally adopted by the Parties in favour of either Scenario 1 or Scenario 2.[700] The Commission considers that since the Parties refer to Scenario 1 in order to calculate the efficiencies of the Transaction[701] and other financial benefit of the JV, such as the reduction in the net debt to EBITDA ratio[702], this is the most likely scenario considered by the Parties absent the Transaction. This is confirmed by the fact that both VimpelCom and H3G referred to the cost synergies implied by Scenario 1 when announcing the Transaction in August 2015, with no mention of the revenue synergies implied by Scenario 2[703]. In September 2015, […][704]. On this basis, the Commission considered that the Parties' own synergy assessment suggest that the competitiveness of WIND would not decline significantly in the future, absent the merger.

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698 Annex 73 to the Form CO, Slides 39 and 44.

699 Annex 37 to the Form CO, pages 11 and 14.

700 Reply to the Commission RFI n.28 of 4 April 2016, questions 1 and 3 [ID 1158].

701 See Form CO, Section 9, Table 1.

702 See Form CO, Section 6, Table 60 and Annex 24 to the Form CO.

703 See H3G's press release, available at: http://www.tre.it/Assets/comunicato/245/C_2_comunicato_711_allegato.pdf
See also, VimpelCom's press release, available at: http://www.vimpelcom.com/Media-center/Press-releases/2015/CK-Hutchison-and-VimpelCom-to-form-joint-venture-of-their-telecoms-businesses-in-Italy/

704 VimpelCom internal document, […].

WIND has even more ambitious business plans respect to the one presented in the Form CO

(740) The Commission notes that VimpelCom in December 2014 […].[705][…].

(741) […].

(742) […].[706]

(743) After its approval in December 2014, the evidence also indicates that WIND was actively involved in implementing the plan.

(744) […].[707] […]. Thus indicating that WIND would be able to compete in the mobile market and in the digital segment absent the Transaction and with the 4G coverages presented in the plan.[708]

(745) […].[709] […].[710][…].[711]

(746) […].[712]

VimpelCom is likely to face incentives to support WIND in case of a risk of marginalisation

(747) As regards capital injection from WIND's shareholder, the Parties claim that VimpelCom has limited or no incentives to provide any further financial support to WIND since, in case the investment is unsuccessful, VimpelCom would absorb alone all the losses while, conversely, in case the investment is successful, the higher revenues would be used to service interest payment and reduce WIND's leverage. As regards further debt financing, according to the Parties, covenants in WIND's current debt facility constrain its ability to issue additional debt securities if its Net Debt is four times greater than its EBITDA.

(748) The Commission considers that, based on the evidence reviewed in the Sections above, WIND does not need any additional financial support from VimpelCom in order to remain a competitive constraint in the Italian mobile market, exercising a significant competitive constraint on the other market players.

(749) Moreover, based on the evidence collected during its investigation, the Commission does not agree with the claim that WIND's shareholders would have limited or no incentives to financially support WIND if this was needed in order to maintain its competitiveness in the market.

(750) The Commission notes that at the outset that VimpelCom is perceived by rating agencies as having a sufficient strategic interest in WIND to be likely to provide support if needed. On this basis, rating agencies' reports assume VimpelCom support and increase WIND's ratings accordingly. This appraisal is possibly influenced by a number of elements, including the capital injection of EUR 500 million in 2014 (in the framework of debt refinancing) as well as the perception that despite any possible ring-fencing, financial support by VimpelCom is likely in case WIND experienced financial difficulties (including a possible intervention by VimpelCom's largest

705 VimpelCom internal document, […].
706 VimpelCom internal documents, […].
707 VimpelCom internal document, […].
708 VimpelCom internal document, […].
709 VimpelCom internal documents, […].
710 VimpelCom internal documents, […].
711 VimpelCom internal document, […].
712 WIND internal document, […].

shareholder with 47.9% of the capital, Letter One[713]) is seen as a realistic possibility. In April 2015, LetterOne announced the launch of its subsidiary LetterOne Technology ("L1T"). L1T has access to USD 16 billion fund and is mainly targeting investment in existing mobile telecommunication businesses.[714] Mr Fridman is also the Chairman of the Supervisory Board of Alfa Group Consortium, one of Russia's largest privately owned financial-industrial conglomerates which owns several financial services and investment companies including the Alfa-Bank. [715] Additional documentary evidence suggests that […].[716]

(751) […].[717] […].[718] […].[719] […].[720] […].[721]

(752) […]. [722]

(753) […].

(754) These documents show that at the time VimpelCom had the incentive to refinance WIND, […]. [723]

(755) […].[724][…].

(756) The documentary evidence submitted by VimpelCom […]..[725][…].

(757) […].[726]

(758) […].[727]

(759) Ultimately, VimpelCom did inject some capital as part of the refinancing of WIND in 2014/2015, even before the finalisation of the Transaction […].[728]

(760) […].[729] […].[730]

(761) The Commission considers that the documentary evidence on the review and implementation of financing options in relation to WIND in 2013-2015 does not support the "debt overhang" claims made by the Parties. The Commission notes in particular that VimpelCom injected capital into WIND as part of the refinancing of its debt, which directly contradicts the "debt overhang" claim. […]..

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713 LetterOne is a private-equity fund founded in 2013 and "*assets under management at 31 December 2014 amounted to approximately USD 25 billion*" (see http://www.letterone.com/about-us/our-story). LetterOne is part of the Alfa Group Consortium, owned by a group of Russian investors led by Mr Mikhail Fridman who is part of the Supervisory Board of VimpelCom). The CEO of LetterOne Technology ("L1T") is also the President of the Supervisory Board of VimpelCom.

714 LetterOne Technology launches in London, 6 April 2015, available at: http://www.letterone.com/media/news/2015/letterone-technology-launches-in-london

715 See http://www.alfagroup.org/about-us/supervisory-board/member/mikhail-fridman/.

716 VimpelCom internal documents, […].

717 VimpelCom internal documents, […].

718 VimpelCom internal documents, […].

719 Hutchison internal documents, […].

720 Hutchison internal documents, […].

721 VimpelCom internal documents, […].

722 VimpelCom internal documents, […].

723 VimpelCom internal documents, […].

724 WIND internal document, […].

725 VimpelCom internal documents, […].

726 VimpelCom internal documents, […].

727 VimpelCom internal document, […].

728 VimpelCom internal document, […].

729 VimpelCom internal document, […].

730 H3G internal document, […].

(762) VimpelCom's willingness and incentives to support WIND are further illustrated by the fact that, […].[731][…].

(763) […].[732] This evidence also indicates that that absent the Transaction VimpelCom would have faced incentives to repair WIND's capital structure […].

(764) WIND's strategic importance to VimpelCom is further proven by an email from […].[733]

(765) […].[734]

(766) […]..[735] […]. [736]

(767) […]..[737]

(768) WIND's strategic relevance to VimpelCom is additionally reinforced by its own statements over the years where it constantly considers that "[…]".[738]

(769) In light of the above, the Commission considers that WIND's shareholders would have the incentives to financially support WIND if this was needed in order to maintain its competitiveness in the market.

iii. Conclusion

(770) In the light of the above, the Commission concludes that, absent the Transaction, WIND is likely to have the ability and the incentive to continue exerting important competitive constraint in the market for retail mobile telecommunications services in Italy.

c) Conclusion on the competitive constraint exerted by WIND

(771) In light of its findings illustrated in the previous Sections, the Commission concludes that WIND has exerted an important competitive constraint on the Italian retail mobile market before the Transaction, and would continue do so absent the Transaction.

7.3.2.3. Closeness of competition

a) Parties' view

(772) The Parties argue that H3G and WIND are not close competitors for the following reasons: (i) the applicable legal standard requires, according to the Parties, a significantly higher degree of substitutability between the products of the Parties than between the ones of the Parties and their competitors, (ii) the diversion ratios between the Parties do not indicate any particular closeness, (iii) the Parties pursue different business strategies and (iv) lower quality services cannot be considered, according to the Parties, as an indicator of closeness.

(773) The Parties claim that the applicable legal standard for assessing closeness of competition requires that the substitutability between the merging parties' products is higher than between their products and those supplied by the remaining

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731 VimpelCom internal documents, […].
732 VimpelCom internal document, […].
733 H3G internal document, […].
734 VimpelCom internal document, […].
735 VimpelCom internal document, […].
736 VimpelCom internal document, […].
737 VimpelCom internal document, […].
738 VimpelCom internal documents, […].

competitors.[739] Otherwise, according to the Parties, a significant price increase by the JV would not be profitable as customers would be expected to switch to the substitutes offered by competing firms. The Parties argue that such standard is not met as the Parties' products are even less close substitutes to each other than to the products of their competitors.

(774) The Parties claim that the diversion ratios between H3G and WIND show that the customers of H3G are not particularly inclined to switch to WIND and vice versa.[740] To support this view, the Parties make several arguments concerning the use of number portability data as a proxy for diversion ratio and conclude, based on switching data by AGCOM's MNP database, that Vodafone is the closest competitor to H3G and WIND on the overall retail market.[741]

(775) The Parties also highlight the differences in their business strategies, in terms of targeted segment, provided technology, handset subsidies, distribution channels or network, which illustrate the absence of closeness of competition.[742]

(776) Finally, the Parties argue that the fact that they may have a reputation for providing lower-quality services compared to the other MNOs should not be perceived as an element of closeness of competition, since this is not, according to them, a feature sought by customers.[743] Furthermore, the Parties do not consider themselves as being more aggressive on price and quality than other MNOs in Italy.[744]

(777) In the Reply to the Article 6(1)(c) Decision, the Parties reiterate their claims concerning closeness of competition. In particular, they argue that the responses to the market investigation, the diversion ratios, and the internal documents do not support a finding of closeness of competition. To the contrary, they assert that the evidence provided shows a lack of closeness of competition between WIND and H3G.

b) Commission's assessment

(778) As explained in recitals (235) and (420), under the Merger Regulation and paragraphs 24 and 25 of the Horizontal Merger Guidelines, the elimination of competition between two merging firms may give rise to a significant impediment of effective competition resulting from horizontal non-coordinated effects in oligopolistic markets, in particular if they feature a limited number of players and particularly high barriers to entry, where the merging firms exert an important competitive constraint on each other and on the remaining competitors.

(779) The factors listed in paragraphs 27 onwards of the Horizontal Merger Guidelines may influence whether or not significant horizontal non-coordinated effects are likely to result from a merger, but not all of these factors need to be present to make significant non-coordinated effects likely and the list is not exhaustive.[745] The presence of these factors may though have an impact on the degree of horizontal non-coordinated effects arising from the transaction.

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739 Form CO, Section 6, paragraphs 700 and 701.
740 Form CO, Section 6, paragraph 720.
741 Form CO, Section 6, paragraphs 715 and 720.
742 Form CO, Section 6, paragraph 728.
743 Form CO, Section 6, paragraph 731.
744 Form CO, Section 6, paragraph 733.
745 Horizontal Merger Guidelines, paragraph 26.

(780) In this context, the Horizontal Merger Guidelines lists closeness as one of the potentially relevant factors for the analysis of the likelihood of non-coordinated effects of a concentration.[746]

(781) The Horizontal Merger Guidelines clearly provide for a relative approach to the question of closeness of competition. According to paragraph 28 of the Horizontal Merger Guidelines, the higher the degree of substitutability between the merging firms' products, the more likely it is that the merging firms will raise prices significantly. In this regard, the Commission needs to verify whether the rivalry between the parties has been an important source of competition on the market.[747] The same concept is set out in paragraph 17 of the Horizontal Merger Guidelines, according to which a merger may raise competition concerns based on "*the extent to which the products of the merging parties are close substitutes*". Both wordings set out a positive correlation between the degree of substitutability between the products of the merging parties and the likelihood and seriousness of the competition concerns raised by the proposed merger.

(782) It follows that if the merging parties' products are each other's closest substitutes, the competition concerns may be particularly strong. If a substantial number of customers view the products offered by the parties as their first and second choices then this can be relevant and lead to significant price increases.[748]

(783) However, it is not required that the merging parties' products are each other's closest substitutes for competition concerns to be raised. That is, it is not required that the majority of the customers having one of the parties as their first best option, consider the other merging party as the second best option. The fact that for certain customers substitutability is lower between the products of the merging parties than between each of the merging parties' products and those supplied by other competitors, is not sufficient, in itself, to discount the possibility that in an oligopolistic market a transaction can give rise to a significant impediment to effective competition in the internal market.[749]

(784) In the present case, the Commission has assessed the closeness of competition between the Parties on the basis of the results of the market investigation, as well as of the internal documents that the Parties have submitted to the Commission. This assessment is carried out in recital (786) and following below.

(785) Furthermore, the Horizontal Merger Guidelines indicate that diversion ratios are one of the methods that can be used to assess the closeness of competition between the merging parties.[750] The Commission has applied this type of analysis in previous merger cases in the telecommunications sector.[751] The Commission's assessment of diversion ratios in the present cases is presented in (797) and following below.

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746 Horizontal Merger Guidelines, paragraphs 26 and 28-30.

747 Horizontal Merger Guidelines, paragraph 28.

748 Horizontal Merger Guidelines, paragraph 28.

749 Commission decision of 12 December 2012 in case M.6497 – *Hutchison 3G Austria/Orange Austria*, recital 176.

750 Horizontal Merger Guidelines, paragraph 29.

751 Commission decision of 12 December 2012 in case M.6497 – *Hutchison 3G Austria/Orange Austria*, recital 176, Commission decision of 2 July 2014 in case M.7018 – *Telefónica Deutschland/E-Plus*, recitals 273 and following.

i. Results of the market investigation and Parties' internal documents

(786) When asked to identify the closest competitor for each of H3G and WIND, respondents to the market investigation indicated that the Parties are each other's closest competitor.

(787) Most respondents among MVNOs suggested that H3G is WIND's closest competitor in the overall retail market for mobile telecommunications services, as well as with regard to the prepaid, postpaid and data-only segments specifically, and with respect to the private segment of the market. Similarly, MVNOs also indicated that H3G's closest competitor in the overall market and each of those segments is WIND. Respondents explained their statements in light of the Parties' similar market positions, mobile plans and prices and offerings.[752] One respondent explained that "*for retail mobile offers, Wind and H3G's are generally each other's closest competitors, and they have generally followed similar paths in the past years in terms of plans and prices, though H3G generally is more aggressive on pricing. For data-only offers with 2-5GB for example, Wind has generally offered the second lowest prices on the market, following H3G* […] *Wind also lowered its prices on average for these offers between 2014 and 2015. Wind is also particularly strong in the residential and prepaid market segments, where its market shares have been increasing in the past years*."[753]

(788) MNOs' answers to the same question varied. TIM considered that there is no clear indication that any one MNO is the closest competitor to a specific MNO.[754] Business customers answering to the market investigation also gave more mixed views on closeness of competition between the Parties. While some respondents indicated that H3G and WIND are each other's closest competitor, others indicated one or both of the other MNOs.[755]

(789) Replies to other queries of the market investigation also suggest that the Parties are similar players, particularly in terms of market behaviour, position and commercial offerings. For instance, when asked to indicate what had been the main changes and innovations in the Italian retail market for mobile telecommunications services, MVNOs responding to the market investigation mentioned, among others, the launch of innovative tariff plans by H3G and WIND.[756]

(790) MVNOs also indicated that in the past three years, H3G and WIND were the most aggressive mobile providers on the retail market in terms of pricing, with respect to the prepaid and the postpaid segment, as well as with respect to data-only services. When asked to rank the MNOs' price aggressiveness on a one to five point scale, MVNOs gave the highest scores to H3G, with WIND following or on par with H3G, generally in front of Vodafone and TIM.[757] Fastweb explained its evaluation by stating that H3G's prices were "clearly the lowest in every year considered, even in presence of similar voice and traffic allowances, while Wind's were almost always

[752] See replies to Questionnaire Q1 to MVNOs of 8 February 2016, question 66.
[753] PosteMobile's response to Questionnaire Q1 to MVNOs of 8 February 2016, question 70.1, [ID 835].
[754] See response of TIM to Questionnaire Q4 to MNOs of 8 February 2016, question 46, [ID 814].
[755] See responses to Questionnaire Q2 to business customers of 8 February 2016, question 18.
[756] See responses to Questionnaire Q1 to MVNOs of 8 February 2016, question 62.
[757] See responses to Questionnaire Q1 to MVNOs of 8 February 2016, question 64.

the second lowest".[758] Similarly, TIM also indicated H3G and WIND as the most aggressive MNOs in terms of pricing in the three years prior to the Transaction.[759]

(791) Respondents to the market investigation also emphasised that H3G and WIND have very similar commercial features. When asked to rate the competitive position of the four MNOs in relation to various competitive parameters, MVNOs gave to H3G and WIND the highest score with respect to the parameter of prices for prepaid, postpaid and data-only services offered to private customers, confirming that the Parties have the best offering of mobile services in terms of price. [760] When answering to the same question, TIM also indicated that H3G and WIND are particularly strong with respect to price offering for prepaid and data-only services offered to private customers.[761] Similarly, when asked to indicate the main strengths of the four MNOs, respondents to the market investigation indicated for each of H3G and WIND their competitive and aggressive prices and tariffs.[762]

(792) These replies to the market investigation suggest that the Parties closely compete in the retail market for mobile telecommunications, in light of their similar aggressive commercial policy, market behaviour and offerings.

(793) The Parties' internal documents also suggest that H3G and WIND closely compete. In particular, WIND's internal documents indicate that […].[763] In another presentation, […].[764] Another WIND internal document […].[765]

(794) In the Reply to the Article 6(1)(c) Decision, the Parties refer to a series of factors that, in their view, point to a lack of closeness of competition between H3G and WIND.[766] However, those factors do not appear to be conclusive to such finding.

(795) As regards the claim that H3G and WIND "traditionally target different segments", H3G focusing on postpaid and WIND on prepaid, the Commission notes that, as explained in Section 7.3.2.1 a) above, H3G has disruptively entered the prepaid segment of the retail mobile market. In particular, in 2013 H3G launched its "ALL-IN" prepaid tariffs, which triggered a price war in 2013. Therefore, H3G is an active player in the prepaid segment, and competes against WIND in this respect. This is also indicated by the fact that H3G's market share in prepaid has been growing in recent years, whereas WIND's has been decreasing. As regards the claim that H3G's lack of a 2G network is a differentiating commercial element, the Commission notes that H3G's reliance on a roaming agreement with TIM for 2G has not hindered its competitiveness or ability to provide 2G services.[767] Therefore, this does not differentiate H3G from WIND. As regards the Parties' statement that a larger proportion of H3G's customer base subscribes to data-only tariffs than that of WIND, the Commission notes that, based on the information illustrated in recital (412) and Figure 24 above, H3G and WIND have a more similar proportion of data-intensive customer base than claimed by the Parties. Based on those figures, […]%

758 See response of Fastweb to Questionnaire Q1 to MVNOs of 8 February 2016, question 64.1, [ID 707].
759 See response of TIM to Questionnaire Q4 to MNOs of 8 February 2016, question 44, [ID 814].
760 See responses to Questionnaire Q1 to MVNOs of 8 February 2016, question 65.
761 See responses to Questionnaire Q4 to MNOs of 8 February 2016, question 45.
762 See responses to Questionnaire Q1 to MVNOs of 8 February 2016, question 63; response of TIM to Questionnaire Q4 to MNOs of 8 February 2016, question 43, [ID 814].
763 VimpelCom internal document, […].
764 VimpelCom internal document, […]
765 VimpelCom internal document, […].
766 Reply to the Article 6(1)(c) Decision, paragraph 228.
767 See recital (441) and footnotes 371 and 372 above.

of WIND's customers consumed between […]and more than […] of monthly mobile data, against […]% of H3G's. As regards the argument that H3G focuses on mono-brand stores (attracting "brand conscious customers"), whereas WIND relies on multi-brand retail stores (attracting "cost-conscious customers"), the Parties have not substantiated to what extent this difference actually affects the commercial strategies or the closeness of competition between the Parties. In this respect, it is noteworthy that, based on the findings of Section 7.3.2.1 above, H3G is the most price-aggressive MNO, irrespective of its mono-brand stores, and therefore would be attractive also to "cost-conscious customers". Finally, as regards the argument that H3G does not have a fixed network and therefore is "unable to develop a strategy similar to WIND which includes cross-selling of its mobile services", the Commission notes that, as explained in recital (129) above, customers in Italy tend to purchase retail mobile services on a standalone basis. Moreover, only […]% of WIND's mobile pre-paid private subscribers (who account for […]% of WIND's total mobile subscribers) subscribed to a fixed-mobile bundle as of September 2015. Therefore, it does not appear that H3G's lack of a fixed network leads to a lack of closeness of competition vis-à-vis WIND.

(796) The Commission therefore considers that the responses to the market investigation and the reviewed internal documents indicate that H3G and WIND closely compete. In particular, the Parties appear to be the most aggressive MNOs on the Italian retail market for mobile telecommunications services, to have similar commercial offers, and to be both characterized by the cheap pricing of their services, as opposed to the other two MNOs TIM and Vodafone, which appear to be more focused on higher quality of services (particularly network) for higher prices.

ii. Diversion ratios

(797) Further evidence of the fact that the Parties compete closely to each other is provided by the analysis of the diversion ratios.

(798) The Horizontal Merger Guidelines explain that diversion ratios are one of the methods that can be used to assess whether the merging parties are close competitors.[768] The diversion ratios indicate the extent to which sales lost by one of the Parties are taken up by the other party or the remaining market participants. The Commission has adopted this type of analysis in previous merger cases in the telecommunications sector.[769]

(799) In the phase I investigation, the Commission calculated diversion ratios at the network level[770] based on MNP data collected from the mobile operators. On this basis, it found sizeable diversion between the networks of the Parties.[771]

(800) The Commission considers that MNP data, which measures consumer switching between operators, can form a basis for calculating diversion ratios. The Commission has indeed relied on MNP data in past decisions. However, MNP data presents a number of limitations for the purposes of calculating diversion ratios. In particular,

[768] Horizontal Merger Guidelines, paragraph 29.

[769] Commission decision of 2 July 2014 in case No. M.7018 – *Telefónica Deutschland/E-Plus*; Commission decision of 28 May 2014 in case No. M.6992 – *Hutchison 3G UK/Telefónica Ireland*; Commission Decision of 12 December 2012 in case No. M.6497 – *Hutchison 3G Austria/Orange Austria*.

[770] That is, including each MVNOs under its corresponding MNO host and considering customer switching across networks.

[771] The MNP diversion ratios are presented in Annex A.

MNP data (i) does not provide a direct estimate of the customers' first and second choice; (ii) may not accurately reflect customer responses to price changes as data on past switching may have occurred for a variety of reasons not necessarily related to changes in relative prices; and (iii) only captures switching patterns for customers who port their number. To refine its estimate of the diversion ratios across operators, the Commission has carried out a specific Survey in the phase II investigation.[772]

(801) The Survey has been conducted by telephone and aimed at eliciting switching patterns between the Parties and the other mobile operators in response to price changes. A set of 8000 private customers having recently (within 2015) switched to H3G or WIND have been interviewed about their likely alternative choice if their most recent choice of mobile provider (that is, H3G or WIND) had been more expensive or not available.[773] The Survey hence directly investigated second choices of customers who, through their recent choice, have identified themselves as having one of the Parties as their first choice alternative.[774]

(802) The Commission has computed two sets of diversion ratios from the responses to the Survey. The first is based on respondents' stated behaviour in the hypothetical event that the tariffs of their most recently chosen provider had been more expensive at the time they made their choice ("intensive question").[775] The second set of diversion ratios is based on respondents' stated switching behaviour in the hypothetical event that their most recently chosen provider had not been available at the time they made their choice ("extensive question").

(803) Both questions elicit information on the distribution of respondents' second choices, that is, the alternative that the respondents considered to be the second best at the time of their choice. The intensive question has the further benefit that it can identify the second choices of marginal consumers, that is to say consumers that are most likely to change their behaviour following a price increase. The responses to the intensive question are therefore the most relevant for the assessment of likely behaviour following price increases, and are used by the Commission in its computation of the diversion ratios.

(804) The diversion ratios can be computed at the network level or at the provider level. For the former, switching is considered across the four mobile networks only including the MVNOs under their host network. The diversion ratios at the provider level instead assume that MVNOs are fully independent from their host network and, therefore, diversions to and from and to each MVNO are reported separately.

(805) More details on the Survey and the calculation of diversion ratios based on this Survey data are presented in Annex A, where the Commission also discusses the Parties' arguments on diversion ratios in the Reply to the Article 6(1)(c) Decision.

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772 A detailed explanation of the Survey's purpose and design is presented in Annex A. Annex B and Annex C present, respectively, the Survey methodology and the Survey questionnaire.

773 The Survey did not target business customers as they are likely not in control of their tariff plans decisions and are likely not to pay directly for their tariff plans.

774 The Survey focussed on interviewing customers of the Parties because the diversion ratios between them have a first order effect on the results of the quantitative analysis. The diversions from other operators are a significantly less important driver of the analysis of the price effects of the Transaction. See Annex A to this Decision.

775 The consumers were asked about their most recent choice of mobile telephone brand and which brand they would have chosen in case the price of the chosen brand had been approximately 10% higher per month at the time they made their choice. See Annex C.

(806) The Commission has calculated diversion ratios separately for the prepaid and the postpaid private segments, as well as for the overall private segment.[776]

(807) Table 22 and Table 23 below present the diversion ratios at the network and at the provider level, respectively, based the intensive Survey questions.

Table 22: Diversion ratios based on intensive Survey questions, 2015, network level

Overall Private	**H3G**	**WIND**	**TIM**	**Vodafone**
H3G	-	[20-30]%	[30-40]%	[30-40]%
WIND	[10-20]%	-	[30-40]%	[40-50]%
Prepaid Private	**H3G**	**WIND**	**TIM**	**Vodafone**
H3G	-	[20-30]%	[30-40]%	[30-40]%
WIND	[10-20]%	-	[30-40]%	[40-50]%
Postpaid Private	**H3G**	**WIND**	**TIM**	**Vodafone**
H3G	-	[20-30]%	[30-40]%	[40-50]%
WIND	[20-30]%	-	[40-50]%	[30-40]%

Source: Commission computation based on Survey data

(808) At the network level, [20-30]% of private customers that chose a H3G's tariff indicated WIND's network as their second choice, while [30-40]% and [30-40]% indicated respectively TIM's and Vodafone's networks as their second choice alternative. Of WIND's private customers, [10-20]% indicated H3G's network as their second choice, while [30-40]% and [40-50]% indicated TIM's and Vodafone's network as their second choice, respectively. Similar diversion ratios are observed in the prepaid private segment. In the postpaid private segment the diversion ratios from WIND to H3G and TIM are higher ([20-30]% and [40-50]%, respectively), while the diversion ratio to Vodafone is lower ([30-40]%).[777] For H3G, the diversion ratio to WIND in the postpaid private segment are slightly lower ([20-30]%) while the diversion ratios to Vodafone are higher ([40-50]%); the diversion ratios to TIM are in line with the one in the overall private segment ([30-40]%).

776 The Commission has computed the diversion ratios for the private segment by aggregating the responses in the prepaid and postpaid private segments.

777 The Commission notes that the diversion ratios from WIND in the postpaid private segment may be less reliable due to a relatively low number of responses to the intensive Survey question.

Table 23: Diversion ratios based on intensive Survey question, 2015, provider level[778]

Overall Private	**H3G**	**WIND**	**TIM**	**Vodafone**	**PosteMobile**	**Fastweb**
H3G	-	[10-20]%	[30-40]%	[30-40]%	[0-5]%	[0-5]%
WIND	[10-20]%	-	[30-40]%	[40-50]%	[0-5]%	[0-5]%
Prepaid Private	**H3G**	**WIND**	**TIM**	**Vodafone**	**PosteMobile**	**Fastweb**
H3G	-	[20-30]%	[30-40]%	[30-40]%	[0-5]%	[0-5]%
WIND	[10-20]%	-	[30-40]%	[40-50]%	[0-5]%	[0-5]%
Postpaid Private	**H3G**	**WIND**	**TIM**	**Vodafone**	**PosteMobile**	**Fastweb**
H3G	-	[20-30]%	[30-40]%	[40-50]%	[0-5]%	[0-5]%
WIND	[20-30]%	-	[40-50]%	[30-40]%	[0-5]%	[0-5]%

Source: Commission computation based on Survey data

(809) The diversion ratios at provider level displayed in Table above are broadly in line with the corresponding figures at network level due to the limited diversion towards MVNOs.

(810) Compared to the MNP diversion ratios, in the overall private segment the diversion ratios based on the intensive Survey question are slightly higher from H3G to WIND, while they are lower from WIND to H3G.

(811) Overall, based on the intensive Survey question diversion ratios, the closeness of competition between the Parties appears to be asymmetric. WIND appears to be a close competitor to H3G essentially on par with TIM and Vodafone, while H3G appears to be a less close competitor to WIND than TIM and Vodafone.

(812) In any event, the Commission's quantitative analysis presented in Section 7.3.2.4 f) below takes into account the degree of closeness of competition between the Parties and among the other market participants. The analysis predicts significant price increases post-Transaction, suggesting that despite the asymmetric closeness of competition between the Parties resulting from the diversion ratios based on the intensive Survey question, the Transaction is likely to generate sizable incentives to increase prices for the JV.

c) Conclusion on closeness of competition

(813) The findings on closeness of competition between the Parties illustrated above appear to be mixed. The market investigation and the qualitative evidence gathered through the Parties' internal documents indicate that the Parties are close competitors. The quantitative evidence of the diversion ratios, however, suggests an asymmetric closeness of competition between the Parties, with WIND being closer to H3G than H3G to WIND. Overall, the Commission considers that on balance the evidence of closeness of competition indicates that all MNOs closely compete in the Italian retail

[778] Diversion ratios to operator "Other" (i.e. other MVNOs in the market) omitted from the table.

market for mobile telecommunications services, which represents an oligopolistic market featuring a limited number of players and particularly high barriers to entry. In such a situation, the loss of the competitive pressure exercised by one of the Parties following the Transaction is likely to give raise to anti-competitive effects in the market (which is also in line with the results of the Commission's quantitative analysis presented in Section 7.3.2.4 f) below).

7.3.2.4. Competitive conditions following the Transaction

(814) For the reasons set out in Section 7.3.2.1, the Commission has found that H3G has been an important competitive force on the Italian retail mobile market prior to the Transaction and that, absent the Transaction, it would have the ability and incentive to continue competing. In Section 7.3.2.2, the Commission has found that WIND has exerted a competitive constraint on the Italian retail mobile market and that, absent the Transaction, it would have the ability and incentive to continue competing. In Section 7.3.2.3, the Commission also found that the Parties closely compete, together with the other MNOs.

(815) In this Section, the Commission will assess the likely dynamics of competition that would emerge in the Italian retail mobile market after the Transaction. The Commission will first analyse whether the JV would continue to compete as aggressively as the Parties absent the Transaction and continue exerting an important competitive constraint on the market. The Commission will then assess the likely reaction of the JV's competitors after the Transaction, in particular whether the remaining MNOs TIM and Vodafone would continue competing on the market as before the Transaction and whether MVNOs would have the ability to exert a competitive constraint that could replace that of the Parties.

(816) The Commission will then assess the existence of barriers to entry on the market and of countervailing buyer power. As a complement to its qualitative analysis, this Section also includes the Commission's quantitative analysis of the extent to which the elimination of competition between the Parties would generate an incentive to increase prices for the JV post-Transaction.

a) Likely behaviour of the JV after the Transaction

i. Parties' view

(817) According to the Parties, the Transaction will not give rise to a significant impediment to effective competition in the form of non-coordinated effects as it will not lead to the combined business having market power in the overall market or in any sub-segment thereof.[779] The Parties consider that the Transaction will not result in the creation of a dominant position and will instead enable the JV to significantly improve its network coverage and performance (and in particular download speeds) and to compete with TIM and Vodafone on a more equal footing.[780]

(818) As regards the JV's incentives to compete post-Transaction, the Parties argue that the retail market will remain characterised by a number of strong operators, both MNOs and MVNOs, with the incentive and ability to aggressively compete. In the Parties' view, this will incentivize the JV to compete aggressively on price and quality to attract customers.[781]

779 Form CO, Section 6, paragraph 646.
780 Form CO, Section 6, paragraph 577.
781 Form CO, Section 6, paragraph 568.

(819) In the Reply to the Article 6(1)(c) Decision, the Parties reiterate that the JV will have the incentive to compete post-Transaction. In particular, the Parties explain that the JV's greater ability to compete, stemming from the JV's better network, will also increase the JV's incentive to compete, as it will have the means necessary to compete efficiently with the other MNOs without risking network problems.

ii. Commission's assessment

(820) The Transaction would combine the operations of the third and fourth mobile players by subscribers and revenues in the retail market for the provision of mobile telecommunications services in Italy, creating a market leader by number of subscribers and revenues, and significantly increasing the level of market concentration in an oligopolistic market characterised by a limited number of players and particularly high barriers to entry. Furthermore, on certain segments of the market, the JV's market share would be even higher (see Sections 7.3.1.1 and 7.3.1.2 above).

(821) The Commission notes that the Transaction would fully eliminate competition between the Parties. This loss of competition is likely to provide the JV with the incentive to compete less aggressively on the market and to raise prices in particular because some of the customers who would have been lost to the other Party pre-Transaction would be captured by the JV post-Transaction.[782] Moreover, the JV's expectations that the remaining competitors would also follow its unilateral price rises due to reduced competitive pressure may also be "a relevant factor influencing the JV's incentives to increase prices".[783]

(822) Additionally, in light of the post-Transaction market shares described in Section 7.3.1.1 above, the Commission notes that the JV would have an increased customer base, which would likely reduce its incentives to compete as aggressively as the Parties did pre-Transaction.

(823) The responses to the phase I market investigation indicated that the JV would not have the incentive to compete on the retail market as aggressively as H3G and WIND separately prior to the Transaction.

(824) In this respect, when asked to comment on whether the Transaction would have an impact on the competitive aggressiveness of the JV, as compared to the aggressiveness of the Parties before the Transaction, MVNOs responding to the Commission's market investigation expressed the opinion that, post-Transaction, the JV would be a less aggressive competitor than the Parties separately, mainly because of its increased size and customer base, which would reduce its incentive to compete.[784] Fastweb explained that the Transaction would combine the two cheapest and most aggressive mobile operators in Italy, which closely compete given their similar features in terms of network, market position and pricing policy, and that the JV would thus compete less aggressively, given its increased customer base. Fastweb also emphasised that, after the Transaction, the likely reaction of the other two MNOs to a price increase by the JV would be to increase their own prices to maximize profits.[785]

782 Horizontal Merger Guidelines, paragraph 24.
783 Endnote 28 of the Horizontal Merger Guidelines.
784 See responses to Questionnaire Q1 to MVNOs of 8 February 2016, question 72 and 72.1.
785 Response of Fastweb to Questionnaire Q1 to MVNOs of 8 February 2016, question 72.1, [ID 707].

(825) PosteMobile also commented that the Transaction would remove H3G, the "maverick" of the retail market for mobile telecommunications services, whose aggressiveness pushed competitors to lower their prices in order to remain competitive. Therefore, in PosteMobile's view, the Transaction would remove the competitive constraint the Parties exercised on each other.[786] Finally, Tiscali emphasised that after the Transaction, the three remaining MNOs would have quite similar market shares, which would likely lead them to have less incentives to increase their customer bases and compete against each other.[787]

(826) MVNOs also commented that post-Transaction, the likely commercial strategy of the JV would be to focus on customer retention.[788]

(827) The Commission also specifically asked market participants what would be, in their view, the incentives of the JV to compete on the retail market after the Transaction. In this respect, MVNOs argued that the JV would not have the incentive to compete aggressively.[789] Those respondents found that the JV's increased size and customer base of would reduce its incentives to compete and encourage it to focus rather on customer retention. Some respondents also added that the Transaction would remove the two most aggressive competitors, which were closely competing against each other, and create an oligopolistic market structure with three MNOs (the JV, Vodafone and TIM): this would further lessen the incentives to compete among mobile operators.

(828) Only the MNOs replying to the Commission's market investigation were of the opinion that the JV would not have reduced incentives to compete. For instance, TIM explained that the JV would be a more complete and competitive player in the market. Vodafone indicated that the JV would become technically and commercially on par with the other MNOs.[790] TIM also commented that the JV would benefit from a better and more extended coverage, which would lead to more qualitative and competitive services.[791]

(829) Therefore, the majority of the respondents to the market investigation (with only the exception of the MNOs) indicated that the JV would have fewer incentives to compete.

(830) Furthermore, as explained and illustrated in Section 7.2 above, the Commission's review of the Parties' internal documents in the course of its in-depth investigation has provided several indications that the Parties have viewed and considered the Transaction as a means to achieve "market repair", resulting from a lower level of competition in the Italian retail mobile market. Furthermore, those documents also show that each of Hutchison and VimpelCom calculated and estimated the value of the market repair benefits they would achieve from the Transaction.

(831) The Commission considers that this overall body of documentary evidence illustrates that the Transaction would change the Parties' incentives to compete aggressively, giving rise to […][792] and to a […].[793] The Commission considers that those internal

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786 Response of PosteMobile to Questionnaire Q1 to MVNOs of 8 February 2016, question 72.1, [ID 835].

787 Response of Tiscali to Questionnaire Q1 to MVNOs of 8 February 2016, question 72.1, [ID 1348].

788 See responses to Questionnaire Q1 to MVNOs of 8 February 2016, question 73.

789 See responses to Questionnaire Q1 to MVNOs of 8 February 2016, question 74.

790 See responses of TIM and Vodafone to Questionnaire Q4 to MNOs of 8 February 2016, question 54, [ID 1704] and [ID 882].

791 Response of TIM to Questionnaire Q4 to MNOs of 8 February 2016, question 52, [ID 1704].

792 VimpelCom internal document, […].

documents indicate that VimpelCom and Hutchison lack the incentive to make the JV compete on the market after the Transaction. Rather, it appears that VimpelCom and Hutchison have the incentive to achieve market repair on the Italian retail mobile market through the creation of the JV.

(832) With respect to VimpelCom, on the basis of the internal documents illustrated in Section 7.2.1 above, the Commission notes the following. First, throughout the years prior to the Transaction VimpelCom extensively discussed the Transaction, emphasising in several instances that its rationale was to achieve market repair.[794] Second, VimpelCom expected and calculated the uptake and benefits of market repair stemming from the Transaction.[795] Finally, VimpelCom considered the likelihood of market repair to be […], and expressed its intention to achieve the Transaction in order to benefit from market repair.[796] These internal documents indicate that VimpelCom does not have the incentive to make the JV compete post-Transaction as vigorously as each of the Parties did separately before the Transaction.

(833) With respect to Hutchison and H3G, on the basis of the internal documents illustrated in Section 7.2.2 above, the Commission notes the following. First, Hutchison and H3G also perceived the Transaction as a means to achieve market repair.[797] Second, as shown by the various documents illustrated throughout Section 7.2.2 above, Hutchison and H3G carried out […]. For instance, in […].[798] These internal documents of Hutchison and H3G clearly suggest that Hutchison and H3G do not view the post-Transaction market as one where the JV would compete vigorously, but rather as one whether the JV has the incentive to pursue market repair on the Italian mobile market.

(834) Furthermore, the public statements of the other MNOs (reviewed in Section 7.2.4 above) indicate that also TIM and Vodafone consider that the Transaction would change the incentives of the Parties to compete and would give rise to market repair resulting from a lower level of competition by the JV. By way of example, TIM explained that that *"the most effective way to stabilize* [the] *market is through a reduction in the number of player"*[799] and that "*the news of the merger H3G/WIND can only improve domestic margins*".[800] Vodafone also publicly commented that "*[i]t*

793 H3G internal document, […].

794 See, among others: […], VimpelCom internal documents, […], mentioned in recital (251) above; […], VimpelCom internal document, […], mentioned in recital (255) above; […], VimpelCom internal document, […], mentioned in recital (267) above; […], VimpelCom internal document, […], mentioned in recital (276) above.

795 See, for instance, […] discussed in recitals (249) and (252) above, the […] mentioned in recital (258) above, the VimpelCom internal email exchanges described in recitals (260) and (261) above, the […] and VimpelCom analysis reported in recitals (269) to (271) above, the […] mentioned in recitals (278) and (280) respectively.

796 […], VimpelCom internal documents, […], mentioned in recital (271) above; see also the […], mentioned in recital (317), emphasising that […].

797 See, for instance, H3G’s […], mentioned in recital (290) above; the […], H3G internal document, […], mentioned in recital (292) above; H3G’s […], H3G internal document, […], mentioned in recitals (293) and (294) above.

798 See H3G […] mentioned in recital (293) above.

799 TIM's Conference Call 1H 2013 Results - Q&A, available at: http://www.telecomitalia.com/content/dam/telecomitalia/en/archive/documents/media/transcripts/2013/Transcript-ConferenceCall-1H2013-Results.pdf [ID 2576].

800 M. Patuano: "La notizia della fusione 3 Italia-Wind può solo migliorare margini domestici", in Reuters Italia "BRIEF-Telecom, fusione 3 Italia-Wind può solo migliorare margini domestici – AD", dated 7 August 2015, available at: http://it reuters.com/article/itEuroRpt/idITL5N10I1SW20150807 [ID 2566].

is essential that this situation, at some point, gets reduced. [...]. Everything goes back to consolidation – Wind, Hutch and the whole thing".[801] These public statements suggest, among others, that Vodafone and TIM expect that the JV and its shareholders to not have the incentive to compete after the Transaction.

(835) The analyst reports reviewed in Section 7.2.5 above also suggest that the JV will lack the incentive to compete post-Transaction. Reference is here made to that Section in its entirety.

(836) Therefore, on the basis of the documentary evidence illustrated in Sections 7.2.1 to 7.2.5 above, the Commission considers that after the Transaction the JV, as its shareholders, would not have the incentives to compete on the market as vigorously as the Parties did before the Transaction. On the contrary, it appears that the JV would instead focus on pursuing market repair through less competition on the Italian retail mobile market.

(837) In addition to the qualitative analysis presented above, the Commission further notes that the reduction in the incentives of the JV to compete post-Transaction in the retail market resulting is also illustrated by the likelihood of price increases indicated by the Commission's quantitative analysis, described in Section 7.3.2.4f) below.

(838) Therefore, the Commission concludes that, following the loss of competition between the Parties caused by the Transaction, the JV is likely to not have the incentive to compete on the retail mobile market as aggressively as H3G and WIND pre-Transaction. This would lead to a loss of competitive pressure on the remaining competitors on the market.

b) Likely reaction of the other MNOs

i. Parties' view

(839) The Parties submit that the JV's increased size and scale would ensure that TIM, Vodafone and the MVNOs would continue to face strong price and quality competition. TIM and Vodafone's incentives to compete would also increase as a result of the Transaction because of the more significant competitive threat posed by the JV. Post-Transaction, the JV would therefore continue to face aggressive competition from TIM and Vodafone, both of which would be seeking to attract the JV's customers and expand their own footprints in line with their individual strategies and incentives.

(840) In relation to TIM, the Parties submit that TIM will continue to be a significant competitive threat: TIM is already the market leader, with a significant subscriber and revenue base alongside a premium mobile network; TIM has large financial resources and plans to significantly invest in its network; TIM is the preferred partner for business customers and the largest fixed-line telecommunications provider in Italy; and TIM has a unique ability to offer converged products.[802]

(841) In relation to Vodafone, the Parties submit that Vodafone will continue to compete aggressively against the JV: Vodafone is also a market leader with a significant subscriber and revenue base alongside a premium mobile network and Vodafone

[801] Vodafone Preliminary Results 2014/15 – Analyst and Investor Conference Call, dated 19 May 2015, available at: https://www.vodafone.com/content/dam/vodafone/investors/financial_results_feeds/preliminary_results_31march2015/tr_prelim2015.pdf [ID 2579].

[802] Form CO, Section 6, paragraph 655.

continues to invest heavily in its network and customer experience; Vodafone plans to pursue a converged strategy on the opportunity to tie in customers through multi-play propositions; and Vodafone is also a trusted provider in the business segment.[803]

(842) According to the Parties, MNOs will thus continue to compete aggressively on the retail market after the Transaction. In the Reply to the Article 6(1)(c) Decision, the Parties further argue that the Commission should not rely on certain public statements from TIM and Vodafone as an indication of lack of incentives to compete post-Transaction, and that in fact TIM and Vodafone have adopted aggressive pricing strategies in the past, and would continue to do so post-Transaction.

ii. Commission's assessment

(843) A merger is unlikely to harm competition where the reaction of the remaining competitors would discipline the behaviour of the JV. On the other hand, competition would be harmed if the remaining competitors may not be willing or able to compete sufficiently post-Transaction so as to compensate for the loss of competition.

(844) According to the Horizontal Merger Guidelines, "*non-merging firms in the same market can also benefit from the reduction of competitive pressure that results from the merger, since the merging firms' price increase may switch some demand to the rival firms, which, in turn, may find it profitable to increase their prices*".[804] The Horizontal Merger Guidelines further state that "*mergers in oligopolistic market involving the elimination of important competitive constraints that the merging parties previously exerted upon each other together with a reduction of competitive pressure on the remaining competitors may […] also result in a significant impediment to effective competition*."

(845) During its phase I market investigation, the Commission assessed whether post-Transaction TIM and Vodafone would have the ability and incentive to compete against the JV.

(846) When asked to assess what would be the behaviour and incentives of the other two MNOs after the Transaction, most respondents among MVNOs expressed the view that Vodafone and TIM would likely not have the incentives to compete aggressively.[805] Some of these respondents explained that TIM and Vodafone would have the ability to compete with the JV, but would lack the incentives to compete. Fastweb explained that the Italian retail market is already prone to coordination among MNOs, and the Transaction would increase the incentives of MNOs to follow each other's price increase. Fastweb added that, after the Transaction, the likely reaction of the other two MNOs to a price increase by the JV would be to increase their own prices to maximize profits.[806] Tiscali explained that TIM and Vodafone would rather keep the incoming balance situation and maintain stable prices, rather than compete aggressively.[807] Among the MNOs, TIM indicated that post-Transaction it would have the ability and incentive to compete aggressively against the JV, and that it would do so.[808]

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803 Form CO, Section 6, paragraph 657.

804 Horizontal Merger Guidelines, paragraph 24.

805 See responses to Questionnaire Q1 to MVNOs of 8 February 2016, question 75.

806 Response of Fastweb to Questionnaire Q1 to MVNOs of 8 February 2016, question 75, [ID 707].

807 Response of Tiscali to Questionnaire Q1 to MVNOs of 8 February 2016, question 75, [ID 1348].

808 See response of TIM to Questionnaire Q4 to MNOs of 8 February 2016, question 55, [ID 814].

(847) TIM and Vodafone raised the concern that following the Transaction, the JV would have an amount of aggregated spectrum by far superior to that of the other two MNOs, which would give the JV an undue advantage, not replicable by its competitors, and would limit their ability to compete. Vodafone explained that the asymmetry in spectrum holding between the JV and TIM and Vodafone would limit the latters' ability to compete, as the former would be able to offer improved services.[809] The Commission considers however that this concern is not substantiated. First, the Transaction does not have any impact on the spectrum holdings of the other MNOs. TIM and Vodafone will keep their current spectrum, which currently enables them to compete. Second, the JV will need to maintain both existing networks until the networks have been consolidated, and therefore will need more spectrum than the competing MNOs, which only operate one network. Third, a spectrum asymmetry in and of itself does not necessarily lead to competition concerns, but may actually stimulate competition among MNOs with differently sized spectrum holdings. The JV's improved services stemming from an enlarged spectrum portfolio could force TIM and Vodafone to in turn improve their offerings, thus stimulating competition. Finally, a foreclosure or marginalisation of Vodafone and TIM due to the JV's improved network is unlikely, as the other MNOs would hold sufficient spectrum enabling them to compete even post-Transaction. In their replies to the market investigation, TIM and Vodafone confirmed that they would remain able to compete post-Transaction.[810] The Commission therefore considers that the spectrum aggregation that the JV would obtain from the Transaction would not significantly impede TIM and Vodafone's ability to compete. The Commission's competitive assessment on this issue is without prejudice to any further regulatory intervention by AGCOM on the matter. Should the JV's spectrum holding be in excess of any regulatory caps set by AGCOM, AGCOM would be able to intervene to correct any spectrum unbalances.

(848) The Commission notes that most respondents to the market investigation were of the opinion that TIM and Vodafone would not have the incentives to compete against the JV. Only TIM, commenting on its own incentives, stated that it would still compete aggressively. TIM and Vodafone claimed that their ability to compete would be limited by the JV's enhanced spectrum holding, but the Commission does not consider this concern to be substantiated, for the reasons given in the previous recital.

(849) In the Reply to the Article 6(1)(c) Decision, the Parties argued that the 2013 and 2014 public statements by TIM and Vodafone referred to by the Commission were not an adequate indication of the fact that TIM and Vodafone would lack the incentives to compete post-Transaction.

(850) In the course of its in-depth investigation, the Commission further analysed the public statements made by each of TIM and Vodafone in relation to the Italian retail mobile market and the topic of consolidation, reading them also in the light of the discussions on market repair emerging from the Parties' internal documents described in Section 7.2.3 above.

(851) An overview of those public statements is provided in Section 7.2.4 above. As explained in that Section, through the years prior to the Transaction each of

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[809] Vodafone's submission to AGCOM of 28 June 2016, provided to the Commission [ID 2341]; TIM's submissions of 5 July 2016, pp 2-3 [ID 2178], and of 13 July 2016, pp 3-4 [ID 2371].

[810] TIM's response to Questionnaire Q4 to MNOs of 8 February 2016, question 55.1 [ID 814]Vodafone's response to Questionnaire Q4 to MNOs of 8 February 2016, question 55.2 [ID 882].

Vodafone and TIM made public statements supporting market consolidation and a reduction of the number of MNOs in the Italian market.[811] The Commission considers that those statements indicate that Vodafone and TIM were in favour of the in-market consolidation brought by the Transaction, and were even willing to provide their support in order to facilitate it. Therefore, those statements suggest that in a post-Transaction market, TIM and Vodafone would be less willing to compete, given their open support to the creation of the JV, their declarations in favour of a three player market, their expectations of the competitive environment created by the mobile consolidation, and their statements of availability to help facilitate the accomplishment of the Transaction (which, as explained in Section 7.2.3 above, was even provided to a certain extent).

(852) Furthermore, the Parties' own internal documents described in Section 7.2.3 above show that the Transaction would have produced market repair benefits not only for the Parties, but also for TIM and Vodafone. For instance, as was explained in that Section, […],[812] […].[813]

(853) Those market scenarios and analyses, which are those studied and expected by the Parties themselves as the likely outcome of the Transaction, consider that TIM or Vodafone would be beneficiaries of the market repair stemming from the less competitive environment. They thus assume and imply that TIM and Vodafone would not have the incentives to compete post-Transaction, as they would benefit from the market repair scenario and the lessening of the competitive conditions.[814]

(854) Furthermore, the Parties internal documents reviewed in Section 7.2.3 […].[815] […].[816] […],[817] […].

(855) Overall, in light of the results of the market investigation, and of the review of the Parties' internal documents provided in the Section and in more detail in Section 7.2 above, the Commission considers that post-Transaction TIM and Vodafone may have the ability to aggressively compete against the JV, but would likely lack the incentive to do so as effectively as prior to and in the absence of the Transaction. Rather, TIM and Vodafone would have the incentive to compete less vigorously against the JV, in light of the market repair benefits that the Transaction would bring them, as calculated and assumed by the Parties themselves.

c) Likely reaction of MVNOs

i. <u>Parties' view</u>

(856) The Parties claim that the JV will continue to face strong competition from existing and new entrant MVNOs after the Transaction. The Parties submit that MVNOs in Italy have unique competitive strengths and strategies, which enable them to compete effectively. For example, PosteMobile has been able to leverage its extensive distribution network and financial services customer base to rapidly acquire mobile

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811 For TIM, see the public statements mentioned in recitals (329), (330), (333), (337) and (342) above; for Vodafone, see the public statements mentioned in recitals (331), (332) and (340) above.

812 See recital (310) above

813 See recital (315) above.

814 By way of further example, one of H3G's synergy calculations for the Transaction […]. H3G internal document, […].

815 See for instance recitals (317) and (318) above.

816 See, for instance recitals (310) and (316) above.

817 See for example the speaking points mentioned in recitals (317) and (318) above, referring to the purchase of certain assets, and the Vodafone offer mentioned in recital (324).

subscribers. Retailers such as Carrefour and Coop likewise benefit from extensive pre-existing distribution networks and a loyal customer base. Moreover, Italian MVNOs include fixed-line service providers, such as Fastweb, Tiscali and BT Italia, which have the ability to compete in offering converged products. Lycamobile and DIGI have successfully targeted certain segments more effectively than the MNOs.

(857) The Parties submit that unlike in some Member States of the Union where MVNOs have been declining in importance, MVNOs have been rapidly growing in Italy, and that the share of supply of MVNOs has increased year-on-year since market entry.

(858) Moreover, the Parties explain that customers are increasingly switching to MVNOs and that their market share is expected to increase. This creates a large growth potential for MVNOs in Italy, as shown by the entry on the market of a number of MVNOs (such as Noitel, Rabona and Ringo Mobile) in 2015, and other imminent entries (such as IVO).[818] Thus, the JV will be constrained by the increasing role of MVNOs on the Italian retail market.

(859) The Parties further submit that post-Transaction MVNOs will have the ability to exert the same if not increased competitive pressure on the JV. According to the Parties, the competitive conditions in the wholesale market will not deteriorate post-Transaction. On the contrary, the JV's incentive to host MVNOs will increase and hosting MVNOs will remain an attractive way for MNOs to increase their capacity utilisation and realise scale economies.

(860) Finally, the Parties state that the Commission's conclusion in the Article 6(1)(c) Decision that MVNOs are unable to exert competitive pressure in the retail market post-Transaction, is based on the MVNOs' own responses to the market investigation, which cannot be relied upon due to the MVNOs' self-interest to the case. TIM and Vodafone, however, confirm the relevance of MVNOs is growing and that MVNOs can already compete effectively.

ii. Commission’s assessment

Competitive position of MVNOs pre-Transaction

(861) The Commission considers that MVNOs are not able to exercise the same degree of competitive pressure in the retail mobile market as that exercised by MNOs.

(862) A first indication of the impact MVNOs have had on competition in the retail market is their share of the retail market. The first MVNO entered in 2007. There are now approximately 16 MVNOs active on the Italian market.[819] Despite the large number of MVNOs competing in the retail telecommunications market, they in fact account for only a small part of the overall retail market. According to 2015 market data, MVNOs had a cumulative market share of only [0-5]% by revenues and [5-10]% by subscribers,[820] with the largest one, PosteMobile, accounting for more than half of that share in terms of subscribers.[821]

[818] Form CO, Section 6, paragraph 659.

[819] Form CO, Section 6, paragraph 217.

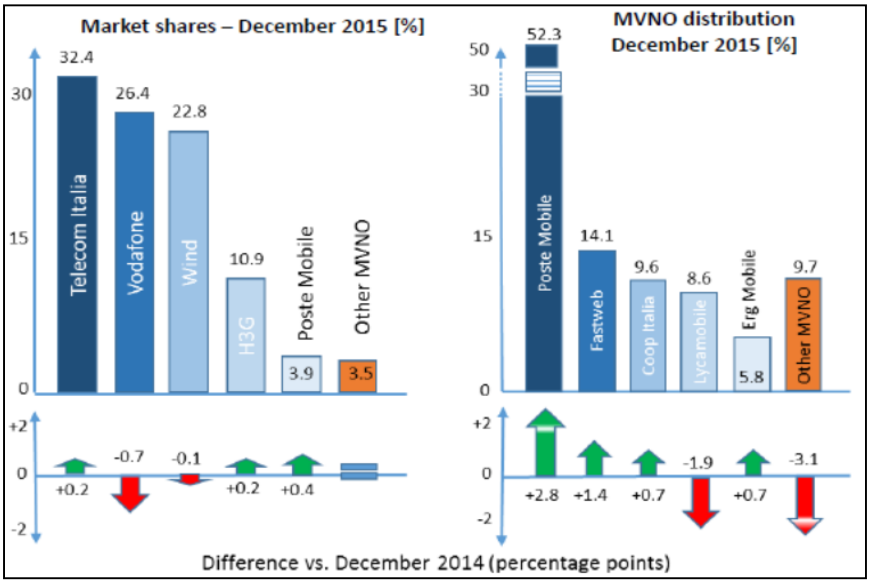
[820] See Table 6 above.

[821] According to AGCOM's data, PosteMobile's share of the MVNOs' subscriptions was 52.3% http://www.agcom.it/documents/10179/2154593/Allegato+30-3-2016/a4a08e41-8fe1-47da-95c9-eb1544fb7880 [ID 2586].

(863) Although the market share of MVNOs has increased over the years, in terms of subscribers from approximately 3.8% of the total market in 2011 to 7.1% in 2014,[822] in the last year the market share of all the MVNOs has shown only a minor growth to approximately 7.4%.[823] The data shows that after an increase of market share for the MVNOs up until 2014, due mainly to PosteMobile's entry and stabilisation in the total market, the shifting in market share towards MVNOs evened out. This is illustrated in Figure 1 above.

(864) A significant part of last year's growth has been generated by PosteMobile and Fastweb, whose shares of the MVNOs' subscriptions increased by respectively 2.8 and 1.4 percentage points between 2014 and 2015. Coop Italia and ERG Mobile also increased their share of the MVNO market, both by 0.7 percentage points, while Lycamobile lost 1.9 percentage points and other MVNOs combined lost 3.1 percentage points in the same year.[824] This is illustrated in Figure 65 below.

Figure 65: Market shares (by subscribers) December 2015, MVNO distribution, and change from December 2014



Source: AGCOM's Quarterly Report No. 1 – 2016, p.10 [ID 2328]

(865) The Commission considers that the reason for the MVNOs' relatively small share of the retail market is a result of their lack of ability, rather than lack of incentive, to compete.

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822 According to AGCOM's data, the market share of MVNOs has increased from 3.8% in 2011 (3.65 million MVNO subscriptions out of 96.0 million subscriptions in total) to 7.1% in 2014 (6.67 million MVNO subscriptions out of 94.18 million subscriptions in total) http://www.agcom.it/documents/10179/2154593/Allegato+6-4-2016/e17e2d92-160d-4b77-9202-9469cc990d14 [ID 2328], for more detail figures, see also AGCOM's data, sheet 1.6: http://www.agcom.it/documents/10179/2154593/Allegato+30-3-2016/a4a08e41-8fe1-47da-95c9-eb1544fb7880 [ID 2586].

823 According to AGCOM's data (7.4% = 6.89 million MVNO subscriptions out of 92.52 million subscriptions in total). http://www.agcom.it/documents/10179/2154593/Allegato+30-3-2016/a4a08e41-8fe1-47da-95c9-eb1544fb7880 [ID 2586].

824 AGCOM's Quarterly Report No. 1 – 2016, p.10, available at http://www.agcom.it/documents/10179/2154593/Allegato+6-4-2016/e17e2d92-160d-4b77-9202-9469cc990d14 [ID 2328].

(866) MVNOs' ability to compete is constrained by the wholesale access conditions granted by their respective host MNOs, which limit the range of services that they can offer, the customer segment they can address, and the prices they can offer. Therefore, MVNOs cannot exert the same competitive pressure as an MNO in a significant and sustained way.

MVNOs are very small or focus on niche segments

(867) In addition to the fact that the MVNOs' collective market share is small, each MVNO operating in Italy is either very small or focused on certain segments. None of them is currently present across all market segments.

(868) As for size, PosteMobile and Fastweb are the only MVNOs that have a market share of 1% or more. PosteMobile is the largest MVNO, with a 3.7% share of the overall retail market, followed by Fastweb, which has a share of approximately 1% of the retail market (see Table 2 above).

(869) Typical examples of niche operators are Lycamobile, Daily Telecom and DIGI Italy, which centre their offer on low-cost international calls and target immigrant and other customers who make a relatively large share of their calls to other countries. These MVNOs are focused on very small niches, and with this business strategy their scope for growth is limited. Even if they would want to expand their business to other segments of the retail market, that may be an unattractive alternative. Many MVNOs have no contractual restrictions as to the customer groups they can target.[825] However, the contract between DIGI and H3G contains a clause according to which, for the wholesale tariffs to apply, the amount of outgoing international traffic should not be less than 20% of the total national and international outgoing traffic.[826] This condition has been likely adopted in order to keep DIGI outside the main retail segments (see also recital (1259) below).

(870) Some MVNOs are active in other industries and use their already present customer base and distribution network to offer mobile services as well. This typology of MVNOs includes PosteMobile, ERG Mobile, Coop Voce and Carrefour 1 Mobile. These MVNOs have an advantage when it comes to launching a new product, because they target an already existing customer base and don't have to invest in a new distribution chain. But at the same time, this strategy also exercises constraints to the development of the customer base, because the success and the visibility in the market of the telecoms business are intrinsically linked to the success and the visibility of the already existing main business.

(871) Bearing this in mind, it is not surprising that PosteMobile is the most successful of all the MNOs and this success is a testament of its unique position in the MVNOs market. The company capitalises on the yearlong experience and customer base of Poste Italiane, one of the most important Italian companies, founded in 1862 as an independent company that ran a monopoly on postal and telegraph services for the State and is now operational in postal, financial and insurance services. Nevertheless, despite this advantage in comparison with the other MVNO's, PosteMobile has, since its business launch in 2007, only been able to reach an overall market share by subscribers of 3.7% (see Table 2 above).

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825 See responses to Questionnaire Q1 to MVNOs of 8 February 2016, Question 3.1.

826 "Agreement between H3G and RCS & RDS", from 25 January 2010, para 9.16 [Annex 32.1 to the Form CO] and "Annex 1 to the Agreement Economic conditions", Art.6 [Annex 32.2 to the Form CO].

(872) The third largest MVNO Coop Voce has, despite access to Coop Italia's extensive network of shops and supermarkets for its distribution, and a well-known brand, managed to capture only approximately 0.7% of the retail subscriptions in Italy more than eight years after its launch (see Table 2 above).

(873) In the retail market, MVNOs have a higher market share in the private segment than in the business segment. In the private segment the MVNOs have 4% based on revenues and 8% based on subscriptions, while in the business segment they have a share of 3% based on revenues and of 2% based on subscriptions (see Table 10 and Table 11).

(874) Respondents among business customers stated that MVNOs are not able to compete effectively with MNOs, in particular with regard to providing services to the business segment.[827] Business customers explained that MVNOs focus mostly on residential customers, are smaller and less able to meet the specific requirements of business customers.[828] As described in Section 6.2.1.2 b) v, from a demand perspective, there are substantial differences between the private and the business segments in terms of the type and quality of the service requested. Large private firms and public enterprises require a 3G/4G network with better coverage, higher quality of service in terms of network and assistance, and innovative products. Most MVNOs lack the required features to be competitive in this segment. They lack dedicated corporate functions like provisioning and technical assistance, which is tailored and personalized for each customer. They lack the ability to supply value added services and Information Communication Technology and they cannot provide for good quality and coverage of the network over the whole national territory.[829]

(875) Not even the business oriented MVNOs have been successful in attracting business customers. The largest of these MVNOs, BT Italia, has a very limited market share,[830] indicating it is not a competitive constraint on the MNOs in the business segment. According to BT Italia, MVNOs are not able to compete effectively with MNOs because MVNOs' cost base is higher.[831] Notably, BT Italia cannot offer 4G services.[832]

(876) In sum, no Italian MVNO is currently present across all market segments,[833] due to the elements described above, which limit their ability to grow and reach scale.

MVNOs have limited bargaining power vis-à-vis the MNOs

(877) MVNO respondents to the market investigation took the view that MVNOs are currently unable to compete effectively in the Italian retail mobile market. According to the respondents, this is due to the wholesale access conditions in the MVNOs

827 See responses to Questionnaire Q2 to Business customers of 8 February 2016, Question 17.
828 See responses to Questionnaire Q2 to Business customers of 8 February 2016, Question 17.
829 See responses to Questionnaire Q6 to MVNOs of 12 May 2016, Question 17.
830 Form CO, Section 6, Table 18. The Parties estimate that six small MVNOs, including BT Italia, have a collective subscription market share of [0-5]%. Even taking into account that the business segment represents 15.7% of all mobile subscriptions (see recital (34)), and assuming all BT Italia's customers are business customers, BT Italia's share of the business segment would be limited.
831 BT Italia's reply to Questionnaire Q1 to MVNOs of 8 February 2016, question 78, [ID 512].
832 BT Italia's reply to Questionnaire Q1 to MVNOs of 8 February 2016, question 34, [ID 512].
833 See also Form CO, Section 6, Table 19 for a summary of the main MVNOs and their customer focus.

contracts with MNOs and the fact that MVNOs enjoy limited bargaining power in negotiations with MNOs.[834]

(878) The weak bargaining power of the MVNOs is made evident by the MNOs poor incentive to offer wholesale. The MVNOs are very rarely approached by the MNOs offering wholesale contracts (see recital (1225)). On the contrary, even after an MVNO actively requests for offers from several companies, many times the MVNO does not receive an offer from all MNOs it contacted.[835] In several cases MVNOs had no alternative offers.[836] One responded said they were *"more or less obliged to go with the current MVNO"*.[837]

(879) The result of this poor bargaining power reflects on the prices MVNOs can offer to their retail customers and on other contractual restraints.

Wholesale access terms limits MVNOs ability to compete on price

(880) As explained in Section 7.3.1.3, in the Italian retail mobile market price still remains the most important competitive parameter.

(881) The majority of MVNOs responding to the market investigation pointed out that while they are in principle free to design their own tariff plans,[838] they are constrained by the wholesale pricing they receive from their host MNO.[839]

(882) According to Coop Italia, "[t]he price of wholesale access does not allow MVNOs to be more aggressive in terms of pricing. Success of MVNOs relies on other factors: customer care, distribution, special services and tariffs (ethnic market, offers linked with respective core business), bundles."[840] However, as discussed in recitals (868) to (871), while there are several MVNOs in Italy with access to such factors, they have still not managed to capture any sizable shares of the retail market.

(883) The cost structure imposed by the host MNO (whereby costs increase with traffic, while MNOs' costs are mostly fixed)[841] makes it difficult for MVNOs to compete against MNOs on price. A majority of the MVNOs responding to the market investigation said that they are not able to compete against MNOs by offering attractive retail tariffs, especially prices for tariffs that include data packages, which demand has been significantly increasing in the last years.[842] As one respondent to the market investigation said "*[i]nternet traffic is a key element of competition for the future since users are using more and more services based on that. Operators keep the wholesale price of mobile data very high and services based on 4g technology – if available – are worsening this trend.*"[843]

(884) MNOs offer data bundles for a fixed fee. However, when wholesale prices are set on a per unit basis (for example, per MB used), the discrepancy in data pricing at the

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834 See responses to Questionnaire Q1 to MVNOs of 8 February 2016, question 78, and responses to Questionnaire Q6 to MVNOs of 12 May 2016, question 12.
835 See responses to Questionnaire Q1 to MVNOs of 8 February 2016, questions 7.
836 See responses to Questionnaire Q1 to MVNOs of 8 February 2016, questions 9.2.
837 See ICS Italia's (Ringo Mobile) response to Questionnaire Q1 to MVNOs of 8 February 2016, question 9.1 [ID 509].
838 See responses to Questionnaire Q1 to MVNOs of 8 February 2016, question 3.5.
839 See responses to Questionnaire Q6 to MVNOs of 12 May 2016, question 12.
840 See Coop Italia's response to Questionnaire Q1 to MVNOs of 8 February 2016, question 78 [ID 581].
841 See responses to Questionnaire Q1 to MVNOs of 8 February 2016, question 3 and Contract between Fastweb and H3G from 5 December 2007, Article 5 [Annex 32.15 to the Form CO].
842 See responses to Questionnaire Q6 to MVNOs of 12 May 2016, question 12.
843 Linkem's response to Questionnaire Q6 to MVNOs of 12 May 2016, questions 12.4 and 12.5, [ID 1357]

retail and wholesale levels increases commercial risks for non-MNOs which would have to pay extra fees if its subscribers' consumption of data increases without being able to pass on those extra fees to its customers.

(885) Wholesale contracts can even be designed in a way that discourages MVNOs from competing aggressively on price. As explained in recital (869), DIGI's wholesale contract effectively prevents DIGI from offering attractive prices for domestic traffic, because if it did, its balance between domestic and international traffic would change and DIGI would be changed a higher wholesale price. Another MVNO, Tiscali, explained that in its wholesale agreement, there is a mechanism that sets off a significant increase of the average cost when Tiscali performs well and that this mechanism limits its growth.[844]

MVNOs have limited ability to differentiate themselves from MNOs

(886) As explained in Section 7.3.1.3, network quality and network coverage are important competitive parameters, after price in the Italian retail mobile market. However, in addition to difficulties related to designing attractive retail tariffs, MVNOs have very limited ability to differentiate their retail services from those of the host MNO as regards quality and coverage. This is because MVNOs obtain access to a host MNO's mobile network through a wholesale access agreement. The MNOs' decisions regarding network investments and roll-out greatly influence the performance of the MVNOs mobile services and affect the user experience, including through providing different levels of network reliability, coverage and speed.

(887) Full MVNOs have some scope of differentiation through value-added services.[845] However, such product innovation is regarded as one of the least important parameters of competition (see Figure 21) and the Commission considers it very unlikely that full MVNOs' ability to offer value added services can compensate for the MVNOs' lack of ability to compete on the most important parameters price, quality and coverage. Also, the majority of MVNOs in Italy operate as light MVNOs (see Table 2), and are much more limited in this regard.[846] In addition, MVNOs do not always have access to all technologies and services available in the MNOs network.[847] This dependence on the host MNO limits MVNOs' ability to compete on product differentiation and innovation.

(888) If an MVNO could buy wholesale access from more than one MNO, and thus rely on so called multi-sourcing, it could have the possibility to improve its service offer from its host MNO. However, the results of the market investigation show that multi-sourcing is not used by Italian MVNOs.[848] Therefore, MVNOs have no ability to differentiate their service offers.

MVNOs are not seen as competitive threats

844 Tiscali's response to Questionnaire Q1 to MVNOs of 8 February 2016, question 78 and to RFI n. 40 of 19 April 2016, question 6, [ID 527] and [ID 1553]

845 See PosteMobile's reply to RFI n. 35 of 19 April 2016, question 6 [ID 1318], and Fastweb's reply to RFI n. 36 of 19 April 2016, question 7 [ID 1601].

846 For a light MVNO to transform into a full MVNO, to increase its ability to differentiate in terms of value added services, requires significant investments See PosteMobile's reply to RFI n. 35 of 19 April 2016, question 6c [ID 1318], and Fastweb's reply to RFI n. 36 of 19 April 2016, question 7c, [ID 1601].

847 See responses to Questionnaire Q1 to MVNOs of 8 February 2016, question 3.3.

848 See PosteMobile's reply to RFI n. 35 of 19 April 2016, question 5 [ID 1318], Fastweb's reply to RFI n. 36 of 19 April 2016 , question 6, [ID 1601], Tiscali's reply to RFI n. 40 of 19 April 2016, question 8, [ID 1553].

(889) The Parties have dismissed MVNOs' complaints as biased comments from competitors and have called the Commission to not put too much weight on their validity. The Commission considers that the MVNOs' limited market shares is a clear and unbiased evidence of the MVNOs' lack of competitiveness. Moreover, the Commission notes that MVNOs are largely absent from the Parties' analyses of the retail market, of the positioning of the players or evaluations of new offerings from competitors. Several internal documents of H3G and WIND for example have shown that the Parties […] while never taking into account any of the MVNOs.[849] Similarly, the customer surveys conducted by the Parties described in Section 7.3.1.3 b) above typically […], not even taking into account MVNOs. The Commission considers this lack of attention paid to competition from MVNOs to be further proof of the limited competitive pressure MVNOs exert on the MNOs.

(890) MVNOs are also largely absent in reports on the Italian mobile market by third party analysts.[850] These analysts, employed by banks or consultancies, normally advise investors by issuing regular reports on the companies' past and expected performance. They are experts in their industry sectors and follow markets closely.

Competitive position of MVNOs absent the Transaction

(891) Considering the growing demand for mobile data, mentioned in Section 5.1.2.3 above, and that MVNOs currently find it more difficult to compete with the MNOs for tariffs that include data packages (see recital (883)), MVNOs' ability to compete may decrease in the coming years, also absent the Transaction, if wholesale access terms do not improve. Figure 66 below illustrates the rapid growth in data traffic in recent years. The number of data-enabled SIMs has increased in 2015 from 43.6 to 50.2 million units, with a growth rate of 15.1 %. Since December 2011, the number of SIMs with data traffic has increased from 28.1 % to 54.2 % of the overall customer base.

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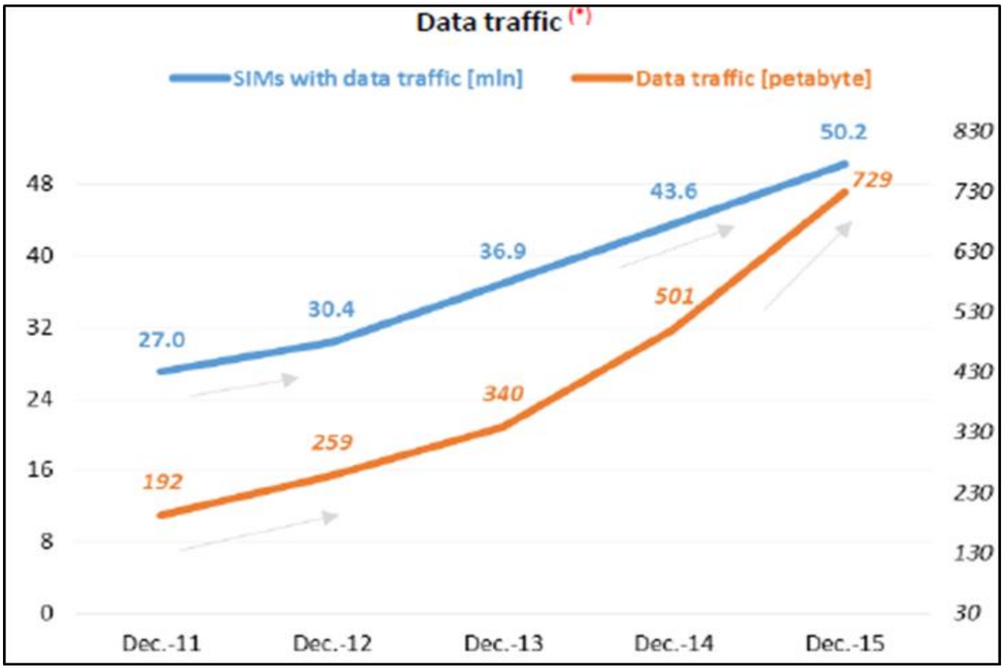
[849] See for example H3G internal documents provided by the Parties in response to the Commission's RFI of 15 January 2016 concerning the Second Draft Form CO, […]; and WIND internal documents provided by the Parties in response to the Commisson's RFI n. 20 of 16 February 2016, questions 5 and 6: […].

[850] Form CO, Annexes 13.1–13.145.

Figure 66: Evolution of mobile data traffic



Source: AGCOM, Quarterly Report No. 1/2016, p.11 [ID 2328]

(892) As described in Sections 5.1.2.3 and 7.3.1.4 respectively, the volumes of data traffic are expected to continue to grow in the coming years, and 4G will likely take over from 3G as the technology with the highest amount of data traffic on the Parties' networks. MVNOs responding to the market investigation said they are most of the time not able to rely on the latest technology on a wholesale basis, like 4G, or if so, only after their MNO has started offering these kind of services to their retail customers as well,[851] or subject to excessively high prices.[852] Data services based on 4G was launched commercially by MNOs in 2012,[853] but still many MVNOs do not have wholesale access to the technology.[854] This means that when customer demand for 4G (or subsequent technologies) increases, MVNOs' ability to compete with MNOs may decrease.

Likely reaction of MVNOs post-Transaction

(893) The majority of the MVNOs responding to the market investigation commented that also post-Transaction MVNOs would not be able to compete with MNOs after the Transaction,[855] and that in fact operating in Italy as an MVNO would become more difficult.[856]

(894) As described in the previous recitals, already pre-Transaction MVNOs’ ability to compete in the Italian retail mobile market is very limited in several aspects. The Commission considers that the ability of MVNOs to compete with MNOs crucially depends on the access conditions that they obtain at the wholesale level, conditions that are controlled by the MNOs themselves. Already pre-Transaction, MVNOs’

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851 See responses to Questionnaire Q1 to MVNOs of 8 February 2016, question 3. See also Fastweb's reply to the Commission's RFI n. 36 of 19 April 2016, question 2, [ID 1601].

852 See responses to Questionnaire Q1 to MVNOs of 8 February 2016, question 78. See also Tiscali's reply to RFI n. 40 of 19 April 2016, question 7, [ID 1553].

853 See recital (41) of this Decision.

854 See responses to Questionnaire Q1 to MVNOs of 8 February 2016, question 3.3.

855 See responses to Questionnaire Q1 to MVNOs of 8 February 2016, question 80.

856 See responses to Questionnaire Q1 to MVNOs of 8 February 2016, question 23.

ability to compete against MNOs is limited by the existing wholesale access conditions. Furthermore, MVNOs have limited bargaining power to negotiate better wholesale access conditions. Finally, most MVNOs are small niche players, with a small presence on the market and little ability to differentiate themselves from MNOs. Even the two most successful MVNOs, PosteMobile and Fastweb, exert limited competitive pressure on the Italian market.

(895) The Commission considers that all the aforementioned factors currently limiting MVNOs' competitiveness would remain even after the Transaction. Therefore, post-Transaction MVNOs would remain unable to compete effectively against MNOs. Furthermore, as noted in recitals (891) - (892), the expected increase of mobile data usage is likely to further limit MVNOs' competitiveness after the Transaction.

(896) As will be explained in Section 7.4.1.4 below, the Transaction would likely produce effects also on the wholesale market for access and call origination on mobile networks. For the reasons explained in that Section, the Transaction would likely worsen in the short term the conditions of those MVNOs that are not contractually bound to an MNO, and of possible new MVNO entrants on the retail market, which would seek wholesale access (although the Commission is not aware of any concrete and credible plan by market players to enter as MVNOs in the Italian market, with the possible exception of Sky, discussed in more detail in recital (1347) below). Conversely, the Transaction would have a limited impact in the short term on the main Italian full MVNO, PosteMobile, which accounts for half of MVNOs' customer base, and on other MVNOs because of the contractual terms included in their wholesale agreements.

(897) However, the Commission considers that MVNOs' ability to compete on the retail market is already very limited prior to the Transaction, for the reasons explained above. This conclusion is irrespective of the finding of possible effects of the Transaction on the wholesale market, which would further worsen the position of MVNOs.

iii. Conclusion

(898) Based on the above findings, it therefore appears that there are already prior to the Transaction a number of difficulties for MVNOs to effectively compete with MNOs at the retail level in Italy. Those difficulties would remain even post-Transaction, and would continue limiting MVNOs ability to compete against MNOs, irrespective of any possible further deterioration of the competitive conditions at the wholesale level caused by the Transaction.

(899) The Commission therefore concludes that MVNOs would be unable to exert a competitive pressure on the retail market post-Transaction that would replace the one exerted by the Parties separately before the Transaction.

d) Barriers to entry

i. Parties' view

(900) The Parties consider that barriers to entry as an MNO on the market for retail telecommunications services are significant. Those barriers are the need for substantial investments and regulatory prerequisites.[857] On the other hand, the Parties consider that barriers to entry for MVNOs are low. This is confirmed by the presence of numerous MVNOs on the Italian retail market and the continuous interest from

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[857] Form CO, Section 7, paragraphs 295 and 296.

potential new MVNO entrants. The Parties submit they expect new MVNOs, including IVO and Mundio-Vectone, to enter the retail market in the near future.[858]

(901) The Parties submit that the pre-requisites, costs and time necessary to enter the retail market vary with the type of MVNO. Partial or light MVNOs can enter within a matter of months at very limited expense. While it would take longer and would require a greater budget to enter the market as a full MVNO, barriers to entry would still be low.[859]

(902) In the Reply to the Article 6(1)(c) Decision, the Parties agree with the Commission that barriers to entry for MNOs are comparably high. However, the Parties reiterate that barriers to entry for an MVNO are low, as is evidenced by the fact that numerous MVNOs have entered and are present on the Italian market, and several others plan to enter in the near future. Furthermore, the Parties consider that entry can occur within a short timeframe. Therefore, the Parties consider that MVNO entry can be expected to occur in the next two to three years, and that MVNOs will fuel competition on the Italian market and constrain MNOs.

ii. Commission's assessment

(903) Based on the results of the market investigation, the Commission considers that there are significant barriers to entry on the Italian retail market for mobile telecommunications services.

(904) In previous decisions, the Commission concluded that entering the retail market for mobile telecommunications services as an MNO presents significant difficulties, due to the need to build a radio network and the related requirements[860].

(905) Most of the MVNO respondents to the market investigation stated that entry as an MNO is very costly and time-consuming, with substantial investments in spectrum and network equipment being required, including for the roll-out of 4G.[861] For example, Fastweb stated, inter alia, that no new MNO entrant could be expected before 2029 (when new spectrum in the more valuable bands will be allocated through public auctions).[862] All MVNO and all MNO respondents stated that they do not expect any new MNO to enter the Italian market in the next 2-3 years.[863]

(906) Therefore, in light of the high barriers to entry, the Commission considers that entry in Italy of a new MNO is unlikely, and would not be timely to deter the likely competition concerns raised by the Transaction.[864]

(907) Entering the market as an MVNO is easier than entering the market as an MNO, since MVNOs do not need to build their own radio network. Nonetheless, entry as an MVNO requires a certain level of investment and planning.

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858 Form CO, Section 6, paragraph 659.

859 Form CO, Section 7, paragraph 285.

860 See Commission decision of 28 May 2014 in Case M.6992 - *Hutchison 3G UK/Telefónica Ireland*, recitals 262-269; Commission decision of 2 July 2014 in Case M.7018 - *Telefónica Deutschland/E-Plus*, recitals 845-848; Commission decision of 12 December 2012 in Case M.6497 - *Hutchison 3G Austria/Orange Austria*, recitals 287-292.

861 See responses to Questionnaire Q1 to MVNOs of 8 February 2016, questions 81 to 82.

862 Response of Fastweb to Questionnaire Q1 to MVNOs of 8 February 2016, questions 81 to 82, [ID 707].

863 See responses to Questionnaire Q1 to MVNOs of 8 February 2016, question 82; responses to Questionnaire Q4 to MNOs of 8 February 2016, question 60.

864 Horizontal Merger Guidelines, paras. 69-74.

(908) A number of MVNO respondents stated that they expect new MVNOs to enter the Italian market in the next 2-3 years. No MVNO, however, (with the possible exception of Sky (see recital (1347) below), put forward any concrete and credible plan to this effect.

(909) In any event, even if entry by MVNOs were to be likely and foreseeable in the near future in Italy, the Commission does not consider that this entry would be of sufficient scope and magnitude to deter or defeat the anti-competitive effects of the Transaction.[865] Indeed, for the reasons explained in section 7.3.2.4 c) above, MVNOs already today do not seem able to effectively compete on the Italian retail market for mobile telecommunications services, or exert the same type of competitive pressure of MNOs. This situation is not expected to change over the next years and could potentially worsen as a result of the Transaction.

(910) Therefore, the Commission considers that barriers to entry as an MNO in the Italian retail market for mobile telecommunications services are high, which makes entry of a new MNO unlikely. As regards entry as an MVNO, barriers to entry are lower. However, the Commission considers that entry by new MVNOs in the near future does not appear likely or, in any event, of sufficient scope and magnitude to remove the competition concerns raised by the Transaction.

e) Buyer power

(911) According to the Horizontal Merger Guidelines, the competitive pressure on a supplier is not only exercised by competitors but can also come from its customers. Even firms with very high market shares may not be in a position, post-merger, to significantly impede effective competition, in particular by acting to an appreciable extent independently of their customers, if the latter possess countervailing buyer power. Countervailing buyer power in that context should be understood as the bargaining strength that the buyer has vis-à-vis the seller in commercial negotiations due to its size, its commercial significance to the seller and its ability[866].

(912) As explained in section 7.3.1.1, the Transaction would lead to a loss of competition in particular in the private segment of the retail market for mobile telecommunications services in Italy, where the JV would have a market share of [30-40]% in terms of subscribers and revenues, ahead of the two remaining MNOs.

(913) Private customers cannot be expected to have any countervailing buyer power vis-à-vis the JV to offset the anti-competitive effects of the Transaction. Their demand is too fragmented. They do not negotiate their mobile contracts on an individual basis and their individual subscription value would be of no material commercial significance to the JV.

(914) The market investigation indicated that customer switching for retail mobile services in Italy is easy. According to all MVNO respondents, customers can easily and timely switch mobile providers in Italy. In particular, most respondents stated that switching through the MNP procedure requires two working days (consistent with the regulatory requirements). DIGI Mobile pointed out that switching requires 3 days if the customer also requires credit transfer, and that, in the case of postpaid

[865] Horizontal Merger Guidelines, para. 75.

[866] Horizontal Merger Guidelines, paragraph 64.

contracts, switching requires payment for subsidies/exit.[867] MNOs also confirmed that customers can easily switch mobile provider.[868]

(915) However, the Commission does not consider that the possibility to easily switch to another provider of retail mobile services grants a customer, particularly a private customer, any significant degree of buyer power. As it appears that, following the Transaction, the JV and the remaining MNOs would lack the incentives to vigorously compete and would likely raise prices, customers could switch mobile operator, but would be unable to negotiate better terms with any MNO.

(916) The lack of buyer power of customers is confirmed by the results of the market investigation.

(917) As regards private customers, MVNO respondents to the Commission's market investigation stated that these customers have no or very limited bargaining power in their negotiations with MNOs and MVNOs.[869]

(918) As regards business customers, MVNO respondents took the view that these customers generally have more bargaining power than private customers. However, this concerns mostly or only large companies, while small/medium companies have limited bargaining power. [870]

(919) The Commission therefore concludes that buyer power does not constitute a countervailing factor that would offset the likely anti-competitive effects of the Transaction in relation to the provision of retail mobile telecommunications services.

f) Quantitative analysis of the likely non-coordinated price effects of the Transaction

i. <u>Introduction</u>

(920) The Commission has undertaken an in-depth quantitative assessment of the likely non-coordinated price effects stemming from the elimination of the horizontal competition between the Parties in the Italian retail market for mobile telecommunications services resulting from the Transaction.

(921) The analysis performed is a calibrated merger simulation and consists of an extension of the analysis presented in the Article 6(1)(c) Decision. This estimation of the likely price effect of the Transaction takes into account the most direct unilateral effects as indicated in the Horizontal Merger Guidelines.[871] These are the likely price effects resulting from the elimination of competition between H3G and WIND. The analysis also accounts for price reactions of the remaining competitors in the market. Therefore, the results of analysis provide an indication of the approximate price effect that the Transaction would have across all operators.

(922) The Commission notes that the quantitative analysis can only reflect the expected effect on prices caused by the loss of competition between H3G and WIND in the retail mobile market.[872]

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867 See responses to Questionnaire Q1 to MVNOs of 8 February 2016, question 86.

868 See responses to Questionnaire Q1 to MVOs of 8 February 2016, question 64.

869 See responses to Questionnaire Q1 to MVNOs of 8 February 2016, question 88.

870 See responses to Questionnaire Q1 MVNOs of 8 February 2016, question 88.

871 Horizontal Merger Guidelines, paragraph 24.

872 As such, the price effects predicted by the quantitative analysis are likely to be compounded by the anti-competitive effects due to coordination of the MNOs' competitive behaviour discussed in Section 7.3.3 below. In particular, see paragraph (1211) below.

(923) The merging parties do not need to be each other's closest competitor for a unilateral price increase to be profitable for the JV. However, the closer the competition between the merging parties, that is, the higher the diversion ratios between them, the stronger will the JV's incentive be to raise prices post-merger. Moreover, the higher the observed margins are, the higher will the incentives be to increase prices. Similarly, the price reactions by rivals will depend on their closeness of competition with the merging firms as well as rivals' margins.

(924) The Commission notes that the possibility of deterioration of competition post-Transaction may also take the form of the JV offering a lower quality of service compared to what would have occurred in the absence of the Transaction. A reduction of handset subsidies may be an additional way of achieving a de facto price increase. In the Commission's analysis, the finding that the Transaction would generate significant incentive to raise price is understood to encompass all mechanisms by which the JV could increase its margins relative to the situation absent the Transaction.

(925) The analysis performed necessarily abstracts from a number of additional factors affecting the Parties pricing incentives (such as product repositioning or the existence of barriers to entry). Nevertheless, the applied framework captures, in the Commission's view, the most important factors (such as the closeness of competition between the Parties) determining how the Transaction will likely affect the mobile operators' pricing incentives. The Commission considers that the market features and dynamics outside the scope of this analysis are unlikely to significantly bias the results in a particular direction. In any event, the results should not be interpreted as providing a precise quantification of the exact increase in prices expected following the Transaction but only as an approximation of the change in pricing incentives post-Transaction.

(926) A high level summary of the approach to the quantitative analysis of the horizontal non-coordinated effects is discussed in the following Section. A more comprehensive and technical discussion of this quantitative analysis is presented in Annex A, where the Commission also presents its assessment of the arguments raised by the Parties in the Reply to the Article 6(1)(c) Decision.

(927) The efficiency claims raised by the Parties are discussed in Section 7.4.1.6 below. The Commission is of the view that only a limited amount of these efficiency claims satisfy the three cumulative criteria outlined in the Horizontal Merger Guidelines. The Commission performed a sensitivity analysis taking into account such efficiency claims in Annex A. The prediction that the JV would lead to adverse non-coordinated effects applies also to the scenario where part of the efficiency claims made by the Parties is accepted.

ii. <u>Outline of the analysis</u>

(928) The main inputs for the calibrated merger simulation are a measure of the diversion ratios across operators, a measure of prices and margins and a measure of quantities.

(929) In its baseline scenario, the Commission has computed diversion rations for the Parties based on the Survey (using only the intensive question). The diversion ratios for the other operators are based on MNP data.

(930) The analysis has been carried out at network level and at the provider level. For the former, switching is considered across the four networks only and each MVNO is aggregated under its host network. For the latter, switching is considered across all operators and MVNOs are treated as independent market players on par with the MNOs.

(931) The Commission notes that the analysis at provider level does not account for the possible effects on the retail market stemming from a likely reduction of competition at the wholesale level, which could further reduce the competitive constraint exercised by MVNOs (see Section 7.4.1.4 below). On the contrary, the analysis at the network level assumes that the effect of the elimination of competition between the Parties is captured by their positions at the network level rather than the pure retail level interaction between their respective brands. The Commission considers that the network level analysis proxies to a certain extent the wider anti-competitive effects of the Transaction, in particular in relation to possible detrimental effects on the wholesale competition, as it assumes that MNOs control non-MNOs on their network both pre- and post-Transaction. This assumption partly accounts for the identified harm relating to reductions in competition at the wholesale level.

(932) As regards the margin figures, for its baseline scenario the Commission uses the contribution margins of each operator.[873]

(933) Prices have been proxied by using a measure of ARPU and pre-Transaction quantities have been proxied by using the operators' gross adds.

(934) The Commission has also carried out sensitivity analyses using (i) different measures of diversion ratios (e.g. MNP, both intensive and extensive diversion ratios from the Survey, etc.); (ii) different measures of margins (e.g. incremental margins); and (iii) assuming a diversion ratio to an outside good.

(935) More details on the construction of diversion ratios, margins, ARPU and quantities are presented in Section 3 of Annex A, which forms an integral part of this Decision.

iii. Results

(936) Due to the prevalence of prepaid tariffs and due to the similarities in the prepaid private and the postpaid private segments in the Italian retail mobile telecommunication market,[874] the Commission focused its quantitative analysis on the overall private segment.

(937) The predicted price effects resulting from the Commission's baseline scenario are presented in Table 24 below. The left hand side of Table 24 presents the price effects based on diversion ratios aggregated at the network level, while the right hand side of Table 24 presents the price effects based on diversion ratios at the provider level.

873 As explained in Annex A, the Commission considers that the contribution margins, as opposed to the incremental margins, drive the operators' pricing decisions in the Italian retail mobile telecom market.

874 See recital 32 of this Decision.

Table 24: Calibrated Merger Simulation Results baseline scenario, 2015

Mobile operator	Private Segment	
	Network Level	**Provider Level**
H3G	13.1%	12.1%
WIND	10.7%	10.0%
Vodafone	4.6%	3.8%
TIM	3.5%	2.9%
PosteMobile	-	1.2%
Fastweb	-	1.5%
Overall Segment Effect	7.0%	6.1%

Source: Commission computations based on data provided by the operators

(938) The baseline scenario of the Commission's quantitative analysis predicts price increases in the range of 12.1-13.1% for H3G and 10-10.7% for WIND. On average, the model predicts price increases between 6.1% and 7% in the private segment.

(939) The results of the baseline scenario indicate that the Transaction is likely to give sizeable incentives to the Parties as well as to the other market participants to increase prices in the private segment.

(940) In order to verify the robustness of the baseline results, the Commission performed an extensive set of sensitivity analyses. These are presented in Annex A to this Decision.

(941) In particular, the Commission has assessed the magnitude of the estimated price increases in case diversion ratios based on MNP data are used.[875] The results are displayed in Table 25 below.

[875] In a number of previous cases concerning the mobile telecommunications sector, the Commission has used MNP data at the network level as the main data source for the calculation of diversion ratios (Commission decision of 2 July 2014 in case No M.7018 – *Telefónica Deutschland/E-Plus*, Commission decision of 28 May 2014 in case No M.6992 – *Hutchison 3G UK/Telefónica Ireland*). The Commission has also used MNP data to inform the quantitative analysis presented in the 6(1)(c) Decision in this case.

Table 25: Calibrated Merger Simulation Results using MNP diversion ratios, 2015

Mobile operator	Private Segment	
	Network Level	Provider Level
H3G	15.4%	12.6%
WIND	15.9%	14.0%
Vodafone	6.0%	4.5%
TIM	4.3%	3.1%
PosteMobile	-	2.6%
Fastweb	-	2.4%
Segment Effect	9.4%	7.5%

Source: Commission computations based on data provided by the operators

(942) The price effects for the Parties predicted by the sensitivity analysis using MNP diversion ratios range between 12.6% and 15.4% for H3G, and between 14% and 15.9% for WIND. On average, the model predicts price increases of 7.5-9.4% in the private segment.

(943) Compared to the baseline scenario, the sensitivity analysis using MNP diversion ratios predicts higher price increases both segment-wide and for the Parties. This confirms the conclusion of the baseline scenario that the Transaction is likely to give raise to sizable incentives to increase prices.

(944) The remaining sensitivity analyses focus on the following aspects.

(945) First, a number of sensitivity analyses use different measures of diversion ratios. These sensitivities generally predict higher price increases than the baseline scenario.

(946) Second, the Commission has tested the sensitivity of its baseline results to the use of different margin measures and the introduction of an outside good. These sensitivities generally predict lower but still significant price increases compared to the baseline scenario.

(947) Finally, the Commission has included part of the Parties' cost efficiency claims in the calibrated merger simulation (based on the Commission's assessment of the Parties' efficiency claims, set out in Section 7.5). The predicted price effects of this sensitivity analysis are broadly in line with the baseline scenario due to the limited size of the cost reductions arising from the efficiencies that meet the conditions set out in the Horizontal Merger Guidelines.

(948) Moreover, also the results of the quantitative analysis carried out by the Parties in the Parties' Merger Simulation study are, absent efficiencies, in line with the results of the Commission's baseline scenario (see Annex A, Section 4.3.).

(949) The results of these sensitivity analyses show that the conclusion of likely significant price increases from the Commission's baseline quantitative analysis are robust to changes in the main assumptions. A number of sensitivities produce higher predicted price increases while other sensitivities produce lower but still significant price increases.

(950) Overall, the quantitative analysis performed by the Commission is in line with the results of the Commission's qualitative analysis, and indicates that the Transaction is likely to generate an incentive for the JV to significantly increase prices. This would also lead to significant price increases in the private segment overall.

7.3.2.5. Conclusion on horizontal non-coordinated effects

(951) On the basis of the findings illustrated in this Section, the Commission concludes that the Transaction is likely to give rise to non-coordinated anti-competitive effects on the retail market for mobile telecommunications services in Italy.

(952) Those effects would arise from the reduction of the number of MNOs from four to three in a highly concentrated market with high barriers to entry. The Transaction would remove from the market an important competitive force, H3G, as well as the competitive constraint exerted by WIND. The Parties closely compete on the market, and have exerted a competitive constraint on each other and the other MNOs. Following the Transaction, the JV would have a significant market share, and would not have the incentive to compete on the market in the same way as the Parties did before the Transaction separately. Furthermore, the other MNOs would also not have the incentive to compete against the JV to counter the anticompetitive unilateral effects of the Transaction. MVNOs may have the incentive to compete, but would lack the ability to compete, and would thus be unable to replace the competitive constraint exerted by the Parties, which the Transaction would remove. This would result in significant price effects, which would not be offset by buyer power or market entry.

(953) Therefore, the Commission concludes that that the Transaction would significantly impede effective competition in the retail market for mobile telecommunications services in Italy as a result of horizontal non-coordinated effects.

7.3.3. Horizontal coordinated effects

7.3.3.1. Introduction

(954) A merger in a concentrated market may significantly impede effective competition due to horizontal coordinated effects if, through the creation or strengthening of a collective dominant position, it increases the likelihood that firms are able to coordinate their behaviour in this way and raise prices, even without entering into an agreement or resorting to a concerted practice within the meaning of Article 101 TFEU.[876] A merger may also make coordination easier, more stable or more effective for firms that were already coordinating before the merger, either by making the coordination more robust or by permitting firms to coordinate on even higher prices.[877]

(955) The reduction in the number of firms in a market may, in itself, be a factor that facilitates coordination. However, a merger may also increase the likelihood or significance of coordinated effects in other ways. For instance, a merger may involve a "maverick" firm that has a history of preventing or disrupting coordination, for example by failing to follow price increases by its competitors, or has characteristics that gives it an incentive to favour different strategic choices than its coordinating competitors would prefer. If the merged firm were to adopt strategies similar to those

[876] Horizontal Merger Guidelines, paragraph 39.
[877] Horizontal Merger Guidelines, paragraph 39.

of other competitors, the remaining firms would find it easier to coordinate, and the merger would increase the likelihood, stability or effectiveness of coordination.[878]

(956) Coordination is more likely to emerge in markets where it is relatively simple to reach a common understanding on the terms of coordination.[879] In addition, three conditions are necessary for coordination to be sustainable. First, the coordinating firms must be able to monitor to a sufficient degree whether the terms of coordination are being adhered to. Second, discipline requires that there is some form of credible deterrent mechanism that can be activated if deviation is detected. Third, the reaction of outsiders, such as current and future competitors not participating in the coordination, as well as customers, should not be able to jeopardise the results expected from the coordination. [880]

(957) For the reasons set out in the following Sections, the Commission considers that the present Transaction is likely to lead to coordinated effects on the retail market for mobile telecommunication services in Italy.

(958) In conducting its investigation, the Commission has assessed how the proposed transaction affects the incentives of market participants to coordinate (Section 7.3.3.2), whether and how reaching terms of coordination would be possible (Section 7.3.3.3), whether coordination would be likely to be sustainable (Section 7.3.3.4) and, in addition, whether there are any practices that firms could follow to facilitate coordination (Section 7.3.3.5). For this purpose, the Commission has taken into account the available relevant information on the characteristics of the Italian retail mobile market, including its structural features and the past behaviour of firms.[881]

(959) In carrying out its assessment, the Commission has also considered the arguments put forward by the Parties in the Form CO and in the Reply to the Article 6(1)(c) Decision.

(960) In the Reply to the Article 6(1)(c) Decision, the Parties claim, as a preliminary argument, that the Commission should have excluded the existence of coordinated effects in this case even at the initial stage of the investigation. According to the Parties, this is because the Italian retail mobile market exhibits many of the same characteristics as other mobile markets in which the Commission has excluded the likelihood of coordinated effects, and there are no relevant distinguishing factors which would make coordination likely to emerge in the Italian retail mobile market. The Parties' claim cannot be accepted. The Commission assesses each merger on its own merits, by comparing the competitive conditions that would result from the merger with the conditions that would have prevailed without the merger,[882] on the basis of the specific features of the relevant market, including the market structure, the products and price characteristics and the past behaviour of the merging parties and their competitors. In addition, previous Commission decisions are not the benchmark against which the legality of Commission acts needs to be assessed.[883]

(961) The remaining arguments of the Parties will be summarised and addressed in the following Sections.

[878] Horizontal Merger Guidelines, paragraph 42.
[879] Horizontal Merger Guidelines, paragraph 41.
[880] Horizontal Merger Guidelines, paragraph 41.
[881] Horizontal Merger Guidelines, paragraph 43.
[882] Horizontal Merger Guidelines, paragraph 9.
[883] Judgment of the General Court of 23 January 2014, T-384/09, *SKW Stahl-Metallurgie Holding et al* v *Commission*, ECLI:EU:T:2014:27, paragraph 86.

7.3.3.2. Transaction's impact on the incentives to coordinate

(962) A merger can only create the risk of coordinated effects if it *changes* coordination incentives in such a way that either a pre-existing coordination becomes significantly easier to sustain or by permitting firms to engage in tacit coordination in the first place.[884] This section, therefore, examines the changes brought about by the Transaction and how they would affect the MNOs' incentives to engage in coordination.

(963) After presenting the Parties' view in Section a), the subsequent sections set out the Commission's findings in relation to the Transaction's impact on the MNOs' incentives to coordinate. In particular, Section b) examines the effects of the reduction in the number of MNOs resulting from the Transaction. Section c) considers the impact of the disappearance from the market of H3G as an independent maverick player. Section d) analyses the consequences of the creation of a symmetric market structure after the Transaction. Section e) describes the available documentary evidence pointing to an alignment of the MNOs' incentives to engage in coordination after the Transaction. Finally, Section f) draws the Commission's conclusions.

a) Parties' view

(964) The Parties object to the Commission's preliminary finding in the Article 6(1)(c) Decision that the reduction in the number of MNOs resulting from the Transaction would facilitate and incentivise coordination. In this regard, the Parties point out that all concentrations (including in oligopolistic markets) lead to a reduction in the number of competitors.

(965) Furthermore, the Parties disagree with the Commission's preliminary finding in the Article 6(1)(c) Decision that the Transaction could facilitate coordination by removing one or more maverick firms from the market. In the Parties' view, neither H3G nor WIND can be considered as an important competitive force and there is no risk that the JV's incentives to compete would be reduced as a result of the Transaction.

(966) In addition, according to the Parties, the JV, TIM and Vodafone would not have aligned interests and would not be sufficiently symmetrical in order to reach stable terms of coordination. In the Parties' view, asymmetry between the MNOs would exist in terms of: (i) level of service quality (due to the LTE performance gap between TIM and Vodafone on the one hand and WIND and H3G on the other hand, which the JV would address post-Transaction through significant investment, inducing in turn further investment by TIM and Vodafone); (ii) market positioning (with TIM and Vodafone enjoying strong brand recognition, and the JV pursuing an aggressive marketing strategy to establish its credibility); (iii) capacity (with the JV having considerably more spare capacity than TIM and Vodafone, thereby fuelling the JV's incentive to compete intensively to expand its customer base); (iv) ability to offer bundles of mobile and fixed services (with Vodafone and the JV being far behind TIM in this respect); and (v) volume and type of smartphones (with Vodafone selling most handsets and the JV lagging behind, and with TIM and Vodafone selling lower range handsets and the JV mostly selling premium handsets).

[884] Horizontal Merger Guidelines, paragraph 42.

b) Reduction in number of players

(967) The Italian retail mobile market is currently already a concentrated market, with four firms (the four MNOs) together accounting for the large majority of the overall retail market ([90-100]% in terms of revenues and [90-100]% in terms of subscribers).[885] The Transaction would further increase the level of market concentration by reducing the number of MNOs from four to three. Post-Transaction, the large majority of the market would therefore be in the hands of only three players, i.e. the JV, TIM and Vodafone. While a number of MVNOs would remain active, they would only account for a marginal proportion of the market (collectively, [0-5]% in terms of revenues and [5-10]% in terms of subscribers).[886]

(968) The increase in market concentration resulting from the Transaction is reflected in the post-merger HHI. After the Transaction, the HHI in the overall retail market would be [2000-3000] by subscribers and [3000-4000] by revenues, representing a delta of [500-1000] by subscribers and of [0-500] by revenues compared to the pre-Transaction HHI.[887] The HHI delta would also be high in key segments of the retail mobile market, such as the private segment ([500-1000] by subscribers and [500-1000] by revenues) and the pre-paid segment ([500-1000] by subscribers and [0-500] by revenues).

(969) The reduction in the number of firms in a market may, in itself, be a factor that facilitates coordination.[888] Unlike what the Parties seek to imply, this is not equivalent to arguing that any reduction in the number of competitors as a result of a merger would lead to coordinated effects. Whether or not a merger raises coordinated effects depends on the overall assessment of a number of factors.[889] However, the reduction in the number of market players, particularly if – as in the present case – the market was already concentrated pre-merger and presents other characteristics that make it prone to coordination,[890] may increase the likelihood of coordinated effects materialising.

(970) Indeed, the smaller the number of market players, the easier and the more profitable coordination is likely to be. Coordination tends to be *easier* among a few players than among many, particularly because it is easier to reach a common understanding on the terms of coordination.[891] Monitoring compliance with terms of coordination is also easier among fewer players and, as a result, coordination is more likely to be sustainable. With fewer players, engaging in coordination is also *more profitable*: given that the overall profit arising from coordination is to be shared between the coordinating firms, the smaller the number of firms, the larger share of the overall profit each firm will obtain. Increased profits, in turn, tend to enhance the sustainability of coordination. Indeed, deviating from the terms of coordination is commercially less tempting for firms with high market shares, because such firms have more to lose in terms of future profits from coordination.

(971) In conclusion, the reduction in the number of MNOs from four to three as a result of the Transaction is likely to contribute to facilitating and incentivising coordination

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885 See Table 6 above.
886 See Table 6 above. Moreover, as explained in Section 7.3.2.4 c) above, MVNOs are constrained in their ability to compete because of their dependence on MNOs for network access.
887 See Table 13 above.
888 Horizontal Merger Guidelines, paragraph 42.
889 See paragraph (956) above.
890 See Sections 7.3.3.3 and 7.3.3.4 below.
891 Horizontal Merger Guidelines, paragraph 45.

and, in addition, to enhancing its sustainability compared to the pre-Transaction situation.

c) Removal of a "maverick" firm

(972) Besides reducing the number of key market players in the Italian mobile market, the Transaction would also remove from the market an important competitor as a stand-alone player, H3G.

(973) As described extensively in Section 7.3.2.1 a) ii. and iii. above, the Commission's investigation has shown that H3G has consistently acted as the most commercially aggressive MNO, with appreciably different pricing incentives from those of the other MNOs, thus making it an important competitive force on the Italian retail mobile market. Moreover, as will be explained in Section 7.3.3.3 c) below, H3G has disrupted parallel price increases of the other MNOs in the past, thereby hindering stable coordination in the Italian retail mobile market.

(974) The particularly disruptive market approach of H3G can be explained by its market position, which differs from that of the other three MNOs. Historically, H3G has been the smallest MNO on the Italian mobile market, having entered only in 2003, whereas TIM and Vodafone had been active since 1994 and WIND since 1997. In the past few years, H3G's market share has been [10-20]% or less. Being the smallest MNO in the market, H3G has generally had much stronger incentives to compete aggressively for incremental market share, and less interest in participating in coordination. The reason for this is threefold.

(975) First, from an economic perspective, firms with a comparatively low market share such as H3G benefit appreciably less from coordination attempts than larger incumbents, since they have a smaller customer base on which they could earn a supra-competitive margin. Such firms are therefore much less inclined to cement the existing market structure by agreeing to engage in accommodative pricing. On the contrary, they have a comparatively stronger incentive to try and win over customers from rivals through price cuts.

(976) Second, firms with smaller market shares such as H3G have to be less concerned than large incumbents that aggressive price discounts would cannibalise the profits they make with their existing mobile customer base. As a result, smaller contestants are generally more inclined to discount their price in an effort to win customers from rivals. Conversely, MNOs with a large market share are likely to be concerned that competitive discounting policies to attract new customers might later force them to offer better terms also to their large existing customer base.

(977) Third, this effect is further exacerbated by the importance of economies of scale in mobile markets, which fuel firms' incentives to increase their market share to operate more profitably. In practice, such scale is attained through competitive price discounting. Since variable costs are relatively low in mobile telecommunications, such price cuts permit firms to expand their customer base while still earning an appreciable gross margin on each customer that contributes to cover fixed costs. Accordingly, a relatively small contestant such as H3G has had strong economic incentives to compete aggressively on price to increase its scale.

(978) These considerations are consistent with the practical experience on the Italian mobile market described above, where H3G as the smallest MNO has generally been the most aggressive competitor in terms of pricing. It is therefore not surprising that

H3G has been particularly successful in terms of winning gross adds over time,[892] thereby making progress towards the goal of gaining scale in the market.

(979) As a result of the Transaction, H3G's subscriber share of the overall retail market would increase from [10-20]% (accounting for around 10 million subscribers), to [30-40]% of the JV, in line with the incumbent MNOs TIM and Vodafone.[893] The Transaction is therefore likely to mute H3G's incentives to engage in coordination. With a market share […] as large as pre-Transaction, H3G would lose its previous incentives to disrupt coordination attempts by the other MNOs. Indeed, the factors described above that dissuaded H3G from engaging in coordination in the past – i.e. the prospect of relatively low profits, the limited risk of cannibalising its existing customer base through discounts, and the interest to exploit economies of scale – would likely no longer apply to H3G after the Transaction.

(980) The likely change in H3G's pricing incentives in connection with a larger scale is effectively illustrated by the words of H3G's CEO Vincenzo Novari in September 2014. In reply to a journalist's question "*until when will you continue offering discounted tariffs compared to the other* [MNOs]?", H3G's CEO stated that H3G would continue to do so "*Until we will reach a profitable position*". According to H3G's CEO, this would happen as soon as H3G would reach at least 15 million subscribers: "*Today we are operating at break-even with 10 million customers, we have to get to 15 million, and since we are in a saturated market, with 90 million SIMs (1.5 per Italian), the only way is to steal customers from other operators, with more attractive prices or with more innovative propositions. ... We won 10 million customers and we are in balance. But to reach a profitability of 3-4% on the capital we need five million customers. Say 2 from Tim, 2 from Vodafone and 1 from Wind. Assuming that the market does not consolidate in the meantime*".[894] As a result of the Transaction, H3G would be merged into a company of 31 million subscribers, i.e. well above the 15 million subscribers mentioned by H3G's CEO.

(981) In conclusion, the disappearance of H3G from the market as an independent competitor would leave the other MNOs unencumbered by a maverick with misaligned incentives and a commercial policy of vying for market share. As such, the Transaction is likely to increase the ability and incentives of the remaining MNOs to engage in and sustain coordinated conduct.

d) Increase in symmetry

(982) Besides reducing the number of players and removing an important competitive force from the market, the Transaction would also increase symmetry among the remaining MNOs.

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892 See recitals (435)-(437) above.

893 See Table 6 above.

894 Interview with Repubblica, 8 September 2014, available at: http://www.repubblica.it/economia/affari-e-finanza/2014/09/08/news/novari_prezzi_troppo_bassi_per_fare_margini_a_tre_servono_5_milioni_di_utenti_in_pi-95238535/?ref=search [ID 1690] Original text: "*Dunque fino a quando andrete avanti a proporre tariffe scontate rispetto agli altri? Fino a quando non raggiungeremo una posizione di redditività. Oggi siamo a break even operativo con 10 milioni di clienti, dobbiamo arrivare a 15 milioni e siccome siamo in un mercato saturo, con 90 milioni di Sim (1,5 per ogni italiano), l'unica via è strappare clienti agli altri operatori, con prezzi più attraenti o con proposte più innovative. ... Abbiamo conquistato 10 milioni di clienti e siamo in pareggio. Ma per arrivare a una redditività del 3-4% sul capitale ci occorrono altri cinque milioni di clienti. Diciamo 2 da Tim, 2 da Vodafone e 1 da Wind. Sempre che nel frattempo il mercato non si consolidi*".

(983) Firms may find it easier to reach a common understanding on the terms of coordination if they are relatively symmetrical, especially in terms of cost structures, market shares, capacity levels and levels of vertical integration.[895] The reason why symmetry is conducive to coordination is two-fold. On the one hand, when firms are similar, it is easier for them to tacitly agree on a common course of action to maximise their joint profits. On the other hand, such conduct is also appreciably more likely to be successful. This is because, as explained in Section c) above, the existence of even a single smaller maverick with misaligned incentives can disrupt the ability of other firms to coordinate prices.

(984) In principle, symmetry in terms of market shares is particularly important for the purpose of firms' incentives to engage in coordination. As held by the General Court, "*the market structures which encourage oligopolistic conduct most are those in which two, three or four suppliers each hold approximately the same market share*".[896] Indeed, the larger a firm's market share, the higher the expected profits from coordinating by keeping prices above competitive levels and, hence the higher the incentives to coordinate. The fact that all firms in a given market have similarly high market shares is therefore an important first indication that they may have a similarly high incentive to coordinate.

(985) In the present case, the Transaction would substantially increase market share symmetry between the main market participants, not only by removing the smallest MNO (H3G), but also by bringing the size of the third largest MNO (WIND) to the level of the remaining incumbents Vodafone and TIM.

(986) Currently, the market shares of the four MNOs in the retail mobile market vary to a large extent, with TIM and Vodafone accounting for a share of around [20-30]-[30-40]% each, followed by WIND with around [20-30]-[20-30]% and by H3G with around [10-20]%. After the Transaction, market shares would be [30-40]% (JV), [30-40]% (TIM) and [30-40]% (Vodafone) in terms of revenues. A similarly symmetric distribution would ensue in terms of subscribers, with post-Transaction market shares of [30-40]% (JV), [30-40]% (TIM) and [20-30]% (Vodafone).[897] Post-Transaction market share symmetry would also be significant in the main segments of the retail mobile market. In the private segment, the JV, TIM and Vodafone would have market shares of, respectively, [30-40]%, [30-40]% and [20-30]% by revenues and [30-40]%, [20-30]% and [20-30]% by subscribers.[898] In the prepaid segment (which is mostly made up by private customers), the JV, TIM and Vodafone would have market shares of, respectively, [30-40]%, [30-40]% and [30-40]% by revenues and [30-40]%, [20-30]% and [20-30]% by subscribers.[899]

(987) Accordingly, the Transaction is likely to considerably help aligning post-merger incentives in as far as the size of the MNOs is concerned.[900]

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895 Horizontal Merger Guidelines, paragraph 48.

896 Judgment of the Court of First Instance of 25 March 1999, T-102/96, *Gencor v. Commission*, EU:T:1999:65, paragraph 134.

897 See Table 6 above.

898 See Table 10 above.

899 See Table 8 above.

900 This is also confirmed by several MVNO respondents in the market investigation, who specifically pointed to the risk that the Transaction would result in more aligned incentives to coordinate due to an increase in market share symmetry. Responses to Questionnaire Q1 to MVNOs of 8 February 2016, question 76.1.

(988) In addition to bringing the MNOs closer to each other in terms of size, the Transaction would also mitigate other differences between them. For example, after the Transaction, the MNOs would all be present on markets related to the retail mobile market, such as the retail market for fixed telecommunication services, where H3G is currently not active. Moreover, after the Transaction, the MNOs would have a much more comparable presence on the wholesale market for mobile access and call origination compared to the pre-Transaction situation.[901]

(989) The arguments put forward by the Parties in support of the alleged lack of symmetry between the three MNOs in terms of brand recognition, LTE coverage, capacity, ability to offer mobile-fixed bundles and value of handsets sold are addressed below.

(990) As regards the alleged "LTE gap" between the JV on the one hand and TIM and Vodafone on the other, as explained in Section 7.3.1.4 above, 4G take up in Italy is currently relatively limited. The majority of mobile customers currently still use 3G, in respect of which all four MNOs enjoy almost full network coverage. In the coming years, 4G take up is poised to increase, as explained in recitals (413)-(417) above. However, the Parties intend to close the 4G gap by accelerating investments after the Transaction. According to the Business Plan of the JV, the Parties predict that, by 2018-2019, the JV, TIM and Vodafone would all offer a comparable level of 4G network quality/coverage.[902] Therefore, the Parties' own estimates indicate that the Transaction may ultimately lead to an increase in the symmetry between the three MNOs in terms of 4G network quality and coverage.

(991) In any event, some degree of discrepancy between the MNOs' 4G network coverage for an initial period of time is unlikely to affect either the incentives or the ability of the MNOs to coordinate. In particular, as will be explained in more detail in Section 7.3.3.3 d) ii. below (notably in recitals (1108)-(1113)), any perceived differences in network quality between coordinating parties are not an obstacle to successful coordination in this case, as they can be compensated by maintaining an "acceptable" price difference between the MNOs' respective tariffs.

(992) As regards brand recognition, as shown in Figure 21 above, the results of the market investigation conducted in the present case suggest that brand is a competitive parameter of relatively limited importance in the Italian retail mobile market. Moreover, to the extent that brand recognition is influenced by the degree of 4G roll out, the considerations made in the previous recitals apply. Therefore, as noted in the Article 6(1)(c) Decision and not contested by the Parties, any possible difference in brand recognition does not appear sufficient on its own to prompt the JV to pursue an aggressive marketing strategy with low prices.

(993) The Parties' claim regarding the allegedly significant asymmetries in capacity as an obstacle to coordination cannot be accepted either. First, the Parties fail to consider that the amount of spectrum available to the JV after the Transaction would likely be lower than the sum of WIND's and H3G's current spectrum holdings, as the JV would be forced to dismiss the spectrum exceeding the applicable regulatory caps.[903] Second, a possible capacity asymmetry would not necessarily lower the JV's incentives to engage in coordination. Neither TIM nor Vodafone suffer from capacity

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901 See Section 7.4.1.2 a) ii. below.

902 Form CO, Section 8, Figure 2. See also Section 7.5.4 below.

903 See Parties' reply to RFI 58, question 1.b.

shortage, as they both currently hold a large amount of spectrum and sites.[904] Moreover, the Italian retail mobile market is saturated and is not expected to grow in terms of number of subscribers, meaning that an MNO can only expand its customer base at the expense of other MNOs. Thus, any attempts by the JV to steal customers from Vodafone and TIM through competitive prices – so as to exploit its spare capacity, as per the theory put forward by the Parties – would likely trigger an aggressive reaction from TIM and Vodafone to win back the lost subscriber share. This would likely lead to a "war" which would only result in a loss of profits for the JV (as well as for TIM and Vodafone), similar to the Summer 2013 price war.

(994) As regards the alleged asymmetry in the ability to offer bundles of mobile and fixed services, the penetration of such bundles is still limited in Italy, as explained in recital (129) above. Therefore, in the foreseeable future, the strategies of the three MNOs would remain mobile-only strategies as regards the largest portion of their mobile offerings.

(995) Even in a possible scenario in which fixed-mobile bundles were to gain greater traction in Italy in the next few years, the Transaction would, if anything, increase symmetry as regards the ability of the MNOs to offer such bundles. While currently there is one MNO (H3G) who is unable to offer fixed-mobile bundles, all three MNOs would in principle be able to offer such bundles after the Transaction. The Parties specifically mention that, as part of the JV's commercial strategy post-merger, they envisage […].[905]

(996) The Parties' claim concerning the alleged asymmetry in terms of the value of handsets sold by the MNOs lacks substantiation. In any event, as emphasised by the Parties in the Form CO, the use of handset subsidies by mobile operators is not common in the Italian market.[906] As a result, handsets and mobile subscriptions are mostly sold to end customers under separate contracts. Accordingly, even if the three MNOs' strategies concerning the volume and types of handsets were to differ significantly post-Transaction, this would be unlikely to affect their incentive to coordinate in relation to mobile services. In addition, the source of the Parties' claim is unclear, given that, as explained by the Parties elsewhere in the Form CO, the commercial strategy of the JV, including as regards handset subsidies, has not yet been decided.[907]

(997) In short, it appears that, overall, the possible asymmetries between the MNOs as regards aspects other than their size (and particularly, as regards 4G network quality and coverage) would not be of such magnitude as to put into question the alignment of incentives resulting from the symmetric market sizes of the MNOs.

e) Documentary evidence pointing to alignment of incentives

(998) For the reasons explained in the previous sub-sections, the changes brought about by the Transaction would be likely to align the incentives for the remaining MNOs to engage in coordination and to sustain such coordination over time. However, the alignment of incentives ensuing from the Transaction not only follows from the economic reasoning described above, but is also directly supported by documentary evidence. This evidence relates to: (i) the key rationale and expected effects of the

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904 See Table 1 and Table 4 above, which show that each of TIM and Vodafone currently hold more than 17 000 sites and 165 MHz of spectrum.

905 Form CO, paragraph 93.

906 Form CO, paragraphs 154-170.

907 Form CO, paragraph 94.

Transaction according to the Parties; (ii) the views of other MNOs as to the likely effects of the Transaction; and (iii) the negotiations between MNOs to "compensate" each other for the profit gains expected from the Transaction. These items will be described in turn below.

i. Rationale and expected effects of the Transaction according to the Parties

(999) As described extensively in Section 7.2 above, the Parties' internal documents reveal that one of the main drivers of the Transaction is to establish "market repair" in the Italian mobile market, that is to say to generate substantial industry-wide profit margins as a result of higher retail prices. Many of these internal documents show that, concretely, [...].

(1000) These documents suggest that this "rational" pricing behaviour would, in turn, be a direct consequence of: [...]. The following examples are illustrative:

- […].[908]
- […][909] […].

Figure 67: [...]

[…]

Source: […]

- […].[910]
- […].[911]
- […].[912]
- […].[913] […].[914]
- […].[915] […].[916]
- […].[917]
- […].[918] […].[919] […].[920]

(1001) The expectation consistently emanating from these documents is that of a "quiet" post-Transaction market environment featuring three large competitors, each of which having an equally large share of the pie and therefore a similar incentive to slow down price competition. Indeed, in the language of the Parties, the terms "market repair" and "rational pricing" are used euphemistically to refer to projected price increases by the MNOs to the disadvantage of Italian mobile customers, as if

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908 VimpelCom internal document, […].
909 VimpelCom internal document […].
910 VimpelCom internal document, […].
911 VimpelCom internal document, […].
912 VimpelCom internal document, […]. Similarly, in a script of the meeting between the Parties' senior executives to discuss the Transaction, […].
913 H3G internal document, […].
914 H3G internal document, […]. Some earlier documents predict a […]% ARPU increase for H3G and a […]% ARPU increase for WIND. See H3G internal document, […] and H3G internal document, […].
915 VimpelCom internal document […].
916 VimpelCom internal document […].
917 VimpelCom internal document, […].
918 VimpelCom internal document, […].
919 VimpelCom internal document, […].
920 VimpelCom internal document, […].

competitive prices with normal profit margins were an indication of a "broken" market with "irrational" conduct.

ii. Rationale and effects of the Transaction according to the other MNOs

(1002) The fact that the post-Transaction market structure – with three large MNOs of symmetric sizes – would be the "ideal" one to achieve a more "rational" market environment did not go unnoticed in the industry. Statements by senior executives of the other MNOs show that both TIM and Vodafone shared the conviction that the Transaction would give rise to optimal conditions to permit the MNOs engage in a more "disciplined" and "rational" approach. For instance:

- Back in April 2013, TIM's senior executives stated that "*the most effective way to stabilize our mobile market is through a reduction in the number of players*" and that "*the number of infrastructural players for Italy* [shouldn't] *exceed three*".[921]
- In September 2013, Vodafone's CEO Vittorio Colao replied to a question on how to solve the problem of the "price war" experienced by Italy in the past few years that "*one should ask oneself if four network operators are not too many in a country like Italy. A healthy consolidation is desirable, which rewards who takes long-term commitments*".[922]
- Similarly, TIM's CEO Marco Patuano, speaking of the awaited consolidation process in the Italian mobile market at the end of 2013, stated that "*many times we tried to be the accelerator of this process and honestly, what we learn is that we are not the right one in order to do this. The better combination is the one that ends with a more symmetric position among the remaining three players*".[923]
- In March 2014, Mr. Patuano emphasised again that TIM "*cannot be the ones who drive the consolidation because the consolidation in order to be effective has to rebalance the market and not create a giant and keeping another player which remains much smaller*".[924]
- Mr. Patuano's position was summarised as follows in HSBC's notes of a meeting with him […].[925] HSBC sent these and other meeting notes to VimpelCom's CEO Jo Lunder, who considered […].[926]
- In February 2015, Mr. Patuano, speaking again of possible consolidation in the Italian mobile market, stated that "*the benefits of being three players is that, the situation we have today two of us working for quality and two of us are still*

[921] TIM's Conference Call 1H 2013 Results- Q&A, available at: http://www.telecomitalia.com/content/dam/telecomitalia/en/archive/documents/media/transcripts/2013/Transcript-ConferenceCall-1H2013-Results.pdf [ID 2576].

[922] 30 September 2013, http://www.corrierecomunicazioni.it/tlc/23396_bertoluzzo-il-nostro-futuro-si-giochera-sulla-qualita htm [ID 2562] (original text: "*chiedendosi se in un Paese come l'Italia non siano troppi quattro operatori mobili infrastrutturati. È auspicabile un sano consolidamento che premi chi si da prospettive di lungo periodo*").

[923] TIM, "9M 2013 Financial Results and 2014-16 Plan Outline QA section", 7 November 2013 [Filename RFI55_0016270.pdf], [ID 1585-363].

[924] Telecom Italia's CEO Discusses Q4 2013 Results – Earnings Call Transcript, dated 7 March 2014, available at: http://seekingalpha.com/article/2076173-telecom-italias-ceo-discusses-q4-2013-results-earnings-call-transcript [ID 2552].

[925] VimpelCom internal document […].

[926] VimpelCom internal document […].

working for price, I think will be over and I think it's better to have three players are working on quality" because that way, the "*overall environment is safer*".[927]

(1003) TIM's and Vodafone's positive expectations from the Transaction also emerge from further public statements of their respective senior executives by which they openly expressed their enthusiasm for the Transaction. Reference is here made to the entire list of statements cited in Section 7.2.4 above.

(1004) In sum, all major market participants seemed to be convinced that the post-Transaction market structure would lead to aligned incentives of the MNOs to foster accommodating pricing behaviour. Indeed, there appears to be a common understanding among MNOs that the Transaction could lead to substantial industry-wide benefits in terms of higher profit margins.

iii. "Direct" cooperation with TIM and Vodafone

(1005) The evidence described above on its own points to an alignment of incentives of the three MNOs to coordinate their market behaviour after the Transaction. What is more, the Parties, being aware of the "benefits" that TIM and Vodafone could draw from the Transaction, even sought to engage directly with them to obtain their "contribution". The type of "contribution" sought was twofold.

(1006) […].[928]

(1007) […].[929] […].[930] […].[931]

(1008) The availability of TIM and Vodafone to provide their "contribution" by purchasing the JV's assets is further evidenced by some public statements of their senior managers. By way of example, TIM's CEO Marco Patuano made clear already at the end of 2013 that "*we could be available to help the deal to happen*",[932] and, in early 2014, that "*we're more than open minded to participate. It can be with frequency, it can be with some assets, it can be with eventually with other parts that can determine synergies with our business*".[933] Likewise, Vodafone's CEO, in replying to a question in February 2014 as to whether Vodafone would be willing to "*facilitate*" a merger between H3G and WIND by "*buying spectrum, buying towers and things like that*" stated that "*rationally and at the right price levels, yes*".[934] Vodafone's CEO reiterated the concept in November 2014 by emphasising in relation to a merger between H3G and WIND that "*when contributions or roles will be needed, we'll be*

927 Telecom Italia Group, FY 2014 Preliminary Results & 2015-2017 Plan Outline, dated 20 February 2015, available at: http://www.telecomitalia.com/content/dam/telecomitalia/en/archive/documents/investors/Presentations/Investor_Relations/2015/SlideFY2014Preliminary.pdf [ID 2603].

928 VimpelCom internal document, […].

929 VimpelCom internal document, […].

930 VimpelCom internal document, […].

931 WIND internal document, […].

932 M. Azzola: "Patuano - prosegue Azzola - ci ha detto che Telecom è disponibile a essere un soggetto facilitatore della fusione", 22 November 2013, available at: http://www.corrierecomunicazioni.it/tlc/24472_fusione-wind-3-azzola-telecom-pronta-a-comprare-frequenze.htm [ID 2559].

933 Telecom Italia's CEO Discusses Q4 2013 Results – Earnings Call Transcript, dated 7 March 2014, available at: http://seekingalpha.com/article/2076173-telecom-italias-ceo-discusses-q4-2013-results-earnings-call-transcript [ID 2552].

934 Vodafone Group, Internim Management Statement, dated 6 February 2014, available at: https://www.vodafone.com/content/dam/vodafone/investors/financial_results_feeds/ims_quarter_31december2013/t_ims_31december2013.pdf [ID 2582].

there" and that Vodafone *"would clearly do everything to have a better industry structure*".[935]

(1009) Sections 7.2.3 and 7.2.4 above contain abundant additional evidence, respectively, of […] and of public statements of TIM and Vodafone confirming their willingness to take steps to facilitate the Transaction. Reference is here made to those Sections in their entirety.

(1010) The interactions between MNOs leave little doubt as to the expectations that the MNOs entertained in relation to Transaction. That is to say, that the Transaction would make it possible and profitable to engage in a more "rational" market behaviour and that this would generate industry-wide profit increases. This holds true irrespective of whether […] were ultimately struck between MNOs or not. Thanks to those interactions, each MNO got further confirmation that the other MNOs would also be highly interested in pursuing a more "rational" behaviour post-Transaction with the goal of increasing profits and that they considered this goal to be feasible. As such, the knowledge of each other's incentives is likely to further increase the likelihood that MNOs would reach terms of coordination after the Transaction and that such coordination would be stable over time.

f) Conclusion on the Transaction's impact on the incentives to coordinate

(1011) For all the reasons explained in Sections b), c) and d) above, the Commission concludes that, by creating a highly concentrated and relatively symmetric market structure and by removing a maverick operator with misaligned commercial interests, the Transaction would be likely to align the incentives of the MNOs in the Italian mobile market to engage in coordination. This effect is corroborated by the evidence presented in Section e) above regarding the shared view of all MNOs that the Transaction would be conducive to more "rational" pricing behaviour. Indeed, the Parties saw it fit to even engage in a *direct* cooperation with other MNOs […].

7.3.3.3. Ability to reach terms of coordination

(1012) In order for firms to engage in coordinated conduct, it is necessary for them to be able to reach terms of coordination. This is more likely to happen if competitors can easily arrive at a common perception as to how the coordination should work and if they have similar views regarding which actions would be considered to be in accordance with the aligned behaviour and which actions would not.[936] This section therefore examines how MNOs could reach terms of coordination post-Transaction.

(1013) After presenting the Parties' view in Section a), Section b) analyses the key characteristics of the Italian retail mobile market. Section c) reviews past attempts at coordination by the MNOs and the reasons for their failure and Section d) examines likely coordination mechanisms that the MNOs could rely on post-Transaction. Finally, Section e) draws the Commission's conclusions. Where applicable, the below analysis also highlights the changes that the Transaction would bring about for the purpose of the MNOs' ability to reach terms of coordination, in addition to the changes already described in Section 7.3.3.2 above.

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935 Vodafone Group, Half Year Results - Analyst and Investor Conference, dated 11 November 2014, available at: https://www.vodafone.com/content/dam/vodafone/investors/financial_results_feeds/half_year_30september2014/t_halfyear2014.pdf [ID 2580].

936 Horizontal Merger Guidelines, paragraph 44.

a) Parties' view

(1014) In the Form CO and in the Reply to the Article 6(1)(c) Decision, the Parties claim that the number and complexity of tariffs excludes the necessary degree of transparency in order for coordination concerns to arise.

(1015) In particular, the Parties argue that there are currently a very large number of SIM-only and handset tariffs available on the Italian market, which makes it impossible to reach terms of agreement and to monitor the tariffs. Furthermore, the Parties claim that mobile tariffs are highly complex, as they include various elements, such as one or several up-front charges, air time included (SMS, voice, data), air-time validity period, recurring monthly charges, out-of-bundle charges for additional usage, the possibility to purchase add-ons and handsets. The Parties also argue that, even if tariffs are grouped into broad categories, none of the tariffs within the broad categories typically offer the same amount of data, voice or SMS allowance. Moreover, even the broad categories included in the Parties' internal benchmarking exercises only capture a fraction of the tariffs actually available in the market, which would be insufficient to reach terms of coordination.

(1016) Furthermore, the Parties point out that MNOs make frequent use of below-the-line tariffs to target specific customer groups, which are in most instances only valid for a short period of time, thus increasing the overall market complexity. Finally, the Parties claim that the existence of tariffs including contract handsets, of parameters of duration of pre-paid contracts and of traceability services adds a further layer of complexity. In the Parties' view, there cannot be a standalone theory of coordination in relation to pre-paid tariffs without MNOs also coordinating on contract handsets, as any attempts to coordinate in a single segment would be undermined by competition from other more competitive segments.

(1017) Moreover, the Parties in the Form CO argue that, in addition to price competition, the Italian retail mobile market post-Transaction would be characterised by intensive non-price competition on parameters such as investments, network quality, speed, coverage, which, as such, cannot be coordinated.

(1018) Finally, the Parties in the Form CO argue that the Italian mobile market is not sufficiently stable to be conductive to coordination, in particular in light of the transformation towards data-centricity, the expected growth of data traffic and the emergence of significant multi-play competition.

b) Market characteristics

(1019) The review of relevant market characteristics is an important starting point to determine if coordination is feasible. Generally, the less complex and the more stable the economic environment, the easier it is for the firms to reach a common understanding on the terms of coordination.[937] In this light, the following sub-sections examine the degree of: (i) transparency concerning prices and product characteristics, (ii) product differentiation; (iii) tariff complexity, and (iv) stability of the market environment.

i. <u>High transparency of prices and product characteristics</u>

(1020) Transparency is important to enable the coordinating firms to reach a common understanding of the terms of coordination,[938] as it allows firms to observe the moves

[937] Horizontal Merger Guidelines, paragraph 45.

[938] Horizontal Merger Guidelines, paragraph 47.

of their competitors and adapt their own decisions accordingly. Transparency is also important to enable the coordinating firms to monitor deviations from the coordinated behaviour.[939] In particular, according to the General Court, "*price transparency is a fundamental factor in determining the level of market transparency where there is an oligopoly*".[940]

(1021) The Italian retail mobile market is characterised by a high degree of transparency as regards prices and product offerings of the MNOs. The prices and product offerings of the MNOs are publicly available from the MNOs' websites, from retail shops and from several price comparison websites.[941]

(1022) The high degree of transparency applies to all product segments, including pre-paid, post-paid, private and business customers. The only partial exception relates to mobile contracts for large business customers. Indeed, these customers usually do not subscribe to the MNOs' predefined standard terms, but enter into customised terms, either as a result of individual negotiations or of tenders.[942]

(1023) The high degree of tariff transparency is corroborated by the results of the first-phase market investigation. The two MNOs and most MVNO respondents stated that they monitor the tariff plans of their competitors and, specifically, characteristics such as the tariff's price, the volume of minutes, SMS and GB included in the tariff, as well as potential value added services.[943] The primary sources used for this purpose include competitors' websites, press releases, brochures and sales kits (including material that is available in retail shops).[944] Monitoring is often carried out by internal market intelligence teams, sometimes with the support of external consultancies.[945] The time frame in which competitors become aware of each other's offers is typically very short, i.e. often on the same day or just a few hours after their launch.[946]

(1024) MNOs sometimes rely on "below-the-line" ("BTL") offers as a way to complement their standard offers, known as "above-the-line" offers ("ATL"). BTL offers, also called "underground", "tactical" or "promotional" offers, are tariffs that (i) target individual customers or specific clusters of customers, unlike the ATL offers which are available to the general public; and that (ii) are more favourable than the ATL tariffs (as they, for example, involve a rebate from the ATL price and more content for the same price). Accordingly, unlike ATL tariffs, BTL tariffs are not publicly advertised by the MNOs through the standard channels (websites, TV ads and printed media), but are offered to the target customers through specific channels, such as tele-selling and SMS (and can be activated by the customers either via phone or at a

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939 Horizontal Merger Guidelines, paragraph 49.

940 Judgment of the Court of First Instance of 25 March 1999, T-102/96, *Gencor v. Commission*, EU:T:1999:65, paragraph 227.

941 Examples of price comparison websites for mobile services include www.supermoney.eu and www.sostariffe.it.

942 See recital (156) above.

943 Responses to Questionnaire Q1 to MVNOs of 8 February 2016, questions 59 and 59.1.2; Responses to Questionnaire Q4 to MNOs of 8 February 2016, questions 39 and 39.1.2.

944 Responses to Questionnaire Q1 to MVNOs of 8 February 2016, question 59.1.1; Responses to Questionnaire Q4 to MNOs of 8 February 2016, question 39.1.1.

945 Responses to Questionnaire Q1 to MVNOs of 8 February 2016, question 59.1.1; Responses to Questionnaire Q4 to MNOs of 8 February 2016, question 39.1.1.

946 Responses to Questionnaire Q1 to MVNOs of 8 February 2016, question 59.1.3; Responses to Questionnaire Q4 to MNOs of 8 February 2016, question 39.1.3.

retail shop).[947] Also, BTL tariffs are typically only valid for a limited timeframe within which the customer may subscribe. In the Italian retail mobile market, BTL tariffs have typically been used to acquire new customers from other providers, most often to win back customers who have been switching away to a competitor.[948] BTL offers are used to target both pre-paid private customers and business customers.[949]

(1025) Even though BTL offers are not advertised publicly, MNOs are typically well aware not only of the fact that competitors resort to BTL offers, but also of the exact terms of competitors' BTL offers. Sources include specialised websites and contacts with the customers themselves.[950] As explained in more detail in section 7.3.3.4 b) i. below, the Parties' internal documents confirm that they are fully aware of their competitors' BTL tariffs, which they seem to monitor regularly.

ii. Limited degree of product differentiation

(1026) Coordination is easier to achieve when products are homogeneous.[951] Product homogeneity reduces the number of parameters that need to be observed and makes it easier to compare prices, thereby facilitating the finding of a focal point for coordination.

(1027) All MNOs offer, as a core product, connectivity packages that include mobile voice, SMS and data. In principle, potential differentiating factors between mobile products could include: (i) possible differences in the *structure* of the product (for example, whether the core mobile components are bundled with related products, how the core mobile components are combined into a mobile package); and (ii) possible differences in *quality* of the products (for example, depending on network coverage, customer service, brand image).

(1028) As regards the *structure* of the MNOs' products, this typically consists of mobile voice (minutes), SMS and data (GB).

(1029) While MNOs do offer bundles of mobile services with other products or services, these "multi-product" bundles are currently not very widespread in Italy. For instance, mobile subscriptions are typically sold independently from fixed subscriptions. As explained in recital (129) above, the penetration of multiple-play services including a mobile component is still limited in Italy. Similarly, as noted in recital (996) above, the Italian mobile market does not typically feature handset subsidies, meaning that handsets and mobile subscriptions are mostly sold to end customers under separate contracts, i.e. separate prices. Likewise, the impact of bundles of mobile services and audio-visual content, (e.g. music, videos) appears to be relatively limited.[952] Accordingly, retail mobile subscriptions in Italy, especially as far as private pre-paid customers are concerned, are still largely sold on a stand-alone basis, i.e. independently from related products and services.

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947 Questionnaire Q6 to MVNOs of 2 May 2016, question 7; Questionnaire Q7 to MNOs of 2 May 2016, question 7. Fastweb's reply to RFI of 23 March 2016, question 1 [ID 988].

948 Questionnaire Q6 to MVNOs of 2 May 2016, question 7; Questionnaire Q7 to MNOs of 2 May 2016, question 7. Parties' reply to RFI 28, question 16.

949 Questionnaire Q6 to MVNOs of 2 May 2016, question 7; Questionnaire Q7 to MNOs of 2 May 2016, question 7.

950 Questionnaire Q6 to MVNOs of 2 May 2016, question 7; Questionnaire Q7 to MNOs of 2 May 2016, question 7.

951 Horizontal Merger Guidelines, paragraph 45.

952 See e.g. H3G internal document […].

(1030) The composition of the mobile subscriptions themselves is also rather simple. MNOs offer a number of mobile tariffs typically consisting of several components (voice minutes, SMS and data), corresponding to different prices. Some tariffs are pay-as-you-go tariffs, where subscribers pay depending on actual usage (i.e. on the number of units of voice, SMS and data that they use). However, the majority of tariffs (both pre-paid and post-paid) are pre-designed flat-rate tariffs, also commonly known as "mobile bundles",[953] where subscribers pay a fixed periodic (e.g. monthly) fee allowing them to consume data, voice and SMS up to a certain volume. The pre-designed bundles offered by MNOs can be distinguished from one another essentially on the basis of their size, i.e. the volume of GB, minutes and SMS included in the bundle (with the amount of GB, minutes and SMS typically increasing in parallel from the "smaller" to the "larger" mobile bundles). As all MNOs offer a comparable range of sizes of mobile bundles (e.g. small, medium, large), their product offerings are overall quite similar (the only difference being that GB, minutes and SMS may be included in slightly different proportions).

(1031) The limited degree of product differentiation regarding the structure of mobile products finds support in the Parties' internal documents. Indeed, several documents emphasise the difficulty in differentiating vis-à-vis competitors and the "risk" of commoditisation of mobile products.[954] Commoditisation is poised to increase further as data becomes the key parameter that determines the price of mobile tariffs, with SMS and voice becoming "flat", i.e. offered up to an unlimited volume. According to a VimpelCom internal document, […].[955] Broad consensus also exists among the other MNOs that voice and SMS are bound to become "unlimited".[956] An internal document of VimpelCom reproduced in Figure 68 below illustrates the […].

Figure 68: Increased commoditisation due to data-centric tariffs

[…]

Source: VimpelCom internal document, […].

(1032) As regards possible differences in *quality*, the MNOs' products may feature different levels of network quality, customer service and brand image. However, as explained in Section 7.3.1.3 above, while these parameters influence some customers' perception of the MNOs' products, price appears to be the main driver of customer choice in the Italian retail mobile market. The intense price competition and customer switching that has characterised the Italian market in the past years – particularly the recurrence of "price wars" such as the one of summer 2013 – also indicate that customers perceive mobile products of different providers as interchangeable to a large extent. The Parties' internal documents confirm that the

953 For the sake of clarity, the term "mobile bundles" used in this recital refers to bundles of mobile services (i.e. minutes, SMS and data). This term should not be confused with the "multi-product" bundles referred to in recital (1029) above, which, besides mobile services, include additional products or services such as fixed services, handsets and audio-visual content.

954 See e.g. VimpelCom internal document, […].

955 VimpelCom internal document, […].

956 For example, back in August 2013, TIM's CEO Marco Patuano already stated that "*voice and SMS will tend to become flat*" (TIM's Conference Call 1H 2013 Results - Q&A, 2 August 2013, available at: http://www.telecomitalia.com/content/dam/telecomitalia/en/archive/documents/media/transcripts/2013/Transcript-ConferenceCall-1H2013-Results.pdf [ID 2576]). According to Vodafone's CEO Vittorio Colao, "*voice is going to go unlimited or is going to be VoIP, if you think long-term*" (Vodafone Half year Results - Analyst and Investor conference, 11 November 2014, available at: https://www.vodafone.com/content/dam/vodafone/investors/financial_results_feeds/half_year_30september2014/t_halfyear2014.pdf [ID 2580]).

degree of product quality differentiation is relatively limited in the eyes of customers, with price often being seen as the key parameter. For example, VimpelCom internal documents note that […].[957]

(1033) In any event, the existence of a certain degree of product quality differentiation is not an obstacle to reaching terms of coordination. Indeed, as explained in Section d) below, market participants may be able to reach a mutually acceptable equilibrium that takes into account possible differences in quality between their respective products.

(1034) Therefore, contrary to the Parties' claims, the role of competitive parameters other than price would not be an impediment to coordination successfully taking place on retail mobile prices.

iii. Ability to meaningfully compare tariffs

(1035) Reaching terms of coordination is easier in a market with a limited number of tariffs.[958] Market players may overcome problems stemming from price complexity by establishing simple pricing rules that reduce the complexity of coordinating on a large number of prices.[959]

(1036) Mobile providers regularly review and update their product portfolio[960] by changing the price of the mobile plans or the composition of the bundle (e.g. in terms of volume of minutes or data included in the bundle). These changes can either be marketed as "new" mobile plans (i.e. with new names) or as modifications of existing mobile plans (i.e. while keeping the original name). The "old" mobile plans remain in force for those customers who subscribed to them before the new or modified mobile plans were introduced, unless the customer is given the possibility to switch to one of the new mobile plans and chooses to do so, or the mobile provider unilaterally decides to modify the customer's mobile plan.[961]

(1037) Accordingly, at any given point in time, each mobile provider has a certain number of mobile tariffs that are available for customers to subscribe to. However, only a limited number of these tariffs form the provider’s key mobile portfolio, which the provider chooses to advertise prominently to customers. This is apparent from internal documents of the Parties, which contain hundreds of presentations that review and compare the MNO offers available on the market at a given point in time. Many of these documents show, for each MNO, a number of tariffs for private customers typically ranging between two and five (including both pre-paid and post-paid). These tariffs typically consist of an "entry-level" pre-paid tariff (that is the smallest allowance of minutes, SMS and data, corresponding to the lowest price), which is complemented by a few with larger allowances, corresponding to higher prices. Furthermore, the Parties’ internal documents typically do not present the entirety of the elements of each tariff, but focus on the few elements that are considered key, namely the price, the volume of GB, voice minutes and SMS, while

957 VimpelCom internal document […]. Another document notes an […].

958 Horizontal Merger Guidelines, paragraph 45.

959 Horizontal Merger Guidelines, paragraph 47.

960 The discussion in this section relates to predefined standard tariffs which, as explained in recital (156) above, apply to private customers and small/medium business customers, which account for the large majority of retail mobile customers.

961 In this case, mobile providers must comply with certain regulatory requirements that require them to communicate the modification to customers at least 30 days in advance and grant customers the right to terminate the mobile contract.

other parameters (e.g. activation fee, out-of bundle charges, add-ons) are in most cases not represented. The below example in Figure 69, taken from H3G's internal documents, is illustrative.

Figure 69: Overview of retail private mobile offers per month as seen by H3G

[…]

Source: H3G internal document, […].

(1038) While the mobile tariffs presented in these documents are not necessarily exhaustive, the Parties clearly view them as sufficiently representative. This is confirmed by the fact that, in some of the Parties' documents containing overviews of MNOs' offers, these offers are explicitly labelled, for instance, as [main offers][962], […][963] or […].[964]

(1039) In some of the Parties' internal documents, competing tariffs are also explicitly organised into broad categories on the basis of specific criteria. A key criterion is the size of the bundle, e.g. large, medium and small, depending on the volume of GB/minutes/SMS included in the bundle (as the volume of these components tends to increase in parallel). For instance, […].[965] Other criteria include the customer group targeted by the offer (e.g. "young" or "ethnic" customers). For example, documents show that […].[966]

(1040) The Parties' internal documents also contain examples of more "analytical" comparisons between MNOs. For instance, the graph reproduced in Figure 70 below shows the relative positioning of the four MNOs, taking into account two key variables: (i) the price of comparable pre-paid bundles (vertical axis); and (ii) the "value" included in such bundles (horizontal axis). […]. Thus, the graph demonstrates how the different key components of a mobile bundle can be easily translated into one single parameter.

Figure 70: MNOs' relative positioning based on price and value[967]

[…]

Source: VimpelCom internal document, […]

(1041) These comparisons are used by the MNOs to draw relevant indications as to their positioning vis-à-vis competitors and as a basis to decide whether to launch new tariffs, to remove or modify existing tariffs. Contrary to the Parties' claims, therefore, the high number of tariffs available is by no means an obstacle to MNOs comparing each other's tariffs (as the MNOs only focus on a few tariffs that they consider representative). And neither is the fact that mobile tariffs include several elements (as MNOs consider it sufficient to focus on the volume of GB, minutes and SMS and, in the future, will increasingly focus on GB only as SMS and voice become "unlimited"). Similarly, the fact that MNO tariffs within each category do not offer the exact same volume of data, SMS or voice clearly does not hinder comparisons either. After all, as already noted in the Article 6(1)(c) Decision, MNOs would not invest time and resources in preparing documents where they compare each other's offerings if they did not consider that those documents provide a meaningful comparison of mobile offers from which they can determine their positioning vis-à-

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962 H3G internal document, […].
963 H3G internal document, […].
964 WIND internal document, […].
965 H3G internal document, […].
966 Annex 12.4.55 to Form CO, slide 10.
967 The graph shows […].

vis competitors and on the basis of which they can adapt their offers. This conclusion is self-evident and indeed, the Parties do not dispute it in their Reply.

(1042) For the reasons set out above, the Parties' claim the alleged complexity of pricing in the Italian retail market would hinder coordination cannot be accepted. Finally, it is worth noting that the Transaction would further reduce the level of price complexity on the market. By removing one player from the market, the Transaction would significantly reduce the number of tariffs available, which would further facilitate comparison between the MNOs' offers.

iv. Sufficiently stable market environment

(1043) It is easier to coordinate on prices when demand and supply conditions are relatively stable than when they are continuously changing. In particular, volatile demand, substantial internal growth by some firms or frequent new entry may indicate that the current situation is not sufficiently stable to make coordination likely.[968]

(1044) The Italian retail mobile market is saturated as far as the number of customers is concerned (with a penetration rate of 158 SIM cards per 100 inhabitants),[969] and the total number of mobile subscribers is not expected to grow.[970] This means that MNOs can only expand their respective customer bases by stealing each other's customers. As is apparent from Figure 7 and recital (38) above, the monthly data traffic has been increasing in the last years and is projected to continue increasing steadily in the coming years. Demand for mobile data services is therefore neither volatile nor unforeseeable.

(1045) Moreover, according to the Parties' own estimates, the growth of data traffic is not expected to lead to a significant fluctuation in the level of revenues, especially if compared to the past years. In the Parties' view, ARPU has started to stabilise since early 2014[971] and, based on their projections, total mobile revenues are expected to follow a much more stable trend in the future compared to the past few years.[972]

(1046) In addition, new MNO entry is extremely rare (with the most recent MNO entry dating back to 2003) and is not expected to take place at least within the next 2-3 years.[973] While MVNO entry is more frequent, MVNOs play a marginal role in the market, as explained more in detail in recitals (1177)-(1180) below.

(1047) As a result, as noted by the Commission in the Article 6(1)(c) Decision and as not contested by the Parties in their Reply, the economic environment in the Italian retail mobile market is not expected to undergo continuous changes of a nature and magnitude such as to hinder coordination after the Transaction. Quite the contrary, the lack of any prospect of future MNO entry and of new contestable mobile subscribers would reassure MNOs that they could engage in coordination without fear of external disruptions.

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968 Horizontal Merger Guidelines, paragraph 45.

969 See recital (29) above.

970 On the contrary, as explained in recital (30) above, the total number of mobile SIM cards has been declining in recent years.

971 Form CO, paragraph 290.

972 Annex 73 to Form CO, titled "Project 'Caesar Augustus': Synergies and Combined Business Plan". According to slide 3 of this document, total mobile revenues decreased from EUR […] billion to EUR […] billion in the course of only three years (i.e. from 2012 to 2015), while they are expected to either increase to EUR […] billion (slides 3 and 5) or to decrease to EUR […] billion (slide 3) within the next three-four years (i.e. by 2019).

973 See Section 7.3.3.4 d) ii. below.

c) Examples of previous coordination patterns

(1048) In assessing the likelihood of coordinated effects, the Commission takes into account all available relevant information on the characteristics of the market concerned, including the past behaviour of firms.[974] In particular, although not necessary for a finding of coordinated effects, evidence of past coordination patterns is important if the relevant market characteristics have not changed appreciably or are not likely to do so in the near future.[975]

(1049) Accordingly, this section reviews a number of past instances in which the MNOs engaged in behaviour that could be considered the result of coordination. In particular, two main instances are considered: (i) the price increases implemented in Q4 2013 and Q1 2014, and (ii) the change in certain parameters that affect customers' yearly "bill size" in 2014 and 2015, both of which have (iii) implications regarding the likelihood of coordinated effects arising post-Transaction.

i. <u>Price increases for new customers in Q4 2013 and Q1 2014</u>

(1050) Parallel price increases are not unprecedented in the Italian retail mobile market. An example in point is the way in which TIM, Vodafone and WIND managed to successfully coordinate to bring mobile prices up following the price war that had been raging over the summer 2013. As explained in recitals (472)-(482) above,[976] H3G had launched a heavily discounted private pre-paid offer at the beginning of 2013. TIM, Vodafone and WIND had initially resisted by keeping their premium prices, thereby losing a large number of customers to H3G. However, they eventually decided to enter the price war in June 2013 by reducing their own prices to try to halt the loss of customers. TIM was the first to join the battlefield at the end of June 2013, then followed by Vodafone and by WIND. As a result, by the end of August 2013, prices for mobile tariffs had gone down significantly.

(1051) Against this background, starting from autumn 2013, TIM, Vodafone and WIND succeeded in implementing at least two waves of price increases in a coordinated fashion, each of which consisted of several consecutive price increases for new pre-paid private customers.[977]

First wave of parallel price increases (Q4 2013)

(1052) The first wave of coordinated prices increases took place already in autumn 2013. This first wave is illustrated effectively by an internal document of VimpelCom reproduced as Figure 71 below (see area framed in blue). Figure 71 only shows one mobile tariff per MNO at any given point in time, i.e. the entry-level tariff for new pre-paid private customers, which was the main tariff subject to the price increases.[978]

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974 Horizontal Merger Guidelines, paragraph 43.

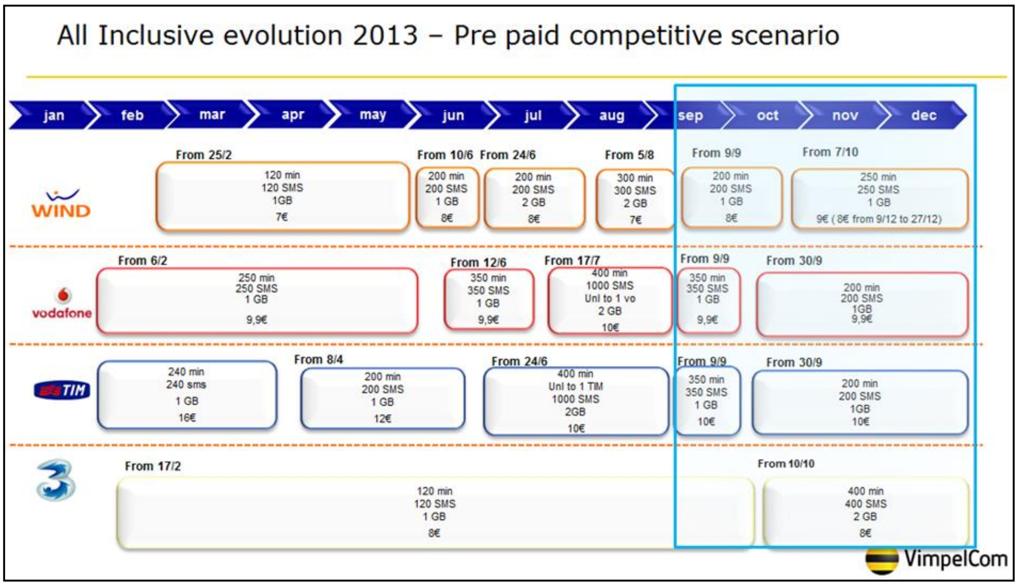
975 Horizontal Merger Guidelines, paragraph 43.

976 See also Figure 72 below.

977 The term "price increase" is used here as a broad term that is intended to cover not only those instances of actual increases in mobile prices, but also of reduction of the volume of in-bundle data and voice minutes available at a certain price, or a combination of the two.

978 However, MNOs also carried out parallel price increases on some of the other pre-paid tariffs of their mobile portfolios (see VimpelCom internal document, […].

Figure 71: 1st wave of parallel price increases (Q4 2013)



Source: VimpelCom internal document, […] (frame added).

(1053) As shown in Figure 71 above, the first wave of price rises consisted of two consecutive price increase moves by the three main MNOs. The first move took place on 9 September 2013, the day from which the three main MNOs discontinued their promotional mobile tariffs for new customers. TIM and Vodafone both drastically reduced the volume of GB (from 2 to 1 GB), of minutes (from 400 to 350 minutes) and of SMS (from 1000 to 350 SMS) of their respective entry-level tariffs for new customers, while keeping the price unchanged (EUR 10).[979] Both the size of the tariff change and the new tariff were therefore identical for TIM and Vodafone and took effect on the same day. Similarly, WIND decreased the volume of GB (from 2 to 1 GB), of minutes (from 300 to 200 minutes) and of SMS (from 300 to 200 SMS) for its entry-level tariff and also increased the price from EUR 7 to EUR 8.

(1054) The second part of the autumn wave of price increases took place shortly thereafter. From 30 September 2013, both TIM and Vodafone again reduced the volume included in their entry-level tariff for new customers, focusing this time on the minutes (from 350 to 200 minutes) and the SMS (from 350 to 200 SMS), while leaving the number of GB and the price unaffected. From 7 October 2013, WIND increased the price of its entry-level tariff from EUR 8 to EUR 9, while leaving the GB and the price unchanged and readjusting the volume of SMS and the minutes (from 200 to 250, which amounts to an essentially negligible increase). Internal documents of VimpelCom […],[980] thus confirming that WIND's move was deliberately made to align with TIM and Vodafone. H3G, unlike the other MNOs, did not reduce the allowance of its mobile tariffs in early September and kept the price at EUR 4.[981] H3G eventually increased the price of its entry-level tariff from EUR 4 to EUR 8 as of 10 October, while also more than doubling the data, voice and SMS allowance.

979 Vodafone decreased the price from EUR 10 to EUR 9.9.
980 VimpelCom internal document, […]
981 […].

(1055) Figure 72 below illustrates the evolution of the Italian retail mobile market in 2013 as seen by VimpelCom – starting from the [action by H3G] in February 2013, which culminated in the [price war] of summer 2013. This trend was reversed with the first wave of parallel price increases of the MNOs in September 2013. Indeed, with [autumn], the MNOs increased the prices of all their portfolio offers, thus paving the way for a [slow market value recovery]. However, one notable exception was H3G, which continued to keep a [very large gap with competitors].

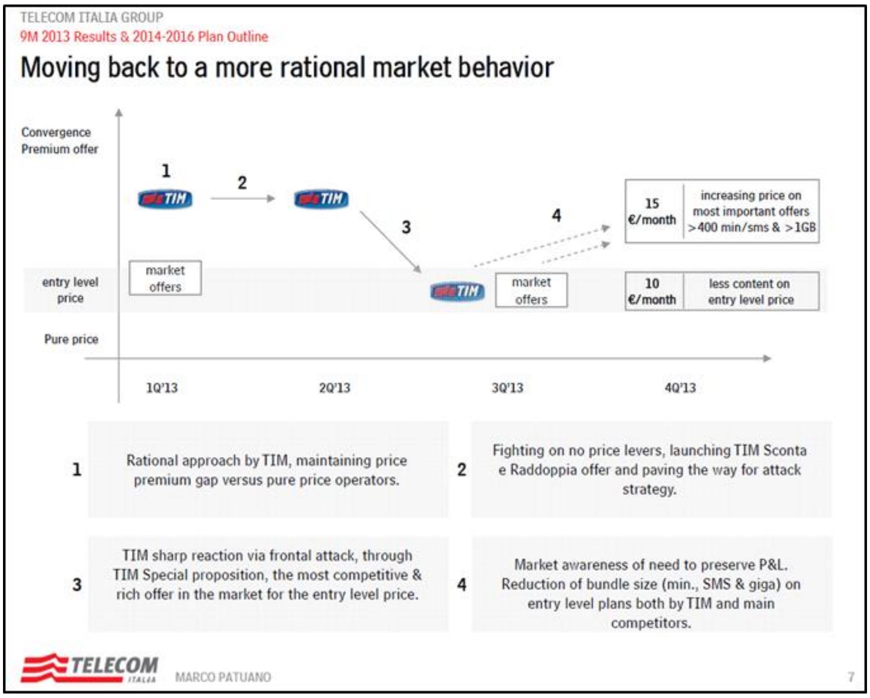
Figure 72: Mobile tariff evolution in 2013 as seen by VimpelCom

[…]

Source: VimpelCom internal document, […]

(1056) A comparable description of the 2013 price war and the subsequent price increases is provided in a document of TIM. As shown in Figure 73 below, in TIM's view, following the price war in summer 2013, the "*market awareness of need to preserve P&L*" led to a "*reduction of bundle size (min., SMS & giga) on entry level plans both by TIM and main competitors*". Thus, according to TIM, in autumn 2013, the market was "*moving back to a more rational market behavior*".

Figure 73: Mobile tariff evolution in 2013 as seen by TIM

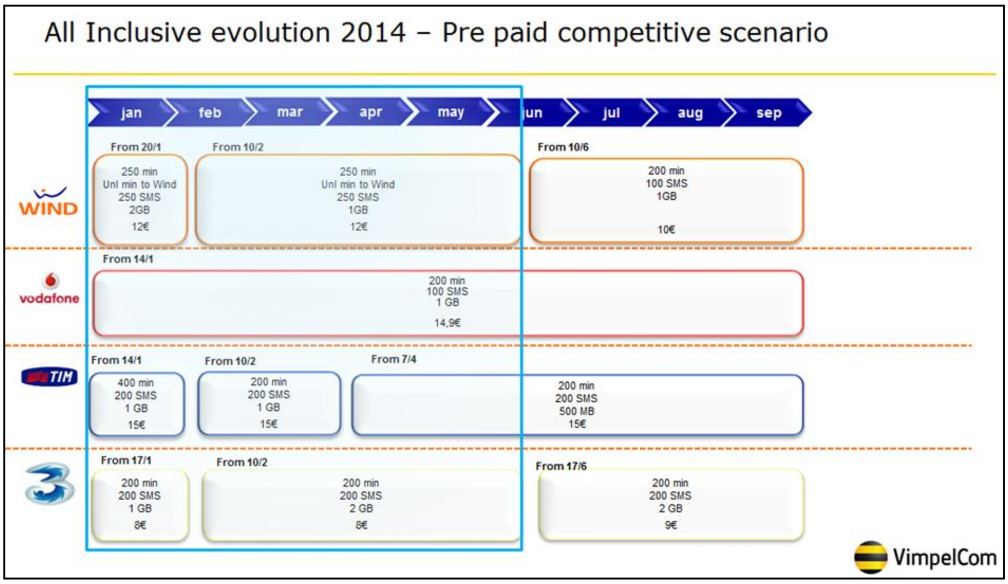


Source: TIM public document "9M 2013 results & 2014-2016 Plan Outline", 7 November 2013, slide 7, available at *http://www.telecomitalia.com/content/dam/telecomitalia/en/archive/documents/investors/Presentations/Investor_Relations/2013/Patuano-2014-2016Plan-3Q2013-7nov13.pdf* *[ID 2601].*

Second wave of parallel price increases (Q1 2014)

(1057) The second wave of parallel prices increases took place in the first months of 2014. These moves are illustrated effectively by an internal document of VimpelCom reproduced at Figure 74 below (see area framed in blue).

Figure 74: 2nd wave of parallel price increases (Q1 2014)



Source: VimpelCom internal document, […] (frame added).

(1058) As shown in Figure 74, the second wave of price increases started with TIM and Vodafone changing their mobile tariffs from 14 January 2014. Vodafone increased the price of its entry-level mobile tariff by 50% from EUR 10 to EUR 15,[982] while leaving the volume of GB (1 GB) and of minutes (200 minutes) unchanged and reducing that of SMS (from 200 to 100 SMS). Similarly, from the same date, TIM increased the price of its entry-level tariff by 50% from EUR 10 to EUR 15, while leaving the volume of GB (1 GB) and of SMS (200 SMS) unchanged. While TIM initially also increased the volume of minutes (from 200 to 400 minutes), less than one month later (from 10 February) it decided to align with Vodafone by reducing the volume again to 200 minutes. The strategy of WIND mirrored the one of TIM. From 20 January, WIND increased its price (from EUR 9 to EUR 12), while also increasing the volume of GB (from 1 to 2 GB) and leaving that of SMS and minutes unchanged (except for granting unlimited minutes for calls to other WIND customers). However, presumably inspired by the moves of the other MNOs, from 10 February WIND decreased again the volume of GB from 2 to 1 while leaving the price unchanged. H3G initially decreased the data, voice and SMS allowance by half as of 17 January, while maintaining the same price (EUR 8). A few weeks later, however, H3G almost undid its previous move: it doubled again the amount of data (from 1 to 2 GB) and maintained the same volume of SMS and minutes and the same price.

(1059) Figure 75 below provides a summary of the two waves of price increases in Q4 2013 and Q4 2014 as viewed by TIM, which is consistent with that of VimpelCom described above. Figure75 illustrates, in Q4 2013, a "*bundles size reduction among all competitors*" and, in 2014, a trend of "*moving towards more sustainable entry-level prices for the whole market*", thus suggesting that the stabilisation would continue also in the following months. Figure 75 also shows that the price increases translated into a "*steep decline in MNP volume impl*[ying] *lower churn level*" and an increase in the entry-level tariff ARPU.

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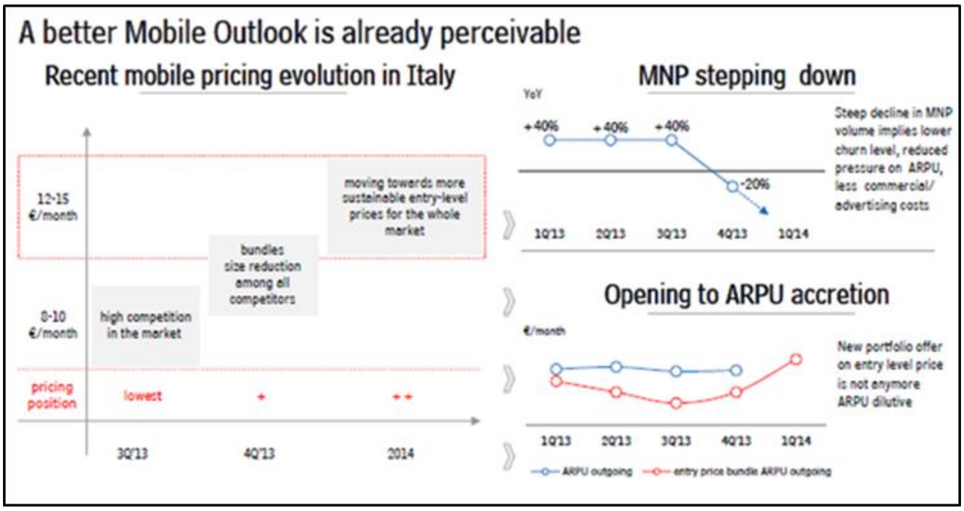
[982] The new price introduced by Vodafone was EUR 14.9.

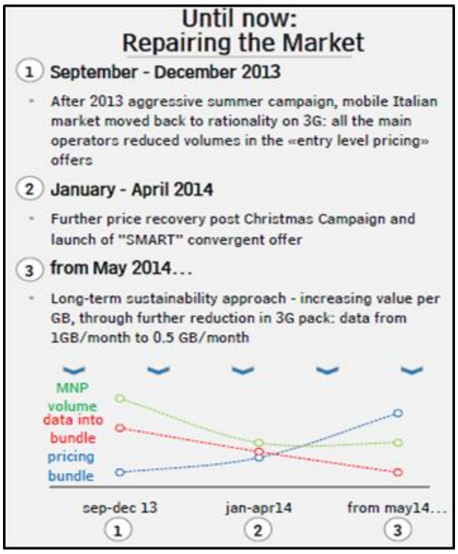
Figure 75: Mobile tariff, MNP and ARPU evolution in 2013-2014 as seen by TIM



Source: TIM public document "FY 2013 Results", 7 March 2014, slide 8, available at http://www.telecomitalia.com/content/dam/telecomitalia/en/archive/documents/investors/Presentations/Investor_Relations/2014/MP-FY13-2013Results.pdf [ID 2598].

(1060) Similarly, Figure 76, titled "*repairing the market*", illustrates the two waves of price increases, including the "*move back to rationality*" in Q4 2013 and "*further price recovery*" in Q1 2014.[983] It also shows that the price increases went hand in hand with a reduction of the MNP volume.

Figure 76: Mobile tariff and MNP evolution in 2013-2014 as seen by TIM



Source: TIM public document "1Q 2014 Results", 13 May 2014, slide 18, available at: http://www.telecomitalia.com/content/dam/telecomitalia/en/archive/documents/investors/Presentations/Investor_Relations/2014/Slide-1Q-2014.pdf [ID 2602].

(1061) Table 26 below summarises the changes in the entry-level mobile tariffs of the MNOs between August 2013 and February 2014, as a result of the two waves of parallel price increases.

983 In addition, Figure 76 also shows a new move consisting of a further reduction of the volume of GB in TIM's entry-level mobile tariff in the context of TIM's 4G strategy.

Table 26: MNOs' entry-level tariffs in August 2013 vs. February 2014

	August 2013	**March 2014**	**% Difference**
TIM	*EUR 10*	*EUR 15*	*+50%*
	2 GB	1 GB	-50%
	400 min	200 min	-50%
	1000 SMS	200 SMS	-80%
Vodafone	*EUR 10*	*EUR 15*	*+50%*
	2 GB	1 GB	-50%
	400 min	200 min	-50%
	1000 SMS	200 SMS	-80%
WIND	*EUR 7*	*EUR 12*	*+70%*
	2 GB	1 GB	-50%
	300 min	250 minutes	-15%
	300 SMS	250 SMS	-15%
H3G	*EUR 4*	*EUR 8*	*+100%*
	1 GB	2 GB	+100%
	120 min	200 minutes	+65%
	120 SMS	200 SMS	+65%

Source: VimpelCom internal document, […]

Temporary "price equilibrium" in 2014 as a result of parallel price increases

(1062) The MNOs' increased entry-level mobile tariffs remained in place during the rest of 2014 (save for some minor adjustments).[984]

(1063) The newly reached price equilibrium was highly welcomed by the three larger MNOs and by market analysts as the beginning of the long-awaited "market stabilisation" process. For example:

- Vodafone's CEO for Europe publicly commented in February 2014 that "*The good news in our eyes for Italy is that the price war right now is over on the gross adds side, so we have no different price level in the market. We are focusing ourselves on a €15 price level, which is significantly higher than what we were before so, in that sense, we are positive. We're not the only one, but also Wind and TIM are now on similar price levels, so the market is going to recover*."[985]

- In March 2014, TIM's CEO noted with satisfaction that "*the whole market has leaped towards a sustainable pricing and bundle sizing*".[986] Indeed, its reply to the Commission's market investigation, TIM stated that "*starting from September 2013,* [the market] *experiences a price rationalisation process which*

[984] See Figure 74 above. For example, in April, TIM further halved the volume of GB of its entry-level tariff from 1 GB to 500 MB.

[985] Vodafone Group, Interim Management Statement, dated 6 February 2014, available at: https://www.vodafone.com/content/dam/vodafone/investors/financial_results_feeds/ims_quarter_31december2013/t_ims_31december2013.pdf [ID 2582].

[986] Telecom Italia's CEO Discusses Q4 2013 Results – Earnings Call Transcript, dated 7 March 2014, available at: http://seekingalpha.com/article/2076173-telecom-italias-ceo-discusses-q4-2013-results-earnings-call-transcript [ID 2552].

continues in 2014: TIM, VODA and WIND reduce the volume (min, sms, data) included in their entry-level plans (10€) and increase their mid-level plans (500 min, 500 SMS, 1Gb) up to 13-15€".[987]

- According to a WIND document […][988]
- A report from HSBC from April 2014 stated: "*While we believe it is difficult for the Italian mobile market to significantly improve organically, we were encouraged to see that the pricing environment remained stable following the Q4 2013/Q1 2014 price increases. TIM and Vodafone's entry level prices are EUR15/month (compared to EUR10 in the summer 2013) for 200min traffic/200sms and 500MB and 1GB of mobile internet (respectively). Wind's entry level tariff is EUR12/month for 250min traffic/250sms/1GB of mobile internet (compared to a promotional price of EUR6 in summer 2013). 3Italia continues to be priced at a 30-50% discount with the entry level tariff for 200min traffic/200sms and 2GB of mobile internet set at EUR8month (compared to a promotional price of EUR4 in summer 2013)*".[989]

(1064) A number of observations can be made on the basis of the successful waves of price increases described above.

(1065) First, the price rises of Q4 2013 and Q1 2014 show that coordinated increases in mobile prices are feasible despite the "multitude of tariffs"[990] alleged by the Parties. As a result of their parallel price moves, the three MNOs managed to successfully increase the prices of their entry-level mobile bundle for new customers by 50% or more, while at the same time significantly reducing the volume of data, minutes and SMS included in the bundle. The fact that the MNOs acclaimed these price increases as a first hint of stabilisation demonstrates that they considered coordination between them to be successful. This also indicates that, for coordination to be effective, it does not need to cover all mobile customers and all MNO tariffs. The successful parallel price increases of Q4 2013 and Q1 2014 show that a price equilibrium can be reached on a limited number of tariffs (or even on just one tariff) concerning a certain customer segment (here: pre-paid private customers) as long as those tariffs are crucial for a key portion of customers, i.e. because they satisfy a large part of overall customer demand. Indeed, in 2013-2014 (and still today) pre-paid private customers represented around 70% of all retail subscribers,[991] a large portion of which is likely to be interested in entry-level tariffs.

(1066) Second, a "price equilibrium" that is perceived as satisfactory for all coordinating parties is attainable even if prices are not perfectly aligned with each other. As of March 2014, TIM and Vodafone's entry-level tariffs were identical in terms of price and of in-bundle volume. WIND's entry-level tariff was virtually identical to the one of TIM and Vodafone in terms of volume, though WIND's price was lower by EUR 3, i.e. by about […]. […].[992] This shows that prices do not need to be identical for coordination to be successful. A relative price gap is compatible with a

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987 TIM's response to Questionnaire Q7 to MVNOs of 2 May 2016, question 4.2.1 [ID 1704]. Original text: "*Da settembre 2013 si assiste ad un processo di razionalizzazione dei prezzi che proseguirà nel 2014: TIM, VODA e WIND riducono i volumi (min, sms, data) inclusi nei piani entry level (10€) e aumentano i piani mid level (500 min, 500 SMS, 1Gb) fino a 13-15€*".

988 WIND internal document, […].

989 […].

990 Reply to the Article 6(1)(c) Decision, paragraph 287.

991 See Form CO, Sections 7-8, Tables 12 and 14; Section 6, Table 75.

992 WIND internal document, […].

coordinated outcome to the extent that it serves to compensate for discrepancies between the coordinating parties' products – in this case, for the perceived lower quality of WIND's mobile services.[993]

(1067) Third, the tariffs of H3G stand out from those of the three other MNOs. While H3G also increased prices between August 2013 and March 2014, H3G's entry-level tariff in March 2014 was still significantly cheaper than that of the other MNOs (around 33% cheaper than WIND's and 47% cheaper than TIM and Vodafone's). In addition, it included twice as much data as the other MNOs. H3G's excessively discounted offers and its unreliable behaviour were one of key reasons why coordination was eventually not sustainable in the long term, as will be explained further below.

Factors disrupting the "price equilibrium" in 2014-2015

(1068) Despite the apparent stabilisation process described above, in the course of 2014, two key factors came to threaten the temporary price equilibrium (and prevented MNOs from continuing the path towards an even higher price equilibrium).

(1069) On the one hand, H3G's entry-level tariffs continued to be significantly below those of the three larger MNOs, with a gap of up to 50-60%. H3G's offers kept attracting customers from other MNOs, thus increasingly interfering with the newly reached market equilibrium.

(1070) Numerous internal documents of WIND note that, unlike the other MNOs, "*Hutchison is continuing its price undercutting approach, maintaining a -50/60% gap versus WIND's current price level*".[994] TIM's CEO Marco Patuano publicly stated in August 2014 that "*Rational attitude is characterizing the three major players, some early signals of movement toward a less irrational attitude also from Hutchison [sic] but still too much discount. They're given such a high discount*".[995] Similarly, as put by WIND in May 2014, […].[996] The disruptive prices of H3G became a substantial concern in the eyes of WIND, as evidenced by the words of WIND's CEO: […].[997] In its press release concerning the financial results for 1H 2014, WIND noted that "*promotional pressure, except for one operator, has decreased in the first semester, thus leading to a reduction in new activations with a positive impact on churn*".[998]

(1071) On the other hand, also as a consequence of H3G's aggressive offers, the three larger MNOs started efforts to re-conquer the customers lost in spring-summer 2013 and subsequently, due to H3G's continued low prices. MNOs deliberately chose not to reduce ATL prices for gross adds out of fear of triggering a new price war. Instead, they resorted to BTL activities to win-back lost customers.[999] The BTL offers from

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993 See Section 7.3.3.3 d) ii. below and particularly recitals (1108)-(1113) for more details.

994 WIND [see https://www.windgroup.it/fileadmin/reports/presentations/2014/en/WIND_Public_Presentation.pdf, slide 17].

995 TIM's Conference Call 1H 2014 Results – Q&A, available at: http://www.telecomitalia.com/content/dam/telecomitalia/en/archive/documents/media/transcripts/2014/Transcript%20-%20First%20Half%202014%20Financial%20Results.pdf [ID 2575].

996 VimpelCom internal document, […].

997 VimpelCom internal document, […].

998 Original text: "*La pressione promozionale, fatta eccezione per un operatore, si è ridotta nel primo semestre dell'anno portando ad una contrazione delle nuove attivazioni con un impatto positivo sul churn*" (see http://www.windgroup.it/it/media/comunicati/comunicato/article/wind-migliore-performance-del-mercato-nel-primo-semestre/, 6 August 2014).

999 See e.g. VimpelCom internal document, […].

one MNO triggered strong reactions from the other MNOs in the form of further BTL campaigns. While win-back campaigns were initially used almost exclusively by the three larger MNOs, H3G eventually decided to launch win-back offers as well around summer 2014. True to its reputation, H3G's BTL offers were particularly aggressive and thus led to an exacerbation of the BTL war in 2014. Indeed, 2014 was marked by recurring BTL battles to such a degree that H3G internally […].[1000]

(1072) Vodafone's CEO publicly expressed his concern that BTL offers hindered full stabilization on multiple occasions in 2014. For example, in May 2014, he noted that "*we also have seen some resurgence of tactical promotions, or below the line promotions, which are coming a little bit on the fixed side, and a little bit on the mobile side, which are not completely signalling that the market has really repaired*".[1001]

(1073) The BTL battles among MNOs and, particularly, the disruptive tariffs of H3G continued to destabilise the Italian market also in 2015.

(1074) As described by market analysts in May 2015, *"The optimism was stimulated by the three largest operators: Vodafone, TI and Wind Italy, all of which increased entry-level mobile offers. However, challenger operator Hutch continues to undercut the pricing of the main three, and continues to win market share*".[1002] Vodafone's CEO complained in 2015 that *"the issue is ... still in Italy, we just had an announcement from Hutch of another unlimited, unlimited one-gig price point at €10, which has been advertised*"[1003] and, moreover, *"Italy … is still a challenged market … it remains a fragile landscape. … still 30% of the activity in Italy is below the line, and below the line is incredibly competitive, so it can easily tilt in all directions*".[1004]

(1075) Throughout 2015, VimpelCom consistently described H3G as aggressive in its internal documents. In March 2015, VimpelCom characterised H3G's strategy as a […].[1005] Starting from summer 2015, VimpelCom reported that […].[1006] Accordingly, in one of his updates to VimpelCom, WIND's CEO Maximo Ibarra summarised the situation as follows: […].[1007]

(1076) Tellingly, the MNOs also shared the same view as to what would be the *remedy* to get rid of the two factors – H3G's aggressive tariffs and the MNOs' BTL tariffs – that prevented a full-fledged price stabilisation. That is to say, a merger between H3G and WIND.

1000 The intensification of BTL offers in the latest years is also confirmed by the MVNOs who responded to the market investigation. See PosteMobile's reply to Questionnaire Q6 to MVNOs of 2 May 2016, question 7.3, [ID 1354].

1001 Vodafone Group, Analyst and Investor Conference Call, dated 20 May 2014, available at https://www.vodafone.com/content/dam/vodafone/investors/financial_results_feeds/preliminary_results_31march2014/t_prelim2014.pdf [ID 2610].

1002 VimpelCom internal document, […]. Another analyst provided the following summary of the "*feedback*" from meetings with TIM and WIND: […].

1003 Vodafone Group, "Analyst and Investor Conference Call", 5 February 2015, available at https://www.vodafone.com/content/dam/vodafone/investors/financial_results_feeds/ims_quarter_31december2014/t_ims_31december2014.pdf [ID 2608].

1004 Vodafone Group, Preliminary Results - Analyst and Investor Conference Call, dated 19 May 2015, available at https://www.vodafone.com/content/dam/vodafone/investors/financial_results_feeds/preliminary_results_31march2015/tr_prelim2015.pdf [ID 2579].

1005 VimpelCom internal document, […].

1006 See VimpelCom internal document, […]

1007 VimpelCom internal document, […].

(1077) Indeed, in concluding his email cited in recital (1075) above, WIND's CEO stated that […].[1008] […]. In the same vein, in May 2015, after complaining about H3G's BTL offers and the resulting lack of price stability, Vodafone's CEO Vittorio Colao concluded that "*Everything goes back to consolidation – Wind, Hutch and the whole thing. It's another saga that we have been discussing many times*".[1009]

ii. Change in parameters affecting the customer's yearly bill size

(1078) Over the past two years, the MNOs have been taking parallel steps to change certain parameters of their customer contracts. The changes in these parameters have led to potentially significant increases of the total amount of money to be paid by customers each year.

(1079) In 2014, the MNOs started charging customers for the use of so-called "traceability services". Traceability services are services that notify customers of the fact that another customer is not reachable or of attempted calls from another customer. While the four MNOs previously offered traceability services for free, in 2014 they all started charging their [new and existing] customers a monthly amount for the use of these services. The first MNO to start charging for these services was Vodafone in July 2014. Within a time frame of less than four months, first TIM and then WIND followed suit. H3G also implemented the change one year later, in August 2015. The exact sequence is shown in the table below.

Table 27: Change in charge for traceability services

	Name of service	Commencement of charge
Vodafone	"Recall" e "Chiamami" ("Call me")	July 2014
TIM	"Lo sai" ("Do you know") and "Chiamaora" ("Call now")	August 2014
WIND	"My Wind"	October 2014
H3G	"Ti ho cercato" ("I have looked for you")	August 2015

Source: Form CO, Sections 7-8, p. 24.

(1080) This change generated additional revenues for the MNOs that did not go unnoticed. For example, in reply to a question from an investment analyst, TIM's CEO explained that the increase in internet content revenues experienced by TIM in Q3 2014 was partly due to the fact that TIM had been starting to charge its traceability services EUR. 0.49 a month. As put by TIM's CEO, "*Vodafone is doing the same and Wind is doing the same. So now it's a market standard. And so it's something that is healthy*".[1010]

1008 VimpelCom internal document, […].

1009 Vodafone Group Preliminary Results – Analyst and Investor conference Call, dated 19 May 2015, available at: https://www.vodafone.com/content/dam/vodafone/investors/financial_results_feeds/preliminary_results_31march2015/tr_prelim2015.pdf [ID 2579].

1010 Telecom Italia's CEO Marco Patuano on Q3 2014 Results – Earning Call Transcript, dated 7 November 2014, available at: http://seekingalpha.com/article/2657225-telecom-italias-ti-ceo-marco-patuano-on-q3-2014-results-earnings-call-transcript [ID 2572].

(1081) In 2015 WIND, TIM and Vodafone all changed the duration of their monthly pre-paid contracts from one month (30 days) to four weeks (28 days). The shorter duration was first introduced by WIND in March 2015 for new customers. TIM and Vodafone followed suit in May and June 2015, respectively, as shown in Table 28 below. As H3G already relied on a weekly based billing system, this change was not an option for H3G.

Table 28: Change in duration of pre-paid contracts

	Commencement of new duration
WIND	March 2015
TIM	May 2014
Vodafone	June 2014
H3G	N.A.

Source: Form CO, Sections 7-8, p. 24.

(1082) WIND noted in its internal documents that […], as evidenced by Figure 77 below.

Figure 77: TIM and Vodafone following WIND on change in duration

[…]

Source: WIND internal document […]

(1083) According to AGCOM, the change in contract duration resulted in an average yearly price increase by 7% for the MNOs.[1011] This is also confirmed by VimpelCom's internal documents, according to which […].[1012]

(1084) While the MNOs initially only implemented the change in duration on their new customers, as of August 2015, TIM started to apply it retroactively to existing customers as well. WIND did so to as of November 2015.

iii. Implications of past events for the post-Transaction scenario

(1085) The events described in Section i. above (i.e. the price increases in Q4 2013 and Q1 2014) show that the Italian retail mobile market is prone to coordination and, in particular, that the three larger MNOs have been able in the past to take coordinated steps to reach a mutually acceptable (albeit temporary) price equilibrium. These events also show that coordination was not sufficiently stable over time. This lack of stability was due to (1) the continued aggressive tariffs of H3G, and to (2) the BTL activities pursued by the three larger MNOs to recover the subscribers that were "stolen" from them during the summer 2013 price war (and subsequently, due to H3G's continued low tariffs). This situation is inevitably set to change with the Transaction, with the disappearance of H3G as an independent aggressive competitor and the more symmetric market structure resulting from the Transaction.

(1086) Furthermore, the events described in Section ii. above (i.e. the change in parameters affecting customers' bill size) show that MNOs are able to engineer additional,

1011 See AGCOM's press release, available at http://www.agcom.it/documents/10179/2244123/Comunicato+stampa+30-07-2015/1050ca5d-d455-4e7a-ab83-87d8a5aa94d2?version=1.0. [ID 2593].

1012 VimpelCom internal document, […]. See also VimpelCom internal document, […].

sometimes sophisticated, mechanisms to increase their overall mobile revenues, and that the three larger MNOs are able and willing to swiftly follow each other's moves in this respect. Moreover, the coordinated change in the duration of mobile contracts was made significantly easier by the fact that it required coordination by only three market players and that participation of the disruptive player (H3G) was not needed for coordination to take place successfully.

(1087) Accordingly, the Transaction would significantly increase the likelihood of coordinated effects materialising.

(1088) Absent the Transaction, while there may be additional instances of parallel price increases by the three larger MNOs of the type that occurred in Q4 2013 and Q 2014, these attempts at coordination are unlikely to be sufficiently stable due to the continued presence of H3G in the market. Indeed, as explained in Section 7.3.2.1 above, H3G is likely to continue having the ability and the incentive to compete aggressively, thus threatening stable coordination between TIM, Vodafone and WIND. Moreover, coordination on individual commercial parameters (e.g. the duration of mobile bundles) may not necessarily be possible if it requires H3G's contribution.

(1089) Conversely, after the Transaction, the likelihood of coordination would increase in several ways. First, without H3G as an independent player and with only three remaining MNOs of symmetric sizes and similar incentives, parallel price increases such as the ones from Q4 2013 and Q 2014 are likely to lead to a price equilibrium that would be more stable, more robust, and therefore sustainable over time. Moreover, MNOs may be able to coordinate on an even higher price equilibrium compared to the situation absent the Transaction. In addition, with the reduction in the number of MNOs and the disappearance of H3G as a standalone player, implementing coordinated changes in commercial parameters to increase customers' yearly bill would become substantially easier. Finally, the new market structure resulting from the Transaction may make it easier for the remaining MNOs to reach terms of coordination in the first place, for example by facilitating the identification of an appropriate focal point (as explained in Section d) below).

d) Possible mechanism for coordination post-Transaction

(1090) According to the Court of Justice, "*tacit coordination is more likely to emerge if competitors can easily arrive at a common perception as to how the coordination should work, and, in particular, of the parameters that lend themselves to being a focal point of the proposed coordination*".[1013]

(1091) This section examines a possible mechanism that the three MNOs could use in order to reach terms of coordination, including (i) the key logic underlying coordination (i.e., the main "focal point" around which coordination would take place), and (ii) the concrete steps that would be available to the MNOs to coordinate around this focal point.

i. Likely focal point of coordination

(1092) The characteristics of the Italian retail mobile market (including high price transparency, limited product differentiation and significant ease of comparison)[1014]

[1013] Judgment of the Court of Justice of 10 July 2008, C-413/06 P, *Bertelsmann and Sony Corporation v. Impala*, EU:C:2008:392, paragraph 123.

[1014] See Sections 7.3.3.3 b) i., ii. and iii. above.

indicate that the most likely form of coordination between the MNOs would involve keeping prices for mobile services above the competitive level.[1015]

(1093) Several mechanisms are conceivable to achieve this goal. One mechanism that seems particularly realistic in light of the post-Transaction market structure consists of using existing market shares as a focal point. Coordination could therefore be based on a tacit understanding whereby each MNO would seek to stick to its current customer base representing around 30-32% of the retail mobile market. The aim would be to reduce inter-MNO churn as much as possible with a view to maintaining the post-Transaction market shares essentially unaltered (save for possible small adjustments or temporary fluctuations that are considered harmless). In practice, this coordination mechanism would require MNOs to abandon or significantly slow down their efforts to gain gross adds by stealing other MNOs' customers and focus instead on retaining (and eventually capitalising on) their own customer base.[1016]

(1094) A coordination mechanism aimed at "cementing" existing market shares would be particularly appealing to the MNOs, as it would be intuitive, easy to implement and perceived as "fair".

(1095) First, this mechanism is based on a simple and intuitive reference point – the status quo division of the market – which stands out as self-evident. The MNOs could therefore readily identify this as the relevant focal point without the need to resort to any explicit collusion. Furthermore, with such a simple and clear-cut rule, it would be clear to the MNOs which actions are considered "rational" (i.e. in line with the rule) and which ones are not.

(1096) Second, this mechanism would be easy to implement (and to subsequently monitor).[1017] At its minimum, it would just require MNOs to refrain from decreasing prices and stop or slow down promotional efforts aimed at attracting each other's customers. This behaviour would already in itself be profitable as it would allow MNOs to retain the revenues that they would otherwise forgo by offering discounted tariffs to compete for other MNOs' customers. In addition, once MNOs are assured that their customer base is sufficiently sheltered from other MNOs' attacks, they could also more confidently raise prices for their own existing customer base, thereby generating additional profits.

(1097) Finally, this mechanism would enable the MNOs to share profits from coordination roughly equally among them and could therefore be perceived as "fair" and mutually acceptable. This would make it easier for MNOs to identify the relevant focal point. Moreover, this perceived fairness would limit the MNOs' incentives to subsequently deviate from the coordinated equilibrium.

(1098) The likelihood of the MNOs adopting a strategy aimed at cooling down the market by reducing gross adds and using existing market shares as a focal point is directly supported by the Parties' internal documents discussing the Transaction. For example:

1015 Horizontal Merger Guidelines, paragraph 40.

1016 The coordination mechanism does not assume a total halt in customer churn. Even in a regime of coordination, there is likely to be a number of customers who switch between MNOs. As will be explained more in detail in recitals (1147)-(1149) below, as long as this number stays within "normal" boundaries, it would not be perceived as a sign of deviation and would therefore not compromise the collusive equilibrium.

1017 On ease of monitoring, see Section 7.3.3.4 b) below.

- A note prepared by H3G's COO summarising a kick-off meeting on […][1018] that took place on […] presumably with VimpelCom emphasises that the Transaction would result in a […].[1019] The latter presumably refers to the expected shift in strategy by the three remaining MNOs post-Transaction towards […].
- The same concept was restated more explicitly in another note by H3G's COO reporting the takeaways of a subsequent meeting on […].[1020]
- In an email to Hutchison's […][1021] […].
- […].

Figure 78: **[…]**

[…]

Source: […].

The subsequent slides of the same presentation contain more detailed estimates concerning the evolution of churn, gross adds and subscriber market shares. As can be seen from Figure 79 below, H3G estimated […].

Figure 79: **Market churn evolution post-Transaction according to H3G**

[…]

Source: H3G internal document, […].

Accordingly, as shown in Figure 80 below, […].

Figure 80: Gross adds evolution post-Transaction according to H3G

[…]

Source: H3G internal document, […].

As mentioned above and fleshed out in Figure 81 below, […].

Figure 81: Market share evolution post-Transaction according to H3G

[…]

Source: H3G internal document, […].

H3G's estimates in Figure 82 below, […].[1022]

Figure 82: ARPU evolution post-Transaction according to H3G

[…]

Source: H3G internal document, […].

- A document prepared by HSBC for VimpelCom in […] foresees that a merger between H3G and WIND would unleash additional revenues […].[1023]
- In a H3G presentation […], H3G foresees a […].[1024]
- In an email exchange […].[1025] […].

1018 […]
1019 Original text: […].
1020 Original text: [...].
1021 H3G internal document, […].
1022 […].
1023 VimpelCom internal document, […].
1024 H3G internal document […].

ii. Concrete steps to coordinate around focal point

(1099) In order to reach an equilibrium based on maintaining existing market shares, MNOs would have to take the steps that are considered "rational" having this focal point in mind. For this purpose, MNOs would likely implement the following actions:

- Stopping or significantly slowing down BTL activities;
- Increasing prices of ATL tariffs for new customers;
- Increasing the bill for new customers through other means; and
- Reducing dealer's commissions for the acquisition of new customers.

(1100) As many as possible of these actions would need to be implemented to reach a "perfect" market equilibrium in which customer churn levels would become stable and relatively low. However, not all of them would be strictly required for coordination to be successful. Each of these actions, if implemented in a coordinated fashion, would already on its own lead to prices above the competitive level,[1026] i.e. above the level that would otherwise exist in a market free of coordination – even if customer churn would then reduce less significantly and competition would remain on certain aspects of the MNOs' offers. The fact that areas may remain in which competition still takes place is not an obstacle to a finding of coordinated effects. Indeed, as also pointed out by the General Court in the context of Article 102 TFEU proceedings, the existence of a collective dominant position "*in no way implies that competition between the undertakings concerned is completely eliminated*".[1027]

(1101) Similar considerations apply to the possibility that the MNOs would not implement the actions indicated above in relation to certain categories of customers. In particular, the actions at issue mostly assume the use by MNOs of predefined standard mobile tariffs. As explained in recital (156) above, these standard tariffs are applicable to private customers and small/medium business subscribers (which account for the large majority of all retail mobile subscribers), but not necessarily to large business customers, who typically determine their tariffs on the basis of tenders or individual negotiations with MNOs. Therefore, the fact that, after the Transaction, large business customers may not be covered by coordinated actions of the type listed above (or of any other type) would not prevent MNOs from effectively coordinating in relation to other customers. As demonstrated by the parallel price increases in Q4 2013 and Q1 2014, coordination does not need to cover all mobile customers or all tariffs to be successful.[1028]

(1102) The individual actions that MNOs would likely implement for the purpose of coordinating around existing market shares will be described in more detail in the following recitals.

Stopping or significantly slowing down BTL activities

(1103) As explained in recital (1024) above, BTL offers have mainly been used by MNOs in the Italian market to win back customers lost to other MNOs. MNOs tend to see BTL campaigns from another MNO as a substantial threat, as they directly attack their own customer base through aggressive promotions. As a result, BTL campaigns from

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1025 Original text: […]. WIND internal document, […].

1026 Horizontal Merger Guidelines, paragraph 40.

1027 Judgment of the Court of First Instance of 30 September 2003, T-191/98, T-212/98 to T-214/98, *Atlantic Container Line AB and Others v Commission*, EU:T:2003:245, paragraph 653.

1028 See recital (1065) above.

one MNO tend to trigger strong reactions from other MNOs in the form of further BTL campaigns. Also because of this, the use of BTL offers is not consistent over time, as periods of limited BTL activity alternate with periods during which BTL offers intensify. As explained in recital (1071) above, especially after the end of the summer 2013 price war and the subsequent waves of price increases, MNOs have made significant use of BTL offers to win back the customers lost during the price war and hence to recover the loss of market share.[1029] For instance, according to data submitted by the Parties, in 2015, more than […]% of WIND's and H3G's total number of pre-paid mobile customers were acquired through BTL offers.[1030] According to the statements of Vodafone's CEO, BTL offers accounted for around 25-30% of acquisitions in 2015.[1031]

(1104) As also explained in recitals (1071)-(1075) above, the continuation of BTL campaigns in 2015 was seen by the three larger MNOs as a disrupting factor that was threatening the much wanted "stabilisation" of the market. In this context, representatives of the MNOs publicly voiced their discontent with the ongoing BTL offers (especially from H3G) and called for a reduction or a complete halt of BTL offers – which they believed could be achieved through a merger between H3G and WIND. The following examples are illustrative:

- In February 2015, during Vodafone's earnings call, Vodafone's CEO Vittorio Colao complained that, while Vodafone's price increases at the beginning of 2014 led to a stabilisation of mobile ARPU, "*competitors are still discounting headline prices using below the line offers to win customers and, as a result, the customer base trend remains under pressure*";[1032]
- In May 2015, VimpelCom's CFO Andrew Davies noted that he echoed some of the sentiments expressed by TIM and Vodafone as to the fact that "*headline pricing that's generally available in retail distribution ... is moderating and have moderated over the last several quarters. However, what we do see happening ...is still a lot of under the radar aggressive price campaigns, mainly of an outbound telesales type of nature where people are offering a very large data bundle at a pretty discounted price, some 20% offer of retail right. So yes, headline pricing is reasonably stable, but we do know and again see a little bit of Guerrilla warfare breaking out*";[1033]

1029 The intensification of BTL offers in the latest years is also confirmed by the MVNOs who responded to the market investigation. See PosteMobile's reply to Questionnaire Q6 to MVNOs of 2 May 2016, question 7.3.

1030 Parties' Reply to the Article 6(1)(c) Decision, paragraph 287.

1031 Vodafone Group Preliminary Results - Analyst and Investor Conference Call, dated 19 May 2015 available at: https://www.vodafone.com/content/dam/vodafone/investors/financial_results_feeds/preliminary_results_31march2015/tr_prelim2015.pdf [ID 2579] and Vodafone Analyst and Investor Conference Call, dated 24 July 2015, available at: https://www.vodafone.com/content/dam/vodafone/investors/financial_results_feeds/ims_quarter_30june2015/q1-15-16-trading-update-transcript.pdf [ID 2607].

1032 Vodafone Group Analyst and Investor Conference Call, dated 5 February 2015, available at: https://www.vodafone.com/content/dam/vodafone/investors/financial_results_feeds/ims_quarter_31december2014/t_ims_31december2014.pdf [ID 2608].

1033 VimpelCom's CEO Jean-Yves Charlier on Q1 2015 Results – Earning Call Transcript of 13 May 2015, available at: http://seekingalpha.com/article/3180066-vimpelcoms-vip-ceo-jean-yves-charlier-on-q1-2015-results-earnings-call-transcript [ID 2554].

- In May 2015, Vodafone's CEO noted that: "*we have a distinction between above the line and below the line and, below the line, we have a €5 offer from one player* [referring to H3G], *which compares to €15 above the line from the two leaders, us and Telecom Italia. ... It is a market that is showing signs of improvement but, until you have in the market offers below the line that are so distant from the above one, it's unstable, because you don't know whether it's tuned up or down and you don't know about the credibility of your advertising. It is essential that this situation, at some point, gets reduced. ... There is this instability that stays there, so trends are good ... but it's still a negative with a big ticking thing that is there. Everything goes back to consolidation – Wind, Hutch and the whole thing. It's another saga that we have been discussing many times*";[1034]

- In November 2015, TIM's CEO Marco Patuano stated that: "*I aim not only to stabilization, but to some improvement. And improvement will come mostly from what we hope to come, which is a reduction of any below-the-line offer. So we are convinced that below-the-line offer have to be pushed out of the market*";[1035]

- Vodafone's CEO took a similar view in November 2015: "*I'm optimistic about Italy ... The only risk in Italy is we see again very heavy below-the-line activity from one player and some tentative response from the other two major ones. That should not, I hope, drag the whole market back again into super-promotional €5/€7 per month type of things*".[1036]

(1105) These statements confirm that a reduction or halt in BTL offers is something that the MNOs consider realistic, especially in a post-Transaction scenario. This is further reflected in one of the internal documents of VimpelCom mentioned above, which foresees a […] to be adopted after a merger between H3G and WIND.[1037] Moreover, […].

Increasing prices of ATL mobile tariffs for new customers

(1106) As an additional measure to "cement" the post-Transaction market structure, MNOs could increase the prices of their (ATL) mobile tariffs for new customers ("gross adds"). The purpose would be to ensure that, for each MNO, prices for gross adds customers are higher than those for existing customers. This would at the same type discourage some customers from switching away from their current MNO (thus contributing to the ultimate goal of maintaining status quo market shares) and generate higher revenues from those few customers who may nevertheless decide to switch.

1034 Vodafone Group Preliminary Results – Analyst and Investor conference Call, dated 19 May 2015, available at: https://www.vodafone.com/content/dam/vodafone/investors/financial_results_feeds/preliminary_results_31march2015/tr_prelim2015.pdf [ID 2579].

1035 Telecom Italia's CEO Marco Patuano on Q3 2015 Results – earning Call Transcript of 8 November 2015, available at: http://seekingalpha.com/article/3661726-telecom-italias-ti-ceo-marco-patuano-q3-2015-results-earnings-call-transcript [ID 2552]

1036 Vodafone Group plc Half Year results: Analyst and Investor Conference, dated 10 November 2015, available at: https://www.vodafone.com/content/dam/vodafone/investors/financial_results_feeds/half_year_30september2015/t_halfyear2015.pdf [ID 2581]

1037 VimpelCom internal document, […].

(1107) Increasing prices for new customers could be equally achieved either by directly increasing the prices of mobile tariffs or by reducing the volume of data and voice minutes available at a given price, or through a combination of the two.[1038]

(1108) Prices for new customers would need to be increased in a way as to achieve an equilibrium that is compatible with the focal point of coordination, namely the status quo market division. For this purpose, several scenarios are conceivable. In the most likely scenario at least in the short term (i.e. a few years after the Transaction), MNOs would not necessarily seek to put in place identical prices: a relative price difference may be required between the prices of the JV, on the one hand, and the prices of TIM and Vodafone, on the other hand. This price gap would reflect the relative difference in perceived quality between the MNOs' respective mobile networks – with TIM's and Vodafone's networks being often perceived by customers to offer higher quality or coverage relative to H3G's and WIND's networks. This price difference would remain in place as long as the perceived gap in network quality/coverage between the JV and TIM/Vodafone still exists (and would decrease proportionally with any reduction in this perceived gap).

(1109) The need to observe a price difference is also reflected in […].[1039]

(1110) The size of the price gap would be crucial for the collusive equilibrium to remain stable over time. Past evidence shows that MNOs, on the basis of their market experience and their sophisticated analysis tools, have clear views as to what price gap would be acceptable and what would not for the sake of a "quiet" market. The views of the MNOs seem to converge on the fact that, currently, a price difference of up to 15-20% between TIM/Vodafone's mobile tariffs and WIND/H3G's tariffs can be regarded as "acceptable", while a wider price gap may threaten the price equilibrium.

(1111) For instance, according to TIM's CEO Marco Patuano, "*what the market says is that more or less, we* [TIM] *have to keep almost the same price with Vodafone. Because the market considers – for different reasons that our brand value is almost the same. So, the ties have to be even if it would a different combination almost in line. With reference to the other two players, after a difference of around – of course, it's consideration, but let me say that <u>up to a more or less 20% difference, 15%, 20% difference, it's not a major problem</u>. It's not a major issue. Sometimes you gain a bit. Sometimes you lose a bit. But it does not determine big swings in the customer base*".[1040] During the temporary "truce" that followed the Summer 2013 price war and the subsequent parallel price increases, TIM noted with satisfaction that "*a better mobile outlook* [is] *already perceivable*" thanks to a "*Stable premium price between tier-one and tier-two players*",[1041] and, more explicitly: "*From Vodafone and from Wind, yes, both of them have followed the strategy of price increases. Of course,*

[1038] For ease of reference, the following recitals refer to prices and price increases (with volumes of GB, minutes and SMS remaining equal). However, as explained in footnote 977 above, this expression should be interpreted in a broader way, as also covering reductions in the volume of GB, minutes and SMS included in mobile bundles (with prices remaining equal).

[1039] Original text: […].

[1040] Telecom Italia Conference Call 1H 2013 Results – Q&A, available at: http://www.telecomitalia.com/content/dam/telecomitalia/en/archive/documents/media/transcripts/2013/Transcript-ConferenceCall-1H2013-Results.pdf [ID 2576].

[1041] TIM public document, "FY 2013 Results", 7 March 2014, slide 8, available at http://www.telecomitalia.com/content/dam/telecomitalia/en/archive/documents/investors/Presentations/Investor_Relations/2014/MP-FY13-2013Results.pdf [ID 2598].

Wind keeps sort of 20% discount on TIM and Voda. And this is quite normal, given the strength of TIM and Voda brand, but the three of us are moving up prices".[1042]

(1112) Internal documents show that VimpelCom has been following closely the "price gap" between WIND, TIM and Vodafone over the past years. While this gap was around […]% in the 2000s, it then progressively decreased in 2010-2012, reaching […]% in 2013 (summer),[1043] probably due to the price war in which TIM and Vodafone reduced their prices significantly. In implementing the parallel price increases of Q4 2013 and Q1 2014, as described in recital (1066) above, […].[1044]

(1113) Arriving to a price level that is within the boundaries of the acceptable price gap and therefore satisfactory for all market participants would not necessarily happen overnight. Thanks to their repeated interactions in the retail mobile market, MNOs are able to test price changes and find out which ones are met with an accommodating behaviour on the part of the other MNOs, and which ones instead trigger an aggressive reaction. Using this trial-and-error approach, MNOs could gradually arrive at the price levels that are compatible with a "perfect" or near to perfect equilibrium market. Once the equilibrium has been reached, MNOs could use the same trial-and-error method again should they wish to move to a new mutually acceptable market equilibrium, for example at an even higher price level.

Increasing the bill for new customers through other means

(1114) Increasing mobile prices for new customers to dissuade them from switching MNO can also be achieved in additional ways, as also suggested by real life evidence examples.

(1115) For instance, MNOs could reintroduce activation fees for new subscribers. Currently, while mobile subscribers are normally required to pay an activation fee (e.g. EUR 15), MNOs generally discount most of the value of the activation fee to new subscribers (although customers terminating their subscription before a certain term are required to reimburse the discount received).[1045]

(1116) Another example relates to the commercial parameters that affect the overall price paid by customers of mobile services (i.e. the yearly "bill size"), such as the duration of mobile contracts. As explained in Section 7.3.3.3 c) ii. above, in 2015, TIM, Vodafone and WIND all changed the duration of mobile contracts for new customers (and subsequently, for current customers). MNOs could engineer additional mechanisms to increase the yearly bill size for potential new customers. As shown by the events in 2015, the other MNOs could easily and promptly follow the MNO that takes the lead in such initiative.[1046]

Reducing dealer commissions for the acquisition of new customers

(1117) Another step that MNOs could take to help "cool down" the market relates to the use of dealer commissions. All MNOs have in place reward schemes that they use to

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1042 Telecom Italia's CEO Marco Patuano on Q1 2014 Results - Earnings Call Transcript, dated 13 May 2014, available at: http://seekingalpha.com/article/2215223-telecom-italias-ti-ceo-marco-patuano-on-q1-2014-results-earnings-call-transcript [ID 2571].

1043 VimpelCom internal document, […].

1044 See VimpelCom internal document, […]; and VimpelCom internal document, […].

1045 For example, WIND charges an activation fee for pre-paid private tariffs of EUR15 which is discounted to EUR 1 for new customers who remain with WIND for at least 24 months. Form CO, paragraphs 69-70.

1046 See recitals (1081)-(1082) above.

incentivise retail shops and distribution channels to acquire new customers, particularly to acquire customers from other MNOs through the MNP system.

(1118) For example, WIND's reward scheme comprises […][1047]

(1119) To help reducing inter-MNO churn, MNOs could cut down or eliminate the incentives they are currently granting to retailers to stimulate customer switching through MNP.

(1120) In fact, MNOs have already been using this tool in the past in an attempt to fight the effect known as "washing machine", whereby customers keep switching from one MNO to another by relying on the MNP system, thus forcing MNOs to offer increasingly competitive offers to win back customers.

(1121) For instance, in July 2012, WIND reduced the payments made to dealers with respect to pre-paid customers acquired from other MNOs based on the MNP system.[1048] Commissions were lowered by half with a view to reducing inter-operator churn.[1049] WIND's internal documents indicate that […].[1050] Indeed, a strategy of reducing dealers' incentives for MNP acquisitions would only be "rational" if it is also pursued by the other MNOs. As reported by WIND […].[1051]

(1122) The problem of high customer churn due to MNP commissions seems however to have lasted beyond 2012. For example, VimpelCom's internal documents suggest that, in the first quarter of 2013, WIND was still seeking to reduce overall customer churn by lowering dealer's commissions.[1052] In 2014, TIM's CEO publicly flagged the "washing machine" problem and blamed the use of dealer commissions stimulating MNP churn: "*MNP when the market is fully saturated as it is now is just value destruction. I honestly believe that we need to keep the market rational to cool it down to avoid unnecessary effect that we internally call washing machine, a customer that moves around from one operator to another. You know until few months ago there were special commissions to the sales channels just for stimulating MNP, which is wrong*".[1053]

(1123) In sum, a coordinated reduction or elimination of dealer commissions would be an effective step in the direction of stabilising post-Transaction market shares.

e) Conclusion on the ability to reach terms of coordination

(1124) On the basis of all the evidence explained in Section b), c) and d) above, the Commission concludes that reaching terms of coordination would likely be possible after the Transaction. In particular, for the reasons explained in Section b) above, the characteristics of the Italian retail mobile market (particularly the transparency and ease of comparison of mobile tariffs) would not be an obstacle to reaching terms of coordination post-Transaction. This is further corroborated by past instances, described in Section c), in which the MNOs managed to successfully increase prices in a parallel fashion (although in most cases coordination was ultimately not stable

1047 WIND's reply to RFI 62, question 8.
1048 WIND's reply to RFI 62, question 8.
1049 VimpelCom internal document, […]
1050 VimpelCom internal document, […]
1051 VimpelCom internal document, […].
1052 VimpelCom internal document […]
1053 Telecom Italia's CEO Discusses Q4 2013 Results - Earnings Call Transcript, dated 8 March 2014, available at: http://seekingalpha.com/article/2076173-telecom-italias-ceo-discusses-q4-2013-results-earnings-call-transcript [ID 2552].

over time because of factors related to the pre-Transaction market structure). As explained in Section d), after the Transaction, one of the most likely focal points of coordination would be the status quo market shares of the MNOs. This coordination mechanism not only stands out as the most sensible in light of the symmetrical market structure post-Transaction (with each MNO controlling around 30-32% of the retail mobile market), but also finds support in the Parties' internal documents discussing the likely market scenario post-Transaction.

(1125) Finally, the Transaction would directly increase the ability to reach terms of coordination, notably by further reducing the level of price complexity on the market (as a result of the disappearance of one MNO) and by making it easier to identify a sensible and mutually acceptable coordination mechanism (as a result of the more symmetrical market structure).

7.3.3.4. Sustainability of coordination

(1126) In order to be sustainable, coordination must be sufficiently stable over time and shielded from external disruptions. For this purpose, three distinct conditions must be present.[1054] After presenting the Parties' view in Section a), each of these conditions is reviewed in turn. Section b) examines if the coordinating firms would be able to monitor to a sufficient degree whether the terms of coordination are being adhered to. Section c) considers the existence of some form of credible deterrent mechanism that could be activated if deviation is detected. Section d) examines whether possible reactions of outsiders, such as current and future competitors not participating in the coordination, as well as customers, would be able to jeopardise the results expected from the coordination. Section e) draws the Commission's conclusions. Where applicable, the below analysis also highlights the changes that the Transaction would bring about for the purposes of the sustainability of coordination, in addition to the changes already described in Section 7.3.3.2 above.

a) Parties' view

(1127) In the Form CO and in their Reply to the Article 6(1)(c) Decision, the Parties argue that, due to the complexity of products and pricing, it would not be possible to monitor a hypothetical coordination or to retaliate against a putative deviation.

(1128) Furthermore, the Parties claim in the Form CO that MVNOs' ability to compete combined with their rapid growth would disrupt any attempt by MNOs to coordinate. In particular, according to the Parties, a number of MVNOs have well-established brands and distribution networks (e.g. PosteMobile and Lycamobile) and ability to offer converged products (e.g. Fastweb and BT Italia), enabling them to credibly challenge MNOs. Moreover, the Parties point out that the market shares of MVNOs have grown by […]% in terms of subscribers and by […]% in terms of revenues between December 2010 and December 2014.

b) Monitoring deviations

(1129) Coordinating firms are often tempted to increase their share of the market by deviating from the terms of coordination, for instance by lowering prices, offering secret discounts or trying to win new customers. Only the credible threat of timely and sufficient retaliation keeps firms from deviating. Markets therefore need to be

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1054 Horizontal Merger Guidelines, paragraph 41.

sufficiently transparent to allow the coordinating firms to monitor to a sufficient degree whether other firms are deviating, and thus know when to retaliate.[1055]

(1130) Transparency in the market is often higher, the lower the number of active participants in the market. Further, the degree of transparency often depends on how market transactions take place in a particular market. When evaluating the level of transparency in the market, the key element is to identify what firms can infer about the actions of other firms from the available information. Coordinating firms should be able to interpret with some certainty whether unexpected behaviour is the result of deviation from the terms of coordination.[1056]

(1131) The Italian retail mobile market exhibits a very high degree of transparency. Currently, the market features only four large players, which after the Transaction would be reduced to three. Moreover, for the large majority of mobile customers,[1057] transactions take place on the basis of standard terms that are publicly available, without any room for secret negotiations. As explained more in detail below, the degree of transparency is also high as regards customer flows in the Italian mobile market.

(1132) In this overall context of significant transparency, this section examines possible tools to monitor compliance with the terms of coordination that would be likely to be reached by the three MNOs post-Transaction. As described in Section 7.3.3.3 d) ii. above, these terms consist of stopping or significantly slowing down BTL activities, increasing prices of ATL tariffs for new customers, increasing the yearly bill for new customers through other means and reducing dealer's commissions for the acquisition of new customers. The tools that would be available to monitor adherence to the terms of coordination include: (i) tools for direct monitoring (ATL tariffs, BTL tariffs and dealer commissions); and (ii) tools for indirect monitoring (MNP data and market shares).

i. <u>Direct monitoring tools</u>

(1133) MNOs would enjoy a range of easily accessible sources to directly monitor competitors' compliance with the terms of coordination, which they already use today in their day-to-day operations. Indeed, MNOs are currently able to directly observe their competitors' behaviour in relation to BTL tariffs, ATL tariffs and other terms for new customers, as well as dealers' incentive schemes.

BTL tariffs

(1134) Even though BTL tariffs are not advertised on the operators' websites, MNOs have significant if not full visibility of each other's BTL offers through multiple sources of information. For example, online forums and specialised price comparison websites constantly monitor and gather information on BTL offers, which they publish and update on a daily basis.[1058] Furthermore, the customers themselves may inform their

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1055 Horizontal Merger Guidelines, paragraph 49.

1056 Horizontal Merger Guidelines, paragraph 50.

1057 The only exception being large business customers who engage in tenders or individual negotiations with mobile providers. See recitals (156) and (1022) above.

1058 See, for example, http://www.mondomobileweb.it/category/offerte-telefonia-mobile-ricaricabili/perte/offerte-per-chi-ritorna/ (a dedicated webpage for win-back offers which publishes new offers daily or several times a week) [ID 2623] and http://www mondomobileweb.it/52065-offerte-speciali-winback-tim-vodafone-wind/ (a list of win-back offers currently available in the market) [ID 2624]. See also Questionnaire Q6 to MVNOs of 2 May 2016, question 7.5; Questionnaire Q7 to MNOs of 2 May 2016, question 7.6; Fastweb's Reply to Commission RFI of 23 March 2016, question 1.

own provider about BTL offers that they receive from other providers, as indicated by the respondents to the market investigation.[1059] The Parties' internal documents suggest that MNOs actively monitor whether their own customers are targeted by BTL offers from competitors, thus enabling them to gather detailed and up-to-date information regarding the terms offered by competitors and the validity period of their offers.[1060] Additional sources of information regarding competing BTL offers include multi-branded resellers. Indeed, internal documents of the Parties […].[1061]

(1135) The Parties' internal documents confirm that MNOs constantly monitor and collect information on each other's BTL offers. By way of example, Figure 83 below contains an excerpt […].[1062]

Figure 83 : **Overview of MNOs' BTL offers**

[…]

Source: H3G internal document […].

(1136) In addition, the MNOs' awareness of each other's BTL activities is corroborated by the public statements made by MNOs senior managers cited at recital (1104) above, by which they acknowledge each other's BTL offers and complain about their aggressiveness.

(1137) Accordingly, after the Transaction, if an MNO were to violate the implicit understanding by launching aggressive BTL tariffs or by targeting an enlarged group of customers, the other MNOs could quickly and easily detect such deviations through any of the sources described above.

ATL tariffs and other terms for new customers

(1138) As explained in recitals (1021)-(1023) above, changes in ATL tariffs and other terms for new customers (including e.g. prices and composition of monthly bundles, activation fees and other commercial parameters) are made publicly available through the MNOs' websites, retail shops and other media. Moreover, the MNOs have dedicated teams in charge of monitoring and comparing each other's retail prices and of interpreting competitors' actions.

(1139) Therefore, if an MNO would be tempted to "cheat" by decreasing ATL prices or otherwise making commercial parameters more favourable for new customers, such change would be immediately detected by the other MNOs.

Dealers' incentive schemes

(1140) The Parties' internal documents show that MNOs have substantial visibility regarding the incentive schemes used by competitors to stimulate inter-MNO switching and that they constantly monitor any updates introduced by their competitors to those schemes.

(1141) One important source of information seems to be the dealers themselves. MNOs regularly send to dealers new or updated schemes to incentivise them to acquire new customers (inter alia through the MNP system). Various internal documents of the Parties suggest that the dealers often forward the updated terms that they receive

1059 Questionnaire Q6 to MVNOs of 2 May 2016, question 7.5; Fastweb's Reply to Commission RFI of 23 March 2016, question 1.

1060 See e.g. WIND internal document, […]; and WIND internal document, […].

1061 WIND internal document, […].

1062 For an example from WIND, see VimpelCom internal document, […].

from one MNO (e.g. Vodafone) to another MNO (e.g. WIND or H3G).[1063] Information concerning competitors' dealer incentive schemes can also be gathered directly by employees of the MNOs, for example by attending events organized by multi-branded dealers.[1064]

(1142) Consequently, if an MNO would deviate from the terms of coordination by changing its dealer incentive scheme in such a way as to incentivise churn of competitors' customers, the MNOs would easily detect such a change.

ii. Indirect monitoring tools

(1143) In addition to the direct monitoring tools described above, MNOs would have additional tools at their disposal to indirectly check competitors' compliance with the coordination terms, that is to say data from the MNP system and information on each other's market shares.

(1144) Data from the MNP system[1065] enable MNOs to ascertain to whose network their customers switch (provided the customers decide to keep their number when changing operator). While MNP data do not capture all switching that occurs (as not all customers use the MNP system when switching), the statistics generated through MNP data should be expected to constitute a highly representative sample for customers at large. Indeed, the Parties' internal documents reveal that MNP data is relied upon to a great extent in order to analyse switching patterns.[1066] Also, the results of the market investigation indicate that mobile providers consider that MNP data provides them with sufficient knowledge regarding switching patterns.[1067]

(1145) Monitoring customer flows through the MNP system would provide further assurances to MNOs that the terms of coordination are being adhered to. Indeed, if an MNO were to deviate from coordination (for instance, by launching a new BTL campaign) without the other MNOs noticing this, this deviation would nonetheless be likely to be detected, as it would lead to customer movements away from other MNOs to the deviator. Conversely, in a scenario of "perfect" market equilibrium post-Transaction, the MNP balance would be close to zero for all three MNOs.

(1146) The Parties' internal documents indicate that MNOs monitor very closely the MNP data and, on this basis, prepare sophisticated graphs and tables at various levels of granularity, which they use as a basis to review customer switching patterns and infer competitors' actions. In particular, MNOs monitor, for each operator, the number of port-ins, port-outs and the balance versus the other operators (both collectively and individually). Customer MNP flows are presented on a yearly, quarterly, monthly, weekly and even daily basis.[1068]

(1147) As a result, MNOs are able to detect even the smallest customer flows to and from competitors and to identify the MNO or MNOs that are the recipient of such customer flows. Furthermore, MNOs are able to interpret whether those movements are within the boundaries of "normal" customer switching or if they are a sign of a deviation from the terms of coordination, be it the launch of a BTL offer or the

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1063 See e.g. H3G internal document, […]; WIND internal documents, […]; […]; […]; […]; […].

1064 See e.g. WIND internal document […].

1065 On the MNP system, see recital (47) above.

1066 See, for H3G, Annex 41.1 to Form CO, slide 15 and, for WIND, Annex 12.4.22, slides 13-14.

1067 See Responses to Questionnaire Q1 to MVNOs of 8 February 2016, question 87. All MVNO respondents stated that, when a customer leaves them, they are aware of which competitor the customer switches to.

1068 See VimpelCom internal document, […].

decrease of ATL prices. For example, the graph reproduced in Figure 84 below illustrates the evolution of the weekly MNP balance from […], as recorded in H3G's internal documents. The graph shows that H3G was able to attribute certain particularly significant fluctuations in the […] MNP balance to specific win-back activities of its competitors that took place in […].

Figure 84: MNP […] balance as recorded by H3G ([…])

[…]

Source: H3G internal document, […]

(1148) Similarly, the table reproduced in Figure 85 below records H3G's […] port-ins, port-outs and balance towards the other operators in […]. In the email accompanying the slides, H3G noted that, […].[1069]

Figure 85: MNP […] balance as recorded by H3G

[…]

Source: H3G internal document […].

(1149) Statements from senior managers of TIM and Vodafone confirm that they also regard the information obtained through MNP data as highly informative of the current status of the market and as a meaningful indicator of the MNOs' competitive behaviour. For instance, in May 2013, in the run-up to the summer price war, TIM's CEO noted that "*the new wave of price pressure experienced in the first quarter is essentially due to a duel between two of our competitors for the lowest entry-level on bundles. This generated a strong increase in the Market MNP Volumes and finally called for an answer*".[1070] Instead, during the temporary "truce" following the parallel price increases of the three larger MNOs in Q4 2013 and Q1 2014, TIM's CEO noted that "*Mobile number portability, we are close to zero, so we lose really almost irrelevant number of customers, and being close to zero with almost all the operators is a clear signal that the situation is fairly calm*".[1071] Similarly, Vodafone's CEO Vittorio Colao noted that "*the trends are positive, the number* [portability] *numbers are good in Italy. So, usually, that's a leading indicator*".[1072]

(1150) In addition to MNP data, MNOs closely monitor the evolution of each other's market shares in terms of subscribers and revenue. Monitoring is carried out inter alia by the MNOs' respective market intelligence teams and on the basis of information made publicly available by other MNOs. Although changes in market shares cannot be detected as quickly and at the same level of granularity as changes in the MNP data, information on market shares would serve as a supplementary monitoring tool.

1069 H3G internal document, […] (original text: […]. See also WIND internal document […] (original text: […]).

1070 Telecom Italia 1Q 2013 Financial Results – Mr Bernabé's and Mr. Peluso's Speech, dated 9 May 2013, available at: http://www.telecomitalia.com/content/dam/telecomitalia/it/archivio/documenti/media/discorsi/2013/FB-PGP-MP-Speech-call1Q2013.pdf [ID 2595].

1071 TIM Conference Call 1H 2014 Results – Q&A, available at: http://www.telecomitalia.com/content/dam/telecomitalia/en/archive/documents/media/transcripts/2014/Transcript%20-%20First%20Half%202014%20Financial%20Results.pdf [ID 2575] The original text speaks of "profitability", presumably referring to "portability".

1072 Vodafone Group Half Year Results - Analyst and Investor Conference, dated 10 November 2015, available at: https://www.vodafone.com/content/dam/vodafone/investors/financial_results_feeds/half_year_30september2015/t_halfyear2015.pdf [ID 2581].

Indeed, by observing the evolution in their competitors' subscriber shares, MNOs would be able to receive further reassurances as to each other's compliance with the terms of coordination.

(1151) In sum, observing MNP data and MNOs' market shares would provide MNOs' with further tools to indirectly monitor competitors' adherence with the terms of coordination (in addition to the "direct monitoring" tools described above).

(1152) Finally, it is worth noting that the Transaction would make it easier to monitor compliance through the direct and indirect monitoring tools described above. Indeed, by removing one MNO from the market, the Transaction would reduce the amount of ATL and BTL tariffs, dealer incentives schemes and customer flows to be monitored and thus would facilitate the detection of possible deviations.

c) Deterrent mechanism

(1153) Coordination is not sustainable unless the consequences of deviation are sufficiently severe to convince coordinating firms that it is in their best interest to adhere to the terms of coordination. It is thus the threat of future retaliation that keeps the coordination sustainable. A simple form of retaliation consists in engaging into a temporary price war.[1073] However the threat is only credible if, where deviation by one of the firms is detected, there is sufficient certainty that some deterrent mechanism will be activated and that this happens quickly.[1074]

(1154) This section considers possible punishment mechanisms that could deter deviations post-Transaction, and, in particular, examines (i) which would be the likely form of retaliation, (ii) whether such retaliation would be immediate and credible, and (iii) whether, all in all, it would likely be effective in deterring deviations.

i. <u>Likely forms of retaliation</u>

(1155) As explained in the previous section, in the present case, deviation by an MNO from the terms of coordination could be easily and almost instantaneously detected. Other MNOs could therefore punish a deviator by engaging in a "price war", for example by launching aggressive BTL campaigns targeted at customers of the deviator or by increasing dealers' commissions to stimulate customers to switch away from the deviator.

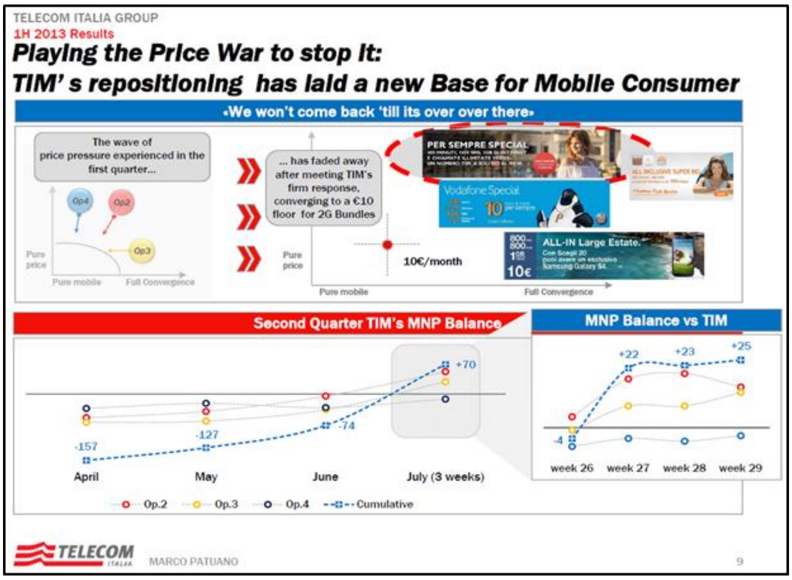
(1156) The fact that such forms of retaliation would be conceivable is illustrated by previous examples of what appears as retaliatory behaviour by TIM in reaction to competitors' actions that TIM regarded as being too aggressive.

(1157) As explained in recital (1050) above, faced with H3G's launch of aggressive offers in early 2013 (described by WIND as […]),[1075] the three larger MNOs had initially decided to behave "rationally" by clinging to their higher prices, thereby losing a large number of customers to H3G. Eventually, however, TIM decided to react at the end of June 2013 by launching a very aggressive offer (2 GB, 400 minutes, 1000 SMS for EUR 10), which was mirrored by Vodafone a few weeks later.[1076] As described by TIM's CEO Marco Patuano, "*Time was up. After months of "on hold" rational approach that did not pay, we decided to strongly react with a "zero tolerance" stance to the risk of losing further market share during the summer*

1073 Horizontal Merger Guidelines, paragraph 54.
1074 Horizontal Merger Guidelines, paragraphs 52-53.
1075 See recital (1055) above.
1076 See recital (1050) above. See also Figure 71 above.

campaign season".[1077] TIM's action was specifically aimed to "*make evident to the whole market that we will no longer tolerate losing to others our customer base*".[1078] The ultimate goal of TIM's intervention was to "*force* [the] *market into a more rational competitive game*".[1079] TIM's strategy is illustrated by one of TIM's own slides on the company's financial results for the first half of 2013, titled "*playing the price war to stop it*"[1080] and reproduced at Figure 86 below.

Figure 86: TIM's "Zero Tolerance" approach in the summer 2013 price war



Source: TIM public document "1H 2013 Results", 2 August 2013, slide 9, available at http://www.telecomitalia.com/content/dam/telecomitalia/en/archive/documents/investors/Presentations/Investor_Relations/2013/TelecomItalia1H2013Results-Operations-Patuano.pdf.

(1158) As shown from the slide in Figure 86 above, TIM's aggressive move lasted for a limited period of time (a few weeks), i.e. until TIM was satisfied that it had won back a sufficient number of customers and stopped the price race to the bottom ("*we won't come back 'till its over over there*"). TIM's move was therefore a "*short-term lever*" to address a "*shortterm acceleration of problems*".[1081] In presenting the slide, TIM's CEO Marco Patuano emphasised: "*We have proven to our competitors our determination in preventing further market share erosion. I was not looking for a*

[1077] Telecom Italia, 2Q 2013 Domestic Results, Marco Patuano's speech, 2 August 2013, available at: http://www.telecomitalia.com/content/dam/telecomitalia/it/archivio/documenti/media/discorsi/2013/FB-PGP-MP-speeches-call1H2013.pdf [ID 2596].

[1078] Telecom Italia, 2Q 2013 Domestic Results, Marco Patuano's speech, 2 August 2013, available at: http://www.telecomitalia.com/content/dam/telecomitalia/it/archivio/documenti/media/discorsi/2013/FB-PGP-MP-speeches-call1H2013.pdf [ID 2596].

[1079] Telecom Italia Group, 9M 2013 Results & 2014-2016 Plan Outline, dated 7 November 2013, slide 5, available at: http://www.telecomitalia.com/content/dam/telecomitalia/en/archive/documents/investors/Presentations/Investor_Relations/2013/Patuano-2014-2016Plan-3Q2013-7nov13.pdf [ID 2601].

[1080] TIM public document, "1H 2013 Results", 2 August 2013, slide 9, available at http://www.telecomitalia.com/content/dam/telecomitalia/en/archive/documents/investors/Presentations/Investor_Relations/2013/TelecomItalia1H2013Results-Operations-Patuano.pdf.

[1081] TIM's Conference Call 1H 2013 Results – Q&A, available at: http://www.telecomitalia.com/content/dam/telecomitalia/en/archive/documents/media/transcripts/2013/Transcript-ConferenceCall-1H2013-Results.pdf [ID 2576].

price war. I am not pleased to play it. We will do whatever is necessary to stop it".[1082]

(1159) Although TIM's reaction in Summer 2013 should not necessarily be seen as a retaliatory measure in the context of an ongoing coordination mechanism, it is highly illustrative of the type of punishment that could materialise in a coordination scenario post-Transaction. Indeed, H3G's sudden price drops and TIM's "zero tolerance" reaction show that punishment through temporary price wars is practically feasible in the Italian retail mobile market and is therefore a functional deterrence mechanism.

(1160) In addition to the main retaliation on the retail mobile market, retaliation could also take place on a different market where the three MNOs have commercial interactions.[1083] For example, MNOs could retaliate by engaging into a price war in the retail market for fixed telecommunications services, where all three MNOs would be active post-Transaction.

ii. <u>Swift and credible retaliation</u>

(1161) In the present case, retaliation could take place very swiftly.

(1162) First, as soon a deviation is detected (which, as explained above, would happen almost instantaneously), MNOs could quickly implement the change required to activate punishment, for example by launching a BTL campaign to target the deviator's customers. Indeed, past episodes of intense price competition show that MNOs can respond to rivals' price changes within a short time lag.

(1163) Second, the effects of retaliation could manifest themselves very quickly. Interactions between competitors are very frequent in the retail mobile market, as transactions take place continuously in the form of several small purchases by individual customers. The dispersed nature of individual contracts implies that, at any given moment, a relatively stable (and predictable) proportion of contracts are up for renewal.[1084] This contrasts to markets characterised by large lumpy orders (such as many B2B markets), where punishment for undercutting coordination may have to wait until the next large order happens to arrive.[1085]

(1164) In addition, retaliation could be perceived as a credible threat by the potential deviator.

(1165) Indeed, the MNOs are aware that their competitors would have the ability to quickly implement the required changes and, moreover that there would be no obstacles (such as capacity constraints) preventing them from doing so. The credibility of

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1082 Telecom Italia, 2Q 2013 Domestic Results, Marco Patuano's speech, 2 August 2013, available at: http://www.telecomitalia.com/content/dam/telecomitalia/it/archivio/documenti/media/discorsi/2013/FB-PGP-MP-speeches-call1H2013.pdf [ID 2596] TIM's CEO further explained that "*We took the strategic decision to give a clear and final message to all the competitors. Price war is not our goal, but we will not stay watching our customer base going away. This war destroys value and it should be reversed soon, but we do not intend to leave any free food on the table*".

1083 Horizontal Merger Guidelines, paragraph 55.

1084 While retaliatory price cuts in the mobile market to punish deviators are necessarily limited to contestable customers in the short run, the same is true for the initial deviation of a cheater. The fact that not the entirety of the mobile market is instantly addressable for punishments therefore does not undermine the ability of firms to credibly threaten deviators with retaliation.

1085 In *Airtours*, for example, the alleged punishment consisted in flooding the market with holiday packages the next year. See Judgment of the Court of First Instance of 6 June 2002, T-342/99, *Airtours v Commission*, EU:T:2002:146, paragraph 203.

retaliation is strengthened by the existence of precedents such as TIM's intervention in the summer 2013 price war.

(1166) Although retaliation would entail a short-term economic loss for the MNOs, this loss would likely be smaller than the long-term benefit of retaliating resulting from the return to coordination.[1086] Indeed, the cost for an MNO of engaging into a price war for e.g. a few weeks would be lower than the profits which that MNO would be able to generate from several months or years of coordinated equilibrium. For example, according to TIM, its "zero tolerance" intervention in summer 2013 was costly but definitely worth. According to TIM's CEO, "*since we closed it fairly soon in the fall, and since we did not give the possibility to the customer base to adopt this offer, the repositioning effect has been limited to one million customer … If we didn't do such a disruptive move, it was a month-after-month bleed of EUR 0.50, EUR 1, EUR 0.75 and more quantity, more minutes, more giga and it was a never ending story. So it was tougher. We are – all the market is paying the bill. But after September, we built up – the whole industry built up a movement towards a new more safe price environment*".[1087]

iii. Overall deterrence effect

(1167) The three remaining MNOs would be likely to find it economically preferable not to deviate from any existing coordination. Indeed, the profits from deviation would likely be short-lived, because the time lag between the deviating action and the disciplining response would likely be very short. Moreover, deviation would lead to potentially destructive price wars resulting in losses and foregone profit for all MNOs. Conversely, the potential long-term benefits from sticking to the coordinated terms are likely to be substantial for each of the MNOs, outweighing by far the benefits from deviation. With this in mind, the MNOs would likely have a joint incentive to adhere to the terms of coordination to keep it going. This joint incentive would be a direct consequence of the changes brought about by the Transaction, namely the reduction in the number of MNOs, the disappearance from the market of H3G as a standalone player and the increased symmetry between the MNOs, as explained in Section 7.3.3.2 above.

(1168) The incentive of MNOs to comply with the terms of coordination is further reinforced by the fact that demand for mobile services is not subject to unpredictable fluctuations and that, in addition, it is foreseen to grow over time as far as mobile data is concerned.

(1169) Indeed, as explained in recital (1044) above, demand for retail mobile services is not expected to be subject to any strong unpredictable fluctuations in the coming years. The non-volatility of demand in the Italian retail mobile market is in contrast to more cyclical markets, where deviators can take advantage of temporary surges in demand to cheat, whereas punishment may have to be undertaken in a subsequent down-cycle (where it would be less effective).

(1170) Furthermore, as also explained in recitals (38) and (1044) above, demand for mobile data is expected to gradually increase in the coming years. From an economic perspective, in the presence of high barriers to entry, gradual and predictable

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1086 Horizontal Merger Guidelines, paragraph 54.

1087 Telecom Italia's CEO Marco Patuano on Q1 2014 Results - Earnings Call Transcript, dated 13 May 2014, available at: http://seekingalpha.com/article/2215223-telecom-italias-ti-ceo-marco-patuano-on-q1-2014-results-earnings-call-transcript [ID 2571].

increases in demand over time render a market particularly conducive for collusive outcomes.[1088] Indeed, given that a relatively larger part of the sales is expected to take place in the future, the gains from deviation are likely to be small compared to the gains from long-term coordination. In the present case, MNOs are well aware of the expected future increase in demand for data and of the likely absence of new MNO entrants.[1089] Hence, they are likely to weigh larger future profits from coordination more than immediate smaller profits from deviation.

(1171) In sum, the existence of a swift and credible deterrence mechanism, as well as the non-volatility and the expected stable growth in demand, would be likely to increase the willingness of the MNOs to patiently abide by the rules of coordination.

d) Reaction of outsiders

(1172) For coordination to be sustainable, the foreseeable reaction of non-coordinating firms (including actual and potential competitors), as well as customers, should not jeopardise the outcome expected from coordination.[1090]

(1173) This section examines the potential disruptive role of (i) mobile customers, (ii) existing MVNOs and potential MVNO entrants, (iii) potential MNO entrants, and (iv) existing MNOs.

i. <u>Mobile customers</u>

(1174) As explained in Section 7.3.2.4 e) above, the purchaser-side of the retail market for mobile services is highly fragmented: it consists of individual customers who acquire mobile services through a multitude of small transactions. The vast majority of these individual customers are atomistic in comparison to the size of MNOs, either because they are final consumers or small businesses. While larger business customers may enjoy some degree of bargaining power,[1091] they would not be able to counter coordination between the MNOs involving private customers and small business customers (which together account for the large majority of the overall retail market).

(1175) Hence, mobile customers overall hold no sufficient buyer power that would enable them to disrupt coordination between the MNOs post-Transaction.

ii. <u>Potential MNO entrants</u>

(1176) The Italian retail mobile market is characterised by high barriers to entry for new MNOs, as explained in more detail in Section 7.3.2.4 d) above. Accordingly, MNO entry is highly unlikely to take place within the next two to three years (or even before 2029, when a large part of the spectrum licenses currently allocated the MNOs is set to expire).[1092] Hence, it is very unlikely that the prospect of new MNO entry would undermine coordination between the three remaining MNOs.

iii. <u>Existing MVNOs and potential MVNO entrants</u>

(1177) Contrary to the Parties' claims, MVNOs would also be highly unlikely to have the ability to disrupt coordination. Indeed, the MVNOs' presence on the Italian retail

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1088 See, for example, Marc Ivaldi, Bruno Jullien, Patrick Rey, Paul Seabright, Jean Tirole, "The Economics of Tacit Collusion", March 2003, available at http://ec.europa.eu/competition/mergers/studies_reports/the_economics_of_tacit_collusion_en.pdf, p. 26-28.

1089 See Section 7.3.2.4 d) above and recital (1176) below.

1090 Horizontal Merger Guidelines, paragraph 56.

1091 See Section 7.3.2.4 e) above.

1092 See recital (88) above.

mobile market is currently negligible, accounting for a collective market share of merely [0-5]% in terms of revenues and [5-10]% in terms of subscribers in 2015.[1093] Moreover, as explained in recital (30), the subscribers' growth rate of MVNOs seems to have considerably slowed down in 2015.

(1178) In addition, the prices and products that MVNOs (whether new or existing) can offer on the retail market heavily depend on the terms of their current and future wholesale contracts with host MNOs. However, as explained in detail in Section 7.3.2.4 c) above, the MVNOs' current wholesale access terms (and, in particular, the fact that wholesale prices are set on a per unit basis, e.g. per MB used) limit their ability to compete against MNOs on price.

(1179) The limited role played by MVNOs is also confirmed by the Parties' internal documents that analyse the market and compare competitors' offerings. As explained in recitals (889) - (890) above, these documents tend to focus almost exclusively on the four MNOs, while the MVNOs are in most cases not even taken into account. Not surprisingly, MVNOs do not appear to have disrupted any attempts at coordination by the MNOs in the past in a way that would be comparable to H3G's track record of disruptions. For example, there is no indication that MVNOs played a role similar to the one that was played by H3G in destabilising the temporary price equilibrium following the parallel price increases of Q4 2013 and Q1 2014.

(1180) In addition, in the next years, given the growing customer demand for data, the MVNOs' ability to offer data packages at competitive prices is likely to decrease even further.

(1181) For all these reasons, it seems unlikely that MVNOs would be able to meaningfully disrupt coordination between MNOs after the Transaction.

iv. Existing MNOs

(1182) As coordination after the Transaction would likely involve the JV, TIM and Vodafone, there would not be any MNO left outside the coordination mechanism that could challenge such mechanism.

(1183) In this respect, the Transaction would bring about significant changes. Before the Transaction, any potential coordination attempt would be likely to be disrupted by H3G, given its appreciably different pricing incentives compared to those of the other MNOs (see Section 7.3.3.2 c) above). This is also corroborated by past instances in which H3G upset the temporary "equilibrium" created by the other MNOs (see Section 7.3.3.3 c) i. above).

(1184) By removing H3G as a stand-alone competitor, the Transaction would therefore eliminate the only credible threat to coordination, given the inability of other outside players (such as mobile customers and MVNOs) to act as a credible threat. Accordingly, the Transaction would directly increase the sustainability of coordination.

e) Conclusion on the sustainability of coordination

(1185) On the basis of all the evidence explained in Section b), c) and d) above, the Commission concludes that coordination would be likely to be sustainable after the Transaction. In particular, MNOs would have several direct and indirect tools enabling them to swiftly and effectively detecting deviations from the terms of

[1093] See Table 6 above.

coordination. Moreover, the ability of MNOs to punish deviations by engaging into a price war would constitute a credible threat that would likely deter MNOs from deviating in the first place and induce them to stick to the terms of coordination. In addition, given the negligible power of customers, actual and existing MVNOs and the lack of new MNO entrants, reactions of outsiders would be likely insufficient to jeopardise coordination between the MNOs after the Transaction.

(1186) Finally, the Transaction would directly increase the likelihood of coordination being sustainable, notably by facilitating the monitoring of deviations, by increasing the MNOs' incentive to abide by the terms of coordination and by removing the only player (H3G) who could otherwise have acted as a credible threat to coordination.

7.3.3.5. Practices facilitating coordination

(1187) Certain practices can facilitate coordination of market players' competitive behaviour either by making it easier to reach terms of coordination in the first place, or by helping coordination to become sustainable in time.

(1188) This section, therefore, reviews possible practices that could facilitate coordination post-Transaction. These practices include the use of public statements by MNO senior executives as a tool to "signal" to competitors (Section a), the exchange of information via investment banks (Section b) and the frequent high-level contacts that take place between MNOs' top executives (Section c). Importantly, neither of these facilitating practices would be *necessary* as such for coordination to take place, because, as demonstrated Sections 7.3.3.3 and 7.3.3.4 above, the MNOs would be able to reach terms of coordination and sustain them even without engaging in any of the facilitating practices. However, if adopted, such practices could make it even easier for the MNOs to enter into coordination and to sustain it over time.

a) "Signalling" through public statements

(1189) MNOs make regular conference calls in which their top managers report to shareholders and investors about the companies' financial results and answer questions from investment analysts. These conference calls take place at least once every quarter for each company, often within a few days from each other. These conference calls are closely followed by the managers of the other MNOs, either directly or by reviewing ad hoc reports prepared by the companies' internal business departments.[1094] In the past, MNOs have often taken the opportunity of such conference calls to convey certain messages to competitors, e.g. to invite them to behave in a certain way or to express their view as to how the market will or should develop. Although not all of these statements were strictly speaking related to a coordination mechanism, they illustrate the kind of "signals" that MNOs could send to each other in a regime of coordination after the Transaction.

(1190) In particular, MNOs could make use of public statements in the context of a post-Transaction coordination mechanism in order to: (i) communicate "dos and don’ts" of coordination; (ii) threaten to adopt retaliatory measures in case of misconduct; (iii) suggest actions to take coordination to a new stage; and, thus, (iv) make it easier to reach coordination and to sustain it over time.

i. <u>Communicate "dos and don’ts"</u>

(1191) In the past, MNOs have routinely made use of conference calls to express their approval or disapproval of certain actions taken by competitors, e.g. urging them to

[1094] See, VimpelCom internal document, […]. […]. See also VimpelCom internal document, […].

stop certain actions. In a post-Transaction coordination scenario, MNOs could use this kind of statements to make their views clear as to what actions they consider appropriate for the purpose of reaching terms of coordination (or of complying with existing terms of coordination) and which ones they do not. Examples of such past statements include the following:

- In November 2012, TIM's COO Marco Patuano, in referring to the "*intense promo activity by some competitors during the summer months*" (which had translated into strong MNP fluctuations), stated that "*the summer MNP spike … burned resources for the whole market. Our point of view is that competitive efforts could be better spent elsewhere rather than feeding churn …. I hope that this further evidence will drive a more rational competitive behaviour*". TIM's COO added that "*if we don't reach a stable balance, it's difficult to hope in a more rational behaviour*".[1095]

- TIM's COO stated in May 2013 that "*We remain deeply convinced that the push we saw in this First Quarter coming from some competitors towards excessively discounted prices is not sustainable in the mid- term*".[1096]

- Also in May 2013, Vodafone's regional CEO for Southern Europe Paolo Bertoluzzo pointed out that "*when you compare €13 price points for Vodafone Red in Italy in contract to a €10 price point, which the competition is driving for 400 minutes, 400 messages, 1 GB in prepaid, it is an issue*".[1097]

- TIM's COO reiterated the message in August 2013 (in the context of the 2013 price war): "*I don't think that €10 is sustainable till the end of the year. … So, I hope it will end well before next year. … as I told many times, this price point for the mobile is unsustainable.*"[1098] TIM's chairman Franco Bernabè supported the CEO by saying that "*I think that this price war is unsustainable for all the players*".[1099]

- In March 2014, TIM's CEO Marco Patuano defined MNP as "*value destruction*", adding that: "*I honestly believe that we need to keep the market rational to cool it down to avoid unnecessary effect that we internally call washing machine*". In particular, he stated that "*until few months ago there were*

1095 Telecom Italia's CEO Discusses Q3 2012 Results - Earnings Call Transcript, dated 9 November 2012, available at: http://seekingalpha.com/article/996171-telecom-italias-ceo-discusses-q3-2012-results-earnings-call-transcript [ID 2569].

1096 Telecom Italia 1Q 2013 Financial Results – Mr Bernabé's and Mr. Peluso's Speech, dated 9 May 2013, available at: http://www.telecomitalia.com/content/dam/telecomitalia/it/archivio/documenti/media/discorsi/2013/FB-PGP-MP-Speech-call1Q2013.pdf [ID 2595].

1097 Vodafone Group, Analyst and Investor Conference Call, dated 21 May 2013, available at: https://www.vodafone.com/content/dam/vodafone/investors/financial_results_feeds/preliminary_results_31march2013/t_prelim2013.pdf [ID 2609].

1098 TIM's Conference Call 1H 2013 Results – Q&A, available at: http://www.telecomitalia.com/content/dam/telecomitalia/en/archive/documents/media/transcripts/2013/Transcript-ConferenceCall-1H2013-Results.pdf [ID 2576].

1099 TIM's Conference Call 1H 2013 Results – Q&A, available at: http://www.telecomitalia.com/content/dam/telecomitalia/en/archive/documents/media/transcripts/2013/Transcript-ConferenceCall-1H2013-Results.pdf [ID 2576].

special commissions to the sales channels just for stimulating MNP, which is wrong".[1100]

- In May 2014, in the context of the temporary price equilibrium, TIM's CEO made clear that "*what we try is to avoid as most as we can to create special offers for MNP. So mobile number portability has to be to not incentivate, both in the small medium enterprises and in the consumer*" and that "*we are working much more consciously in this area in order to avoid to have entry level data so cheap*".[1101]
- In November 2014, Vodafone's CEO Vittorio Colao expressed his view as to how data should be monetised: "*betting on data and on the possibility to increase ARPU through data marginal increases is the name of the game. What we are doing is exactly that; ... basically, is about taking customers who are at lower levels at a higher level, and trying then to build a nice experience, a better experience, in terms of pulling them up with more video, with more usage, at pricing conditions which are, I would say, decent – so, not the crazy pricing of the early days*". In this context, according to Vodafone's CEO, a clear "don't" would be to offer bundles without data caps: "*What is wrong, in my view, is unlimited data because, if you go unlimited data, by definition you don't take anybody up*". [1102]
- In November 2015, TIM's CEO made clear that, from TIM's side, "*we are convinced that below-the-line offer have to be pushed out of the market*".[1103]
- A few days later, Vodafone's CEO concurred with TIM's CEO's view in relation to BTL offers: "*The only risk in Italy is we see again very heavy below-the-line activity from one player and some tentative response from the other two major ones. That should not, I hope, drag the whole market back again into super-promotional €5/€7 per month type of things*".[1104]

ii. Threaten retaliation

(1192) In addition to condemning the actions taken by some of their competitors, the MNOs have been using conference calls to issue "warnings" to their peers against continuing those actions and inform them that they are being monitored. These warnings included an implicit threat to respond aggressively in case the competitors' misconduct would persist. For instance:

1100 Telecom Italia's CEO Discusses Q4 2013 Results – Earnings Call Transcript, dated 7 March 2014, available at: http://seekingalpha.com/article/2076173-telecom-italias-ceo-discusses-q4-2013-results-earnings-call-transcript [ID 2552].

1101 Telecom Italia's CEO Marco Patuano on Q1 2014 Results - Earnings Call Transcript, dated 13 May 2014, available at: http://seekingalpha.com/article/2215223-telecom-italias-ti-ceo-marco-patuano-on-q1-2014-results-earnings-call-transcript [ID 2571].

1102 Vodafone Group, Half Year Results - Analyst and Investor Conference, dated 11 November 2014, available at: https://www.vodafone.com/content/dam/vodafone/investors/financial_results_feeds/half_year_30september2014/t_halfyear2014.pdf [ID 2580].

1103 Telecom Italia's CEO Marco Patuano on Q3 2015 Results - Earnings Call Transcript of 8 November 2015, available at: http://seekingalpha.com/article/3661726-telecom-italias-ti-ceo-marco-patuano-q3-2015-results-earnings-call-transcript [ID 2552].

1104 Vodafone Group, Half Year Results - Analyst and Investor Conference, dated 10 November 2015, available at: https://www.vodafone.com/content/dam/vodafone/investors/financial_results_feeds/half_year_30september2015/t_halfyear2015.pdf [ID 2581].

- In August 2013, TIM's CEO stated, in relation to the ongoing price war, that "*We took the strategic decision to give a clear and final message to all the competitors. Price war is not our goal, but <u>we will not stay watching our customer base going away</u>. This war destroys value and it should be reversed soon, but <u>we do not intend to leave any free food on the table</u>*".[1105] In other words, "*we have proven to our competitors our determination in preventing further market share erosion. I was not looking for a price war. I am not pleased to play it. <u>We will do whatever is necessary to stop it</u>*".[1106]
- In November 2013, TIM's CEO noted that "*With "Tim Special", which by September had builtup 1-spot-1 million clients, our offensive pricing strategy played most definitely a decisive dampening factor on irrational competitive behavior. <u>We are continuing to keep a high guard</u>, but are currently back towards a sustainable premium positioning*".[1107]
- In May 2014, Vodafone's CEO warned that "*we will have to respond to the tactical price moves of some of our competitors to discourage further deterioration of the structural pricing of the market*". He added that "*There seems to be again, the €10 price point being mentioned in Italy, €6 I saw a €6 2GB private offer, which really, after VAT is a €4.50, or €4.60, which doesn't make any sense. Now, <u>those things, you have to respond to, because otherwise they can take the market down very quickly</u>*".[1108]
- In February 2015, Vodafone's CEO announced that "*of course if we stabilise our revenue market share we will be happy, but if we see that there is leakage because we are too disciplined, too smart, <u>we will have inevitably to get back into the market more aggressively ourselves</u>*".[1109]

iii. <u>Suggest new coordinated actions</u>

(1193) In a number of instances in the course of conference calls, MNOs have described ongoing actions or indicated their intention or openness in undertaking certain actions. In some cases, this included explicit invitations to competitors to follow a similar course of action. In other cases, the invitation was more implicit. By way of example:

1105 Telecom Italia, 1H 2013 Financial Results – Mr. Bernabé's Speech, dated 2 August 2013, available at: http://www.telecomitalia.com/content/dam/telecomitalia/it/archivio/documenti/media/discorsi/2013/FB-PGP-MP-speeches-call1H2013.pdf [ID 2596].

1106 Telecom Italia, 1H 2013 Financial Results – Mr. Bernabé's Speech, dated 2 August 2013, available at: http://www.telecomitalia.com/content/dam/telecomitalia/it/archivio/documenti/media/discorsi/2013/FB-PGP-MP-speeches-call1H2013.pdf [ID 2596].

1107 Telecom Italia, 3Q 2013 and Group 2014-16 Plan Outline – Marco Patuano, dated 8 November 2013, available at: http://www.telecomitalia.com/content/dam/telecomitalia/en/archive/documents/media/transcripts/2014/MP-7-Novembre-Call-intro-3Q13.pdf [ID 2597].

1108 Vodafone Group, Preliminary Results – Analyst and Investor Conference Call, dated 20 May 2014, available at: https://www.vodafone.com/content/dam/vodafone/investors/financial_results_feeds/preliminary_results_31march2014/t_prelim2014.pdf [ID 2610].

1109 Vodafone Group, Analyst and Investor Conference Call, dated 5 February 2015, available at: https://www.vodafone.com/content/dam/vodafone/investors/financial_results_feeds/ims_quarter_31december2014/t_ims_31december2014.pdf [ID 2608].

- In May 2013, TIM's CEO emphasised that "*we are premium-pricing LTE in a region of +50%*".[1110]
- In May 2013, Vodafone's CEO noted that "*we want to maintain the price premium that we have declared*" (i.e. EUR 10 per month). Vodafone's regional CEO Paolo Bertoluzzo added that "*on the pricing point, I really believe that as an industry, we have to use these types of opportunities to try and ask our investment to pay it back, because the service is much better than a good 3G service. ... I think the industry has to try and price it for what is the cost to deliver it. We are resisting on this point in Italy ... We see incumbent in Italy having a similar position*".[1111]
- In November 2013, VimpelCom's CEO Jo Lunder stated that "*I think ... the market needs to find a better way to price data going forward*".[1112]
- In March 2014, VimpelCom's CEO Jo Lunder announced that, following the recent price increases and resulting lower gross adds and stable churn, "*we are seeing more benefits from maybe monetizing our subscriber base by having additional price levels offered rather than focusing too much on subscriber growth and revenue growth. So I think we have achieved a certain size in Italy now that will lead to more focus on the right price level and profitability margins going forward rather than subscriber growth*".[1113]
- On the following day, during TIM's conference call, an analyst referred to VimpelCom's statement and asked TIM's CEO if "*you expect them to potentially increase the prices also for their existing customer base and would you follow them in case they did*". TIM's CEO answered as follows: "*Well VimpelCom it's always welcomed any price increase and we will be delighted to move in this direction but I think that if I have to imagine something furtherly fixing the Italian market, the situation of the Italian market I would say downsizing the data bundle at the entry level. So all the operators are making bundles that are too big, so what I assume is sooner or later this year reducing the quantity of mega or even giga that today we include because otherwise we end up making the broadband, the mobile broadband too cheap*".[1114]
- In May 2014, TIM's CEO explained in detail TIM's new strategy regarding monetisation of 4G: "*For the summer, what we did is we included LTE as the*

1110 TIM's Transcript Conference Call 1Q 2013 – Q & A, available at: http://www.telecomitalia.com/content/dam/telecomitalia/en/archive/documents/media/transcripts/2013/Transcript-ConferenceCall-1Q2013-Q%26A.pdf [ID 2604].

1111 Vodafone Group, analyst and Investor Conference Call, dated 21 May 2013, available at: https://www.vodafone.com/content/dam/vodafone/investors/financial_results_feeds/preliminary_results_31march2013/t_prelim2013.pdf [ID 2609] and Vodafone Group, Preliminary Results – For the year ended 31 March 2013, dated 21 May 2013, available at: https://www.vodafone.com/content/dam/vodafone/investors/financial_results_feeds/preliminary_results_31march2013/p_prelim2013.pdf [ID 2606].

1112 VimpelCom's CEO Discusses Q3 2013 Results – Earning Call Transcript of 6 November 2013, available at: http://seekingalpha.com/article/1813432-vimpelcoms-ceo-discusses-q3-2013-results-earnings-call-transcript [ID 2554].

1113 VimpelCom's CEO Discusses Q4 2013 Results – Earning Call Transcript of 6 March 2014, available at: http://seekingalpha.com/article/2072463-vimpelcoms-ceo-discusses-q4-2013-results-earnings-call-transcript [ID 2554].

1114 Telecom Italia, Group FY2013 – Marco Patuano, dated 7 March 2014, available at: http://www.telecomitalia.com/content/dam/telecomitalia/en/archive/documents/media/transcripts/2014/MP-speech-March-7-2014-FY2013.pdf [ID 2600].

distinctive feature of our portfolio. We are not cutting prices any more. Prices for the summer campaign are still increasing or better, did not decrease since we increased prices few weeks ago. And now what we did was reducing the level of data that is included in the portfolio, in the bundle. And it will be priced, 3G and 4G the same price, but simply if you use 4G, the quantity of data you get will not satisfy your need. And these will push you to buy a further package of data in order to satisfy your wishes […] after September, we built up – the whole industry built up a movement towards a new more safe price environment. And now what we want to do is not competing anymore. I don't want to compete anymore on prices. I want to compete on the quality. And as I said in my speech, on the beauty of 4G".[1115]

iv. Overall effect in facilitating coordination

(1194) Although "signalling" statements such as the ones listed above are not necessarily binding or verifiable, they enable MNOs at the very least to get a "feeling" of their competitors' view regarding the ongoing market dynamics and the developments that they wish for. Moreover, insofar as these statements are used to urge competitors to behave or not in a certain way, to warn them of possible retaliation and to suggest new parallel actions, they could considerably facilitate reaching terms of coordination and enhance the coordination's sustainability.

(1195) MNOs seem to be well aware of the potential of public statements to convey "messages" and help reaching coordinated outcomes. For instance, internal documents […].

(1196) Indeed, […].[1116][…] is illustrated in Figure 87 below, […]. […]. […].[1117]

Figure 87: […]

[…]

Source: VimpelCom internal document […].

b) Exchange of information through investment banks

(1197) Investment banks also contribute to increasing the level of transparency in the market by conveying information to the MNOs regarding each other's results and intended market strategies.

(1198) In particular, investment banks regularly organise conferences or other events, such as company visits, conference calls, where representatives of the MNOs are solicited to answer questions from analysts and comment on current and desired market developments. The topics discussed include the MNOs' own current and future pricing and product strategies and their views on rivals' strategies.

1115 Telecom Italia's CEO Marco Patuano on Q1 2014 Results - Earnings Call Transcript, dated 13 May 2014, available at: http://seekingalpha.com/article/2215223-telecom-italias-ti-ceo-marco-patuano-on-q1-2014-results-earnings-call-transcript [ID 2571] TIM's CEO further explained that "*after having successfully reshaped the market following the 2013 price war, we are now restoring value in the data segment through a reduction of the amount of Giga we include in the bundle. Entry-level data packages have to reflect actual usage patterns of 3G Smartphones, and therefore we have to progressively drive them down to 500 Mega from the 2Giga per month which were embedded in last summer's offers. At the same time, ... [t]he entire summer portfolio is 4G-enabled, moving the competition from price to quality and innovation. ... The time for coffee*-sized *discounts is over. So we are expecting a material ARPU uplift from the higher demand for data driven by 4G*".

1116 VimpelCom internal document […]. See also VimpelCom internal document […].

1117 VimpelCom internal document […].

(1199) For example, at a Deutsche Bank conference in […].[1118]

(1200) Similarly, at a BNP Paribas conference in […].[1119]

(1201) On the basis of the information collected during these events (and from the MNOs' quarterly conference calls on companies' financial results), market analysts prepare detailed reports, which are then circulated to the MNOs. This contributes to significantly increasing the level of transparency regarding MNOs' pricing actions and also enables competitors to send "messages" to each other. In a regime of coordination post-Transaction, the role of investment banks would therefore facilitate reaching terms of coordination and making it sustainable in time.

c) High-level contacts between top MNO executives

(1202) The evidence on file indicates that high-level contacts between MNO executives take place […]. [Interactions took place between the Parties and TIM and Vodafone to explore possible ways to compensate the Parties for the "benefits" that TIM and Vodafone would derive from the Transaction in terms of "market repair"].[1120]

(1203) In addition, internal documents of the Parties indicate […].

(1204) […].[1121]

(1205) […].[1122]

(1206) Even though these contacts may have been limited to exchanging high-level views without involving commercially sensitive information, they indicate that informal interactions between MNO top level executives occur […]. After the Transaction, these interactions would offer an opportunity for MNOs to exchange (implicit) "signals" that would facilitate coordination (comments on competitors' behaviour being consistent or not with the coordination terms, reassurances regarding adherence to the terms, threats of possible retaliations, etc.).

d) Conclusion on facilitating practices

(1207) In light of the information presented in Section a), b) and c) above, the Commission concludes that, after the Transaction, the MNOs would be likely to engage in certain practices that may facilitate coordination between them. These practices, to which the MNOs resort already today, include public statements by MNO senior executives in conference calls, communication through investment banks and high level contacts between MNOs' top managers. Although none of these practices would be strictly necessary for coordination to arise and to be sustainable post-Transaction, they could make it easier to reach terms of coordination and contribute to its sustainability.

7.3.3.6. Conclusion on horizontal coordinated effects

(1208) In light of all of the elements illustrated above, the Commission concludes that the Transaction is likely to give rise to coordinated anticompetitive effects in the retail market for mobile telecommunications services in Italy. Indeed, the Transaction would increase the likelihood that the three remaining MNOs are able to coordinate their behaviour and raise prices in a sustainable way, even without entering into an

1118 VimpelCom internal document, […].
1119 VimpelCom internal document, […].
1120 See Sections 7.2.3 and 7.3.3.2 e) iii. above.
1121 VimpelCom internal document, […].
1122 Hutchison internal document, […].

agreement or resorting to a concerted practice within the meaning of Article 101 of the Treaty.

(1209) In particular, as explained in Section 7.3.3.2 above, the Transaction would lead to an overall alignment of incentives of the JV, TIM and Vodafone to coordinate their competitive behaviour. As described in Sections 7.3.3.3 and 7.3.3.4, respectively, reaching terms of coordination would be possible and coordination would be likely to be sustainable after the Transaction. Finally, as explained in Section 7.3.3.5, certain facilitating practices, although not necessary as such for coordinated effects to arise in this case, could both make it easier to reach terms of coordination and contribute to the coordination's sustainability.

(1210) Therefore, the Commission concludes that that the Transaction would significantly impede effective competition in the retail market for mobile telecommunications services in Italy also as a result of horizontal coordinated effects.

(1211) The Commission considers that the effects from coordination would materialise *in addition* to the non-coordinated effects arising from the Transaction (see Section 7.3.2.5 above), leading to additional harm to consumers (over and above the harm implied by non-coordinated effects). The finding of coordinated effects, however, does not require a prior finding of non-coordinated effects, given that the two competitive mechanisms at work are distinct and do not depend on each other.

7.4. Wholesale market for access and call origination on mobile networks

7.4.1. Horizontal non-coordinated effects

7.4.1.1. Introduction

a) Legal test and the Commission's approach

i. <u>Legal test</u>

(1212) As explained in Section 7.1, under the Merger Regulation and paragraphs 24 and 25 of the Horizontal Merger Guidelines, both in the case of creation or strengthening of a dominant position and in absence of the creation or strengthening of such a position, the elimination of competition between two merging firms may give rise to a significant impediment of effective competition resulting from horizontal non-coordinated effects in oligopolistic markets, featuring a limited number of players and particularly high barriers to entry, where the merging firms exert an important competitive constraint on each other and on the remaining competitors.

(1213) The factors listed in paragraphs 27 onwards of the Horizontal Merger Guidelines may influence whether or not significant horizontal non-coordinated effects are likely to result from a merger, but not all of these factors need to be present to make significant non-coordinated effects likely and the list is not exhaustive.[1123] The presence of these factors may though have an impact on the degree of horizontal non-coordinated effects arising from the Transaction.

ii. <u>Commission's approach</u>

(1214) Applying the legal test set out in the Merger Regulation and recalled above in Section 7.1, the Commission has assessed whether the Transaction is likely to lead to horizontal non-coordinated effects in the wholesale market for access and call origination services on public mobile networks in Italy, by eliminating the important

[1123] Horizontal Merger Guidelines, paragraph 26.

competitive constraints exerted by the Parties on each other and reducing competitive pressure on the remaining competitors.

(1215) To this effect, the Commission first describes the structure of the wholesale market (Section 7.4.1.1 b)). Then, it examines the competitive constraint exerted by the Parties in the market, looking at market shares and concentration levels (Section 7.4.1.2 a)). Then, it assesses the specific competitive constraints exerted by each of H3G and WIND before and in absence of the Transaction (Sections 7.4.1.2 b) and 7.4.1.2 c) respectively) and the degree to which the Parties are currently close competitors (Section 7.4.1.2 d)).

(1216) The Commission also assesses the likely behaviour of the JV post-Transaction (Section 7.4.1.2 e)). The Commission then analyses the competitive position of the Parties' competitors, before and in absence of the Transaction, as well as their likely behaviour post-Transaction (Section 7.4.1.3).

(1217) Section 7.4.1.4 sets out the Commission's findings in relation to non-coordinated effects arising from the Transaction. Section 7.4.1.5 assesses the countervailing effects and finally, Section 7.4.1.6 sets out the Commission's conclusions.

b) Market conditions

i. Structure of competition

(1218) On the wholesale market for access and call origination on mobile networks, MNOs sell access to their mobile networks and call origination services to MVNOs. Based on this wholesale access, MVNOs provide retail mobile telecommunications services to end customers, in competition with the MNOs (see Section 5.4.2).

(1219) Currently all four MNOs in Italy offer wholesale access to their mobile networks. The wholesale market for access and call origination on mobile networks is not subject to ex-ante regulation by AGCOM (see recital (84) above).

ii. Categories of MVNOs

(1220) As described in recital (66), there are different types of MVNOs: full MVNOs that own some of the core infrastructure, and light MVNOs (or ESPs), which do not own any network infrastructure.[1124] In recent years some of the Italian MVNOs have transformed from light MVNO to full MVNO (PosteMobile, DIGI, BT Italia),[1125] and according to the Parties more MVNOs are considering this.[1126] While becoming a full MVNO requires more investments than entry as a light MVNO, there are several advantages of being a full MVNO. For example, it is easier for a full MVNO to switch host MNO as there is no need for its customers to change SIM cards. A full MVNO has also more flexibility in designing its retail offer.

(1221) MVNOs can also be distinguished according to their profile and position in the retail market. Some MVNOs are niche operators that target particular segments of the market. Examples of this type are Lycamobile, Daily Telecom and DIGI Italy, which focus on low-cost international calls and target immigrants and other customers with make a relatively large share of their calls to other countries. Another type is the MVNOs that are active in other industries and utilise their existing customer base and distribution network to offer also mobile services. This type includes

[1124] As explained in recital (174), while so called branded resellers also provide retail services based on the MNOs' networks, they are not active as buyers on the wholesale market.

[1125] Form CO, Section 6, Table 18.

[1126] Form CO, Section 6, paragraph 236.

PosteMobile, ERG Mobile, Coop Voce and Carrefour 1 Mobile.[1127] A third type comprises so called converged MVNOs which offer fixed telecommunications services and buy mobile wholesale access to be able to offer also mobile services to their customers. Fastweb and Tiscali are examples of converged MVNOs. As further discussed in recitals (1226) to (1228), the incentive of an MNO to provide wholesale access to an MVNO may be influenced by MVNO's profile and whether it complements or overlaps the MNO's own retail strategy.

(1222) An overview of the main MVNOs active in Italy, i.e. the customers on the wholesale market, is shown in Table 2 above.

iii. Contracting for wholesale access and call origination services

(1223) Wholesale agreements are negotiated bilaterally between MNOs and MVNOs.[1128] Key terms in wholesale agreements include the services which are included, various wholesale access fees, exclusivity provisions, contract duration etc.[1129]

(1224) MVNOs invite MNOs to bid for their services. The results of the market investigation show that the number of MNOs that are invited by the Italian MVNOs varies; MVNOs may contact one, several or all MNOs when they seek wholesale access to a mobile network.[1130] MNOs that are invited to bid for a wholesale contract do not always decide to actually bid or engage in negotiations. More than half of the MVNOs responding to the Commission's market investigation said that they did not receive an offer from all of the MNOs they contacted for the purpose of negotiating their current wholesale agreement.[1131]

(1225) The results of the market investigation also indicate that MVNOs are rarely approached by MNOs unless the MVNO takes the initiative to a negotiation or announces its intentions.[1132] The Parties have also stated that the negotiation processes are initiated by the MVNOs.[1133]

(1226) MNOs provide wholesale access in order to make use of spare capacity and the possibility to generate incremental revenue.[1134] In addition, providing wholesale access also can be a way for MNOs to reach customer segments that they find difficult to access themselves.[1135]

(1227) However, because MNOs are vertically integrated and operate at both retail and wholesale level, there is a risk that they will lose some of their retail subscribers to the MVNOs they host. This is often referred to as "cannibalisation". The risk of cannibalisation means that MNOs face a trade-off when bidding for contracts to

[1127] PosteMobile is owned by the Italian postal services provider Poste italiane, ERG Mobile by TotalERG which operates a chain of petrol stations in Italy, Coop voce belongs to cooperative Coop which also operates one of the largest supermarket chains in Italy, Carrefour 1 Mobile's mobile services are distributed through Carrefour's supermarkets and convenience stores.

[1128] Or, in the case an MVNA is involved, between MNO and MNVA, see recital (1229).

[1129] See H3G and WIND's wholesale agreements, Form CO, Annexes 32.1–32.44.

[1130] See replies to Questionnaire Q1 to MVNOs of 8 February 2016, question 7.

[1131] See replies to Questionnaire Q1 to MVNOs of 8 February 2016, question 7.1.

[1132] PosteMobile's reply to RFI n. 25 of 19 April 2016, question 3 [ID 1318], Fastweb's reply to RFI 36 of 19 April 2016, question 3 [ID 1601], Coop's reply to RFI n. 37 of 19 April 2016, question 3 [ID 1688], Lycamobile's reply to RFI n. 38 of 19 April 2016, question 3 [*ID 1310*], TotalERG's reply to RFI n. 39 of 19 April 2016, question 3 [ID 1276], Tiscali's reply to RFI n. 40 of 19 April, question 3 [ID 1553].

[1133] See H3G's reply to RFI n. 31 of 15 April 2016, paragraph 2.4 and WIND's reply to RFI n. 32 of 15 April 2016, paragraph 2.2.

[1134] Form CO, Section 6, paragraph 824.

[1135] Form CO, Section 6, paragraph 825.

supply MVNOs. On the one hand, hosting MVNOs generate wholesale profits for the MNO. On the other hand, MVNOs can cannibalize the retail business of the host MNO as well as inducing a lower retail market price due to potentially increasing retail competition.

(1228) If the MNOs and the MVNOs target different customer segments in the retail market, the risk of cannibalisation is lower, and MNOs may be more inclined to provide wholesale access to the MVNO. However, as explained by the Parties, even if an MVNO targets similar retail customers as the MNO, the latter may have the incentive to host the MVNO to avoid that the MVNO chooses a different host MNO.[1136]

iv. Aggregators and enablers

(1229) As described in recital (67), MVNAs and MVNEs can facilitate MVNO entry. MVNAs and MVNEs do not have a relationship with consumers and do not compete on the retail market for mobile telecommunications services, but are rather suppliers of network enablement platforms and intermediary wholesale access services.

(1230) An MVNA pools together several brands and business and concludes agreements with MNOs on behalf of its members for the use of the MNO's spectrum and radio network.[1137] While the main MVNOs in Italy do not use MVNAs, Nòverca is an example of an MVNA that buys wholesale access from TIM on behalf of MVNOs Noitel and Ring Mobile.[1138]

(1231) MVNOs may be assisted by MVNEs which provide business support systems, administration and operations support systems to MVNOs.[1139]

7.4.1.2. Assessment of the competitive constraints exercised by the Parties

a) General assessment

i. Parties' view

(1232) The Parties acknowledge that they both host MVNOs on their respective networks and that their activities therefore overlap on the wholesale market for access and call origination on public mobile networks in Italy.[1140]

(1233) In their Reply to the Article 6(1)(c) Decision, the Parties argue that the market shares presented in the Article 6(1)(c) Decision do not provide a reliable indication of the Parties' market positions. First, subscriber shares that are based on the number of subscribers of the MVNOs are more a reflection of the success of the MVNOs than of the MNOs' ability to attract MVNOs. Second, the share attributed to H3G is misleading since it does not take into account the anticipated migration of Fastweb from H3G to TIM in […], or the […] migration of DIGI from H3G to TIM. The share attributed to WIND is also misleading as […].

(1234) According to the Parties, after the announced migrations of Fastweb and DIGI from H3G to TIM have been completed, there will no longer be an overlap in the Parties' activities at the wholesale level.

1136 Form CO, Section 6, paragraph 825.
1137 Form CO, Section 6, paragraph 130.
1138 Form CO, Section 6, paragraph 235.
1139 Form CO, Section 6, paragraph 131.
1140 Form CO, Section 6, paragraph 795.

(1235) Moreover, in their Reply to the Article 6(1)(c) Decision, the Parties claim that H3G and WIND are not each other's closest competitor. In support of their claim, the Parties point out that the MVNOs switching from H3G in recent years have not switched to WIND, and that WIND has never lost a wholesale customer to H3G. The Parties also contest the finding in the Article 6(1)(c) Decision that the similarities in network quality and coverage of the Parties' networks would make them close competitors.

ii. Commission's assessment

Market shares and concentration levels

(1236) Market shares in the wholesale market for access and call origination on public mobile networks can be subject to large variations, should a large wholesale customer switch host MNO or be acquired by an MNO. Nevertheless, market shares can provide an indication of the operators' market positions.

(1237) The Parties submit that due to limited public information and high levels of switching by MVNOs, it is difficult to provide reliable estimates of the market share of the MNOs in the Italian wholesale market.

(1238) The Parties have nevertheless provided data on the MNOs' revenues, number of subscriptions and market shares in the wholesale market, based on the Parties' best estimates.

(1239) As regards market shares based on wholesale revenues, the Parties have provided shares by revenues based on data from analysis firm IDC, presented in Table 29 below. According to the Parties, IDC significantly over-estimates the actual revenues that H3G and WIND obtain from providing wholesale access. As an alternative, the Parties have calculated revenues and market shares using estimates provided by the data provider Busacca & Associati, presented in Table 30 below.

Table 29: Market shares in wholesale market for access and call origination on public mobile networks – by revenues, based on IDC data

	2012		2013		2014		2015	
	MEUR	Share	MEUR	Share	MEUR	Share	MEUR	Share
H3G	[…]	[10-20]%	[…]	[20-30]%	[…]	[20-30]%	[…]	[10-20]%
WIND	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%
Combined	**[…]**	**[20-30]%**	**[…]**	**[30-40]%**	**[…]**	**[30-40]%**	**[…]**	**[30-40]%**
TIM	[…]	[20-30]%	[…]	[20-30]%	[…]	[20-30]%	[…]	[20-30]%
Vodafone	[…]	[50-60]%	[…]	[30-40]%	[…]	[30-40]%	[…]	[40-50]%
Total	[…]	100%	[…]	100%	[…]	100%	[…]	100%

Source: Parties' reply to RFI n. 58 of 12 May 2016, Table 1

Table 30: Market shares in wholesale market for access and call origination on public mobile networks – by revenues, based on estimates by Busacca & Associati

	2013		2014		2015	
	MEUR	Share	MEUR	Share	MEUR	Share
H3G	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%
WIND	[…]	[0-5]%	[…]	[0-5]%	[…]	[10-20]%
Combined	**[…]**	**[10-20]%**	**[…]**	**[20-30]%**	**[…]**	**[20-30]%**
TIM	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%
Vodafone	[…]	[70-80]%	[…]	[60-70]%	[…]	[50-60]%
Total	[…]	100%	[…]	100%	[…]	100%

Source: Parties' reply to RFI n. 58 of 12 May 2016, Table 2

(1240) In the Phase II market investigation, the Commission asked the Parties to provide data on the number of PosteMobile subscribers on each of WIND's and Vodafone's network. The Parties estimated that by the end of 2015, about […]% of PosteMobile's customers were on WIND's network, and the remaining on Vodafone's network.[1141] Table 31 below shows market shares, based on estimates by Busacca & Associati, with the subscribers of PosteMobile split between WIND and Vodafone according to the number of subscribers actually on each network in 2014 and 2015. Also, in this table the individual market shares of each of TIM and Vodafone have been estimated.

Table 31: Market shares in wholesale market for access and call origination on public mobile networks – by subscriptions, based on estimates by Busacca & Associati.

	2013		2014		2015	
	millions	Share	millions	Share	millions	Share
H3G	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%
WIND	[…]	[0-5]%	[…]	[5-10]%	[…]	[10-20]%
Combined	**[…]**	**[10-20]%**	**[…]**	**[10-20]%**	**[…]**	**[30-40]%**
TIM	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%
Vodafone	[…]	[60-70]%	[…]	[60-70]%	[…]	[50-60]%
Total	[…]	100%	[…]	100%	[…]	100%

Source: Parties' reply to RFI n. 58 of 12 May 2016, Table 4

(1241) The Parties submit that subscriber shares are more a reflection of the success of the MVNOs in attracting and retaining customers at the retail level, than it is of MNOs' ability to attract and retain MVNOs on the wholesale level.[1142] However, MVNOs' success in the retail market depends to a large extent on the access conditions that they obtain at the wholesale level from the MNO. The Commission therefore considers that subscriber shares at wholesale level are a suitable proxy for the position of the MNOs in the wholesale market.

(1242) As described in recital (1236), market shares in the wholesale market for access and call origination on public mobile networks can be subject to large variations. The market shares based on actual revenues (Table 30) and on the number on subscribers

[1141] Reply to RFI n. 58 of 12 May 2016, paragraph 5.6.
[1142] Reply to the Article 6(1)(c) Decision, paragraph 294.

actually hosted on each MNO's network (Table 31), give a static picture of the MNOs' market positions at each point in time.

(1243) However, as pointed out in recitals (1223)–(1224) and (1236), the wholesale market for access and call origination on mobile networks is characterised by bids and individual negotiations, and market shares can be subject to large variations, should a large wholesale customer switch to another MNO. The market shares in Table 29 to Table 31 indeed show that there have been variations in recent years.

(1244) Further changes can be expected in the future because of the ongoing and upcoming switches of PosteMobile, Fastweb and DIGI. PosteMobile's migration from Vodafone to WIND has been going on since […] (see recital (1240)). Fastweb will start providing mobile services on TIM's network in […][1143]. As for DIGI, it started to move to TIM's network in […] and the migration is due to be completed by […].[1144]

(1245) In particular, PosteMobile and Fastweb's switches will have significant effects on market shares, as combined they represent more than half of the wholesale market in terms of subscriptions.

(1246) In a forward looking approach where the known future migrations of wholesale subscribers are taken into account when assessing the market shares, all PosteMobile's subscribers are attributed to WIND, and all Fastweb's and DIGI's customers are attributed to TIM. This approach is also applied in the Commission's quantitative analysis, as described in Section 7.3.2.4 (f).

(1247) The switches of PosteMobile to WIND and of Fastweb and DIGI to TIM have been taken into account in Table 32 below, based on data from AGCOM and the Parties' own estimates of 2015. The Table presents the likely development of market shares when the customers of DIGI, Fastweb and PosteMobile would be fully migrated to the new hosting MNO. WIND's market share would be [50-60]% when the PosteMobile migration has been completed. The switch of Fastweb and DIGI from H3G to TIM would lead to H3G having a market share of [0-5%], as […]. Thus, the market share of the JV would be [50-60]%, with TIM and Vodafone with the remaining [40-50]%.[1145]

Table 32: Likely market shares estimates with MVNOs fully migrated in wholesale market – based on 2015 subscriptions.

MNO	2015	
	millions	Share
H3G	[…]	[0-5]%
WIND	[…]	[50-60]%
Combined	**[…]**	**[50-60]%**
TIM & Vodafone	[…]	[40-50]%
Total	[…]	100%

Source: Commission's computation based on parties' reply to RFI n. 58 of 12 May 2016, Table 3

[1143] […].

[1144] Form CO, Section 6, paragraph 230, and Reply to the Article 6(1)(c) Decision, paragraph 294.

[1145] As for market shares based on revenues, the Parties claim the shares in Table 17 have been estimated on the basis that PosteMobile has been attributed to WIND for 2014 and 2015. However, the Commission notes that […] as is the case in Table 19 where the same methodology was used.

(1248) These market shares would materialize if no other changes take place in the wholesale market in the meantime. However, other switches of host MNO, as well as new entries or exits, may occur in the coming years. In addition, the market shares of the existing MVNOs on the retail market may also change, which in turn could affect the market shares in the wholesale market. Thus, the market shares in the wholesale market are likely to continue to fluctuate.

(1249) As regards the Parties' claim that if there would be no overlap between the Parties if these future switches were taken into account, the Commission considers that H3G would still exert important competitive constraints in the wholesale market, irrespectively of the method used for assessing the market shares. As explained in more detail in Section 7.4.1.2 b) below, the Commission considers that H3G has both the incentive and ability to offer wholesale access to its mobile network, thus exerting important competitive constraints.

(1250) The Commission has assessed the change in concentration levels brought about by the Transaction on the wholesale market within the framework set out in the Horizontal Merger Guidelines and as described in recital (376). Table 33 below sets out the HHI levels on the wholesale market pre- and post-Transaction, based on the market shares presented in Table 30 (revenues according to the Parties' more conservative estimates), Table 31 (actual number of subscriptions on each MNO's network) and Table 32 (Likely market shares estimates with MVNOs fully migrated in wholesale market).

Table 33: HHI wholesale market for access and call origination on public mobile networks based on Table 30, 31 and 32

Market share measure	HHI Pre-transaction	HHI Post-Transaction	Change in HHI
Revenues - Table 30 (2015)	[4000-5000]	[4000-5000]	[0-500]
Subscriptions - Table 31 (2015)	[3000-4000]	[4000-5000]	[0-500]
Subscriptions - Table 32 (2015)	[3000-4000]	[3000-4000]	[0-500]

Source: Commission's calculation on the basis of the Parties' market share data

(1251) The high values shown in the first two rows of Table 33 are well above the benchmarks set out in the Horizontal Merger Guidelines.[1146] It should be noted, however, that the values of the HHI index were very high also pre-Transaction due to the fact that the market shares of Vodafone were already significant and above 50%. In addition, when using the market shares based onTable 32, the change in HHI would be equal to [0-500], as […].

b) The competitive constraint exerted by H3G

i. <u>Parties' view</u>

(1252) The Parties submit that H3G is not an important competitive force. According to the Parties, […]. The Parties claim that many MVNO subscribers use 2G handsets which do not function on a 3G or LTE network, and that this is the case in particular for

[1146] Horizontal Merger Guidelines, paragraphs 19–20.

those MVNOs which target immigrants with a focus on low-cost calls to international destinations. H3G is able to offer MVNOs 2G services through its national roaming agreement with TIM, but this is, according to the Parties, […].

(1253) According to the Parties, H3G's lack of an own 2G network and reliance on national roaming […].[1147] […].

(1254) According to the Parties, H3G participated in […] bids or negotiations in the period 2010–2015 and was […] successful in […]. Furthermore, both of H3G's current wholesale customers, Fastweb and DIGI, are switching to TIM […].

(1255) The Parties further submit that […] as a host for MVNOs. H3G's 3G indoor coverage of around 87%, compared to >90% for TIM and Vodafone, means that MVNOs seeking to offer data packages will generally find it more attractive to be hosted on networks with wider coverage […]. MVNOs will increasingly demand LTE access and network quality will be a key issue preventing H3G from attracting MVNOs in the coming years.

(1256) In their Reply to the Article 6(1)(c) Decision, the Parties argue that the conclusion that H3G competes most aggressively on price in the wholesale market is flawed because it is based on the views of MVNO that have limited visibility of pricing across the whole market and some MVNOs have expressed opinions about MNOs pricing behaviour without having actually received offers for wholesale services from them.

ii. Commission's assessment

The competitive constraint exerted by H3G before the Transaction

(1257) The Commission considers that H3G has both the incentive and ability to offer wholesale access to its mobile network. H3G has hosted several MVNOs over the years and participates in bids and negotiations for wholesale contracts. In addition, MVNOs responding to the market investigation consider that H3G competes aggressively on price in the wholesale market.[1148]

(1258) H3G acknowledges that it has commercial incentives to provide wholesale access to MVNOs.[1149]

(1259) Furthermore, the risk of cannibalisation can be reduced through provisions in the wholesale agreement. H3G's agreement with DIGI illustrates this. […].[1150] […].[1151] […],[1152] […].[1153]

(1260) The Commission further considers that H3G has also the ability to compete in the wholesale market since it has hosted several MVNOs over the years.

(1261) Since 2008, H3G has signed […] MVNO contracts:[1154] […].[1155] […].[1156] […]. In addition, H3G has been approached by, and negotiated with, several prospective wholesale customers. […].[1157]

[1147] The MVNO DIGI, focused on Romanians in Italy, is currently hosted by H3G, but has entered into an agreement with TIM to become a full MVNO (see Form CO, Section 6, paragraph 230).
[1148] See replies to Questionnaire Q1 to MVNOs of 8 February 2016, question 12.
[1149] H3G's reply to the Commission's RFI n. 31 of 15 April 2016, questions 1a–c.
[1150] See Annex 32.1 to the Form CO: […].
[1151] See Annex 32.2 to the Form CO: […].
[1152] See Annex 32.1 to the Form CO: […].
[1153] See Annex 32.1 to the Form CO: […].
[1154] Internal document of H3G, […] [ID 1118-6074].

(1262) As regards the Parties' argument that H3G has only been successful in […] of [..][1158] bids and negotiations between 2010 and 2015, the Commission notes that of the […] negotiations listed by H3G, […] did not result in any market entry.[1159] Of the remaining […] negotiations, H3G won […].[1160]

(1263) As regards the Parties' argument that H3G is a […] because it does not have a 2G network, the Commission considers that the claim is in contradiction with the fact that H3G has been an active MNO host in the market in the past years.

(1264) The fact that H3G does not have its own 2G network should be well known to MVNOs in Italy. Yet, MVNOs, including those who focus on low-cost international calls, for which 2G would be more important,[1161] have been wholesale customers of H3G and continue to engage in negotiations with H3G. For instance, […].[1162] […],[1163] […].[1164] […].[1165]

(1265) Furthermore, MVNOs' responses to the market investigation indicate that MVNOS do not see 2G as crucial for operating.[1166] […].[1167] […],[1168] […].[1169] […].

(1266) As regards the Parties' claim that Fastweb left H3G due to network deficiencies, the Commission notes that Fastweb contacted all MNOs, including H3G, for the purpose of becoming a full MVNO. Fastweb refers to "unacceptable commercial terms" as the reason for not selecting H3G,[1170] and says that the agreement with TIM was entered into "in the broader context of a global settlement". This indicates that Fastweb's decision to switch from H3G to TIM was not necessarily a question of network deficiencies.[1171] Moreover, Fastweb commented that it has always relied on

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1155 Internal documents of H3G […] [ID 1118-6074]. However, Form CO, Section 6, paragraph 822, […].

1156 In 2014, Lycamobile re-launched its mobile service on Vodafone's network, see footnote 1202.

1157 PosteMobile's reply to Questionnaire Q1 to MVNOs of 8 February 2016, question 8 [ID 835].

1158 […].

1159 Form CO, Section 6, Table 93.

1160 Form CO, section 6, Table 93.

1161 The Commission notes however that a minority of the eleven main MVNOs active in Italy (see Table 2 above) fits this profile, namely Lycamobile, Daily Telecom and DIGI.

1162 H3G internal documents, […] [File name: 056801923.00001 msg], [ID 955-18639], […] [File name: 065702829.00001.msg], [ID 954-31696], and […] [ID 1122-6547], and H3G's reply to the Commission's RFI n. 31 of 15 April 2016, Annex A and Annex 2.7. […]..

1163 According to internal documents, […]. H3G internal document, […] [File name: 002700496.00001.pdf], [ID 1116-169]

1164 See e.g. H3G internal documents, […] [File name: 078002330.00001.pptx], [ID 1118-4619], […] [File name: 078001219.00001.pptx], [1118-4362], and […] [File name: 078001453.00001 msg], [ID 1118-4400].

1165 H3G internal document, […] [File name: 078704574.00001.docx], [ID 1118-6074]. […].

1166 For instance, PosteMobile said that it has no customers using 2G only handset, but that 2G is helpful because of the better coverage compared to 3G (PosteMobile's reply to the Commission's RFI n. 35 of 19 April, question 8 [ID 1318]). Tiscali said that a lack of 2G does not affect H3G's attractiveness as a provider of wholesale access (Tiscali's reply to the Commission's RFI n. 40 of 19 April 2016, question 9 [ID 1553]). Fastweb said it has had access to 2G as an MVNO on H3G's network through the roaming agreement with TIM, but that it has a negligible 2G-only customer base (Fastweb's reply to the Commission's RFI n. 36 of 19 April 2016, question 10 [ID 1601]). TotalERG said the lack of a 2G network has no impact on H3G's attractiveness (TotalERG's reply to the Commission's RFI n 39 of 19 April, question 7 [ID 1276]).

1167 H3G's reply to the Commission's RFI n. 31 of 15 April 2016, paragraph 1.4 and Annexes 1.2 and 1.3.

1168 In the Form CO, the Parties state that […]. However, […], see Annex 32.1 to Form CO, Article 18.1. DIGI launched in October 2010, see Form CO, Section 6, table 18.

1169 See Parties' Reply to the Article 6(1)(c) Decision, paragraph 294.

1170 Fastweb's reply to Questionnaire Q1 to MVNOs of 8 February 2016, question 7.2 [ID 707].

1171 Position Paper by Fastweb, dated 15 December 2015, page 40 [ID 757]

2G services from H3G through the roaming agreement with TIM, and that it did not consider H3G less attractive as an MNO host because of its lack of a 2G network.[1172]

(1267) The Commission therefore considers that, even without full network coverage and relying on a national roaming agreement with another network operator for 2G services, H3G has been able to provide wholesale services in the market and compete with the other MNOs to acquire new potential MVNO customers. The Commission also notes that the market investigation did not provide any indication that reliance on a roaming agreement to provide wholesale services would not be technically possible with respect to other types of mobile technologies, provided that the cost structure of such a roaming agreement is competitive.

The likely competitive constraint exerted by H3G absent the Transaction

(1268) The Commission considers that, absent the Transaction, H3G would likely continue to have the incentive and ability to provide wholesale access to MVNOs. The Commission also considers that, absent the Transaction, H3G would have the incentive and ability to continue investing in its network and improve its coverage.

(1269) As regards the Parties' argument that […], the Commission considers that, absent the Transaction, H3G would have the ability and incentive to continue investing in its network and improve its coverage (see Section 7.3.2.1.b) above).

(1270) The majority of MVNOs responding to the market investigation said they expect that absent the Transaction, H3G would continue to compete for MVNOs as up until now, and several respondents also pointed out that they expect H3G to continue to invest in their networks.[1173]

(1271) Moreover, as explained in paragraphs (1223)-(1224), the wholesale contracts are reached after a bidding and negotiation process. Firms competing in such processes can play an important role in the competitive outcome without winning the contract, for example by acting as a viable alternative for the customer in a bidding process or providing leverage in the negotiation process. Therefore, notwithstanding the fact that H3G's market share would be equal to [0-5%] […], the Commission considers that H3G would be a competitive constraint to other MNOs during the contract negotiations for wholesale access.

(1272) The Commission further considers that H3G would still have the incentive and ability to compete to host other MVNOs and would act as an important competitive constraint in the market.

Conclusion on the competitive constraint exerted by H3G

(1273) The Commission concludes that H3G has the incentive and ability to provide wholesale access and that it exerts an important competitive constraint on the other MNOs in the wholesale market.[1174] The Commission also considers that absent the merger H3G would improve its competitive position by investing it its network, narrowing its 4G network gap by 2019.

(1274) The Commission further notes that H3G's share of the wholesale market can be predicted to decrease over the next years when DIGI and Fastweb have migrated

[1172] Fastweb's reply to the Commission's RFI n. 36 of 19 April 2016, question 10 [ID 1601].
[1173] See replies to Questionnaire Q1 to MVNOs of 8 February 2016, question 15.
[1174] Horizontal Merger Guidelines, paragraph 37.

their subscribers to TIM's network.[1175] Nevertheless, H3G would remain as an active competitor in the market and act as an important competitive constraint.

c) The competitive constraint exerted by WIND

i. Parties' view

(1275) The Parties submit that WIND is not an important competitive force. According to the Parties, […]. This is illustrated by the migration of PosteMobile's customers from Vodafone's network to WIND's network, which has stalled in part due to […]. Moreover, WIND has participated in […] bids or negotiations since 2008 and has reached an agreement with […] MVNOs.

(1276) The Parties argue that the conclusion in the Article 6(1)(c) Decision that after H3G, WIND is the MNO that competes most aggressively on price in the wholesale market is flawed for the same reasons as for H3G, see recital (1256) above.

ii. Commission's assessment

The competitive constraint exerted by WIND before the Transaction

(1277) The Commission considers that WIND has the incentive and ability to compete in the wholesale market. According to WIND, "providing wholesale access to MVNOs is economically attractive for MNOs" and "WIND is always open to discussions with interested MVNO customers".[1176]

(1278) WIND has recently won a contract with Italy's largest MVNO, PosteMobile. This shows that WIND is a significant competitor in the wholesale market.

(1279) WIND has also participated actively in a number of negotiations and bidding regarding wholesale contracts in the last five years,[1177] which further indicates that it plays an important role in the wholesale market.

(1280) As regards the Parties argument that WIND reached an agreement in only […] out of […] bids or negotiations since 2008, the Commission notes that many of these negotiations did not result in market entry.

(1281) Even when WIND loses the bidding to a competing MNO, for the reasons explained in recital (1271), WIND still contributes to competition. This is especially the case since, according to MVNOs responding to the market investigation, WIND is after H3G the MNO that competes most aggressively on price in the wholesale market.[1178] Additionally, TIM also recognises WIND's "ability to be credible competitor on the wholesale market".[1179]

(1282) The Parties claim that the migration of PosteMobile's customers from Vodafone to WIND […]. According to the Parties, […].[1180]

(1283) The Commission first notes that […].[1181] […].[1182] […].[1183] […].[1184] […].[1185] […].

1175 Depending on whether H3G wins any new wholesale contracts during this period.

1176 WIND's reply to RFI 32 of 15 April 2016, paragraph 1.1 [ID 1194].

1177 Form CO, Section 6, tables 93 and 94. See also replies to Questionnaire Q1 to MVNOs of 8 February 2016, question 7.

1178 See replies to Questionnaire Q1 to MVNOs of 8 February 2016, question 12.

1179 TIM's reply to Questionnaire Q4 to MNOs of 8 February 2016, question 91 [ID 814].

1180 Reply to the Article 6(1)(c) Decision, paragraphs 294 and 301.

1181 WIND internal document, […] [File name: RFI20_0535309.pptx], [ID 1058-22178].

1182 Parties' reply to RFI n. 58 of 12 May 2016, paragraph 5.6.

1183 […].

(1284) […].[1186] Internal documents show that […].[1187] […].[1188] […].[1189] […].[1190] […].

(1285) In addition, it appears that […]. The choice whether to migrate or not has been left to the subscribers themselves, […].[1191] […].[1192] […].[1193] These factors indicate […].

(1286) Based on the above, the Commission considers that WIND exerts an important competitive constraint on the other MNOs in the wholesale market.

The likely competitive constraint exerted by WIND absent the Transaction

(1287) As described in Section 7.3.2.2. b), the Commission considers that absent the transaction WIND will continue to invest in its network, which will further improve its position in the market.

(1288) The majority of MVNOs responding to the market investigation said they expect that absent the Transaction both H3G and WIND will continue to compete for MVNOs as up until now, and several respondents also pointed out that they expect the Parties to continue to invest in their networks.[1194]

(1289) The Commission further considers that WIND would still have the incentive and ability to compete to host other MVNOs and would act as an important competitive constraint in the market. Therefore, the Commission considers that, absent the Transaction, WIND is likely to exert an important competitive constraint in the wholesale market.

Conclusion on the competitive constraints exerted by WIND

(1290) In light of the above, the Commission concludes that WIND is currently exerting an important competitive constraint on the other MNOs on the wholesale market and that, absent the Transaction, WIND is likely to remain exerting such important competitive constraint.

d) Closeness of competition

(1291) The extent of closeness of competition between the merging parties is one of the factors relevant for the analysis of the likelihood of significant non-coordinated effects of a merger.[1195] It is not required for the merging parties to be each other's closest competitors for such likelihood to arise. The Horizontal Merger Guidelines clearly provide for a relative approach to the relevance of closeness of competition. According to the Horizontal Merger Guidelines, "*the higher the degree of*

1184 In June 2014, all MVNOs in Italy had approximately […] million subscribers. By the end of December 2015, the number was approximately […] million. The Parties' reply to RFI n. 58 of 12 May 2016, Annex 1.

1185 […].

1186 See wholesale agreement between WIND and PosteMobile, Annex 32.44 to the Form CO, article 10.8.

1187 WIND internal document, […] [File name: […]], [ID 927-27191] and WIND internal document, […] [File name: RFI20_0540578 msg], [ID 1058-22466] .

1188 WIND internal document, […] [File name: […]], [ID 927-27191].

1189 WIND internal document, […] [File name: RFI20_0556176.pdf], [ID 1069-44887]; […] [File name: RFI20_0417093.ppt], [ID 1069-9826] and […] [File name: RFI20_0591672.pdf], [ID 1069-51779]

1190 WIND internal document, […] [ID 097-31834].

1191 WIND internal document, […][File name: […]], [ID 927-31681].

1192 WIND internal document, […][File name: […]], [ID 927-31681].

1193 WIND internal document […][File name: […]], [ID 927-27191].

1194 See replies to Questionnaire Q1 to MVNOs of 8 February 2016, questions 15 and 17.

1195 Horizontal Merger Guidelines, paragraphs 26 and 28–30.

substitutability between the merging firms' products, the more likely it is that the merging firms will raise prices significantly."[1196]

(1292) The same concept is set out in paragraph 17 of the Horizontal Merger Guidelines, according to which a merger may raise competition concerns based on "the extent to which the products of the merging parties are close substitutes". Both wordings set out a correlation between the degree of substitutability of the products of the merging parties and the likelihood and seriousness of competition concerns raised by the proposed merger.

(1293) It follows that if the merging parties' products are each other's closest substitutes, the competition concerns may be particularly strong. However, a merger between firms producing close, but not necessarily the closest substitutes also makes price increases more likely than a merger between firms producing products with a low degree of substitutability.

(1294) All four Italian MNOs could be regarded as close competitors, as they all provide wholesale access to mobile networks with national coverage, the same network technologies[1197], that is services that enables MVNOs to offer voice, SMS and data services in the Italian retail market.

(1295) Moreover, some respondents to the market investigation noted that H3G and WIND have some commonalities that indicate that they are closer competitors to each other than they are to the other two MNOs. Tiscali[1198] and Fastweb[1199] considered that the due the larger customer bases, TIM and Vodafone have less incentives to host MVNOs. Also PosteMobile noted some differences and pointed to examples illustrating "*the lack of interest*" of TIM and Vodafone to host MVNOs and the greater interest shown by WIND in providing access to 4G.[1200]

(1296) Furthermore, when asked to identify the closest competitor for each of the MNOs in the wholesale market, the MVNOs responding to the market investigation clearly indicated that WIND is H3G's closest competitor and that H3G is WIND's closest competitor. The responding MVNOs also indicated that TIM and Vodafone are each other's closest competitors in the wholesale market.[1201]

(1297) Regarding the Parties' argument that they cannot be each other's closest competitors because that the MVNOs switching from H3G in recent years have not switched to WIND, and that WIND has never lost a wholesale customer to H3G; the Commission notes that not many MVNOs have switched MNO in recent years. From H3G, only two MVNOs have, or are about to, switch to another MNO (Fastweb and DIGI) and both switched to TIM.[1202] The Commission is not aware of any MVNO having switched from WIND to another host MNO, while it notes that the largest Vodafone's MVNO customer switched to WIND. The Commission considers that it is not possible to draw the conclusion that the Parties are not close competitors based on these few examples.

1196 Horizontal Merger Guidelines, paragraph 28.

1197 That is 2G, 3G and 4G, although H3G offers 2G through a roaming agreement with TIM as it does not have a 2G network of its own.

1198 Tiscali's reply to RFI n. 40, question 2 [ID 1553].

1199 Fastweb's reply to RFI n. 36, question 2 [ID 1601].

1200 PosteMobile's reply to RFI n. 35, question 2 [ID 1318].

1201 See replies to Questionnaire Q1 to MVNOs of 8 February 2016, question 13.

1202 […]. The Commission does not consider this a switch of host MNO. See H3G Internal document, […] [File name: 078704574.00001.docx], [ID 1118-6074].

(1298) In light of the above, the Commission considers that at least all four MNOs in Italy closely compete on the wholesale market for access and call origination on mobile networks since all MNOs are acquiring and losing customers to each other in the market.

e) The likely behaviour of the JV post-Transaction

i. Parties' view

(1299) According to the Parties, the JV will have increased incentives to host MVNOs on its network post-Transaction. The combined business will have a larger amount of spare capacity at its disposal than the Parties in aggregate and therefore increased incentives to utilise this additional spare capacity by hosting MVNOs.

(1300) The Parties state that the conclusion in the Article 6(1)(c) Decision that the JV would have less incentive to host converged MVNOs than H3G as a mobile only operator has pre-Transaction, ignores Fastweb's announcement to migrate from H3G to TIM (an MNO that also has fixed infrastructure) and disregards other converged MVNOs hosted by TIM.

ii. Commission's assessment

(1301) The Commission considers that the JV would have lower incentives to compete in the wholesale market than each of the Parties in a standalone scenario.

(1302) As explained in the following sub-sections, the reduced incentive to compete in the wholesale market would be the result of i) the loss of competition between the Parties, ii) the expanded presence in the wholesale and the retail market, and iii) a desire to support market repair at retail level.

Reduced incentives from loss of competition between the Parties

(1303) The Commission considers that the loss of competition between the Parties is likely to provide the JV with the ability and incentive to raise prices, or in other ways worsen the conditions on which it gives wholesale access. This is because some of the wholesale customers (and the wholesale customers’ retail customers) who would have been lost to the other Party pre-Transaction would be captured by the JV post-Transaction.[1203] Deterioration in access conditions for MVNOs would apply both to prospective entrants and to existing MVNOs, once they seek to re-negotiate their wholesale agreement or switch MNO partners.

(1304) Several MVNOs expressed concerns that the Transaction would reduce the number of potential wholesale hosts and thereby lead to a weakening competitive pressure.[1204]

(1305) In their Reply to the Article 6(1)(c) Decision, the Parties question the assertion that competition between the Parties' would be lost because some of the wholesale customers who would have been lost to the other Party pre-Transaction would be captured by the JV post-Transaction. The Parties claim that this would not be the case, because no MVNO has switched from H3G to WIND or *vice versa.*

[1203] Horizontal Merger Guidelines, paragraph 24.

[1204] BT Italia's response to Questionnaire Q1 to MVNOs of 8 February 2016, question 18.1 and 21.1 [ID 512]. See also Fastweb's response to Questionnaire Q1 to MVNOs of 8 February 2016, question 18.1 [ID 707]. Lycamobile's response to Questionnaire Q1 to MVNOs of 8 February 2016, question 95 [ID 661]. PosteMobile's response to Questionnaire Q1 to MVNOs of 8 February 2016, question 21.1 [ID 835].

(1306) However, the risk of losing a wholesale customer to a competitor does not refer only to situations when MVNOs actually switch from one MNO to another, but to every time an MVNO considers choosing one MNO over another, be it an existing MVNO or a new entrant negotiating its first contract.

(1307) As explained in recitals (1291) to (1298), the Commission considers that H3G and WIND are close competitors in the wholesale market in Italy and exert an important competitive pressure on each other, notwithstanding the lack of MVNOs switching between the Parties in the past (see recital (1297)).

(1308) Moreover, for the reasons set out in recital (1271), an MNO can be a competitive threat to other MNOs during the contract negotiations for wholesale access, even if it is not successful in winning the bidding process. This applies both to situations where an existing MVNO negotiates for a new wholesale contract and considers switching host MNO, and to situations where a new MVNO tries to enter the market. Therefore, competition between the Parties could be eliminated by the Transaction even if no MVNO in the past has switched between the Parties.

Reduced incentives from the expanded presence in wholesale and retail market

(1309) The Commission considers that the expanded presence in the retail and wholesale markets would reduce the JV's incentive to compete on the wholesale market.

(1310) As acknowledged by the Parties, MNOs provide wholesale access in order to make use of spare capacity and the possibility to generate incremental revenue.[1205] In addition, providing wholesale access also can be a way for MNOs to reach customer segments that they find difficult to access themselves.[1206] However, in providing wholesale services, MNOs may also face the risk of cannibalisation and reduce their revenues in the retail market as discussed in recitals (1227)-(1228) above.

(1311) Due to this interplay between the wholesale and the retail markets, the Transaction may lead to a reduction in the JV's incentives to host MVNOs compared to the incentives of H3G and WIND pre-Transaction for the following reasons.

(1312) First, after the Transaction the JV's own retail customer base would be significantly larger than of each of the Parties before the Transaction (see Section 7.3.1.1). The larger customer base would make the JV more sensitive to cannibalisation from an MVNO. This is because when the JV's customer base becomes larger, a greater proportion of the retail customers acquired by an MVNO will be from the JV's customer base, and the retail losses resulting from hosting an MVNO will be higher.

(1313) Second, the incentive to provide wholesale access in order to avoid that the MVNO chooses a different host MNO would also be reduced post-Transaction. As a result of the elimination of competition between the Parties following the Transaction, the risk that MVNOs find another host MNO that offers attractive terms and conditions is reduced. This means, in turn, that the Parties' claim that an MNO may have the incentive to also host an MVNO that targets similar customers as the MNO itself targets (see recitals (1227)-(1228)), is less valid after the Transaction. The reduced probability that MVNOs will be able to find any alternative host to the JV or an alternative host that provides wholesale terms that allow it to compete effectively (notwithstanding MVNOs' limited ability to compete), increases the extent to which

[1205] Form CO, Section 6, paragraph 824.
[1206] Form CO, Section 6, paragraph 825.

cannibalisation effects are avoidable and, therefore, reduces the incentive of the JV to compete.

(1314) The Parties submit that the incentives of the JV to offer wholesale access to MVNOs are likely to increase, particularly in light of the expected excess capacity of the JV following the loss of H3G's MVNO customers and the stalled migration of PosteMobile's customers to WIND's network.[1207] However, the coming migration of these MVNOs' subscribers is not related to the Transaction, and will not lead to a situation where the JV would have more spare capacity than each of the Parties would have absent the merger. Therefore, the Commission does not consider that the JV would have an increased incentive to host MVNOs compared to each of the Parties absent the Transaction. In any event, the loss of a wholesale customer does not necessarily imply that the freed capacity will be made available to other wholesale customers as the MNO could also decide to allocate the capacity to its own retail customers.[1208]

Conclusion on the JV's incentives

(1315) Based on the above findings, the Commission concludes that the incentives of the JV to grant wholesale access to MVNOs would be lower than the incentives of each of the Parties prior to the Transaction.

7.4.1.3. Assessment of the competitive position of the Parties' competitors (TIM and Vodafone)

a) Parties' view

(1316) According to the Parties, TIM and Vodafone are strong competitors, and stronger than the Parties, due to their superior networks and their ability to attract and retain wholesale customers.

(1317) As regards TIM, the Parties state that TIM has a long track record of success on the wholesale market and has attracted several MVNOs in recent years.

(1318) The Parties submit that the statement in the Article 6(1)(c) Decision that Vodafone may not be competing actively for new MVNO contracts is contradicted by Vodafone's behaviour. Lycamobile launched services on Vodafone's network in 2014, and in 2015 Vodafone participated in the tender process launched by ENEL. Moreover, according to the Parties, Vodafone has not lost any MVNOs.[1209]

(1319) The Parties submit that post-Transaction all MNOs will have the ability and incentive to host new MVNOs. Each of TIM and Vodafone has spare capacity on their respective networks, and it is desirable for MNOs to fill spare capacity through MVNO agreements rather than leaving it unutilised.

b) Commission's assessment

i. <u>Competitive position pre and absent the Transaction</u>

TIM

(1320) TIM hosts several MVNOs, including Coop Italia, Tiscali and BT Italia (see Table 2). In addition, DIGI and Fastweb are set to migrate from H3G to TIM in 2016 and

[1207] Reply to the Article 6(1)(c) Decision, paragraph 323.

[1208] An MNO’s network capacity is not divided into "retail capacity" and "wholesale capacity", and in general the MNO can decide whether to offer its network capacity to wholesale customers or to its own retail customers.

[1209] Parties' Reply to the Article 6(1)(c) Decision, paragraph 315.

2017 respectively. TIM's activities in the wholesale market show that it has both the incentive and ability to compete for wholesale customers.

(1321) However, as described in recital (1225), Italian MNOs, including TIM, are in general not proactive and do not seem to poach other MNOs' wholesale customers. While TIM is Italy's largest mobile operator at retail level (see Table 6), it is currently the smallest at wholesale level by subscriptions (see Table 31).

(1322) MVNOs responding to the market investigation rated TIM high on network quality and coverage, but low on price.[1210]

(1323) In light of the above, the Commission considers that TIM currently exerts an important competitive constraint on the other MNOs in the wholesale market.

Vodafone

(1324) Vodafone was the first MNO in Italy to offer wholesale access as part of commitments to AGCM in 2007, when it also entered into agreements with BT Italia and PosteMobile. Shortly after, Vodafone signed wholesale agreements with some smaller MVNOs (ERG Mobile, Daily Telecom and Carrefour 1 Mobile, see Table 2). However, in 2014, contrary to what the Parties claim,[1211] Vodafone lost two wholesale customers: Italy's largest MVNO PosteMobile to WIND and BT Italia to TIM.

(1325) While Vodafone has the ability to provide wholesale access, the Commission has doubts whether Vodafone has the incentive, or strategy, to do so. The results of the market investigation indicate that Vodafone has, in the last years, become more cautious in providing wholesale access.

(1326) While MVNOs responding to the market investigation rated Vodafone high on network quality and coverage, comparable to TIM,[1212] no MVNO mentioned Vodafone as the MNO being the most aggressive on price in the wholesale market.[1213] One MVNO responding to the market investigation said that "*Vodafone was active only at the early stage collecting some virtual mobile operators, afterwards left this business and does not seem interested at all*".[1214] Another respondent stated that it was under the impression that "*Vodafone Italia is no longer offering MVNO access*".[1215]

(1327) Public comments by the CEO of the Vodafone Group, Vittorio Colao, suggest that Vodafone's more cautious approach to wholesale access is a group wide strategy.[1216]

(1328) Vodafone's wholesale strategy has also been noted by the analyst and consultancy firm Ovum which interpreted Vodafone's loss of the "high-profile" MVNOs PosteMobile and BT Italia as "the outcomes of a clear and consistent strategy" of Vodafone Group. Ovum sees Vodafone's loss of the consumer-focused operator

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1210 Replies to Questionnaire Q1 to MVNOs of 8 February 2016, question 11.

1211 Parties' Reply to the Article 6(1)(c) Decision, paragraph 315.

1212 Replies to Questionnaire Q1 to MVNOs of 8 February 2016, question 11.

1213 In contrast, two MVNOs mentioned TIM, three mentioned WIND and six respondents pointed to H3G as the most price aggressive MNO on the wholesale market. See replies to Questionnaire Q1 to MVNOs of 8 February 2016, question 12.

1214 Coop Italia's response to Questionnaire Q1 to MVNOs of 8 February 2016, question 12 [ID 581].

1215 MVNO Europe's response to Questionnaire Q1 to MVNOs of 8 February 2016, question 7.2 [ID 600].

1216 Vodafone Group, Preliminary Results - Analyst and Investor Conference Call, dated 20 May 2014, page 13–14, available at: https://www.vodafone.com/content/dam/vodafone/investors/financial_results_feeds/preliminary_results_31march2014/t_prelim2014.pdf [ID 2610].

PosteMobile as a result of Vodafone's strategy to maintain the value of mobile services. The loss of BT Italia, which targets the higher-ARPU business segment, is seen by Ovum as a result of Vodafone prioritising the business segment themselves, and using LTE as a differentiator rather than offering the technology to MVNOs. Lycamobile, on the other hand, which re-launched in Italy in 2014 on Vodafone's network, is according to Ovum a clear example of a "complementary" MVNO which can reach segments where Vodafone's brand and distribution channels face challenges and which also has a proven track record of growing market share in its segment.[1217] This strategy is similarly adopted also by other MNOs in the market (i.e H3G with DIGI as mentioned in recital (1258))

(1329) In light of the above, the Commission considers that Vodafone is present in the wholesale market and has the ability to compete, but that Vodafone may not be competing particularly actively for new MVNO contracts, or only for certain niche MVNOs which could complement its own retail business.

(1330) In relation to the likely competitive development of TIM and Vodafone, absent the Transaction, there is no evidence that the two MNOs would change their behaviour and competitive position in the wholesale market in the coming years.

ii. Likely reaction post-Transaction

(1331) A merger is unlikely to harm competition where the reaction of the remaining competitors would discipline the behaviour of the JV. On the other hand, the remaining competitors may not be willing or able to compete sufficiently post-Transaction so as to compensate for the loss of competition.

(1332) For this purpose, the Commission assessed the likely reaction of the remaining competitors post-Transaction. In particular, the Commission examined whether TIM and Vodafone would have sufficient ability and incentives to compensate for the degree of competition lost due to the Transaction.

(1333) As regards ability to compete, the Commission considers that both TIM and Vodafone would be able to compete effectively with the JV post-Transaction.

(1334) However, for the following reasons, the Commission considers that neither TIM nor Vodafone would have the incentive to compete aggressively post-Transaction.

(1335) As discussed in recitals (1303) and following, the Transaction would eliminate the competition between the Parties. Non-merging firms in the same market can also benefit from the reduction of competitive pressure that would result from the Transaction, since a price increase by the JV might result in a switch of some demand to the rival firms, which, in turn, may find it profitable to increase their prices.[1218]

(1336) The risk of MVNOs finding alternative host MNOs is recognized by the Parties as a driver for MNOs to offer wholesale access (see recital (1228)). After the Transaction, TIM and Vodafone would face a decreased likelihood that an MVNO would find an alternative host, given the increased market concentration and reduced incentives of the JV to compete for MVNOs. As a result, TIM and Vodafone's incentive to offer wholesale access would likely be reduced after the Transaction.

1217 WIND internal document, "What Italian mobile wholesale trends could mean for Vodafone Europe", dated 8 December 2014 [File name: OVUM Research_Vodafone in Italy.pdf], [ID 940-18722]

1218 Horizontal Merger Guidelines, paragraph 24.

(1337) Moreover, it is also possible that a decrease of competitive pressure at the retail level could also have an impact on the competing MNOs' incentive to compete on the wholesale market, in the same way as it would affect the JV's incentives, see recitals (1309) and following above. If retail prices would increase as a result of the Transaction (which the Commission considers would happen, see Section 7.3.2.5), TIM and Vodafone would have the incentive to increase wholesale prices to inhibit disruptive behaviour from the MVNOs and to maintain the higher price level in the retail market. This view is put forward by several respondents to the market investigation, who expressed concerns that the incentive of the other MNOs would change as a result of the Transaction.[1219]

c) Conclusion on the competitive position of the Parties' competitors

(1338) In summary, the Commission concludes, that the Parties' competitors in the wholesale market have the ability to compete pre-Transaction, and would have the ability to do so also post-Transaction. However, the Commission finds it likely that they would, post-Transaction, have lower incentive to compete aggressively for wholesale customers.

7.4.1.4. Commission's assessment of the impact of the Transaction

a) General assessment

(1339) Mergers in oligopolistic markets involving the elimination of important competitive constraints that the merging parties previously exerted upon each other and on the remaining competitors, may, even where there is little likelihood of coordination between the members of the oligopoly, also result in a significant impediment to competition.[1220]

(1340) The Transaction would reduce the number of options for MVNOs who seek network access from four to three, and would significantly increase the level of market concentration (see recitals (1250) to (1251)).

(1341) As explained in Sections 7.4.1.2 b) and 7.4.1.2 c) above, the Commission considers that both H3G and WIND exert an important competitive constraint upon each other and on the remaining competitors in the market within the meaning of paragraph 24 and 25 of the Horizontal Merger Guidelines. The Transaction would eliminate these competitive constraints.

(1342) As explained in recitals (1303) and following, the Commission considers that the JV's incentives to compete would be lower than those of each of the Parties pre-Transaction. Moreover, the Commission considers that the Transaction would decrease the remaining competitors' incentives to compete and defeat a possible price increase implemented by the JV, see recitals (1331) and following.

b) The likely effects on the overall wholesale market

(1343) As a result of the Transaction, the number of MNO hosts would be reduced from four to three, thus impacting the competitive conditions in the wholesale market. The reduction of competition resulting from the Transaction in this already concentrated

[1219] BT Italia's response to Questionnaire Q1 to MVNOs of 8 February 2016, questions 22.1.1 and 22.2.1. [ID 512]. MVNO Europe's response to Questionnaire Q1 to MVNOs of 8 February 2016, question 21.1. [ID 600]. Tiscali's response to Questionnaire Q1 to MVNOs of 8 February 2016, question 22.1.1. [ID 527]. Coop Italia's response to Questionnaire Q1 to MVNOs of 8 February 2016, questions 22.1.1 and 22.2.1. [ID 581].

[1220] Horizontal Merger Guidelines, paragraph 25.

market, with high barriers to entry, may make it even more difficult than it already is today for MVNOs to obtain wholesale access on commercially attractive terms.

(1344) Furthermore, the Commission considers that the loss of competition between the Parties is likely to provide the JV with the ability and incentive to raise prices, or to reduce prices at a slower pace than absent the merger.

(1345) However, the Commission notes that the reduction of competition in the market would not affect for a number of years the most successful MVNO in the market, namely PosteMobile, which accounts for approximately half of the MVNOs' market share in Italy. This reflects the fact that PosteMobile has in place a […] full MVNO wholesale access agreement with WIND. The agreement was entered into in […] and will expire in […].[1221] The Commission does not consider that the Transaction would have any impact on this contractual relationship, all the more because […]. Moreover, any clause that may be included in said agreement which may impede or reduce PosteMobile's ability to compete on the retail market pre-dates the Transaction and would not result from the Transaction. In addition, […].[1222] Therefore, PosteMobile would not be impacted by the Transaction […].

(1346) Fastweb, the second largest MVNO in Italy, would also be contractually protected for several years from any deterioration of the wholesale market conditions. This reflects the fact that in early 2016 Fastweb has entered into a long term full MVNO wholesale access agreement with TIM. Based on the market investigation, the Commission further notes that other MVNOs operating on the Italian market are subject to clauses in their wholesale agreements similar to those of PosteMobile's wholesale contract as regards exclusivity and duration of wholesale services.[1223] Some of these MVNO would also not be immediately affected in the short to medium term by the Transaction.

(1347) The Transaction would negatively affect potential new entrants as MVNOs, as it would reduce the number of hosts and potentially the incentive of the JV to host MVNOs. However, the Commission has not been informed of any potential new company that plans to enter the Italian market as an MVNO in the short term. While Sky in its reply to the Market Test defined itself as the most credible of all potential candidates to execute a rapidly and successful entry in the market as an MVNO,[1224] it did not concretely state that it would actually enter the market in the short term. In this respect, the Commission notes that it could take at least one to two years to enter the Italian market as a full MVNO,[1225] due to the time required to negotiate a deal with the host operator and to set-up a core network.

c) Conclusion on anti-competitive effects on the wholesale market

(1348) On the basis of the above, the Commission concludes that the Transaction will likely have anti-competitive effects in the wholesale market, by eliminating the important

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1221 See WIND's wholesale agreement with PosteMobile, […].

1222 WIND's wholesale agreement with PosteMobile, […].

1223 Responses to Questionnaire Q1 to MVNOs of 8 February 2016, questions 3.7 and 3.9.

1224 Sky's response to Questionnaire Q8 Market Test of 8 June 2016, question 35.1 [ID 1986].

1225 See section 7.3.2.4 (d). For instance, NetValue considered that entry could require between 9 and 24 months, NetValue's response to Questionnaire Q1 to MVNOs of 8 February 2016, question 83 [ID 467]. Fastweb commented that the timing for entry is affected by the level of investment and the complexity of the chosen architecture, with lighter MVNO launch requiring less time than a more complex solution. Fastweb added that to launch as an ESP itself, it required 10 to 12 months, Fastweb's response to Questionnaire Q1 to MVNOs of 8 February 2016, question 83 [ID 707].

competitive constraints exerted by the Parties in an oligopolistic market featuring a limited number of players and high barriers to entry. Those effects would be particularly relevant with respect to MVNOs which are not contractually bound to an MNO in the short term and with respect to potential new entrants.

(1349) Therefore, considering that such effects would not be countered by countervailing factors (see Section 7.4.1.5 below), the Commission considers that the Transaction would likely lead to a significant impediment of effective competition on the wholesale market due to non-coordinated effects.

7.4.1.5. Countervailing factors

a) Buyer power

i. Parties' view

(1350) The Parties submit that any attempt by the JV to worsen terms of access for MVNOs would be unsuccessful as the MVNOs hosted by the JV would be able to switch to either TIM or Vodafone.

ii. Commission's assessment

(1351) In the market for wholesale access and call origination on public mobile networks, which is characterised by high concentration, limited credible alternatives and high barriers to entry, the buyer power of MVNOs is limited. Following the Transaction, a current or new entrant MVNO would have a limited choice between the JV, TIM and Vodafone. In addition, the result of the market investigation indicates that Vodafone may not be competing actively for new MVNO contracts (see recitals (1325) and following).

(1352) In addition to the limited choice of alternative host MNOs, MVNOs face several costs and challenges if they want to switch host MNO.

(1353) MVNOs responding to the market investigation explained that while migration of their existing customers from the network of its current host MNO to the network of another host MNO is possible, this can be a lengthy and costly process.

(1354) In terms of timing, MVNOs responding to the market investigation estimate that the time needed for migration of the existing customer is at least 6 months, and others said it would even take as long as 2 years or more.[1226]

(1355) In terms of costs, respondents were reluctant to disclose the costs in precise terms. However, several different cost items can be expected depending on the type of MVNO. Exchanging the subscribers' SIM-cards would be a cost for a light MVNO, or a light MVNO that wants to switch to a full MVNO. In addition to the cost of the SIM-cards themselves, there would be related costs of communicating with the customers and incentivising them to change SIM.[1227] Internal documents from WIND indicate that […],[1228] […].[1229] According to BT Italia, the MVNO's cost would be higher for business customers than for retail customers, because the former will

1226 See Responses to Questionnaire Q1 to MVNOs of 8 February 2016, question 6.3.1. One respondent, Auchan, indicated that it would only take one week to switch. However, as Auchan is a branded reseller and not an MVNO that buys wholesale access, the Commission does not consider this reply to be indicative to the time required for an MVNO to switch host MNO.

1227 BT Italia's response to Questionnaire Q1 to MVNOs of 8 February 2016, question 6.3.2. [ID 512].

1228 WIND internal document, […] [File name: […]], [ID 927-27191].

1229 NetValue's response to Questionnaire Q1 to MVNOs of 8 February 2016, question 6.3.2, [ID 467].

generally expect a significant level of support for their employees during the transition period, to ensure continuity of service.[1230]

(1356) A full MVNO would not have to change its customers SIM cards, but would face other costs and challenges if it were to switch host MNO. Respondents to the market investigation point to the need to set up interconnections with the new host MNO, and claim that technical implementation is more complicated for MVNOs which own more of their own systems and infrastructure which must be integrated with the systems and infrastructure of the new host MNO.[1231]

(1357) If the MVNO would want to transform itself into a full MVNO when it switches MNO, significant additional costs would be required.[1232]

(1358) The new host MNO may also charge a set-up fee to recover the technical investments required to integrate the new MVNO.[1233] […].[1234]

(1359) There is also a risk of customer churn, in particular if the change of MNO requires customers to switch SIM cards. PosteMobile's switch from Vodafone to WIND, […]. PosteMobile launched its services on WIND's network in July 2014. […] (see recital (1282)).

(1360) On this basis, the Commission considers that MVNOs would face challenges of a commercial, contractual and technical nature in switching host MNO, if their host MNO were to raise prices, not offer access to new technologies or in other ways worsen the conditions, as a result of the Transaction.

(1361) Based on the above, the Commission considers that Italian MVNOs do not enjoy strong bargaining power vis-à-vis MNOs and that their bargaining power is likely to even decrease post-Transaction as the number of MNOs they can choose from would decrease. For this reason, the risk of anti-competitive effects resulting from the Transaction cannot be offset by countervailing buyer power exercised by MVNOs.

b) Entry

i. Parties' view

(1362) The Parties submit that they are not aware of any anticipated or likely MNO entry in Italy.

ii. Commission's assessment

(1363) As discussed in Section 7.3.2.4 d), the Commission considers that barriers to entry as an MNO are high and that market entry of MNOs in the near future is unlikely.

(1364) The Commission therefore considers that entry on the wholesale market for access and call origination on mobile networks in the next few years is unlikely.

7.4.1.6. Overall conclusion on horizontal non-coordinated effects

(1365) In light of all the above elements, the Commission’s conclusion is that the Transaction is likely to give rise to non-coordinated anti-competitive effects on the wholesale market for access and call origination on mobile networks in Italy. Based on the Commission's finding that such effects are unlikely be offset by buyer power,

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1230 BT Italia's response to Questionnaire Q1 to MVNOs of 8 February 2016, question 6.2. [ID 512].

1231 See Responses to Questionnaire Q1 to MVNOs of 8 February 2016, questions 6.1 and 6.2.

1232 Coop Italia's response to Questionnaire Q1 to MVNOs of 8 February 2016, question 6.3.2. [ID 581].

1233 Form CO, Section 8, paragraph 122.

1234 Form CO, Section 8, paragraph 124.

entry or efficiencies, the Transaction would significantly impede effective competition in the wholesale market for access and call origination on mobile networks in Italy.

7.4.2. Horizontal coordinated effects

(1366) Recitals (236) to (240) above set out the conditions under which, according to the case law, horizontal coordinated anticompetitive effects are most likely to emerge.

(1367) In the Article 6(1)(c) Decision, the Commission considered that the Transaction raised serious doubts as to its compatibility with the internal market as a result of likely coordinated effects on the wholesale market for access and call origination on public mobile networks.

(1368) In particular, respondents to the Commission's market investigation indicated that the Transaction would make coordination on the wholesale market easier, as regards prices, other wholesale elements, or market shares.[1235]

(1369) In the course of its in-depth investigation, the Commission further investigated the risk of horizontal coordinated effects on the wholesale market. To that end, the Commission sent several RFIs to MVNOs and reviewed the internal documents provided by the Parties. It ascertained whether the evidence collected could be interpreted to contain indications that the Transaction would lead to coordinated effects on the Italian wholesale market for access and call origination, in light of the criteria set out in the Horizontal Merger Guidelines.[1236]

(1370) The Commission notes that it appears that there is transparency on the wholesale market with respect to at least certain key features of wholesale agreements between MNOs and MVNOs, such as whether an MVNO has access to 4G, and whether an MVNO has migrated to a different MVNO. The knowledge of such elements could make coordination among MNOs conceivable in principle, as MNOs could possibly coordinate with respect to granting access to certain technologies to MVNOs, and could monitor whether an MNO has deviated from such practice.

(1371) However, the Commission has also found that the wholesale market for access and call origination on mobile networks in Italy is characterized by a high degree of complexity and, notwithstanding the Commission's observations in recital (1370) above, there remains a lack of transparency with respect to a number of key parameters of wholesale agreements between MNOs and MVNOs and the negotiation processes. With regard to complexity, the Commission notes that wholesale agreements include various terms and components, related to both pricing and services, which vary from contract to contract, depending on each bilateral relationship between MNO and (type of) MVNO. For instance, wholesale access fees and prices vary depending on the specific negotiated contract, and the services offered differ depending on the type of MVNO (Full MVNO or light MVNO). As regards the lack of transparency, this is due mainly to the fact that wholesale access agreements between MNOs and MVNOs are subject to stringent confidentiality provisions. The vast majority of MVNOs stated they are not aware of the key elements and conditions (including pricing) of the wholesale access and call origination contracts negotiated between competing MVNOs and their respective host MNOs.[1237] Therefore, there is limited transparency with respect to the majority

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[1235] Responses to Questionnaire Q1 to MVNOs of 8 February 2016, questions 25 and 26.

[1236] Horizontal Merger Guidelines, paragraphs 39 - 43.

[1237] Responses to Questionnaire Q1 to MVNOs of 8 February 2016, question 10.

of the terms and conditions of wholesale agreements entered into by other MNOs with MVNOs. Furthermore, as explained in recitals (1223) to (1224) above, the wholesale market is a bidding market, with MVNOs negotiating bilaterally with MNOs, in different instances and occasions. This also serves to limit MNOs' visibility with respect to the terms offered by their competitors and render coordination more difficult. Finally, wholesale agreements are stipulated for different durations, and may be subject to periodic renegotiations of their key terms, which are also not disclosed.

(1372) Such opacity and complexity of the wholesale market for access and call origination on mobile networks suggest that the market's structure makes coordination more difficult, namely as regards the ability of MNOs to reach terms of coordination and the long-term sustainability of coordination, in particular, monitoring deviations and retaliating. For instance, the lack of transparency of key terms, the long duration and the complexity of wholesale agreements make retaliations on the wholesale market more difficult to achieve. The Commission has also found no concrete evidence of how a possible retaliation mechanism at the retail level could operate. Furthermore, the market shares on the wholesale market, discussed in Section 7.4.1.2 a) above, appear to differ among MNOs depending on the parameters and MVNO migrations.

(1373) The evidence at the Commission's disposal, following the in-depth investigation and the review of the Parties' internal documents, is not conclusive to finding that the Transaction would lead to a significant impediment of effective competition due to coordinated effects on the wholesale market, under the requirements set by the Horizontal Merger Guidelines and the case law. In any event, even if coordinated effects in the Italian wholesale market for access and call origination were assumed, the Commission notes that the Final MNO Commitment would address such coordinated effects.

7.5. Efficiencies

7.5.1. Framework for the assessment of efficiencies

7.5.1.1. Parties' view

(1374) The Parties submit that the Transaction would lead to two types of efficiencies: (i) cost and revenue synergies, with variable and fixed components; (ii) creation of a third high-quality network, comparable to the one of TIM and Vodafone, given that the JV would enable a faster LTE roll out achieving a higher population coverage than absent the Transaction.

(1375) The Parties submit that the efficiencies resulting from the Transaction should be taken into account in two ways:

(a) First, the overall competitive assessment should already account for the pro-competitive effects of the Transaction regardless of whether the Parties raise a formal "efficiency defence". According to the Parties, in the present case, this first level of analysis should lead the Commission to conclude that the Transaction poses no risk of a significant impediment of effective competition and rather has the effect of promoting competition.

(b) Second, where the Commission identifies a competition concern, it must assess whether the efficiencies can outweigh the competition concerns using the three cumulative criteria set out in the Horizontal Merger Guidelines (verifiability, merger-specificity, benefits to consumers). The Parties submit that no competition concern arises in the first place. However, and without prejudice to this position, the Parties also contend that the efficiencies, as detailed in the

Form CO, meet the three cumulative conditions of benefit to consumers, merger specificity and verifiability as delineated in the Horizontal Merger Guidelines.[1238]

(1376) Further, in the Reply to the Article 6(1)(c) Decision, the Parties contend that, for what concerns the verifiability of the efficiencies, they are not required to provide the information to enable an independent verification of the synergy by a third party (i.e. the Commission) and that "there cannot be any doubts that the Parties' efficiencies claims have been fully substantiated".[1239]

7.5.1.2. Commission's assessment

(1377) The Commission's framework for assessing efficiencies resulting from a merger is set out in the Horizontal Merger Guidelines, which provide the following:

"77. The Commission considers any substantiated efficiency claims in the overall assessment of the merger. It may decide that, as a consequence of the efficiencies that the merger brings about, there are no grounds for declaring the merger incompatible with the common market pursuant to Article 2(3) of the Merger Regulation. This will be the case when the Commission is in a position to conclude on the basis of sufficient evidence that the efficiencies generated by the merger are likely to enhance the ability and incentive of the merged entity to act pro-competitively for the benefit of consumers, thereby counteracting the adverse effects on competition which the merger might otherwise have.

78. For the Commission to take account of efficiency claims in its assessment of the merger and be in a position to reach the conclusion that as a consequence of efficiencies, there are no grounds for declaring the merger to be incompatible with the common market, the efficiencies have to benefit consumers, be merger specific and be verifiable. These conditions are cumulative.

(1378) The Commission will therefore consider positive effects of efficiencies that benefit consumers as part of its overall assessment of the Transaction, provided the efficiencies are substantiated and satisfy the following three cumulative criteria:

(a) Efficiencies have to benefit consumers in the sense that they should be substantial and timely and should, in principle, benefit consumers in those relevant markets where it is otherwise likely that competition concerns would occur;[1240]

(b) Efficiencies have to be a direct consequence of the concentration and cannot be achieved to a similar extent by less anticompetitive alternatives. Also, it is for the merging parties to timely provide all the information to demonstrate that there are no less anti-competitive alternatives which would preserve the claimed efficiencies. In this assessment the Commission only considers those alternatives that are realistic and attainable, of a concentrative or non-concentrative nature, and that are reasonably practical in the business situations faced by the merging parties;[1241]

(c) Efficiencies have to be verifiable such that the Commission can be reasonably certain that the efficiencies are likely to materialise and be substantial enough to counteract a merger's potential harm to consumers. [1242]

[1238] Horizontal Merger Guidelines, paragraphs 76-88.
[1239] Reply to the Article 6(1)(c) Decision, paragraphs 343-344.
[1240] Horizontal Merger Guidelines, paragraph 79.
[1241] Horizontal Merger Guidelines, paragraph 85.
[1242] Horizontal Merger Guidelines, paragraph 86.

(1379) The Horizontal Merger Guidelines further explain that the burden of proof for showing that efficiencies fulfil the above criteria lies with the merging Parties as most of the information is solely in their possession. It is, for example, incumbent upon the Parties to provide in due time all the relevant information necessary to demonstrate that the claimed efficiencies are merger-specific and likely to be realised. Similarly, it is for the Parties to show to what extent the efficiencies are likely to counteract any adverse effects on competition that might otherwise result from the merger, and therefore benefit consumers. [1243] Furthermore, evidence relevant to the assessment of efficiency claims should include, in particular, internal documents that were used by the management to decide on the merger, statements from the management to the owners and financial markets about the expected efficiencies, historical examples of efficiencies and consumer benefit, and pre-merger external experts' studies on the type and size of efficiency gains, and on the extent to which consumers are likely to benefit.[1244]

(1380) In this respect, in the Article 6(1)(c) Decision the Commission raised doubts on the verifiability of the claimed efficiencies. In their Reply to the Article 6(1)(c) Decision the Parties invoke the Ryanair judgment[1245] to maintain that "*the verifiability of efficiencies does not require them to provide data capable of being independently verified by a third party*".[1246] The Commission however notes this judgment confirms that, as indicated in the Horizontal Merger Guidelines, the Commission, in its assessment, is correct to examine whether the efficiency claims are "*'verifiable', in the sense that they ma[ke] it possible for [the Commission] to be reasonably certain that the efficiencies [are] likely to materialise and be substantial enough to counteract the concentration's potential harm to consumers*"[1247]. Moreover, this judgment confirmed that "*it is incumbent upon the notifying parties to provide (...) evidence*" which can "*show that the efficiencies claimed are capable of counteracting the negative effects that the transaction could otherwise have on competition*".[1248]

(1381) Further, contrary to what the Parties argue, the Commission considers that even if the final calculations used by the Parties to quantify the synergies of the JV have been produced by external consultants in the context of the financial evaluation of the JV and that they have been communicated to the capital market, this in itself does not prove the verifiability of the efficiency claims.

(1382) First, it is the Commission's responsibility to assess the efficiency claim on the basis of the legal standard set out above.

(1383) Second, the economic literature suggests that synergies calculation in support of merger and acquisition activity might often overestimate the extent of cost savings.[1249]

1243 Horizontal Merger Guidelines, paragraph 87.

1244 Horizontal Merger Guidelines, paragraph 88.

1245 Judgment of the General Court of 6 July 2010, T-342/07, *Ryanair Holdings plc v Commission*, EU:T:2010:280, paragraph 406.

1246 Reply to the 6(1)(c) decision, paragraph 343.

1247 Judgment of the General Court of 6 July 2010, T-342/07, *Ryanair Holdings plc v Commission*, EU:T:2010:280, paragraph 411.

1248 Judgment of the General Court of 6 July 2010, T-342/07, *Ryanair Holdings plc v Commission*, EU:T:2010:280, paragraph 412.

1249 On this see two recent analyses by Harward Business Review (https://hbr.org/2016/05/so-many-ma-deals-fail-because-companies-overlook-this-simple-strategy) and Bain & Company (http://www.bain.com/publications/articles/why-some-merging-companies-become-synergy-

(1384) Third, it is far from established that the claimed synergies have been generally accepted by the capital market. For instance an investment bank took the following position in its analysis of the proposed JV: *"We see P&L synergies as achievable if some revenue synergies are included"* and *"We are a bit more skeptical about CAPEX synergies"*.[1250] Given that the Parties only claim cost synergies, as also highlighted by the investment bank's report (*"Focus only on cost synergies- too early to speak of revenue synergies as the market remains competitive. A standard comment in light of antitrust scrutiny"*), this means that the investment bank saw the claimed OPEX and CAPEX cost synergies as too optimistic. In particular, the investment bank's own assessment of the JV's synergies is consistent with the assessment of the Parties only when revenue synergies amounting to […] of total synergies are included.[1251]

(1385) Fourth, there are indications that the Parties and their independent consultants are aware of the possible optimistic nature of the cost synergy assessment. As an example, [...].[1252] Also, the Commission notes that [...][1253][...]. Further examples that question the reliability of the cost synergies estimates will also be discussed in detail in the following Sections.

(1386) Fifth, the Commission notes that the Parties have been working at the assessment of synergies since at least January 2012. Market repair revenue synergies represented a significant part of the total synergies assessment, for a period of at least [...], and the review of internal documents shows that in several instances […].

(1387) In […], in a first assessment of a deal between H3G and WIND […] H3G estimated the "steady state" synergies in EUR […] billion of which […] were related to "Mkt repair" synergies with an assumption of a price increase of […] for WIND and […] for H3G. [1254] Another simulation [...]. Notably, the same presentation estimated the NPV of the synergies in [...]. The Commission notes that this latter figure is similar to the NPV of the synergies claimed for the Transaction ([approx. EUR 5 billion]) […].[1255] […].[1256][…].[1257]

(1388) Similar discussions took place on the WIND's side. […]. [1258] […][1259] Also, […]. [1260]

(1389) Other doubts […]. [1261] Other, more recent, […][1262] […].[1263]

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overachievers.aspx). Another study (Banal-Estañol, A. and Seldeslachts, J. (2011), Merger Failures. Journal of Economics & Management Strategy, 20: 589–624) reports similar evidence.

1250 Deutsche Bank Report November 2015; Italian Telecoms; Sector overview; Deutsche Bank; November 2015, slide 42; Annex 12.3.46 of the Form CO [ID 319-104]

1251 Ibid. slide 43.

1252 Annex 73 of Form CO slide 37. The Commission notes that the Parties in their reply to RFI n.28 of 21 April 2016 claims the following: *"[...]."* The Commission disagrees with this explanation that does not seem to be related to context discussed. Moreover, previous versions of the A.T. Kearney presentation of July 2015 supports the Commission's view that the assumption used for the cost synergy analysis are likely very optimistic. For instance, H3G internal document, […].

1253 H3G internal document, […].

1254 H3G internal document, […].

1255 H3G internal document, […].

1256 H3G internal document, […].

1257 H3G internal document, […].

1258 Document […].

1259 VimpelCom internal document, […].

1260 VimpelCom internal document, […].

1261 VimpelCom internal document, […].

1262 Hence in the period […].

(1390) For the above reasons, listed in recitals (1382) - (1389), and according to the Horizontal Merger Guidelines, the Commission will examine the submitted supporting documents related to the efficiency claims as to establish whether there are verifiable and merger-specific efficiencies that are likely to materialise and be substantial enough to counteract the JV's potential harm to consumers.

(1391) According to the Commission's practice, the assessment of the benefit to consumers from efficiencies and the competitive harm that might results from the merger should consider the same period of time. The harm arising from a merger might already impact consumers shortly after the merger. This implies that in order to be considered as a balancing factor the efficiencies must be timely. [1264] In the present case the Commission's assessment of the efficiencies considers the benefit to consumers expected during the period 2016-2019. For what concerns the cost synergies the Commission notes that until […] only part of the synergies would be realized due to integration costs. For this reason, in this case, the analysis of cost synergies will consider in particular the expected run-rate synergies following the network integration phase. The Commission notes that this approach, in this specific case, is in favour to the Parties as the run-rate synergies are higher than the average annual synergies expected in the period 2016-2019.

(1392) The Parties' efficiency submission is based on a detailed description of the expected cost synergies and it is supported by some documentation (including calculations) prepared by the consultancy firm AT Kearney during the assessment of the JV's synergies carried out in the context of the deal negotiations. A first set of documents (including underlying calculations) was submitted with the Form CO and a second set of documents (including other underlying calculations) was submitted in response to the Commission's RFI n. 28 of 4 April 2016 and with the Response to the Article 6(1)(c) Decision. A further "summary" document was submitted by the Parties on 17 May 2016.

(1393) The Commission has reviewed this information. Consistently with previous cases[1265] and precedents,[1266] in the following recitals the Commission will assess separately whether each of the three submitted efficiencies fulfils the three criteria defined in the Horizontal Merger Guidelines.

7.5.2. Variable cost synergies

7.5.2.1. Parties' view

(1394) The Parties submit that the JV would lead to cost synergies with a net present value in excess of EUR 5 billion. [1267] According to the Parties, these savings are likely to create the incentive and enable the JV to deliver better value to customers. Over the period 2016-2019, before accounting for integration costs, the Transaction is

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1263 H3G internal document, […].

1264 Horizontal Merger Guidelines, paragraph 83.

1265 Commission's decision of 28 May 2014 in case M.6992 – *Hutchison 3G UK/Telefónica Ireland*, Section 7.1; and Commission's decision of 01 February 2012 in case M.6166 – *Deutsche Börse/NYSE Euronext*, Section 12

1266 Judgment of the General Court of 9 March 2015, T-175/12, *Deutsche Börse AG v Commission*, EU:T:2015:148, paragraphs 281-288.

1267 WIND estimates the NPV of the JV synergies in […]. H3G's own assessment of the NPV of synergies might differ from WIND's own assessment due to the used assumption, in particular the appropriate […] (WIND's reply to the Commission's RFI n. 55 of 3 May 2016 paragraph 6.2). [ID 1478].The Commission notes however that in its announcement of the deal in August 2015, H3G refers to cost synergies in excess of EUR 5 billion.

expected to deliver […] of cost synergies of which […] related to fixed cost synergies and […] related to variable cost synergies. After integration costs, between 2016 and 2019 the net synergies would correspond to […]. [1268] From 2020 onwards the Parties expect cost synergies of EUR 707 million on an annual run-rate basis, of which […]from fixed cost savings and […]from variable cost savings.

(1395) Table 34 below presents an overview of the cost synergies, both variable and fixed, submitted by the Parties.

(1396) The variable cost savings would be realised in the following business areas: market facing […] customer operation […]; network […].

(1397) The Parties submit that the variable savings are likely to generate a direct incentive to provide better value to customers in the form of lower prices and advantageous tariffs plans. Also, according to the Parties, the cost savings are specific to the Transaction and are not attainable under other alternatives like network sharing agreements.

Table 34: Cost synergies (before integration costs) generated by the Transaction, by business area (EUR million)

	2016	**2017**	**2018**	**2019**	**2016 to 2019**	**Run rate (2020)**	**2016 to 2019 as %**	**Run rate (2020) as %**
[…]	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**
Of which fixed	*[…]*	*[…]*	*[…]*	*[…]*	*[…]*	*[…]*	*[…]*	*[…]*
Of which variable	*[…]*	*[…]*	*[…]*	*[…]*	*[…]*	*[…]*	*[…]*	*[…]*
[…]	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**
Of which fixed	*[…]*	*[…]*	*[…]*	*[…]*	*[…]*	*[…]*	*[…]*	*[…]*
Of which variable	*[…]*	*[…]*	*[…]*	*[…]*	*[…]*	*[…]*	*[…]*	*[…]*
[…]	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**
Of which fixed	*[…]*	*[…]*	*[…]*	*[…]*	*[…]*	*[…]*	*[…]*	*[…]*
Of which variable	*[…]*	*[…]*	*[…]*	*[…]*	*[…]*	*[…]*	*[…]*	*[…]*
[…]	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**
Of which fixed	*[…]*	*[…]*	*[…]*	*[…]*	*[…]*	*[…]*	*[…]*	*[…]*
Of which variable	*[…]*	*[…]*	*[…]*	*[…]*	*[…]*	*[…]*	*[…]*	*[…]*
[…]	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**
Of which fixed	*[…]*	*[…]*	*[…]*	*[…]*	*[…]*	*[…]*	*[…]*	*[…]*
Of which variable	*[…]*	*[…]*	*[…]*	*[…]*	*[…]*	*[…]*	*[…]*	*[…]*
Total synergies	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**
Of which fixed	*[…]*	*[…]*	*[…]*	*[…]*	*[…]*	*[…]*	*[…]*	*[…]*
Of which variable	*[…]*	*[…]*	*[…]*	*[…]*	*[…]*	*[…]*	*[…]*	*[…]*

Source: Form CO Section 9 (Table 1) and Commission's own calculations (last two columns)

7.5.2.2. Commission's assessment

(1398) The Commission considers that some claimed variable cost synergies would not represent a variable cost reduction. These are discussed in the following recitals.

[1268] The integration costs, that will be borne between 2016 and 2019, correspond to […].

(1399) The claimed variable synergies related to the elimination of cross-churn between the Parties (with an impact on the level of customers acquisitions costs and customer care costs of the JV) do not represent a variable cost reduction. The Parties, in the Reply to the Article 6(1)(c) Decision, argue that the Commission would be wrong not to consider these synergies as variable because customer acquisition costs are by their definition variable and that they vary with the customer base. [1269] The Commission does not dispute that customer acquisition costs are variable. Indeed, customer acquisition cost synergies related to […] are considered variable and to benefit consumers as the *per-customer* cost to acquire customers for the JV could be lower than the cost of either Party in the standalone scenario. However, the reduction of cross-churn does not reduce the variable cost of acquiring a new customer. This reasoning applies similarly to […]. The Commission considers that these cost reductions are, in effect, fixed cost reductions, because they are related to a fixed reduction in the volume of acquired customers. Being fixed cost reductions the Commission considers that these savings are less likely to be translated into lower prices to attract marginal consumers. Furthermore, accordingly to the Horizontal Merger Guidelines, the Commission considers that cost reductions, which merely result from anti-competitive reductions in output, cannot be considered as efficiencies benefiting consumers.[1270] As the claimed cost reductions are a direct result of the Transaction and of the loss of competition between the Parties, the Commission considers that this cost synergy does not meet the benefit to consumer test.

(1400) Furthermore, as explained below, the Commission considers that the revenue synergies related to […] are also not classifiable as variable cost reductions that would be passed on to consumers. According to the Parties, the JV will increase its profits by […]. The Commission notes that, all things being equal, the extra profit that will be earned by the JV from […] would already be the result of a profit maximization decision taken by the JV. For this reason the Commission doubts that this extra profit would be passed to consumers in terms of lower prices, otherwise it would violate the profit maximization hypothesis. It is possible, as discussed by the Parties,[1271] that a reduction in the transaction cost due to […]would have an impact on the variable cost of […] and hence benefit consumers but the Parties have not quantified this element.

a) Benefits to consumers

(1401) According to the Commission's practice, variable cost reductions are more likely to be passed to consumers than fixed cost savings, as they directly affect firms' pricing incentive.[1272] Accordingly, also in this case, the Commission considers that variable cost savings would be likely passed (partly) to consumers in terms of lower costs.

(1402) The Commission considers that only some of the variable cost synergies claimed by the Parties would meet the benefit to consumer condition. These are the variable cost synergies related to […] (network), the […] (market facing), […] (customer operations). The Commission considers that cost reductions in these areas would likely reduce the cost of attracting marginal customers and consequently are likely to create the incentive to lower prices.

[1269] Reply to the Article 6(1)(c) Decision, paragraph 357.
[1270] Horizontal Merger Guidelines, paragraph 80.
[1271] Form CO, Section 9, paragraph 104.
[1272] Horizontal Merger Guidelines, paragraph 80.

(1403) The Commission concludes that it is not necessary to take a position on the variable synergies related to […](for both market facing and customer care activities). As discussed below, these cost synergies do not meet the merger specificity condition.

(1404) Further, under the variable cost synergies, the Parties claim that the Transaction could also directly improve consumer welfare because of […][1273] In this respect, the Commission considers that both synergies have not been quantified and the consideration of the latter would imply a double counting of the synergies already claimed under the adoption of the "digital strategy".

(1405) Further, the Commission considers that the incentive on the part of the JV to pass efficiency gains on to consumers is often related to the existence of competitive pressure from the remaining firms in the market and from potential entry.[1274] To the extent that the Commission has doubts on the competitive pressures that will be prevailing in the market following the Transaction, the Commission has doubts that the claimed variable cost synergies might be passed to consumers. Against this background, the Commission considers, on the basis of its analysis on horizontal coordinated effects (see section 7.3.3) and on the basis of the expectations of market-wide repair (as reported in section 7.2.), that there is evidence that the Transaction may reduce competitive pressure to such an extent that it is unlikely that efficiencies could outweigh the harm.

b) Verifiability

i. Network

(1406) The Parties claim cost synergies related to […][1275] […] [1276] […][1277]). […]. For these reasons the Commission cannot be reasonably certain that […] efficiencies can be fully verifiable. At the same time the Commission considers these synergies to be limited and a more precise assessment would not materially change their impact on total variable cost synergies.[1278]

ii. Market facing

(1407) Claimed market facing cost synergies accrue from the following areas: […].

(1408) In relation to the reduction in […] the Commission understands that the cost savings related to this area are computed assuming a […] reduction, from 2018, in the weighted average of the stand-alone […]. This reduction is explained by […].[1279]

(1409) […]. [1280].The expected synergies are based on WIND's […][1281]. This implies that also about […][1282]. […].[1283] In this respect, the Commission is not in a position to accept the verifiability of this cost saving.

(1410) The Parties also expect to generate variable cost synergies in […].[1284] This would translate in a lower level of […] as compared to the […]. The verifiability of these

1273 Form CO, Section 9, paragraph 92.
1274 Horizontal Merger Guidelines, paragraph 84.
1275 H3G internal document, […].
1276 Ibid.
1277 http://www.mondo3.com/3-italia/news/2016-04-12-zone-senza-roaming-tim.html [ID 2591].
1278 Form CO, Section 9, Table 5.
1279 Form CO, Section 9, paragraph 27.
1280 Annex 3 […] reply to RFI n.28 of 21 April 2016.
1281 Ibidem.
1282 Ibidem.
1283 H3G internal document, […].

assumptions is questionable as the analysis of the available documents indicates that the choice of the JV's expected overall […].[1285] Also, from the data made available [1286] and the internal documents reviewed[1287] it is not evident to what extent this reduction in […]. Hence, the Commission is not in a position to accept the verifiability of these cost savings. In any event, as already noted, the reduction in costs due to […]do not represent a variable cost saving, as such does not qualify as an efficiency under the Horizontal Merger Guidelines.

(1411) The Parties submit that the Transaction would also generate cost synergies from […]. The Commission notes that the cost synergies related to […] is not quantified in the documents made available[1288] and the run-rate value is all attributable […]. About the verifiability of this claimed synergies […].[1289] […] On the basis of the above discussion the Commission is not in a position to accept the verifiability of the revenue synergies from […].

(1412) Moreover, the Commission notes that benefit to consumers related […] but no quantification was carried out in this respect.

iii. Customer operations

(1413) The Parties claim that the JV will lead to variable savings in costs related to […].

(1414) The Parties argue that, due to a […] [1290] The assumed reduction in […]. [1291] […].[1292] […]. For the above reasons, the Commission does not consider this claim to be reasonably verifiable.

(1415) The parties argue that the JV will reduce the […][1293] The Commission notes that this claim was not originally formulated in the Form CO (where on the contrary it is stated that […]) [1294] and this claim is not supported by the working documents produced by […][1295]. For these reasons, the Commission is not in a position to conclude the verifiability test is met.

(1416) The Parties argue that the […]. Also, the Commission notes that the synergy calculations related to the […] are not verifiable for the reasons discussed in para (1410) for […] cost savings.

c) Merger specificity

i. Network

(1417) The Parties claim cost synergies related to the […]. The Commission considers that these synergies might be merger specific if they are a direct consequence of the JV and cannot be achieved to a similar extent by other less anticompetitive alternative. The Commission notes that […] could also be achieved within a full network sharing

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1284 Annex 29.4 to the Form CO […].
1285 H3G internal document, […]
1286 Annex 3 […] reply to RFI n.28 of 21 April 2016.
1287 For instance, H3G internal document, […].
1288 Annex 3 […] reply to RFI n.28 of 21 April 2016.
1289 H3G internal document, […]
1290 Form CO, Section 9, paragraph 33.
1291 Reply to the Article 6(1)(c) Decision, paragraph 361.
1292 The Parties affirms that: […] Response to the Article 6(1)(c) Decision, paragraph 361.
1293 Reply to the Article 6(1)(c) Decision, paragraph 363.
1294 Form CO, Section 9, paragraph 33.
1295 Annex 3 […] reply to RFI n.28 of 21 April 2016.

agreement […][1296] […][1297] Further, even under other "lighter" and more feasible forms of NSA, like an LTE active sharing, H3G would further increase its […] coverage with an impact on […]. As explained in detail in Section 7.5.4.2 c) the Commission considers that a network sharing agreement, in particular in the form of LTE active sharing, would be a reasonably practical alternative, in the business situation faced by the merging parties, and would entail a less anticompetitive alternative to the JV. Hence, the Commission considers that only part, if any, of the assumed reduction in […] costs could be merger specific. However, given that the […] costs do not appear material the Commission does not conclude on the merger specificity.

ii. Market facing

(1418) In relation to the reduction in […].[1298] […]. However, this claim is not quantified nor supported by further evidence on the impact of […] and therefore cannot be assessed.[1299] On this basis the Commission has doubts that all of the claimed synergies related to […] might be merger specific. For the purpose of the overall assessment of the Parties' variable cost efficiency claims, the Commission will therefore consider a range based on the share of variable cost savings that may qualify as efficiencies, as set out in recital (1431).

(1419) The Commission questions the claim that the adoption of […].[1300]

(1420) However, the Parties also note that […].[1301] This suggests that […][1302]

(1421) The Parties, in the Form CO, claim that […].[1303] The Commission disagrees with this view […] [1304] (this is also in clear contrast also with the fact […]. On this basis, the Commission is not in a position to accept that the claimed savings from the […] are merger specific.

(1422) For what concerns the variable cost synergies from the reduction in churn (from better network and the loss in the cross-churn between the parties), the Commission considers that it is plausible to assume that in general a concentration would reduce the level of observed market churn as due to the concentration of choice and output might be reduced. As noted in the HMG, savings from such a reduction of output do not qualify as efficiencies under the HMG. (and consequently the benefit to consumer criteria might not be met). In the specific case, the parties also claim that part of the reduction of acquisition costs would come from a the better network. The Commission observes that to the extent that a better network could be achieved also under other less anticompetitive alternatives the merger specificity test is not met. As explained in detail in section (1462) the Commission considers that a NSA, in particular in the form of LTE sharing, would be reasonably practical, in the business situation faced by the merging parties, and would entail a less anticompetitive alternative to the JV. For this reason, the reduction in churn due to better network does not meet the merger specificity condition.

1296 Form CO, Section 7, paragraph 371-374 and Annexes cited therein.
1297 Parties' reply to Question 6 of the RFI n.21 dated 16 February 2016.
1298 Annex 3 […] reply to RFI n.28 of 21 April 2016..
1299 Reply to the 6 Article 6(1)(c) Decision, paragraph 353.
1300 Reply to the 6 Article 6(1)(c) Decision, paragraph 355.
1301 Ibidem.
1302 […].
1303 Form CO, Section 9, paragraph 56.
1304 Annex 3 […] reply to RFI n.28 of 21 April 2016.

(1423) The cost-synergies related to the […] are considered to be merger specific.

iii. Customer operations

(1424) The Commission notes that, in principle, the cost synergies related to […] might be merger specific […]. However, due to the doubts raised above under the verifiability assessment the Commission cannot conclude that these cost synergies would be entirely or in part merger specific.

(1425) About the increased use of the […]. [1305] […].

(1426) The claimed customer care synergies related to the better network might also be reached under less anti-competitive alternatives like a NSA. As discussed in detail in section (1462) the Commission considers that a NSA, in particular in the form of LTE sharing, would be reasonably practical, in the business situation faced by the merging parties, and would entail a less anticompetitive alternative to the JV. Hence, the Commission considers this claim not merger specific.

(1427) For the customer care cost reductions related to the elimination of the cross-churn the Commission considers that it is not necessary to conclude on merger specificity as the benefit to consumers condition is not met.

7.5.2.3. Conclusion on variable cost synergies

(1428) The Parties submit that the […] cost savings related to the Transaction could be equivalent to savings for […] per month per customer. Given the ARPU forecast for the JV (in 2019), this would amount to cost savings in the order of […] of ARPU, or a price saving in the order of […] assuming a pass-through rate of about 50%.

(1429) The Commission has reviewed the documents submitted by the Parties to support their variable cost efficiency claim and concludes that several of the claimed efficiency do not meet the three cumulative conditions of benefits to consumers, verifiability and merger specificity.

(1430) The Commission concludes that only three efficiency claims pass the cumulative test. These are the synergies related to […]. However, as outlined in the above analysis, for all these claims, based on the information provided by the Parties, the Commission is not in a position to conclude that the verifiability and merger specificity criteria are met for the entirety of the claimed savings. The Commission therefore finds it appropriate to consider a range for these claimed savings. By assuming that only between 25% and 75% of these claims would meet the three cumulative criteria in the Horizontal Merger Guidelines, the variable cost efficiencies from the transaction would be in the range of between […].[1306]

(1431) Given the split of the variable cost savings provided by the Parties [1307] most of the variable cost efficiencies would be attributed to […] and only a small share to […]. On the basis of its quantitative analysis, the Commission concludes that the pass-

[1305] […] [Annex 12.3.3. to Form CO].

[1306] In any case even if the Commission were to consider 100% of these three claimed efficiencies, hence not considering the verifiability and merger specificity concerns raised, the conclusions on the limited size of these efficiencies would not change and the efficiencies would not outweigh the competitive harm identified.

[1307] Reply to the Commission RFI n.28 of 4 April 2016, questions 9 [ID 1158].

through to consumers would amount to […] in terms of H3G's ARPU and […]in terms of WIND's ARPU. [1308]

(1432) On this basis the Commission concludes that the size of the efficiencies related to variable cost synergies is limited and would not outweigh the harm caused by the Transaction. This without factoring in that the incentive on the part of the JV to pass efficiency gains on to consumers is often related to the existence of competitive pressure from the remaining firms in the market.[1309] Because of the evidence on coordinated effects and on the expectations of "market repair" (Section 7.3.3 and Section 7.2), the Transaction may indeed reduce the competitive pressure such that these limited savings might be passed to consumers only to a limited extent.

7.5.3. Fixed cost synergies

7.5.3.1. Parties' view

(1433) The Parties submit that, on a run-rate basis, the expected fixed cost savings (both CAPEX and OPEX) are expected to amount to […].Table 34 (above) presents an overview of the fixed cost synergies submitted by the Parties.

(1434) These savings would be realised across all areas of the business: network […]; selling general and administrative expenses […]; [1310] IT […]; customer operation […].

(1435) The Parties submit that also fixed cost savings will lead to better value to consumers as they will […] and would allow the JV to fund the investments to build a state of the art network. Consequently, this would deliver better quality to consumers and enable the JV to compete on quality with TIM and Vodafone, […]. Also, the Parties claim that other agreements like network sharing agreements would not generate the same synergies of the JV and would not lead to comparable efficiencies.

7.5.3.2. Commission's assessment

a) Benefits to consumers

(1436) The Commission notes, as general point, that fixed cost savings are less likely to be passed on to consumers than variable cost savings.[1311] This is because fixed costs savings do not affect marginal pricing decisions, and are therefore unlikely to lead to lower prices.

(1437) The Parties claim that economies of scale and fixed cost synergies reached by the JV will […]. This, will be reflected in an improved cash flow for the JV that will allow the JV to fund the investments necessary to build a state of the art network.

(1438) In relation to these claims the Commission questions that the fixed cost savings claimed by the Parties and the consequent improved cash-flow will benefit consumers in a timely manner. The submitted business plans for the JV show that fixed cost savings will lead to improved cash-flows that in the time horizon considered are mainly used to […]. [1312] Confirming this there is also an internal

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[1308] These computations consider the ARPU of 2015 for both WIND and H3G and the run-rate savings estimated for year […] after the network integration. If the same analysis would be carried out with the variable cost savings of the period […] the size of the pass-through in terms of ARPU would be even lower […].

[1309] Horizontal Merger Guidelines, paragraph 84.

[1310] On […] there is no detailed description by the Parties.

[1311] Horizontal Merger Guidelines, paragraph 80.

[1312] Parties' reply to the Commission's RFI n. 28 of 4 April 2016, Annex 1, sheet […].

assessment of VimpelCom, […]. [1313] The agreed policy foresee the […][1314] The JV, under the scenario considered by the Parties for the assessment of synergies (i.e. Scenario 1), is expected to […]. [1315] In particular, the size of the expected […] represents […] of the expected total (variable and fixed) run-rate synergies that are quantified in EUR 700 million.

(1439) The Commission observes that according to the Parties' synergy plans, fixed cost savings are not used to […] beyond what the two standalone companies had already planned. On the contrary, there will be a reduction in […].

Table 35: Network CAPEX Comparison (EUR million)

	2014	**2015**	**2016**	**2017**	**2018**	**2019**
WIND Mobile standalone	[…]	[…]	[…]	[…]	[…]	[…]
H3G standalone	[…]	[…]	[…]	[…]	[…]	[…]
Sum standalone (mobile only)	[…]	[…]	[…]	[…]	[…]	[…]
Combined (mobile only)			[…]	[…]	[…]	[…]
Difference			**[…]**	**[…]**	**[…]**	**[…]**

Source: Annex 29.5 Form CO

(1440) This shows that the JV is expected to build an allegedly superior network by consolidating the current standalone entities with […].[1316]

(1441) The Commission already expressed the above concerns (that fixed cost savings will be used to […]) in the Article 6(1)(c) Decision. The Parties' reply to these concerns is reported in the following:

(1442) "All of these savings will be beneficial for consumers. In particular, as acknowledged by the Commission itself, there will be a benefit for consumers from a high quality network. The Combined Business will be able to compete more effectively with TIM and Vodafone to the benefit of customers. Absent the Transaction, […] will prevent the necessary investments. As a consequence, the gap between the Parties and the two incumbents would widen. This gap would over time lead to a de facto duopoly of TIM and Vodafone leaving customers with only two alternative operators. This cannot be in the Commission's interest."

(1443) On this basis, the Commission finds confirmation that even according to the Parties´ own submissions the claimed fixed cost synergies would only or largely be passed to consumers through the benefits related to the higher quality network. No other channel of fixed cost pass-through has been quantified in any level of detail.

(1444) The claimed benefits to consumers related to the higher quality network are already part of another separate submission, discussed in Section 7.5.4. As the Parties do not specify any additional concrete benefit to consumer from fixed cost savings the

1313 VimpelCom internal documents, […].

1314 VimpelCom internal documents, […].

1315 Parties' reply to the Commission's RFI n. 28 of 4 April 2016, Annex 1, sheet […].

1316 This evidence also contradicts the Parties statement that the JV […] as claimed in the Reply to the Article 6(1)(c) Decision, paragraph 402.

Commission concludes that fixed cost savings do not meet the benefit to consumers condition.

b) Verifiability and merger specificity

(1445) As discussed above, the claimed fixed cost synergies do not meet the benefit to consumers test. For this reason, it is therefore not necessary to conclude on verifiability and merger specificity as one condition of the cumulative test is already not met for the whole claim related to fixed cost savings.

7.5.3.3. Conclusion on fixed cost synergies

(1446) For the reasons outlined above, the Commission concludes that fixed cost savings do not meet the three cumulative tests and therefore would not be taken into account in the competitive assessment of the Transaction.

7.5.4. Network improvements

7.5.4.1. Parties' view

(1447) The Parties submit that absent the JV, neither WIND nor H3G would be able to build a quality network to compete with the two market leaders (TIM and Vodafone). This is allegedly due to […]. As a consequence the gap between the Parties and the two market leaders is expected to widen.

(1448) According to the Parties the JV would roll-out faster a third high quality network, characterized by higher coverage and speed than the networks that either of the Parties would roll-out absent the Transaction. Further, the Parties argue that the network of the JV is expected to enhance the quality of service, increase consumers' choice for high quality networks and foster competition *vis-à-vis* TIM and Vodafone in all segments of the Italian telecom market.

(1449) The impact of the Transaction on LTE coverage and LTE speed, as estimated by the Parties, is summarised in the following. According to the Parties, the JV will achieve an LTE indoor coverage of […] of the population in 2019 whereas the standalone plan of WIND and H3G would only reach […] and […], respectively (Figure 88 and Table 36 below). In terms of speed, the combined entity will reach an average speed of […] Mbps in 2019 whilst absent the Transaction WIND and H3G would remain at their 2015 levels of […] Mbps and […] Mbps, respectively (Table 37 below).

Figure 88: LTE indoor coverage – Parties vs JV

[…]

Source: Parties data and combined business plan, Form CO, Figure 52.

Table 36: Expected LTE coverage by MNO (2019)

MNO	**LTE coverage**	
	Outdoor	**Indoor**
TIM	[…]	[…]
Vodafone	[…]	[…]
WIND	[…]	[…]
H3G	[…]	[…]
JV	[…]	[…]

Source: para. 112 Form CO Section 9 (the text reads near comprehensive)*

Table 37: Theoretical speeds of Combined Business compared to stand-alone and competitors

MNO	Maximum theoretical speed (LTE / LTE-A)	Average speed (LTE / LTE-A)[1317]
TIM	[…]	[…]
Vodafone	[…]	[…]
WIND	[…]	[…]
H3G	[…]	[…]
JV	[…]	[…][1318]

Source: second column Table 56 Form CO Section 6; second column Table 56 Form CO Section 6

(1450) In the Form CO, the Parties had not quantified the benefit to consumers deriving from the creation of a high quality network. As a follow up to their Reply to the Article 6(1)(c) Decision, the Parties quantified the overall effects of the JV on consumer welfare by means of a merger simulation exercise that estimates the welfare enhancing effects due to the increase in LTE coverage and the increase in LTE download speed that would be caused by the JV (the "Parties' Merger Simulation study").[1319]

(1451) The Parties' Merger Simulation study aimed at balancing the anti-competitive effect of the reduction in competition following the Transaction with the pro-competitive effect from the efficiencies claimed by the Parties, namely the increase in LTE coverage and speed and a marginal cost reduction for the JV.

(1452) The Parties' Merger Simulation study estimated the impact of the Transaction on price and quantity using a specific economic model (the so-called random coefficient model).[1320] The methodology of the Parties' Merger Simulation study follows three subsequent stages: estimation, calibration and simulation.

(1453) In the estimation stage, the Parties' Merger Simulation study estimated the consumers' willingness to pay for a given set of tariffs' characteristics using a discrete choice experiment. The Parties' Merger Simulation study conducted an online survey in the period from February 20 to March 2 2016, collecting 1,000 interviews from a random sample of panellists representative of the Italian population over some demographic variables such as gender and age. After a series of questions relating to the panellists' socio-demographic characteristics and their current mobile tariffs, the panellists were introduced to a choice experiment where they had to select their preferred option over five possible tariffs.

(1454) The Parties' Merger Simulation study designed 100 choice experiments where the values of the tariffs' attributes (i.e. brand, indoor 4G coverage, 4G speed, included minutes, included SMS, included data allowance, type of tariffs (prepaid or postpaid)

1317 […] (Footnote 287 Form CO).

1318 Compass Lexecon presentation, "The transaction will be welfare-increasing", dated 27 April 2016, slide 41 [File name: Case M7758_presentation for CET meeting_29_4_2016.pdf], [ID 1320]: […].

1319 Parties' submission "The Transaction will be welfare-increasing" of April 22, April 27 [ID 1320]and March 1 2016 [ID 1320].

1320 See, for example Train, K. (2009), *Discrete Choice Methods with Simulation*, Cambridge University Press, New York, 2nd edition. Annexed to the Parties' submission of May 1 2016.

and monthly price) were chosen randomly over a set of pre-determined attributes.[1321] All tariffs' characteristics were selected randomly without any correlation between one another, which allowed for the possibility of "dominated tariffs" in each set of bundled tariffs per choice experiment.[1322]

(1455) The choice experiment was repeated five times per panellist (each time with a different set of bundled tariffs), for a total of 25,000 stated choices. From these stated choices, the Parties' Merger Simulation study estimated the average valuation of each tariffs' characteristic for the panellists,[1323] and their willingness to pay for each characteristic.

(1456) In the calibration stage, the Parties' Merger Simulation study collected from the Internet the characteristics of the tariffs offered by the main MNOs and MVNOs (PosteMobile and Fastweb) in November 2015.[1324] Only SIM-only tariffs were considered. The Parties' Merger Simulation study combined the valuations estimated in the estimation stage with the tariffs' characteristics actually offered by the Italian mobile operators to compute the market share of each operator.[1325] This computation was calibrated so that the resulting market shares resembled the observed subscriber market shares in the market. The combination of valuations and tariffs' characteristics also enabled to compute own and cross price elasticity, as well as diversion ratios.

(1457) The Parties' Merger Simulation study modelled the supply side of the market as a standard model of competition on prices with differentiated products ("Bertrand-Nash"). Under this assumption, the Parties' Merger Simulation study computed the marginal cost and the profit margins of each operator. The Parties' Merger Simulation study used a scaling factor to calibrate the computed margins to resemble the observed margins of the Parties.

(1458) Finally, in the simulation stage the Parties' Merger Simulation study estimated the likely effects on competition and on consumer welfare following the Transaction.

(1459) The Parties' Merger Simulation study first calibrated the model using the assumed quality level (in terms of 4G indoor coverage and 4G speed) reached by H3G and by WIND on a stand-alone basis in 2019. It then simulated the merger without any quality increase. This scenario displayed price effects for WIND and H3G in the private segment of [5-10]% and [20-30]%, respectively. The model also predicts an overall price increase in the private segment of [0-5]% and a consumer welfare decrease of […].

(1460) Once an assumed quality improvement and reduction of variable costs are taken into account, the model predicted price effects for WIND and H3G of [10-20]% and [20-30]%, respectively, and an overall average price increase of [0-5]%.[1326] Under this scenario consumer welfare, however, would increase by […], which translates in

1321 For example, data allowance could have been zero, one, two, three, five or ten GB per month.

1322 A dominated tariff is a tariff that is inferior in all characteristics relative to another tariff.

1323 The coefficients in the panellists' utility function.

1324 The set of tariffs was further augmented to include all possible combinations with the add-ons offered by the operator. Dominated tariffs of each operator-segment combination were then excluded from the resulting set.

1325 The market shares are effectively the probability of an average consumer to choose a given operator.

1326 The average price effect once the quality increase is accounted for is lower than the scenario without quality increase post-Transaction because, while the quality increase gives incentives to H3G and WIND to increase prices, it also increases the level of competition on quality and, hence, gives incentives to the other market participants (in particular TIM and Vodafone) to decrease prices.

EUR […] per month and per subscriber, for a total of EUR […] per month or EUR […] per year of benefits to consumers for the entire Italian market.

(1461) Based on these results, the Parties' Merger Simulation study concludes that the pro-competitive effects of the Transaction outweighed its anti-competitive effects, as the Transaction would increase consumer welfare in the Italian mobile telecom market.

(1462) Related to the provision of a high quality network, the Parties also claim that the JV will improve consumer welfare through the offering of better quality related also to the 2G and 3G networks. Further, the Parties claim that consumers will directly benefit from […].

7.5.4.2. Commission's assessment

a) Benefit to consumers

(1463) The Parties claim that the JV will result in a much improved network, as compared to the two standalone networks of the Parties absent the Transaction. These developments, the Parties argue, would have a direct impact on consumers through improved quality (i.e. LTE coverage and LTE speed) and indirect effect through a more intense competition vis-à-vis the two market leaders TIM and Vodafone.

(1464) Accordingly to the Horizontal Merger Guidelines, for the assessment of benefits to consumers the Commission has to assess that the claimed efficiencies "*should be substantial and timely, and should, in principle, benefit consumers in those relevant markets where it is otherwise likely that competition concerns would occur*".[1327]

(1465) The Commission considers that, in principle, offering a better network to consumers would benefit consumers.[1328] It is therefore plausible to expect some consumer benefits due to greater network quality, if the proposed JV were to lead to an improved network.

(1466) However, in order to account for these efficiencies the Commission needs to be reasonably certain that the network quality efficiencies are likely to materialise, and be substantial enough to counteract the potential competitive harm caused by the JV.[1329] A direct quantification of the efficiency would allow for a direct balancing of the quantified anticompetitive effects of the JV. In any case, if efficiencies cannot be quantified, the Horizontal Merger Guidelines require the Commission to "*foresee a clearly identifiable positive impact on consumers, not a marginal one"* in order to consider the claimed efficiencies.[1330] On this basis, in order to conclude on the possible extent of any benefits to consumers from the JV the Commission has to evaluate the verifiability condition of the estimates proposed by the Parties. This assessment is presented in the following section. The additional criterion of merger-specificity is in turn assessed after the discussion of verifiability.

(1467) Regarding the separate claim that thanks to the improved network consumers should also directly benefit from […] the Commission considers that the Parties have not substantiated nor quantified those benefits and have thus failed to provide the required evidence to support a clearly identifiable positive impact on consumers.

1327 Horizontal Merger Guidelines, paragraph 79.

1328 Accordingly to the Horizontal Merger Guidelines "Consumers may also benefit from new or improved products or services, for instance resulting from efficiency gains in the sphere of R & D and innovation", paragraph 81.

1329 Horizontal Merger Guidelines, paragraph 86.

1330 Horizontal Merger Guidelines, paragraph 86.

b) Verifiability

(1468) As summarised above, to support the verifiability of the efficiency claim related to network improvements, the Parties' Merger Simulation study quantifies the net impact of price and quality effects arising from the JV on consumer welfare.

(1469) Accordingly to this study and its methodological approach, the two factors that drive the increase in consumer welfare are identified in the higher LTE indoor coverage and LTE speed of the JV with respect to the coverage and speed (for LTE technology) of the two standalone entities.

(1470) The Commission considers that the above claim and quantification of efficiency is based on two main dimensions. The first dimension is the increment in LTE speed and LTE coverage that drive the size of consumer welfare gains. The second dimension is the methodological framework used for the quantification of the benefits to consumers given a certain level of network improvement.

(1471) For its assessment the Commission will evaluate whether the verifiability condition is met for both dimensions.

i. <u>Incremental network improvement</u>

(1472) The Parties base their efficiency claim on the incremental network improvement of the JV with respect to the LTE roll-out and coverage plans dated […]for WIND[1331] and […] for H3G.[1332]

(1473) The Commission, for the reasons that will follow, considers that these plans are not the most relevant plans that should be used to assess the LTE roll-out of the two standalone entities in the scenario absent the Transaction. This questions the claim made by the Parties that absent the JV the market would experience a possible "bifurcation" (as also discussed in Section 7.3.2.1. b) for H3G and Section 7.3.2.2.b) for WIND).

Wind's LTE coverage

(1474) The Commission's review of WIND's internal documents shows that WIND's approach toward LTE roll-out was originally defined within […].[1333] […]. [1334] […].

(1475) The review of internal documents also shows that WIND's LTE strategy has been […][1335] […][1336][…].[1337] […].[1338]

(1476) […].[1339][…].

(1477) In this respect, the Commission notes that WIND's LTE plans have also changed frequently following the drawing of the […] plan and also after the announcing of the JV with H3G. This evidence is described in the following recitals.

1331 Form CO, Section 6, Table 65 and Table 66.

1332 Form CO, Section 6, Table 63 and Table 64. Although some tables in the Form CO report value for H3G relative to the […] plan.

1333 VimpelCom internal documents, […].

1334 VimpelCom internal documents, […].

1335 VimpelCom internal documents, […]

1336 VimpelCom internal documents, […]

1337 VimpelCom internal documents, […].

1338 VimpelCom internal documents, […].

1339 VimpelCom internal documents, […].

(1478) Table 38 below compares WIND's […] LTE roll-out plan (the one presented in the Form CO) with a plan developed at a later stage […]. The table reports the cumulative figures for the number of sites deployed (by spectrum frequency) and the expected coverage. In terms of number of sites the Commission notes that in a matter of […] the LTE plans of WIND had changed significantly. […].

(1479) Consequently, also the coverage increases significantly between the two plans. […].

Table 38: Comparison of […] and […] LTE roll-out plan (cumulative figures) and coverage

LTE plan […] (Form CO)	**2014**	**2015**	**2016**	**2017**	**2018**	**2019**	**2020**
4G 800 MHz	[…]	[…]	[…]	[…]	[…]	[…]	n.a.
4G 1800 MHz*				[…]	[…]	[…]	n.a.
4G 2600 MHz**			[…]	[…]	[…]	[…]	n.a.
LTE sites	[…]	[…]	[…]	[…]	[…]	[…]	n.a.
4G outdoor coverage		[…]	[…]	[…]	[…]	[…]	n.a.
4G indoor coverage		[…]	[…]	[…]	[…]	[…]	n.a.
LTE plan […]	**2014**	**2015**	**2016**	**2017**	**2018**	**2019**	**2020**
4G 800 MHz	n.a.	[…]	[…]	[…]	[…]	[…]	[…]
4G 1800 MHz*				[…]	[…]	[…]	[…]
4G 2600 MHz**							[…]***
LTE sites	n.a.	[…]	[…]	[…]	[…]	[…]	[…]
4G outdoor coverage		[…]	[…]	[…]	[…]	[…]	[…]
* […]; ** […] *** […]							

Source: […] *plan, Form CO, Table 59 and Table 65.* […] *plan* […].

(1480) The Parties claim that the figures reported in the […] plans should be considered as working documents not representing WIND's business plan at the time or at later dates.[1340] The Commission considers that this claim is contradicted by the numerous and several LTE strategy discussions that followed during […]. All the reviewed plans and budget documents show a significant […].[…].[1341][…].[1342][…][1343][…].[1344][…].

(1481) Further, the Commission considers that there is evidence that the revision of the LTE coverage plans at the end of […] could be related to the Transaction. The review of the internal documents shows that […].[1345] Hence, the Commission considers that it is likely that WIND's standalone plans for LTE coverage absent the JV would have

1340 WIND's reply on 10 May 2016 to the clarification questions of the Commission on the first reply to the Commission's RFI n. 42 dated 20 April 2016.
1341 Annex 3.3, slide 3, of the reply to the Commission's RFI n. 59 of 18 May 2016.
1342 Annex 3.2, slide 11 and 23, of the reply to the Commission's RFI n. 59 of 18 May 2016.
1343 Annex 3.4, slide 3, of the reply to the Commission's RFI n. 59 of 18 May 2016.
1344 Annex 3.5, slide 2, of the reply to the Commission's RFI n. 59 of 18 May 2016.
1345 VimpelCom internal documents, […].

been higher than […] plan presented in the Form CO, as indicated by […]. The evidence also indicates that the latest coverage projections indicated in WIND's internal documents are likely to be biased downward as to preserve the value of the synergies from network integration, and therefore also underestimates WIND's likely 4G coverage absent the JV.

H3G's LTE coverage

(1482) The Commission has similar doubts related to the presented standalone plans of H3G. […].[1346] […]. Nevertheless, the Commission observes that the H3G's network plans used for the synergy assessment were prepared after the announcement of the JV and might therefore be biased […].

LTE indoor coverage

(1483) After the review of the WIND's and H3G's internal documents, the Commission has also doubts that the Parties themselves consider indoor coverage as a relevant metric for the Italian market. Moreover, the Commission has specific doubts on the verifiability of the LTE indoor coverage metric. As discussed above, the Parties' model relates the benefits to consumers to the improvement in LTE indoor coverage. However, the review of the internal documents show that […][1347] […].[1348]

(1484) In general, […],[1349] the LTE indoor coverage metrics is only rarely communicated to the public by the MNOs active in Italy and at most WIND and H3G have to resort to estimates to approximate the expected LTE indoor coverage of their competitors. For this reason the Commission considers that the LTE indoor coverage is not a metric used by the MNOs active in Italy to signal their quality and to attract customers, if anything competition between MNOs involves the comparison of LTE outdoor coverage.

LTE Speed

(1485) The other metric used by the Parties to identify benefits to consumers from the improved network relates to LTE speed. In their assessment the Parties assume that the LTE speed of H3G and WIND […].

(1486) The Commission's investigation indicates that this assumption is not justified. The Commission notes that in the Form CO the Parties have indicated that the theoretical speed of WIND will be […].

(1487) The review of the internal documents shows that […] [1350]. […].

(1488) […] [1351] […].

(1489) At the same time H3G's own business plan for the period […].[1352] […].

(1490) For the above reasons the Commission considers that the specific levels for the increment in LTE indoor coverage and speed, on which the Parties base their quantification of the benefit to consumers from network improvement (as set out in

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1346 H3G's reply to the Commission's RFI n. 56 dated 3 May 2016.

1347 For what concerns WIND, reference can be made to the […]documents discussed at footnote 1341, 1342, 1343, and 1344.

1348 For instance reference is made to LTE indoor coverage in the […].

1349 WIND's reply to the Commission's RFI n. 62 of 23 May 2016 question 6 [ID 1709]; H3G's reply to the Commission's RFI n. 63 of 23 May 2016 question 6 [ID 1711].

1350 Annex 12.4.13 to the Form CO, slide 2.

1351 Annex 3.6, slide 3, of the reply to the Commission's RFI n. 59 of 18 May 2016.

1352 H3G's business plan […].

the Parties' Merger Simulation study), have not been verified to the requisite standard.

ii. Quantification of the benefits to consumers

(1491) As explained in Section 7.5.4.1, the Parties' Merger Simulation study estimates the impact of price and quality effects arising from the Transaction on consumer welfare.

(1492) Based on the results of the Parties' Merger Simulation, the Parties conclude that the pro-competitive effects of the Transaction outweigh its anti-competitive effects as JV will increase consumer welfare in the Italian mobile telecom market.

(1493) The Commission, however, considers that the submitted study suffers from a number of shortcomings. In particular the Commission has doubts that the online survey used in the Parties' Merger Simulation (the "Parties' survey") is sufficiently representative of the target population (in this case the Italian population).

(1494) The Commission notes that the Parties' survey was designed to estimate and disentangle the valuations and the willingness to pay of the average Italian customer over a number of tariff characteristics. For this purpose, it is important for the survey sample interviewed to be representative of the Italian population.

(1495) The Parties' survey was conducted by a survey company GfK, which used the online panel from the market research company Toluna. Toluna's Italian online panel includes 226,000 individuals recruited through means of web-banners, website referrals, pay-per-click, natural search optimization, affiliate marketing, email and online public relations activities.[1353] Panellists are compensated in the form of points which can be used to redeem cash, vouchers, lottery tickets, etc.[1354]

(1496) Online panels, however, run the risk (as it is explained below) of bearing a bias and of not being representative of the target population, in particular if the target population is the overall national population, as in the case of the Parties' survey. This is one of the reasons for which, the Commission preferred to perform a survey through mobile telephone to assess the closeness of competition in the Italian mobile telecom market as opposed to an online survey (see Annex A, Section 3.2.1).

(1497) The Commission reviewed the academic literature on online surveys and online panels to gather insights on possible biases stemming from this survey mode and applicable to the Parties' survey. The Commission notes that in 2008 the American Association for Public Opinion Research ("AAPOR") established a task force to review the state-of-the-art empirical studies on online panels and provide key information on the quality and on possible uses of online panels. The study of Baker et al. (2010)[1355] is the result of the task force's research (the "AAPOR Report"), and the Commission has used the AAPOR Report for guidance in its literature review.

(1498) Overall, although the literature identifies some benefits of online surveys, it appears that the academic literature views negatively the use of online panels to make inferences on the population of interest (particularly if the target population is the overall national population). Limitations appear more severe in the family of online panels that the AAPOR Report refers to as "non-probability online panels" (see recital (1501)). Indeed, the AAPOR Report concludes that "*[r]esearchers should*

1353 See Question 8 in the Response to RFI 57 of 4 May 2016, and Toluna Esomar 28, page 2 [ID 2005].

1354 See Question 8 in the Response to RFI 57 of 4 May 2016.

1355 Baker et al (2010). Research synthesis AAPOR report on online panels. *Public Opinion Quarterly*, *74*(4), 711-781 [ID 1997].

avoid nonprobability online panels when one of the research objectives is to accurately estimate population values".[1356]

(1499) Following the academic survey literature, the Commission identified three main issues relating the Parties' survey: under-coverage, unrepresentativeness and shortcomings in the Parties' survey questions.

(1500) First, the under-coverage issue is generally common in surveys using online panels and relates to the requirement of having an Internet connection to join the panel and complete surveys. If a significant percentage of the population does not have access to or does not use Internet, the online panel (or a random sample of it) will not be representative of the country population because at least the part of the population without Internet is not represented. The under-coverage issue appears to be particularly relevant in Italy, where the Internet penetration and Internet usage is particularly low. For example, in 2015 the percentage of individuals who used the Internet in the previous 3 months is 66% in Italy.[1357] Approximately one third of the Italian population does not have access to or does not use regularly the Internet. Hence, one third of the Italian population is not represented in the Parties' survey.[1358]

(1501) Second, the Commission considers that the online panel used by the Parties' survey falls in the category of non-probability online panels and, hence, is likely to be unrepresentative of the overall Italian population. The survey literature defines non-probability online panels (also called "opt-in online panels" or "self-selective online panels") those panels in which the recruitment stage does not follow a probability approach. Essentially, in non-probability online panels members are recruited via web banners, emails or other forms of advertising on the Internet by an opt-in process. Due to this opt-in process, members in non-probability online panels self-select themselves at the recruitment stage, making the panel unrepresentative of the overall population.[1359]

(1502) The Commission finds that the overall view of the survey literature towards the use of non-probability panels is negative, and the AAPOR Report itself concludes that non-probability online panels should not be used to study the national population. Several papers compared the results of surveys using probability modes (face-to-face, telephone or online) with surveys using non-probability online panels, and found significant differences in the results between the two modes. The survey literature appears to agree that such differences should be attributed to the self-selection of the panellists in non-probability online panels, which makes the sample interviewed not representative of the overall population.[1360]

1356 Baker et al. (2010), page 714 [ID 1997].

1357 Source: Eurostat [ID 2003].

1358 Moreover, researchers argued that not having Internet might be correlated also with other demographic and non-demographic variables such as age or being part of an ethnic minority. The coverage issues then becomes more severe because part of the target population is not represented or is misrepresented under several dimensions. See, for example, Bethlehem, J. (2010). Selection bias in web surveys. *International Statistical Review, 78*(2), 161-188 [ID 1999].

1359 As opposed to non-probability panels, probability panels choose their members randomly across the population, using for instance the random-digit-dial method that is commonly used in telephone survey.

1360 See, for example, Vonk et al (2006). The effects of panel recruitment and management on research results, a study among 19 online panels, *ESOMAR Publication Services, 317*, 79-99 [ID 2006] Duffy et al. (2005) Comparing data from online and face-to-face surveys, *International Journal of Market Research, 47*(6), 615 [ID 2001] Yeager et al. (2011) Comparing the accuracy of RDD telephone surveys and internet surveys conducted with probability and non-probability samples, *Public opinion quarterly*. [ID 2008].

(1503) Third, the Commission considers that the questionnaire of the Parties' survey had a number of shortcomings that may have affected the results. In particular, neither in the questions nor in the explanatory notes the Parties' survey indicated to the panellists that even in the absence of 4G coverage they would have had full 3G coverage, allowing the use of the mobile phones for calls, send SMS and download data. Therefore, it appears that the Parties' survey did not place the panellists in the correct counterfactual in order to properly disentangle their valuation of 4G coverage and speed. Moreover, the Parties' survey did not ask the panellists about their knowledge of 4G technology. This information could have been used as a first approximation of the panellists' valuation. In addition, the Parties' survey presented to respondents a number of comparisons between 4G and 3G speed which, although truthful, may have artificially increased the panellists stated valuation towards 4G.

(1504) Based on the above, the Commission considers that the Parties' survey suffers from a number of shortcomings which are likely to severely affects the results of the Parties' Merger Simulation study.

iii. <u>Conclusion on verifiability of improved network efficiencies</u>

(1505) The Commission concludes that, based on the information provided by the Parties, there is no sufficient evidence to verify the claimed increase in LTE coverage and speed on which the Parties base their estimation of the benefit to consumers stemming from the improved network of the JV. This applies, in particular, to […] which appear to be significantly underestimated in the efficiency claims made by the Parties. The Commission also considers that the quantification of the benefits to consumers from the alleged improvement in network quality suffers from a number of methodological shortcomings due to the design of the online survey used by the Parties. Nonetheless, the Commission considers that it is not necessary to conclude on the verifiability of the alleged network improvement, as in any case the merger specificity condition is not met as explained in the following.

(1506) Further the Commission considers that the claim that the JV will improve consumer welfare through the offering of better quality related to the 2G and 3G networks has not been substantiated to the required standard, as the Parties' submissions only estimated the benefits to consumers derived from the improved LTE networks. In this respect the Commission notes that the improvements in the 3G network would be in any case limited […].[1361] […]. Moreover, H3G has no customers using exclusively the 2G technology (as it does not offer it on a standalone basis) and in any case the quality improvement in LTE and 3G would imply that less and less customers would use 2G services and benefit from the alleged and not verifiable improvements. On this basis, the Commission concludes that the verifiability criterion is not met for this claim. As the verifiability condition is not met, the Commission considers that it is not necessary to carry out a merger specificity assessment in the following section.

c) Merger specificity

(1507) Accordingly to the Horizontal Merger Guidelines (paragraph 85) efficiencies are relevant for the balancing of the anticompetitive effects when they cannot be achieved to a similar extent by less anticompetitive alternatives and when they are a

[1361] The indoor and outdoor coverage for WIND is estimated in, respectively, […] and […] For H3G the coverage would amount, respectively, to […] and […]. As a comparison, the JV is expected to reach indoor coverage of […] and outdoor coverage of […] (Table 61, Form CO, Section 6).

direct consequence of the concentration. The same paragraph of the guidelines continue as following: "*It is for the merging parties to provide in due time all the relevant information necessary to demonstrate that there are no less anticompetitive, realistic and attainable alternatives of a non-concentrative nature (e.g. a licensing agreement, or a cooperative joint venture) or of a concentrative nature (e.g. a concentrative joint venture, or a differently structured merger) than the notified merger which preserve the claimed efficiencies"*. Further, in this assessment the Commission is bound to consider only those alternatives that are *"reasonably practical in the business situation faced by the merging parties having regard to established business practices in the industry concerned"*.

(1508) The Commission considers that network sharing agreements (as defined in recital (104) and in particular those of the forms discussed below) are relevant for the assessment of the Transaction, as they could constitute less anti-competitive alternatives to achieve similar efficiencies. In this respect, the fact that the Parties have entered into the Transaction in itself does not exclude that network sharing is a realistic and attainable alternative to the proposed transaction for achieving the claimed efficiencies.

(1509) Further, the Commission considers that network sharing agreements are widespread in markets for mobile telecommunications services within the European Union and do not involve particularly insurmountable obstacle.

(1510) […].

(1511) Accordingly, the Commission in the following recitals analyses whether a network sharing agreement would constitute a reasonably practical alternative to the Transaction leading to similar efficiencies with a less anti-competitive outcome.

i. NSA is a realistic alternative and an established business practice

(1512) The Commission considers that it is undisputable that network sharing agreements constitute common business practice in the telecommunications industry and have been implemented successfully in a number of Member States.

(1513) In 2014 the Commission, in the context of a another case, conducted a market investigation on the type of network sharing agreements in place in Europe and concluded the following: "*Based on available information, it appears that in thirteen Member States there are passive network sharing agreements*[1362] *and in ten Member States there are active network sharing agreements and spectrum sharing agreements or extensive roaming sharing agreements.*[1363] *In particular in Sweden, the joint venture Net4Mobility was created between Telenor and Tele2 in order to operate a single 2G and 4G network with spectrum sharing. This joint entity acquired 2 x 10 MHz spectrum in the 2011 spectrum auction for 800 MHz spectrum. In Denmark, a spectrum sharing agreement, which cover all technologies, has been concluded between Telia Denmark and Telenor*."[1364] This evidence shows that network sharing agreements constitute a common business practice in the telecommunication industry.

1362 Belgium, Germany, Denmark, Spain, France, Ireland, Italy, the Netherlands, Poland, Portugal, Romania, Sweden and the United Kingdom.

1363 Austria, Denmark, Spain, France, Ireland, the Netherlands, Portugal, Romania, Sweden and the United Kingdom.

1364 Commission's decision of 2 July 2016 in case M.7018 – Telefonica Deutschland/E-Plus, paragraph 1160.

(1514) The Commission considers that the current situation would not be materially different to the one pictured in 2014. Also, the Commission found evidence, in the internal documents, of […]. [1365] […].

(1515) Moreover, the Parties of the JV belongs to groups that are themselves part of network sharing agreements in other national markets and, […].[1366]

(1516) It is the Commission's view that this evidence would confirm that network sharing agreements are common business practices in the mobile telecom industry.

NSAs involving the CK Hutchison Group

(1517) As reported by the Parties, the CK Hutchison Group has network sharing agreements in place in Australia, Hong Kong, Ireland, Sweden and the United Kingdom. [1367] These agreements take different forms from passive sharing, to active sharing with or without sharing of spectrum.

Australia

(1518) Prior to 2009 the CKHH Group owned the mobile network Hutchison 3G Australia (H3GA). In 2009, CKHH and Vodafone merged their Australian mobile operations to form a joint venture, Vodafone Hutchison Australia (VHA). H3GA and Vodafone, prior to 2009, and VHA since 2009, have all had network sharing agreements.

(1519) H3GA and Telstra concluded an agreement in 2004 to share a 3G network. The agreement gave Telstra access to H3GA's established 3G network and H3GA access to Telstra's better coverage and spectrum holdings as well as a way to share roll-out costs. The agreement was for active network sharing with an agent, 3GIS, owned 50/ 50 by H3GA and Telstra, appointed to manage the network. Costs were also shared on a 50/ 50 basis.

(1520) Vodafone had also concluded [a combination] active [and passive] network sharing agreement in 2004, [which was amended over time to become an exclusively passive network sharing agreement]. When CKHH and Vodafone merged their Australian business in 2009 to form VHA, the newly merged company wanted to retain only one of the network sharing agreements. VHA decided to terminate the network sharing with Telstra and continue with the one with Optus.

(1521) VHA closed the 3GIS network at the end of 2011. Following that, in 2012, VHA negotiated an extension to the network sharing with Optus. The 2012 agreement was for passive network sharing only but supporting all spectrum in the 700 MHz to 2600 MHz spectrum bands and for all technologies (2G, 3G and 4G). The 2012 agreement with Optus is still in place.

Hong Kong

(1522) In Hong Kong, CKHH Group operates 2G, 3G and 4G mobile networks under the Three Hong Kong (3HK) brand.

(1523) On 16 December 2008, 3HK entered into a joint venture agreement with Hong Kong Telecommunications (HKT) for the purpose of acquiring 2600 MHz spectrum and deploying a shared LTE network using that spectrum.

[1365] VimpelCom internal documents, […].
[1366] For instance: see VimpelCom internal documents, […].
[1367] These agreements are described in the Form CO, Section 7, paragraph 381.

(1524) The Hong Kong telecommunications regulator, OFTA, had announced the intention to auction 2300 MHz and 2600 MHz spectrum on a technology neutral basis. Although the spectrum was technology neutral it was suitable for LTE services. At the time, LTE was still in its infancy and there was material risk around the available of network equipment and devices. Therefore, 3HK decided to enter into a joint venture with HKT to reduce investment risk.

(1525) The agreement is for active network sharing of an LTE network using 2600 MHz spectrum. The spectrum is held by a joint venture entity, GBL, which acquired 2 x 20 MHz of 2600 MHz spectrum for the use of the partners. 3HK and HKT provide the sites on which GBL deploys its network equipment and spectrum. Each of 3HK and HKT has a network access contract with GBL.

(1526) 3HK and HKT each have their own core network and backhaul. […].

(1527) 3HK also refarmed 1800 MHz to provide LTE and acquired 2300 MHz TDD in 2012 for LTE services. This is entirely separate from the GBL shared network. […] of 3HK's LTE data traffic is carried by GBL and the other […] by its own LTE network.

Ireland

(1528) In April 2011 O2 Ireland and Eircom entered into an […]sharing agreement (Mosaic Agreement) encompassing the sharing of […].

(1529) […].

(1530) Pursuant to the commitments made to the European Commission in Hutchison 3G UK/Telefónica Ireland, Three (CKHH's telecoms business in Ireland) […].

Sweden

(1531) In Sweden, CKHH has a 60% interest in Hi3G, which operates 3G and 4G mobile networks.

(1532) In 2001, Hi3G acquired 2100 MHz for 3G services by beauty contest. In 2001, Hi3G, Europolitan and Orange agreed to construct a shared 3G network in the rural parts of Sweden with a view to meeting the roll-out obligations in the 2100 MHz licences. The three parties formed a joint venture entity (3GIS) to construct and maintain the shared infrastructure. Subsequently, Orange discontinued its business in Sweden and Europolitan was acquired by Vodafone, whose Swedish operation was itself acquired by Telenor. Therefore, the joint venture parties are now Hi3G and Telenor. […] between Hi3G and Telenor in July 2013. […].

(1533) 3GIS provides the sites and the radio access network in areas covering approximately […] of the population. Hi3G and Telenor do not use Hi3G for the […] largest cities (which together make up approximately […] of Sweden's population). […].

(1534) 3GIS is funded […] by Hi3G and Telenor. Hi3G and Telenor each have a network access agreement with 3GIS. […].

(1535) […].

(1536) […].

(1537) While Telenor remains committed to the current 3G network sharing Hi3G (which would in any event be very difficult to unwind) it has entered into a separate network sharing agreement with Tele2 to roll-out its LTE network. In Sweden, the other mobile operators, TeliaSonera and Tele2, similarly formed a joint venture, Sunad, to roll-out their 3G network.

United Kingdom

(1538) Three, CKHH's United Kingdom telecoms operations, entered into a 50/50 joint venture with T- Mobile in 2007 named Mobile Broadband Network Limited (MBNL). Then, in 2010, T-Mobile merged with Orange to become Everything Everywhere (EE) […]. The agreement governing MBNL continues in force until […]. MBNL provides a shared site portfolio which supports both shared (3G) and non-shared (2G/3G/4G) technologies used by Three and EE.

(1539) MBNL is comprised of a site share on the MBNL grid of approximately […] sites (Shared Grid). These sites can be used for either agreed joint purposes such as 3G or for unilateral purposes such as 2G, 4G and 5G. The parties have also agreed on the active sharing of 3G technology, including 3G RAN equipment and 3G related software, access transmission and interconnection links (Shared 3G RAN). Three has not initiated any discussions with EE regarding moving to an active sharing arrangement with 4G (or 5G).

(1540) The MBNL arrangements are national in scope. MBNL does not involve the sharing of the parties' core network elements that support end user services (such as mobile switching centres, home location registers and service platforms). The parties do not share their individual spectrum frequencies and traffic is fully separated. The arrangements do not cover, among other things, the active elements of EE's 2G network and the 4G networks of both parties.

(1541) The costs of the Shared Grid and the Shared 3G RAN are apportioned between the parties but in general 3G network costs are shared equally (other than costs that are capacity driven which are generally apportioned based on usage).

(1542) There is no active RAN share for 2G or 4G technology, and the majority of 3G sites are passively shared. Indeed, 83% of Three's traffic is served by sites which are passively shared.

NSAs involving VimpelCom

(1543) VimpelCom submitted to the Commission that it has only partial visibility of its subsidiaries' local passive network sharing arrangements but also submitted that it was aware of two active network sharing arrangements.[1368]

(1544) The first is the deal that was signed in December 2014 between VimpelCom's PJSC (Beeline Russia) and MTS. The agreement covers the roll out of LTE in […] Russia. VimpelCom estimates that the agreement provides both companies with individual saving of up to […] OPEX and CAPEX and allows both companies to increase the speed of their network roll-out while continuing to provide a high level of network quality to all their customers. […].

(1545) The Commission notes that this agreement was further expanded in December 2015 with the sharing of the 2,600 MHz LTE frequencies in 20 of the 36 regions of Russia that were covered by the original 2014 agreement.[1369]

(1546) VimpelCom also submits that another agreement is currently expected in Russia between VimpelCom's PJSC (Beeline Russia) and Megafon. The deal is expected to be signed by the end of 2015. Like the MTS deal, it will cover the roll-out of LTE services in […] Russia. VimpelCom estimates that the agreement would provide both

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1368 Form CO, Section 7, paragraph 423.

1369 http://www.vimpelcom.com/Media-center/Press-releases/2015/VimpelCom-Russia-and-MTS-arrange-joint-use-of-radiofrequencies-to-promote-communications-networks/ [ID 2585].

companies with individual savings of up to […] OPEX and CAPEX and allow both companies to increase the speed of their network roll-out while continuing to provide a high level of network quality to all their customers. [1370]

(1547) Beyond the agreements discussed above, the Commission found evidence that network sharing agreements, […].[1371] […].[1372] […].[1373] […][1374]

(1548) The Commission also found that […]:

[…][1375]

(1549) […][1376]

(1550) Previously, in March 2014, Maximo Ibarra the CEO of WIND made a public appeal published on a leading national newspaper ("La Stampa") calling for network sharing agreement in Italy as a way to develop both the mobile LTE network and the fiber network.[1377] […] […].[1378]

(1551) […][1379] […].

[…]

(1552) […].[1380] […]. [1381]

(1553) […]. [1382]

(1554) […] [1383]

(1555) […]. [1384]

(1556) […]. [1385] […].

(1557) […]. [1386] […] [1387] […]. [1388]

(1558) […]. [1389]

(1559) […]. [1390]

(1560) […] [1391] […] [1392]

1370 Reuters in January 2016 reports that the agreement is in place http://www reuters.com/article/russia-mobile-towers-idUSL8N15A2TD. [ID 2590].

1371 VimpelCom internal documents, […]

1372 VimpelCom internal documents, […]

1373 VimpelCom internal documents, […]

1374 VimpelCom internal documents, […]

1375 VimpelCom internal documents, […]

1376 VimpelCom internal documents, […]

1377 VimpelCom internal document, […].

1378 Hutchison internal documents, […].

1379 VimpelCom internal document, […].

1380 Form CO, section 7, paragraph 370-377.

1381 Accordingly to the Parties (Form CO, section 7, paragraph 375 and 379-380) […].

1382 Form CO, section 7, paragraph 371.

1383 Form CO, section 7, paragraph 371.

1384 Form CO, section 3, paragraph 159.

1385 Form CO, section 7, paragraph 371 The Commission found evidence that […].

1386 VimpelCom internal documents, […]

1387 VimpelCom internal documents, […]

1388 VimpelCom internal documents, […].

1389 Form CO, section 3, paragraph 158.

1390 Form CO, section 7, paragraph 376.

1391 Form CO, Annex 12.4.57, slide 2.

(1561) […].[1393] […]. [1394]

(1562) […] [1395] […] [1396]

(1563) In the Commission's view the evidence shows that when the JV discussion between H3G and WIND came to a halt VimpelCom considered the possibility to enter into a network sharing agreements and considered it as a viable alternative to the JV. This proposal was shared with H3G, which showed some general interest […].

(1564) It is the Commission’s view that these repeated contacts between the Parties, and especially the contacts at the end of […] are particularly relevant as to assess whether a network sharing agreement between the Parties would be a realistic and reasonably practicable alternative to the JV. This is so because the Parties during the JV discussions of […] exchanged very detailed information, prepared draft combined business and network plans and synergies assessments. [1397] […].

(1565) […]. [1398] […]. [1399] […] [1400] […]:

> *[…]*
>
> *[…]*

(1566) […] [1401], […] [1402] […] [1403][…] [1404]

(1567) […]:

> *[…]*[1405]

(1568) On the basis of the above evidence the Commission considers that an LTE active sharing agreement between the Parties would represent a realistic and reasonably practicable scenario. In this respect the Commission also notes that the spectrum compensation from H3G to WIND would not represent an impediment. […] [1406] […]

(1569) […][1407] […].

(1570) […] [1408] […] [1409] […]

(1571) However, these further contacts did not lead to a network sharing agreement between the Parties as they eventually agreed on the current Transaction. Indeed, the Commission found evidence that already in […] the consolidation talks between

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1392 Form CO, section 7, paragraph 376.
1393 The first email from […]
1394 VimpelCom internal documents, […]
1395 VimpelCom internal documents, […].
1396 Hutchison internal documents, […].
1397 Hutchison internal documents, […].
1398 Form CO, Annex 12.4.52; Annex 12.4.56; and, Annex 12.4.57.
1399 Form CO, Annex 12.4.57, slide 2.
1400 For example Form CO, Annex 12.4.57, slide 3 and 4.
1401 […]
1402 Form CO, Annex 12.4.57, slide 4.
1403 […].
1404 Form CO, Annex 12.4.57, slide 10 and 19. […].
1405 Form CO, Annex 12.4.57, slide 14.
1406 Parties’ Reply to the Article 6(1)(c) decision, Annex 1, paragraph 2.24. […].
1407 WIND internal Documents, […]
1408 Hutchison internal Documents, […].
1409 Hutchison internal Documents, […].

WIND and H3G had already resumed at the level of the shareholders, […].[1410] This discussions later lead to the exchange […].[1411]

(1572) […][1412] […].

(1573) On the basis of the above evidence, the Commission considers that although the Parties favoured a JV Transaction over the possibility to form a network sharing agreement this does not indicate that the latter form of cooperation would not have been a realistic and reasonably practical alternative under the scenario where the JV would not have been an option (the counterfactual).

(1574) It is the Commission's view that there are clear commercial reasons for why the Parties would prefer a JV (i.e. in-market consolidation) to an alternative network sharing arrangement. In-market consolidation would bring to the Parties also non-network related fixed cost savings which would allow for a faster deleveraging of WIND and the payment of dividends to the JV's shareholders. Whilst network sharing would not bring about these synergies, it is important to note that these non-network related fixed cost savings do not qualify as efficiencies under the Horizontal Merger Guidelines (as discussed above section 7.5.3). Moreover, the Parties expected the JV to lead to additional revenue synergies (or "market repair", see discussion at (1387)). These additional profits to the Parties would not be available under network sharing. For these reasons the Commission considers that the Parties had a clear economic incentive to favour consolidation over other alternatives. This however does not imply that network sharing arrangements would not be commercially viable arrangements in the absence of the merger.

(1575) The Commission also notes that the more recent and extensive network sharing discussions between WIND and H3G date back to the same period when the Parties also discussed and agreed their in-market consolidation plan. Hence, the Commission considers that the fact that a network sharing agreement was not concluded during that period of time is likely to be related to the continuous pursuing of the consolidation strategy.

(1576) […]. […]. Indeed, despite the significant benefits of network sharing, the entering into such an agreement might have then restricted the options and the partner for possible concentrative transactions. For this reason both WIND and H3G had all the incentive to first explore all their in-market concentration opportunities (even with other players) before seriously committing to a network sharing agreement.

(1577) Further, the Commission notes that the fact that one or more types of network sharing agreement are likely to constitute a realistic and reasonably practicable alternative to a given transaction, it does not mean that these agreements are necessarily to be viewed as the situation that would have likely prevailed in the absence of the merger, when assessing the likely anti-competitive effects of the proposed transaction.

(1578) The wording of footnote 108 of the Horizontal Merger Guidelines requires that the alternative solutions considered to assess the merger specificity of the efficiency claims are consistent with the circumstances considered likely to prevail in the absence of the merger, but does not require that these alternatives solutions

[1410] Hutchison internal Documents, […].
[1411] Hutchison internal Documents, […]
[1412] Hutchison internal Documents, […].

correspond to the same circumstances that would have likely prevailed in the absence of the merger.

ii. NSA is commercially attractive, […]

(1579) The above analysis shows that […].

(1580) During its investigation, the Commission also asked the Parties to update their analysis of possible network sharing agreements and to illustrate the cost and revenue synergies they could achieve under these alternative scenarios to the JV. On the basis of the analysis provided by the Parties, this sections discusses the financial viability of a network sharing agreement as an alternative to the JV.

Cost synergies

(1581) In reply to the Commission's request, the Parties provided their updated estimates of cost savings […]of network sharing scenarios […]. The Parties provided two sets of synergy estimates, a first submission before the Commission Article 6(1)(c) Decision [1413] and a second updated submissions with their Reply to the Article 6(1)(c) Decision. [1414]

(1582) The Commission considers that of the presented network sharing solutions the one that would be more realistic is the "LTE active sharing". This corresponds to a potential network sharing agreement […]of LTE spectrum to jointly develop an LTE network […]. [1415]

(1583) […] [1416]

(1584) Although less complex to implement, than a full network sharing scenario, in terms of quality, the LTE active sharing would lead to a high quality LTE shared network as confirmed by the analysis submitted by Parties that says that: "*Under an LTE active sharing agreement, H3G and WIND would share their LTE spectrum, and could in principle deploy an LTE network of a quality comparable to the one expected to be deployed by the Combined Business. There would be no effect on the quality of the 2G and 3G networks*." [1417]

(1585) […].

(1586) […][1418].

(1587) […].[1419]

(1588) […]. [1420] […].[1421]

(1589) […][1422]

(1590) […].

1413 Parties' reply to the Commission's RFI n. 21 of 16 February 2016, response to Question 6.

1414 Annex 2 of the Reply to the Article 6(1)(c) Decision.

1415 Parties' reply to the Commission's RFI n. 21 of 16 February 2016, response to Question 6, section 4.2.

1416 Form CO, Annex 12.4.57, slide 4.

1417 Parties' reply to the Commission's RFI n. 21 of 16 February 2016, response to Question 6, section 4.2.

1418 Parties' reply to the Commission's RFI n. 21 of 16 February 2016 Estimations_of_NSAs_cost_synergies_-_160301.XLSX (sheet "LTE Sharing").

1419 Parties' Reply to the Article 6(1)(c) Decision, Annex 1, paragraph 3.22-3.28.

1420 Parties' reply to the Commission's RFI n. 21 of 16 February 2016, response to Question 6, section 4.3.

1421 Parties' Reply to the Article 6(1)(c) Decision, Annex 1, paragraph 3.22-3.28.

1422 Parties' Reply to the Article 6(1)(c) Decision, Annex 1, paragraph 3.15.

(1591) On the basis of the above assessment the Commission considers that the LTE active sharing option would not be costly for the Parties and would deliver significant cost savings both in the short and in the medium term. Moreover, such an option would provide the Parties with the same high quality network that, the Parties claim, would enable them to compete effectively with TIM and Vodafone.

(1592) The Commission, on the basis of the estimates submitted by the Parties, calculates that the net present value (NPV) of the estimated cost synergies associated with the LTE active sharing option would amount to […]or […]. These estimates are computed using the NPV model that was used by WIND to calculate the NPV of the JV. [1423]

Revenue synergies

(1593) Further, on the basis of the Parties' submissions, the Commission considers that entering into the LTE active sharing agreement would also deliver revenue synergies to WIND and H3G. As mentioned above the Parties claim that on a standalone basis they will not be able to achieve the same network quality that would be possible to achieve with the JV or with LTE active sharing, at least for what concerns LTE quality. […]. On this basis, the Commission considers that the Parties should have aligned incentive to enter into the LTE active sharing as through this agreement, beyond the cost savings described above, they could […] and should expect to generate revenue synergies from the LTE active sharing.

(1594) To account for the positive effect of network sharing on quality, the Commission considers that the assessment of the financial viability of a network sharing scenario should not only consider cost savings but also the incremental revenue that will be generated because of the improved quality.

(1595) At the Commission's request, the Parties have estimated the incremental profits that they could expect to gain due to the quality improvement provided by the implementation of the LTE active sharing (under the assumption that this would lead to same LTE network quality of the JV). These estimates are computed on the basis of the Parties' Merger Simulation study, which was used by the Parties to quantify the consumer benefits of the JV. The same model can also be used to assess the incremental profits that the Parties could expect from the JV or in alternative from the LTE active sharing solution. This implies that the assessment of the commercial benefits from network sharing is consistent with the Parties' own efficiency submission for the JV.

(1596) As discussed below, the Commission considers that the incremental profits from LTE active sharing estimated on the basis of the Parties' Merger Simulation study are sizeable and the Parties have failed to demonstrate that the LTE active sharing would not be a commercially viable alternative. Accounting for the revenue synergies the Parties would then have an additional financial incentive to enter into the LTE active sharing (over and above the cost savings discussed above – recital (1592)).

(1597) For its assessment, the Commission has relied on the Parties' Merger Simulation study to compute the NPV of the estimated annual incremental profits.[1424] For this purpose, the Commission applied the Parties' Merger Simulation study to the period 2016-2019. Table 39 presents the assumptions used by the Commission for the three considered scenarios. The "No Merger" scenario represents the continuation of the

1423 Parties' reply to the Commission's RFI n. 55 of 3 May 2016, Annex 6 [ID 1478].

1424 The NPV is computed following the same assumptions discussed in footnote 1423.

status quo in which H3G and WIND enter neither into the JV nor into the LTE active sharing. For this scenario the Commission uses the same assumptions of the Parties' Merger Simulation study. The LTE coverage figures are taken from the plans submitted by the Parties in the Form CO (the coverage plans dated […] for WIND[1425] and […] for H3G[1426]). Likewise, for LTE speed the scenario uses the average LTE speed reported by the Parties in 2015 and assumed constant over time in the Parties' Merger Simulation study (see Table 37). The "Symmetric No Merger" scenario presents the same status quo but with different (symmetric) assumptions on LTE coverage and speed, reflecting the Commission's doubts on the verifiability of WIND's network plans on a standalone basis (for this scenario WIND is assumed to have the same coverage and speed of H3G). Finally the "NSA" scenario represents the LTE active sharing scenario. In this scenario the LTE coverage is the one assumed by the Parties for the JV […] and the same applies to the LTE speed for 2019. The LTE speed figures for the years 2016-2018 are then obtained through a linear interpolation of the 2019 and 2015 data (on the basis of H3G's figures and symmetrically for WIND and H3G).

Table 39: LTE Coverage and Speed assumptions for Commission's analysis on LTE active sharing

Simulation Scenarios		No Merger				Symmetric No-merger				NSA			
	2015	**2016**	**2017**	**2018**	**2019**	**2016**	**2017**	**2018**	**2019**	**2016**	**2017**	**2018**	**2019**
LTE Coverage													
WIND	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
H3G	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
TIM	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Vodafone	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
PosteMobile		[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Fastweb		[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
LTE Speed													
WIND	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
H3G	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
TIM	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Vodafone	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
PosteMobile	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Fastweb	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]

Source: Commission's assumptions based on the Parties' Merger Simulation study

(1598) Given these assumptions, the Commission has run the model contained in Parties' Merger Simulation study for the years between 2016 and 2019 and has estimated the gross profits related to the provision of the improved quality in each of these years.[1427] The annual gross profits for each scenario are presented in the below Table 40.

1425 Form CO, Section 6, Table 65 and Table 66.

1426 Form CO, Section 6, Table 63 and Table 64. Although some tables in the Form CO report value for H3G relative to the […] plan.

1427 In these simulations, the Commission considers that the MVNO PosteMobile is always hosted on WIND's network and the MVNO Fastweb is always hosted on TIM's network (notably the Parties assumed that Fastweb is hosted by H3G, but as Fastweb is changing hosting operator from H3G to TIM

(1599) Based on the Parties' Merger Simulation study, entering into the LTE active sharing agreement would generate, for the sum of WIND and H3G, […] extra gross profits in years 2016 and […] extra gross profits in year 2019 (respectively a […] and […] increase over the same year without LTE active sharing).

(1600) The NPV of the LTE active sharing is then computed assuming that the 2019 increment in gross profits would apply on a perpetual basis but with zero perpetuity growth.

Table 40: Annual gross profit computations for the Commission's analysis on LTE active sharing

Scenario	No Merger				Symmetric No Merger				NSA			
Year	2016	2017	2018	2019	2016	2017	2018	2019	2016	2017	2018	2019
Annual retail gross profits (million EUR)												
H3G	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
WIND	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Sum of WIND and H3G	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**
TIM	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Vodafone	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
PosteMobile	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Fastweb	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Total Market	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Annual wholesale gross profits (million €)												
H3G												
WIND	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Sum of WIND and H3G	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**
Annual total gross profits (million EUR)	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
H3G	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
WIND	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Sum of WIND and H3G	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**

Source: Commission's calculations based on the Parties' Merger Simulation study

(1601) The analysis of the Commission on the basis of the model submitted by the Parties, and under the flawed hypothesis[1428] that […], estimates the NPV of the LTE active sharing profit synergies (i.e. the incremental profits) in […]. Together with the NPV of the cost synergies due to the LTE active sharing (see recital (1592)) the total NPV would amount to […]. This is a very sizeable economic benefit from network

the Commission considered more appropriate to consider Fastweb already on TIM's network as of 2016, in any case this assumption does not change qualitatively the results). The incremental gross profits from network sharing also include incremental wholesale gross profits earned by Wind on the contract with PosteMobile. To compute the margins and consequently the gross profits the Commission uses the contribution margin as done in the baseline case of the Parties' Merger Simulation Study.

1428 As for the reasons discussed under the verifiability analysis of network improvements.

sharing, suggesting that, on the basis of the Parties' own modelling of the benefits from higher network quality, network sharing would be commercially viable.

(1602) The Commission notes that, according to the results obtained using the Parties' Merger Simulation study[…]. […].

(1603) […]. The Commission estimates, on the basis of the model submitted by the Parties, that the profit synergies for H3G would amount to […]. The total value to H3G, in NPV terms (including cost and profit synergies), would then amount to […] in the hypothesis that WIND and H3G splits 50/50 the cost synergies or would amount to […] under the conservative scenario in which H3G would appropriate only […] of the cost synergies.[1429] At the same time, the financial gains of WIND, estimated with the model of the Parties, would be in excess of […], in NPV terms (including cost and profit synergies).

(1604) […].

(1605) Given these significant gains, the Commission considers, on the basis of the Parties' Merger Simulation study, that H3G and WIND would have the incentive to overcome the main obstacles that allegedly prevented them from entering into a NSA […]. […]

(1606) On this basis, the Commission considers that it can be reasonably expected that the Parties would have been able to successfully implement a network sharing agreement, as an alternative to the JV. Negotiations around the network sharing agreement would appear to be no more complex than the negotiations carried out by the Parties to enter into the JV. For instance, in order to enter into the Proposed Transaction […]. By the same token, the Commission considers that given the high financial benefits at stake the Parties would have likely found also an agreement to enter into a viable network sharing like LTE active sharing, in a counterfactual scenario without the JV. In this respect, it should also be noted that […].

Alleged impediments to network sharing agreements between WIND and H3G

(1607) The Commission also questions that the Parties would be unlikely to agree on a network sharing agreement due to the incomplete nature of contracts documenting a network sharing agreement and due to some specific features that allegedly characterize the Parties' current circumstances, like […]. These factors, the Parties argue, would lead to disagreements and opportunistic behaviour undermining the viability of a network sharing agreement.

(1608) The Commission considers that the arguments put forward by the Parties have not been sufficiently substantiated and ultimately do not show that a network sharing agreement between the Parties is not a realistic alternative. The numerous network sharing agreements that have been concluded in Europe and in the World show that the incomplete nature of contracts is not an obstacle to the closing of these cooperation agreements and that mitigating factors can be devised to avoid disagreements or opportunistic behaviour.

(1609) For example, the Commission notes that VimpelCom's press release presenting the network sharing agreement with MTS in Russia reported the following: *"Additionally, the agreement does not limit strategic development and investment opportunities for either party, allowing both to pursue the construction of base*

[1429] Given the submitted LTE standalone CAPEX plans the share of the cost synergies attributable to H3G would amount to […].

stations to provide additional coverage for their respective customers." [1430] […]. [1431] On this basis, the Commission considers that […] it is possible to devise mitigating solution to possible hold-up or disagreement problems. Therefore, these problems would not pose an obstacle to possible network sharing agreements.

(1610) Also, it should be noted that in Italy there are no network sharing agreements currently in place. Therefore, a potential network sharing between H3G and WIND would not interfere with pre-existing arrangements or commitments with other thirds parties.

(1611) Further […], the Commission considers that spectrum imbalances do not represents an obstacle to entering into network sharing agreements. A spectrum imbalance might (or might not) require a side payment as a condition to enter into a network sharing agreement but this would represent a one-off payment that would then resolve, on a long term basis, the spectrum imbalance. An example of network sharing agreement with spectrum imbalance is the agreement reached, in 2002, by Tele2 Sverige AB and TeliaSonera AB (that was not awarded any 3G licence) for the purpose of building, owning and operating a 3G network.

(1612) The Commission considers that also the claim that H3G and WIND have different business models and caters different sets of consumers is not convincing and at odds with the claim that both WIND and H3G […]. […].

(1613) […].[1432] […].

(1614) In the Commission's view also the argument that […] would discourage a possible network sharing agreement is not convincing. The Commission, as explained above, considers that the opposite might hold true. It would be the expected cost savings and revenue synergies that should provide a higher incentive […] to enter into a network sharing agreements.

(1615) In conclusion, the Commission considers that there is a fundamental inconsistency in the Parties' argument that only the JV would lead to significant network improvements which bring substantial benefits to consumers, whilst network sharing agreements are not commercially viable. The above recitals show that the Parties have not provided sufficient evidence to support the claim that a network sharing agreement between WIND and H3G would not be commercially viable, especially if the LTE active sharing option is considered. Moreover, the Parties' own submission and methodology on the quantification of consumer benefits of network improvements does not indicates that a network sharing agreement like LTE active sharing would not be commercially attractive as an alternative to the merger.

iii. <u>LTE active sharing would yield similar efficiencies to those of the JV</u>

(1616) As already discussed above, recital (1584), the LTE active sharing scenario submitted by the Parties would lead to the same LTE network improvements, in terms of quality, of the JV. This is confirmed by the analysis submitted by the Parties that reads as follows: "Under an LTE active sharing agreement, H3G and WIND would share their LTE spectrum, and could in principle deploy an LTE network of a quality comparable to the one expected to be deployed by the Combined Business.

[1430] VimpelCom internal documents, "VimpelCom Russia and MTS parnter to develop and operate 4G/LTE networks in Russia", dated 19 December 2014 [File name: RFI21W_V_0024867.doc], [ID 1000-19050].

[1431] VimpelCom internal documents, […].

[1432] Parties' Reply to the Article 6(1)(c) Decision, Annex 1, paragraph 2.34.

There would be no effect on the quality of the 2G and 3G networks." [1433] This means that under the submitted LTE active sharing plan, the Parties would achieve the same LTE coverage and the same network characteristics, hence LTE speed, envisaged for the Combined Business.

(1617) That the LTE active sharing scenario would lead to a high quality network is also confirmed […].[1434]

(1618) As discussed in section 7.5.4.2.b, the Parties have substantiated the network efficiencies from the JV (including the potential benefits to consumers) only in relation to the improvement in LTE coverage and LTE speed. On this basis, given that LTE active sharing leads to the same LTE speed and coverage improvement it is the Commission's view to consider that also LTE active sharing would lead to the same or similar efficiencies that have been substantiated for the JV.

(1619) The Parties submit that LTE active sharing, differently from the JV, would not lead to the improvement of the 2G and 3G network of the Parties and would not deliver the consequent benefits to consumers related to these improvements. On this aspect, the Commission notes that the Parties have not substantiated the benefits that consumers would derive from the improvement of the 2G and 3G network delivered by the JV. The Commission is not in the position to account for these efficiencies in its assessment, given that they are not verified and that their benefits to consumers have not been sufficiently established. Any possible efficiency from the improvement of the JV's 2G and 3G network are therefore not relevant to the assessment of merger specificity in relation to improvements in the overall quality of the JV's network.

(1620) The Commission, as reported in recital (1574), notes that LTE active sharing would not allow the Parties to capture any synergies that relate to non-network costs, otherwise captured through the JV. However, the significant majority of these synergies relate to fixed cost savings. As set out in section 7.5.3, the Commission considers that these synergies do not qualify as efficiencies under the Horizontal Merger Guidelines. The only cost synergies that qualify as efficiencies are variable cost savings related to lower distribution costs in the indirect channel, the reduction in customer care cost due to the stronger negotiation power with contractors and the termination of H3G's 2G roaming, quantified in the range between EUR 10-30 million, see section 7.5.2. The Commission notes that these cost savings are relatively minor.[1435] The Commission therefore considers that LTE active sharing would allow the Parties to capture the significant majority of any overall efficiencies associated with the JV (including efficiencies not related to higher quality of the LTE network). The Commission also notes that, in line with the General Court's judgment

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1433 Parties' reply to the Commission's RFI n. 21 of 16 February 2016, response to Question 6, section 4.2.

1434 WIND internal documents,[…].

1435 Following the Parties' Merger Simulation study (slide 42 of the Presentation of 29 April 2016), the quality improvement of the JV would determine a change in consumer surplus from 66.7 to 68.3. The additional variable cost reduction would imply a further gain of 0.1 in consumer welfare. This implies that the model of the Parties estimates that […] of consumer welfare gain is explained by quality improvement and only […] is explained by variable cost reduction. Further, the Commission, as discussed in section 7.5.2, only accepts between 6% and 20% of the claimed variable cost savings, hence the impact of variable cost savings on consumer welfare would be even significantly lower than the […] estimated by the Parties' Merger Simulation study.

in *Deutsche Börse*, it is entitled to perform an assessment of merger specificity only in relation to a part of the overall efficiency claims made by merging parties.[1436]

(1621) In conclusion, the Commission considers that the Parties have not provided sufficient evidence to show that LTE active sharing would not yield to similar efficiencies as the JV. On the contrary, the information reviewed by the Commission indicates that there are realistic and practical network sharing options (LTE active sharing) which would yield the same levels of LTE quality as the JV and hence the same level of consumer benefits from higher network quality.

iv. <u>LTE active sharing is a less anticompetitive alternative</u>

(1622) The Commission considers that any network sharing agreements, including a possible spectrum sharing, would not be restrictive of competition by object, but would require an assessment under Article 101 of the Treaty of the likely anti-competitive and pro-competitive effects that such agreement would generate in the market concerned and of the actual conditions in which it functions. [1437]

(1623) However, the Commission considers that network sharing agreements (including LTE active sharing) are less anticompetitive alternatives compared to similar transactions that result in a market concentration. This because a network sharing agreement would not give rise to an elimination of price competition at the retail or wholesale level given that each party of the agreement would remain in competition with the other party.

(1624) On this basis the Commission considers that in the present Case the LTE active sharing is therefore a less anticompetitive means to achieve the same network improvement efficiencies claimed by the Parties for the JV. In particular, in the present Case, the network sharing alternative would be less restrictive of competition in terms of non-coordinated effects, as it would preserve the retail and wholesale competition between the Parties. Network sharing would also be less restrictive of competition in terms of coordinated effects, as it would preserve an asymmetric retail market structure, and it would still enable H3G to maintain its position of market disruptor.

(1625) Further, the Commission disagrees with the Parties' claim that network sharing agreements might reduce the incentive to invest in network infrastructure and quality. [1438]

(1626) First, the Commission notes that to the extent that a network sharing agreements leads to a reduction of independent network infrastructure this reduction would be the same as experienced under the alternative of a concentration, with the difference that under network sharing there will be no loss of retail and wholesale competition. The Parties do not claim that under the JV there will be a loss of quality competition (this would also invalidate the Parties main efficiency claim on benefit to consumers), on the contrary the Parties claim that the JV would increase quality competition. The Commission considers that the same would apply to the scenario of LTE active sharing.

1436 Judgment of the General Court of 9 March 2015, T-175/12, *Deutsche Börse AG v Commission*, EU:T:2015:148, paragraphs 281-288.

1437 See Judgment by the General Court of 2 May 2006, T-328/03, *O2 (Germany) v. Commission*, EU:T:2006:116, paragraphs 65 to 71.

1438 Parties' Reply to the Article 6(1)(c) Decision, Annex 1, paragraph 3.63.

(1627) Second, the Commission notes that with network sharing agreement each party could retain the freedom to differentiate its own network by carrying out specific and independent investments (like providing higher capacity in some areas or extending coverage in other areas) while sharing the cost of the main investment.[1439] Hence, network sharing agreements could preserve the incentive to invest and preserve infrastructure competition.

(1628) Third, the Commission notes that international experience on network sharing agreements confirms that there are examples in which network sharing is consistent with high quality and retail competition. For example an OECD report on the Swedish experience on network sharing agreements concludes the following:

"*As a result, extensive network sharing has played a major role in the Swedish mobile telecommunication industry since the turn of the century – a development welcomed by all stakeholders. It is said, for example, to be one of the reasons behind the high coverage of advanced mobile networks, namely almost 100% of 3G services and 99.2% of LTE services by October 2013. It has also contributed to the rapid adoption of mobile broadband, with Sweden's penetration ranked third in the OECD in June 2013, not least because consumers have a greater range of MNOs with comparable network coverage from which to choose.*"[1440]

(1629) At the same time the same report continues by confirming that network sharing agreements and retail competition could be preserved:

"*Despite a relatively wide range of shared network resources that might affect the incentives for different players to compete on the retail market the available evidence suggest the Swedish market has retained a healthy degree of competition. The OECD Communications Outlook 2013 recorded that consumers in Sweden can enjoy competitive prices across a range of baskets relative to peers in other countries. For example, with the consumption of 2GB per month by tablet, Sweden had the third least expensive offers in the OECD area. Smaller usage patterns are similarly placed and this has contributed to the high mobile broadband penetration rate*."

v. Conclusions on merger specificity of the claimed network improvement

(1630) As set out in the above recitals, the Commission considers that network sharing agreements are relevant for the assessment of the proposed transaction as they are likely to constitute a less anti-competitive alternative to the current Transaction and could achieve similar efficiencies. The analysis of the Commission shows that network sharing agreements are realistic and established alternatives, that the Parties belong to groups that have entered into numerous network sharing agreements in other mobile markets and the Parties have considered several times to enter into a network sharing agreement in Italy. Moreover, the evidence submitted by the Parties indicates that entering into an LTE active sharing agreements would bring substantial cost reduction and revenue synergies (computed on the basis of the Parties' Merger Simulation study) preserving some degree of retail competition that would be otherwise lost with the merger. Hence, on the basis of the Parties' own efficiency claims, the Commission considers that the Parties would have an incentive to enter

1439 This possibility is also reported […].

1440 OECD (2014), "Wireless Market Structures and Network Sharing", OECD Digital Economy Papers, No. 243, OECD Publishing, available at: http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DSTI/ICCP/CISP(2014)2/FINAL&docLanguage=En [ID 2611].

into such agreements, and that LTE active sharing would bring the same or similar benefits to consumers that the Parties have claimed for the JV.

d) Pro-competitive effects from network improvements not consistent with market evidence

(1631) The Parties claim that the improved network of the JV would enable the new entity to exert a much higher competitive pressure on the two market leaders. Accordingly, the Parties' Merger Simulation study estimates […]. Due to the assumed higher competition, TIM's gross profit […] and Vodafone's gross profits […].[1441]

(1632) The Commission notes that the results of this theoretical modelling are not consistent with the reviewed internal documents (section 7.2) and the analysis of horizontal coordinated effects (section 7.3.3) by which the Commission concludes that the JV would increase the likelihood that the three remaining MNOs are able to coordinate their behaviour and raise prices in a sustainable way, even without entering into an agreement or resorting to a concerted practice within the meaning of Article 101 of the Treaty.

(1633) For these reasons the Commission has doubts on the verifiability of those estimates and considers that the modelling of the Parties (in the Parties' Merger Simulation study) under-estimates the anti-competitive impact of the merger as it does not account for the likely coordination that could be expected post-merger in this specific case. Further, the Commission considers that even if those pro-competitive effects were to realize they would equally apply also to the discussed LTE active sharing scenario. Therefore, the Commission considers that also the merger specificity hypothesis is not realistic.

7.5.4.3. Conclusion on network improvement synergies

(1634) Based on the above assessment, the Commission concludes that the claimed efficiencies related to network quality improvements due to the better network are not merger specific. Given that the merger specificity condition is not met the Commission does not have to conclude on the benefit to consumer criterion and on the verifiability criterion.

7.5.5. Conclusion on efficiencies

(1635) The Commission concludes that the Parties have failed to demonstrate, based on the framework of the Horizontal Merger Guidelines, that the submitted fixed cost savings and improvements related to the network are merger specific, likely to materialise and able to counter the anti-competitive effects on competition that the Commission considers might otherwise result from the Transaction.

(1636) Further, the Commission concludes that only a part of the claimed variable cost efficiencies would meet the three conditions test of the Horizontal Merger Guidelines. However, the size of those efficiencies is too small to outbalance the likely anti-competitive effect of the JV.

7.6. Compatibility with the internal market

(1637) In the light of the above the Commission has come to the view that the Transaction would significantly impede effective competition in a substantial part of the internal market within the meaning of Article 2 of the Merger Regulation through non-coordinated and co-ordinated effects in the market for retail mobile

[1441] See Table 40.

telecommunications services in Italy (discussed in Sections 7.3.2 and 7.3.3 respectively), as well as non-coordinated effects on the wholesale market for access and call origination on public mobile networks in Italy (discussed in Section 7.4.1).

8. COMMITMENTS

8.1. Analytical framework

(1638) When a concentration raises competition concerns, the merging parties may seek to modify the concentration in order to resolve those competition concerns and thereby obtain clearance for the merger.[1442]

(1639) Under the Merger Regulation, the Commission must show that a concentration would significantly impede effective competition in the internal market, or in a substantial part of it. In contrast, it is for the notifying party/parties to the concentration to propose appropriate commitments.[1443] The Commission only has the power to accept commitments that are deemed capable of rendering the concentration compatible with the internal market so that they will prevent a significant impediment to effective competition in all relevant markets in which competition concerns were identified.[1444]

(1640) The commitments must eliminate the competition concerns entirely and must be comprehensive and effective in all respects. The commitments must also be proportionate to the competition concerns identified.[1445] Furthermore, the commitments must be capable of being implemented effectively within a short period of time as the conditions of competition on the market will not be maintained until the commitments have been fulfilled.[1446]

(1641) The Commission also recalls that the Remedies Notice sets out that: "*commitments which are structural in nature, such as the commitment to sell a business unit, are, as a rule, preferable from the point of view of the Merger Regulation's objective, inasmuch as such commitments prevent, durably, the competition concerns which would be raised by the merger as notified, and do not, moreover, require medium or long-term monitoring measures*."[1447]

(1642) The Remedies Notice further explains that: "*the question of whether a remedy and, more specifically, which type of remedy is suitable to eliminate the competition concerns identified, has to be examined on a case-by-case basis. Nevertheless, a general distinction can be made between divestitures, other structural remedies, such as granting access to key infrastructure or inputs on non-discriminatory terms, and commitments relating to the future behaviour of the merged entity. Divestiture commitments are the best way to eliminate competition concerns resulting from*

[1442] Remedies Notice, paragraph 5.

[1443] Remedies Notice, paragraph 6.

[1444] Remedies Notice, paragraph 9.

[1445] Recital 30 of the Merger Regulation. The General Court set out the requirements of proportionality as follows: "*the principle of proportionality requires measures adopted by Community institutions not to exceed the limits of what is appropriate and necessary in order to attain the objectives pursued; when there is a choice between several appropriate measures recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued*" (Case T-177/04 *easyJet v Commission* [2006] ECR II-1931, paragraph 133).

[1446] Paragraphs 9, 10, 11, 63 and 64 of the Commission Notice on remedies acceptable under the Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (OJ C 267, 22.10.2008, p. 1-27), (the "Remedies Notice").

[1447] See Remedies Notice, paragraph 15.

horizontal overlaps, and may also be the best means of resolving problems resulting from vertical or conglomerate concerns. Other structural commitments may be suitable to resolve all types of concerns if those remedies are equivalent to divestitures in their effects ... Commitments relating to the future behaviour of the merged entity may be acceptable only exceptionally in very specific circumstances."[1448]

(1643) Moreover, the Remedies Notice sets out that: "*divestitures are the best way to eliminate competition concerns resulting from horizontal overlaps, and may also be the best means of resolving problems resulting from vertical or conglomerate concerns*"[1449] and "*are the benchmark for other remedies in terms of effectiveness and efficiency. The Commission therefore may accept other types of commitments, but only in circumstances where the other remedy proposed is at least equivalent in its effects to a divestiture*",[1450] and other structural commitments: "*may be suitable to resolve all types of concerns if those remedies are equivalent to divestitures in their effects" whilst behavioural commitments "may be acceptable only exceptionally in very specific circumstances*".[1451]

(1644) The Commission also recalls that when assessing the remedies proposed by the merging parties, it has the legal duty to ensure that such remedies are effective. Paragraph 13 of the Remedies Notices states that in order for the commitments to remove the competition concerns entirely and be comprehensive and effective, there has to be an effective implementation and ability to monitor the commitments. Whereas divestitures once implemented do not require any further monitoring measures, other types of commitments require effective monitoring mechanisms in order to ensure that their effect is not reduced or even eliminated by the parties. Otherwise such commitments would have to be considered as mere declarations of intentions by the parties and would not amount to any binding obligations, as, due to the lack of effective monitoring mechanisms, any breach of them could not result in the revocation of the decision according to the provision of the Merger Regulation.

(1645) With regard to the divestiture of an on-going business, at paragraph 30, the Remedies Notice specifies that: "*The business to be divested has to be viable as such. Therefore, the resources of a possible or even presumed future purchaser are not taken into account by the Commission at the stage of assessing the remedy. The situation is different if already during the procedure a sale and purchase agreement with a specific purchaser is concluded whose resources can be taken into account at the time of the assessment of the commitment*."

(1646) Based on these principles as well on the principles related to the implementation and effectiveness of all type of commitments set out by paragraphs 13 and 14 of the Remedies Notice, the Commission assessed the Commitments put forward by the Parties in the present case.

8.2. Procedure

(1647) In order to address competition concerns identified by the Commission in its in-depth investigation, the Parties submitted a first set of commitments on 6 June 2016 (the "MNO Commitment"). The Commission launched a market test of the MNO

[1448] See Remedies Notice, paragraphs 16 to 17.
[1449] See Remedies Notice, paragraph 17.
[1450] See Remedies Notice, paragraph 61.
[1451] See Remedies Notice, paragraph 17.

Commitment on 8 June 2016 (the "Market Test"). Questionnaires were sent to: (1) current and potential future providers of mobile telecommunications services in Italy, as well as the MVNO association MVNO Europe; and (2) national telecommunications regulators, including AGCOM. In addition, AGCM as well as the national competition authorities of United Kingdom, Netherlands and Germany provided their views on the MNO Commitment.

(1648) Based on the results of the Market Test, the Commission considered that the MNO Commitment did not eliminate the competition concerns entirely in all markets where concerns were identified, in that they were not comprehensive and effective from all points of view.

(1649) The Commission gave the Parties detailed feedback on the outcome of the Market Test during a state of play meeting on 22 June 2016. In this meeting, the Commission also provided the Parties with its assessment of the MNO Commitment in light of the outcome of the Market Test.

(1650) On 5 July 2016 the Parties submitted revised commitments (the "Revised MNO Commitment"). In parallel, the Parties informed the Commission that they had entered into binding long form agreements on 1 July 2016 comprising: (1) a framework and transfer Agreement; (2) a national roaming services agreement; (3) a RAN sharing agreement; and (4) a co-location agreement (together the "New MNO Agreements") with Iliad S.A. ("Iliad") which they presented as the potential taker of the remedy. The MNO Agreements were subsequently amended and re-executed on 18 July 2016.

(1651) On 18 July 2016, the Parties submitted a further set of commitments (the "Final MNO Commitment"), which are in all material respects identical to the Revised MNO Commitment[1452] therefore the analysis below refers only to the Final MNO Commitment.

8.3. Description of the MNO Commitment

(1652) The MNO Commitment consists of:

(1) A commitment to enter into a divestment agreement (the "Divestment Agreement") relating to the sale of spectrum and sites and the […];

(2) A commitment to offer an option to enter into RAN sharing in the less densely populated areas of Italy (the "RAN Sharing Option");

(3) A commitment to enter into a national roaming agreement for a transitional period (the "National Roaming Agreement"); and

(4) A commitment to offer an option to provide transitional services, such as backhaul, transmission, interconnection, and SIM procurement.

(1653) The Divestment Agreement in turn includes four elements. First, the Divestment Agreement includes a commitment to transfer to a potential remedy taker (the "New MNO") a total of 2x30 MHz of Frequency Division Duplex ("FDD") spectrum (the "Divestment Spectrum"), belonging to different frequency bands, namely:

[1452] The Final MNO Commitment contains three amendments to the Revised MNO Commitment, of which only the first is substantive: (1) introduction of Commission oversight to the any […] (paragraph 7 of the Final MNO Commitment), as discussed further below in recital (1756) (2) deletion of the specification that the possible extension of the co-location agreement would be for […] (paragraph 13(b) of the Final MNO Commitment); and (3) alignment of the language in Annex 2 with the MNO Agreements to refer to the "target" date for the availability of the Revised Sites.

(1) the 2x5MHz spectrum block ([…]) on the 900 MHz frequency licenced to […] until 31 December 2021 and used for 3G technology;

(2) the 2x5MHz spectrum block ([…]) on the 1,800 MHz frequency licenced to […] until […] and used for 2G technology;

(3) the 2x5MHz spectrum block ([…]) on the 1,800 MHz frequency licenced to […] until […] and used for 2G technology;

(4) the 2x5 MHz spectrum block ([…]) on the 2,100 MHz frequency licenced to […] until […] and used for 3G technology; and

(5) the two 2x5MHz spectrum blocks ([…]) on the 2,600 MHz frequency licenced to […] until 31 December 2029 and used for 4G technology.

(1654) Second, the Divestment Agreement includes a commitment to make available to the New MNO up to […] macro access network sites, of which:

(1) […] available for transfer (the "Transfer Sites"); and

(2) […] available for co-location[1453] under the standard inter-operator co-location conditions (the "Co-location Sites" and together with the Transfer sites, the "Divestment Sites").

(1655) The Parties commit to release the Divestment Spectrum and the Divestment Sites on a […] phased basis in accordance with the release plan attached to the MNO Commitment and complete the release by […].[1454]

(1656) Third, the Divestment Agreement includes a commitment whereby the Parties, at the request of the New MNO, shall in the least populated areas of Italy (as defined between the Parties and the New MNO) extend the number of Transfer Sites to include an additional […] sites and the number of Co-location Sites to include an additional […] sites (the "Extended Sites").

(1657) Finally, […].

(1658) As regards the RAN Sharing Option, the Parties commit to offer the New MNO the option to enter into a one-way (non-reciprocal) RAN sharing solution based on a multi-operator radio access network ("MORAN") architecture covering the less densely populated areas (as defined between the Parties and the New MNO). If exercised, the New MNO would gain access to the Parties' active network equipment at the sites (including antennas, base stations, backhaul and radio network controllers) for the deployment of the Divestment Spectrum. The RAN Sharing Option would cover 3G and 4G technology and would be deployed on up to […] sites in the less densely populated areas of Italy, (the "RAN Sharing Sites"). The RAN sharing would be made available for up to […] at commercial conditions to be agreed between the Parties and the New MNO, but in any event covering […] to provide access to the RAN Sharing Sites to the New MNO.

1453 Co-location refers to the practice of locating wireless equipment of different MNOs on the same macro access site.

1454 The [phased] release of spectrum and transfer of rights to the New MNO to use the spectrum will be completed in its entirety by the following dates: (a) in relation to the 900MHz Spectrum by […]; (b) in relation to the 1,800MHz Spectrum (block 1) by […]; (c) in relation to the 1,800MHz Spectrum (block 2) by […]; (d) in relation to the 2,100MHz Spectrum by […]; and (e) in relation to the 2,600MHz Spectrum by […].

(1659) As regards the National Roaming Agreement, the Parties commit to enter into an agreement with the New MNO to provide national roaming services on the network of H3G or WIND, including that of the JV as it is consolidated post-closing of the Transaction, across 2G, 3G, 4G and 5G if and when commercially launched, for an initial term of […], with an optional extension of a […]. The fee structure for both terms will be agreed between the Parties and the New MNO. Under the terms of the National Roaming Agreement, the New MNO will have access to defined amounts of data and voice throughput capacity to be agreed with the Parties. The coverage of the roaming services will be initially national, but will be reduced over time in accordance release of the Divestment Spectrum and Divestment Sites, as described in recital (1655). Finally, for the […] after the commencement of the National Roaming Agreement, the New MNO will not be permitted to provide wholesale services to third parties. After these […], providing wholesale services to third parties will be permitted up to a maximum of […]% of the total roaming capacity used by the New MNO.

8.4. Commission's assessment of the MNO Commitment

8.4.1. Results of the Market Test

(1660) The results of the Market Test were broadly positive on the concept of the MNO Commitment; market participants as well as AGCM, AGCOM and other NCAs considered that in principle the MNO Commitment constituted a structural solution for the competition concerns identified by the Commission with respect to the retail market and, subject to the removal of the wholesale ban included therein, the wholesale market. However, respondents identified a number of shortcomings in each of the elements of the MNO Commitment which needed to be addressed for the MNO Commitment to effectively remove those concerns.

(1661) The results of the Market Test are described in more detail in recitals (1662) to (1693) below.

8.4.1.1. Divestment Agreement

a) Divestment Spectrum

(1662) The responses to the Market Test regarding the Divestment Spectrum were generally negative with the majority of competitors replying to the Market Test considering that the spectrum included in the MNO Commitment would not be sufficient to roll out a 3G[1455] or 4G[1456] network. A negative view was also expressed also by AGCM,[1457] the competition authority of the United Kingdom, the Competition and Markets Authority ("CMA"),[1458] the Swedish Post and Telecom Authority[1459] and the German telecommunications regulator, Bundesnetzagentur.[1460]

(1663) In particular, a number of competitors,[1461] as well as AGCM,[1462] the CMA,[1463] the Swedish Post and Telecom Authority,[1464] and the Bundesnetzagentur,[1465] specifically

[1455] Responses to Questionnaire Q8 Market Test of 8 June 2016, question 5.

[1456] Responses to Questionnaire Q8 Market Test of 8 June 2016, question 6. See in particular PosteMobile Annex to Questionnaire Q8 to Market Test of 8 June 2016, [ID1945].

[1457] AGCM's comments on the MNO Commitment [ID 1949].

[1458] CMA's comments on the MNO Commitment [ID1940].

[1459] Swedish Post and Telecom Authority's response to Questionnaire Q8 to the Market Test of 8 June 2016, question 5 [ID 1910].

[1460] Bundesnetzagentur's response to Questionnaire Q8 to the Market Test of 8 June 2016, question 5 [ID 1977].

[1461] Responses to Questionnaire Q8 to the Market Test of 8 June 2016, question 5.

highlighted that the limited amount of sub-1 GHz would be a constraint in terms of coverage, capacity and the ability to roll out a 4G network. Those respondents noted that this limited amount of sub 1-GHz spectrum could however be overcome by: (1) spectrum refarming; (2) purchasing spectrum in an up-coming 700 MHz auction; or (3) site densification, but that each of these options had a cost implication on the New MNO.[1466] One respondent noted that the Divestment Spectrum does not contain sufficient spectrum currently licenced for 4G.[1467] AGCOM stated however that the frequency portfolio included in the MNO Commitment is a satisfactory starting point for a new entrant and that, despite the limited amount of sub-1 GHz spectrum, an additional 5MHz in the 2,100 or 2,600 MHz bands would be sufficient to ensure the competitiveness of the New MNO.[1468]

(1664) A number of competitors,[1469] as well as AGCM,[1470] the Bundeskartellamt[1471] and the CMA,[1472] also noted that the […] 10MHz of 1,800 MHz spectrum is set to expire in […] and the 10MHz of […] 900 MHz spectrum is set to expire in 2021.[1473]

(1665) AGCM[1474] and AGCOM[1475] both noted that MiSe approval would be required for: (1) approval of the New MNO to start operating as an MNO in Italy; (2) transfer of the Divestment Spectrum to the New MNO; (3) extending those licences which will expire shortly, in particular the […] 10MHz of 1,800MHz in […] and the 10MHz of […] 900MHz in 2021; and (4) re-farming of certain spectrum blocks, in particular 10MHz of 1,800MHz from 2G to 4G. AGCM and AGCOM noted that this requirement to seek approval from a third party creates uncertainty regarding the implementation of the remedy.

(1666) A number of respondents to the Market Test expressed an interested in acquiring the Divestment Spectrum should they become the New MNO.[1476]

b) Sites

(1667) The majority[1477] of respondents did not consider that the number of sites included in the MNO Commitment is sufficient to roll out a national network in competition with the joint venture and the other MNOs in Italy.

(1668) As an average, respondents considered that in order to achieve approximately 95% population outdoor coverage with the Divestment Spectrum, the New MNO would

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1462 AGCM's comments on the MNO Commitment [ID 1949].

1463 CMA's comments on the MNO Commitment [ID1940].

1464 Swedish Post and Telecom Authority's response to Questionnaire Q8 to the Market Test of 8 June 2016, question 5 [ID 1910].

1465 Bundesnetzagentur's response to Questionnaire Q8 to the Market Test of 8 June 2016, question 5 [ID 1977].

1466 Responses to Questionnaire Q8 to the Market Test of 8 June 2016, question 5.2. Bundesnetzagentur's response to Questionnaire Q8 to the Market Test of 8 June 2016, question 5 [ID 1977].

1467 PosteMobile's response to Questionnaire Q8 to the Market Test of 16 June 2016, question 5 [ID 1900] and PosteMobile's submission to the Commission of 26 July 2016.

1468 AGCOM's comments on the MNO Commitment [ID1931].

1469 Responses to Questionnaire Q8 to the Market Test of 8 June 2016, question 5.

1470 AGCM's comments on the MNO Commitment [ID1949].

1471 Bundeskartellamt comments on the MNO Commitment [ID1943]

1472 CMA's comments on the MNO Commitment [ID1940].

1473 Responses to Questionnaire Q8 Market Test of 8 June 2016, question 15.

1474 AGCM's comments on the MNO Commitment [ID1949].

1475 AGCOM's comments on the MNO Commitment [ID1931].

1476 Responses to Questionnaire Q8 Market Test of 8 June 2016, question 7.

1477 Responses to Questionnaire Q8 Market Test of 8 June 2016, question 8.

need between 10,000 and 15,000 sites. Respondents mentioned however that this target could be achieved, not only by relying on the sites included in the MNO Commitment, but also via site sharing or sites available from tower companies in the market.[1478] In this respect, the Market Test revealed that there is ample availability of sites from tower companies in the Italian market.

(1669) With regard to the Extended Sites, some respondents considered that they would be sufficient to ensure coverage of the [the least densely populated areas] in the event that the RAN Sharing Option was not taken up with others stating that additional sites may be required in order to achieve satisfactory nationwide coverage. [1479]

(1670) The participants to the Market Test were asked to identify important criteria that the sites should comply with to allow the new MNO to roll out a 3G and 4G nationwide network.[1480] Island Capital identified multiple relevant features including height, location, relative location to each other, proximity to population centres, available space, grid power, transmission ideally fibre available and security. The Market Test indicated that the most important site feature was appropriate location to achieve coverage, that is to say whether the New MNO would gain access to sufficient sites in densely populated areas where barriers to site access may be high. It was also noted by Vodafone that the sites would need to comply with local laws, in particular electromagnetic field caps.

(1671) With regard to costs for the co-located sites, the majority of respondents considered that the costs should be shared between the parties co-located on the site. [1481]

(1672) With regard to the release of the Divestment Sites by the Parties, respondents had mixed views in relation to both the timeline[1482] and the procedure.[1483] Respondents noted that a faster release would enable the new MNO to roll-out its own network faster with some, such as TIM, considering the release was too slow to allow effective entry, and others considering it satisfactory. Overall, there were limited comments on the procedure for site release but it was highlighted that further detail would need to be given to the New MNO, including how the Divestment Sites for release would be selected by the Parties. The CMA commented that given the fact that the MNO Commitment included only the option of the New MNO to take the Divestment Sites, as well as the fact that the release plan is indicative, creates considerable uncertainty regarding the rollout of the New MNO's network.[1484]

(1673) A number of respondents to the Market Test expressed an interested in acquiring the Transfer Sites[1485] and the Co-location Sites[1486] as well the Extended Sites,[1487] should they become the New MNO.

c) […]

(1674) […].[1488]. […].

[1478] Responses to Questionnaire Q8 Market Test of 8 June 2016, questions 9 and 10.
[1479] Responses to Questionnaire Q8 Market Test of 8 June 2016, question 9.3.
[1480] Responses to Questionnaire Q8 Market Test of 8 June 2016, question 9.4.
[1481] Responses to Questionnaire Q8 Market Test of 8 June 2016, question 14.
[1482] Responses to Questionnaire Q8 Market Test of 8 June 2016, question 12.
[1483] Responses to Questionnaire Q8 Market Test of 8 June 2016, question 11.
[1484] CMA's comments on the MNO Commitment, paragraphs 16 and 27 [ID1940].
[1485] Responses to Questionnaire Q8 Market Test of 8 June 2016, question 37.
[1486] Responses to Questionnaire Q8 Market Test of 8 June 2016, question 38.
[1487] Responses to Questionnaire Q8 Market Test of 8 June 2016, question 39.
[1488] Responses to Questionnaire Q8 to the Market Test of 8 June 2016, question 16.

8.4.1.2. RAN Sharing Option

(1675) With respect to the RAN Sharing Option, the majority of the competitors responding to the Market Test who provided an informative reply considered that such an option would be useful in allowing the New MNO to maximise its network coverage in a cost-efficient manner[1489] and several respondents expressed an interest in exercising the RAN Sharing Option, should they become the New MNO.[1490] This positive view on the RAN Sharing Option was also expressed by AGCM, AGCOM and the Swedish Post and Telecom Authority.[1491]

(1676) The view of competitors were mixed as to whether, given the number of sites and technologies included, the RAN Sharing Option would be sufficient for the New MNO to be competitive in the whole of the Italian market. AGCM and half of the competitors indeed explained that the number of RAN Sharing Sites should be increased and it should be ensured that the future technologies including 5G were provided.[1492]

(1677) AGCOM and AGCM highlighted that as the RAN Sharing Option does not cover 2G, in order to preserve the competitiveness of the New MNO, the National Roaming Agreement should not be deactivated in the areas covered by the RAN Sharing Option to allow continued 2G coverage as 2G services still constitute an important part of the Italian mobile traffic.[1493]

(1678) The Swedish Post and Telecom Authority pointed out that the relevance of the RAN Sharing Option is linked to the conditions and price at which the RAN sharing is offered.[1494] In this respect, those competitors, who provided a view on what would be the most cost-effective commercial conditions for the RAN Sharing Option, generally stated that the RAN sharing should be provided on a cost based model, sharing running costs (rent, energy, maintenance, etc.) and incurring investment (e.g. active equipment book value, actual cost for new equipment/upgrade).[1495]

(1679) With respect to the procedure described in paragraph 18 of the MNO Commitment for the selection and release of the RAN Sharing Sites, the views of respondents were mixed as to whether it was sufficiently clear and capable of being effectively implemented and monitored, with half of the respondents pointing to the fact that only very limited details were included and the would need to be worked through between the New MNO and the Parties.[1496] The views of respondents were similarly mixed with respect to the appropriateness of the […] period within which the New MNO would have to select the RAN Sharing Sites.[1497]

(1680) Finally, with respect to the duration of the RAN Sharing Option, once exercised the majority of competitors stated that the proposed […] term would provide the New

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1489 Responses to Questionnaire Q8 to the Market Test of 8 June 2016, question 27.

1490 Responses to Questionnaire Q8 to the Market Test of 8 June 2016, question 40.

1491 AGCM's and AGCOM's comments on the MNO Commitment [ID1931 and 1949]. Swedish Post and Telecom Authority's responses to Questionnaire Q8 to the Market Test of 8 June 2016, question 27 [ID 1910].

1492 Responses to Questionnaire Q8 to the Market Test of 8 June 2016, question 27. See also AGCM's comments on the MNO Commitment.

1493 AGCM's and AGCOM's comments on the MNO Commitment [ID1931 and 1949].

1494 Swedish Post and Telecom Authority, response to Questionnaire Q8 to the Market Test of 8 June 2016, question 27 [ID 1910].

1495 Responses to Questionnaire Q8 to the Market Test of 8 June 2016, question 30.

1496 Responses to Questionnaire Q8 to the Market Test of 8 June 2016, question 28.

1497 Responses to Questionnaire Q8 to the Market Test of 8 June 2016, question 29.

MNO with a sufficiently long term plan to serve the least densely populated areas of Italy.[1498]

8.4.1.3. National Roaming Agreement

(1681) Respondents to the Market Test expressed mixed views on whether the National Roaming Agreement would be sufficient for the New MNO to compete on a comparable basis with the other MNOs.[1499] In this respect, Iliad considers that a solution based on a multi-operator core network ("MOCN") would be a more efficient architecture to optimize the transition to an independent RAN.[1500] Tiscali Italia expressed a critical view on the National Roaming Agreement, considering that a RAN sharing solution is the only possible solution to ensure continuity of service.[1501] Vodafone, on the contrary, considers that the National Roaming Agreement could be sufficient for the New MNO to compete on a comparable basis with the other MNOs for the transitional phase.[1502] In the same vein, other respondents expressed the view that the National Roaming Agreement could be a competitive transitory solution, subject to its cost structure. In this respect, one respondent explained that the terms of the National Roaming Agreement should be at a significant discount,[1503] Sky highlighted that it will be crucial that the New MNO is able to provide services to its customers on a cost basis similar to that of the other MNOs to compete on a comparable basis with the other MNOs.[1504] AGCOM considered that the National Roaming Agreement could be improved by specifying the available capacity to the new MNO and by indicating the national roaming tariff applied to the new MNO.[1505] AGCM also noted that economic and technical conditions should be specified and that, since national roaming will be phased out in the areas where the New MNO would deploys its 3G/4G network (including in the RAN sharing areas), the Parties should guarantee access to 2G services should be guaranteed even in the area where the New MNO would deploy its network.[1506]

(1682) Respondents to the Market Test had differing opinions with respect to the possibility to effectively implement and monitor the National Roaming Agreement, with many highlighting the complexity in determining and monitoring the non-discrimination aspects of the agreement.[1507]

(1683) Most of the respondents considered that a national roaming agreement would give the New MNO sufficient incentive to effectively compete on equal terms with other MNOs.[1508] Vodafone considers the roaming agreement would be an effective way to complement the New MNO's coverage at a national level and others also note that provided that the New MNO also builds out its own network.[1509] Lastly, Sky argues that the National Roaming Agreement provides incentives to the New MNO to

[1498] Responses to Questionnaire Q8 to the Market Test of 8 June 2016, question 31.
[1499] Responses to Questionnaire Q8 to the Market Test of 8 June 2016, question 17.
[1500] Iliad's response to Questionnaire Q8 to the Market Test of 8 June 2016, question 17 [ID 2013].
[1501] Tiscali's Italia response to Questionnaire Q8 to the Market Test of 8 June 2016, question 17 [ID 1950].
[1502] Vodafone's response to Questionnaire Q8 to the Market Test of 8 June 2016, question 17 [ID 1983].
[1503] Anonymous response to Questionnaire Q8 to the Market Test of 8 June 2016, question 17 [ID 2315].
[1504] Sky's response to Questionnaire Q8 to the Market Test of 8 June 2016, question 17 [ID 1986].
[1505] AGCOM's comment on the MNO Commitment [ID1931].
[1506] AGCM's comment on the MNO Commitment [ID1949].
[1507] Responses to Questionnaire Q8 to the Market Test of 8 June 2016, question 18.
[1508] Responses to Questionnaire Q8 to the Market Test of 8 June 2016, question 19.
[1509] Vodafone's response to Questionnaire Q8 to the Market Test of 8 June 2016, question 19 [ID 1983].

compete in the retail market, but it does not provide sufficient incentives to compete in the wholesale market. [1510]

(1684) In relation to the capacity allowance, respondents did not provide a clear indication on what the capacity allowance of the New MNO in Italy should be but, based on their submissions, a strong increase in data usage should be expected over the next years (i.e. 200% increase from 2016 to 2019) as a result of increased take up of higher data plans and increased video consumption on the move.[1511]

(1685) A number of respondents highlighted that, to ensure the effectiveness of the National Roaming Agreement, its commercial terms should be clearly defined. However respondents had mixed views on what would be the most competitive cost structure.[1512] Iliad considers that a capacity model with an annual fixed amount to be paid for the first 3 years, until the New MNO starts to effectively carry a material amount of traffic on its own network since it enables to replicate the fixed structure of an MNO during the transitional period. In a subsequent period, a pay-as-you-go ("PAYG") structure would be preferable.[1513] One respondent stated that an incentivized PAYG structure would be preferable since the commitment upfront on volumes foreseen in the capacity model may limit the New MNO's ability to invest in the rollout of the network. This respondent further notes that the PAYG model would require a mechanism to protect from data traffic explosion by linking the price per GB to host network customer consumptions over the next years.[1514] Island Capital did not have a preferred model but noted that a mechanism to protect against the potential increase in traffic consumption or margin squeeze would be needed.[1515] Sky believes the most cost-effective commercial conditions for the National Roaming Agreement should include competitive wholesale costs and protection mechanisms to protect the New MNO in case of strong decreases in retail prices.[1516] With respect to the PAYG cost structure, most respondents consider that it could provide the ability and incentive to compete,[1517] but Island Capital suggested that the unit price should decrease over the next years based on the expected evolution on traffic demand[1518] while NetValue considered a cost plus approach with a margin of approximately 5% for the JV should be used.[1519]

(1686) In relation to the duration of the National Roaming Agreement, respondents had mixed views.[1520] Vodafone and Island Capital considered the proposed duration adequate,[1521] Sky believes the duration to be sufficient if it is ensured that the New MNO would roll out its own network.[1522] Contrary to this, TIM considers that the roaming should last at least 10 years with a possibility to renew it for additional 5

1510 Sky's response to Questionnaire Q8 to the Market Test of 8 June 2016, question 19 [ID 1986].

1511 Responses to Questionnaire Q8 to the Market Test of 8 June 2016, questions 20 and 22.

1512 Responses to Questionnaire Q8 to the Market Test of 8 June 2016, question 23.

1513 Iliad's response to Questionnaire Q8 to the Market Test of 8 June 2016, question 23 [ID 2013].

1514 Anonymous response to Questionnaire Q8 to the Market Test of 8 June 2016, question 23 [ID 2315].

1515 Island Capital's response to Questionnaire Q8 to the Market Test of 8 June 2016, question 23 [ID1904].

1516 Sky's responses to Questionnaire Q8 to the Market Test of 8 June 2016, question 23 [ID1986].

1517 Responses to Questionnaire Q8 to the Market Test of 8 June 2016, question 25.

1518 Island Capital's Response to Questionnaire Q8 to the Market Test of 8 June 2016, question 25 [ID1904].

1519 See NetValue's Response to Questionnaire Q8 to the Market Test of 8 June 2016, question 23.1. [ID1879].

1520 Responses to Questionnaire Q8 to the Market Test of 8 June 2016, question 26.

1521 Vodafone's response to Questionnaire Q8 to the Market Test of 8 June 2016, question 26 [ID1983]. Island Capital's Response to Questionnaire Q8 to the Market Test of 8 June 2016, question 26 [ID1904].

1522 Sky's responses to Questionnaire Q8 to the Market Test of 8 June 2016, question 26 [ID1986].

years,[1523] and another respondent considers that the initial period of the National Roaming Agreement should be seven years.[1524]

(1687) With regard to wholesale access for MVNOs, respondents pointed out that the ban for the […] of the National Roaming Agreement and the subsequent limits on capacity would prevent the New MNO from exerting a competitive constraint in the wholesale market. PosteMobile[1525] in particular notes that the restrictions contained in the National Roaming Agreement would "*severely limit the ability of the New MNO to host virtual operators*". It also notes that the National Roaming Agreement is very vague with respect to access to new technologies and that it is important that a suitable provider of wholesale access should be able to offer access to any new technologies to MVNOs at reasonable prices.

8.4.1.4. Overall results of the Market Test

(1688) Competitors and telecoms regulators were asked to express a view as to whether the MNO Commitment was sufficiently clear and capable of being implemented. The majority of the competitors responding to the Market Test who provided an informative reply considered that the MNO Commitment was sufficiently clear and capable of being implemented,[1526] although, as mentioned in recitals (1672) and (1685), the commercial terms of the National Roaming Agreement and the procedure for release of the Divestment Spectrum and Divestment Sites should be further expanded upon.

(1689) Moreover, competitors and telecommunications regulators were asked whether any additional asset, other than those included in the MNO Commitment, should have been added to the remedy package for the New MNO to be able to compete on equal footing with MNOs in Italy. Respondents to the Market Test generally considered the MNO Commitment sufficiently comprehensive and only a minority of competitors indicated that a retail distribution network would be needed by the New MNO in additions to the assets included in the MNO Commitment for the New MNO to be able to compete on equal footing with the other MNOs in Italy and TIM suggested that a customer base be included.[1527]

(1690) With respect to the potential of the MNO Commitment to solve the competition concerns identified by the Commission, the majority of the respondents to the Market Test who provided an informative reply expressed the opinion that the MNO Commitment would have such a potential with respect to the Commission's concerns on the retail market, as it conceptually constitutes a structural solution for those concerns.[1528]

(1691) However, the respondents stated that the potential of the MNO Commitment to restore the competition which would be lost as a result of the Transaction is mainly contingent on: (1) the divestment of additional spectrum and the certainty of such divestment; (2) the terms of the National Roaming Agreement; and (3) the business

1523 TIM's response to Questionnaire Q8 to the Market Test of 8 June 2016, question 26 [ID1953].

1524 Anonymous response to Questionnaire Q8 to the Market Test of 8 June 2016, question 26 [ID2315].

1525 PosteMobile Annex to Questionnaire Q8 the Market Test of 8 June 2016, [ID1945].

1526 Responses to Questionnaire Q8 to the Market Test of 8 June 2016, question 32.

1527 Responses to Questionnaire Q8 to the Market Test of 8 June 2016, question 34.

1528 Responses to Questionnaire Q8 to the Market Test of 8 June 2016, question 35.1. See also AGCM's, AGCOM's and CMA's comments on the MNO Commitment [ID 1931 and 1940].

plan of the remedy taker, in particular its commitment to invest and build a fourth mobile network in Italy.[1529]

(1692) On the contrary, the majority of the respondents to the Market Test who provided an informative reply considered that the MNO Commitment was not sufficient to eliminate the Commission's competition concerns in the wholesale markets, as it included a ban on the New MNO providing wholesale access services for the […] of the operations as well as capacity caps after that initial period.[1530] A minority of competitors suggested that an MVNO remedy should be imposed in addition to the MNO Commitment to operate in the interim while the MNO becomes operational, or in any event that specific measures are taken to ensure that concerns on the wholesale market are also addressed.[1531]

(1693) Several respondents stated that they were interested in entering into the Divestment Agreement and National Roaming Agreement and becoming the New MNO and to be negotiating with the Parties to these effects.[1532]

8.4.2. Commission's assessment

8.4.2.1. Introduction

(1694) At the outset, the Commission recalls that to be acceptable, the proposed commitments must be capable of rendering a concentration compatible with the internal market as they prevent a significant impediment to effective competition in all relevant markets in which competition concerns were identified. In the present case, the commitments needed to eliminate the competition concerns identified by the Commission with respect to: (1) horizontal non-coordinated effects on the market for retail mobile telecommunications services in Italy; (2) horizontal coordinated effects on the market for retail mobile telecommunications services in Italy; and (3) horizontal non-coordinated effects on the wholesale market for access and call origination on mobile networks in Italy.

(1695) Moreover, pursuant to paragraph 15 of the Remedies Notice, structural commitments are preferable from the point of view of the Merger Regulation's objective, inasmuch as such commitments prevent, durably, the competition concerns which would be raised by the merger as notified, and do not, moreover, require medium or long-term monitoring measures.

(1696) In this respect the Commission considers that the MNO Commitment constitutes a commitment which is structural in nature, and which could create a fourth MNO capable of compensating for the loss of competition deriving from the Transaction (namely the elimination of H3G as an independent competitor) both in the retail and in the wholesale markets and thus capable in principle of removing the competition concerns identified by the Commission. Indeed, in light of the results of the Market Test, the MNO Commitment included the divestment of the essential inputs necessary for the operation of an MNO business, that is to say the transfer of licences

[1529] Responses to Questionnaire Q8 to the Market Test June 2016, question 35.1. See also AGCM's and AGCOM's comments on the MNO Commitment [ID 1949 and 1931].

[1530] Responses to Questionnaire Q8 to the Market Test of 8 June 2016, question 35.2. See also AGCM's and AGCOM's comments on the MNO Commitment [ID 1949 and 1931].

[1531] Responses to Questionnaire Q8 to the Market Test of 8 June 2016, question 35.2.

[1532] Responses to Questionnaire Q8 to the Market Test of 8 June 2016, question 36.

to use spectrum band(s) and access to macro access network sites for rolling out a mobile network.[1533]

(1697) The Commission does not consider that the structural nature of the MNO Commitment is undermined by either (i) the staggered release of the Divestment Sites and Divestment Spectrum to the New MNO; or (ii) the transitional reliance of the New MNO on the National Roaming Agreement. Indeed, the roll-out of a nationwide network is a process which requires time and it is normal practice in the mobile telecommunications industry that this process is underpinned by a national roaming allowing the new entrant MNO to be active on the market during the roll-out phase.[1534] While the New MNO would operate for a transitional period on the basis of the National Roaming Agreement, the […] payments for the Divestment Spectrum constitute a key distinction to the costs of an MVNO and provide a significant incentive for the New MNO to roll out its own national network.[1535] Provided that the spectrum and sites are sufficient for an MNO to build its national network, and to the extent that such MNO makes […] payments to this effect, a national roaming agreement has the aim of transitionally filling coverage gaps in the network during the network roll-out phase. Therefore, the more the New MNO relies on national roaming, the less efficiently it will be using its own resources. Accordingly, the New MNO has the incentive to reduce its roaming traffic and exploit its resources more efficiently by rolling out its network.[1536]

(1698) Despite of its structural nature, however, the Commission considers that the MNO Commitment fell short of removing entirely and in an effective manner the competition concerns identified in the relevant markets. This is because as each element of the package presented a series of shortcomings as detailed in recitals (1699) to (1719).

8.4.2.2. Divestment Agreement

(1699) The Commission considers that there are doubts as to whether the Divestment Spectrum would have been sufficient to allow the New MNO to compete effectively on the Italian market, as H3G would have done absent the Transaction.

(1700) The Commission notes that H3G currently has 45MHz of paired FDD spectrum used to roll out 3G and 4G networks.[1537] The MNO Commitment on the other hand included 30MHz of paired FDD spectrum to be divested on a [phased] basis. As noted above, the results of the Market Test were generally negative regarding the quantity and composition of the Divestment Spectrum. However, as also noted

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1533 See recital (50) above.

1534 For example, see Fastweb submission of 4 July 2016, "Technical comparison between roaming agreement and RAN wholesale agreement" by ICT Consulting S.p.A., section 2: "*National Roaming has also the aim to facilitate the entrance of new players in the market, since a National Roaming Agreement enables the new subject to immediately guarantee to its customers a full national service; such agreements are usually temporary and their geographical span is progressively reduced according to the New Entrant RAN rollout plan"* [ID 2187].

1535 The incentives to roll out also depend on the cost structure of the National Roaming Agreement; in this regard see Section 8.4.1.3.

1536 In this regards see Fastweb submission of 4 July 2016, "Technical comparison between roaming agreement and RAN wholesale agreement" by ICT Consulting S.p.A., section 2 [ID 2187].

1537 The Commission notes that H3G also holds a licence for 35MHz of unpaired TDD spectrum however it appears that currently the commercial utilization of TDD spectrum is very limited, in particular because it cannot be used for the simultaneous upload and download of data. See, Form CO, Section 6, paragraph 253.

above, AGCOM indicated that an additional 5MHz in the 2,100 or 2,600 MHz bands would be sufficient.

(1701) Network coverage is a function of both spectrum and the number of sites. Low frequency spectrum provides coverage over a greater geographic area (whereas high frequency spectrum is better for capacity but provides coverage over a smaller geographic area). As a result, to achieve wider coverage with higher frequency spectrum, a larger number of sites are needed. The combination of the optionality regarding the number of Divestment Sites, combined with the limitations of the Divestment Spectrum, in particular in terms of sub-1 GHz, would have been likely to result in inferior network quality compared to H3G today and going forward.

(1702) In addition to the quantity and type of the spectrum, on the basis of the information available in its file when assessing the MNO Commitment, the Commission does not consider that there is sufficient certainty regarding the transfer of the Divestment Spectrum. First, the transfer of Divestment Spectrum is conditional upon approval from MiSe. The MNO Commitment foresaw this with the divestment by the Parties being "*subject to"* the necessary approvals required under Italian legislation and regulation.[1538] However, under the terms of the MNO Commitment, the Parties were deemed to have complied with the commitment upon the Parties having entered into the Divestment Agreement and the National Roaming Agreement, and not them having effectively transferred the Divestment Spectrum.[1539]

(1703) Second, the expiration date of the licences for some of the blocks of spectrum (notably the 1,800 MHz […] block) is as early as […] and any extension of the duration of the licence requires MiSe approval.[1540]

(1704) Third, the Commission notes that the New MNO would have only a limited amount of spectrum currently licenced for 4G usage (2x10MHz of 2600MHz spectrum) and would therefore likely need to refarm some of the blocks currently used for other technologies. This refarming would again require MiSe approval.

(1705) Moreover, the Commission considers that there are doubts as to whether the New MNO would utilise a sufficient number of sites to roll out a competitive national network. As mentioned in recital (1668), the Market Test suggests that a competitive national network could need between 10,000 – 15,000 sites and that sites can easily be obtained from tower companies. However, at the time of the assessment of the MNO Commitment there was insufficient evidence in the Commission's file that the New MNO, once approved, would have had available sites from tower companies.

(1706) In addition, the Commission notes that the MNO Commitment merely included a commitment to "*make available*" a certain number of Transfer Sites and a certain number of Co-location Sites to the New MNO and was not an effective commitment to divest or co-locate. Moreover, while the MNO Commitment defined the maximum number of sites offered for transfer or co-location, there was no certainty as to whether the New MNO would effectively take any of those sites (either by transfer or co-location).

1538 MNO Commitment, paragraph 5.

1539 MNO Commitment, paragraph 4.

1540 With respect to the 900 MHz spectrum the Commission notes that this is […] the 900 MHz block included in the MNO Commitment, expires on 31 December 2021.

8.4.2.3. RAN Sharing Option

(1707) The Commission considers that the RAN Sharing Option could constitute a cost-effective solution for the New MNO to extend its coverage in the least populated areas of Italy.

(1708) However, on the basis of the results of the Market Test, the Commission considers that there are doubts as to the effectiveness of such solution as proposed by the Parties in the MNO Commitment. In particular, the cost structure of the RAN Sharing Option was not sufficiently defined and this is a particularly crucial element to preserve the competitiveness of the New MNO.

(1709) Moreover, despite interest being expressed in the Market Test,[1541] the RAN Sharing Option and the Extended sites were both optional thereby generating uncertainty as the New MNO would actually develop a RAN network covering the least populated areas of Italy

(1710) Finally, as pointed out by AGCM and AGCOM, under the terms of paragraph 20 of the MNO Commitment, if the RAN Sharing Option is exercised, roaming would have been phased out in the RAN sharing areas. While the National Roaming Agreement covers 2G, 3G and 4G, the RAN Sharing option is limited to 3G and 4G. Therefore there was a risk that, once the RAN sharing was activated, the New MNO would have lost its ability to compete for those customers which still use only 2G services, and constitute an important part of the Italian traffic.

8.4.2.4. National Roaming Agreement

(1711) The Commission considers there to be doubts as to whether the National Roaming Agreement would have allowed the New MNO to compete effectively on the Italian market in the transitional period while it is rolling out its network.

(1712) During the transitional period from commercial launch of the New MNO until the time that it has rolled out its own commercial network (which may require several years after completion of the transfer of the Divestment Sites and the Divestment Spectrum on […]) the New MNO's operations would have been based on the National Roaming Agreement across the combined network of the Parties (albeit to a decreasing extent with the progressive roll-out of the New MNO's own network). The terms of this agreement are therefore fundamental to whether New MNO would have had the ability and incentive to compete effectively.

(1713) No details regarding the pricing mechanism for the National Roaming Agreement were included in the MNO Commitment. The responses to the Market Test clearly indicate that the commercial terms of the National Roaming Agreement are very important, and accordingly, there must be clarity in the commitments.

(1714) In general, such roaming agreements can be based on either a capacity based model or a PAYG based model. A PAYG cost structure means that costs which are generally considered as fixed by MNOs are variable, similar to the cost structure of an MVNO. This has a direct effect on the per subscriber margins of the New MNO (which will be lower than a regular MNO) and, consequently, to its pricing decisions. In particular, under the PAYG cost structure the New MNO's decisions to target additional subscribers will be dependent on the costs to access network capacity on a per subscriber basis. Therefore, given the necessity to take into account these costs, the incentives of the New MNO in a PAYG model will be lower than those of a

[1541] See recital (1675).

MNO that has a predominantly fixed network costs structure. In addition, if the roaming prices are too high the New MNO may not have the incentive and the ability to price aggressively to gain customers in the market thereby exerting a competitive constraint on the other players. In a capacity based model on the other hand, a flat fee is paid for a specified percentage of capacity on the network mirroring the high fixed cost / low variable cost structure of an MNO. Compared to a PAYG cost structure, this ensures the ability and the incentives to compete aggressively. Also, a capacity based model removes any risk associated with agreeing on a per GB pricing for future years. This is very important given that if the retail price declines significantly during the term of the National Roaming Agreement the margin between the PAYG terms and the retail price might reduce significantly (even become negative in some cases) rendering ineffective the entry of the New MNO. This is of particular concern for data as both the industrial cost and the retail price per GB has dropped significantly in the last years. On the contrary, a capacity based model implies the purchase of an amount of data traffic for a fixed fee and future evolution in the retail price of data would not change the incentive and ability of the New MNO to compete

(1715) A capacity based cost structure (in which the capacity is set at a level that would allow the New MNO to exert an effective competitive constraint) for the National Roaming Agreement would have been particularly important in the initial period of the National Roaming Agreement, when the New MNO would almost entirely depend on the JV for the provision of its retail and wholesale services, and it would have allowed it to offer at competitive prices large data bundles, which are set to acquire more and more importance following the significant expected grow of data usage.[1542] During the first period, the capacity based model would provide to the New MNO the incentive to acquire a customer base at least as large as to fill its purchased capacity (but possibly also larger as the New MNO is also committing to buy spectrum and sites and hence make sizeable fixed cost investments). Once acquired this customer base the New MNO will then have the incentive to rapidly complete its own network and to migrate the traffic of these customers to its own network as to replicate the high fixed cost / low variable cost model and avoid a possible reduction in its margins. Then, as the New MNO deploys its network and makes sizeable fixed cost investments, it will have the incentive to keep acquiring customers and price aggressively and a possible PAYG arrangement for the part of remaining roaming traffic was not expected to affect this incentive.

(1716) The Commission considers it to be of paramount important that a balance is found between ensuring that the National Roaming Agreement is sufficiently competitive to provide the New MNO with the incentives to compete effectively with the other MNOs, but also to ensure that it is sufficiently incentivised to roll out its own network rather than relying on the National Roaming Agreement in the medium to long term.

(1717) Without any details of the cost structure of the National Roaming Agreement in the MNO Commitment, the Commission cannot conclude with a sufficient degree of certainty that either of these objectives could have been met and therefore considers that the MNO Commitment is insufficient to address its concerns.

(1718) Finally, the Commission considers that the prohibition on the New MNO providing wholesale services for the […] of the roaming agreement (and then subject to […]%

[1542] See recital (38).

capacity cap) prevented the MNO Commitment from resolving the concerns raised in the wholesale market.

8.4.2.5. Conclusion

(1719) In the light of the above, the Commission concludes that the MNO Commitment would not have been sufficient to remove entirely the competition concerns raised by the Transaction with respect to both the retail market for mobile telecommunications services and the wholesale market for access and call origination on public mobile networks in Italy.

8.5. The Final MNO Commitment

8.5.1. Description of the Final MNO Commitment

(1720) As noted above, the Revised MNO Commitment and the Final MNO Commitment are identical in all material respects therefore the analysis therein refers only to Final MNO Commitment. The Final MNO Commitment amends the MNO Commitment and contains the following commitments by the Parties (see footnote 1452).

(1721) First, the Parties commit to divest 2x35MHz of spectrum to the New MNO (the "Revised Divestment Spectrum") which consists of:

(1) 2x5MHz spectrum block ([…]) on the 900 MHz frequency currently licenced to […]until 31 December 2021 and used for 3G technology;

(2) the 2x5MHz spectrum block ([…]) or, with the consent of the New MNO, the 2x5MHz spectrum block ([…]) on the 1800 MHz frequency currently licenced to […] until […] and used for 2G;

(3) the 2x5MHz spectrum block ([…]) on the 1800 MHz frequency currently licenced to […] until […] and used for 2G;

(4) the 2x5 MHz spectrum block ([…]) on the 2100 MHz FDD frequency currently licenced to […] until […] and used for 3G technology;

(5) the 2x5 MHz spectrum block ([…]) on the 2100 MHz FDD frequency currently licenced to […] until […] and used for 3G technology; and

(6) the two 2x5MHz spectrum blocks ([…]) on the 2600 MHz frequency currently licenced to […] until 31 December 2029 and used for 4G technology.

(1722) […].

(1723) Second, the Parties commit to divest or to co-locate with the New MNO on […] macro access network sites in [the densely populated areas] and the "Revised Divestment Sites").

(1724) In the geographic areas [the least densely populated areas] the Parties commit to either:

(1) Divest and/or co-locate with the New MNO […] sites ("Revised Extended Sites" and, together with the Revised Divestment Sites, the "Revised Sites");[1543] or

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[1543] This […] corresponds to the […] "Further Sites" and the […] "Extended Sites" referred to in the Final MNO Commitment. These sites are treated the same in the Final MNO Commitment but are distinguished to reflect the distinction made in the MNO Agreements. The Revised Divestment Sites ([…]) and the Further Sites ([…]) together total […], which is the number of sites that were made available to the New MNO in the MNO Commitment.

(2) Activate a RAN sharing option (the "Revised RAN Sharing Option").

(1725) The Revised Sites should meet certain suitability criteria set out in the Final MNO Commitment, and the commitment to divest an absolute number of sites is supplemented by a commitment that the Revised Sites will be capable of enabling the New MNO to provide outdoor coverage on the 900 MHz Spectrum for […]% of the Italian population ([…]% for indoor).[1544]

(1726) With regard to the sites on which the Parties and the New MNO will co-locate, the Parties commit to co-locate for a term of […] of such co-location with the New MNO and discuss with the New MNO in good faith a possible extension of the co-location agreement.

(1727) The Final MNO Commitment provides operational flexibility to the New MNO in that to the extent that the New MNO can demonstrate it has obtained an equivalent number of sites or alternative technical solutions from elsewhere to obtain equivalent coverage, the Parties are discharged from the obligation to divest the Revised Sites on a pro rata basis.

(1728) The Parties commit to release the Revised Divestment Spectrum and the Revised Sites on a [phased] basis in accordance with the release plans attached as Annex 1 and Annex 2 to the Final MNO Commitment with a completion date of […].[1545]

(1729) As regards the Revised RAN Sharing Option, this remained conceptually similar to the RAN Sharing Option as described in recital (1658) above but with additional clarification regarding the commercial conditions and the implementation process. The Revised RAN Sharing Option will cover 3G, 4G and all future technologies (including 5G) and would be deployed on a minimum of […] sites in the less densely populated areas of Italy (the "RAN Sharing Sites").

(1730) Third, the Parties commit to enter into an agreement to: (i) provide 2G national roaming services the combined H3G / WIND network ("2G Roaming Services); and (ii) implement and operate 3G/4G MOCN Services,[1546] initially on the WIND network, then on the Parties' combined network as it is consolidated ("3G/4G MOCN Services" both under the "Revised National Roaming Agreement"). The Revised National Roaming Agreement shall have an initial term of […], extendable by a […]. The Parties commit to provide the services within […] from closing of the Transaction.

(1731) The coverage of the 2G Roaming Services and 3G/4G MOCN Services will be initially national; the 3G/4G MOCN Services will reduce over time in accordance with the spectrum and site release plan mentioned in recital (1727) and in the sites where the New MNO exercises the RAN Sharing Option in accordance with Annex 9 to the Final MNO Commitment. Notwithstanding the above, […].

(1732) Fourth, […].

[1544] Provided the New MNO installs the appropriate equipment and takes the requisite steps needed to do so.

[1545] The [phased] release of spectrum and transfer of rights to the New MNO to use the spectrum will be completed in its entirety by the following dates: (a) in relation to the 900MHz Spectrum by […]; (b) in relation to the 1,800MHz Spectrum (block 1) by […]; (c) in relation to the 1,800MHz Spectrum (block 2) by […]; (d) in relation to the 2100MHz Spectrum (block 1 and 2) by […]; and (e) in relation to the 2,600MHz Spectrum by […].

[1546] 3G/4G MOCN Services shall cover 3G and 4G technology and, following commercial launch by JV, all future technologies (including 5G) as agreed between the Parties and the New MNO and subject to technical feasibility.

(1733) Finally, in the event that there is a dispute between the Parties and the New MNO as to the implementation of the Revised Divestment Spectrum release provisions (paragraph 6 of the Final MNO Commitment), the Revised Site release provisions (paragraphs 14 and 15 of the Final MNO Commitment), the Revised Site suitability criteria (paragraph 16 of the Final MNO Commitment), or the coverage obligations (paragraph 17 of the Final MNO Commitment), the New MNO shall have recourse to a fast track dispute resolution mechanism detailed in the Final MNO Commitment.[1547]

(1734) The Final MNO Commitment also specifies that at any point in time during its mandate, the Monitoring Trustee shall be entitled to seek the expert advisory opinion of the AGCOM on specific issues concerning: (1) the Italian regulatory framework for mobile telecommunications; (2) market conditions in the Italian retail mobile telecommunications market; (3) the authorisation by MiSe of the transfer of the Revised Divestment Spectrum (pursuant to article 14-ter of the Italian Electronic Communications Code) and, where relevant, any implications of such authorisations regarding the release of the Revised Divestment Spectrum; and (4) questions regarding the laws and regulations applicable to radio frequency emissions at the Revised Sites.

8.5.2. Parties' view on Iliad as a fix-it-first purchaser under the Final MNO Commitment

(1735) As noted above in recital (1650), the Parties informed the Commission that they had entered into the MNO Agreements with Iliad on 1 July 2016, which were subsequently amended and re-executed on 18 July 2016.

(1736) First, the Parties submit that Iliad is independent and unconnected to the Parties.

(1737) Second, the Parties submit that Iliad has the financial resources, proven expertise and incentive to maintain and develop as the New MNO.

(1738) Third, the Parties consider that Iliad as the New MNO would not raise *prima facie* competition concerns and that no regulatory approvals risk causing a delay in the implementation of the Final MNO Commitment.

8.6. Commission's assessment of the Final MNO Commitment

8.6.1. Final MNO Commitment

8.6.1.1. Introduction

(1739) The Commission notes that the Final MNO Commitment constitutes a significant improvement to the MNO Commitment with which it shares the same overall composition and structural nature as described in recitals (1696) and (1697). The Commission considers that the improvements are such that the Final MNO Commitment would remove entirely, in a clear-cut way, the competition concerns identified in all relevant markets.

(1740) In particular, the Commission considers that the Final MNO Commitment would effectively remove the competition concerns in both the short term and medium to long term. In the short term the Revised National Roaming Agreement and its capacity based cost structure would enable the New MNO to enter the market in a timely manner and to effectively compete.[1548]

1547 Final MNO Commitment, paragraph 24.

1548 This is consistent with the remedy accepted by the Commission in case M.6992 – *Hutchison 3G UK/Telefónica Ireland*.

(1741) In the medium to long term, the Final MNO Commitment provides the New MNO with all the inputs as well as the incentives to roll out a fourth nationwide network in Italy. As further explained in recitals (1697) and Annex E to this Decision, those incentives derive from both the […] payment made by the New MNO for the Revised Divestment Spectrum, and the change in the cost structure (from capacity based to […] structure) of the Revised National Roaming Agreement as […], when the Revised Divestment Spectrum and Revised Sites are scheduled to have been released in their totality.

(1742) Furthermore, the Commission considers that the Final MNO Commitment does not entail elements of uncertainty as regards its effectiveness and the future proofing of the New MNO Agreements.[1549]

(1743) The Final MNO Commitment is assessed in detail in recitals (1744) to (1799) below.

8.6.1.2. Revised Divestment Spectrum

(1744) The Final MNO Commitment includes 2x5MHz more spectrum than the MNO Commitment, in the 2,100 MHz band. This corresponds to an amount of spectrum that multiple respondents to the Market Test considered would allow the New MNO to compete on a nationwide basis.[1550] In particular AGCOM stated that an additional 2x5MHz in the 2,100 or 2,600 MHz bands would be sufficient to ensure the competitiveness of the New MNO which precisely corresponds to the additional spectrum included in the Final MNO Commitment.[1551]

(1745) With regard to the amount of sub-1 GHz spectrum which is important in allowing a network to achieve sufficient coverage, the Commission notes that the New MNO has the same quantity of sub-1 GHz spectrum as H3G currently operates with today and is able to act as a significant competitive force on the market as described in recitals (430) to (569). Moreover, while the New MNO is operating on the basis of the 3G/4G MOCN Services, it will have access to the Parties' 800MHz spectrum; accordingly, the New MNO will have the ability to utilise more sub-1 GHz spectrum than H3G could absent the Transaction or the same amount of spectrum H3G would have had access to, if […] (see recitals (1512) to (1615)).

(1746) In the longer term, the New MNO has the ability to purchase additional sub-1 GHz spectrum in the anticipated 700 MHz auction expected in 2020 - 2022. […].[1552] […].

(1747) In addition to the anticipated 700 MHz auction, the Parties submit that the New MNO will also be able to acquire additional spectrum during the upcoming 3,600-3,8000 MHz spectrum award procedure.[1553] In particular, the New MNO the possibility of acquiring one of the two 50 MHz blocks to be awarded through a "beauty contest". Pursuant to the spectrum auction rules,[1554] in the event of a tie

[1549] This is consistent with the Commission assessment of the remedies submitted by the notifying party in case M.7612 – *Hutchison 3G UK/Telefónica UK,* which were considered insufficient because of the long term dependence of the remedy takers on the merged entity's network, the difficulty to future proof the commercial terms of the contractual relationship between the remedy takers and the merged entity and the several elements of optionality, also aimed at enabling one of the remedy takers to acquire spectrum, which were uncertain if they would have been taken up.

[1550] See in particular confidential responses to Questionnaire Q8 to the Market Test of 8 June 2016 [ID1961 and ID1914].

[1551] AGCOM's comments on the MNO Commitment [ID1931].

[1552] […].

[1553] An official date for the procedure has not yet been set.

[1554] In December 2015, AGCOM adopted resolution 659 / 15 / CONS which sets forth the general rules and procedures to be applied by MiSe when awarding the 3.6-3.8 GHz spectrum (meant essentially for LTE between two or more participants in the award procedure, MiSe will give priority to the participant with the smaller spectrum holding, and in the event of a further tie, to the participant with the least amount of spectrum sub-1 GHz.[1555]

(1748) In addition to the quantity of spectrum, there were a number of uncertainties arising from required approvals from MiSe for the Divestment Spectrum in the MNO Commitment detailed above at recitals (1702) to (1704). The Commission notes that Parties have addressed these uncertainties in the Final MNO Commitment and further evidence has been submitted to the Commission's file to address those uncertainties.

(1749) First, the MNO Commitment foresaw that the Parties would have complied with the commitments upon entry into the relevant agreements, not the actual transfer of the Divestment Spectrum to the New MNO which requires approval from MiSe (see recital (1702)). The Final MNO Commitment states the Parties will not be released from the commitments until the Revised Divestment Spectrum has been both transferred and released to the New MNO, that is to say the Final MNO Commitment will not be satisfied until MiSe has given its approval for the transfer of the Revised Spectrum to the New MNO thereby providing sufficient certainty.

(1750) Second, the expiration date of the licences for some of the spectrum blocks are in the near future and any extension of the duration of these licences requires MiSe approval. Third, the New MNO would only have a limited amount of spectrum currently licenced for 4G usage (2x10MHz of 2,600MHz spectrum) and re-farming blocks currently used for other technologies also requires MiSe approval (see recitals (1703) and (1704) respectively).

(1751) In this regard, as submitted by the Parties, an application for an extension to the licenses for these spectrum blocks can be made at the same time as an application for refarming, and that there is a clear legal framework for such an application. MiSe's decision on refarming and extension would be limited to an assessment of the adequacy of the New MNO's technical/financial plan to determine whether it can operate 4G services in Italy and that the process is straightforward, with approval granted on "*the criteria of objectivity, transparency, non-discrimination and proportionality*."

(1752) The Commission notes that the Parties' claims regarding the relative degree of certainty that approval would be granted by MiSe for such extension / refarming have been confirmed by other submitted in the Commission's file. In particular, on 1 July 2016 MiSe submitted to the Commission a note […][1556]

(1753) MiSe confirmed to the Commission that approval for licence extensions and refarming have already been granted to Vodafone and TIM in January 2015 pursuant to the mentioned procedure.[1557]

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and fixed wireless access ("FWA") services). 200 MHz of 3.6-3.8 GHz spectrum to be offered will be divided in several blocks, among which four blocks of 50 MHz are to be assigned for the provision of, inter alia, LTE and / or FWA services in urban areas (two blocks in major urban areas through an auction procedure and two blocks in less dense urban areas through a "beauty contest" procedure). These blocks will be ready for use within a short period of time after the award given that no / little time is needed to free up the spectrum from legacy services such as fixed (satellite) services.

1555 See AGCOM's Decision 659/15/CONS, article 7, paragraph 4.

1556 MiSe's note of 1 July 2016 [ID 2126].

1557 MiSe's follow up comment to the note of 1 July 2016 and MiSe Decree 30 January 2016 [ID 2142].

(1754) Finally, MiSe explained that the New MNO would be entitled to apply for the extension of the 1,800 MHz band at any time by submitting a formal application to the MiSe before […].[1558]

(1755) In the light of the above, the Commission considers that the level of administrative discretion provided for in the Italian legal and regulatory framework as to the approval for licence extension and refarming is limited. Moreover, the process is governed by the principle of non-discrimination; indeed, extension in the past have been granted been in favour of Vodafone and TIM.

(1756) In any case, the Final MNO Commitment includes […]. The Commission notes that both AGCM and AGCOM evaluated positively these safegurds.[1559]

(1757) Based on the increase in the quantity of spectrum included in the package and the additional protection now included in the Final MNO Commitment to address any possible uncertainties related to regulatory approvals related to the Revised Divestment Spectrum, the Commission considers that the Final MNO Commitment would allow the New MNO to compete effectively with the Revised Divestment Spectrum.

(1758) Finally, the Commission considers that the plan for the release of the Revised Divestment Spectrum to the New MNO, to be undertaken on [phased basis] and in accordance with Annex 1 to the Final MNO Commitment, is sufficiently detailed to eliminate any uncertainty with respect to the spectrum release. Moreover, the Commission notes that the MNO Agreements also provide certainty as to the responsibility for the regulatory obligations and liabilities related to the Revised Divestment Spectrum during the [phased release] given that the spectrum licences are national in scope. Indeed, they specify that upon release of the Revised Divestment Spectrum […] to the New MNO, the New MNO will assume responsibility for the regulatory obligations and liabilities but until the release date, the Parties will remain liable.

8.6.1.3. Revised Divestment Sites

(1759) As mentioned in recitals (1723) and following, in order for the New MNO to obtain national coverage, the Parties commit to divest and/or co-locate with the New MNO either: (i) […] macro access network sites; or (ii) […] macro access network sites in the event that the New MNO opts for the Revised RAN Sharing Option. The Revised RAN Sharing Option would utilise at least […]% of the […] sites the Parties offer as part of the RAN Sharing Option, resulting in a New MNO national network with at least […] macro access network sites.

(1760) The Final MNO Commitment provides operational flexibility to the New MNO in that to the extent that the New MNO can demonstrate it has obtained an equivalent number of sites or alternative technical solutions from elsewhere to obtain equivalent coverage, the Parties are discharged from the obligation to include sites (both the Revised Divestment Sites and RAN Sharing Sites) on a pro rata basis.

(1761) The main difference between the MNO Commitment and the Final MNO Commitment is that pursuant to the Final MNO Commitment the Parties are not simply offering to make available the Revised Divestment Sites, rather they are committed to divest and to co-locate with the New MNO on a minimum number of

[1558] MiSe's note of 1 July 2016 [ID 2126].
[1559] AGCM and AGCOM comments on the Revised MNO Commitment [ID1949 and 1931].

sites. This commitment to divest / co-locate removes the main uncertainty related to the sites that arose in the MNO Commitment. First, the firm commitment to divest and co-locate the relevant sites in the [the densely populated areas] provides certainty that the New MNO will take all the sites (subject to the operational flexibility described in paragraph (1727)). Second, regarding coverage of the [the least densely populated areas], the Parties have committed to either enter the Revised RAN Sharing Option or divest / co-locate for the Revised Extended Sites, rather than these both being optional, which removes the risk that the New MNO takes neither.

(1762) With regard to selection of the Revised Sites and the release plan, the Parties have provided significant additional detail in the Final MNO Commitment. First, the Parties have committed to provide the New MNO with a master release plan which will detail the dates the Parties intend to make available, for transfer or co-location, the sites […], and include with details regarding the coordinates, address, existing antenna bottom height and azimuth per sector, rental amount and date of transfer for each site.[1560] The MNO Agreements specify that this master release plan will be provided to the New MNO by […]. Second, the Parties have committed to make available the Revised Sites on a [phased basis] in accordance with an indicative timetable set out in Annex 2 to the Final MNO Commitment. In particular, the indicative timetable anticipates multiple milestones including that: (1) by […], […] sites in […] areas will have been released; and (2) the release of sites to the New MNO will be completed in its entirety by […]. With regard to site selection, Annex 3 to the Final MNO Commitment details a procedure by which the New MNO selects sites and the Parties make them available, as well as setting out a number of criteria that the sites must meet, for example relating to available space for equipment, power supply, cable runs and third party consents. This additional detail also removes a significant uncertainty in the MNO Commitment regarding how the sites would be released to the New MNO and how the New MNO could be guaranteed to receive sites which were technologically and commercially viable.

(1763) The Final MNO Commitment provides significant additional detail on the commercial terms for co-location compared to the MNO Commitment. In particular, in consideration for co-location, the New MNO shall pay: (i) a set-up fee […] in connection with co-location; and (ii) […] fees for each site based on the rent, rates, energy, maintenance and other costs incurred by the Parties in respect of each site.[1561] The terms […] are detailed in the New MNO Agreements; in particular […]. The Final MNO Commitment also specifies that the term for the co-location agreement as described in recital (1726). The Commission understands based on submissions from the Parties that these terms are consistent with standard market terms and accordingly will allow the New MNO to compete effectively.

(1764) As noted, the total number of sites offered to the New MNO remains the same between the MNO Commitment and the Final MNO Commitment,[1562] that is below the number of sites that, according to the Market Test could be needed to obtain national coverage. However, as respondents to the Market Test commented, it is possible to acquire sites on the market in Italy (see recital (1668)). The role of tower companies in the Italian market is described above in recitals (106) to (113), in particular noting that in Italy, approximately 20.7% of macro access network sites are owned by third party tower companies. As described in recital (1645) if

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1560 Annex 2 to the Final MNO Commitment.
1561 Final MNO Commitment, paragraph 13.
1562 See footnote 1543 above.

agreements with a specific purchaser are concluded during the procedure, their resources can be taken into account. As discussed further in Annex E to this Decision, in assessing Iliad as the New MNO, the Commission has obtained sufficient comfort that Iliad will obtain sufficient sites from third party tower companies to be able to roll out a national network, and therefore compete effectively on a nationwide basis.

(1765) Given the removal of uncertainty regarding whether the New MNO would effectively roll out a sufficient number of sites to operate a national network, the Commission considers that the Final MNO Commitment would allow the New MNO to compete effectively.

8.6.1.4. […]

(1766) […].

8.6.1.5. Revised RAN Sharing Option

(1767) As explained in recital (1707), the Commission considers that the RAN Sharing Option in the MNO Commitment could have constituted a cost-effective way for the New MNO to extend its coverage to the least populated areas of Italy, but that there was significant uncertainty stemming from a lack of clarity regarding the terms of the arrangement and its optionality. AGCM and AGCOM also raised concerns regarding 2G coverage once the National Roaming Agreement was phased out as the RAN Sharing Option only contemplated 3G and 4G coverage.

(1768) As detailed above in recital (1761), to ensure that the New MNO will have coverage in the [least densely populated areas] under the Final MNO Commitment, the Parties commit to either: (1) divest to, or co-locate with, the New MNO on the Revised Extended Sites; or (2) activate the Revised RAN Sharing Option. This commitment removes uncertainty regarding the New MNO's roll out in the least densely populated areas as the Parties are obliged to undertake one or the other of the solutions with the result of the New MNO achieving national coverage. Moreover, in the event that the Revised RAN Sharing Option is activated, the Parties commit to the Revised RAN Sharing Option covering a minimum of […] sites in the [least densely populated areas], rather than a commitment to make sites available to the New MNO. Operational flexibility for the New MNO has also been included regarding the RAN Sharing Sites; the total number of sites may be reduced to the extent that the New MNO can demonstrate that it has obtained an equivalent number of sites (in the same areas) or equivalent coverage through alternative technologies.

(1769) The Final MNO Commitment also includes significant additional details with regard to a number of key aspects. First, Annex 5 to the Final MNO Commitment details the process for the selection and release of the RAN Sharing Sites including issuing a master release plan, the timing by which the New MNO should nominate sites and the procedure for replacing sites on which RAN Sharing is not technical feasible. Second, Annex 6 to the Final MNO Commitment sets out the cost structure of the Revised RAN Sharing Option, in particular […]. Third, Annex 9 to the Final MNO Commitment sets out the procedure by which the Parties will to phase out the 3G/4G MOCN Services in the [least densely populated areas] upon activation of the RAN Sharing Option.

(1770) With regard to 2G coverage, the Revised National Roaming Agreement will provide the New MNO with 2G services until the earlier of: […]. The Commission therefore concludes that the risk in the MNO Commitment highlighted by AGCM and AGCOM, of the New MNO being unable to provide 2G services in rural areas once the RAN sharing is activated, has been removed in the Final MNO Commitment.

(1771) Moreover, the Commission, having reviewed the implementation of the Revised RAN Sharing Option in the MNO Agreements, notes that the MNO Agreements envisage the identification of clean teams and the setting up of ring fencing procedures to ensure the confidentiality of Iliad information that the Parties would obtain as a result of the Revised RAN Sharing Option being exercised. The Commission considers that this provision to be sufficient to prevent information sharing between the JV and Iliad during operation of the RAN Sharing Option.

(1772) As a result of these revisions, the Commission considers that, also, the Final MNO Commitment would allow the New MNO to compete effectively regarding the Revised RAN Sharing Option.

8.6.1.6. Revised National Roaming Agreement

(1773) For the transitional period while the New MNO rolls out its own network, the Parties have committed to provide to the New MNO the 3G/4G MOCN Services and the 2G Roaming Services instead of the National Roaming Agreement for all three technologies. As noted above in recital (1712), the terms of this agreement are fundamental to whether the New MNO has the ability and incentive to compete effectively in the short term because the New MNO's operations will rely solely on the basis of the Revised National Roaming Agreement until completion of the site and spectrum release.

(1774) The Commission considers that the Revised National Roaming Agreement proposed under the Final MNO Commitment addresses all the shortcomings identified with respect to the National Roaming Agreement proposed under the MNO Commitment. The Parties have included a number of key improvements, in particular: (1) inclusion of details of the commercial terms and the capacity based pricing model; and (2) the removal of all restrictions on the ability to offer wholesale services. Each of these points is assessed in turn in recitals (1775) and following.

a) MOCN versus national roaming

(1775) As detailed in recital (1773), for the transitional period while the New MNO is rolling out its network, the Final MNO Commitment foresees a MOCN solution for 3G, 4G and new technologies, and roaming services for the legacy 2G technology.

(1776) MOCN is a form of network sharing where both spectrum and RAN equipment is shared but with each operator using its own core network.[1563] Compared to national roaming, a MOCN solution is more technically complex to implement, however on the basis of the information available in its file,[1564] the Commission considers that it allows greater control over traffic parameters (for quality and customers' traffic management at the single cell level) and allows greater flexibility to transition to an independent RAN.

(1777) Contrary to a submission from Fastweb,[1565] evidence in the Commission's file shows that implementing a MOCN solution rather than a roaming solution does not trigger any regulatory obligations nor requires any regulatory approvals in Italy. To the extent that the 3G/4G MOCN Services involve sharing, for a limited transitional period, only of the Parties' RAN and spectrum, (as opposed to the Parties and the New MNO sharing each other's RAN and spectrum) this sharing is provided only as

[1563] Iliad's confidential Business Plan [ID 2378] and Iliad's confidential submission of 14 July 2016 [ID 2429].
[1564] See in particular Iliad's confidential submission of 14 July 2016 [ID 2429].
[1565] Fastweb's submission dated 5 July 2016 [ID 2190].

a service. In this way, the 3G/4G MOCN Services are similar to other wholesale access services and national roaming through standard solutions.[1566] All MNOs in Italy are entitled to provide wholesale services to MVNOs and national roaming services to other MNOs on the basis of their licences and general authorisations.

b) Commercial Terms

(1778) In response to the Commission's concerns regarding the pricing model of the National Roaming Agreement, the Parties have included extensive details of the commercial terms in the Final MNO Commitment which is based on a […] payment by the New MNO for a fixed amount of capacity for an initial period of […] moving to a […] model after […] years.

(1779) For the provision of 3G/4G MOCN Services during the [...], the New MNO will pay to the Parties: (1) a […] for data usage within a set gigabyte capacity commitment (the "Capacity Commitment"); (2) a […] per gigabyte for data exceeding the Capacity Commitment; and (3) a […] for voice and SMS. Within the Capacity Commitment, the New MNO will not pay any additional charges for data usage, and the Parties commit that the fixed fee will not vary in accordance with the number of retail customers served by the New MNO or the amount of data consumed by the retail customers served by the New MNO. From the […] onwards, the pricing changes to a […] model; the New MNO will pay: (1) a […] per gigabyte of data; and (2) […] for voice and SMS. The Commission notes that the Capacity Commitment relates to the New MNO's traffic on the Parties' network and does not account for the traffic on the New MNO's own network.[1567]

(1780) The Capacity Commitment is set […]. The Commission considers that this is an acceptable level because it incentivises the New MNO to exercise a significant competitive constraint from the very outset of its operations by acquiring customers aggressively to utilise the acquired capacity. The Capacity Commitment alone allows the New MNO to acquire […] gross adds per year during […],[1568] an amount which is equal to approximately […] the number of gross adds acquired by H3G in […]. The New MNO's gross adds will be compounded by the additional capacity provided by the New MNO's own network. Also, the Commission notes that the Capacity Commitment would amount to […] of the total traffic expected by the JV in both the second and third year of the Capacity Commitment. Accounting for the traffic that is also expected on the own network of the new MNO, the total traffic of the New MNO is expected to amount to around […]% of the traffic of the JV in […].

(1781) The Final MNO Commitment includes a number of safeguards to prevent circumvention of the objectives of the Capacity Commitment whilst allowing the New MNO a degree of operational flexibility. First, […]. This ensures that the volumes are used to acquire new customers and the New MNO has a continued incentive to compete aggressively in the market.

(1782) The main effect of introducing the fixed price / fixed capacity model is that the cost structure of the New MNO will be similar to the cost structure of the other MNOs. This, in turn, will give the New MNO the incentives to aggressively acquire new

[1566] This view has been confirmed by AGCOM, see AGCOM's comments on the Revised MNO Commitment [ID 1931] as well as email of 21 July 2016 [ID 2434].

[1567] The Parties estimate that Iliad would carry approximately […]% of traffic on its own network by the end of […]. See Parties' presentation […]. This is further confirmed by Iliad's Business Plan – see Annex E.

[1568] The computation assumes the same projected data consumption profile as H3G's customers.

customers due to its low variable cost per subscriber, and to establish a sizeable initial customer base. The […] model also allows the New MNO to remain competitive vis-à-vis the other MNOs in the event that market unit prices fall more than is currently foreseen.

(1783) Moreover, even if the New MNO's traffic were to go above the Capacity Commitment (hence increasing its variable cost per subscriber at the margin due to the […] model of the Revised National Roaming Agreement), the initial investment in the Divestment Spectrum will give the New MNO additional incentives to acquire further customers above its Capacity Commitment. This is because from a dynamic perspective, the profitability of each customer acquired above the Capacity Commitment will increase once that customer is transferred from the […] model to the New MNO's network. Hence, the combination of the Capacity Commitment and of the New MNO's own roll-out will provide strong incentives to aggressively acquire customer from the beginning of the New MNO's operations.

(1784) […][1569] […].

(1785) The Commission considers that the commercial terms provided for in the Final National Roaming Agreement will ensure that the New MNO has the ability and incentive to compete aggressively, and eliminates risks associated with a per GB pricing system should the retail price decline significantly during the term of the National Roaming Agreement, as explained in recitals (1714) and (1715). On the other hand, the Commission considers that the change in pricing mechanism after […] when the New MNO has grown its customer base provides an appropriate incentive for the New MNO to roll out its network.

c) Wholesale access

(1786) As noted above, as compared to the MNO Commitment, the Final MNO Commitment contains no restrictions on the ability of the New MNO to offer wholesale access to MVNOs. The Final MNO Commitment therefore addresses the concerns the Commission identified in the wholesale market in Section 7.4.1.4 above.

(1787) In that Section, the Commission found that the Transaction would not immediately affect PosteMobile, the largest MVNO operating in Italy, in light of its wholesale contract. In particular, PosteMobile would be contractually protected, as it would remain able to provide its services on the retail market based on the commercial conditions negotiated recently, would be bound by […] and would not be seeking a new host network provider in the near future. Other MVNOs that are subject to similar contractual clauses regarding the duration and the exclusivity of their wholesale access would also not be immediately affected by the Transaction.

(1788) The Commission notes that by the time when these market players may be in a position to look for an alternative MNO host, the New MNO would in all likelihood have made significant progress in rolling out its own mobile network,[1570] and would therefore have overcome any alleged or perceived limitations that it could potentially

1569 […].

1570 See footnote 1567 above for the expected roll-out of Iliad's network. The Parties estimate that Iliad would carry approximately […]% of traffic on its own network by the end of […]. See Parties' presentation […]. This is further confirmed by Iliad's Business Plan – see Annex E. As regards the timing of PosteMobile's agreement, see recital (1345) above.

face in hosting MVNOs during the first years of its operations. PosteMobile[1571] submitted that amendments to the wholesale access contracts of WIND and H3G, such as removal of the […] provisions, extensions in term and equality and introduction of non-discrimination provisions, would be required to allow MVNOs to better compete; the Commission notes however that these issue are not merger specific, as they relate to PosteMobile's wholesale contract stipulated with WIND prior to the Transaction.

(1789) In the shorter term, the Transaction would therefore mainly affect those MVNOs which are not contractually bound to an MNO for the next years and potential new entrant MVNOs (although as noted in recital (1347) above, there is no concrete and credible evidence in the Commission's file of any potential new company that plans to enter the Italian market as an MVNO in the short term).

(1790) The Commission considers that the New MNO will constitute a viable alternative host MNO for those MVNOs seeking wholesale access.

(1791) In the short-term, given the capacity based pricing model in the Final MNO Commitment, the Commission considers that the New MNO would be an attractive host for potential MVNOs from the start of its operations. Should the New MNO not use its capacity commitment, it would have the incentives to aggressively price offer the remaining capacity of the capacity commitment in the wholesale market. In case, instead, that the New MNO use in full its capacity commitment, having reviewed a selection of wholesale agreements currently in place in the market, the Commission considers that the […] for voice, SMS and data included in the Revised National Roaming Agreement are below the […] currently offered in the wholesale market in Italy, and are likely to remain highly competitive in the next few years.[1572] This will give the ability and the incentives to the New MNO to provide wholesale access in the short-term.

(1792) In the medium to long-term, as the New MNO completes the roll-out of its network, it will have the same ability and incentives to compete on the wholesale mobile telecom market as the other MNOs. An analysis of Iliad's roll out plans shows that by the time of launch it would be more than capable of providing a commercially and technologically attractive offer. The New MNO's ability and incentives to grant wholesale access are further discussed in Annex E.

(1793) Therefore, the Commission considers that the Final MNO Commitment addresses the competition concerns raised by the Transaction with respect to the wholesale market.

d) Other terms

(1794) With respect to the duration of the Revised National Roaming Agreement, the Parties have committed to provide the 2G Roaming Services and the 3G / 4G MOCN Services for an initial period of […], starting within […] of closing the Transaction; the New MNO has the option to extend the arrangement for […] (the "Extended Term"). The Parties have committed that the site and spectrum release will be completed by […], that is to say […] period of the Revised National Roaming Agreement. Upon review of the business plan provided by the New MNO discussed further in Annex E, the Commission considers that the overall duration of this agreement is sufficient and is in line with the responses to the Market Test on this point described above at recital (1686). In the Commission's view, the […] term of

1571 See PosteMobile's submission to the Commission of 26 July 2016, page 2 [ID 2443].

1572 […].

the Revised National Roaming Agreement, renewable for […], strikes the right balance in allowing on the one hand: the New MNO to provide mobile services at an acceptable service quality on a national basis from the start of its operations; and on the other hand: incentivizing the New MNO to complete the roll-out of its own network in an acceptable timeframe.[1573]

(1795) Finally, the Parties have committed to provide the 2G Roaming Services and 3G / 4G MOCN Services in a manner that enables the services provided by the New MNO to its retail customers to be non-discriminatory and substantially equivalent to the corresponding quality of services provided to the Parties' retail customers. This provision is subject to certain limitations (in particular the obliged quality of service above the Consumption Caps and Capacity Caps described further below in recital (1784)) on which the Monitoring Trustee retains significant oversight. The New MNO Agreements contain significant additional detail as to how the New MNO's access to new technologies will be governed, in particular providing for a joint technology committee and the obligation to provide annual technological roadmap.

e) Conclusion on the Revised National Roaming Agreement

(1796) In the light of the above, the Commission considers that the Final MNO Commitment would allow the New MNO to compete effectively in the transitional phase while it is rolling out its network on the basis of the Revised National Roaming Agreement.

8.6.1.7. Conclusions regarding Final MNO Commitment

(1797) In conclusion, the Commission considers that the Final MNO Commitment addresses in a clear-cut way the competition concerns identified in the relevant market, as the entry of the New MNO will replace the competitive constraint of H3G, preserving competition on the market.

(1798) This conclusion is supported by submissions from both AGCOM and AGCM. In particular, according to AGCOM, the Revised MNO Commitment,[1574] as a whole, should be positively considered as they are capable of removing the competition concerns that could have arisen from the Transaction.[1575] Likewise, AGCM has expressed a positive opinion on the Revised MNO Commitment. It submits that the Revised MNO Commitment submitted by the Parties, as the MNO Commitments, allows for the entry of a new MNO, which is the only adequate measure to prevent the competition concerns that could have arisen from the Transaction to materialise; it welcomes the amendments offered by the Parties and the fix-it-first solution which ensure the effectiveness of the remedies.[1576]

(1799) The Commission also considers that a second Market Test of the Final MNO Commitment is not required, because each of the shortcomings of the MNO Commitment identified by the Commission following the initial Market Test have substantially been addressed in a clear-cut way , as explained in this Section 8.6.1.6.

1573 The Revised National Roaming Agreement includes also […].

1574 Which are identical in all material respects to the Final MNO Commitment- see footnote 1452.

1575 AGCOM's comments on the Revised MNO Commitment [ID 2434].

1576 AGCM's comments on the Revised MNO Commitment [ID 2437].

8.6.2. Iliad as a fix-it-first purchaser under the Final MNO Commitment

(1800) The Commission considers that Iliad complies with the standard purchaser requirements detailed in the Remedies Notice in terms of independence, financial resources and the absence of prima facie competition concerns.

(1801) First, based on the submissions of the Parties[1577] and Iliad,[1578] the Commission finds that there is no control relationship between Iliad and the Parties. It also considers that the limited business relationships[1579] between the companies do not qualify as control and do not put into question the independence of Iliad vis-à-vis the Parties.

(1802) Second, the Commission considers that Iliad possess the financial resources, proven relevant expertise and has the incentive and ability to enter the Italian market as the New MNO as a viable and active competitive force in competition with the Parties and other competitors based on its analysis set out in Annex E.

(1803) Third, the Commission considers that the Transaction is neither likely to create new competition problems, nor give rise to the risk that the implementation of the Final MNO Commitments will be delayed. In this respect the Commission notes that Iliad is currently not active in the mobile telecommunications sector in Italy. There is therefore no horizontal overlap nor any vertical link between the activities of Iliad and those that it would carry out as the New MNO. Moreover, while Mr. Xavier Niel, Deputy Chairman of the Board of Directors & Chief Strategy Officer of Iliad, had acquired 6% stock options and 5% equity swaps in TIM, the Commission notes that this position has since been unwound since Iliad took the decision to enter into the Italian market as an MNO pursuant to the commitments in this case. In the press release accompanying the announcement of Iliad entering into the MNO Agreements, Iliad announced with regard to Mr Neil that: *"he does not currently hold any stake in the voting rights or capital of Telecom Italia, whether directly or indirectly, and has only a marginal financial interest (of less than €25 million), which will be sold in the next few weeks."*[1580] Following this announcement, Iliad submitted evidence to the Commission documenting the sale of this option by Mr Neil, in particular a filing to the US Securities and Exchange Commission confirming that *"As of July 5, 2016,* [Xavier Neil] *ceased to be beneficial owner of more than 5% of the Shares"*[1581] and notifying the Commission on 27 July 2017 that NJJ Holding states that neither it nor Xavier Niel holds, directly or indirectly any shares or options relating to Telecom Italia S.p.A.[1582]

(1804) Finally, as detailed above in recitals (1748) to (1755), whilst certain regulatory approvals would be required in order to fully implement the Final MNO Commitment, the Commission considers that Iliad can be expected to obtain all necessary approvals from the relevant regulatory authorities and therefore does not consider that regulatory approvals give rise to a risk that the implementation of the commitments will be delayed.

1577 Form RM submitted by the Parties on 15 July 2016.

1578 Iliad's confidential Business Plan [ID 2378] and Iliad's confidential submission of 14 July 2016 [ID2429].

1579 Iliad's French mobile company Free Mobile has an international roaming agreement with […]. International roaming agreements between mobile operators active in different countries are common business practice in the mobile telecommunications sector.

1580 See Iliad's press release: http://www.iliad.fr/presse/2016/CP_050716_Eng_.pdf [ID 2405].

1581 Filing to the US Securities and Exchange Commission with regard to Telecom Italia dated 5 July 2016 as submitted by Iliad [ID 2403].

1582 See also press release: http://njj-holding fr/media/NJJ_Holding_CP_27072016.pdf [ID 2613].

8.7. The MNO Agreements between the Parties and Iliad

(1805) As noted above, on 1 July 2016, Iliad and the Parties signed the MNO Agreements which were subsequently amended on 18 July 2016.

(1806) The Commission considers that the terms of the MNO Agreements as amended are compliant with the Final MNO Commitment.

8.8. Overall Conclusion

(1807) In the light of the above, the Commission considers the Final MNO Commitment capable of rendering the Transaction compatible with the internal market as it will prevent a significant impediment to effective competition in all relevant markets in which competition concerns were identified.

(1808) Moreover, the Commission considers that the MNO Agreements between the Parties and Iliad are compliant with the Final MNO Commitments and that Iliad is a suitable New MNO pursuant to the Final MNO Commitment.

9. CONDITIONS AND OBLIGATIONS

(1809) Pursuant to the second subparagraph of Articles 8(2) and 10(2) of the Merger Regulation, the Commission may attach to its decision conditions and obligations intended to ensure that the undertakings concerned comply with the commitments they have entered into vis-à-vis the Commission with a view to rendering the concentration compatible with the internal market.

(1810) The fulfilment of the measure that gives rise to the structural change of the market is a condition, whereas the implementing steps which are necessary to achieve this result are generally obligations on the parties. Where a condition is not fulfilled, the Commission's decision declaring the concentration compatible with the internal market is no longer applicable. Where the undertakings concerned commit a breach of an obligation, the Commission may revoke the clearance decision in accordance with Article 8(6) of the Merger Regulation. The undertakings concerned may also be subject to fines and periodic penalty payments under Articles 14(2) and 15(1) of the Merger Regulation.

(1811) In accordance with the basic distinction described in recital (1810) as regards conditions and obligations, this Decision should be made conditional on full compliance by the Parties with Section B (including Annexes 1 to 9) of the Final MNO Commitment and Sections C to F should be obligations within the meaning of Article 8(2) of the Merger Regulation. The full text of the Final MNO Commitment is attached as Annex D to this Decision and forms an integral part thereof.

HAS ADOPTED THIS DECISION:

Article 1

The notified operation whereby Hutchison Europe Telecommunications S.à.r.l and VimpelCom Luxembourg Holdings S.à.r.l acquire, within the meaning of Article 3(1)(b) of Regulation (EC) No 139/2004, joint control of a newly-created joint venture by way of contribution to the joint venture of their respective business activities in Italy is hereby declared compatible with the internal market.

Article 2

Article 1 is subject to the conditions set out in Section B (including Annexes 1 to 9) of Annex D.

Article 3

Hutchison Europe Telecommunications S.à.r.l and VimpelCom Luxembourg Holdings S.à.r.l shall comply with the obligations set out in the Sections C to F of Annex D.

Article 4

The Commission approves Iliad S.A. as a suitable New MNO as defined in Annex D.

Article 5

The Commission approves the terms of the MNO Agreements entered into by VimpelCom Amsterdam B.V., Hutchison Europe Telecommunications S.à.r.l, Hutchison 3G Italy Investments S.à.r.l. and Iliad S.A. on 1 July 2016, as amended on 18 July 2016, as being compliant with the commitments set out in Annex D.

Article 6

This Decision is addressed to:

Hutchison Europe Telecommunications S.à.r.l.
Rue du marché-aux-Herbes, 7
L-1728 Luxembourg
Luxembourg

And

VimpelCom Luxembourg Holdings S.à.r.l.
Rue Edward Steichen 15
L-2540 Luxembourg
Luxembourg

Done at Brussels, 1.9.2016

For the Commission
(signed)
Margrethe VESTAGER
Member of the Commission

ANNEX A: THE COMMISSION'S QUANTITATIVE ANALYSIS OF NON-COORDINATED RETAIL PRICE EFFECTS

TABLE OF CONTENTS

1. INTRODUCTION[1]

(1) As discussed in Section 7.3.2 of the Decision, the Commission has carried out a quantitative analysis to assess the likely change in non-coordinated retail pricing incentives resulting from the direct elimination of horizontal competition between H3G and WIND. This Annex contains the details of this analysis.

(2) The Commission's quantitative consists of an extension of the methodology used in the Article 6(1)(c) Decision.

(3) The quantitative analysis is based on a measurement of the key empirical inputs for the analysis of pricing incentives, in particular of the measures for the degree of substitutability between the product propositions by different suppliers available to consumers and of the margins earned by suppliers on new customers they acquire. As explained in Horizontal Merger Guidelines, the degree of substitutability and margins are two important determinants of the likelihood that the elimination of competition between the merging parties will lead to significant non-coordinated price increases.[2]

(4) The price effects presented in the Decision and in this Annex summarise the interaction between the measured degree of substitution and margins. They are point estimates representing the Commission's best estimate of the non-coordinated effect of the merger on prices using a standard framework of analysis. As such, these price effects are informative on the likelihood of significant non-coordinated price increases as a result of the Transaction. A number of further sensitivity analyses are also presented to test the robustness of the estimates on which the Commission relies for its assessment of the transaction.

(5) The Commission notes that the quantitative analysis can only reflect the expected effect on prices caused by the loss of competition between H3G and WIND in the retail mobile market. As such, the price effects predicted by the quantitative analysis are likely to be compounded by the anti-competitive effects due to market coordination discussed in Section 7.3.3 of the Decision.

(6) This Annex is structured as follows. Section 2 presents the Bertrand-Nash framework and the calibration underlying the analysis. Section 3 introduces and discusses the inputs required for the quantitative analysis. The results of the Commission's analysis are presented in Section 4. Finally, Section 5 concludes.

(7) The Commission's assessment of the efficiency claims raised by the Parties is contained in Section 7.5 of the Decision.[3]

2. THEORETICAL FRAMEWORK: BERTRAND-NASH COMPETITION IN DIFFERENTIATED PRODUCTS

(8) The Commission's quantitative analysis rests on the standard analytical framework of Bertrand-Nash competition with differentiated products. The framework assumes

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1 All abbreviations and capitalised terms used in this Annex shall have the same meaning as in the Decision.

2 Horizontal Merger Guidelines, paragraph 29.

3 Form CO, Section 9.

that firms set price in a non-coordinated fashion in order to maximise their own profits. This estimation approach was also used on other recent cases involving mobile telecommunications services.[4]

(9) The starting point of the analysis assumes that the pre-merger situation constitutes a Bertrand-Nash equilibrium. As a result of the JV, H3G's and WIND's products are brought under common ownership. This eliminates competition between these products and generates incentives for the merged entity to raise prices. Post-merger, the merged entity will take into account the effect on the profitability of all of its tariffs when considering whether to change the price of one of its tariffs. For example, if in the pre-merger situation H3G increased the price of one of its tariffs, it would lose subscribers. A number of these lost subscribers would go to the WIND tariffs. After the merger, when the H3G and WIND tariffs are jointly controlled, these subscribers would no longer be lost from the point of view of the merged entity. This would give raise to incentives to raise prices to the merged entity. Moreover, the more there is substitution between the H3G and WIND tariffs (that is to say the higher the diversion ratio), the stronger the unilateral incentive for the merged entity to raise price. Unilateral price changes by the merged entity will also lead to price reactions by rivals (the so called "feedback effects") so that in the post-merger equilibrium all firms' prices may change. The overall extent of the price increases will depend on the closeness of competition between the merging parties and on the degree of competition from rivals.

(10) The Commission's quantitative analysis requires a specific form for the underlying customers' demand and in this case it is assumed that the demand is linear. This assumption is conservative as other forms of demand, such as log-linear demand, would imply a higher predicted price increase.

(11) The framework used also allows assessing the effect of reductions in marginal costs or increases in quality as a result of the merger on the merged entity's incentives to raise price (provided that such effects can be verified and quantified to the required standard set out in the Horizontal Merger Guidelines).[5]

2.1. The model of Bertrand-Nash competition in differentiated products

(12) Bertrand-Nash competition in differentiated products is formally modelled as follows. Each firm *f* is assumed to have a portfolio of products, J_f. The total (variable) profits of firm *f* are given by the sum of profits for each product in its portfolio:

$$\Pi_f(p) = \sum_{j \in J^f} \left(p_j - mc_j\right) q_j(p).$$

(13) Here, p_j denotes the price of product *j*, *p* is the vector with the prices of *all* products by all firms, mc_j is the constant marginal cost of product *j*, and $q_j(p)$ is the demand of product *j* which depends on all prices offered.

[4] Commission decision of 2 July 2014 in case No M.7018 – *Telefónica Deutschland/E-Plus*, Commission decision of 28 May 2014 in case No M.6992 – *Hutchison 3G UK/Telefónica Ireland*, Commission decision of 12 December 2012 in case No M.6497 – *Hutchison 3G Austria/Orange Austria*.

[5] Horizontal Merger Guidelines, Section VII.

(14) The effect of a change in the price of product *j* that is owned by firm *f* for given prices of other products is given by the derivative of the firm *f's* profit function with respect of the price of product *j*:

$$\frac{\partial \pi^{f}\left(p_{j}, p_{-j}\right)}{\partial p_{j}} = q_{j}(p) + \sum_{j' \in J^{f}} \left(p_{j'} - mc_{j'}\right) \frac{\partial q_{j'}(p)}{\partial p_{j}},$$

(15) Where p_{-j} is a vector of price of all products other than *j*. A price increase of product *j* hence has three effects on profits. First, it directly raises profits, proportional to current demand, $q_j(p)$. Second, it lowers the product's own demand which decreases profits proportional to the current mark-up, $(p_j - mc_j)$. Third, as other products are substitutes, it raises the demand for the other products, including the firm's other products. This rise in the demand of the firm's other products in its portfolio partially compensates for the reduced demand of the firm's product *j*, and hence it has a positive effect on the firm's profits.

(16) At profit maximising prices, the positive and negative effects of further price rises by firm *f* must exactly offset one another. This implies that for each product *j* belonging to firm *f*, and for given prices of rivals firms, $\frac{\partial \pi^{f}\left(p_{j}, p_{-j}\right)}{\partial p_{j}} = 0$. This is the first order condition for p_j to be a profit maximising price given the prices of other products.

(17) If the first-order conditions hold simultaneously for each product *j* (across all firms) then the price vector *p* defines the Bertrand-Nash equilibrium of the overall market. In matrix notation, the first order conditions for the equilibrium can be expressed as:

$$q(p) + \left(\Theta \bullet \nabla(p)'\right)(p - mc) = 0,$$

where *q(p)* is a *J*x1 vector with the demand for each product, $\nabla(p) \equiv \partial q(p)/\partial p'$ is the *JxJ* Jacobian matrix of first derivatives, and *mc* the vector of marginal costs. Θ denotes the product ownership matrix, that is, a *JxJ* matrix, whose element in its row *i*, column *j* is equal to 1 if product *j* and *i* are supplied by the same firm pre-merger and to 0 otherwise. The symbol ● denotes element-by-element multiplication of two matrices of the same size. The ownership matrix is multiplied (element-by-element) with the transpose of the Jacobian matrix to account for the fact that each firm only takes account the effect of a price change on its own products but not that on rival products.

(18) Inverting this equation yields an expression of the Bertrand-Nash equilibrium price vector:

$$p = mc - \left(\Theta \bullet \nabla(p)'\right)^{-1} q(p). \tag{1}$$

(19) The first element on the right hand side is the marginal cost component of the equilibrium price, while the second is the markup. The markup depends on the own- and cross-price elasticities of demand. The lower the own-price elasticities and the greater the cross-price elasticities, the greater will be the mark-up over marginal cost.

2.2. Measures of merger effects

(20) As the merger brings together the products of the merging parties under common ownership. In the model this implies a change in the ownership matrix, with the post-merger ownership matrix Θ^{post} reflecting that post-merger all H3G and WIND tariffs are owned and controlled by the JV. Elements of this matrix which refer to the interaction between H3G and WIND tariffs and which took the value 0 pre-merger are changed to 1.

(21) This change in ownership implies that the first order conditions for a Bertrand-Nash equilibrium no longer hold for the merged entity's products at the pre-merger price. Also, it has to be noted that in these merger effect calculations it is assumed that the merged entity keeps all the products of the merging firms (no tariffs or brands are shut down). A post-merger price is calculated for each existing tariff of the merging firms. Consequently, in the tables in the subsequent sections price increase predictions are given separately both for H3G and WIND, even if these two firms will no longer exist as separate entities on the Italian mobile communications services market after the implementation of the Transaction.

2.2.1. Gross Upward Pricing Pressure Index (GUPPI)

(22) The Gross Upward Pricing Pressure Index (GUPPI) provides a first measure of the extent to which (absent synergies) the merged entity has an incentive to unilaterally raise price.

(23) The GUPPI is derived from the post-merger first order conditions when evaluated at the pre-merger price. For the GUPPI, the first order conditions are divided by the own price derivative of demand and are also normalised by the price. As at the pre-merger prices, the pre-merger first order condition equals to zero, the GUPPI for the merged entity's product *j* reduces to the "new" terms in the first order condition (in its diversion ratio formulation):

$$GUPPI_j = \frac{1}{p_j^{pre}} \left(\sum_{i \in J^{otherParty}} \left(p_i^{pre} - mc_{j'} \right) DR_{ji} \right), \text{ where}$$

$$DR_{ji} = -\frac{\partial q_i \left(p^{pre} \right)}{\partial p_j^{pre}} \bigg/ \frac{\partial q_j \left(p^{pre} \right)}{\partial p_j^{pre}}$$

is the diversion ratio from product *j* to product *j'* and where the sum is taken over the set of products which pre-merger belonged to the other merging party.

(24) To compute the GUPPI one therefore only requires information on the diversion ratios between the merging parties' products, and the merging parties' margins and prices. No information on the demand for products or margins of non-merging firms is required. The computation also requires no assumption on the shape of the demand function as prices change.

(25) GUPPIs are frequently computed under the assumption of single product firms pre-merger. However, the above formulae can equally be applied to compute GUPPIs for multi-product firms.

2.2.2. Compensating Marginal Cost Reduction (CMCR)

(26) Alternatively one can ask what level of marginal cost reduction is required for each of the merged entity's products to exactly offset the incentive to raise price. In other

words, the question is establishing at what level of marginal costs will the pre-merger price still be a Bertrand-Nash equilibrium post-merger.[6] This required level of compensating marginal cost can be computed as:

$$mc^{comp} = p^{pre} + \left(\Theta^{post} \bullet \nabla\left(p^{pre}\right)'\right)^{-1} q(p^{pre}).$$

(27) The compensating marginal cost reduction for product *j* is then

$$CMCR_j = mc_j - mc_j^{comp} \text{ per subscriber, or}$$

$$CMCR_j^{\%} = \frac{mc_j - mc_j^{comp}}{mc_j} \text{ in percentage terms.}$$

(28) As with the computation of the GUPPI, the CMCR only requires information for the merged entity's products at the pre-merger price and diversion ratios between the merging parties' products. This is because at pre-merger prices the post-merger first order conditions for non-merging firms equate to zero. CMCR also requires no specific assumption on the shape of the demand function as prices change.

(29) Although GUPPIs are sometimes used to approximate required marginal cost efficiencies, CMCRs provide a better indication for the required marginal cost reductions, because they take account of the fact that a marginal cost reduction of product *j* will, via an increase in the margin of product *j*, also have a feedback effect on the first order conditions for other products. This effect is ignored in approximations based on GUPPI. As the informational requirements for both approaches are the same, CMCRs are to be preferred as a benchmark for required marginal cost efficiencies.

2.2.3. Indicative price rises and merger simulation

(30) Within this framework the post-merger first order conditions, which takes account of the change in ownership of products induced by the merger (via the post-merger ownership matrix Θ^{post}) can be expressed as:

$$p^{post} = mc^{pre} - \left(\Theta^{post} \bullet \nabla\left(p^{post}\right)'\right)^{-1} q(p^{post}). \tag{2}$$

(31) The predicted post-merger prices within this framework are the prices which satisfy these post-merger first order conditions.

(32) With linear demand, first order conditions can be inverted to directly provide the post-merger price as a function of marginal costs and demand parameters. In general, however, this is not possible and one must solve p^{post} as the solution to a non-linear system of first order conditions numerically. One strategy to do this is to express the first order equations as in equation (2) and then, starting from an initial guess for the new equilibrium price on the right hand side iterates this equation to update the value p^{post} until convergence is achieved.

[6] See also Werden, G. J., (1996): "A Robust Test for Consumer Welfare Enhancing Mergers Among Sellers of Differentiated Products," *Journal of Industrial Economics*, 44, pages 409-413 [ID1734].

2.2.3.1. Indicative price rise

(33) If it is assumed that rivals do not react to post-merger price changes by the merged entity, then this problem reduces to finding post-merger prices for the merged entity's products on the basis of the merged entity's first order conditions post-merger. This approach is often called an Indicative Price Rise (IPR). It requires information on the elements in post-merger first order conditions for the merged entity's products as well as an assumption of the functional form of demand. However, as the approach assumes there are no rival reactions, no information on demand derivatives of rival's products is required.

2.2.3.2. Merger simulation

(34) A full merger simulation which also takes account of price reactions by rival amounts to finding the post-merger price vector which corresponds to the new post-merger Bertrand-Nash equilibrium for all firms, that is, the price vector which satisfies the above equation (2) for all products of all firms simultaneously.

(35) In addition to an assumption on the functional form of demand, this approach hence requires information on the elements in the first order equations for all firms' products, not just for the merging firms' products.

2.3. Efficiencies

(36) The effect of reductions in marginal costs as a result of the merger on the merged entity's incentives to raise price can be accounted for by replacing the marginal cost estimate in the equation (2) with the marginal cost after efficiencies.

(37) Quality improvements can also be accounted for. However, the appropriate technique depends on the assumption on the functional form of demand. If demand is assumed to be linear (as is done in the analysis performed by the Commission), quality improvements that lead to a shift in the demand curve become equivalent to analysing competition in quality adjusted prices with reduced marginal cost.[7]

(38) The Commission therefore considers that synergies in the form of demand side efficiencies (quality) and in the form of supply side efficiencies (costs) can in principle be accounted for in the framework adopted. However, in order to be taken into account in the Commission's quantitative assessment, the potential demand side or supply side efficiencies arising from the merger must satisfy the conditions in the Horizontal Merger Guidelines.

(39) The Commission's detailed assessment of the Parties' efficiency claims is provided in Section 7.5 of the Decision.

2.4. Cross ownerships

(40) The merger simulation approach adopted by the Commission allows taking account of any cross ownerships across the mobile operators following Salop-O'Brien (2000).[8] In the Italian retail mobile market, however, this is not necessary as no cross ownership is present across the operators.

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[7] Willig, R., (2011): "Unilateral Competitive Effects of Mergers: Upward Pricing Pressure, Product Quality, and Other Extensions", *Review of Industrial Organization*, 39, pages 19-38 [ID1735].

[8] Salop S. and O'Brien D., (2000): "Competitive Effects of Partial Ownership: Financial Interest and Corporate Control", *Antitrust Law Journal*, Vol. 67, pp. 559–614 [ID1733].

2.5. Calibration of demand parameters

(41) Using the model to compute measures of merger effects for a specific transaction requires a quantification of the demand parameters. If measures of diversion ratios and margins and quantities are available for the pre-merger situation, demand parameters can be calibrated following the approach described in this sub-section.

(42) A diversion ratio is a measure of the degree of substitutability between two products. The diversion ratio from product *j* to *i* (DR_{ji}) is defined as:

$$DR_{ji} = -\frac{\partial q_i}{\partial p_j} \bigg/ \frac{\partial q_j}{\partial p_j}.$$

(43) It measures the number of customers switching from product *j* to product *i* following a price increase of product *j* expressed as a percentage of customers of product *j* that would stop purchasing product *j* following the price increase.

(44) With this definition, the pre-merger first-order condition for product j can be rewritten as:

$$q_j \bigg/ \frac{\partial q_j}{\partial p_j} - \sum_{i \in J^f} (p_i - mc_i) DR_{ji} = 0.$$

(45) Observed diversion ratios, margins and quantities hence imply values of $\partial q_j / \partial p_j$, which then imply values for $\partial q_i / \partial p_j$ via the definition of diversion ratios.

(46) Under the assumption of linear demand, the first derivatives do not change as prices change and it is also straightforward to calculate demand changes and compute price increases either by assuming no price reactions from competitors (UPPs) or by solving the full equilibrium effect which takes account of and predicts price reactions by rivals.

2.6. Analysis of the Parties' argument in the Reply to the Article 6(1)(c) Decision

(47) In their Reply to the Article 6(1)(c) Decision, the Parties argued that the framework of analysis used by the Commission is not appropriate to assess the likely price effects of mergers in the mobile telecom sector.

(48) According to the Parties, the Commission's quantitative analysis assumes that firms compete on price only and does not take into account competition on quality and on investments. Moreover, the Parties also argued that the quantitative framework adopted by the Commission is not able to take into account the fixed cost synergies of the Transaction. Hence, in the Parties' view the Commission's analysis would fail to account for the pro-competitive effects of the Transaction.

(49) The Commission disagrees with the Parties' arguments. Although its framework of analysis relies on a limited number of key inputs, in the Commission's view the analysis captures the most direct effect deriving from the loss of competition between the Parties following the Transaction. Moreover, as explained in Section 2.3, the Commission's framework is able to take into account efficiencies such as marginal cost reductions and quality improvements, provided that they are adequately quantified. Lastly, the Commission places less prominence to fixed cost

savings as they are unlikely to benefit consumers, as explained in the Horizontal Merger Guidelines.[9]

3. DETERMINATION OF THE INPUTS FOR THE QUANTITATIVE ANALYSIS

(50) This section presents the details of the inputs necessary to perform the quantitative analysis. The quantification of the likely price effects following the Transaction relies on empirical measures of diversion ratios and margins as well as on observed quantities and prices pre-merger.

(51) Section 3.1 discusses in detail the data underlying the quantitative assessment and the adjustments that were required by data limitations. The construction of the diversion ratios is discussed in Sections 3.2, while Section (96) presents the measures used as proxies for price and quantities pre-merger. Finally, Section 3.4 discusses the margins computed by the Commission to approximate the operators' economic margins.

3.1. Data

(52) The underlying data used in the quantitative analysis were provided by MNOs of the Italian mobile telecommunication market (the Parties, TIM and Vodafone) as well as by the primary MVNOs (PosteMobile and Fastweb).

(53) The Commission's computation of the inputs for the analysis relies on two key data sources. Segment level monthly data on each mobile operator's subscribers, revenues and costs in the respective segments at the retail level, which are primarily used for the quantification of margins, prices and quantities (see Sections 3.3 and 3.4). Switching information collected from a survey conducted by the Commission and from the operators' Mobile Number Portability ("MNP) data, which are primarily used for the computation of the diversion ratios (see Section 3.2). The Commission obtained further information regarding the mobile operators' estimates of avoidable operating expenditures (OPEX) and avoidable capital expenditures (CAPEX) in the hypothetical case of a reduction of the subscriber base, which complements the assessment of the margins.

(54) In the following, the Commission discusses the limitations present in the data and the way the Commission addressed them.

(55) First, H3G explained that [...]. In its Response to RFI 09 of 18 January 2016, and Response to RFI 17 of 16 February 2016, H3G provided the aggregate yearly figures (for 2013, 2014 and from January to March 2015) of those internal switchers. The Commission divided the aggregate figures on a monthly basis based on the monthly proportion of gross adds in the prepaid private segment, and excluded the resulting figures from the gross adds of the prepaid private segment.[10]

(56) Second, H3G […]. The Commission disaggregated this figure across segments based on the monthly service revenue proportion of each segment.

(57) Third, WIND was unable to provide the active subscriber base in the format required by the Commission (subscribers active in the 90 days prior to the recording month)

[9] Horizontal Merger Guidelines, paragraph 80.

[10] See Response to RFI 01 of 10 November 2015, Response to RFI 09 of 18 January 2016, and Response to RFI 17 of 16 February 2016.

and instead provided the number of subscribers following the definition that WIND uses for internal purposes ([…]). WIND provided additional monthly figures of active subscribers following the Commission's definition only for 2015 (until September), divided in private and business segments. The Commission used these additional figures to approximate the number of active subscribers for the period of the analysis. Specifically, the Commission decreased WIND's subscriber base to the proportion resulting by the ratio of the number of subscribers following the Commission's definition (90 days) and the number of subscribers following WIND's definition ([…]). This resulted in a decrease of WIND's the subscriber base of approximately […] in the private segment and […] in business segment.

(58) Fourth, PosteMobile was not able to provide the costs and the subscribers related to the handsets sales at a segment level, while it provided these figures only at an aggregate level. Similarly, PosteMobile was not able to provide the bad debt at segment level and it provided only the aggregate figures. The Commission attributed the aggregated costs and subscribers related to the handsets sales to each segment based on its share of revenues from the handsets sales. Likewise, the Commission attributed the aggregated bad debt figures to each segment based on its share of total service revenues.

(59) Fifth, Fastweb was not able to disentangle the segments of origin from its MNP data. In the computation of the diversion ratios based on MNP data, the Commission applied the same diversion ratios from Fastweb in each segment.

3.2. Diversion ratios

(60) In the retail mobile telecommunication market the diversion ratios among market participants can be computed either at network level, by including the diversion ratios of the MVNOs to their respective host MNO, or at provider level, by treating the MVNOs as completely independent players on par with MNOs. The Commission quantitative analysis in the Article 6(1)(c) Decision used network level diversion ratios, and included PosteMobile's and Fastweb diversion ratios in their respective hosts, WIND and H3G.

(61) In their Reply to the Article 6(1)(c) Decision, the Parties argued that diversion ratios at network level are not appropriate for the analysis because MVNOs should be treated as independent players, hence diversion ratios at provider level should be used. Moreover, the Parties argued that since Fastweb recently signed a wholesale agreement with TIM to become a Full MVNO from the end of 2016, for the computation of the diversion ratios at network level the diversion ratios of Fastweb should not be included in H3G's, rather they should be included in TIM's diversion ratios.[11]

(62) In the Commission's view, an analysis based on diversion ratios at the provider level is useful to analyse the effect of the merger at the retail level holding wholesale conditions for MVNOs fixed and treating MVNOs as fully independent at the retail level. Therefore, the analysis at the provider level does not account for the effects on the retail market of any reduction of competition at the wholesale level which would

[11] The Parties also argued that the Commission's quantitative analysis should have included the presence of an "outside good", and the corresponding diversion towards it. The inclusion of an outside good is addressed by a sensitivity analysis to the Commission's baseline scenario, and is further discussed in Section 4.2.5.

undermine the effectiveness of the MVNOs, and hence underestimates the anti-competitive non-coordinated effect in the market.

(63) An analysis based on diversion ratios at the network level instead assumes that the effect of the elimination of competition between H3G and WIND is best captured by their positions at the network level rather than by the pure retail level interaction between their respective brands. The Commission considers that the network level analysis proxies to a certain extent the wider anti-competitive effects of the Transaction, in particular in relation to possible detrimental effects on the wholesale competition. It also indirectly accounts for the structural links present between the host MNO and the hosted MVNOs, both in terms of financial incentives (e.g. the host MNO re-captures part of the margin lost by the MVNO via wholesale fees), and pricing conduct (e.g. MVNO tariffs that are set on a retail minus basis imply that that a change in prices by the host MNO would directly translate into higher retail prices by the hosted MVNO).[12] Indeed, in previous merger cases concerning the mobile telecommunications sector, the Commission has used diversion ratios at the network level in its baseline scenario analysis.[13]

(64) In any case, the Commission presents in this Annex the results of its quantitative analysis using both network level and provider level diversion ratios, in order to provide a reasonable range for the likely non-coordinated price effects from the Transaction.

(65) Moreover, despite the transition from an ESP to a Full MVNO may require a significant amount of time, the Commission agrees with the Parties that, due to the recent agreement between Fastweb and TIM, for the computation of the diversion ratios at network level it is more appropriate to include Fastweb's diversion ratios in TIM's rather than in H3G's. The network level diversion ratios underlying the Commission's quantitative analysis will therefore include PosteMobile's diversion ratios in WIND's and Fastweb's diversion ratios in TIM's.

(66) In the Article 6(1)(c) Decision, the Commission derived diversion ratios based on MNP data. The Commission considers MNP data to be a reliable source of customer switching behaviour, and used it also in recent merger cases in the mobile telecommunication sector.[14]

(67) However, the use of MNP data for the purpose of the quantitative analysis of non-coordinated effects also has a number of limitations. In particular, the MNP data (i) includes only switching behaviours of customers who ported their mobile phone number; (ii) requires assumptions on either the customers' first or second choice of mobile operator; and (iii) does not necessarily represent the preferences of marginal consumers (which are more relevant for the purpose of the analysis).[15] These

[12] The financial incentives between host MNO and MVNO can also be modelled by introducing the wholesale margins of the MNO in its first order condition. This is the approach followed by the Parties in the Parties' Merger Simulation study. However, this approach does not take into account the possible partial control by the host MNO over the MVNO's prices.

[13] See, for example, Commission decision of 2 July 2014 in case No M.7018 – *Telefónica Deutschland/E-Plus*.

[14] See Commission decision of 2 July 2014 in case No M.7018 – *Telefónica Deutschland/E-Plus*, Commission decision of 28 May 2014 in case No M.6992 – *Hutchison 3G UK/Telefónica Ireland*.

[15] Being representative of all past switching events (in which customers ported their number), the MNP data does not necessarily represent the preferences of those consumers who would switch operator in the event of an increase in price (that is, the marginal consumers).

shortcomings were noted by the Notifying Parties in previous merger cases in the mobile telecommunication sector.[16] The Commission has no prior as to whether these shortcomings bias the diversion ratios and, if so, in what direction. The extent of the bias, if any, also depends on the particular case. Absent an alternative source of information that addresses these limitations, the Commission considers that MNP data are a reasonable basis to measure diversion ratios for its quantitative assessment.

(68) Nevertheless, in the present case, the Commission investigated during the phase II investigation whether the above limitations of the MNP data lead to inaccuracies in the measurement of diversion ratios. To this end, the Commission conducted a customer survey among mobile phone subscribers in the Italy (the "Survey").[17] The Survey was designed to investigate the question of closeness of competition as described in the Horizontal Merger Guidelines, that is, in terms of customers' first and second choices, [18] and to identify such preferences for the marginal consumers.

(69) The Survey targeted *informed* customers of the Parties who recently made a switching decision to either change provider to one of the Parties ("gross adds"), or modify/renew their contract with one of the Parties ("internal switchers").[19]

(70) The Survey focused on customers of H3G and WIND as the degree of substitutability between the Parties' products is the main driver of the change of pricing incentives arising from the elimination of competition between the Parties through the Transaction. Non-coordinated incentives for post-merger price increases can arise because customers that following a price increase by one merging party would have been lost to the other merging party in the absence of the merger are no longer lost for the JV post-merger. The degree of substitutability between the Parties' products is a key determinant of the strength of this most direct loss of competition effect of a merger.[20]

(71) To ensure that the customers were *informed* at the time of the switching decision, the Survey focused on respondents who had chosen a new tariff plan (or renewed the tariff plan) within the most recent 12 months available, that is, between January 2015 and December 2015. Furthermore, the Survey screened the respondents with a number of questions. The Survey proceeded only if (i) the phone number called was the respondent's primary personal mobile phone tariff plan; (ii) the respondent had chosen/modified the tariff personally; and (iii) if at the time of choosing the current provider/payment plan, the respondent had actively considered tariff plans of other providers.

(72) Customers who recently made a switching decision (to one of the Parties, or within one of the Parties) revealed the operator they switched to (or with which they chose

16 See, for example, Commission decision of 28 May 2014 in case No M.6992 – *Hutchison 3G UK/Telefónica Ireland*.

17 See Annex B and C to the Decision, containing respectively the survey methodology and the survey questionnaire. Prior to implementing the survey, H3G and WIND have been given the opportunity to comment on the survey's questionnaire.

18 See Horizontal Merger Guidelines, paragraph 28.

19 The Survey was conducted over the telephone and has been designed and implemented in cooperation with the specialised survey agency SWG. The Commission has obtained from H3G and WIND data on mobile phone numbers of all gross adds and internal switchers in the pre-paid and post-paid private segments over the period between January 2015 and December 2015. The Survey interviewed a sub-sample of those customers who made a switching decision in the same period.

20 Horizontal Merger Guidelines, paragraphs 24 and 28.

to remain) as their first choice alternative. Hence, the Survey ensured that the customers interviewed had as their first choice one of the Parties. The Survey then investigated these customers' second choice with two questions.

(73) The first question investigated the respondents' switching behaviour in the hypothetical event that the tariffs of their most recently chosen provider (i.e. their first choice) had been 10% more expensive at the time they made their choice ("intensive question").[21] The second question investigated the respondents' switching behaviour in the hypothetical event that their most recently chosen provider had not been available at the time they made their choice ("extensive question").

(74) Both questions elicit information on the distribution of respondents' second choices at the time they made their first choice. That is, the questions are informative on what the respondents considered their second best mobile operator at the time they chose their first best mobile operator. Furthermore, the intensive question is able to identify the second choices of the marginal consumers, i.e. of those that are most likely to change their behaviour following a price increase. In contrast, the extensive question provides information of the distribution of second-best choices of average consumers including those that would likely not change their behaviour following a 10% price increase.

(75) The Commission considers that the ability of the Survey to disentangle customers' first and second choices captures the essence of closeness of competition as it is described in the Horizontal Merger Guidelines, and its ability to provide insights on the preference of the marginal consumers is valuable for the purpose of the quantitative analysis. Moreover, the Survey is not dependent upon other costumers' choices unrelated to closeness of competition (e.g. to port their number).

(76) Overall, therefore, the Commission views the Survey as a superior source of information for the purpose of assessing closeness of competition, compared to other sources based on past switching behaviour, such as the MNP data.

3.2.1. Diversion ratios from the Commission's Survey

(77) The Survey targeted a total of 8000 respondents in the private segment who had changed their mobile provider (the "gross adds"[22]) or modified/renewed their tariff plan (the "internal switchers") between January 2015 and December 2015 (that is, during the most recent 12 months for which data is available). The survey was stratified as follows. It was designed to obtain 4000 respondents from both H3G and WIND. For each operator, half of the respondents (2000) were gross adds, while the other half were internal switchers.[23] The Survey did not target business customers due to the fact that business customers are likely not in control of their tariff plans decisions and are likely not to pay directly for their tariff plans.

(78) Given the relatively large sample of respondents, and the similarities between prepaid and postpaid private tariffs in the Italian mobile telecom market (see recital (33) of the Decision), the Commission decided to let the division in prepaid and

[21] The consumers were asked about their most recent choice of mobile telephone brand and which brand they would have chosen in case the price of the chosen brand had been approximately 10% higher per month at the time they made their choice.

[22] Note that gross adds in this context include individuals who had switched mobile operators, as well as individuals who had acquired their first mobile connection.

[23] The number of respondents for each subgroup differed slightly from the initial design. See Appendix B.

postpaid private segments fall naturally without placing any quotas. Likewise, the division according to some demographic characteristics of the population (gender, age, region of residence) also fell naturally. Appendix B of this Annex provides an overview of the demographic characteristics of the sample and a comparison with the population characteristics. It can be observed that for both H3G and WIND the sample closely matches the population characteristics, suggesting a good representativeness of the target population over these demographic characteristics.

(79) For a limited number of respondents the information provided by the Parties did not match the information declared by the interviewees. For some respondents the information on the identity of their operator did not match the one provided by the Parties (i.e. respondents that were supposed to be H3G's customers declared they were WIND's customers and vice-versa). For the computation of the diversion ratios, the Commission considered as operator of origin the respondents' declared operator. Also, some respondents declared to be on a different segment than the one provided by the Parties (mostly respondents who were supposed to have a prepaid tariff and declared to have a postpaid tariff). In such circumstances the Commission followed the segment indication provided by the Parties.

(80) Moreover, in calculating the diversion ratios based on the Survey data, the Commission assumed that switching takes place within the same segment. In the Commission's view, excluding the cross segment switchers would imply an unnecessary loss of information. This approach is also consistent with the one followed in the computation of the diversion ratios based on MNP data.[24]

(81) The Commission has computed two sets of diversion ratios from the responses to the Survey. The first set of diversion ratios is based on the responses to the intensive question only. The second set of diversion ratios is based on an aggregation of the responses to the intensive and to the extensive question.[25]

(82) Table 1 and Table 2 display the number of respondents underlying the computation of the diversion ratios to the intensive survey question and to the intensive and extensive survey questions, respectively, by operator-segment combination. About 25% of the interviewees declared they would switch operator following a price increase; percentage that increases to more than 80% by including also the responses to the extensive question.

Table 1: Number of respondents to the intensive survey question

Operator\Segment	Postpaid Private	Prepaid Private	Overall Private
H3G	310	733	1,043
WIND	69	853	922

24 See Section 3.2.2.

25 Note that the extensive question was asked only to those respondents who did not provide a switching preference to the intensive question. The two sets of responses do not therefore overlap.

Table 2: Number of respondents to the intensive and extensive survey questions

Operator\Segment	Postpaid Private	Prepaid Private	Overall Private
H3G	844	2485	3,329
WIND	219	3084	3303

(83) Given the stratification of the survey between gross adds and internal switchers for each operator, the answers in the raw Survey data have been re-weighted in order to reflect the actual distribution of gross adds and internal switchers in the respective original populations from which the phone numbers for the interviews have been drawn.

(84) For a given operator j (H3G or WIND), each survey cohort of answers i (internal switchers or gross adds) has been reweighted using the ratio between the proportion of i in the population ($P_{i|j}^{pop}$), and the proportion of i in the survey's sample ($P_{i|j}^{sample}$).

$$\boldsymbol{weight_{ij}} = \frac{\boldsymbol{P_{i|j}^{pop}}}{\boldsymbol{P_{i|j}^{sample}}}$$

(85) Table 3 and Table 4 show the diversion ratios based on the survey intensive question at network and provider level, respectively. The tables are divided by segments: overall private, prepaid private, and postpaid private.[26] The Commission uses the diversion ratios based on the intensive survey question in the baseline scenario of its quantitative assessment.

Table 3: Diversion ratios based on intensive survey question, 2015, network level

Overall Private	H3G	WIND	TIM	Vodafone
H3G	-	[20-30]%	[30-40]%	[30-40]%
WIND	[10-20]%	-	[30-40]%	[40-50]%
Prepaid Private	**H3G**	**WIND**	**TIM**	**Vodafone**
H3G	-	[20-30]%	[30-40]%	[30-40]%
WIND	[10-20]%	-	[30-40]%	[40-50]%
Postpaid Private	**H3G**	**WIND**	**TIM**	**Vodafone**
H3G	-	[20-30]%	[30-40]%	[40-50]%
WIND	[20-30]%	-	[40-50]%	[30-40]%

[26] The post-paid private segment consists of post-paid private voice&data and post-paid private data only.

Table 4: Diversion ratios based on intensive survey question, 2015, provider level[27]

Overall Private	H3G	WIND	TIM	Vodafone	PosteMobile	Fastweb
H3G	-	[20-30]%	[30-40]%	[30-40]%	[0-5]%	[0-5]%
WIND	[10-20]%	-	[30-40]%	[40-50]%	[0-5]%	[0-5]%
Prepaid Private	**H3G**	**WIND**	**TIM**	**Vodafone**	**PosteMobile**	**Fastweb**
H3G	-	[20-30]%	[30-40]%	[30-40]%	[0-5]%	[0-5]%
WIND	[10-20]%	-	[30-40]%	[40-50]%	[0-5]%	[0-5]%
Postpaid Private	**H3G**	**WIND**	**TIM**	**Vodafone**	**PosteMobile**	**Fastweb**
H3G	-	[20-30]%	[30-40]%	[40-50]%	[0-5]%	[0-5]%
WIND	[20-30]%	-	[40-50]%	[30-40]%	[0-5]%	[0-5]%

(86) Appendix A of this Annex presents the diversion ratios tables based on the intensive and extensive survey questions. The diversion ratios between H3G and WIND based on the intensive survey question are generally lower than those based on the responses to the intensive and extensive survey questions. Section 4.2.2 presents the results of a sensitivity analysis that estimates the price effects of the merger using diversion ratios based on the responses to the intensive and extensive survey questions.

(87) As the Survey was conducted among customers of H3G and WIND, to complete the full matrix of diversion ratios required to perform the merger simulation the diversion ratios of the competitors (TIM, Vodafone, Poste Mobile and Fastweb) have been sourced from the MNP data available.[28]

3.2.2. *Diversion ratios using MNP data*

(88) The Commission has also computed the diversion ratios based on Mobile Number Portability ("MNP") data. These are calculated from information on port out requests in each mobile operator's MNP database. These represent the number of porting requests an operator receives from other operators relating to customers who want to port their number to the other operator. This data is available for the private segment and the business segment.

(89) The diversion ratio from segment z of firm j to firm i is then computed as the number of port out requests received by firm j from firm i relating to segment z divided by the total number of port out requests received by firm j relating to segment z.

(90) The MNP data provided by the mobile operators contained information on the segment of origin but not on the segment of destination. The Commission has assumed that for each port out the segment of destination is the same as the segment of origin.

27 Diversion ratios to operator "Other" (i.e. other MVNOs in the market) omitted from the table.

28 Diversion ratios from the competitors have only a secondary effect to the price predictions of the model because they only affect feedback effects, that is, the competitors' reaction to the JV's unilateral price effect. Such feedback effects are also recognised in the Horizontal Merger Guidelines (paragraph 24) and are taken into account in the quantitative analysis. However, the precise measurement of the degree of substitutability between the Parties and their rivals is much less important for the magnitude of price effects than the measurement of the degree of substitutability between the Parties.

(91) Table 5 and Table 6 display the diversion ratios of the Parties computed using MNP data (the "MNP diversion ratios").[29]

Table 5: Diversion ratios based on MNP data, 2015, network level

Overall Private	H3G	WIND	TIM	Vodafone
H3G	-	[…]	[…]	[…]
WIND	[…]	-	[…]	[…]
Prepaid Private	**H3G**	**WIND**	**TIM**	**Vodafone**
H3G	-	[…]	[…]	[…]
WIND	[…]	-	[…]	[…]
Postpaid Private	**H3G**	**WIND**	**TIM**	**Vodafone**
H3G	-	[…]	[…]	[…]
WIND	[…]	-	[…]	[…]

Table 6: Diversion ratios based on MNP data, 2015, provider level

Overall Private	H3G	WIND	TIM	Vodafone	PosteMobile	Fastweb
H3G	-	[…]	[…]	[…]	[…]	[…]
WIND	[…]	-	[…]	[…]	[…]	[…]
Prepaid Private	**H3G**	**WIND**	**TIM**	**Vodafone**	**PosteMobile**	**Fastweb**
H3G	-	[…]	[…]	[…]	[…]	[…]
WIND	[…]	-	[…]	[…]	[…]	[…]
Postpaid Private	**H3G**	**WIND**	**TIM**	**Vodafone**	**PosteMobile**	**Fastweb**
H3G	-	[…]	[…]	[…]	[…]	[…]
WIND	[…]	-	[…]	[…]	[…]	[…]

(92) Compared to the diversion ratios based on the survey intensive question discussed in Section 3.2.1, the MNP diversion ratios display a slightly lower diversion from H3G to WIND and a higher diversion from WIND to H3G.

3.2.3. The Parties' diversion ratios

(93) As part of the Parties' Merger Simulation study in which anti-competitive and pro-competitive effects of the Transaction are balanced, the Parties also submitted the diversion ratios estimated by their model (the "Parties' diversion ratios", see Section 7.5.4 of the Decision).[30] The Commission implemented its quantitative analysis also using of the Parties' diversion ratios.[31]

29 The Parties will have access to the full MNP diversion ratios table, including the diversion ratios of the other market participants, in the Data Room.

30 Parties' submission "The Transaction will be welfare-increasing" of April 22, April 27 and March 1 2016.

31 The Commission used the diversion ratios estimated in the baseline scenario of the Parties' submission, see page 40 of the Parties' submission of April 27.

(94) The Parties' diversion ratios included diversions to an outside good for all market participants,[32] as well as diversions to the PAYG tariffs (pay-as-you-go) which were considered outside of the operators' tariffs offerings, effectively as part of the outside good. In order to make the Parties' diversion ratios consistent and comparable to the other sources of diversion ratios used in its quantitative analysis, the Commission proportionally distributed the diversions to the outside good and the PAYG tariffs across the diversion ratios to the other operators.

(95) Table 7 and Table 8 show the Parties' diversion ratios at network and provider level, respectively.

Table 7: Parties' diversion ratios, 2015, network level

Overall Private	H3G	WIND	TIM	Vodafone
H3G	-	[40-50]%	[20-30]%	[20-30]%
WIND	[20-30]%	-	[30-40]%	[30-40]%
Prepaid Private	**H3G**	**WIND**	**TIM**	**Vodafone**
H3G	-	[40-50]%	[20-30]%	[20-30]%
WIND	[20-30]%	-	[30-40]%	[30-40]%
Postpaid Private	**H3G**	**WIND**	**TIM**	**Vodafone**
H3G	-	[40-50]%	[20-30]%	[20-30]%
WIND	[20-30]%	-	[30-40]%	[30-40]%

Table 8: Parties' diversion ratios, 2015, provider level

Overall Private	H3G	WIND	TIM	Vodafone	PosteMobile	Fastweb
H3G	-	[30-40]%	[20-30]%	[20-30]%	[10-20]%	[0-5]%
WIND	[10-20]%	-	[20-30]%	[30-40]%	[10-20]%	[0-5]%
Prepaid Private	**H3G**	**WIND**	**TIM**	**Vodafone**	**PosteMobile**	**Fastweb**
H3G	-	[30-40]%	[20-30]%	[20-30]%	[10-20]%	[0-5]%
WIND	[10-20]%	-	[20-30]%	[30-40]%	[10-20]%	[0-5]%
Postpaid Private	**H3G**	**WIND**	**TIM**	**Vodafone**	**PosteMobile**	**Fastweb**
H3G	-	[30-40]%	[20-30]%	[20-30]%	[10-20]%	[0-5]%
WIND	[20-30]%	-	[20-30]%	[30-40]%	[10-20]%	[0-5]%

(96) Compared to the diversion ratios based on the intensive survey question, the Parties' diversion ratios display higher diversions between the Parties. The Parties' diversion ratios from H3G to WIND at network level are particularly higher. […].

32 The inclusion of a diversion to an "outside good" assumes that part of the current mobile customers stop using their mobile phone or reduce their usage following a price increase. See paragraph (171).

3.3. Proxies for quantities and prices

3.3.1. Gross adds as a quantity measure

(97) The Commission's approach is intended to capture competition for customers which are contestable in the sense that they are in a position and willing to consider moving to a different provider.

(98) To proxy for these customers, the Commission used the number of customers gained by each mobile operator in the private segments and business segments (the gross adds).

3.3.2. ARPU as price measure

(99) The analysis requires a price measure to approximate the monthly expenditure of an average customer of the mobile operators. The Commission proxied the price with a measure of the Average Revenue Per User ("ARPU"). Specifically, the average monthly price of operator *i* in segment j (p_{ij}) is computed as:

$$p_{ij} = \frac{R_{ij}^{service}}{S_{ij}} + \frac{R_{ij}^{handset}}{30 * G_{ij}}$$

(100) Where $R_{ij}^{service}$ is the total service revenues excluding interconnection revenues,[33] S_{ij} is mid-term subscriber base, $R_{ij}^{handset}$ is the total cumulative handset revenue,[34,35] and G_{ij} is the number of gross adds (i.e. new subscribers).[36] In the Commission's view, p_{ij} represents the average monthly payment of a typical new subscriber of each operator in a given period (i.e. month).

(101) The use of ARPU implies that usage is assumed to be exogenous[37] and that customers choose between brands, i.e. that the customer chooses the provider with the most convenient offer given his or her exogenous needs. In the Commission's view, it is appropriate to work with this simplifying assumption, as consumption is taking place more and more within the bundle due to the large and increasing bundle sizes.[38]

(102) The Commission notes that the average monthly payment of operators' new subscribers is a relevant price measure for the quantitative analysis in that any price effect post-Transaction is likely to manifest on new tariff offerings rather than on existing tariff plans. In addition, this price measure is consistent with the quantity measure of the analysis (i.e. the gross adds).[39] The Commission notes, however, that

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[33] Interconnection revenues are not included as they are not paid by the subscribers. Also, note that the total service revenues do not include revenues from the sale of handsets.

[34] The cumulative handset revenue is the sum of present and future payments of the instalments for the handsets sold in a given period. It includes any upfront payment.

[35] […]

[36] The cumulative handset revenues if further divided by 30 as, generally, handset payments are divided in 30 instalments.

[37] This implies that usage needs are given, that is that they are not a function of pricing.

[38] The Commission computes a yearly average ARPU figure. Usage needs over a period of one year can be reasonably expected not to change as significantly as to be not represented by the yearly average ARPU anymore.

[39] The choice of the price measure was also dictated by data limitations, as WIND and other operators were unable to provide the monthly instalments paid by its customer base for the handsets.

this price measure is upward biased, as the total cumulative handset revenues ($R_{ij}^{handset}$) include the upfront payments at the time of purchase. The upfront payment should, instead, be excluded from the monthly expenditure, and be included only in the computation of the margins. The Commission notes, however, that the upward bias in the price measures implies a downward bias in the predicted price effects. Hence, the analysis can be considered conservative.

(103) In its Reply to the Article 6(1)(c) Decision the Parties argued that the upfront payment should be included in the ARPU because it often represents a significant portion of the "total cost of ownership" for the customers.[40] According to the Parties the Commission's approach of including the upfront payment in the ARPU is the correct approach, and should not be regarded as conservative by the Commission.

(104) The Commission considers that for the purpose of the quantitative analysis the ARPU should represent a proxy for the monthly price paid by the operators' customers. As such, the ARPU relating to upfront handset payments should not be included as it is not a monthly payment. Possibly, an amortisation of the upfront payment could be included in the ARPU computation. This would still make the analysis conservative as the increase in the ARPU (relative to the computation excluding the upfront payment) is likely to be marginal. In any event, due to data limitation the Commission has not changed its computation of the price measure, and the upfront payment is still conservatively fully allocated in the monthly ARPU.

3.4. Margins

(105) The operators' margins, together with the diversion ratios, represent the two primary sources driving the results of the Commission's quantitative analysis. The determination of the relevant margin figure in the operators' pricing decisions is therefore essential for the analysis.

(106) The Commission requested information from the operators on their costs that naturally vary with the number of subscribers (e.g. airtime costs, subscriber acquisition costs, etc.). Subtracting this cost category (the "contribution costs") from the relevant revenue figure forms the "contribution margins".

(107) The Commission also requested the operators to provide their estimate on the amount of the costs not directly related to the number of subscribers (i.e. OPEX and CAPEX figures) that could be avoided should the subscriber base decrease. Subtracting this cost category (the "incremental costs") from the contribution margins forms the "incremental margins".[41]

(108) For the purposes of the merger simulation analysis, the Commission is primarily interested in the margin measure that best reflects marginal costs, that is, those costs that are usually taken into account by firms when setting prices.[42]

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40 Reply to the Article 6(1)(c) Decision, Section 7.4.

41 See Response to RFI 1 of 10 November 2015, Response to RFI 2 of 13 November 2015 and subsequent Responses to RFIs on data clarifications.

42 In the Article 6(1)(c) Decision, the Commission used the contribution margins in its preliminary quantitative analysis. The Parties in the Reply to the Article 6(1)(c) Decision argued that for the analysis at network level the contribution margins should have been calculated as the weighted average between retail and wholesale margins, which would have resulted in lower margin figures than the ones used by the Commission because wholesale margins are lower than retail margins. The Commission disagrees with the Parties' argument. The analysis at network level not only approximates the financial interest of

(109) The Commission considers that the contribution margins constitute the most appropriate approximation for the economic margins driving the pricing decisions of each mobile operator. Not only are contribution margins directly associated with subscribers, there is also ample evidence indicating that they are the primary driver of the operators' pricing decisions. Moreover, there is evidence indicating that the incremental costs are not taken into account in the operators' pricing decisions.

(110) The following subsections first describe the reasons whereby the Commission considers contribution margins the appropriate margin for the analysis. Then, they describe the Commission's computation of the margin figures.

3.4.1. Contribution margins as the most appropriate measure of margins

(111) The contribution margins are based on the direct variable costs only, that is, those costs that naturally vary in direct proportion to each customer acquired or lost. They represent, therefore, the primary candidate to be used as a proxy of the economic margins.

(112) To the contrary, incremental margins include a proportion of indirect costs and the extent to which these costs vary with subscriber numbers is prima facie less intuitive. Indeed, there are a number of elements suggesting that incremental margins are less relevant in the operators' pricing decision, if at all.

(113) The Commission sought the Parties' views on whether the estimates of incremental costs provided were part of the internal analyses for the purposes of pricing decisions, such as profitability analyses or financial planning.

(114) H3G explained that when proposing a new tariff its marketing department [...]. H3G explained that it evaluates the profitability of the tariffs […], in particular whether the tariff […]. Moreover, it does not appear that H3G […]. H3G explained that "*the Italian mobile telecommunications market […]*".[43] H3G, however, considered that [...].[44]

(115) The Commission considers that [...]. The methodology followed by H3G's marketing department in assessing a new tariff offering, [...]. The Commission does not dispute that mobile operators would be unable to sustain its business if they did not recover the costs of their investments. However, as also confirmed by H3G statements, […]. Moreover, these dynamics are generally slow to manifest, […].[45]

(116) WIND explained that [...].[46] WIND pointed to […].[47] WIND explained that […]. Moreover, WIND described that […].[48]

(117) The Commission examined the document submitted by WIND. The document describing […]:

(a) […].

the host MNO towards its hosted MVNOs, it also approximates the ability of the host MNO to affect the prices of the hosted MVNOs. In the Commission's view, to better approximate this control over the hosted MVNOs' prices, the retail margins of the host MNO should be used.

43 Response to RFI 44 of 25 April 2016, paragraph 3.4.

44 Response to RFI 44 of 25 April 2016, question 3.

45 See recital (602) of the Decision.

46 Response to RFI 45 of 25 April 2016, question 4.

47 Response to RFI 45 of 25 April 2016, Annex 3.

48 Response to RFI 45 of 25 April 2016, paragraph 4.3.

(b) […].

(c) […].[49]

(118) […].[50,51] Indeed, […].[52] […].[53] Moreover, […].[54]

(119) The Commission notes that […].

(120) WIND […]. […].[55] […].[56]

(121) Figure 1 […]. The figure shows that […].[57]

Figure 1: […].[58]

[…]

(122) As indicated […]. Figure 2 depicts […]. The figure further show that the time-horizon considered is […].

Figure 2: […].[59]

[…]

(123) The Commission also reviewed […].[60]

(124) […].[61] […].[62] […]. As also mentioned in paragraph (118), […].

(125) In addition to the fact that, as explained in paragraph (118), […].

Figure 3: […].[63]

[…]

(126) […].[64] […].[65,66] Table 9 displays […].

Table 9: […].[67]

[…]

(127) Table 9 shows that […]. [68] […].[69]

49 See Response to RFI 45 of 25 April 2016, Annex 3, page 6.
50 See Response to RFI 45 of 25 April 2016, Annex 3, page 1.
51 […].
52 See Response to RFI 45 of 25 April 2016, Annex 3, page 7.
53 See Response to RFI 45 of 25 April 2016, Annex 3, page 5.
54 See Response to RFI 45 of 25 April 2016, Annex 3, page 6.
55 […]
56 […]
57 See Table 10.
58 […]
59 […]
60 […]
61 […]
62 […]
63 […]
64 […]
65 […]
66 […]
67 […]

(128) Based on the above, the Commission considers that WIND's internal pricing evaluation supports the use of contribution margins as relevant economic margin in the quantitative analysis. Moreover, it appears that […].

(129) Moreover, the Commission considers that the extent by which the Parties' OPEX and CAPEX figures vary with the subscriber base is questionable, and OPEX and CAPEX […].

(130) First, in the Form CO the Parties explain that […].[70] The Parties explain further that […].[71] […].

(131) Second, the Parties submitted an econometric analysis to quantify the scale economies of H3G.[72] The study found that a 10% increase in H3G's subscriber base […].[73] Such results, according to the study, are statistically significant and are robust to alternative specifications.

(132) The Commission considers that the Parties' results, when taken at face value, suggest that […]. According to the Parties' study, the increase in the customer base by 10% […].[74] […].[75] […].

(133) Third, the Parties claimed that […].[76] […].[77] For example, […].[78] […]. If a given cost element indeed varies with the number of subscribers, then adding together two separate subscribers bases (as is the case under the JV) would not yield any synergies.

(134) For the reasons set out in this Section, the Commission concludes that the most appropriate margin figures for the assessment of the likely price effects following the Transaction are the contribution margins. […].

(135) The Commission also considers that there are a number of shortcomings in the Parties' assessment of their avoidable OPEX and CAPEX in case of a decrease of the customer base.[79] Some elements that were considered variable with the customer base appear to be in clear contradiction with the Parties' statements in the Form CO and with the Parties' internal documents. […]. The Commission, however, considers that a detailed assessment of these elements is not necessary due to the overall evidence described in this Section.

(136) In any event, the Commission also performed an additional conservative sensitivity analysis by including in the quantitative analysis the incremental margins used by the

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68 The Commission further notes that WIND's assessment of the relevant costs figures […]. See, for example, […].

69 […]

70 Form CO, Section 6, paragraph 377.

71 Form CO, Section 6, paragraph 379.

72 Form CO, Annex 21.

73 The study's operating costs are measured as […]. See Form CO, footnote 219.

74 […]

75 See Form CO, Section 6, paragraphs 379-380 and Figure 28.

76 Form CO, Section 9, paragraphs 29-32.

77 See Response to RFI 1 of 10 November 2015, Response to RFI 2 of 13 November 2015 and subsequent Responses to RFIs on data clarifications.

78 See Response to RFI 44 of 25 April 2016, question 15.

79 See Response to RFI 1 of 10 November 2015, Response to RFI 2 of 13 November 2015 and subsequent Responses to RFIs on data clarifications.

Parties in the Parties' Merger Simulation study. This sensitivity analysis is discussed in Section 4.2.4.

3.4.2. Computation of contribution margins

(137) The computation of the contribution margins used by the Commission in its quantitative analysis is the following. For operator i in segment j (cm_{ij}), the contribution margins are:

$$cm_{ij} = \frac{\bar{R}_{ij}^{service} - C_{ij}^{service}}{S_{ij}} + \frac{R_{ij}^{handset} - C_{ij}^{handset}}{30 * G_{ij}}$$

(138) Where $\bar{R}_{ij}^{service}$ are the total service revenues including interconnection revenues, $C_{ij}^{service}$ is the sum of interconnection costs, outbound roaming costs (national and international), bad debt (such as non-retrievable costumer debt) and customer acquisition and retention costs, and $C_{ij}^{handset}$ is the total cost for the procurement of the handsets.[80] The other variables on the right-hand side of the equation follow the definitions given in paragraph (100).

(139) For the purpose of expressing the margins in percentage terms, the price measure (ARPU) discussed in Section 3.3.1 is used.

3.4.3. Computation of incremental margins

(140) For the computation of the incremental margins the Commission followed the Parties' approach for the calculation of the total avoidable costs.[81] The computation of the incremental margins of operator *i* in segment *j* (im_{ij}) is as follows:[82]

$$im_{ij} = cm_{ij} - \frac{\widehat{D_\iota} + \widehat{CC_\iota}}{0.1 * S_{ij}} * \%R_{ij}$$

(141) Where cm_{ij} represents the contribution margins as defined in Section 3.4.2., $\widehat{D_\iota}$ represents the avoidable OPEX and avoidable CAPEX depreciation estimated by the operator, and $\widehat{CC_\iota}$ represents the estimated avoidable cost of capital, which is computed as the product of avoidable net book value and WACC (together the total avoidable costs). S_{ij} represents the customer base of operator *i* in segment *j*, which is multiplied by 0.1 because the avoidable CAPEX and OPEX figures were estimated assuming a 10% reduction of a customer base. The total avoidable costs estimates are further multiplied by $\%R_{ij}$, the revenue share of segment *j* for operator *i*.[83]

80 […]

81 In the Parties' Merger Simulation study the Parties used short-run incremental margins. The Parties also submitted long-run incremental margins and a forward-looking approach to the avoidable CAPEX. See Response to RFI 1 of 10 November 2015, Response to RFI 2 of 13 November 2015 and subsequent Responses to RFIs on data clarifications.

82 Vodafone did not provide estimates of the avoidable costs. For the purpose of computing Vodafone's incremental margins, the Commission made adjustments based on the estimated avoidable costs submitted by TIM.

83 The Commission notes that in order to compute a per subscriber/month incremental cost figure the Parties divided the total avoidable costs by only the subscriber base of the private segment. In the Commission's view the total avoidable costs should relate to the total subscriber base of the operators. Hence, an allocation by segment's revenue share appears more appropriate.

3.5. Summary of the key inputs

(142) Table 10 presents an overview of the key inputs for the calibrated merger simulation, in addition to the diversion ratios presented in Section 3.2.

Table 10: Overview of the key inputs, 2015

		Gross adds Market Shares	ARPU	% Contribution Margins	% Incremental Margins
Private Segment	H3G	[…]	[…]	[…]	[…]
	WIND	[…]	[…]	[…]	[…]
Prepaid Private	H3G	[…]	[…]	[…]	[…]
	WIND	[…]	[…]	[…]	[…]
Postpaid Private	H3G	[…]	[…]	[…]	[…]
	WIND	[…]	[…]	[…]	[…]

Source: Commission computations based on data provided by the operators.

4. RESULTS OF THE CALIBRATED MERGER SIMULATION

(143) This section presents and discusses the results of the Commission quantitative analysis of non-coordinated retail price effects.

(144) The Commission concludes that on the basis of its quantitative analysis the Transaction is likely to generate sizable anti-competitive effects in the form of incentives for the JV to significantly increase prices.

(145) As already indicated in paragraph (5), the quantitative analysis can only reflect the expected price increases caused by the loss of competition between H3G and WIND in the retail mobile market. The predicted price effects therefore do not include the likely anti-competitive effects due to market coordination explained in Section 7.3.3 of the Decision, and as such are likely to underestimate the adverse effect of the Transaction on retail prices.

4.1. Baseline scenario of the calibrated merger simulation

(146) Due to the prevalence of prepaid tariffs and due to the similarities in the prepaid private and the postpaid private segments in the Italian retail mobile telecommunication market,[84] the Commission focused its quantitative analysis on the overall private segment.

(147) As mentioned in Section 3, the baseline scenario of the Commission's quantitative analysis is based on 2015 data using contribution margins and diversion ratios based on the intensive survey question. The results are reported for both network level and provider level diversion ratios.

[84] See recital (33) of the Decision.

(148) The Commission has carried out a number of sensitivity analyses to test the robustness of its baseline analysis. The results of the sensitivity analyses are discussed in Section 4.2.

(149) Table 11 presents the results of the baseline scenario. The left-hand side of the table reports the predicted price effects using diversion ratios at network level, while the right-hand side of the table displays the price effects using provider level diverson ratios. The last row of the table reports the average segment price effect, computed as a revenue weighted average of the price effects of the operators.

Table 11: Calibrated merger simulation baseline scenario results, 2015

	Private Segment	
	Network Level	**Provider Level**
H3G	13.1%	12.1%
WIND	10.7%	10.0%
Vodafone	4.6%	3.8%
TIM	3.5%	2.9%
PosteMobile	-	1.2%
Fastweb	-	1.5%
Segment Effect	7.0%	6.1%

Source: Commission computations based on data provided by the operators.

(150) The baseline scenario of the Commission's quantitative analysis predicts price increases in the range of 12.1-13.1% for H3G and 10-10.7% for WIND. On average, the model predicts price increases between 6.1% and 7% in the private segment.[85,86]

(151) The results of the baseline scenario indicate that the Transaction is likely to give sizeable incentives to the Parties as well as to the other market participants to increase prices in the private segment.

(152) The Commission notes that the price increases predicted for the Parties (13.1% and 12.1 respectively for H3G and WIND) in the baseline scenario are in line with the […] (see recital (293) of the Decision). Moreover, the price increases are also in line with those estimated by the Parties in the Parties' Merger Simulation study in the absence of efficiencies (see Section 4.3).[87]

85 The Commission notes that a more appropriate measure to weight the price effects of the MNOs to compute the average segment effect would be to use the gross adds' revenue share, as opposed to the total revenue shares. This would lead to higher segment price effects as the gross adds' revenue share of the Parties is higher than their revenue shares ([…]). Nevertheless, the Commission takes a conservative approach and uses the total revenue shares in light of the fact that the Parties may become less aggressive, hence acquiring less gross adds, post-Transaction.

86 The Commission notes that an analysis including both private and business segments would predict price increases in the range of 5.5-6.3%.

87 Due to a different methodology, in the Parties' Merger Simulation study the price increases for the Parties are estimated to be higher than in the Commission's baseline scenario, whereas the average price effect in the private segment is estimated to be slightly lower than in the Commission's baseline scenario.

4.2. Sensitivity analyses of the calibrated merger simulation

(153) This section presents sensitivity analyses that the Commission has carried out to investigate the robustness of the baseline scenarios. The sensitivity analyses are the following:

(a) Analysis using the diversion ratios based on MNP data;

(b) Analysis using the diversion ratios based on intensive and extensive survey questions;

(c) Analysis using the Parties' diversion ratios;

(d) Analysis using incremental margins;

(e) Analyses assuming a diversion to the outside good.

4.2.1. Sensitivity analysis using diversion ratios based on MNP data

(154) This section presents the sensitivity analysis using the diversion ratios based on MNP data.

(155) As explained in Section 3.2, although compared to the diversion ratios based on survey data the diversion ratios based on MNP data present some limitations, the Commission still considers the MNP data as a valuable source of information on customers' switching behaviours in the retail mobile telecommunication market, and the sensitivity analysis using the MNP diversion ratios is still informative to infer the robustness of the baseline scenario.[88]

(156) Table 12 presents the results of the sensitivity analysis using MNP diversion ratios at network level, on the left-hand side of the table, and at provider level, on the right-hand side of the table.

Table 12: Sensitivity analysis using MNP diversion ratios, 2015

	Private Segment	
	Network Level	**Provider Level**
H3G	15.4%	12.6%
WIND	15.9%	14.0%
Vodafone	6.0%	4.5%
TIM	4.3%	3.1%
PosteMobile	-	2.6%
Fastweb	-	2.4%
Segment Effect	9.4%	7.5%

Source: Commission computations based on data provided by the operators.

88 The Commission also notes that compared to the diversion ratios based on the survey intensive question, the MNP diversion ratios are based on a larger and potentially more (statistically) reliable sample.

(157) The price effects for the Parties predicted by this sensitivity analysis range between 12.6% and 15.4% for H3G, and between 14% and 15.9% for WIND. On average, the model predicts price increases of 7.5-9.4% in the private segment.

(158) Compared to the baseline scenario, the sensitivity analysis using MNP diversion ratios predicts higher price increases both segment-wide and for the Parties. This confirms the conclusion of the baseline scenario that the Transaction is likely to give raise to sizable incentives to increase prices.

4.2.2. Sensitivity analysis using diversion ratios based on intensive and extensive survey questions

(159) This section presents the sensitivity analysis using the diversion ratios based on intensive and extensive survey questions displayed in Table 21 and Table 22 of Appendix A of this Annex.

(160) As mentioned in Section 3.2, the diversion ratios based on the intensive survey question provide information on the likely behaviour of the marginal consumers following a price increase. For this reason, the Commission considers them more appropriate to be included in the analysis and uses them in the baseline scenario. Nevertheless, the diversion ratios based on intensive and extensive survey question are still informative of the first and second choices of the Parties' average customers. They represent, therefore, a valuable source of information to test the robustness of the baseline scenario.

(161) Table 13 displays the results of the sensitivity analysis using diversion ratios based on intensive and extensive survey questions.

Table 13: Sensitivity analysis using diversion ratios based on intensive and extensive survey questions, 2015

	Private Segment	
	Network Level	**Provider Level**
H3G	14.8%	13.6%
WIND	11.8%	11.1%
Vodafone	4.8%	4.1%
TIM	3.9%	3.3%
PosteMobile	-	1.4%
Fastweb	-	1.4%
Segment Effect	7.8%	6.8%

Source: Commission computations based on data provided by the operators.

(162) The sensitivity analysis predicts price effects in the range of 13.6-14.8% for H3G, and 11.1-11.8% for WIND. The segment-wide price effects are between 6.8% and 7.8%.

(163) Using the diversion ratios based on intensive and extensive survey questions leads to higher predicted price increases relative to the baseline scenario. This supports further the conclusion whereby the Transaction is likely to lead to anti-competitive outcomes.

4.2.3. *Sensitivity analysis using the diversion ratios estimated consumer survey run by the Parties*

(164) This section presents the results of the sensitivity analysis using the diversion ratios estimated by the consumer survey run by the Parties, as discussed in Section 3.2.3.

(165) Table 14 presents the results of this sensitivity analysis. The predicted price effects are between 15% and 22.1% for H3G, and between 12.7% and 17.8% for WIND. On average, the model predicts price increases of 7.4-11.2% in the private segment.

Table 14: Sensitivity analysis using the Parties' diversion ratios, 2015

	Private Segment	
	Network Level	**Provider Level**
H3G	22.1%	15.0%
WIND	17.8%	12.7%
Vodafone	6.2%	3.8%
TIM	5.4%	3.1%
PosteMobile	-	7.1%
Fastweb	-	4.5%
Segment Effect	11.2%	7.4%

Source: Commission computations based on data provided by the operators.

(166) The results reported in Table 14 shows that using the diversion ratios presented by the Parties leads to higher price effects compared to the baseline scenario, in particular at the network level (in light of the estimated diversion ratios between H3G and PosteMobile). Under this scenario, the range of price effects due to the Transaction is significantly wider than under the Commission baseline case, and is shifted upwards. In the Commission's view, this further indicates the likely anti-competitive effects brought about by the Transaction.

4.2.4. *Sensitivity analysis based on incremental margins*

(167) This section presents the sensitivity analysis using the incremental margins on which the Parties based a sensitivity analysis of the Parties' Merger Simulation study. The Commission considers the analysis presented in this section as a very conservative estimate of the effects of the merger. As explained in Section 3.4, the Commission does not consider the incremental margins to be the relevant economic margins driving the operators pricing decisions.

(168) Nevertheless, the Commission has carried out a sensitivity analysis including the Parties' estimates of the incremental margins. Table 15 reports the results of this sensitivity analysis.[89]

[89] Data on incremental margins for PosteMobile and Fastweb were incomplete. For the purpose of the sensitivity analysis at provider level, the Commission used the contribution margins for PosteMobile and Fastweb. This would tend to increase the price effects predicted by the model. However, due to the market size of PosteMobile and Fastweb, the Commission considers this adjustment to have a marginal effect on the predicted price effects.

Table 15: Sensitivity analysis using <u>incremental margins</u>, 2015

	Private Segment	
	Network Level	Provider Level
H3G	11.9%	11.0%
WIND	9.6%	9.0%
Vodafone	4.5%	3.7%
TIM	3.4%	2.8%
PosteMobile	-	1.2%
Fastweb	-	1.5%
Segment Effect	6.5%	5.7%

Source: Commission computations based on data provided by the operators.

(169) Using incremental margins, the model predicts price increases in the range of 11-11.9% for H3G, and 9-9.6% for WIND. The average price effect in the private segment is estimated to be in the range of 5.7-6.5% (somewhat lower than the baseline scenario of 6-7% price effects).

(170) The results of this sensitivity analysis indicate that even using conservative incremental margins, the magnitude of the predicted price increases remain sizeable. This further supports the conclusion whereby the merger is likely to give raise to incentives to increase prices.

4.2.5. Sensitivity analysis assuming a diversion to the outside good

(171) This section presents the results a conservative sensitivity analysis based on the assumption that post-Transaction a portion of each operator's demand would leave the mobile telecom market, effectively ceasing to use mobile phone services (so called "diversion to an outside good"). In the Commission's view, it is very unlikely that subscribers would stop using their mobile phones in the event of a price increase. These sensitivity analyses should be rather considered as a proxy for possible decreases in usage following a price increase post-Transaction. Estimating by how much the aggregate usage of mobile services would change as a result of a price increase requires estimating the magnitude of the elasticity of aggregate demand. The Commission is not aware of any study that could provide an indication of such elasticity. The Parties' merger simulation estimated a diversion to the outside good of about 10% for each operator. Whilst the Commission has doubts on the reliability of this estimate, for the purposes of this conservative scenario the Commission relies on this estimate of the diversion to the outside good.[90]

(172) Table 16 displays the results of this sensitivity analysis.

[90] The Commission considers the Parties' estimation of the outside good to be not appropriate and the size of the outside good to be overestimated. The outside good in the Parties' Merger Simulation (see Section 7.5.4 of the Decision) study is estimated using the proportion of interviewees in the Parties' survey that have chosen the "None of these" option or the PAYG option during the choice experiment, as opposed of choosing one of the three fictional randomised bundled tariffs. Therefore, the computation of the outside good in the Parties' Merger Simulation study does not represent an actual decision of the costumers not to purchase a product. Moreover, the final size of the outside good estimated by the Parties' Merger Simulation study is to a large extent the result of the calibration strategy adopted by the Parties, as the pre-calibrated outside good represented [c.8%] of the market, while post-calibration it increased to [c.20%]. See Reply to RFI 57 of 4 May 2016, question 10.

Table 16: Sensitivity analysis assuming 10% diversion to the outside good, 2015

	Private Segment	
	Network Level	Provider Level
H3G	11.0%	10.2%
WIND	8.7%	8.2%
Vodafone	3.4%	2.8%
TIM	2.5%	2.1%
PosteMobile	-	0.8%
Fastweb	-	1.1%
Segment Effect	5.6%	4.9%

Source: Commission computations based on data provided by the operators.

(173) Assuming a 10% to the outside good in the model results in predicted price effects of 10.2-11% and 8.2-8.7% for H3G and WIND, respectively. Segment-wide, the model predicts an average price effect of 4.9-5.6% in the private segment (somewhat lower than the baseline scenario of 6-7% price effects).

(174) This sensitivity analysis shows that even when applying a conservative assumption of 10% diversion to the outside good, the model predicts sizeable price effects both for the Parties and in the private segment. This supports the conclusion of the baseline scenario whereby the Transaction is likely to lead to significant anti-competitive effects.

4.2.6. Sensitivity analysis including the variable costs efficiencies

(175) In Section 7.5 of the Decision the Commission assesses the efficiencies claim submitted by the Parties. The Commission concludes that only part of such claims fulfilled in principle the three criteria set out in the Horizontal Merger Guidelines of benefit to consumers, merger specificity and verifiability. Moreover, the Commission considers that the figures provided by the Parties are overestimated.

(176) Table 17 displays the marginal cost reduction for H3G and WIND following the efficiencies. On left-hand side the upper bound of the efficiencies is reported, while on the right-hand side the lower bound is reported. […].

(177) Table 18 displays the results of the sensitivity analysis taking into account the claimed marginal cost reductions. Predicted price effects are reported for the upper bound of the efficiencies, on the left-hand side of the table, and for the lower bound of the efficiencies, on the right-hand side of the table.

Table 17: Marginal cost reduction (EUR/subscriber/month), 2015

		Efficiencies Upper Bound	Efficiencies Lower Bound
Private Segment	**H3G**	[…]	[…]
	% of ARPU	[…]	[…]
	WIND	[…]	[…]
	% of ARPU	[…]	[…]

Table 18: Sensitivity analysis including the efficiencies claimed by the Parties, 2015

	Efficiencies Upper Bound		Efficiencies Lower Bound	
	Private Segment		Private Segment	
	Network Level	Provider Level	Network Level	Provider Level
H3G	12.2%	11.2%	12.8%	11.8%
WIND	10.5%	9.8%	10.6%	9.9%
Vodafone	4.4%	3.7%	4.6%	3.8%
TIM	3.3%	2.7%	3.4%	2.8%
PosteMobile	0.0%	1.2%	0.0%	1.2%
Fastweb	0.0%	1.4%	0.0%	1.5%
Segment Effect	6.8%	5.9%	6.9%	6.0%

Source: Commission computations based on data provided by the operators.

(178) This sensitivity analysis predicts price increases in the range of 11.2-12.8% for H3G, and 9.8-10.6% for WIND. The average segment-wide price effect ranges between 5.9% and 6.9%, similar to the 6.1-7% of the baseline scenario.

(179) Overall, the results of the sensitivity analysis taking into account the efficiencies claimed by the Parties in the form of a marginal cost reduction are close to the results of the Commission's baseline scenario, and hence support its conclusion that the Transaction is likely to give rise to significant incentives to increase prices both to the Parties and in the private segment.

4.2.7. Summary of the quantitative analysis' results

(180) Table 19 presents a summary of the predicted non-coordinated price effects resulting from the Commission's quantitative analysis.

(181) The results of the sensitivity analyses are grouped in (i) sensitivity analyses using different measures of diversion ratios (i.e. MNP diversion ratios, diversion ratios based on intensive and extensive diversion ratios, and Parties' diversion ratios); (ii) sensitivity analyses using different measures of margins or assuming an outside good (i.e. incremental margins, and 10% of outside good); (iii) sensitivity analysis including the variable cost efficiencies.

Table 19: Summary of the price effects predicted by the Commission's quantitative analysis

	Predicted Price Increases		
	Average Private Segment	H3G	WIND
Baseline Scenario	6.1% - 7.0%	12.1% - 13.1%	10.0% - 10.7%
Sensitivity analyses using different measures of diversion ratios[91]	6.8% - 11.2%	12.6% - 22.1%	11.1% - 17.8%
Sensitivity analyses using different measures of margins or assuming an outside good[92]	4.9% - 6.5%	10.2% - 11.8%	8.2% - 9.6%
Sensitivity analysis including variable costs efficiencies[93]	5.9% - 6.9%	11.2% - 12.8%	9.8% - 10.6%

(182) Compared baseline scenario the sensitivity analyses using alternative measures of diversion ratios tend to predict higher price increases both for the Parties and on average in the private segment. On the other hand, sensitivity analyses using different measures of margins or assuming an outside good tend to predict somewhat lower price increases. Finally, the sensitivity analysis including the variable cost efficiencies that were deemed by the Commission to fulfil the three conditions set out in the Horizontal Merger Guidelines of benefit to consumers, merger specificity and verifiability predicts price effects close to those predicted in the baseline scenario.

(183) Overall, all the sensitivity analyses support the conclusions reached in the baseline scenario that the Transaction is likely to give rise to sizable incentives to the JV to increase prices. This, in turn, will significantly increase the average prices in the private segment.

4.3. The Parties' estimated price effects absent efficiencies

(184) In the Parties' Merger Simulation study, the Parties performed a merger simulation to estimate the price effects brought about by the Transaction using a different methodology than the methodology applied by the Commission. The methodology applied in the Parties' Merger Simulation study is introduced and discussed Section 7.5.4 of the Decision.

(185) Table 20 displays the predicted price effects estimated by the Parties in the Parties' Merger Simulation study in the scenario where no efficiencies are included in the analysis.

91 Includes the results presented in Table 12, Table 13 and Table 14.

92 Includes the results presented in Table 15 and Table 16.

93 Includes the results presented in Table 18.

Table 20: Predicted price effects in the Parties' Merger Simulation study absent efficiencies

	Private Segment	
	"Network Level"[94]	Provider Level
H3G	[20-30]%	[20-30]%
WIND	[10-20]%	[5-10]%
Vodafone	[0-5]%	[0-5]%
TIM	[0-5]%	[0-5]%
PosteMobile	[0-5]%	[-5-0]%
Fastweb	[0-5]%	[-5-0]%
Segment Effect	[5-10]%	[0-5]%

Source: Parties' Merger Simulation study[95]

(186) The Parties estimated price effects in the range of [20-30]% for H3G, and in the range of [5-10]% for WIND. In the private segment, the average price effect is estimated to be between [0-5]% and [5-10]%.

(187) Except for the high price effects predicted for H3G, the price effects estimated in the Parties' Merger Simulation study are in line with the results of the Commission's baseline scenario. The estimated price effects for the Parties are, on average, higher in the Parties' Merger Simulation study than in the Commission's baseline scenario, while the average price effect in the private segment is, on average, lower.

(188) Although the Commission raised concerns on the reliability of the results of the Parties' Merger Simulation study (as explained in Section 7.5.4 of the Decision), the predicted price effects estimated by the Parties support the Commission's conclusions of the baseline scenario. In the absence of efficiencies the Transaction is likely give raise to sizable incentives for the Parties to increase prices, which, in turn, will significantly increase prices in the private segment.

5. CONCLUSION

(189) Based on the results of the quantitative analysis, the Commission considers that the Transaction is likely to generate significant non-coordinated anti-competitive effects in the Italian retail mobile telecommunication market.

(190) The Commission carried out a quantitative assessment of the likely retail price effects resulting from the elimination of horizontal competition between H3G and WIND. This assessment is based on a calibrated merger simulation approach which is an extension of the methodology used in support of the findings presented in the Article 6(1)(c) Decision.

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94 In the Parties' Merger Simulation study the Parties did not use the same definition of "network level" as the Commission. The Parties treated PosteMobile and Fastweb as separate operator and introduced a wholesale margin into the Parties' first order conditions. In the Parties' Merger Simulation study's "network level" Fastweb is treated as being on H3G's network, while PosteMobile is treated as being on WIND's network.

95 See Parties' submission of 27 April 2016, page 42 (provider level), and Response to RFI 57 of 04 May 2016 received on May 13 2016, Table 11, page 27 (network level).

(191) The Commission's first baseline scenario relies on information on contribution margins and diversion ratios based on the intensive survey question. The model predicts price increases for H3G and WIND of respectively 12.1-13.1% and 10-10.7% in the private segment. The resulting segment-wide predicted price effects are in the range of 6.1-7% in the private segment.

(192) As discussed in Section 4.2, the Commission has carried out a number of sensitivity scenarios based on a number of alternative assumptions. These consist in (i) using the MNP diversion ratios, (ii) using the diversion ratios based on intensive and extensive survey question, (iii) using the diversion ratios presented by the Parties in the Parties' Merger Simulation study, (iv) using a conservative measure of margins, (v) assuming a diversion to the outside good, and (vi) including a marginal cost reduction due to the efficiencies claimed by the Parties. The results of the sensitivity scenarios presented in this Annex confirm the conclusion reached based on the baseline scenarios' results.

(193) Overall, the Commission concludes that the Transaction is likely to generate strong incentives for the JV to significantly increase prices. This will foster price increases of the other competitors and hence generate significant price increases in the private segment.

(194) Moreover, the Commission notes that the price effects predicted by its quantitative analysis are likely to be compounded by the anti-competitive effects due to market coordination explained in Section 7.3.3 of the Decision. The Commission's quantitative analysis only reflects the expected price increases caused by the loss of competition between H3G and WIND in the retail mobile market (and to some extent approximate the effects of the loss of competition between H3G and WIND in the wholesale mobile market). As such, the price effects predicted by the quantitative analysis are likely to underestimate the adverse effects of the Transaction on prices.

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Appendix A: Diversion Ratios based on Intensive and Extensive survey questions

Table 21: Diversion ratios based on intensive and extensive survey questions, 2015, network level.

Overall Private	H3G	WIND	TIM	Vodafone
H3G	-	[30-40]%	[30-40]%	[30-40]%
WIND	[10-20]%	-	[30-40]%	[40-50]%
Prepaid Private	**H3G**	**WIND**	**TIM**	**Vodafone**
H3G	-	[30-40]%	[30-40]%	[30-40]%
WIND	[10-20]%	-	[30-40]%	[40-50]%
Postpaid Private	**H3G**	**WIND**	**TIM**	**Vodafone**
H3G	-	[20-30]%	[30-40]%	[30-40]%
WIND	[10-20]%	-	[40-50]%	[40-50]%

Table 22: Diversion ratios based on intensive and extensive survey questions, 2015, provider level.

Overall Private	H3G	WIND	TIM	Vodafone	PosteMobile	Fastweb
H3G	-	[30-40]%	[30-40]%	[30-40]%	[0-5]%	[0-5]%
WIND	[10-20]%	-	[30-40]%	[40-50]%	[0-5]%	[0-5]%
Prepaid Private	**H3G**	**WIND**	**TIM**	**Vodafone**	**PosteMobile**	**Fastweb**
H3G	-	[30-40]%	[30-40]%	[30-40]%	[0-5]%	[0-5]%
WIND	[10-20]%	-	[30-40]%	[40-50]%	[0-5]%	[0-5]%
Postpaid Private	**H3G**	**WIND**	**TIM**	**Vodafone**	**PosteMobile**	**Fastweb**
H3G	-	[20-30]%	[30-40]%	[30-40]%	[0-5]%	[0-5]%
WIND	[10-20]%	-	[30-40]%	[40-50]%	[0-5]%	[0-5]%

Appendix B: Survey Demographic Characteristics

(195) The following tables are based on the operator identity provided by the Parties. The Commission based the diversion ratio figures on the identity of the operator provided by the respondents. In a few instances, respondents that were identified to be H3G's customers declared to be WIND's customers, and vice-versa. There is therefore a small difference between the figures reported in the tables below and the figures used for the computation of the diversion ratios.

Table 23: Sample size.

		Sample Size
H3G	**Gross Adds**	2003
	Internal Switcher	2003
WIND	**Gross Adds**	1993
	Internal Switcher	2003

Table 24: H3G's sample demographic characteristics and comparison with population.

H3G	GROSS ADDS		INTERNAL SWITCHERS	
	Population	Sample	Population[96]	Sample
MALE	[…]	[…]	[…]	[…]
FEMALE	[…]	[…]	[…]	[…]
POSTPAID	[…]	[…]	[…]	[…]
PREPAID	[…]	[…]	[…]	[…]
AGE 18-24	[…]	[…]		[…]
AGE 25-34	[…]	[…]		[…]
AGE 35-44	[…]	[…]		[…]
AGE 45-54	[…]	[…]		[…]
AGE 55-64	[…]	[…]		[…]
AGE 65-84	[…]	[…]		[…]
ABRUZZO	[…]	[…]	[…]	[…]
BASILICATA	[…]	[…]	[…]	[…]
CALABRIA	[…]	[…]	[…]	[…]
CAMPANIA	[…]	[…]	[…]	[…]
EMILIA ROMAGNA	[…]	[…]	[…]	[…]
FRIULI	[…]	[…]	[…]	[…]
LAZIO	[…]	[…]	[…]	[…]
LIGURIA	[…]	[…]	[…]	[…]
LOMBARDIA	[…]	[…]	[…]	[…]
MARCHE	[…]	[…]	[…]	[…]
MOLISE	[…]	[…]	[…]	[…]
PIEMONTE	[…]	[…]	[…]	[…]
PUGLIA	[…]	[…]	[…]	[…]
SARDEGNA	[…]	[…]	[…]	[…]
SICILIA	[…]	[…]	[…]	[…]
TOSCANA	[…]	[…]	[…]	[…]
TRENTINO	[…]	[…]	[…]	[…]
UMBRIA	[…]	[…]	[…]	[…]
VALLE D'AOSTA	[…]	[…]	[…]	[…]
VENETO	[…]	[…]	[…]	[…]

96 No information on the age of the population was available for H3G's internal switchers.

Table 25: WIND's sample demographic characteristics and comparison with population.

WIND	GROSS ADDS		INTERNAL SWITCHERS	
	Population	Sample	Population	Sample
MALE	[…]	[…]	[…]	[…]
FEMALE	[…]	[…]	[…]	[…]
POSTPAID	[…]	[…]	[…]	[…]
PREPAID	[…]	[…]	[…]	[…]
AGE 18-24	[…]	[…]	[…]	[…]
AGE 25-34	[…]	[…]	[…]	[…]
AGE 35-44	[…]	[…]	[…]	[…]
AGE 45-54	[…]	[…]	[…]	[…]
AGE 55-64	[…]	[…]	[…]	[…]
AGE 65-84	[…]	[…]	[…]	[…]
ABRUZZO	[…]	[…]	[…]	[…]
BASILICATA	[…]	[…]	[…]	[…]
CALABRIA	[…]	[…]	[…]	[…]
CAMPANIA	[…]	[…]	[…]	[…]
EMILIA ROMAGNA	[…]	[…]	[…]	[…]
FRIULI	[…]	[…]	[…]	[…]
LAZIO	[…]	[…]	[…]	[…]
LIGURIA	[…]	[…]	[…]	[…]
LOMBARDIA	[…]	[…]	[…]	[…]
MARCHE	[…]	[…]	[…]	[…]
MOLISE	[…]	[…]	[…]	[…]
PIEMONTE	[…]	[…]	[…]	[…]
PUGLIA	[…]	[…]	[…]	[…]
SARDEGNA	[…]	[…]	[…]	[…]
SICILIA	[…]	[…]	[…]	[…]
TOSCANA	[…]	[…]	[…]	[…]
TRENTINO	[…]	[…]	[…]	[…]
UMBRIA	[…]	[…]	[…]	[…]
VALLE D'AOSTA	[…]	[…]	[…]	[…]
VENETO	[…]	[…]	[…]	[…]

ANNEX B

SWG

29th April 2016

Survey on Behalf of the European Commission Regarding the Purchase or Change of Mobile Telephone Subscriptions in Italy

Expert consultancy services on technical, economic and regulatory matters in the context of case M.7758 - Hutchison 3G Italy /WIND / JV

REPORT

Job 35297

METHODOLOGY

METHODOLOGY

The quantitative survey has been conducted through telephone interviews with CATI (Computer Assisted Telephone Interview) method, on a sample of 8002 persons drawn randomly from directories provided by Wind and H3G. The sample consists of individuals that:

- have switched to or renewed/modified a mobile phone contract with Wind and H3G on their main mobile phone in the last 12 months (January 2015-December 2015);
- At that time they have considered also offers from other providers;
- have a "pre-paid" or a "post-paid" contract and have personally selected the contract and provider.

The **total contacts made were 23.205**, on which was made the following screening:

	Screen out
Refusal to answer questions	**11.638**
Quota sample completed	**2.213**
Contract other than Wind / H3G	**292**
Not the main number	**97**
Neither "pre-paid" or "post-paid" contract	**8**
Have not personally chosen the PROVIDER	**92**
Have not changed contract in the last year	**636**
Have not considered other PROVIDERs	**227**
TOTAL NOT SELECTED	**15.203**
REMAINING IN THE SAMPLE *(TOTAL CONTACTS minus TOTAL NOT SELECTED)*	**8.002**

The **RESPONSE RATE** (num. of those who answered the questionnaire / total contacts)

34,5%

The rate is in line with the average response rate of SWG quantitative Cati inquiries

METHODOLOGY

The sample was stratified according to the following parameters: (i) provider-(Wind and H3G), (ii) type of contract modification (Gross Add or Internal Switcher - IS), (iii) contract type ("pre-paid" or a "post-paid"), (iv) age, sex and region of residence, according to the distribution in the directories provided by Wind and H3G.

Quotas were set evenly for the first two parameters, with 2.000 interviews in each provider-type combination (Wind-Gross Add, Wind-IS, H3G-Gross Add, H3G-IS), while for the remaining parameters the sample dimensions are proportional to the distribution of the lists. The method used for the identification of final units is based on randomness.

In order to make the sample consistent with the distribution of the lists, data were weighted according to the (i) provider and (ii) type of contract modification parameters.

Interviews were made in the period between 7th and 20th April 2016.

The days before the beginning of the survey, a "pilot" survey was conducted with 200 test interviews in order to test the questionnaire.

The statistical margin of error of overall data is 1.1% on a 95% confidence range. The statistical margin of error of data on the four sub-samples (Wind-Gross Add, Wind-I.S., H3G-Gross Add, H3G-I.S.) is 2.2% with a 95% confidence range.

General Sample Features: Gender, Age and Region

Values expressed in %

	SAMPLE	PROVIDER		SWITCH TYPE	
	avarage value	Wind	H3G	Gross Add	Internal Switcher
GENDER					
male	[...]	[...]	[...]	[...]	[...]
female	[...]	[...]	[...]	[...]	[...]
AGE					
18-24 years	[...]	[...]	[...]	[...]	[...]
25-34 years	[...]	[...]	[...]	[...]	[...]
35-44 years	[...]	[...]	[...]	[...]	[...]
45-54 years	[...]	[...]	[...]	[...]	[...]
55-64 years	[...]	[...]	[...]	[...]	[...]
over 65 years	[...]	[...]	[...]	[...]	[...]
GEOGRAPHIC AREA					
North West	[...]	[...]	[...]	[...]	[...]
North East	[...]	[...]	[...]	[...]	[...]
Center	[...]	[...]	[...]	[...]	[...]
South	[...]	[...]	[...]	[...]	[...]
Isles	[...]	[...]	[...]	[...]	[...]

	SAMPLE	PROVIDER		SWITCH TYPE	
	avarage value	Wind	H3G	Gross Add	Internal Switcher
REGION					
Abruzzo	[...]	[...]	[...]	[...]	[...]
Basilicata	[...]	[...]	[...]	[...]	[...]
Calabria	[...]	[...]	[...]	[...]	[...]
Campania	[...]	[...]	[...]	[...]	[...]
Emilia Romagna	[...]	[...]	[...]	[...]	[...]
Friuli Venezia Giulia	[...]	[...]	[...]	[...]	[...]
Lazio	[...]	[...]	[...]	[...]	[...]
Liguria	[...]	[...]	[...]	[...]	[...]
Lombardia	[...]	[...]	[...]	[...]	[...]
Marche	[...]	[...]	[...]	[...]	[...]
Molise	[...]	[...]	[...]	[...]	[...]
Piemonte	[...]	[...]	[...]	[...]	[...]
Puglia	[...]	[...]	[...]	[...]	[...]
Sardegna	[...]	[...]	[...]	[...]	[...]
Sicilia	[...]	[...]	[...]	[...]	[...]
Toscana	[...]	[...]	[...]	[...]	[...]
Trentino Alto Adige	[...]	[...]	[...]	[...]	[...]
Umbria	[...]	[...]	[...]	[...]	[...]
Valle d'Aosta	[...]	[...]	[...]	[...]	[...]
Veneto	[...]	[...]	[...]	[...]	[...]

Comparison between sample and population

Values expressed in % - unweighted data

Population distribution as from database

H3G clients sample

	Population	Sample
Gross Adds	76,9%	50%
Internal Switcher	23,1%	50%

	Population		*Sample*		*Difference*	
variable	**Gross Add**	**Internal Switcher**	**Gross Add**	**Internal Switcher**	**Gross Add**	**Internal Switcher**
male	[...]	[...]	[...]	[...]	[...]	[...]
female	[...]	[...]	[...]	[...]	[...]	[...]
Postpaid	[...]	[...]	[...]	[...]	[...]	[...]
Prepaid	[...]	[...]	[...]	[...]	[...]	[...]
age_18_24	[...]	[...]	[...]	[...]	[...]	[...]
age_25_34	[...]	[...]	[...]	[...]	[...]	[...]
age_35_44	[...]	[...]	[...]	[...]	[...]	[...]
age_45_54	[...]	[...]	[...]	[...]	[...]	[...]
age_55_64	[...]	[...]	[...]	[...]	[...]	[...]
age_65_84	[...]	[...]	[...]	[...]	[...]	[...]
ABRUZZO	[...]	[...]	[...]	[...]	[...]	[...]
BASILICATA	[...]	[...]	[...]	[...]	[...]	[...]
CALABRIA	[...]	[...]	[...]	[...]	[...]	[...]
CAMPANIA	[...]	[...]	[...]	[...]	[...]	[...]
EMILIA_ROMAGNA	[...]	[...]	[...]	[...]	[...]	[...]
FRIULI_VENEZIA GIULIA	[...]	[...]	[...]	[...]	[...]	[...]
LAZIO	[...]	[...]	[...]	[...]	[...]	[...]
LIGURIA	[...]	[...]	[...]	[...]	[...]	[...]
LOMBARDIA	[...]	[...]	[...]	[...]	[...]	[...]
MARCHE	[...]	[...]	[...]	[...]	[...]	[...]
MOLISE	[...]	[...]	[...]	[...]	[...]	[...]
PIEMONTE	[...]	[...]	[...]	[...]	[...]	[...]
PUGLIA	[...]	[...]	[...]	[...]	[...]	[...]
SARDEGNA	[...]	[...]	[...]	[...]	[...]	[...]
SICILIA	[...]	[...]	[...]	[...]	[...]	[...]
TOSCANA	[...]	[...]	[...]	[...]	[...]	[...]
TRENTINO ALTO ADIGE	[...]	[...]	[...]	[...]	[...]	[...]
UMBRIA	[...]	[...]	[...]	[...]	[...]	[...]
VALLE_DAOSTA	[...]	[...]	[...]	[...]	[...]	[...]
VENETO	[...]	[...]	[...]	[...]	[...]	[...]

Comparison between sample and population

Values expressed in % - unweighted data

Population distribution as from database

WIND clients sample

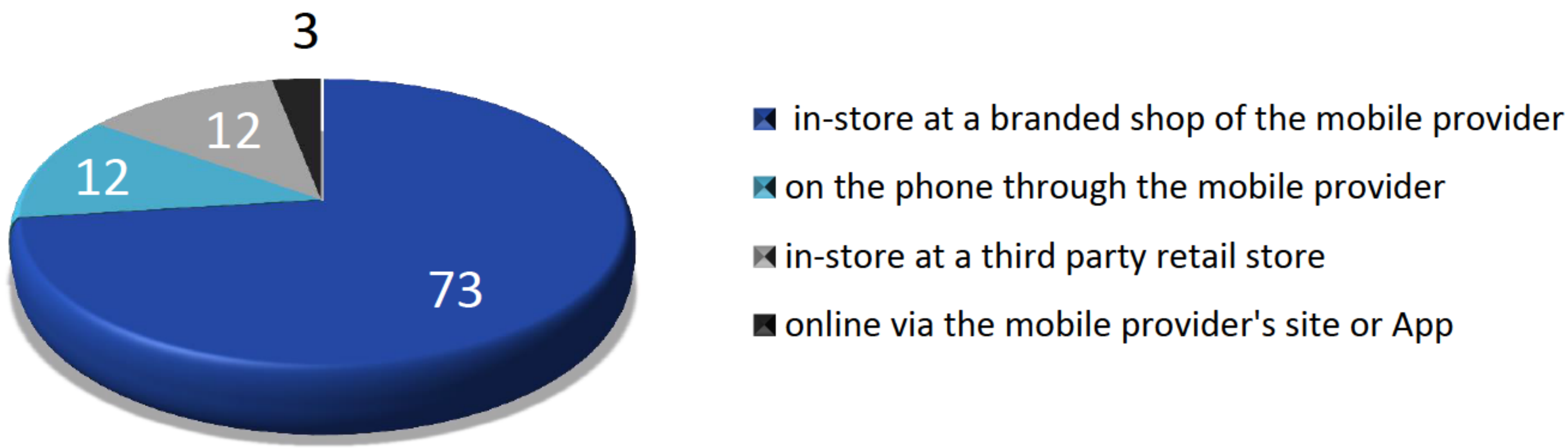
	Population	Sample
Gross Adds	74,3%	49,9%
Internal Switcher	25,7%	50,1%

	Population		*Sample*		*Difference*	
variable	Gross Add	Internal Switcher	Gross Add	Internal Switcher	Gross Add	Internal Switcher
male	[...]	[...]	[...]	[...]	[...]	[...]
female	[...]	[...]	[...]	[...]	[...]	[...]
Postpaid	[...]	[...]	[...]	[...]	[...]	[...]
Prepaid	[...]	[...]	[...]	[...]	[...]	[...]
age_18_24	[...]	[...]	[...]	[...]	[...]	[...]
age_25_34	[...]	[...]	[...]	[...]	[...]	[...]
age_35_44	[...]	[...]	[...]	[...]	[...]	[...]
age_45_54	[...]	[...]	[...]	[...]	[...]	[...]
age_55_64	[...]	[...]	[...]	[...]	[...]	[...]
age_65_84	[...]	[...]	[...]	[...]	[...]	[...]
ABRUZZO	[...]	[...]	[...]	[...]	[...]	[...]
BASILICATA	[...]	[...]	[...]	[...]	[...]	[...]
CALABRIA	[...]	[...]	[...]	[...]	[...]	[...]
CAMPANIA	[...]	[...]	[...]	[...]	[...]	[...]
EMILIA_ROMAGNA	[...]	[...]	[...]	[...]	[...]	[...]
FRIULI_VENEZIA GIULIA	[...]	[...]	[...]	[...]	[...]	[...]
LAZIO	[...]	[...]	[...]	[...]	[...]	[...]
LIGURIA	[...]	[...]	[...]	[...]	[...]	[...]
LOMBARDIA	[...]	[...]	[...]	[...]	[...]	[...]
MARCHE	[...]	[...]	[...]	[...]	[...]	[...]
MOLISE	[...]	[...]	[...]	[...]	[...]	[...]
PIEMONTE	[...]	[...]	[...]	[...]	[...]	[...]
PUGLIA	[...]	[...]	[...]	[...]	[...]	[...]
SARDEGNA	[...]	[...]	[...]	[...]	[...]	[...]
SICILIA	[...]	[...]	[...]	[...]	[...]	[...]
TOSCANA	[...]	[...]	[...]	[...]	[...]	[...]
TRENTINO ALTO ADIGE	[...]	[...]	[...]	[...]	[...]	[...]
UMBRIA	[...]	[...]	[...]	[...]	[...]	[...]
VALLE_DAOSTA	[...]	[...]	[...]	[...]	[...]	[...]
VENETO	[...]	[...]	[...]	[...]	[...]	[...]

DESCRIPTIVES DATA ON GENERAL BEHAVIORS

How They Purchased Current Contract- Gross Add (total values)

10. Where did you purchase your current mobile contract?



Values expressed in %. Gross Adds (6027)

How They Purchased Current Contract- Gross Add (segmentations)

10. Where did you purchase your current mobile contract?

	SAMPLE	PROVIDER		SWITCH TYPE		SWITCH TYPE PER PROVIDER				CONTRACT	
	avarage value	Wind	H3G	Gross Add	Internal Switcher	WIND Gross Add	WIND Internal Switcher	H3G Gross Add	H3G Internal Switcher	pre-paid	post-paid
in-store at a brand shop of the mobile provider	**73**	73	72	73	-	73	-	72	-	73	73
on the phone through the mobile provider	**12**	14	10	12	-	14	-	10	-	13	10
in-store at a third party retail store	**12**	10	15	12	-	10	-	15	-	11	14
online via the mobile provider's site or App	**3**	3	3	3	-	3	-	3	-	3	3
don't know	**0**	0	0	0	-	0	-	0	-	0	0
other	**0**	0	0	0	-	0	-	0	-	0	0

	GENDER		AGE						GEOGRAPHIC AREA				
	male	female	18-24 years	25-34 years	35-44 years	45-54 years	55-64 years	over 65 years	North West	North East	Center	South	Islands
in-store at a brand shop of the mobile provider	72	73	75	71	72	72	74	75	73	73	74	71	72
on the phone through the mobile provider	12	13	10	14	13	13	10	10	12	11	12	14	12
in-store at a third party retail store	12	12	10	12	12	12	13	13	12	13	11	12	11
online via the mobile provider's site or App	4	2	4	3	3	3	3	2	3	3	3	3	4
don't know	0	0	1	0	0	0	0	0	0	0	0	0	0
other	0	0	0	0	0	0	0	0	0	0	0	0	1

Values expressed in %. Gross Adds (6027)

How They Purchased Current Contract- Internal Switcher (total values)

10b. How did you change or renew your current mobile contract?

Values expressed in %. Internal Switchers (1975)

How They Purchased Current Contract - Internal Switcher (segmentations)

10b. How did you change or renew your current mobile contract?

	SAMPLE	PROVIDER		SWITCH TYPE		SWITCH TYPE PER PROVIDER				CONTRACT	
	avarage value	Wind	H3G	Gross Add	Internal Switcher	WIND Gross Add	WIND Internal Switcher	H3G Gross Add	H3G Internal Switcher	pre-paid	post-paid
in-store at a brand shop of the mobile provider	**62**	66	53	-	62	-	66	-	53	64	54
on the phone through the mobile provider	**24**	18	36	-	24	-	18	-	36	21	32
in-store at a third party retail store	**8**	9	7	-	8	-	9	-	7	8	8
online via the mobile provider's site or App	**6**	7	4	-	6	-	7	-	4	6	6
don't know	**0**	0	0	-	0	-	0	-	0	0	0
other	**0**	0	0	-	0	-	0	-	0	1	0

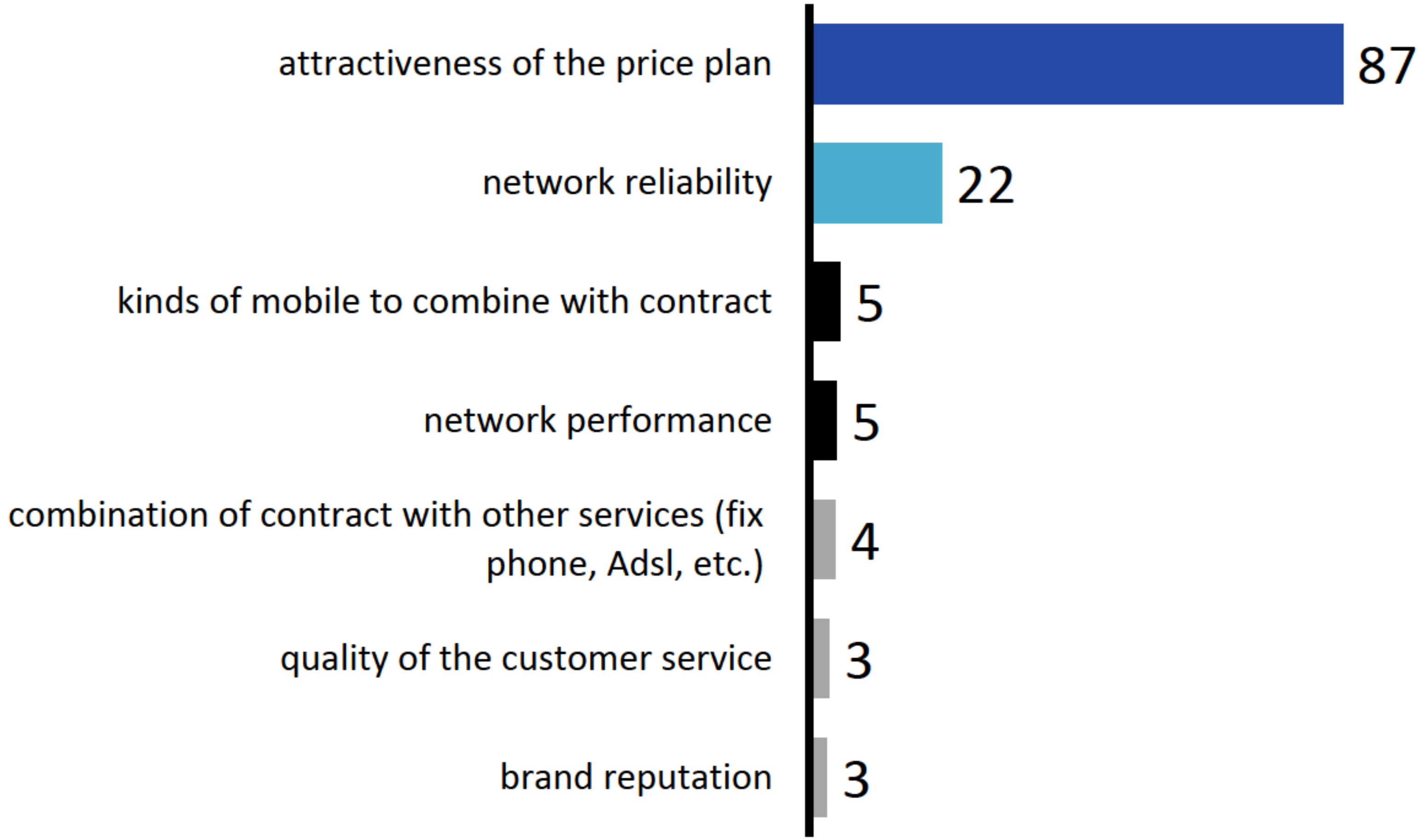
	GENDER		AGE						GEOGRAPHIC AREA				
	male	female	18-24 years	25-34 years	35-44 years	45-54 years	55-64 years	over 65 years	North West	North East	Center	South	Islands
in-store at a brand shop of the mobile provider	61	63	68	59	59	60	66	67	60	63	63	62	59
on the phone through the mobile provider	24	24	20	26	28	24	21	18	26	21	23	25	26
in-store at a third party retail store	8	8	5	8	8	8	9	11	8	9	9	8	8
online via the mobile provider's site or App	7	4	6	7	5	7	4	4	6	7	5	4	6
don't know	0	0	0	0	0	0	0	0	0	0	0	0	1
other	0	1	1	0	0	1	0	0	0	0	0	1	0

SWG

Values expressed in %. Internal Switchers (1975)

Current Mobile Contract Attractors (total values)

11. Which of the following factors did you take into account in the choice of your current contract?



Values expressed in %. Multiple answers. All respondents (8002)

Current Mobile Contract Attractors (segmentations)

11. Which of the following factors did you take into account in the choice of your current contract?

	SAMPLE	PROVIDER		SWITCH TYPE		SWITCH TYPE PER PROVIDER				CONTRACT	
	avarage value	Wind	H3G	Gross Add	Internal Switcher	WIND Gross Add	WIND Internal Switcher	H3G Gross Add	H3G Internal Switcher	pre-paid	post-paid
attractiveness of the price plan	**87**	88	84	87	86	88	88	85	81	89	81
network reliability	**22**	23	19	22	21	23	23	19	19	23	18
kinds of mobile to combine with contract	**5**	2	10	5	6	2	2	9	13	2	14
network performance	**5**	4	5	4	5	4	5	5	5	5	4
combination of contract with other services (fix phone, Adsl, etc.)	**4**	3	6	4	5	3	2	6	9	2	10
quality of the customer service	**3**	4	3	3	4	4	4	2	4	3	3
brand reputation	**3**	3	3	3	3	3	3	3	3	3	2
other	**0**	0	0	0	1	0	1	0	0	0	0

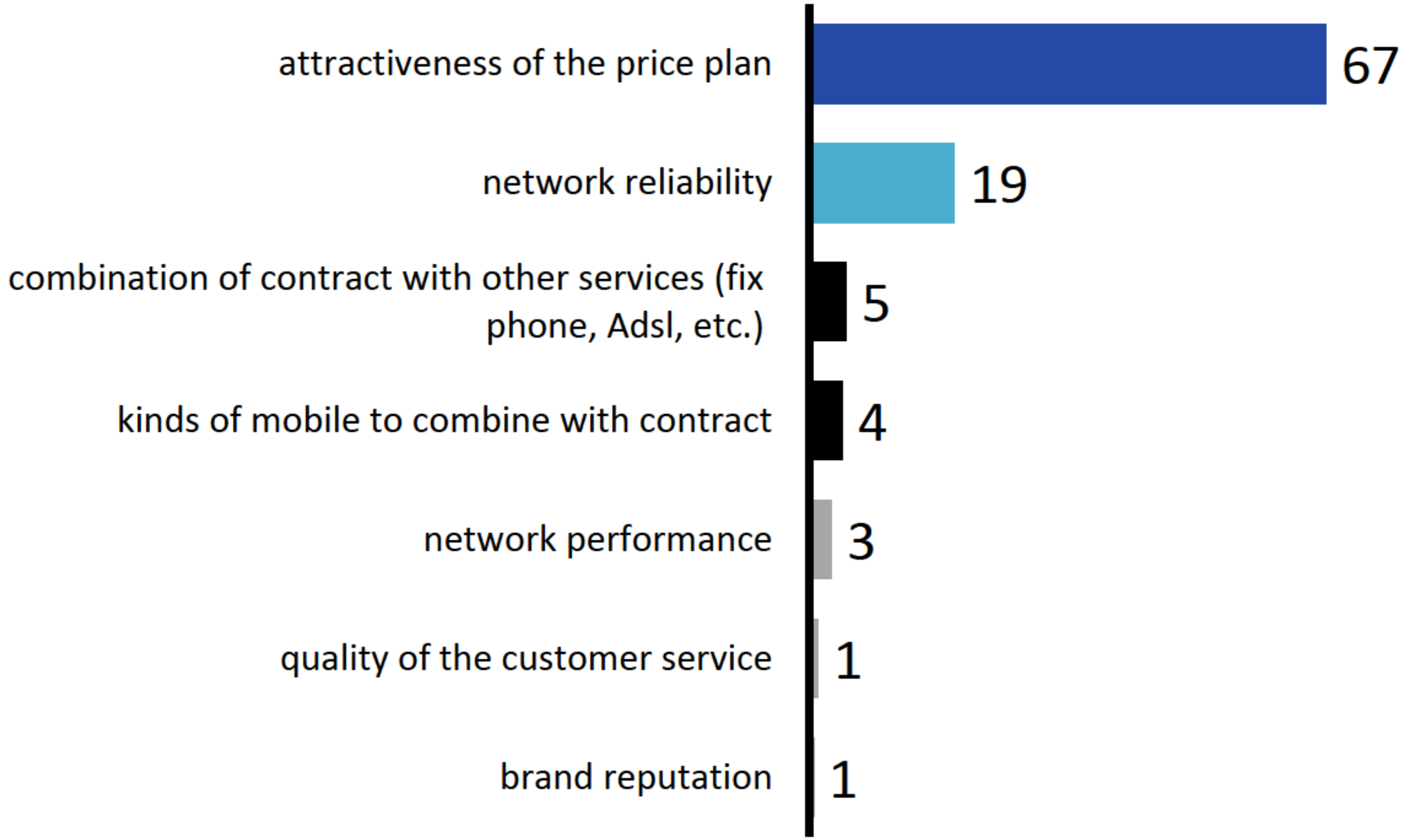
	GENDER		AGE						GEOGRAPHIC AREA				
	male	female	18-24 years	25-34 years	35-44 years	45-54 years	55-64 years	over 65 years	North West	North East	Center	South	Islands
attractiveness of the price plan	86	87	84	88	86	87	86	89	88	88	84	87	89
network reliability	22	21	21	21	23	23	20	18	19	18	27	22	20
kinds of mobile to combine with contract	5	5	6	6	6	5	4	3	6	5	6	5	3
network performance	5	4	8	6	5	4	3	2	5	5	5	4	4
combination of contract with other services (fix phone, Adsl, etc.)	5	4	3	5	4	5	4	4	4	5	5	4	4
quality of the customer service	3	4	5	3	3	3	4	3	3	4	3	3	4
brand reputation	3	3	3	2	3	3	5	2	3	3	4	3	2
other	0	0	0	0	0	1	0	1	1	0	0	0	0

SWG

Values expressed in %. Multiple answers. All respondents (8002)

Primary Attactor for the Current Contract (total values)

11b. Which of these was the most important factor in your choice?
(interviewer listed the attractors chosen in question 11)



Values expressed in %. Respondents who chose at least 2 factors in question 11 (2026)

Primary Attactor for the Current Contract (segmentations)

11b. Which of these was the most important factor in your choice?

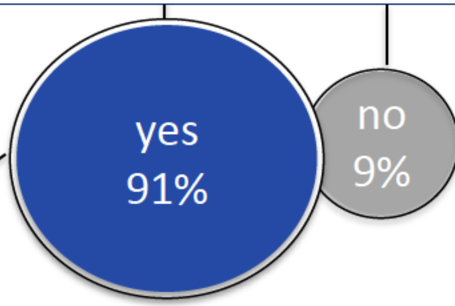
	SAMPLE	PROVIDER		SWITCH TYPE		SWITCH TYPE PER PROVIDER				CONTRACT	
	avarage value	Wind	H3G	Gross Add	Internal Switcher	WIND Gross Add	WIND Internal Switcher	H3G Gross Add	H3G Internal Switcher	pre-paid	post-paid
attractiveness of the price plan	**67**	70	63	68	64	71	68	64	58	71	58
network reliability	**19**	20	17	19	20	20	22	17	18	20	17
combination of contract with other services (fix phone, Adsl, etc.)	**5**	3	7	5	5	3	3	7	9	3	10
kinds of mobile to combine with contract	**4**	2	8	4	5	2	2	8	9	1	12
network performance	**3**	3	3	3	3	3	3	3	4	3	2
quality of the customer service	**1**	2	1	1	2	2	2	0	2	1	1
brand reputation	**1**	0	1	1	1	0	1	1	1	1	0
other	**0**	0	0	0	0	0	0	0	0	0	0

	GENDER		AGE						GEOGRAPHIC AREA				
	male	female	18-24 years	25-34 years	35-44 years	45-54 years	55-64 years	over 65 years	North West	**North East**	Center	South	Islands
attractiveness of the price plan	66	68	71	65	66	68	70	67	70	68	63	67	70
network reliability	19	19	11	18	22	20	18	23	16	15	23	20	21
combination of contract with other services (fix phone, Adsl, etc.)	5	5	7	7	4	5	4	3	4	7	6	5	1
kinds of mobile to combine with contract	5	4	4	5	4	4	4	3	4	3	5	6	3
network performance	3	3	4	3	4	2	3	3	4	3	2	3	3
quality of the customer service	1	2	3	2	1	1	2	1	1	3	1	1	2
brand reputation	1	0	1	1	1	0	1	1	1	1	0	0	1
other	0	0	0	0	0	0	0	0	0	0	0	0	0

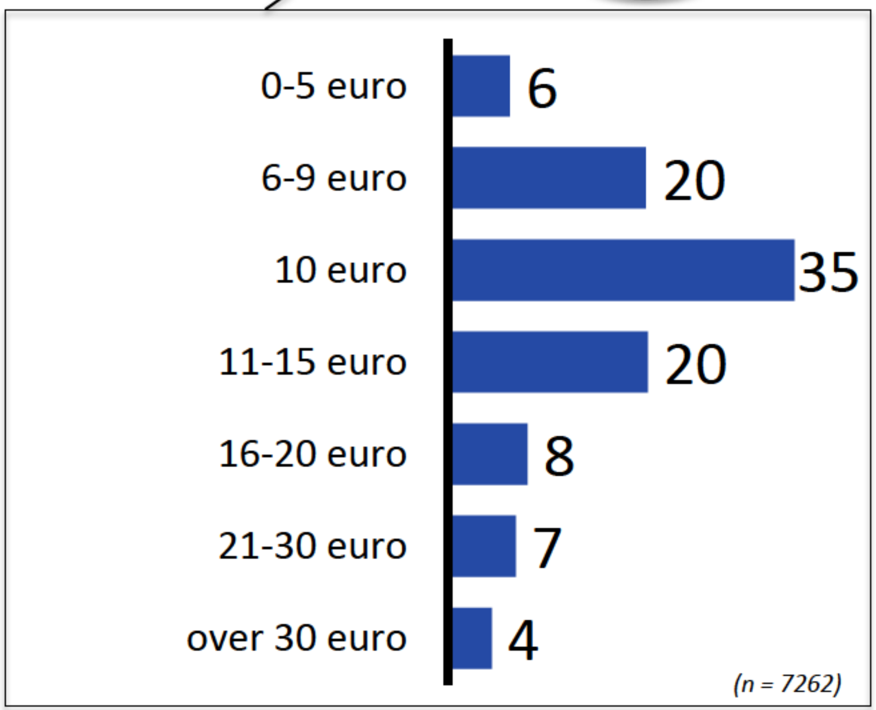
Values expressed in %. Respondents who chose at least 2 factors in question 11 (2026)

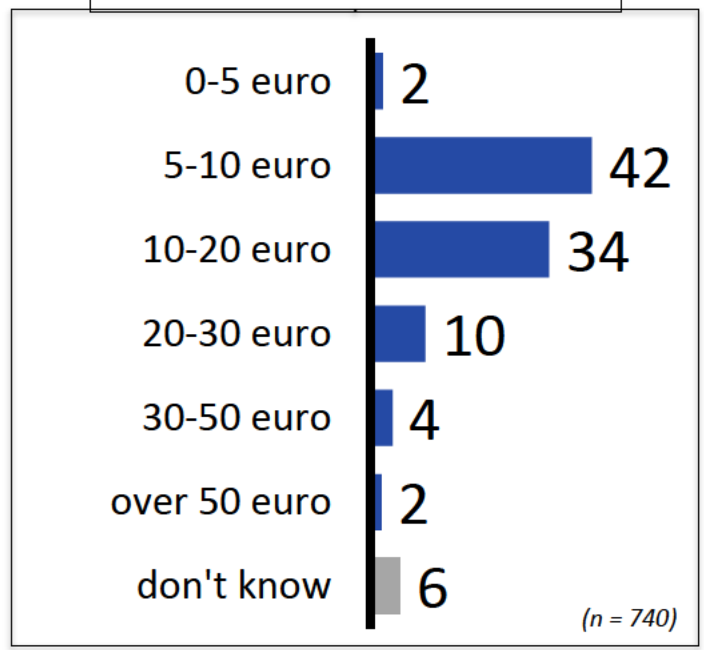
Monthly Spending – Punctual and Extimated (total values)

12. Can you tell how much did you spend last month for this number?



12b. Regarding the following price intervals, how much do you pay monthly for this contract?





Values expressed in %. All respondents (8002)

Monthly Spending – Punctual (segmentations)

12. Approximately, how much did you spend last month for this number?

	SAMPLE	PROVIDER		SWITCH TYPE		SWITCH TYPE PER PROVIDER				CONTRACT	
	avarage value	Wind	H3G	Gross Add	Internal Switcher	WIND Gross Add	WIND Internal Switcher	H3G Gross Add	H3G Internal Switcher	pre-paid	post-paid
0-5 euro	**6**	2	13	7	3	2	2	15	4	8	2
6-10 euro	**20**	29	5	22	13	33	18	5	4	23	10
10 euro	**35**	30	41	36	29	29	34	47	22	37	28
11-15 euro	**20**	23	15	19	25	22	28	13	20	21	17
16-20 euro	**8**	7	9	7	11	6	11	8	13	7	12
21-30 euro	**7**	5	10	6	11	5	5	7	21	3	18
over 30 euro	**4**	3	7	3	8	3	3	4	17	1	14

	GENDER		AGE						GEOGRAPHIC AREA				
	male	female	18-24 years	25-34 years	35-44 years	45-54 years	55-64 years	over 65 years	North West	North **East**	Center	South	Islands
0-5 euro	7	6	5	6	6	6	7	8	6	4	4	9	9
6-10 euro	19	21	18	13	18	20	26	35	17	22	16	22	24
10 euro	33	37	35	32	34	38	36	31	31	32	34	39	37
11-15 euro	20	20	27	23	20	19	16	15	22	21	23	17	19
16-20 euro	9	7	6	12	9	7	6	6	10	9	9	6	6
21-30 euro	7	7	6	9	7	7	5	3	8	8	8	5	4
over 30 euro	5	3	3	5	6	4	4	3	6	4	7	3	2

Values expressed in %. Respondents that did recall a punctual amount (7262)

Monthly Spending – Extimated (segmentations)

12b. Regarding the following price intervals, how much do you pay monthly for this contract?

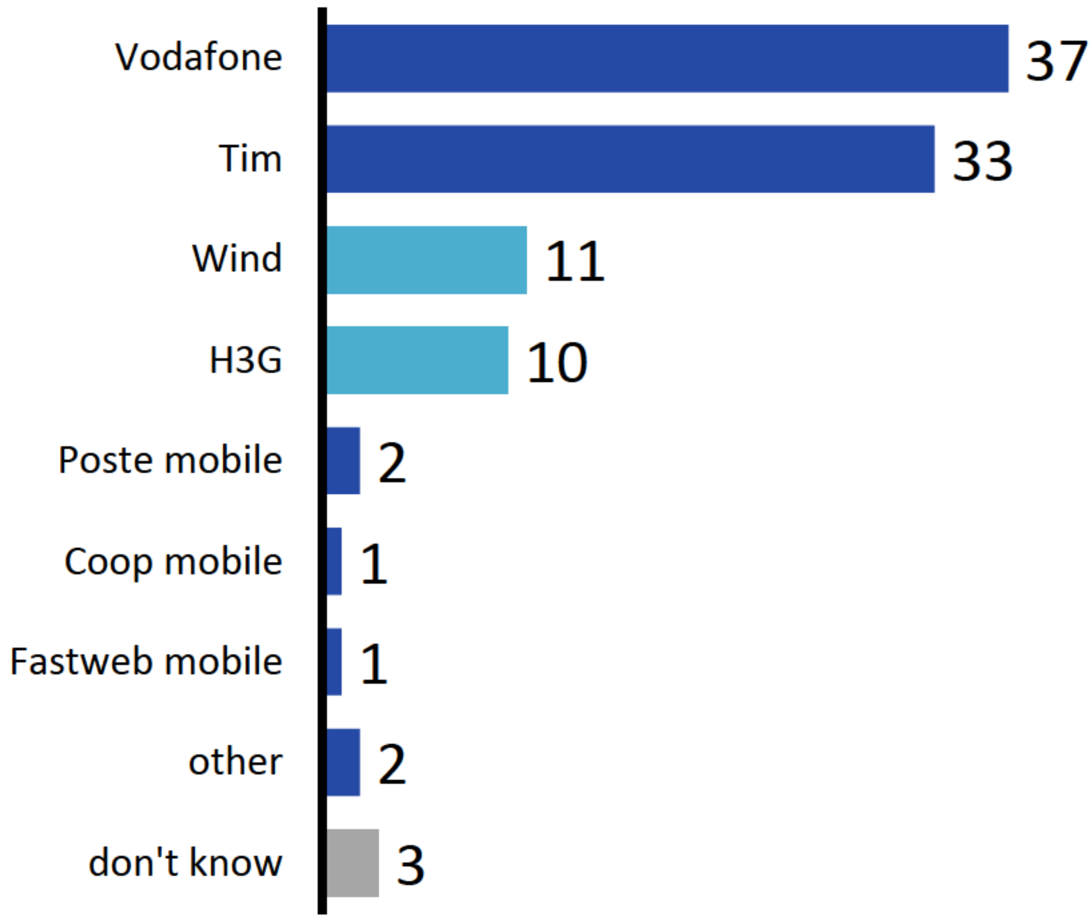
	SAMPLE	PROVIDER		SWITCH TYPE		SWITCH TYPE PER PROVIDER				CONTRACT	
	avarage value	Wind	H3G	Gross Add	Internal Switcher	WIND Gross Add	WIND Internal Switcher	H3G Gross Add	H3G Internal Switcher	pre-paid	post-paid
0-5 euro	**2**	1	4	2	2	1	2	4	3	3	1
5-10 euro	**42**	50	30	44	38	52	47	33	24	52	18
10-20 euro	**34**	34	34	33	36	32	39	35	32	35	31
20-30 euro	**10**	7	16	10	11	7	6	15	19	6	23
30-50 euro	**4**	3	6	4	4	3	2	6	7	1	13
over 50 euro	**2**	0	2	0	3	0	2	1	5	0	3
don't know	**6**	5	7	6	6	5	3	6	10	4	10

	GENDER		AGE						GEOGRAPHIC AREA				
	male	female	18-24 years	25-34 years	35-44 years	45-54 years	55-64 years	over 65 years	North West	**North East**	Center	South	Islands
0-5 euro	3	2	0	0	3	4	3	0	2	3	2	3	0
5-10 euro	42	43	46	42	35	42	47	56	44	33	45	44	43
10-20 euro	33	36	41	36	37	33	30	30	34	38	33	33	35
20-30 euro	12	9	4	8	12	14	12	3	10	11	10	11	12
30-50 euro	5	3	3	8	4	3	3	2	5	4	5	3	2
più di 50 euro	1	1	3	0	3	1	0	0	0	1	1	2	1
don't know	5	6	3	7	6	4	5	9	4	10	5	4	8

Values expressed in %. Respondents that did not recall a punctual amount (740)

The Previous Gross Adds' Provider (total values)

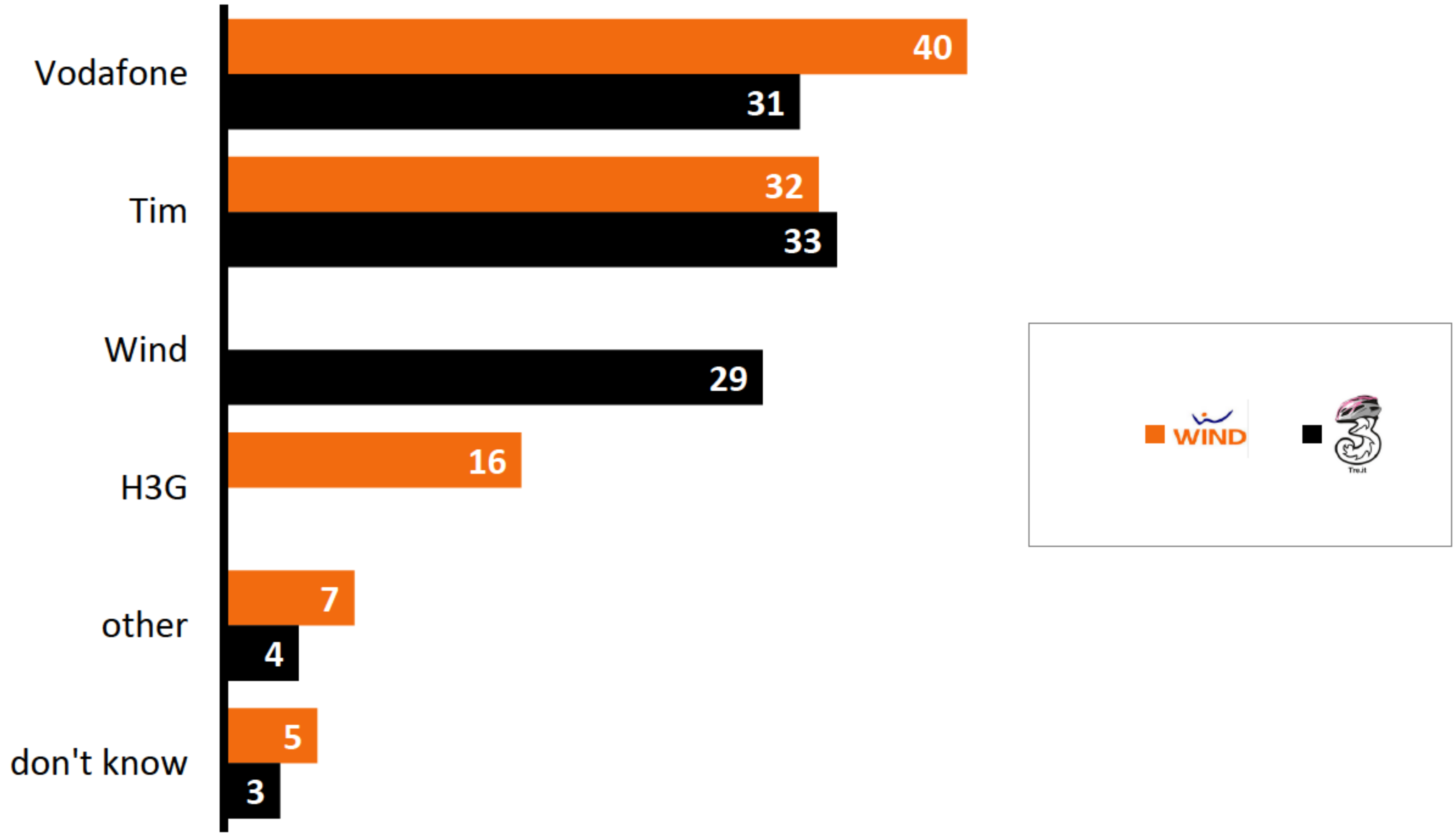
17. Which mobile provider did you use before purchasing the current contract with [Wind/H3G]*?*



Values expressed in %. Gross Adds (6027)

The Previous Gross Adds' Provider (segmented by current provider)

17. Which mobile provider did you use before purchasing the current contract with [Wind/H3G]?



Values expressed in %. Gross Adds (6027)

The Previous Gross Adds' Provider (total values)

17. Which mobile provider did you use before pruchasing the current contract with [Wind/H3G]?

	SAMPLE	PROVIDER		SWITCH TYPE		SWITCH TYPE PER PROVIDER				CONTRACT	
	avarage value	Wind	H3G	Gross Add	Internal Switcher	WIND Gross Add	WIND Internal Switcher	H3G Gross Add	H3G Internal Switcher	pre-paid	post-paid
Vodafone	**37**	40	31	37	-	40	-	31	-	37	34
Tim	**33**	32	33	33	-	32	-	33	-	32	35
Wind	**11**	0	29	11	-	0	-	29	-	10	16
H3G	**10**	16	0	10	-	16	-	0	-	12	5
Poste mobile	**2**	3	2	2	-	3	-	2	-	2	2
Coop mobile	**1**	1	0	1	-	1	-	0	-	1	1
Fastweb mobile	**1**	1	1	1	-	1	-	1	-	1	1
other	**2**	2	1	2	-	2	-	1	-	2	3
don't know	**3**	5	3	3	-	5	-	3	-	3	3

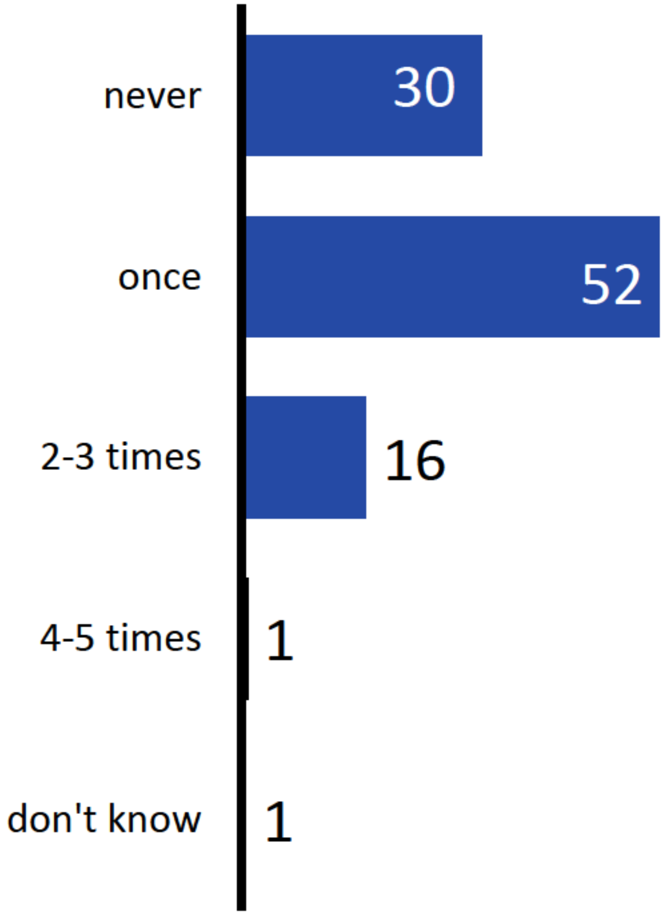
	GENDER		AGE						GEOGRAPHIC AREA				
	male	female	18-24 years	25-34 years	35-44 years	45-54 years	55-64 years	over 65 years	North West	**North East**	Center	South	Islands
Vodafone	34	39	39	38	36	35	37	35	41	45	33	29	37
Tim	33	31	26	31	32	36	34	36	30	27	33	39	33
Wind	13	10	11	11	13	12	11	9	9	8	11	15	14
H3G	10	10	11	13	10	8	8	9	9	11	12	8	10
Poste mobile	2	3	2	2	2	2	3	4	3	2	3	2	1
Fastweb mobile	1	1	0	0	0	1	1	1	1	1	1	0	0
Coop mobile	1	1	0	1	1	1	1	1	1	1	1	1	1
other	2	2	3	2	2	2	1	1	3	2	3	1	1
don't know	4	3	8	2	4	3	4	4	3	3	3	5	3

SWG

Values expressed in %. Gross Adds (6027)

Respondent's Switching Frequency of the Last Two Years

18. How many times did you change your mobile provider in the last two years?



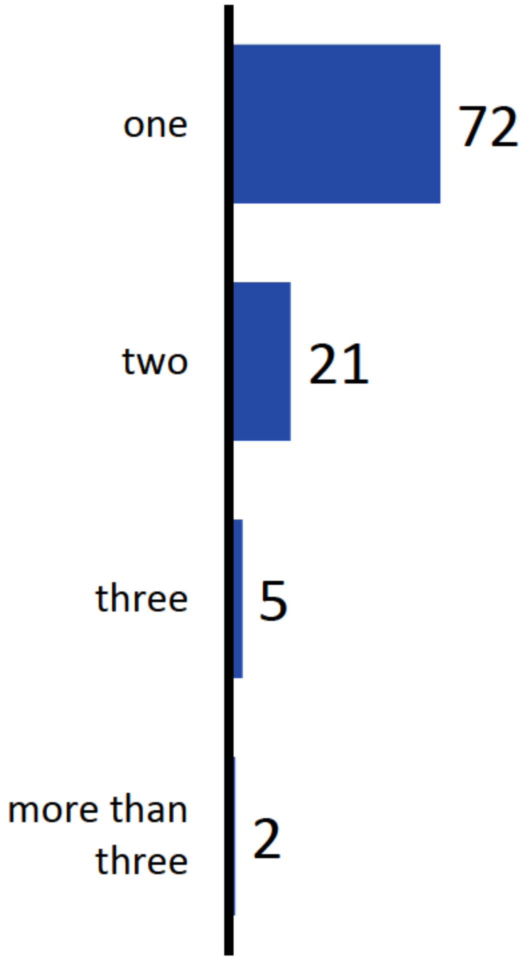
	PROVIDER	
	Wind	H3G
never	30	30
once	53	53
2-3 times	15	16
4-5 times	1	1
don't know	1	0

SWG

Values expressed in %. All respondents (8002)

Number of Sim Cards Owned by All Respondents

19. How many Sim Card do you currently own?



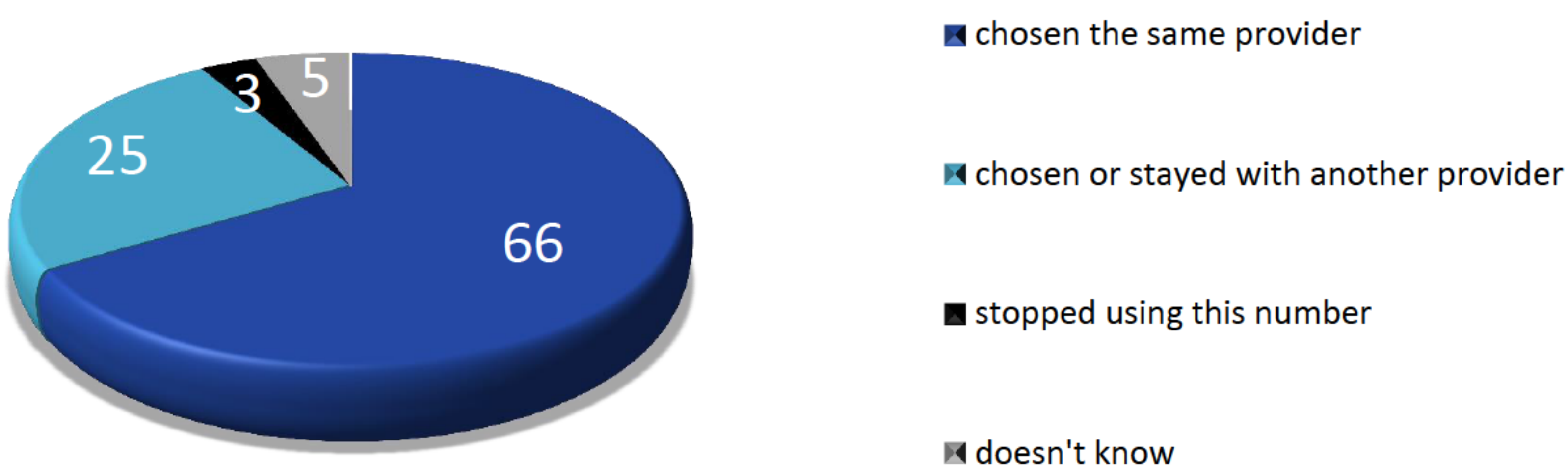
	PROVIDER	
	Wind	H3G
one	74	68
two	20	23
three	4	6
more than three	2	3

Values expressed in %. All respondents (8002)

DATA FOR THE DIVERSION RATIO'S ASSESSMENT

Decision about a 10% more Expensive Offer (total values)

13. You mentioned earlier that you recently have activated a [pre-paid/post-paid] contract with [Wind/H3G]. ***Suppose that at the time you chose this contract, all the contract price plans of [Wind/H3G], including yours, had been 10% more expensive per month****, while the price of all other mobile phone providers had remained unchanged. That means you would have payed approximately € [X] * more per month for your price plan.* ***Which of the following do you think you would have been most likely to do?***



* *X = (answer 12) x 10% (rounded at the first whole number) or (higher number of the range chosen in 12b) x 10%. If respondent didn't answer question 12/12b, interviewer omitted the sentence "That means you would have payed approximately € [X] * more per month on your price plan".*

Values expressed in %. All respondents (8002)

Decision about a 10% more Expensive Offer (segmentations)

*13. You mentioned earlier that you recently have activated a [pre-paid/post-paid] contract with [Wind/H3G]. **Suppose that at the time you chose this contract, all the contract price plans of [Wind/H3G], including yours, had been 10% more expensive per month**, while the price of all other mobile phone providers had remained unchanged. That means you would have payed approximately € [X] more per month for your price plan. **Which of the following do you think you would have been most likely to do?***

	SAMPLE	PROVIDER		SWITCH TYPE		SWITCH TYPE PER PROVIDER				CONTRACT	
	avarage value	Wind	H3G	Gross Add	Internal Switcher	WIND Gross Add	WIND Internal Switcher	H3G Gross Add	H3G Internal Switcher	pre-paid	post-paid
chosen the same provider	**66**	68	64	65	70	66	72	64	66	68	62
chosen or stayed with another provider	**25**	24	27	26	22	25	20	28	25	24	28
stopped using this number	**3**	3	3	3	3	3	3	3	3	3	3
don't know	**5**	5	5	5	5	5	5	5	6	5	7

	GENDER		AGE						GEOGRAPHIC AREA				
	male	female	18-24 years	25-34 years	35-44 years	45-54 years	55-64 years	over 65 years	North West	North **East**	Center	South	Islands
chosen the same provider	66	67	64	65	65	67	71	68	66	67	68	67	64
chosen or stayed with another provider	25	25	27	25	27	24	23	23	26	26	24	24	26
stopped using this number	3	3	3	4	3	3	3	4	3	2	4	4	4
don't know	5	5	6	6	5	6	4	5	5	5	4	6	6

Values expressed in %. All respondents (8002)

Second Option for who has Confirmed Provider (total values)

14. Now let's suppose that it was not possible to purchase a contract with [Wind/H3G]. *What would you had been to do instead?*

Values expressed in %. Respondents who answered question 13 "chosen the same provider" or "don't know" (5738)

Second Option for who has Confirmed Provider (segmentations)

14. Now let's suppose that it was not possible to purchase a contract with [Wind/H3G]. What would you had been to do instead?

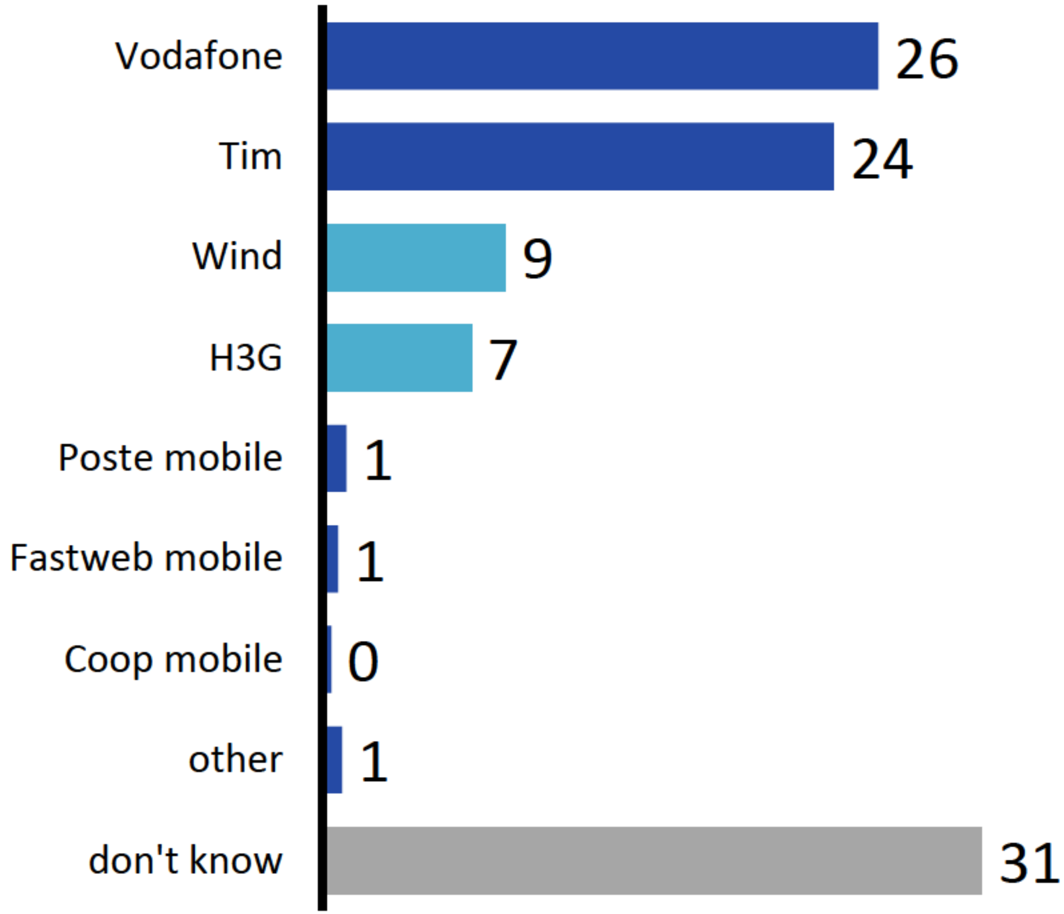
	SAMPLE	PROVIDER		SWITCH TYPE		SWITCH TYPE PER PROVIDER				CONTRACT	
	avarage value	Wind	H3G	Gross Add	Internal Switcher	WIND Gross Add	WIND Internal Switcher	H3G Gross Add	H3G Internal Switcher	pre-paid	post-paid
chosen another provider or stayed with the previous one	**81**	80	83	81	79	80	78	84	81	79	83
stopped using this number	**8**	8	7	8	9	8	9	7	8	9	6
don't know	**11**	12	10	11	12	12	13	9	11	12	11

	GENDER		AGE						GEOGRAPHIC AREA				
	male	female	18-24 years	25-34 years	35-44 years	45-54 years	55-64 years	over 65 years	North West	North **East**	Center	South	Islands
chosen another provider or stayed with the previous one	81	80	82	81	82	80	79	79	79	80	81	81	81
stopped using this number	8	8	6	9	8	8	8	7	9	7	9	8	7
don't know	11	12	12	10	10	12	13	14	12	13	10	11	12

Values expressed in %. Respondents who answered question 13 "chosen the same provider" or "don't know" (5738)

Second Favorite Provider for the Choice (total values)

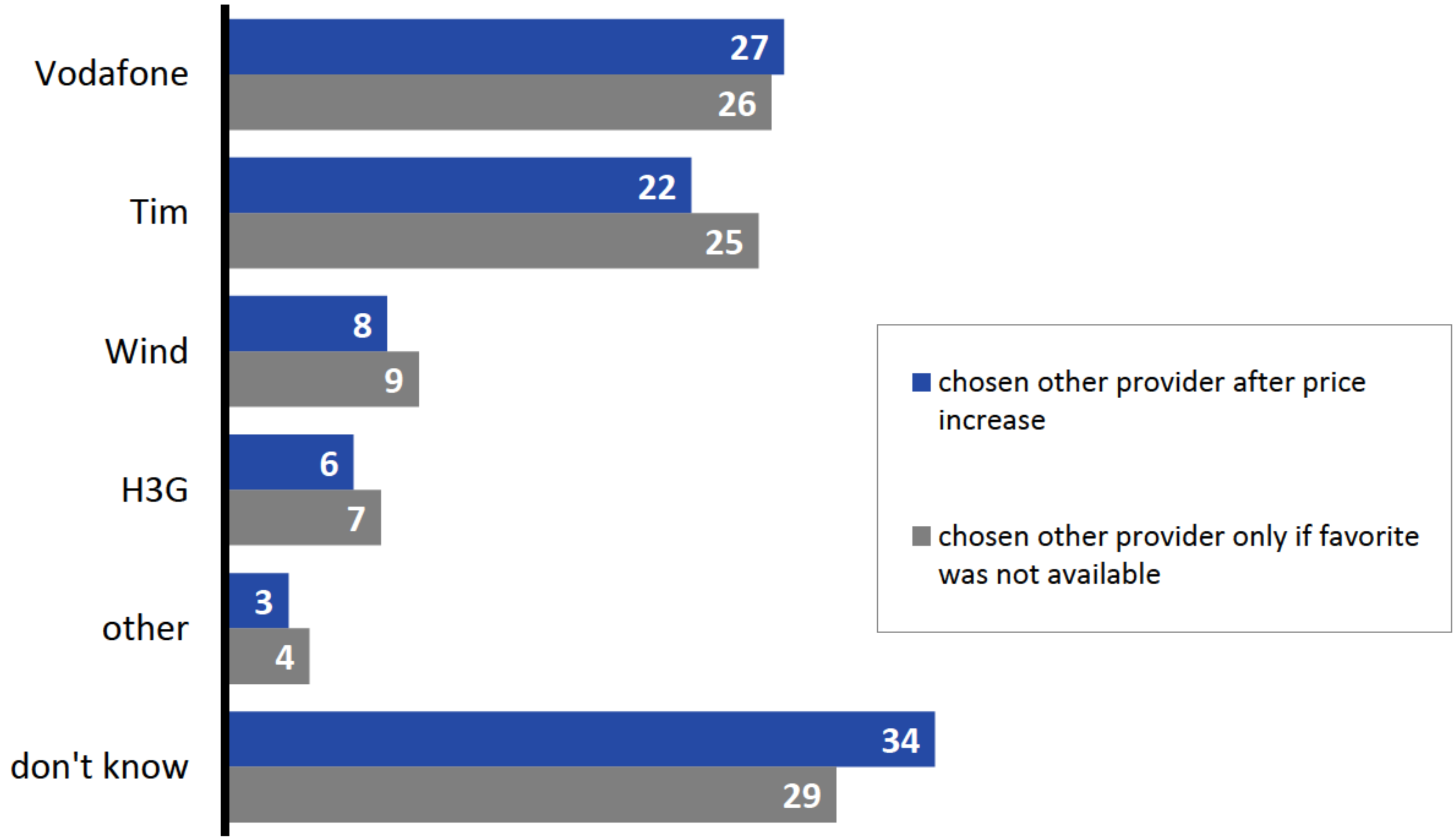
15. Which mobile phone provider would you have chosen?



Values expressed in %. Respondents who answered question 13 or 14 "chosen or stayed with another provider" (6647)

Second Favorite Provider for the Choice (segmented by choice)

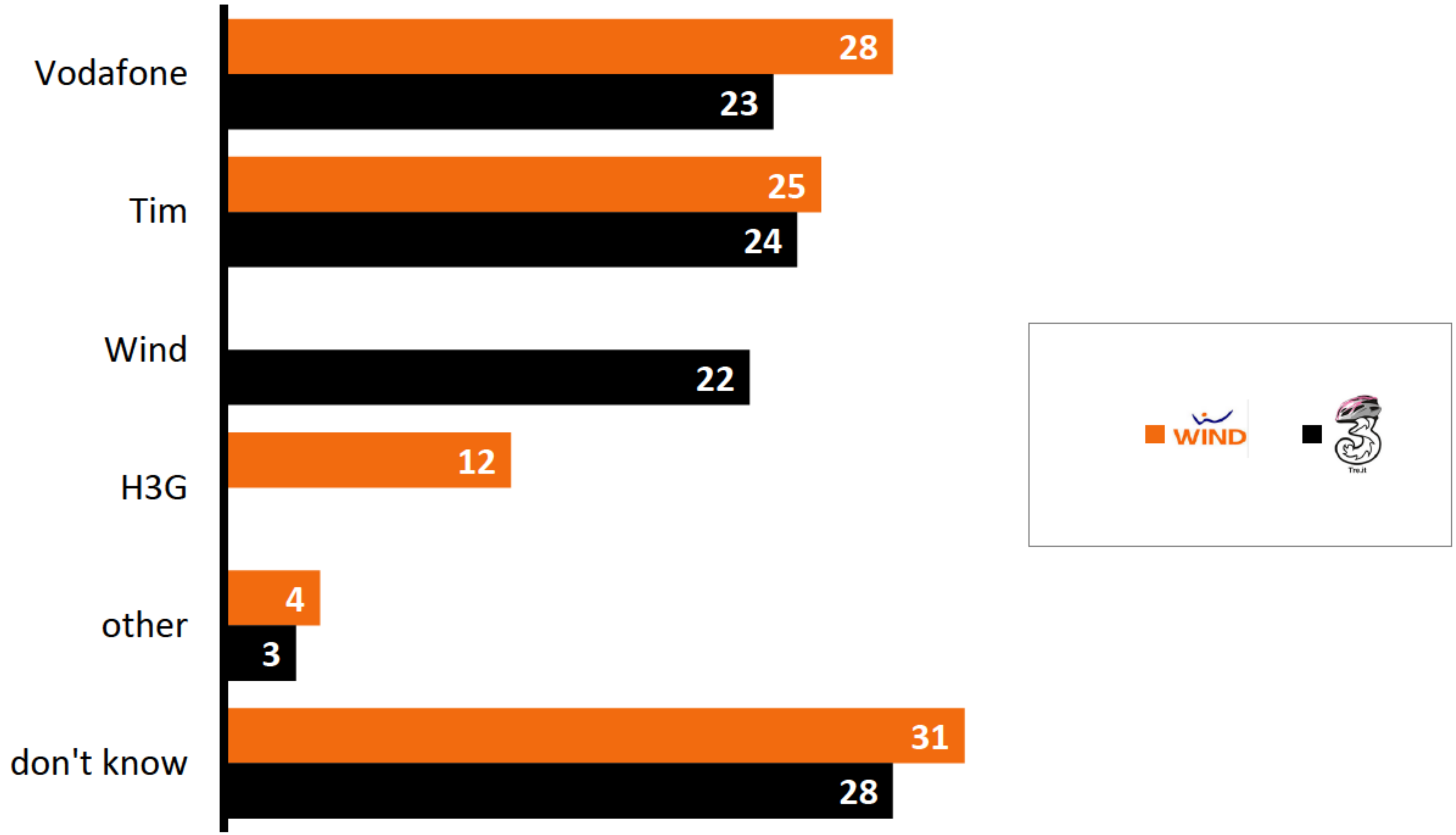
15. Which mobile phone provider would you have chosen?



Values expressed in %. Respondents who answered question 13 or 14 "chosen or stayed with another provider" (6647)

Second Favorite Provider for the Choice (segmented by current provider)

15. Which mobile phone provider would you have chosen?



Values expressed in %. Respondents who answered question 13 or 14 "chosen or stayed with another provider" *(6647)*

Second Favorite Provider for the Choice (segmentations)

15. Which mobile phone provider would you have chosen?

	SAMPLE	PROVIDER		SWITCH TYPE		SWITCH TYPE PER PROVIDER				CONTRACT	
	avarage value	Wind	H3G	Gross Add	Internal Switcher	WIND Gross Add	WIND Internal Switcher	H3G Gross Add	H3G Internal Switcher	pre-paid	post-paid
Vodafone	**26**	28	23	26	26	28	28	23	23	26	26
Tim	**24**	25	24	24	24	24	24	24	24	24	24
Wind	**9**	0	22	9	7	0	0	22	19	7	13
H3G	**7**	12	0	7	7	12	11	0	0	8	4
Poste mobile	**1**	2	1	1	1	2	1	1	1	2	0
Fastweb mobile	**1**	1	1	1	1	1	0	1	1	1	2
Coop mobile	**0**	0	0	1	0	1	0	0	0	0	0
other	**1**	1	1	1	1	1	1	1	1	1	1
don't know	**31**	31	28	30	33	31	35	28	31	31	30

	GENDER		AGE						GEOGRAPHIC AREA				
	male	female	18-24 years	25-34 years	35-44 years	45-54 years	55-64 years	over 65 years	North West	North East	Center	South	Islands
Vodafone	25	28	33	28	26	26	27	18	28	30	25	23	27
Tim	24	24	27	25	23	23	23	26	21	21	25	28	26
Wind	9	8	7	9	9	9	8	7	8	7	9	10	11
H3G	7	7	6	7	8	8	6	5	7	6	8	6	7
Poste mobile	1	1	1	1	1	1	1	2	1	2	1	2	0
Fastweb mobile	1	1	0	1	1	1	0	1	1	1	1	0	0
Coop mobile	0	1	0	0	0	1	1	1	0	1	0	0	0
other	1	1	1	1	1	1	1	1	1	1	1	1	0
don't know	32	29	25	28	31	30	33	39	33	31	30	30	29

SWG

Values expressed in %. Respondents who answered question 13 or 14 "chosen or stayed with another provider" (6647)

Decisions Based on the Spending

13. … Suppose that at the time you chose this contract, all the contract price plans of [Wind/H3G], including yours, had been 10% more expensive per month …Which of the following do you think you would have been most likely to do?

	SAMPLE	MONTHLY SPENDING			
	avarage value	10 euro or less	11 - 20 euro	21 - 30 euro	over 30 euro
chosen the same provider	**66**	69	65	60	54
chosen or stayed with another provider	**25**	23	26	32	39
stopped using this number	**3**	3	4	3	3
don't know	**5**	5	5	5	5

Higher spending perspective increases the propensity to switch

All respondents (8002)

14. Now let's suppose that it was not possible to purchase a contract with [Wind/H3G]. What would you had been to do instead?

	SAMPLE	MONTHLY SPENDING			
	avarage value	10 euro or less	11 - 20 euro	21 - 30 euro	over 30 euro
chosen another provider or stayed with the previous one	81	81	80	83	82
stopped using this number	8	8	8	7	5
don't know	11	11	12	10	13

Respondents who answered question 13 "chosen the same provider" or "don't know" (5738)

SWG

Values expressed in %.

Decisions Based on the Spending

15. Which mobile phone provider would you have chosen?

	SAMPLE	MONTHLY SPENDING			
	avarage value	10 euro or less	11 - 20 euro	21 - 30 euro	over 30 euro
Vodafone	26	25	29	28	27
Tim	24	24	25	24	25
Wind	9	9	7	11	10
H3G	7	7	8	4	3
Poste mobile	1	1	1	1	1
Fastweb mobile	1	1	1	2	2
Coop mobile	0	1	0	0	0
other	1	1	1	1	1
don't know	31	32	29	29	30

Respondents who answered question 13 or 14 "chosen or stayed with another provider" *(6647)*

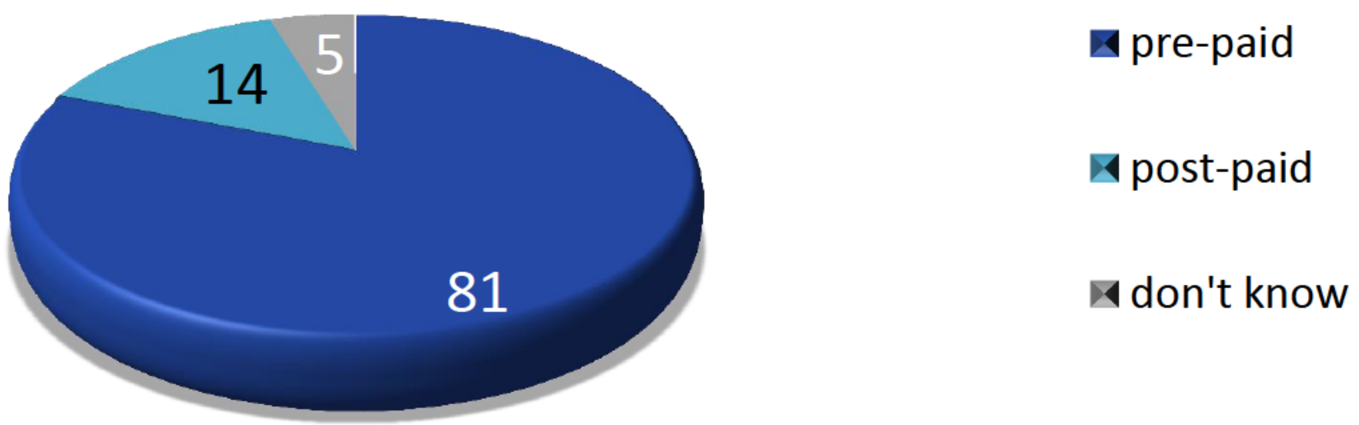
With over 20 euro spending, higher propensity to choose Wind

SWG

Values expressed in %.

Type of Contract with Second Choice Provider (total values)

16. With this provider, which kind of contract would you choose?



Values expressed in %. Respondents who chose a provider in question 15 (4637)

Type of Contract with Second Choice Provider (segmentations)

16. With this provider, which kind of contract would you choose?

	SAMPLE	PROVIDER		SWITCH TYPE		SWITCH TYPE PER PROVIDER				CONTRACT	
	avarage value	Wind	H3G	Gross Add	Internal Switcher	WIND Gross Add	WIND Internal Switcher	H3G Gross Add	H3G Internal Switcher	pre-paid	post-paid
pre-paid	**81**	86	74	81	78	86	86	76	63	93	45
post-paid	**14**	10	21	14	17	10	9	19	30	3	48
don't know	**5**	4	5	5	5	4	5	5	7	4	7

	GENDER		AGE						GEOGRAPHIC AREA				
	male	female	18-24 years	25-34 years	35-44 years	45-54 years	55-64 years	over 65 years	North West	North **East**	Center	South	Islands
pre-paid	80	83	84	78	83	80	80	81	79	78	78	85	84
post-paid	16	12	14	17	13	15	15	12	15	16	16	12	12
don't know	4	5	2	5	4	5	5	7	6	6	6	3	4

SWG

Values expressed in %. Respondents who chose a provider in question 15 (4637)

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SWG S.p.A. has chosen to certify itself in 1999. It was among the first companies in the industry to do so, taking what was the line taken later by the international category. The UNI EN ISO 9001:2008 certification includes all research activities, including the most recently one linked to the Internet world. The company is a member of two organizations: ESOMAR and ASSIRM. ESOMAR is the international association of market research and opinion; it carries out intensive training, legislation, regulatory and representative activity of the category with public and private bodies (European Union, States, business associations).

ASSIRM is the homologous Italian Association; it is very active concerning the problems and needs of the research firm, with particular attention to the issue of quality. This association is the interlocutor of the Public Administration and of private enterprises for the various aspects of the completion of the research work.
SWG is also part of an international network of independent research firms INTERSEARCH – that are not part of multinational groups; the participation in this network allows an exchange of experiences and knowledge, and the opportunity to perform works of international significance.

VOICES from the Blogs

SWG, in 2015 shared the corporation stock of **VOICES from the Blogs S.r.l.** – a Spin-Off of the Milan University - with a percentage of capital of 22%. So the first integrated group of data science was born in Italy, a group that mixes more than 30 years of experience of the research institute in Trieste - specialized in analysis and market, social and political data collection - and the expertise of the academic research group in Milan, which covers a leadership role in Italy in the field of the analysis of the opinions on the Web and, more in general, in the Big Data analytics.

ANNEX C

European Commission

Survey on Behalf of the Commission Regarding the Purchase or Change of Mobile Telephone Subscriptions in Italy[1]

SWG QUESTIONNAIRE DRAFT

INTRODUZIONE

[Buongiorno/Buonasera], la chiamo dall'Istituto di ricerca SWG per conto della Commissione Europea. La Commissione vuole analizzare l'opinione delle persone sul mercato degli operatori telefonici mobili.
L'intervista durerà tra 5 e 10 minuti e la sua disponibilità a rispondere sarebbe molto apprezzata.
Le garantiamo che qualsiasi informazione ci darà verrà trattata solo ed esclusivamente ai fini di questa ricerca, in forma strettamente riservata, anonima e in forma aggregata, nel rispetto della normativa sulla privacy, d.lgs. n.196 del 2003.
Accetta l'intervista? Possiamo partire?
SE CHIEDE: Il suo numero ci è stato fornito dalla Commissione Europea che lo ha richiesto al suo operatore telefonico, a sua volta tenuto a fornirlo alla stessa Commissione.

<u>DOMANDE di PROFILAZIONE / SCREENING</u>

1. Lei è:
[*Leggere solo se non è possibile inferire dalla voce*]
- a) maschio
- b) femmina

2. Qual è la sua età?
[*Non leggere, ma codificare*]

---

1 The survey was carried out through interviews in Italian and Italian is the only existing language of this Annex.

a) 18-24 anni
b) 25-34 anni
c) 35-44 anni
d) 45-54 anni
e) 55-64 anni
f) 65 anni e oltre

3. In quale regione risiede?
[*Non leggere, ma codificare*]
a) Abruzzo
…
w) Veneto

4. Bene parliamo ora di operatori telefonici. Le chiedo innanzitutto qual è l'operatore di telefonia mobile del numero a cui la stiamo chiamando?
[*Leggere solo se necessario*; *rotazione random a,b,c,d,e,f.]*
a) Vodafone → uscita
b) Tim → uscita
c) Tre
d) Wind
e) Poste mobile → uscita
f) Coop mobile → uscita
g) non saprei / non ricordo / altro → uscita

5. Quello che sta usando ora è il suo numero principale (quello che usa più spesso)?
a) si
b) no → uscita

6. Che tipo di pagamento ha scelto per questo numero di telefono?
[*Rotazione random a,b*]
a) ricaricabile
b) abbonamento
c) altro → uscita
d) non saprei / non ricordo → uscita

7. Parliamo ora del contratto [*inserire ricaricabile/di abbonamento - risposta da D.7*] relativo a questo numero. E' stato lei a scegliere questo contratto?
a) si, l'ho scelto io
b) no, l'ha scelto qualcun altro per me → uscita
c) altro → uscita

8. E ricorda di aver scelto questo contratto con [*operatore da D.4*] nell'ultimo anno?
[*Se Gross Add*]
a) si, all'incirca nell'ultimo anno
b) no, sono cliente da più tempo → uscita

8b. E ricorda di aver modificato o rinnovato il suo contratto con [*operatore da D.4*] nell’ultimo anno?

[*Se Internal Switcher*]

a) si, all'incirca nell’ultimo anno
b) no, da più tempo → uscita

9. Quando ha scelto questo contratto, ha considerato anche piani tariffari di altri operatori?

[*Se Gross Add*]

a) si, ho considerato altri operatori
b) no → uscita

9b. Quando ha modificato o rinnovato il suo contratto con [*operatore da D.5*] ha considerato anche piani tariffari di altri operatori?

[*Se Internal Switcher*]

a) si, ho considerato altri operatori
b) no → uscita

<u>DOMANDE CATEGORIALI 1</u>

10. Come ha acquistato il suo attuale contratto di telefonia mobile?

[*Se Gross Add*]

[*Tutti; rotazione random (a+b), c, d*]

a) in un negozio dell’operatore telefonico
b) in un altro negozio di vendita di telefonia al dettaglio
c) online dal sito o dall’ APP dell’operatore telefonico
d) al telefono dall’operatore telefonico
e) altro
f) non ricordo

10b. Come ha modificato o rinnovato il suo attuale contratto di telefonia mobile?

[Se Internal Switcher]

[Tutti; rotazione random (a+b), c, d]

g) in un negozio dell’operatore telefonico
h) in un altro negozio di vendita di telefonia al dettaglio
i) online dal sito o dall’ APP dell’operatore telefonico
j) al telefono dall’operatore telefonico
k) altro
l) non ricordo

11. Quali dei seguenti fattori hanno influito nella scelta dell’attuale contratto [*inserire ricaricabile/abbonamento - risposta da D.7*]?

[*Tutti; scelta multipla; rotazione random a,b,c,d,e,f,g*]

a) convenienza del piano tariffario
b) copertura della rete
c) prestazioni della rete (soprattutto la velocità)
d) qualità dell’assistenza clienti
e) reputazione del brand

f) l'abbinamento del contratto del cellulare ad altri servizi (telefono fisso, Adsl, Tv a pagamento, ecc.)
g) i tipi di telefono cellulare abbinabili al contratto telefonico
h) non saprei
i) altro

11b. Quale di questi fattori è stato il più importante per la sua scelta?
[*Chi ha dato più di una risposta; visualizzate le risposte date a D.12]*
a) convenienza del piano tariffario
b) copertura della rete
c) prestazioni della rete (soprattutto la velocità)
d) qualità dell'assistenza clienti
e) reputazione del brand
f) l'abbinamento del contratto del cellulare ad altri servizi (telefono fisso, Adsl, Tv a pagamento, ecc.)
g) i tipi di telefono cellulare abbinabili al contratto telefonico
h) non saprei
i) altro

12. **All'incirca, quanto ha speso nell'ultimo mese per questo numero?**

12b. In media quanto spende mensilmente con riferimento alle seguenti fasce di prezzo?
[*Se non compila 12*]
a) 0-5 euro
b) 5-10 euro
c) 10-20 euro
d) 20-30 euro
e) 30-50 euro
f) più di 50 euro
g) non saprei *[non leggere, aiutare l'intervistato a compiere una stima]*

<u>**DOMANDE PER DIVERSION RATIO**</u>

13. Prima mi ha detto che lei ha recentemente attivato un contratto [ricaricabile/abbonamento da D.6] con l'operatore [operatore da D.4]. Immagini ora che quando lei ha scelto questo contratto, tutti i prezzi offerti da [operatore da D.4] fossero stati del 10% più alti, con i prezzi degli altri operatori rimasti costanti. Questo significa che lei avrebbe pagato [X]* Euro in più al mese rispetto a quanto paga ora. In questo caso, cosa avrebbe fatto più probabilmente?
[*Solo Gross Ad; rotazione random a,b,c*]
*[X= (risposta 12 o 12b) x 10% (arrotondato al primo intero) oppure (cifra più alta della forchetta scelta in 12b) x 10%. Se non ha risposto a domanda 12 omettere dalla domanda la frase "*Questo significa che lei avrebbe pagato *[X] Euro in più al mese rispetto a quanto paga ora"*]
a) avrei comunque scelto questo operatore
b) avrei scelto un altro operatore o sarei rimasto con l'operatore precedente
c) avrei smesso di usare questo numero
d) non saprei [*non leggere*]

13b. Prima mi ha detto che lei ha recentemente modificato o rinnovato il suo contratto [ricaricabile/abbonamento da D.6] con l'operatore [operatore da D.4]. Immagini ora che quando lei ha scelto questo contratto, tutti i prezzi offerti da [operatore da D.4] fossero stati del 10% più alti, con i prezzi degli altri operatori rimasti costanti. Questo significa che lei avrebbe pagato [XX] Euro in più al mese rispetto a quanto paga ora. In questo caso, cosa avrebbe fatto più probabilmente?

[*Solo Internal Switcher; rotazione random a,b,c*]

*[*X= (risposta 12 o 12b) x 10% oppure (cifra più alta della forchetta scelta in 12b) x 10%. Se non ha risposto a domanda 12 omettere dalla domanda la frase "*Questo significa che lei avrebbe pagato *[X] Euro in più al mese rispetto a quanto paga ora"*]

a) sarei comunque rimasto con questo operatore
b) avrei scelto un altro operatore
c) avrei smesso di usare questo numero
d) non saprei [*non leggere*]

14. Ora le chiedo invece di immaginare che allora non fosse stato possibile avere un contratto con [operatore da D.4]. Cosa avrebbe fatto?

[*Se a) o d) in D.13 o in D.13b*]

a. avrei scelto o sarei rimasto con un altro operatore
b. avrei smesso di usare questo numero
c. non saprei

15. E in questo caso quale operatore avrebbe scelto?

[*Se a) in D.14 + se b) in D.13 + se b) in D.13b; rotazione random a,b,c,d,e,f,g; operatore scelto in D.4 nascosto*]

a) Vodafone
b) Tim
c) Tre
d) Wind
e) Poste mobile
f) Coop mobile
g) Fastweb mobile
h) altro
i) non saprei

16. E con questo operatore quale modalità di pagamento avrebbe scelto?

[*Se a) in D.14; rotazione random a,b*]

a) ricaricabile
b) abbonamento
c) non saprei

DOMANDE CATEGORIALI 2

17. Prima di questo contratto con [*operatore da D.4*] quale operatore di telefonia mobile usava?

[*Se Gross Add; rotazione random a,b,c,d,e,f,g; operatore scelto in D.4 nascosto*]

a) Vodafone

b) Tim
c) Tre
d) Wind
e) Poste mobile
f) Coop mobile
g) Fastweb mobile
h) altro
i) non saprei

18. Quante volte ha cambiato operatore di telefonia mobile negli ultimi due anni?

a) mai
b) 1 volta
c) 2-3 volte
d) 4-5 volte
e) più di 5 volte
f) non saprei / non ricordo

19 Quante SIM possiede?

a) 1
b) 2
c) 3
d) Più di 3

ANNEX D

European Commission
DG Competition Place Madou 1
1210 Saint-Josse-ten-Noode

CASE M.7758

**HUTCHISON EUROPE TELECOMMUNICATIONS S.À R.L/
VIMPELCOM LUXEMBOURG HOLDINGS S.À R.L**

COMMITMENTS TO THE EUROPEAN COMMISSION

18 July 2016

Pursuant to Article 8(2) and 10(2) of Council Regulation (EC) No 139/2004 (the ***Merger Regulation***), Hutchison Europe Telecommunications S.À R.L. and VimpelCom Luxembourg Holdings S.À R.L. (together the ***Parties***) hereby enter into the following commitments (the ***Commitments***) vis-à-vis the European Commission (the ***Commission***) with the view to rendering the creation of a joint venture, Hutchison 3G Italy Investments S.À R.L. (***H3GII***), (the ***Concentration***) compatible with the internal market and the functioning of the EEA Agreement.

The Commitments shall take effect upon the date of adoption of the Decision (the ***Effective Date***).

This text shall be interpreted in the light of the Commission's Decision pursuant to Article 8(2) of the Merger Regulation to declare the Concentration compatible with the internal market and the functioning of the EEA Agreement (the ***Decision***), in the general framework of Union law, in particular in light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (the ***Remedies Notice***).

A. DEFINITIONS

1. For the purpose of the Commitments, the following terms shall have the following meaning:

2G National Roaming Services: has the meaning given in paragraph 21.

3G/4G MOCN Services: has the meaning given in paragraph 21.

[the most densely populated area]: means an area to be agreed between the Parties and the New MNO and corresponding to the most densely-populated areas of Italy […].

Affiliated Undertakings: means any undertakings controlled by the Parties and/or by the ultimate parents of the Parties, whereby the notion of control shall be interpreted pursuant to Article 3 of the Merger Regulation and in light of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings.

Annual Capacity Commitment: has the meaning given in paragraph 22(f)(ii).

Capacity Commitment: has the meaning given in paragraph 22(f)(ii).

Closing: means the completion of the Concentration whereby the Parties create a joint venture, H3GII.

Co-location Sites: means macro access network sites owned by the Parties (or their Affiliated Undertakings) on which the Parties co-locate with the New MNO in accordance with the Co-location Agreement.

Confidential Information: means any business secrets, know-how, commercial information, or any other information of a proprietary nature that is not in the public domain.

Conflict of Interest: means any conflict of interest that impairs the Monitoring Trustee's objectivity and independence in discharging its duties under the Commitments.

[…]: […].

Divestment Spectrum: means:

- the 2x5MHz spectrum block ([…]) on the 900 MHz frequency currently held by […] (the ***900MHz Spectrum***);
- the 2x5MHz spectrum block ([…]) or, with the consent of the New MNO, the 2x5MHz spectrum block ([…]) on the 1800 MHz frequency currently held by […] (the ***1800 MHz Spectrum Block 1***);
- the 2x5MHz spectrum block ([…]) on the 1800 MHz frequency currently held by […] (the ***1800 MHz Spectrum Block 2*** and together with the ***1800MHz Spectrum Block 1***, the ***1800MHz Spectrum***);
- the 2x5 MHz spectrum block ([…]) on the 2100 MHz FDD frequency currently held by […] (the ***2100MHz Spectrum Block 1***);
- the 2x5 MHz spectrum block ([…]) on the 2100 MHz FDD frequency currently held by […] (the ***2100MHz Spectrum Block 2*** and together with the ***2100MHz Spectrum Block 1***, the ***2100MHz Spectrum***); and
- the two 2x5MHz spectrum blocks ([…]) on the 2600 MHz frequency currently held by […] (the ***2600MHz Spectrum***).

Effective Date: means the date of adoption of the Decision.

Extended Sites: means […] Sites in the [least densely populated area] (comprising approximately […] Transfer Sites and approximately […] Co-location Sites) or such lower number to which the Monitoring Trustee does not object in accordance with paragraph 12. More particularly, the Extended Sites will be located within the least densely populated areas of Italy […].

Extended Term: has the meaning given in paragraph 22(b).

Fast Track Dispute Resolution Mechanism: has the meaning given in paragraph 24.

Further Sites: means […] Sites in the [least densely populated area] (comprising approximately […] Transfer Sites and approximately […] Co-location Sites) or such lower number to which the Monitoring Trustee does not object in accordance with paragraph 12.

H3G: means H3G S.p.A., a joint stock company with a sole shareholder incorporated under the laws of Italy, whose registered office is at Via Leonardo Da Vinci 1, 20090 Trezzano sul Naviglio, Milan, Italy and registered with the Register of Enterprises of Milan with tax code and registration number 02517580920.

H3GII: means a joint venture company, Hutchison 3G Italy Investments S.À R.L., which upon Closing will be jointly controlled by HET and VIP, the holding companies of H3G and WIND.

HET: means Hutchison Europe Telecommunications S.À R.L., a *société à responsabilité limitée* incorporated under the laws of the Grand Duchy of Luxembourg, having its registered office at 7, rue du Marché-aux-Herbes, L-1728 Luxembourg, Grand Duchy of Luxembourg, registered with the Luxembourg Trade and Companies' Register under number B74649.

Indemnified Party: has the meaning given in paragraph 51.

Initial Sites: means […] Sites in the [most densely populated area] (comprising approximately […] Transfer Sites and approximately […] Co-location Sites) or such lower number to which the Monitoring Trustee does not object in accordance with paragraph 10.

Initial Term: has the meaning given in paragraph 22(b).

[least densely populated area]: means an area to be agreed between the Parties and the New MNO and corresponding to the least densely populated areas of Italy […] (i.e. all areas in Italy excluding the [most densely populated area]).

Monitoring Trustee: means one or more natural or legal person(s) who is/are approved by the Commission and appointed by the Parties, and who has/have the duty to monitor the Parties' compliance with the conditions and obligations attached to the Decision.

Monitoring Trustee Proposal: has the meaning given in paragraph 27.

Network: means (as the context requires) the H3G or WIND publicly available cellular radio access network (including that of the combined business as it is consolidated post-Closing) in Italy from time to time. For the avoidance of doubt, the 2G National Roaming Services and 3G/4G MOCN Services shall be provided on the publicly available cellular radio access network operated or used by WIND in Italy (including that of H3G as it is consolidated with WIND post-Closing) and, once the consolidation has been completed, on the consolidated network.

New MNO: means Iliad S.A. a *société anonyme* incorporated under the laws of France, having its registered office at 16, rue de la Ville l'Evêque, 75008

Paris, France and registered in Paris in the Trade and Companies Register under no. 342 376 332 (or an Affiliated Undertaking).

New MNO Agreements: has the meaning given in paragraph 5(a).

RAN Sharing: has the meaning given in paragraph 18.

Ready for Service Date: has the meaning given to it in paragraph 22(a).

Request: has the meaning given to it in paragraph 25.

Response: has the meaning given to it in paragraph 25.

Sites: means the Initial Sites, the Further Sites and the Extended Sites as the context requires all of which shall be macro access network sites.

Transfer Sites: means macro access network sites which the Parties will divest to the New MNO in accordance with the Commitment in Section B.II. The assets/rights to be available at each Transfer Site consist of (i) the transfer of a ground lease or site use agreement for the Transfer Site (including any rights and obligations arising from such lease or agreement, and if applicable, any construction permits or agreements allowing the use of any such Transfer Sites), but excluding any permits relating to the operation of active equipment; and (ii) the transfer of title to the applicable passive equipment owned by the Parties at the Transfer Site. For the avoidance of doubt, radio base station equipment, microwave transmission equipment, and any other electronic equipment which carries traffic shall not be transferred to the New MNO.

VIP: means VimpelCom Luxembourg Holdings S.À R.L., a *société à responsabilité limitée* incorporated under the laws of the Grand Duchy of Luxembourg, having its registered office at 15, rue Edward Steichen, L-2540 Luxembourg, Grand Duchy of Luxembourg, registered with the Luxembourg Trade and Companies' Register under number B199019.

WIND: means Wind Telecomunicazioni S.p.A, a joint stock company with a sole shareholder incorporated under the laws of Italy, whose registered office is at Via Cesare Giulio Viola, 48 Rome, 00148, Italy and registered with the Register of Enterprises of Rome with tax code and registration number 05410741002.

B. NEW MNO COMMITMENT

2. The Parties commit to (i) divest the Divestment Spectrum to the New MNO in accordance with paragraphs 6 and 7; (ii) divest the Initial Sites and/or co-locate with the New MNO on the Initial Sites in accordance with paragraphs 9 and 10; (iii) divest and/or co-locate with the New MNO in respect of the Further Sites and the Extended Sites in accordance with paragraphs 11 and 12, unless the New MNO enters RAN Sharing with the Parties in accordance with paragraphs 18 to 20; (iv) provide the 2G National Roaming Services and the 3G/4G MOCN Services to the New MNO in accordance with paragraph 22; and (v) offer […] to the New MNO in accordance with paragraph 23. With respect to (ii) and (iii) the Parties commit to comply with the procedure and terms set out in paragraphs 13 to 17.

3. Subject to paragraph 8 below, in order to maintain the structural effect of the Commitments, the Parties shall, for a period of 10 years after Closing, not acquire, whether directly or indirectly, the possibility of exercising influence (as defined in paragraph 43 of the Remedies Notice, footnote 3) over the whole or part of the New MNO's activities in the mobile telephony sector in Italy and/or otherwise acquire the Divestment Spectrum or the Sites unless, following the submission of a reasoned request from the Parties showing good cause and accompanied by a report from the Monitoring Trustee, the Commission finds that the re-acquisition of some or all of the Sites or the Divestment Spectrum does not undermine the effectiveness of the Commitments.

4. The Concentration shall not be implemented before the Parties have entered into the New MNO Agreements and the Commission has approved the New MNO Agreements.

5. The Parties shall be deemed to have complied with the Commitments in Section B upon the Parties (and/or their respective Affiliated Undertakings) having:

   (a) entered into the following agreements with the New MNO:

      (i) the Framework and Transfer Agreement;

      (ii) the Co-location Agreement;

      (iii) the National Roaming Agreement; and

      (iv) the RAN Sharing Agreement,

      (together the ***New MNO Agreements***);

   (b) transferred and released the Divestment Spectrum to the New MNO in accordance with the dates indicated in paragraph 6;

   (c) divested to the New MNO or entered into site specific agreements for co-location with the New MNO on the Initial Sites by […] in accordance with paragraphs 9 and 10;

   (d) either (i) divested to the New MNO or entered into co-location with the New MNO on the Further Sites and Extended Sites in accordance with paragraphs 11 and 12; or (ii) enabled the Network for the provision of RAN Sharing in accordance with paragraph 18; and

   (e) enabled the Network for the provision of the 2G National Roaming Services and 3G/4G MOCN Services to the New MNO by the Ready for Service Date in accordance with paragraph 22(a).

B.I: Divestment Spectrum

6. The Parties commit to divest the Divestment Spectrum to the New MNO on a [phased] basis substantially in accordance with the indicative spectrum release plan attached as **Annex 1** (which may be modified from time to time in accordance with terms agreed between the Parties and the New MNO and

approved by the Monitoring Trustee), subject to any adjustments required in order to obtain all necessary approvals required under applicable Italian legislation and regulation. The [phased] release of spectrum and transfer of rights to the New MNO to use the spectrum will be completed in its entirety by the following dates (subject to any changes to the release dates due to technical reasons which are agreed between the Parties and the New MNO, communicated to the Monitoring Trustee and approved by the Commission):

(a) in relation to the 900MHz Spectrum by […];

(b) in relation to the 1800MHz Spectrum (Block 1) by […];

(c) in relation to the 1800MHz Spectrum (Block 2) by […];

(d) in relation to the 2100MHz Spectrum (Block 1 and Block 2) by […]; and

(e) in relation to the 2600MHz Spectrum by […].

7. […].

8. If following the transfer of the Divestment Spectrum and before the end of the Initial Term:

(a) the New MNO seeks to transfer more than […]% of the overall Divestment Spectrum (whether or not in the ordinary course of business) to any third party (excluding Affiliated Undertakings of the New MNO);

(b) the New MNO seeks to transfer […]% (or less) of the overall Divestment Spectrum outside of the ordinary course of business to any third party (excluding Affiliated Undertakings of the New MNO); or

(c) there is a combination or transfer of business or a sale of shares in the New MNO or any of its Affiliated Undertakings with or to a mobile network operator in Italy,

the Parties shall have the right, subject to applicable approvals under Italian and/or EU law and the approval of the Monitoring Trustee, to […]. […].

B.II: Sites

[Most densely populated area]

9. Subject to paragraph 10, the Parties commit to divest to the New MNO or to enter into co-location with the New MNO in respect of […] Initial Sites.

10. The number of Initial Sites can be reduced on a pro rata basis if the New MNO:

(a) obtains sites from a third party, provided that the New MNO obtains a total of approximately […] macro access network sites (through acquisition or co-location from the Parties and/or third parties) located in the [most densely populated area] by […]; or

(b) enables technical solutions to achieve substantially the same coverage in the [most densely populated area] as would be achieved with […] macro access network sites,

in each case provided that the New MNO notifies the Monitoring Trustee in advance and the Monitoring Trustee does not object.

[Least densely populated area]

11. In respect of the [least densely populated area], the Parties commit to either:

(a) activate the RAN Sharing with the New MNO in accordance with paragraph 18; or

(b) subject to paragraph 12, divest to the New MNO or enter into co-location with the New MNO in respect of […] Further Sites and […] Extended Sites.

12. The number of Further Sites and the number of Extended Sites can be reduced on a pro rata basis if the New MNO:

(a) obtains sites from a third party, provided that (i) the New MNO obtains a total of approximately […] macro access network sites (through acquisition or co-location from the Parties and/or third parties) located in the [least densely populated area] by the last date on which the RAN Sharing option may be exercised by the New MNO in accordance with paragraph 19 below; and (ii) the total number of sites obtained from third parties (together with Sites obtained from the Parties) enables the New MNO to achieve in the [least densely populated area] substantially the same coverage that would be achieved with […] macro access network sites; or

(b) enables technical solutions to achieve substantially the same coverage in the [least densely populated area] as would be achieved with […] macro access network sites,

in each case provided that the New MNO notifies the Monitoring Trustee in advance and the Monitoring Trustee does not object.

Terms of co-location

13. The Parties commit to co-locate with the New MNO on Co-location Sites substantially in accordance with the following:

(a) the New MNO shall have the right to install, operate, maintain and use its equipment in respect of Co-location Sites for the provision of current and future wireless and wireline communication services, provided that the New MNO shall not be permitted to operate any equipment, technology or spectrum except to the extent it is for its own sole use;

(b) the Parties shall offer co-location on each Co-location Site for a term of […] years starting from the date of the relevant agreement in respect of the Co-location Site and, at the New MNO's request, the Parties will discuss in good faith with the New MNO a possible extension on terms and conditions to be agreed; and

(c) in consideration for co-location on each Co-location Sites, the New MNO shall pay a set-up fee covering the […] in connection with co-location and […] for each Co-location Site based on the rent, rates, energy, maintenance and other costs incurred by the Parties in respect of each Co-location Site.

Process for making Sites available

14. The Parties commit to making the Sites available for divestment or co-location in accordance with the indicative site release plan attached as **Annex 2**, which may be modified from time to time in accordance with terms agreed between the Parties and the New MNO and approved by the Monitoring Trustee. The release of the Sites to the New MNO will be completed in its entirety by […], subject to any change due to technical reasons which are agreed between the Parties and the New MNO, communicated to the Monitoring Trustee and approved by the Commission.

15. The procedure by which the Sites shall be made available for divestment or co-location shall be substantially in accordance with **Annex 3**.

Site suitability criteria and coverage

16. The Sites shall meet the site suitability criteria set out in **Annex 4** save as otherwise requested by the New MNO and agreed between the Parties and the New MNO on a site by site basis.

17. The Initial Sites, the Further Sites and the Extended Sites (or the RAN Sharing sites as defined in paragraph 18) shall be capable of enabling the New MNO to provide outdoor coverage on the 900 MHz Spectrum for […]% of the Italian population ([…]% for indoor) provided the New MNO installs the appropriate equipment and takes the requisite steps needed to do so.

B.III: RAN Sharing option

18. The Parties commit to offer the New MNO an option to enter into a one-way radio access network (***RAN***) sharing solution covering a minimum of […] sites located in the [least densely populated area] (***RAN Sharing***) on substantially the following terms:

(a) the RAN Sharing shall be based on a multi-operator radio access network (MORAN) architecture and the New MNO shall gain access to the Parties' active network equipment at the sites (including antennas, base stations, backhaul and radio network controllers);

(b) the RAN Sharing shall cover 3G and 4G technology, and, following commercial launch by H3GII, all future technologies (including 5G) as agreed between the Parties and the New MNO and subject to technical feasibility. The RAN Sharing shall be provided using the Divestment Spectrum;

(c) the RAN Sharing shall be activated on a [phased] basis as 3G/4G MOCN Services are phased out;

(d) the RAN Sharing shall be made available for a total term of […] from the date of initial activation and any extension shall be subject to terms to be agreed between the Parties and the New MNO;

(e) the procedure by which macro access network sites shall be made available for RAN Sharing shall be as agreed between the Parties and the New MNO and shall be substantially in accordance with **Annex 5**;

(f) in consideration for the RAN Sharing, the New MNO shall pay a set-up fee and a contribution to on-going costs as set out in **Annex 6**;

(g) the New MNO may request a unilateral deployment of new technologies on the RAN Sharing macro access network sites and the Parties shall implement such unilateral requests subject to certain conditions to be further discussed and agreed from time to time between the Parties and the New MNO; and

(h) the Parties shall ensure that the technical specifications of the hardware and software used to implement the RAN Sharing at each macro access network site to provide mobile telecommunications carriers on the New MNO's radio access network are substantially equivalent to the technical specifications of the hardware and software used by the Parties at that macro access network site to provide mobile telecommunications carriers on the Parties own radio access network. This is subject to any differentiation due to: (i) the spectrum holdings of the New MNO and the Parties; (ii) the features, functionality and location of the New MNO's and the Parties' unilateral macro access network sites; and (iii) any fault of the New MNO.

19. The RAN Sharing option shall be exercisable by the New MNO at any time from […] until the later of: (i) […]; and (ii) […].

20. The number of sites referred to in paragraph 18 can be reduced on a pro rata basis, if the New MNO:

(a) obtains sites from a third party by the date referred to in paragraph 19, provided that the total number of sites obtained from third parties (together with Sites obtained from the Parties) enables the New MNO to achieve in the [least densely populated area] substantially the same coverage that would be achieved with […] macro access network sites; or

(b) enables technical solutions to achieve substantially the same coverage in the [least densely populated area] as would be achieved with […] macro access network sites,

in each case provided that the New MNO notifies the Monitoring Trustee in advance and the Monitoring Trustee does not object.

B.IV: 2G National Roaming Services and 3G/4G MOCN Services

21. The Parties commit to (or procure that one or more of their respective Affiliated Undertakings) enter into an agreement (the ***National Roaming Agreement***) to (i) provide 2G national roaming services to the New MNO to allow the New MNO's customers to roam onto the Network (***2G National Roaming Services***); and (ii) implement and operate a 3G and 4G MOCN solution to link the Network and the New MNO's core network (***3G/4G MOCN Services***).

22. The 2G National Roaming Services and 3G/4G MOCN Services shall be provided on substantially the following terms:

(a) the Network will be ready for the provision of 2G National Roaming Services and 3G/4G MOCN services to the New MNO as soon as practicable within […] of Closing (the ***Ready for Service Date***), subject to any delays caused by acts or omissions of the New MNO;

(b) the 2G National Roaming Services and 3G/4G MOCN Services shall be provided for an initial term ending at least […] from the Ready for Service Date (***Initial Term***) with the option for the New MNO to prolong for a further […] (***Extended Term***);

(c) in consideration for the provision of the 2G National Roaming Services and the 3G/4G MOCN Services the New MNO shall pay an initial set-up fee […] and, in addition, the fees described at paragraphs 22(e)(iii) and 22(f)(iii)-(iv) below;

(d) the Parties shall provide the 2G National Roaming Services and 3G/4G MOCN Services in a manner that enables the quality of the radio access network services provided by the New MNO to its retail customers to be non-discriminatory and substantially equivalent to the corresponding quality of radio access network services provided by the Parties to the Parties' retail customers on the Network. […];

(e) in relation to the 2G National Roaming Services:

(i) the Parties shall provide 2G voice and SMS and 2G data services operated from time to time on the Network to the New MNO;

(ii) as from the […] contract year, the New MNO shall be subject […];

(iii) charges for 2G National Roaming Services shall be payable […]; and

(iv) the 2G National Roaming Services shall be provided on a national basis until the earlier of […];

(f) in relation to the 3G/4G MOCN Services:

(i) the 3G/4G MOCN Services shall cover 3G and 4G technology, and, following commercial launch by H3GII, all future technologies (including 5G) as agreed between the Parties and the New MNO and subject to technical feasibility;

(ii) the Parties shall make available a minimum of […] million gigabytes (***Capacity Commitment***) which the New MNO has agreed with the Parties to acquire during the first […] years of the National Roaming Agreement as follows (each an ***Annual Capacity Commitment***):

[…];

(iii) For the first […], the following pricing structure for the 3G/4G MOCN Services shall apply:

(A) a fixed fee agreed between the Parties and the New MNO for the Capacity Commitment. For the avoidance of doubt, the fixed fee shall not vary in accordance […] served by the New MNO or the amount of data consumed […] served by the New MNO, in each case during the first […] of the National Roaming Agreement. No additional fee shall be charged for usage within the Capacity Commitment;

(B) for the volumes exceeding the Capacity Commitment a […] per gigabyte;

(C) for voice and SMS, […];

in each case substantially in accordance with **Annex 7**;

(iv) For the remaining term, the following pricing structure for the 3G/4G MOCN Services shall apply:

(A) […] per gigabyte; and

(B) for voice and SMS, a […];

in each case substantially in accordance with **Annex 7**;

(v) the New MNO shall be subject to overall 3G/4G capacity caps which shall be (during the […]) set at a level above the applicable Annual Capacity Commitment and which shall be calculated on an annual basis as a percentage of Network capacity in accordance with the principles set out in **Annex 7**;

(vi) as from the […] contract year, the New MNO shall be subject to a 3G/4G consumption cap of […] of the New MNO's forecast traffic (subject to the overall capacity cap) in accordance with the principles set out in **Annex 8**, provided that (during the […]) the consumption caps shall be at least equal to the Annual Capacity Commitment. In the […], no consumption cap will apply;

(vii) in the event that the New MNO […] of its Annual Capacity Commitment in the […] contract year, it shall be entitled to […] a proportion of the […] Annual Capacity Commitment into the immediately ensuing contract year as follows: (A) at the end of the […] contract year, no more than […] of the Annual Capacity Commitment for the […] contract year and (B) at the end of the […] contract year, no more than […] of the Annual Capacity Commitment for the […] contract year. For the avoidance of doubt, there shall be no […] Annual Capacity Commitments […] and in any subsequent contract year;

(viii) […];

(ix) 3G/4G MOCN Services shall initially be provided on a national geographic basis. The New MNO may nominate macro access network sites on which the Parties shall withdraw 3G/4G MOCN Services (i.e. as the New MNO rolls out its own network). […] of such macro access network sites, the Parties shall […] to provide 3G/4G MOCN Services on […] in accordance with **Annex 9** and the following:

(A) if the New MNO […], the Parties shall […] MHz spectrum on withdrawn macro access network sites during a […] from the date of the availability of the […]; or

(B) if the New MNO does […], the Parties will provide 3G/4G MOCN Services on […] to the New MNO on withdrawn macro access network sites […].

(x) If the New MNO exercises the […] option in accordance with paragraph 18, the Parties shall […] in the [least densely populated area] substantially in accordance with **Annex 9**.

B.V: […]

23. […].

B.VI: Fast Track Dispute Resolution

24. In the event that there is a dispute between the Parties and the New MNO as to the implementation of the Commitments in paragraphs 6 (including the relevant provisions of **Annex 1**), 14 (including the relevant provisions of **Annex 2**), 15 (including the relevant provisions of **Annex 3**), 16 (including the relevant provisions of **Annex 4**) and 17 of the Commitments, the New MNO shall have recourse to the following fast track dispute resolution mechanism (the ***Fast Track Dispute Resolution Mechanism***) for the sole purposes of resolving matters of fact in relation to the implementation of these paragraphs of the Commitments.

Pre-dispute escalation

25. If the New MNO wishes to avail of the fast-track dispute resolution procedure, it shall send a written request to that effect (the ***Request***) to the Parties, with a copy to the Monitoring Trustee. In the Request, the New MNO shall set out in detail the reasons leading it to believe that the Parties have not properly implemented the Commitments referred to in paragraph 24 above. If the Parties so wish, they shall provide a response (***Response***) by no later than […] working days following the receipt of the Request, with copies to the Monitoring Trustee.

26. Within a reasonable period of time not exceeding […] working days after receipt of the Request by the Parties (or Response by the New MNO, whichever is the later), the New MNO and the Parties will use their best efforts to resolve through cooperation and consultation all differences of opinion and to settle all disputes underlying the Request. If the settlement of the disputes fails within these […] working days, the CEOs of the Parties and a nominee of the New MNO may seek to resolve the matters in dispute within an additional […] working days from expiry of the initial […] working days period.

27. The Monitoring Trustee shall present to the New MNO and the Parties with its own proposal (the ***Monitoring Trustee Proposal***) for resolving the dispute within […] working days after receipt of the Request by the Monitoring Trustee, specifying in writing the action(s), if any, to be taken by the Parties in order to ensure compliance with the Commitments vis-à-vis the New MNO, and be prepared, if requested, to facilitate the settlement of the dispute. To the extent the Parties and the New MNO have settled a dispute on the basis of the Monitoring Trustee Proposal and the Parties comply with such settlement, the Parties shall be deemed not to be in breach of the Commitments.

28. If the Parties and the New MNO have failed to resolve their differences under the process set out above, and provided that the CEOs of the Parties and the New MNO have not resolved the matters in dispute within […] working days of the matter being escalated to them in writing by either party, the dispute resolution procedure below shall apply upon written notice by one party to the other provided such notice is given within […] working days of the end of the […] working day period specified in this paragraph.

Dispute Resolution Procedure

29. The Parties and the New MNO shall appoint a panel of experts (the ***Expert***) to determine any matter pursuant to paragraph 24 above.

30. This panel shall comprise:

(a) one expert appointed jointly by the Parties;

(b) one expert appointed by the New MNO; and

(c) one expert appointed by the two experts so appointed provided that if they fail to appoint the third expert within […] calendar days from their appointment, either the Parties or the New MNO may request the Monitoring Trustee to appoint the third expert, provided that each person so appointed shall be an independent, suitably qualified and experienced expert.

31. The process shall be conducted in private and shall be confidential but under supervision of the Monitoring Trustee. The language of the process shall be in English.

32. The Expert shall act on the following basis:

(a) the Expert shall act fairly and impartially;

(b) each party shall submit to the Expert its brief and its submission in relation to the matter in dispute within […] calendar days of the Expert's appointment;

(c) the Expert shall decide the procedure to be followed within […] calendar days of their appointment, which may be the rules of arbitration of the London Court of International Arbitration;

(d) the Parties and the New MNO shall assist and provide such documentation as the Expert reasonably requires to consider the matters referred to it in accordance with paragraph 24 by the New MNO;

(e) decisions of the Expert shall be based on majority votes of the panel;

(f) the Expert's determination in relation to any matter pursuant to paragraph 24 shall be given within a maximum period of […] of the Expert's appointment;

(g) the Expert's determination in relation to any matter pursuant to paragraph 24 shall (save for manifest error or fraud) be final and binding on the Parties and the New MNO;

(h) any challenge to the Expert's determination in accordance with clause 32(g) shall be made in the Courts of England and Wales;

(i) each party shall carry out the actions required to comply with the obligations set out in the Expert's determination in relation to any matter pursuant to paragraph 24 within any time-limits specified by the Expert; and

(j) the Expert shall determine how and by whom the costs of the determination in relation to any matter pursuant to paragraph 24 including the fees and expenses of the Expert are to be paid.

33. The Commission shall be allowed and enabled to participate in all stages of the fast-track dispute resolution procedure by:

(a) receiving all written submissions (including documents and reports, etc.) made by the Parties and the New MNO to the procedure;

(b) receiving all documents exchanged by the Expert with the Parties and the New MNO to the procedure;

(c) filing any written submissions; and

(d) being present at the hearing(s) and being allowed to ask questions to the Parties and the New MNO.

34. The Expert shall forward, or shall order the Parties and the New MNO to forward, the documents mentioned in paragraphs 33(a) and 33(b) to the Commission without delay.

35. The Monitoring Trustee shall receive copies of:

(a) all submissions made by the Parties and the New MNO in relation to the matters they wish to have resolved by the Expert, on the day when these have been submitted to the Expert;

(b) all other documentation provided by the Parties and the New MNO, on the day when these have been submitted to the Expert; and

(c) the determination made by the Expert, on the day when the determination has been provided to the Parties and the New MNO.

36. Following the final transfer of Sites and the Divestment Spectrum in accordance with these Commitments the dispute procedure set out above shall no longer apply. The Fast Track Dispute Resolution Mechanism is without prejudice to any other rights and remedies that may be available to the New MNO or the Parties as the case may be in respect of any breach of any of the New MNO Agreements. For the avoidance of doubt, the Expert shall have no authority to determine any liability (including any damages or other remedy) in relation to matters subject to the Fast Track Dispute Resolution Mechanism and any dispute on liability between the Parties and the New MNO shall be governed solely by the terms of the New MNO Agreements.

C. RELATED COMMITMENTS

[…]

37. […].

D. MONITORING TRUSTEE

Appointment procedure

38. The Parties shall appoint a Monitoring Trustee to carry out the functions specified in paragraph 46 below. The Parties commit not to close the Concentration before the appointment of a Monitoring Trustee.

39. The Monitoring Trustee shall: (i) at the time of appointment, be independent of the Parties and their Affiliated Undertakings; (ii) possess the necessary qualifications to carry out its mandate, for example have sufficient relevant experience as an investment banker or consultant or auditor; and (iii) neither have nor become exposed to a Conflict of Interest.

40. The Monitoring Trustee shall be remunerated by the Parties in a way that does not impede the independent and effective fulfilment of its mandate.

Proposal by the Parties

41. No later than two weeks after the Effective Date, the Parties shall submit the name or names of one or more natural or legal persons whom the Parties propose to appoint as the Monitoring Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the person or persons proposed as Monitoring Trustee fulfil the requirements set out in paragraph 39 and shall include:

(a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Monitoring Trustee to fulfil its duties under these Commitments; and

(b) the outline of a work plan which describes how the Monitoring Trustee intends to carry out its assigned tasks.

Approval or rejection by the Commission

42. The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Monitoring Trustee to fulfil its obligations. If only one name is approved, the Parties shall appoint or cause to be appointed the person or persons concerned as Monitoring Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, the Parties shall be free to choose the Monitoring Trustee to be appointed from among the names approved. The Monitoring Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

New proposal by the Parties

43. If all the proposed Monitoring Trustees are rejected, the Parties shall submit the names of at least two more natural or legal persons within one week of being informed of the rejection, in accordance with paragraphs 38 and 41 of these Commitments.

Monitoring Trustee nominated by the Commission

44. If all further proposed Monitoring Trustees are rejected by the Commission, the Commission shall nominate a Monitoring Trustee, whom the Parties shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission. The Monitoring Trustee shall also fulfil the requirements set out in paragraph 39.

Functions of the Monitoring Trustee

45. The Monitoring Trustee shall assume its specified duties and obligations in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Monitoring Trustee or the Parties, give any orders or instructions to the Monitoring Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

Duties and obligations of the Monitoring Trustee

46. The Monitoring Trustee shall:

(a) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision;

(b) monitor compliance by the Parties with the conditions and obligations attached to the Decision. In particular, the Monitoring Trustee shall specifically monitor compliance with the Commitments in paragraphs 6, 15 and 18(e);

(c) propose to the Parties such measures as the Monitoring Trustee considers necessary to ensure the Parties' compliance with the conditions and obligations attached to the Decision;

(d) provide to the Commission, sending the Parties a non-confidential copy at the same time, the following:

(i) a written report in relation to the transfer of the Divestment Spectrum in accordance with paragraph 6, to be provided within […] calendar days of the end of every […] from the appointment of the Monitoring Trustee until the Divestment Spectrum has been transferred in full to the New MNO;

(ii) a written report in relation to the Commitment to divest or co-locate on Sites in accordance with paragraphs 9 to 12 and in respect of the making available of Sites in accordance with paragraphs 14 to 15, to be provided within […] calendar days of the end of every […] from the appointment of the Monitoring Trustee until the Sites have been transferred to the New MNO or the Parties have entered into co-location on the Sites (as applicable);

(iii) if the RAN Sharing option is exercised in accordance with paragraph 19, a written report in relation to the implementation of RAN Sharing in accordance with paragraph 18, to be provided within […] calendar days of the end of every […] from the date on which the RAN Sharing option is exercised until the RAN Sharing has been activated […];

(iv) a written report in relation to the implementation of the 2G National Roaming Services and 3G/4G MOCN Services, to be provided within […] calendar days of the end of every […]

from the entering into of the National Roaming Agreement in accordance with paragraph 21 until the Ready for Service Date;

(e) promptly report in writing to the Commission, sending the Parties a non-confidential copy at the same time, if it concludes on reasonable grounds that the Parties are failing to comply with these Commitments;

(f) upon request in accordance with paragraph 3, provide a report to the Commission regarding the re-acquisition of some or all of the Sites or Divestment Spectrum;

(g) upon receipt of a request from the Parties (or the New MNO) referring to paragraphs 6, 8, 14, or 22(d), communicate to the Parties (or the New MNO) and the Commission whether it grants its approval as provided for in those paragraphs;

(h) assume the functions assigned to the Monitoring Trustee in relation to the Fast Track Dispute Resolution Mechanism in paragraphs 25, 27, 30(c) and 31.

(i) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision.

47. The documents provided for above shall be prepared in English.

Duties and obligations of the Parties

48. The Parties shall provide and shall cause its advisors to provide the Monitoring Trustee with all such co-operation, assistance and information as the Trustee may reasonably require to perform its tasks. The Monitoring Trustee shall have full and complete access to any of the Parties' books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments and the Parties shall provide the Monitoring Trustee upon request with copies of any document. The Parties shall make available to the Monitoring Trustee one or more offices on their premises and shall be available for meetings in order to provide the Monitoring Trustee with all information necessary for the performance of its tasks.

49. The Parties shall provide the Monitoring Trustee with all administrative support that it may reasonably request.

50. The Parties shall indemnify the Monitoring Trustee and its employees and agents (each an ***Indemnified Party***) and hold each Indemnified Party harmless against, and hereby agree that an Indemnified Party shall have no liability to the Parties for, any liabilities arising out of the performance of the Monitoring Trustee's duties under the Commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Monitoring Trustee, its employees, agents or advisors.

51. At the expense of the Parties, the Monitoring Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to the Parties' approval (this approval not to be unreasonably withheld or delayed) if the

Monitoring Trustee reasonably considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the mandate, provided that any fees and other expenses incurred by the Monitoring Trustee are reasonable. Should the Parties refuse to approve the advisors proposed by the Monitoring Trustee the Commission may approve the appointment of such advisors instead, after having heard representations from the Parties. Only the Monitoring Trustee shall be entitled to issue instructions to the advisors. Paragraph 50 of these Commitments shall apply *mutatis mutandis*.

52. The Parties agree that the Commission may share Confidential Information proprietary to the Parties with the Monitoring Trustee. The Monitoring Trustee shall not disclose such information and the principles contained in Article 17 (1) and (2) of the Merger Regulation apply *mutatis mutandis*.

53. At any point in time during its mandate the Monitoring Trustee shall be entitled to seek the expert advisory opinion of the Autoritá per le Garanzie per le Comunicazioni (***AGCOM***) on specific issues concerning: (i) the Italian regulatory framework for mobile telecommunications, (ii) market conditions in the Italian retail mobile telecommunications market, (iii) the authorisation by MISE of the transfer of the Divestment Spectrum (pursuant to art 14-ter of the Electronic Communications Code) and, where relevant, any implications of such authorisations regarding the release of the Divestment Spectrum, and (iv) questions regarding the laws and regulations applicable to radio frequency emissions at Sites. To this end, the Monitoring Trustee shall be entitled to share Confidential Information proprietary to the Parties with AGCOM, provided that the Monitoring Trustee provides the Parties with prior notice and a reasonable opportunity to make representations before sharing such information with AGCOM.

54. The Parties agree that the contact details of the Monitoring Trustee are published on the website of the Commission's Directorate-General for Competition and they shall inform interested third parties of the identity and the tasks of the Monitoring Trustee.

55. For a period of 10 years from the Effective Date the Commission may request all information from the Parties that is reasonably necessary to monitor the effective implementation of these Commitments.

<u>Replacement, discharge and reappointment of the Monitoring Trustee</u>

56. If the Monitoring Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Trustee to a Conflict of Interest:

(a) the Commission may, after hearing the Monitoring Trustee and the Parties, require the Parties to replace the Trustee; or

(b) the Parties may, with the prior approval of the Commission, replace the Monitoring Trustee.

57. If the Monitoring Trustee is removed according to paragraph 56 of these Commitments, the Monitoring Trustee may be required to continue in its

function until a new Monitoring Trustee is in place to whom the Monitoring Trustee has effected a full hand over of all relevant information. The new Monitoring Trustee shall be appointed in accordance with the procedure referred to in paragraphs 38 to 44 of these Commitments.

58. Unless removed according to paragraph 56 of these Commitments, the Monitoring Trustee shall cease to act as Monitoring Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Monitoring Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

E. THE REVIEW CLAUSE

59. The Commission may extend the time periods foreseen in the Commitments in response to a request from the Parties or, in appropriate cases, on its own initiative. Where the Parties request an extension of a time period, they shall submit a reasoned request to the Commission no later than one month before the expiry of that period, showing good cause. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to the Parties. Only in exceptional circumstances shall the Parties be entitled to request an extension within the last month of any period.

60. The Commission may further, in response to a reasoned request from the Parties showing good cause waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to the Parties. The request shall not have the effect of suspending the application of the undertaking and, in particular, of suspending the expiry of any time period in which the undertaking has to be complied with.

F. ENTRY INTO FORCE

61. The Commitments shall take effect upon the date of adoption of the Decision.

EXECUTED by the Parties:

……………………………………
duly authorised for and on behalf of
Hutchison Europe Telecommunications S.À R.L.

……………………………………
duly authorised for and on behalf of
VimpelCom Luxembourg Holdings S.À R.L.

ANNEX 1: INDICATIVE SPECTRUM RELEASE PLAN

[…]

ANNEX 2: INDICATIVE SITE RELEASE PLAN

[…]

ANNEX 3 - PROCESS FOR SELECTION AND RELEASE OF SITES

[…]

ANNEX 4 - SITE SUITABILITY CRITERIA

[…]

ANNEX 5 - RAN SHARING SITES

[…]

ANNEX 6 - SET-UP FEES AND ONGOING COSTS FOR RAN-SHARING

[…]

ANNEX 7: CAPACITY AND FEES UNDER THE NATIONAL ROAMING AGREEMENT CAPACITY AND CONSUMPTION CAPS

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ANNEX 8: FORECAST MECHANISM UNDER THE NATIONAL ROAMING AGREEMENT

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ANNEX 9: MOCN REDUCTION PLAN

[…]

ANNEX E – NON CONFIDENTIAL
ASSESSMENT OF ILIAD AS A VIABLE AND COMPETITIVE FORCE

TABLE OF CONTENTS

1. INTRODUCTION[1]

(1) As mentioned in Section 8 of the Decision, in parallel with the submission of the Revised MNO Commitment, the Parties informed the Commission that they had entered into the New MNO Agreements Iliad which they presented as the potential taker of the remedy. The MNO Agreements were subsequently amended and re-executed on 18 July 2016.

(2) As stated in recital (1801) to (1804) of the Decision the Commission considers that Iliad complies with the standard purchaser requirements detailed in the Remedies Notice in terms of independence, financial resources and the absence of prima facie competition concerns. In particular, the Commission considers that Iliad possess the financial resources, proven relevant expertise and has the incentive and ability to enter the Italian market as the New MNO as a viable and active competitive force in competition with the Parties and other competitors for the reasons outlined in this Annex.

2. ILIAD

(3) Iliad is the most recent operator to enter the French fixed and mobile telecoms markets in 2001 and 2011 respectively. It quickly achieved a significant market position and today, is the third largest of the four French telecoms operators with 23% market share in fixed and 17% in mobile, by number of subscribers.[2]

(4) Iliad has been pursuing a strategy of international expansion in the recent past, for example offering EUR 15 billion to purchase a majority stake in T-Mobile in the US in August 2014[3] as well[…].[4] Xavier Neil, the found of Iliad, together with other investors launched Golan Telecom in Israel in 2012[5] and in December 2014 acquired Orange in Switzerland, rebranding it as Salt in April 2015.[6]

3. ILIAD BUSINESS PLAN

(5) On 14 June 2016 Iliad provided the Commission with an initial business plan setting out its projections with regard to entering the Italian market as the New MNO (the "Initial Iliad Business Plan").[7] Pursuant to the revisions that the Parties made to the MNO Commitment leading to the submission of the Revised MNO Commitment, and entry into the New MNO Agreements, Iliad provided an updated confidential business plan to the Commission on 12 July 2016 (the "Iliad Business Plan").[8] The Iliad Business Plan details two different scenarios: (1) the base case scenario, […](the "Base Case Scenario"); and (2) an optimistic case scenario […] (the "Optimistic Scenario").[…].

1 All abbreviations and capitalised terms used in this Annex shall have the same meaning as in the Decision.

2 Iliad's press release, 2015 Results, available at: https://www.iliad.fr/finances/2016/CP_100316_Eng.pdf

3 See: https://www.salt.ch/media/press/files/2015/2/24/e03cee06-9b1f-41de-a364-24720905823c/114/MM_closing_en.pdf

4 Power Point presentation of 7 June 2016 " Iliad New MNO Project for the Italian Market – Merger case Tre-Wind" [ID 2012].

5 See: https://www.golantelecom.co.il/web/about.php

6 See: https://www.salt.ch/media/press/files/2015/2/24/e03cee06-9b1f-41de-a364-24720905823c/114/MM_closing_en.pdf

7 See Iliad response to Commission RFI64 dated 9 June 2016 [ID2010] and Power Point presentation of 7 June 2016 " Iliad New MNO Project for the Italian Market – Merger case Tre-Wind" [ID 2012].

8 Iliad Business Plan [ID 2378] and Iliad's submission of 14 July 2016 [ID2429].

(6) […].

(7) […][9] […].

(8) […].

(9) Table 1 and Table 2 provide Iliad's estimates on customer acquisition broken down by gross add, churn, market share and total number of subscribers of operations for the Base Case Scenario and Optimistic Scenario respectively.

Table 1: Iliad Business Plan - Base Case Scenario - Subscriber Base

	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]

Table 2: Iliad Business Plan - Optimistic Scenario - Subscriber Base

	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]

(10) […].

(11) […].

(12) The Commission considers that the Iliad Business Plan is sufficiently realistic and aggressive as to viably allow Iliad to exercise a significant competitive constraint on the retail and wholesale mobile telecom market in Italy.

4. NETWORK ROLL-OUT

(13) […]Details of its intended sites acquisitions and traffic coverage targets are detailed in

[9] As described in described in recital (1779) of the Decision.

(14) Table 3.[10]

[10] […].

Table 3: Iliad Business Plan - Site Acquisition

	[…]	[…]	[…]
[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]

(15) […].

(16) From review of the MNO Agreements, the Commission notes that Iliad has committed to pay the Parties: (1) EUR 450 million to acquire the Divestment Spectrum; (2) EUR […] to acquire the Capacity Commitment; and (3) either EUR […] or EUR […] per Revised Site). The Commission considers that this significant investment gives Iliad a significant incentive to both compete aggressively in the market to recover CAPEX and to roll out its national network.

(17) In addition to the CAPEX related to the acquisition of the Divestment Spectrum, the Divestment Sites and the Capacity Commitment, […] .

(18) […].

(19) On the basis of the above, the Commission considers that Iliad will roll out its network in a timely and effective manner, allowing it to compete effectively against the JV and other competitors in the market during the transitional roll out phase.

5. COMMERCIAL STRATEGY COMPARED TO FRENCH ENTRY

(20) […].

(21) […].

(22) Fastweb[11] and PosteMobile[12] have submitted that given the differences between the mobile markets in the two countries, the business model that Iliad deployed in France will not have the same commercial impact in Italy and that Iliad will not be able to act as a significant competitive constraint.

[11] Fastweb submission of 5 July 2016 [ID2190].

[12] See PosteMobile's submission to the Commission of 26 July 2016, page 5 – 7 [ID2444].

(23) First, Fastweb and PosteMobile note that Iliad does not have a consumer base of fixed customers in Italy as it does in France meaning that Iliad will therefore not be successful without a customer base to cross sell to and with which to cross subsidise its mobile loses. PosteMobile also notes that this lack of fixed network will prevent Iliad from adopting a triple / quadruple play commercial strategy as it did in France.

(24) […].

(25) […]. As detailed in recital (129) of the Decision, the Commission's market investigation confirms that the uptake of bundles including a mobile element in Italy is low and consistent with the high number of pre-paid customers in Italy. The Commission also notes that while three of the four MNOs offer multiple play bundles including a mobile component,[13] H3G and the majority of the MVNO respondents do not offer such bundles.

(26) […].

(27) […].

(28) Given that […], and the fact that H3G is able to place a significant competitive force on the market despite not having a fixed business, the Commission considers that the lack of an existing fixed customer base will not hamper Iliad's ability to successfully enter the Italian market.

(29) Second, Fastweb and PosteMobile note that Iliad does not have a strong brand in Italy (as it had in France upon entry into mobile) and this will hamper its ability to compete effectively. Specifically with regard to Iliad's distribution model in France, Fastweb and PosteMobile note that Iliad's successful rollout of SIM-card dispensers will not be feasible in Italy due to regulatory requirements necessitating the provision of personal identification at the point of sale.

(30) […].

(31) […].

(32) […].

(33) The Commission considers that the Iliad Business Plan is suitably well developed to take into account the specificities of the Italian market and envisages appropriate measures to overcome the lack of brand recognition in Italy today.

(34) Third, Fastweb and PosteMobile note that part of Iliad's success in France was due to the high ARPU rates at that time and the fact that the French market was not very competitive with only 3 main players. By contrast, Fastweb submits that Italy is a market with low ARPUs and the ability to compete by undercutting the incumbents is far less. PosteMobile submits moreover that low spending customers that it considers Iliad would be targeting, are already catered for by MVNOs in the Italian market.

(35) […].

(36) […].

[13] Responses to Questionnaire Q4 to MNOs of 8 February 2016, question 9.

Figure 1: […]

[…]

Source: Iliad's submission of 14 July 2016 [ID2429]

(37) Finally, the Commission notes that MVNOs play a limited role in the Italian market as described in the Decision (section 7.3.2.4(c)), given the difficulties for MVNOs to effectively compete with MNOs at the retail level in Italy, the Commission does not consider that they will materially constraint Iliad's entry.

(38) Fourth, Fastweb notes that Iliad has poor network quality in France and has been reluctant to invest in rolling out its own network. Fastweb submits that the Italian market is seeing greater data usage and that competition will move to being based on quality of service rather than low value propositions.

(39) […].

Figure 2: […]

[…]

Source: Iliad's submission of 14 July 2016 [ID2429].

(40) With regard to the likely quality of the Iliad network, the Commission first notes that based on its assessment above, it considers that the New MNO will be equipped with a satisfactory network on which to be able to compete effectively. Secondly, as described in the Decision at Section 7.3.1.3, the Commission notes that while quality is indeed an important parameter of competition, price is in fact more important.

(41) The Commission also notes that the Final MNO Commitment includes strong safeguards to ensure the New MNO (i.e. Iliad) rolls out its own national network in a timely manner, in particular the removal of any optionality on the Parties with regard the number of Divestment Sites and how to address coverage in the [least densely populated areas], the restriction on sale of more than […]% of the Divestment Spectrum, […]. Moreover, […].

(42) Based on the foregoing, the Commission considers that Iliad has the proven relevant expertise to enter the Italian market as the New MNO as a viable and active competitive force in competition with the Parties and other competitors. In particular, the Commission considers that Iliad has sufficiently taken the specificities of the Italian market into account in its business plan.[14]

6. FINANCING

(43) […].

(44) The Commission considers that Iliad is a listed company with ready access to the capital market and with a strong track record (over more than 15 years) of mobilizing significant financial resources. Moreover, Iliad is generating positive cash flow and has a reliable plan to improve its profitability in the coming years further contributing to the financial soundness of the Group. Moreover, the Commission notes that Iliad has a limited level of leverage with a leverage ratio of less than 1x

[14] In its submission of 26 July 2016 (Doc [ID2443]) Poste Mobile claims that Golan Telecom is facing challenges that could lead to it exiting the market. The Commission notes however, as Poste itself states, that no two mobile markets are the same. As stated, the Commission considers that Iliad has sufficiently taken the specificities of the Italian market into account in its business plan.

compared to an average of about 2x for other telecommunication companies in Europe.[15]

(45) On this basis the Commission considers that Iliad would have the financial resources to invest and viably compete as a New MNO in the Italian market.

7. SITES

(46) As noted, the Parties are commit to divest / co-locate with the New MNO […] sites (depending on whether the New MNO exercises the RAN Sharing Option or not) which is slightly lower than the number of sites the Market Test considers could be necessary achieve nationwide coverage. The Commission considers however that it is sufficiently certain that Iliad will be able to obtain a sufficient number of sites from third party tower companies in Italy[16] in order to achieve national coverage.

(47) […].

(48) […].[17] […].

(49) […].[18]

(50) Given the Iliad Business Plan and this evidence regarding the ease of acquiring additional sites on the market, the Commission considers that the New MNO will be endowed with sufficient sites in order to compete effectively on the market.

8. CONCLUSION

(51) Overall, the Commission considers that Iliad possesses the financial resources, proven relevant expertise and has the incentive and ability to enter the Italian market as the New MNO as a viable and active competitive force in competition with the Parties and other competitors. In particular, the Commission considers that the Iliad Business Plan is sufficiently realistic and aggressive as to viably allow Iliad to exercise a significant competitive constraint on the retail and wholesale mobile telecom market in Italy. The Revised National Roaming Agreement and the Capacity Commitment allow and incentivize Iliad to be competitive from the beginning of its operations, while the substantial investment envisaged to enter the market represents a very credible commitment to roll-out its network and to operate as an MNO. Furthermore, the initial investment gives Iliad the incentives to (1) acquire a substantial customer base in the short-term and (2) quickly move traffic from the Parties' network (via the National Roaming Agreement) to its network as to recover its fixed costs and turn to profitability.

15 Iliad's press release, 2015 Results, available at: https://www.iliad.fr/finances/2016/CP_100316_Eng.pdf

16 See Section 5.6.4 of the Decision for details on the role of third party tower companies in the Italian market.

17 In particular, see […].

18 In particular, see […].