EUROPEAN COMMISSION
DG Competition

Case M.10153 - ORANGE / TELEKOM ROMANIA COMMUNICATIONS

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) in conjunction with Art 6(2)
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EUROPEAN COMMISSION

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PUBLIC VERSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

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Subject: **Case M.10153 – ORANGE/TELEKOM ROMANIA COMMUNICATIONS**
Commission decision pursuant to Article 6(1)(b) in conjunction with Article 6(2) of Council Regulation No 139/2004[1] and Article 57 of the Agreement on the European Economic Area[2]

Dear Sir or Madam,

(1) On 8 June 2021, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Orange S.A. ("Orange", France) acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of the whole of Telekom Romania Communications S.A. ("TKR", Romania), currently controlled by Deutsche Telekom AG ("DT",

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 L 1, 3.1.1994, p. 3 (the 'EEA Agreement').

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Germany) (the "Transaction")[3]. Orange and TKR are designated hereinafter as the "Parties" and Orange is referred to as the "Notifying Party".

1. THE PARTIES

(2) **Orange** is a global telecommunications operator, providing a wide range of electronic communications services mainly in the area of fixed-line, internet and mobile telephony in 27 countries worldwide. In Romania, through its subsidiary Orange Romania, it offers mobile telecommunications services relying on its own mobile network. Orange Romania also offers, to a very limited extent, fixed telephony, fixed internet and TV services relying almost exclusively on third-party infrastructures. Orange is listed on the NYSE Euronext Paris industry and on the New York Stock Exchange. No shareholder has sole or joint control over Orange within the meaning of the Merger Regulation.

(3) **TKR** is a provider of fixed telecommunications services, TV services and multiple-play bundles to residential and non-residential customers, wholesale services to other telecommunications operators and, to a very limited degree, mobile telecommunications services as a Mobile Virtual Network Operator relying on an agreement with Telekom Romania Mobile Communications S.A. ("TRMC"), all in Romania. TKR is currently under the sole control of DT, through DT's subsidiary Hellenic Telecommunications Organizations S.A. ("OTE"), which indirectly (through its 100% subsidiary OTE International Investments Ltd) owns 54.01% of TKR shares and voting rights. The remaining shares (45.99%) belong to the Romanian State, but do not confer joint control over TKR within the meaning of the Merger Regulation.

(4) TKR holds a 30% non-controlling minority shareholding in TRMC, the third largest mobile network operator in Romania. TRMC is solely controlled by DT via OTE, which holds 70% of the shares.

2. THE OPERATION

(5) Pursuant to the Share Sale and Purchase Agreement ("the Agreement") signed on 6 November 2020, Orange Romania will acquire 100% of the shares of OTE International Ltd, and thus indirect control over TKR. The Romanian State will retain its non-controlling minority shareholding in TKR. TKR's Shareholders' Agreement will not be affected by the Transaction. Therefore, as a result of the Transaction, Orange will solely control TKR within the meaning of Article 3(1)(b) of the Merger Regulation.

(6) Additionally, as a consequence of the acquisition of TKR, Orange will indirectly acquire 30% of the share capital of its direct competitor TRMC, together with the relating voting and other corporate governance rights.

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3 Publication in the Official Journal of the European Union No C 231, 16.06.2021, p. 5-6.

3. UNION DIMENSION

(7) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million (Orange: EUR 42 270 million; TKR: EUR […])[4]. Each of them has a Union-wide turnover in excess of EUR 250 million (Orange: EUR […]; TKR: EUR […]), but each does not achieve more than two-thirds of its aggregate Union-wide turnover within one and the same Member State. The notified operation therefore has a Union dimension pursuant to Article 1(2) of the Merger Regulation.

4. RELEVANT MARKETS

(8) In Romania, the Parties' main activities are complementary. Orange primarily provides retail mobile telecommunications services. It offers retail fixed telephony and retail fixed internet services, mainly through a wholesale access agreement […], as well as business connectivity services through "ad hoc" broadband access agreements with TKR, each addressing the specific needs of its business customers. Orange also offers retail TV services through its own satellite service and via cable based on its wholesale agreement with TKR.

(9) TKR on the other hand is mainly active in the retail supply of fixed telephony and fixed internet access services. It offers mobile telecommunications services based on a wholesale mobile virtual network operator ("MVNO") agreement with TRMC. TKR also offers retail audio-visual ("AV") services through cable, satellite and IPTV, as well as business connectivity services. TKR also provides third parties with commercial (non-regulated) wholesale access to its fibre network and cable TV network.

(10) The Parties' activities mainly overlap in the areas of: (i) fixed-mobile convergent ("FMC") bundles; (ii) business connectivity services; (iii) retail supply of AV services; and (iv) wholesale supply and acquisition of TV channels (acquisition side). Besides, there are minor horizontal overlaps between the Parties' activities in: (i) retail fixed telephony services; (ii) retail fixed internet access services; (iii) retail mobile telecommunications services; and (iv) wholesale leased lines.

(11) In addition, Orange and/or TKR are present upstream in: (i) wholesale broadband access (TKR); (ii) wholesale services for fixed backhaul (TKR); (iii) wholesale fixed call termination services (Orange and TKR); (iv) wholesale termination and hosting of calls to non-geographic numbers (TKR); (v) wholesale provision of domestic call transit services on fixed networks (TKR); (vi) global telecommunications services (Orange); (vii) wholesale internet connectivity services (Orange); (viii) wholesale mobile call services (Orange and TKR); and (ix) wholesale international roaming services (Orange). Those services are vertically linked to (i) retail mobile telecommunications services, (ii) retail fixed telephony services, and (iii) retail business connectivity services. Further details on the vertical relationships between the Parties are in Table 2 under section 5.2.2.

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4 Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.4.2008, p. 1).

4.1. Retail supply of mobile telecommunications services

4.1.1. Product market definition

4.1.1.1. Commission precedents

(12) In previous decisions, the Commission has identified an overall retail market for mobile telecommunications services constituting a separate market, distinct from retail fixed telecommunication services. The Commission considered that the retail mobile market does not need to be further segmented based on the type of service (voice calls, SMS, MMS, mobile Internet data services), or the type of network technology (2G, 3G, 4G).[5] The Commission considered a number of possible segmentations of the overall retail market for mobile telecommunication services (pre-paid vs post-paid services;[6] private customers vs. business customers;[7] high-value vs low-value customers;[8] sim-card only ("SIMO") and handset subscriptions;[9] different distribution channels[10]) but considered that they do not constitute separate product markets but rather segments of the same market .

(13) The Commission considered that Over-the-top ("OTT") services, whether provided over Wi-Fi or via mobile telecommunications data networks, were not part of the market for mobile telecommunications services, as OTT rely on mobile telecommunications (data) services and/or fixed broadband services to function.[11]

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5 Commission decision of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets*, recital 66; Commission decision of 30 May 2018 in case M.7000 – *Liberty Global/Ziggo*, paragraph 207; Commission decision of 1 September 2016 in case M.7758, *Hutchison 3G Italy/Wind/JV*, recitals 135 to 140; Commission decision of 3 August 2016 in case M.7978 – *Vodafone/Liberty Global/Dutch JV*, paragraph 74; Commission decision of 11 May 2016 in case M.7612 – *Hutchison 3G UK/Telefónica UK*, recitals 259 to 265 and 287; Commission decision of 02 July 2014 in case M.7018 – *Telefónica Deutschland/E-Plus*, recitals 31 to55; 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*, recitals 43 to 58.

6 Commission decision of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets*, recitals 64 to 67; Commission decision of 27 November 2018 in case M.8792 – *T-Mobile NL/Tele2 NL*, recital 202; Commission decision of 30 May 2018 in case M.7000 – *Liberty Global/Ziggo*, paragraphs 200 to 207; Commission decision of 1 September 2016 in case M.7758 – *Hutchison 3G Italy/Wind/JV*, recitals 146 to 149; Commission decision of 3 August 2016 in case M.7978 – *Vodafone/Liberty Global/Dutch JV*, paragraphs 72 to 74; Commission decision of 11 May 2016 in case M.7612 – *Hutchison 3G UK/Telefónica UK*, recitals 266 to 270 and 287; Commission decision of 2 July 2014 in case M.7018 – *Telefónica Deutschland/E-Plus*, recitals 37 to 39 and 65 to 71; Commission decision of 28 May 2014 I case M.6992 – *Hutchison 3G UK/Telefónica Ireland*, recitals 141 to 143; Commission decision of 12 December 2012 in case M.6497 – *Hutchison 3G Austria/Orange Austria*, recitals 38 to 41 and 58.

7 Commission decision of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets*, recitals 64 to 67; Commission decision of 30 May 2018 in case M.7000 – *Liberty Global/Ziggo*, paragraphs 200 to 207; Commission decision of 3 August 2016 in case M.7978 – *Vodafone/Liberty Global/Dutch JV*, paragraphs 72 to 74; Commission decision of 11 May 2016 in case M.7612 – *Hutchison 3G UK/Telefónica UK*, recitals 276 to 279; Commission decision of 2 July 2014 in case M.7018 – *Telefónica Deutschland/E-Plus*, recitals 30 to 36; Commission decision of 28 May 2014 in case M.6992 – *Hutchison 3G UK/Telefónica Ireland*, recitals 141, 149 and 150; Commission decision of 12 December 2012 in case M.6497 – *Hutchison 3G Austria/Orange Austria*, recitals 32 to 35.

8 Commission decision of 2 July 2014 in case M.7018 – *Telefónica Deutschland/E-Plus*, recitals 40 to 44.

9 Commission decision of 11 May 2016 in case M.7612 – *Hutchison 3G UK/Telefónica UK*, recitals 271 to 275.

10 In Commission decision of 11 May 2016 in case M.7612 – *Hutchison 3G UK/Telefónica UK*, recitals 280 to 286, the Commission took into account also the segmentation between direct distribution and independent specialist retailers in view of the important role played in the retail market by independent specialist retailers and since direct distribution and independent specialist retailers account for the largest part of the market.

11 Commission decision of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets*, recital 65 to 66; Commission decision of 27 November 2018 in case M.8792 – *T-Mobile NL/Tele2 NL*, recitals 168 to 169;; Commission decision of 1 September 2016 in case M.7758 – *Hutchison 3G Italy/WIND/JV*, recitals 138 to 145

Finally, the Commission excluded Machine-to-Machine ("M2M") services from the overall retail mobile market, due to the particular characteristics of the demand for and supply of these services.[12]

4.1.1.2. The Notifying Party's view

(14) With respect to the retail market for the supply of mobile telecommunications services, the Notifying Party considers that the relevant product market to be taken into account is the market for the retail supply of mobile telecommunications services.

(15) With respect to M2M services, the Notifying Party considers that the definition of the relevant product market should be left open given the rapid technological and usage changes that this market is still experiencing.

(16) With respect to OTT services, the Notifying Party disagrees with the Commission's past practice of excluding such services from the retail market for the supply of mobile telecommunications services.

(17) In that respect, the Notifying Party argues that OTT messaging and voice services are used interchangeably with traditional mobile voice and SMS services, and constitute a competitive threat to traditional services offered by mobile network operators ("MNOs"), including voice telephony and SMS. This is the case, in particular, as they are often very cheap or free for consumers, may entail strong networks effects and profit from increasing availability of data access (mobile high speed data and private/public Wi-Fi) and better interoperability while changing between infrastructures (handover and mesh technology).

(18) In that respect, the Notifying Party considers that the market for the retail supply of mobile telecommunications services should include OTT services but however submits that the exact product market can be left open in the present case as the assessment of the Transaction would remain the same.

4.1.1.3. The results of the market investigation and the Commission's assessment

(19) A majority of respondents to the market investigation indicated that the market for the retail supply of mobile telecommunications services would be distinct from the market for the retail supply of fixed telecommunications services; and that no further segmentation of such market would be warranted.[13]

(20) With respect to M2M services, as suggested by the results of the market investigation, the Commission considers that such services would fall into a market distinct from the market for the retail supply of mobile telecommunications services. Relevant factors include the fact that M2M services and retail mobile services are characterized by different usage patterns and pricing models. Respondents to the market investigation thus suggested that M2M services are currently mainly used by

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and 162, Commission decision of 11 May 2016 in case M.7612 – *Hutchison 3G UK/Telefónica UK*, recitals 262 to 265 and 286s.

12 Commission decision of 15 July 2019 in case M.9370 – *Telenor/DNA*, paragraphs 39 to 42; Commission decision of 27 November 2018 in case M.8792 – *T-Mobile NL/Tele2 NL*, recitals 223 and 224.

13 Replies to Questionnaire Q1 to competitors, question 3.

business customers and not on a large scale. M2M services also usually include data but not voice services and appear to be especially dedicated for the Internet-of-Things ("IoT") domain.[14]

(21) With respect to OTT services, the results of the market investigation were mixed. Some competitors suggested that OTT services today would be used interchangeably with *traditional* mobile telecommunications services while providing additional functionalities. While OTT services would rely on mobile data, mobile devices could also access data services provided via Wi-Fi. In that context, developments such as automatic, SIM-based authentication, multipath TCP protocol and the implementation of seamless handover between Wi-Fi and LTE would suggest enhanced substitutability and would enable the use of OTT services at home, at work as well as on the go.

(22) In light of the above, the Commission considers that, for the purpose of this Decision, the relevant product market is the market for the retail supply of mobile telecommunication services, excluding M2M services. The question whether such product market should include OTT services can be left open as the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement under any considered product market definition.

4.1.2. Geographic market definition

(23) In previous decisions, the Commission found that the market for the retail supply of mobile telecommunications services is national in scope.[15]

(24) The Notifying Party considers that the relevant geographic market for the retail provision of mobile telecommunications services corresponds to the territory of Romania.

(25) A majority of the respondents to the market investigation indicated that - in line with *Vodafone/Certain Liberty Global Assets*[16] - it would be appropriate to consider that the geographic scope of the market for the retail supply of mobile telecommunications services in the present case is the territory of Romania.[17]

(26) In light of the above, the Commission considers that, for the purpose of this Decision, the relevant geographic market for the retail supply of mobile telecommunication services is the territory of Romania.

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14 Replies to Questionnaire Q1 to competitors, questions 4 and 4.1

15 Commission decision of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets*, recital 70; Commission decision of 2 October 2008 in case M.5148 – *Deutsche Telekom/OTE*, paragraphs 18 to 20.

16 Commission decision of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets*.

17 Replies to Questionnaire Q1 to competitors, question 6.

4.2. Retail supply of fixed telephony services

4.2.1. Product market definition

4.2.1.1. Commission precedents

(27) In previous decisions, the Commission considered whether to distinguish between residential and non-residential customers in the market for the retail supply of fixed telephony services.[18] While the Commission left the precise scope of the market for the retail supply of fixed telephony services open in several decisions,[19] it found in recent decisions that such market does not contain further segmentations[20] and that the overall product market for fixed telephony services includes VoIP services.[21]

4.2.1.2. The Notifying Party's view

(28) The Notifying Party considers that the exact product market definition can be left open in this case. Additionally, the Notifying Party notes that fixed telephony services are becoming increasingly obsolete, compared with alternative voice services, and have become of little relevance for Romanian customers.

4.2.1.3. The results of the market investigation and the Commission's assessment

(29) A majority of respondents to the market investigation indicated that an overall market for the retail supply of fixed telephony services both through fixed telephony lines and through VoIP is appropriate.[22]

(30) With respect to a distinction between local/national and international calls, the results of the market investigation were mixed. While certain submissions from competitors suggested that such distinction would be appropriate due to the often significantly higher international termination rates vis-à-vis national interconnection rates, other respondents indicated that there would be no significant distinctions between such calls.[23]

(31) With respect to a segmentation between residential and non-residential customers, the results of the market investigation were also inconclusive. While certain competitors suggested that, unlike services to residential customers, services to non-residential customers would usually include private branch exchange ("PBX") or

18 Commission decision of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets*, recitals 35 to 40; Commission decision of 8 October 2018 in case M.8842 – *Tele2/Com Hem Holding*, paragraphs 14 to 17.

19 Commission decision of 8 October 2018 in case M.8842 – *Tele2/Com Hem Holding*, paragraph 17; Commission decision of 29 January 2010 in case M.5730 – *Telefónica/Hansenet Telekommunikation*, paragraph 17; Commission decision of 26 June 2009 in case M.5532 – *Carphone Warehouse/Tiscali UK*, paragraphs 35 to 39; Commission decision of 27 November 2007 in case M.4947 – *Vodafone/Tele2 Italy/Tele2 Spain*, paragraph 12

20 Commission decision of 26 October 2020 in case M.9963 – *Iliad/Play Communications*, paragraphs 19 to 23; Commission decision of 4 February 2016 in case M.7637 – *Liberty Global/Base Belgium*, recitals 68 and 69.

21 Commission decision of 29 September 2019 in case M.6990 – *Vodafone/Kabel Deutschland*, paragraph 131; Commission decision of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets*, recitals 35 to 40; In Commission decision of 8 October 2018 in case M.8842 – *Tele2/Com Hem Holding*, paragraph 17, the Commission left open the exact scope of the product market with respect to VoIP services.

22 Replies to Questionnaire Q1 to competitors, questions 7 and 7.1

23 Replies to Questionnaire Q1 to competitors, questions 8 and 8.1

Virtual PBX connectivity; others indicated that there are no significant differences between the services provided to either residential or non-residential customers.[24]

(32) In light of the above, the Commission considers that, for the purpose of this Decision, the relevant product market is the market for the retail supply of fixed telephony services including VoIP services, and that the market does not need to be segmented further. In any event, the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement under any possible product market definition.

4.2.2. Geographic market definition

(33) In *Iliad/Play Communications,*[25] the Commission found the market for the retail supply of fixed telephony services to be national in scope, in particular due to the importance of national regulation in the telecommunications sector and the national basis upon which upstream wholesale services are provided. The Commission has also found such market to be national in scope several other decisions,[26] including one decision concerning Romania in 2019.[27] At other occasions, the Commission left open the exact geographic market,[28] including for Romania in 2008.[29]

(34) The Notifying Party considers that the relevant geographic market for the retail supply of fixed telephony services corresponds to the territory of Romania.

(35) A majority of respondents to the market investigation indicated that – in line with *Vodafone/Certain Liberty Global Assets*[30] – it is appropriate to consider that the geographic scope of the market for the retail supply of fixed telephony services in the present case is the territory of Romania.[31]

(36) In light of the above, the Commission considers that, for the purpose of this Decision, the relevant geographic market for the retail supply of fixed telephony services is the territory of Romania.

4.3. Retail supply of fixed internet access services

4.3.1. Product market definition

(37) Internet access services consist of the provision of a telecommunications link enabling customers to access the internet. Internet access may be provided as dial-up ("narrowband") access, as higher bandwidth ("broadband") access via xDSL, a cable modem or mobile broadband technology, or in the form of dedicated access

24 Replies to Questionnaire Q1 to competitors, questions 9 and 9.1.

25 Commission decision of 26 October 2020 in case M.9963 – *Iliad/Play Communications*, paragraph 26.

26 Commission decision of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets,* recital 46; Commission decision of 30 May 2018 in case M.7000 – *Liberty Global/Ziggo*, paragraph 150; Commission decision of 3 August 2016 in case M.7978 – *Vodafone/Liberty Global/Dutch JV*, paragraph 29; Commission decision of 19 May 2015 in case M.7421 – *Orange/Jazztel*, recital 37; Commission decision of 3 July 2012 in case M.6584 – *Vodafone/Cable & Wireless*, paragraph 13..

27 Commission decision of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets*, recital 46.

28 Commission decision of 3 July 2012 in case M.6584 – *Vodafone/Cable & Wireless*, paragraph 13.

29 Commission decision of 2 October 2008 in case M.5148 – *Deutsche Telekom/*OTE, paragraph 16.

30 Commission decision of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets.*

31 Replies to Questionnaire Q1 to competitors, question 10.

involving leased lines linking one point to the internet and guaranteeing higher levels of performance and security.[32]

4.3.1.1. Commission precedents

(38) In recent cases (including specifically for Romania[33]), the Commission has considered that the relevant product market is the overall retail market for the provision of fixed internet access services, including all product types (narrowband, broadband, dedicated access), distribution modes (DSL, cable, fibre, fixed-wireless-access ("FWA")) and speeds/bandwidths, to residential and small business customers, excluding the supply of fixed internet services provided through mobile network infrastructure (i.e. "fLTE").[34]

(39) As for large business customers, the Commission indicated that they belong to a separate market for the retail supply of business connectivity services.[35]

(40) As regards fLTE services in particular, in its past practice (including recent precedents), the Commission did not identify these services as being part of a standalone market. It rather considered that mobile routers/fLTE services should be included in the overall market for retail mobile telecommunications services.[36]

4.3.1.2. The Notifying Party's view

(41) The Notifying Party considers that the relevant product market to be taken into account is the market for the retail supply of fixed internet access services excluding mobile internet access services.

4.3.1.3. The results of the market investigation and the Commission's assessment

(42) In line with the Notifying Party's submission and the results of the market investigation[37], the Commission considers that it would be appropriate to consider an overall retail market for the supply of fixed internet access services, including all product types, distribution modes and speeds/bandwidths, to residential and small business customers, but excluding the supply of fixed internet services provided through mobile network infrastructure.

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32 Commission decision of 29 January 2010 in case M.5730 – *Telefónica/Hansenet Telekommunikation*, paragraph 7.

33 Commission decision of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets*, recitals 55 and 56..

34 Commission decision of 6 March 2020 in case M.9674 – *Vodafone Italia/TIM/Inwit JV*, paragraph 110; Commission decision of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets*, recitals 53 50 to 56; Commission decision of 9 July 2018 in case M.8808 – *T-Mobile Austria/UPC Austria*, paragraphs 39, 41; Commission decision of 30 May 2018 in case M.7000 – *Liberty Global/Ziggo*, paragraphs 165 seq.

35 In Commission decision of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets*, recitals 50 to 56, the Commission notably came to such conclusion for Romania; Commission decision of 30 May 2018 in case M.7000 – *Liberty Global/Ziggo*, paragraphs 165 seq.; In Commission decision of 9 July 2018 in case M.8808 – *T-Mobile Austria/UPC Austria*, paragraphs 39, 41, the Commission left the exact product market open definition in that regard; Commission decision of 26 June 2009 in case M.5532 – *Carphone Warehouse/Tiscali UK*, paragraphs 21 to 27.

36 Commission decision of 2 July 2014 in case M.7018 – *Telefonica Deutschland/E-Plus*, recitals 51-55.

37 Replies to Questionnaire Q1 to competitors, question 11.

(43) With regard to fixed internet access services provided through mobile network infrastructure, the respondents to the market investigation confirmed that fixed broadband Internet access services are not substitutable with mobile broadband access services, because "*capacities available on fixed broadband, pricing models and customer usage patterns are different than in the case of mobile broadband*".[38]

(44) With respect to a possible distinction by customer type, the respondents to the market investigation confirmed that fixed internet access services provided to residential and small business customers on the one hand, and large business and government customers on the other hand belong to separate markets. In particular, the majority of competitors indicate that large business and government customers need a dedicated infrastructure and customised solutions vis-à-vis the more standardized and homogeneous requirements of residential and small business customers.[39] The Commission further notes that, also from a supply side perspective, there is no perfect substitution between the services provided to the two categories. In fact, while, according to a majority of market participants, switching from the supply to residential and small business customers to large business and government customers would be possible within a short timeframe and at minimal costs,[40] a majority of market participants indicated that the reverse (*i.e.* switching from the supply to large business and government customers to residential and small business customers) could involve significant investments into network infrastructure and technology to offer the necessary coverage.[41]

(45) The Commission, therefore, concludes that services provided to residential and small business customers, on the one hand, and to large business and government customers belong to separate product markets.

(46) In light of the above, the Commission considers that, for the purpose of this Decision, the relevant product market is the market for the retail supply of fixed internet access services, including all product types, distribution modes, and speeds/bandwidth, to residential and small business customers, excluding fixed internet access services provided through mobile network infrastructure.

4.3.2. Geographic market definition

(47) In previous decisions, the Commission has found the market for the retail supply of fixed internet access services to be national in scope,[42] including for Romania.[43]

(48) The Notifying Party considers that the relevant geographic market for the retail supply of fixed internet access services corresponds to the territory of Romania.

38 Replies to Questionnaire Q1 to competitors, questions 11-12.1.

39 Replies to Questionnaire Q1 to competitors, questions 13 and 13.1.

40 Replies to Questionnaire Q1 to competitors, question 14 and 14.1.

41 Replies to Questionnaire Q1 to competitors, question 15 and 15.1.

42 Commission decision of 3 August 2016 in case M.7978 – *Vodafone/Liberty Global/Dutch JV*, paragraph 40; Commission decision of 29 September 2019 in case M.6990 – *Vodafone/Kabel Deutschland*, paragraph 197; Commission decision of 26 June 2009 in case M.5532 – *Carphone Warehouse/Tiscali UK*, paragraph 47; Commission decision of 29 January 2010 in case M.5370 – *Telefónica/Hansenet Telekommunikation*, paragraph 28.

43 Commission decision of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets,* recital 61; Commission decision of 14 April 2014 in case M.7109 – *Deutsche Telekom/GTS*, paragraph 57 in conjunction with 350.

(49) A majority of respondents to the market investigation indicated that the geographic scope of the market for the retail supply of fixed internet access services in the present case would be the territory of Romania.[44]

(50) In light of the above, the Commission considers that, for the purpose of this Decision, the relevant geographic market for the retail supply of fixed internet access services is the territory of Romania.

4.4. Retail supply of audio-visual services

4.4.1. Product market definition

4.4.1.1. Commission precedents

(51) In previous cases, the Commission has identified a relevant product market for the retail supply of audio-visual ("AV") services, which includes suppliers of linear and non-linear AV services and AV content to end customers. The Commission considered a number of possible segmentations (i) between Free-to-Air ("FTA) and Pay AV services; (ii) within Pay AV services, between linear and non-linear services (Pay-Per-View ("PPV"), Video-on-Demand ("VOD")); (iii) between distribution technologies (cable, satellite, terrestrial television and Internet Protocol Television ("IPTV")); and (iv) premium and basic pay AV services, but ultimately left the exact product market definition open.[45]

4.4.1.2. The Notifying Party's view

(52) The Notifying Party considers that the relevant product market is the market for the retail supply of TV services. Furthermore, the Notifying Party notes that the possible segmentation between FTA TV and Pay TV can be left open as i) neither of the Parties is active in FTA TV in Romania and ii) due to a strong prevalence of Pay TV subscriptions while FTA TV is practically inexistent in Romania.

(53) The Notifying Party also considers that the market for Pay TV services should not be segmented based on the distribution technologies because (i) satellite is not relevant anymore in Romania; (ii) IPTV is marginal; and (iii) technology conversion[46] is widely used and does not affect the substitutability of different distribution technologies.

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44 Replies to Questionnaire Q1 to competitors, question 16.

45 Commission decision of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets*, recitals 76 to 83; Commission decision of 30 May 2018 in case M.7000 – *Liberty Global/Ziggo*, paragraphs 70 to 79; Commission decision of 6 February 2018 in case M.8665 – *Discovery/Scripps*, paragraphs 31 to 33; Commission decision of 7 April 2017 in case M.8354 – *Fox/Sky*, paragraphs 97 to 102; Commission decision of 3 August 2016 in case M.7978 – *Vodafone/Liberty Global/Dutch JV*, paragraphs 55 to 62; Commission decision of 24 February 2015 in case M.7194 – *Liberty Global/Corelio/W&W/De Vijver Media*, recitals 117 to 127; In Commission decision of 25 June 2008 in case M.5121 – *News Corp/Premiere*, paragraphs 21 to 22, the Commission only distinguished between FTA TV on the one hand and Pay TV on the other; Commission decision as of 18 July 2007 in case M.4504 – *SFR/Télé 2 France*, recitals 37 to 44.

46 In the Parties' Reply of 15 March 2021 to RFI 1, question 25: the Notifying Party specified that conversion from fibre to cable TV relates to the conversion of the fibre signal in customers' homes to facilitate the connection to customers' devices. Such conversion is done via CPE boxes which output e.g. cable, Wi-Fi or Ethernet connections and are connected to customers' TVs and other devices.

4.4.1.3. The results of the market investigation and the Commission's assessment

(54) A majority of respondents to the market investigation indicated that Pay AV services and FTA services would not fall into separate product markets. In particular, Pay AV channels and FTA channels appear to be included in the same monthly subscription. In a recent decision of the Romanian Competition Council ("RCC"), the RCC defined a single, albeit differentiated, market for the provision of audio-visual services (*i.e.* FTA AV, basic Pay AV, premium Pay AV) to end users was defined.[47] Therefore, the Commission considers that the retail market for the provision of AV services in Romania does not need to be further segmented between FTA and Pay AV services, or between basic Pay AV and premium Pay AV services.

(55) With respect to the possible distinction between linear and non-linear services, a majority of respondents to the market investigation indicated that such services would fall into separate relevant product markets. In particular, one respondent noted that such services would usually be sold separately.[48] Therefore, the Commission considers that there is an indication that linear and non-linear AV services might belong to separate markets in Romania.

(56) With respect to distribution technologies, from a demand-side perspective, the results of the market investigation indicated that there is substitutability for end-customers between all technical forms of AV distribution.[49] The Commission also notes that this is also in line with the precedents of the RCC, which defined a market for retail TV services including both cable and satellite services (which are the main distribution technologies in Romania).[50] The Commission therefore considers that the retail market for the provision of AV services includes all types of distribution technology.

(57) In light of the above, the Commission considers that, for the purpose of this Decision, the relevant service market is the market for the retail supply of AV services encompassing all distribution technologies. The question whether the market should be segmented (i) between FTA and Pay AV services; (ii) basic and premium Pay AV services; and (iii) linear and non-linear services can be left open as the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible product market definition.

4.4.2. Geographic market definition

(58) In previous decisions, the Commission concluded that the market for the retail supply of audio-visual services is national in scope or at most corresponds to linguistically homogenous areas.[51] In a case specifically involving Romania, the

47 Replies to Questionnaire Q1 to competitors, questions 17 and 17.1

48 Replies to Questionnaire Q1 to competitors, questions 18 and 18.1

49 Replies to Questionnaire Q1 to competitors, questions 19 and 19.1.

50 Decision 38/2020 of the RCC, paragraph 106.

51 Commission decision of 30 May 2018 in case M.7000 – *Liberty Global/Ziggo*, paragraph 89; Commission decision of 24 February 2015 in case M.7194 – *Liberty Global/Corelio/W&W/De Vijver Media*, recital 139; In Commission decision of 15 April 2013 in case M.6880 – *Liberty Global/Virgin Media*, paragraphs 51 to 54, the Commission found a respective geographic market to be national in scope or, at most, to comprise the United Kingdom and Ireland; Commission decision of 21 December 2011 in case M.6369 – *HBO/Ziggo/HBO Nederland*, paragraph 42; Commission decision of 21 December 2010 in case M.5932 – *NewsCorp/BSkyB*, paragraph 110; In Commission decision of 25 January 2010 in case M.5734 – *Liberty Global Europe/Unitymedia*, paragraph 40, the Commission found the market for the retail supply of Pay TV services to

Commission concluded that such market is national in scope.[52] The Commission has further considered the coverage of a service provider's (cable) network as the geographical scope but ultimately left the exact geographic market definition open in such cases.[53]

(59) The Notifying Party considers that the relevant geographic market for the retail supply of audio visual services corresponds to the territory of Romania.

(60) A majority of respondents to the market investigation indicated that the geographic scope of the market for the retail supply of audio-visual services in the present case is the territory of Romania.[54]

(61) In light of the above, the Commission considers that, for the purpose of this Decision, the relevant geographic market for the retail supply of audio-visual services is the territory of Romania.

4.5. Retail supply of multiple play services

4.5.1. Product market definition

(62) The term "multiple play" relates to product offerings comprising two or more of the following services provided to retail consumers on the basis of a single or multiple contracts by the same provider: mobile telecommunications services, fixed telephony services, fixed internet access and audio-visual services. Multiple play offers comprising two, three or four of these services are referred to as dual play ("2P"), triple play ("3P") and quadruple play ("4P") respectively.[55]

(63) Three of the four services, namely fixed telephony services, fixed internet access and AV services, are fixed services as they are provided over a fixed network such as cable, copper or fibre infrastructure. Multiple play offers comprising any combination of two or more of these fixed services without a mobile component are referred to as "fixed multiple play" products. Multiple play offers comprising one or more of these fixed services in combination with a mobile component are referred to as "fixed-mobile multiple play" or "fixed-mobile convergence" ("FMC") products. FMC products may involve a single mobile subscription or more than one mobile subscription combined with the fixed services.[56]

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be national in scope; In Commission decision of 25 June 2008 in case M.5121 – *News Corp/Premiere*, paragraph 27, the Commission found the respective markets for the retail supply of Pay TV to be national in scope; In Commission decision of 26 February 2007 in case M.4521 – *LGI/Telenet*, paragraph 25, the Commission considered the respective market for the retail supply of audio-visual services to be either limited to the coverage of each cable operator and national in case other platforms are included but ultimately left the exact geographic market definition open.

52 Commission decision of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets*, recital 88.

53 Commission decision of 26 February 2007 in case M.4521 – *LGI/Telenet*, paragraph 25; Commission decision of 15 June 2004 in case M.3355 – *Apollo/JPMorgan/Primacom*, paragraph 10.

54 Replies to Questionnaire Q1 to competitors, question 22.

55 Commission decision of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets*, recital 146.

56 Commission decision of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets*, recital 147.

4.5.1.1. Commission precedents

(64) In previous decisions, the Commission considered but ultimately left open if there exist one or more multiple play markets which are distinct from each of the underlying individual telecommunications services.[57] It also noted that, due to different services, delivered over different infrastructures (fixed for 2P and 3P or fixed and mobile for 4P), that are included in the different multiple play bundles, instead of one possible market for multiple play, there could be several candidate multiple play markets: a market for fixed bundles (dual play and triple play) and another separate market for FMC bundles. The possibility for several mobile subscriptions to be included in a quadruple play bundle further complicates the picture.[58]

4.5.1.2. The Notifying Party's view

(65) The Notifying Party considers that there is no separate retail market for multiple-play services in Romania notably because these services are mostly sold as "soft-bundles" where only a discount is offered to consumers when they subscribe to multiple eligible services and therefore where customers are entirely free to discontinue part of the bundle but might lose the discount.

4.5.1.3. The results of the market investigation and the Commission's assessment

(66) Overall, the results of the market investigation were mixed with respect to the existence of a distinct product market for the retail supply of multiple-play services.[59]

(67) With respect to demand side substitutability, respondents underlined the existence of one-stop-shop advantages due to the bundling of services.[60] Regarding contractual conditions, a majority of market participants indicated that multiple-play services in Romania are more often sold as a combination of standalone fixed and mobile offers from the same provider with various types of benefits attached ("soft bundles"), rather than as multiple play offers containing pre-defined fixed and mobile benefits ("hard bundles").[61] Accordingly, barriers to switching from a multiple-play services package to standalone services appear, on balance, not to be significant, but rather limited to losing certain discounts or the advantage of interacting with one provider instead of multiple ones. [62]

(68) With respect to supply side substitutability, the majority of respondents to the market investigation indicated that there would or could be cost savings associated with supplying multiple-play services relative to standalone services, e.g. due to infrastructure advantages, as well as cost savings linked to marketing, service, billing

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57 Commission decision of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets*, recitals 152 to 161; Commission decision of 3 August 2016 in case M.7978 – *Vodafone/Liberty Global/Dutch JV*, paragraph 108; Commission decision of 4 February 2016 in case M.7637 – *Liberty Global/BASE Belgium*, recitals 74 to 98; Commission decision of 19 May 2015 in case M.7421 – *Orange/Jazztel*, recitals 72 to 86; Commission decision of 24 February 2015 in case M.7194 – *Liberty Global/Corelio/W&W/De Vijver Media*, recitals 130 to 132.

58 Commission decision of 3 August 2016 in case M.7978 – *Vodafone/Liberty Global/Dutch JV*, paragraph 107.

59 Replies to Questionnaire Q1 to competitors, questions 23 to 26.

60 Replies to Questionnaire Q1 to competitors, questions 23 and 23.1.

61 Replies to Questionnaire Q1 to competitors, question 24.2.

62 Replies to Questionnaire Q1 to competitors, questions 24 and 24.1.

and payment collection activities. Furthermore, respondents to the market investigation indicated the ability to make more competitive offers in the first place as advantages, which would or could reduce churn rates of multiple-play services packages.[63]

(69) Based on the results of the market investigation, the Commission considers that, due to the fact that different combinations of fixed and mobile telecommunications services are mainly sold as soft bundles in Romania, allowing customers to choose different suppliers for certain parts of the bundle, it appears that suppliers of standalone services are still exerting significant competitive pressure on suppliers of bundles. Moreover, given that there are no standard offers containing pre-defined fixed and mobile benefits, it is difficult to identify which bundles would belong to a separate market or segment.

(70) Therefore, the Commission will assess the effects of the Transaction as regards any possible multiple play bundles, as well as each of the standalone markets.

(71) In light of the above, the Commission considers that the question whether there a separate product market(s) for the retail supply of multiple-play-services exists and whether there are separate markets for fixed bundles and FMC bundles can be left open as the Transaction does not raise serious doubts as to its compatibility with the internal market under any possible product market definition.

4.5.2. Geographic market definition

(72) In previous decisions, the Commission considered that the geographic scope of any possible retail market for multiple-play services would be (either regional or) at most national in scope.[64] With respect to Romania, the Commission concluded specifically that this market is national in scope.[65]

(73) The Notifying Party considers that the relevant geographic segment for the retail supply of multiple-play services corresponds to the territory of Romania.

(74) A majority of the respondents to the market investigation indicated that the geographic scope of the market for the retail supply of multiple-play services in the present case is the territory of Romania.[66]

(75) In light of the above, the Commission considers that, for the purpose of this Decision, the relevant geographic market for the retail supply of multiple play services is the territory of Romania.

63 Replies to Questionnaire Q1 to competitors, questions 25 and 25.1.

64 In Commission decision of 30 May 2018 in case M.7000 – *Liberty Global/Ziggo*, paragraph 232, Commission decision of 3 August 2016 in case M.7978 – *Vodafone/Liberty Global/Dutch JV*, paragraphs 109 to 112 and Commission decision of 19 May 2015 in Case M.7421 – *Orange/Jazztel*, recitals 89 to 90, the respective market investigation suggested such possible markets would be national in scope; In Commission decision of 24 February 2015 in case M.7194 – *Liberty Global/Corelio/W&W/De Vijver Media*, recital 132, the Commission found the geographic market to be the footprint of the operator in question; In Commission decision of 20 September 2013 in Case M.6990 - *Vodafone/Kabel Deutschland*, paragraphs 263 to 265, the Commission considered such possible markets for bundles would be national in scope; In Commission decision of 16 June 2011 in Case M.5900 - *LGI/KBW*, paragraphs 183-186, the Commission considered such possible markets to be at most national in scope.

65 Commission decision of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets*, recital 165.

66 Replies to Questionnaire Q1 to competitors, question 26.

4.6. Retail supply of business connectivity services

4.6.1. Product market definition

4.6.1.1. Commission precedents

(76) The retail market for the supply of business connectivity services includes fixed telecommunications services purchased by large businesses, enterprises and public sector customers in order to provide data connectivity between multiple sites.

(77) In previous decisions, the Commission considered potential subdivisions into (i) broadband access for large business customers[67]; (ii) leased lines[68]; and (iii) virtual private networks ("VPN") services[69], but ultimately left the question open.[70] The Commission also distinguished between two separate markets for connectivity services. Firstly, connectivity services offered to residential and small business customers, which are part of the retail market for fixed internet access services; and secondly, connectivity services to large business customers, which are part of the retail market for business connectivity services. This is because of the peculiar requirements and purchase processes of larger business customers.[71]

4.6.1.2. The Notifying Party's view

(78) The Notifying Party considers that the relevant product market is the market for the supply of retail business connectivity services. The Notifying Party emphasises that business connectivity clients often purchase custom-made solutions that include several elements, and that leased lines tend to be replaced by VPN and broadband access services.

4.6.1.3. The results of the market investigation and the Commission's assessment

(79) The results of the market investigation confirm that there is no need to distinguish between residential and small business customers, and that these customers should not be included in the market for business connectivity services along with

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67 Retail broadband access to business customers with significant needs which require higher performance in terms of security, bandwidth and functionality.

68 Leased lines are part-circuits that allow communication providers to connect their own networks to end user sites for the supply of business connectivity.

69 An encryption technology enabling to secure shared access as if it were a dedicated one.

70 Commission decision of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets*, paragraphs 169 to 171; Commission decision of 9 July 2018 in case M.8808 – *T-Mobile Austria/UPC Austria*, paragraphs 66 to 68; Commission decision of 3 August 2016 in case M.7978 – *Vodafone/Liberty Global/Dutch JV*, paragraphs 124 to 127; Commission decision of 3 July 2012 in case M.6584 – *Vodafone/Cable & Wireless*, paragraph 9; Commission decision of 29 January 2010 in case M.5370 – *Telefónica/Hansenet Telekommunikation*, paragraphs 11 to 12.

71 Commission decision of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets*, paragraphs 169 to 171. Commission decision of 3 August 2016 in case M.7988 – *Vodafone/Liberty Global/Dutch JV*, paragraph 126, the market investigation confirmed that the requirements and purchase processes of larger business customers for business connectivity are different than those of residential and small business customers; Commission decision of 29 June 2009 in case M.5532 – *Carphone Warehouse/Tiscali UK*, paragraph 27; Commission decision of 28 November 2006 in case M.4417 – *Telecom Italia/AOL German Access Business*, paragraphs 19 to 24;

connectivity services to larger business customers, notably due to different customer requirements.[72]

(80) With respect to a potential segmentation into broadband access; leased lines; and VPN services, a majority of respondents to the market investigation confirmed that such segmentation would be appropriate. While a number of respondents noted that such services should be treated individually due to different technical characteristics[73], others nevertheless indicated that business customers could and would easily switch between such services and that it is common for business customers to purchase a mix of (some of those) services.[74]

(81) In light of the above, the Commission considers that, for the purpose of this Decision, the relevant product market is the market for the retail supply of business connectivity services to large businesses and public sector customers, excluding the supply of such services to residential and small business customers. The question whether such product market should be further segmented into (i) broadband access for large business customers, (ii) leased lines, and (iii) VPN services can be left open, as the Transaction does not raise competition concerns under any possible product market definition.

4.6.2. Geographic market definition

(82) In previous decisions, the Commission found the market for the retail supply of business connectivity services to be national in scope,[75] including for Romania.[76]

(83) The Notifying Party agrees with the Commission and considers that the relevant geographic market for the retail supply of business connectivity services corresponds to the territory of Romania.

(84) A majority of respondents to the market investigation indicated that the geographic scope of the market for the retail supply of business connectivity services in the present case is the territory of Romania.[77]

(85) In light of the above, the Commission considers that, for the purpose of this Decision, the relevant geographic market for the retail supply of business connectivity services is the territory of Romania.

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72 Replies to Questionnaire Q1 to competitors, questions 27 and 27.1, Questionnaire Q2 to business customers, questions 3 and 3.1.

73 Replies to Questionnaire Q1 to competitors, question 28.1, Questionnaire Q2 to business customers, question 4.1.

74 Replies to Questionnaire Q1 to competitors, questions 28 and 28.1.

75 Commission decision of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets*, recital 176; Commission decision of 14 April 2014 in case M.7109 – *Deutsche Telekom/GTS*, paragraph 33; Commission decision of 3 July 2012 in case M.6584 – *Vodafone/Cable & Wireless*, paragraph 10; Commission decision of 29 January 2010 in case M.5730 – *Telefónica/Hansenet Telekommunikation*, paragraph 28..

76 Commission decision of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets*, recital 176; Commission decision of 14 April 2014 in case M.7109 – *Deutsche Telekom/GTS*, paragraph 33..

77 Replies to Questionnaire Q1 to competitors, question 29, Questionnaire Q2 to business customers, question 5.

4.7. Wholesale supply of leased lines

4.7.1. Product market definition

(86) Wholesale leased lines are part-circuits that allow telecommunications providers to connect their own networks to end user sites for the supply of business connectivity services. In addition, wholesale leased lines are an input for the provision of fixed and mobile telecommunications services.[78]

(87) In particular, 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 networks can be comprised of wireless backhaul (i.e. microwaves) or fixed backhaul. MNOs have typically operated their own microwave backhaul while fixed backhaul has been provided by fixed network operators. Fixed backhaul services are provided on either (i) fibre optic cables or (ii) copper cables. However, wireless backhaul can be used in areas where fixed backhaul is not available.[79]

4.7.1.1. Commission precedents

(88) In previous decisions, the Commission considered possible segmentations of the market for the wholesale supply of leased lines according to (i) network layer (trunk vs. terminating (i.e., backhaul) segments of leased lines); (ii) speed (terminating leased lines with bandwidth below 2 Mbps vs. above 2 Mbps); (iii) passive or active nature of the line (the distinction corresponding to dark fibre on the one hand and managed leased lines and Ethernet services with guaranteed bandwidth on the other); (iv) leased lines with traditional interfaces vs. Ethernet services with guaranteed bandwidth; and (v) transmission means (wireless, fiber, copper lines), but ultimately left open the exact product market definition.[80] The Commission has further considered a potential segment for fixed backhaul services.[81]

4.7.1.2. The Notifying Party's view

(89) The Notifying Party considers that the exact product market definition for the wholesale supply of leased lines can be left open. With respect to wholesale fixed backhaul services, the Notifying Party argues that such service do not fall into a separate product market.

4.7.1.3. The results of the market investigation and the Commission's assessment

(90) With respect to a segmentation by transmission means (i.e. wireless, fibre and copper lines), the results of the market investigation were mixed. Several respondents submitted that while there are certain differences between technologies for layer 1,

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78 Commission decision of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets*, recital 196.

79 Commission decision of 6 March 2020 in case M.9674 – *Vodafone Italia/TIM/Inwit JV*, paragraph 123.

80 Commission decision of 9 July 2018 in case M.8808 – *T-Mobile Austria/UPC Austria*, paragraphs 85 to 90; Commission decision of 4 February 2016 in case M.7637, *Liberty Global/BASE Belgium*, recitals 144 to 146; Commission decision of 20 April 2014 in case M.7499 – *Altice/PT Portugal*, paragraphs 69 to 74; Commission decision of 14 April 2014 in case M.7109 – *Deutsche Telekom/GTS*, paragraphs 64 to 70; Commission decision of 3 July 2012 in case M.6584 – *Vodafone/Cable & Wireless*, paragraphs 28 to 30.

81 Commission decision of 31 August 2018 in case M.9041 – *Hutchison/Wind Tre*, paragraphs 46 to 49; Commission decision of 1 September 2016 in case M.7758 – *Hutchison 3G Italy/Wind/JV*, recitals. 208 to 209.

specifically in relation to bandwidth/speed, all technologies ultimately serve the same purpose of providing wholesale leased lines as a means to connect different parts of the network of a telecommunications operator. For layer 2, there is basically no differentiation between technologies as services are provided packet-based, i.e. a certain bandwidth/speed is agreed. [82]

(91) With respect to a segmentation by network layer (trunk segments and terminating segments), a majority of market participants that responded to the market investigation indicated that such segmentation would not be relevant. In particular, one respondent noted that, once leased lines are installed, there is no differentiation between the capacity used for trunk segments and that allocated to terminating segments.[83]

(92) With respect to a segmentation based on bandwidth/speed, above and below 2Mbps, a majority of market participants that responded to the market investigation indicated that such segmentation would not be meaningful. In particular, respondents noted that a speed of 2 Mbps would be too slow for today's requirements.[84]

(93) With respect to a segmentation between active and passive infrastructure, a majority of market participants that responded to the market investigation indicated that such segmentation would not be meaningful.[85]

(94) Based on the above, the Commission considers that the product market wholesale leased lines in Romania does not need to be segmented based on transmission means, bandwidth/speed or between active and passive infrastructure.

(95) With respect to a separate segment for fixed backhaul services (i.e., within a larger overall market of wholesale leased lines), the results of the market investigation were mixed. While certain respondents noted that fixed backhaul services and leased lines would represent different services, others indicated that fixed backhaul would be only one way to use wholesale leased lines among others with similar requirements for speed and bandwidth.[86] The Commission therefore considers that the market investigation provided no clear indication that fixed backhaul services should belong to a product market separate from the product market for wholesale leased lines.

(96) In light of the above, the Commission considers that, for the purpose of this Decision, the exact product market definition of the wholesale market for the supply of leased lines and the question whether it includes wholesale fixed backhaul services can be left open as the Transaction does not raise serious doubts as to its compatibility with the internal market under any possible product market definition.

82 Replies to Questionnaire Q1 to competitors, questions 30 and 30.1.

83 Replies to Questionnaire Q1 to competitors, questions 31 and 31.1.

84 Replies to Questionnaire Q1 to competitors, questions 32 and 32.1.

85 Replies to Questionnaire Q1 to competitors, questions 33 and 33.1.

86 Replies to Questionnaire Q1 to competitors, questions 34 and 34.1.

4.7.2. *Geographic market definition*

(97) In previous decisions, the Commission found that the relevant geographic market for the wholesale supply of leased lines (and possible sub-segments) is national in scope,[87] including for Romania.[88]

(98) The Notifying Party considers that the relevant geographic market for the wholesale supply of leased lines corresponds to the territory of Romania.

(99) A majority of respondents to the market investigation indicated that – in line with the Commission's findings in the case *Vodafone/Certain Liberty Global Assets*[89] – the market for the wholesale supply of leased lines in the present case is the territory of Romania.[90]

(100) In light of the above, the Commission considers that, for the purpose of this Decision, the relevant geographic market for the wholesale supply of leased lines is the territory of Romania.

4.8. Wholesale supply and acquisition of TV channels

4.8.1. *Product market definition*

(101) In the wholesale market for TV channels, TV broadcasters supply linear channels that retail TV providers either purchase or carry in order to provide audio-visual services to end-users. In particular, TV broadcasters package the TV content that they have acquired or produced in-house in order to create linear TV channels. Subsequently, retailers of TV services incorporate those TV channels in their TV offerings to final viewers.[91]

4.8.1.1. Commission precedents

(102) In previous decisions, the Commission identified a market for the wholesale supply and acquisition of TV channels.[92] Within that market, the Commission has identified separate product markets for: (i) FTA TV channels; and (ii) Pay TV channels[93] and more recently left the exact product market definition open.[94]

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87 Commission decision of 4 February 2016 in case M.7637 – *Liberty Global/BASE Belgium*, recital 150; Commission decision of 3 July 2012 in case M.6584 – *Vodafone/Cable & Wireless*, paragraph 31.

88 Commission decision of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets*, recital 203; Commission decision of 14 April 2014 in case M.7109 – *Deutsche Telecom/GTS*, paragraph 74.

89 Commission decision of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets*.

90 Replies to Questionnaire Q1 to competitors, question 35.

91 Commission decision of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets*, recital 267.

92 Commission decision of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets*, recitals 269 to 276; Commission decision of 30 May 2018 in case M.7000 – *Liberty Global/Ziggo*, paragraphs 99 to 115; Commission decision of 7 April 2017 in case M.8354 – *Fox/Sky*, paragraphs 76 to 85; Commission decision of 20 September 2013 in case M.6990 – *Vodafone/Kabel Deutschland*, paragraphs 30 to 41.

93 Commission decision of 24 February 2015 in case M.7194 - *Liberty Global/Corelio/W&W/De Vijver Media*, recital 101; Commission decision of 20 September 2013 in case M.6990 – *Vodafone/Kabel Deutschland*, paragraph 41.

94 Commission decision of 6 October 2020 – *PPF Group/Central European Media Enterprises*, paragraph 39; Commission decision of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets*, recital 273; In Commission decision of 30 May 2018 in case M.7000 – *Liberty Global/Ziggo*, paragraph 111, the Commission left open the question as to whether FTA and Pay TV belong to separate markets, because of peculiarities of the Dutch TV market; In Commission decision of 7 April 2017 in case M.8354 – *Fox/Sky*, paragraph 85, the

(103) In addition, the Commission found that within the Pay TV channels market, there are different segments[95] or, more recently, product markets[96] for (i) premium Pay TV channels and (ii) basic Pay TV channels. In certain cases, the Commission has considered FTA channels to be part of the market for basic Pay TV channels.[97]

(104) Further, the Commission also examined a number of other potential segmentations, including: (i) by genre or thematic content (such as films, sports, news, youth, and others);[98] (ii) between linear and non-linear;[99] and (iii) between the different means of infrastructure used to deliver channels to the viewer (cable, satellite, terrestrial or IPTV)[100] but ultimately left the exact market definition open.

4.8.1.2. The Notifying Party's view

(105) The Notifying Party considers that the relevant product market to be taken into account is the market for wholesale supply and acquisition of TV channels irrespective of the different types of infrastructures, notably because satellite is not relevant anymore in Romania, IPTV is marginal, and technology conversion (*e.g.* the conversion of fibre into cable or IPTV signal to facilitate the connection to customers' devices) is widely used as it is required in all homes where TV services are based on fibre, cable or xDSL infrastructures. The Notifying Party explains that this conversion does not affect the substitutability of different distribution technologies as it does not materially differ across input infrastructure (*e.g.* between fibre, cable or xDSL). For instance, Digi converts fibre to cable TV and TKR converts fibre to cable TV or to IPTV (depending on the customer requirements).[101]

Commission left open the question whether the market for the wholesale supply of TV channels should be further segmented among FTA, basic Pay TV and premium Pay TV. In Commission decision of 18 August 2014 in case M.7194 – *Liberty Global/Corelio/W&W/De Vijver Media*, recital 91, the Commission considered that wholesale supply of premium Pay TV constitutes a product market that is separate from the wholesale supply of basic Pay TV/FTA channels.

95 Commission decision of 18 August 2014 in case M.7194 – *Liberty Global/Corelio/W&W/De Vijver Media*, recital 89.

96 Commission decision of 12 November 2019 in case M.9064 - *Telia Company/Bonnier Broadcasting Holding*, recital 157; Commission decision of 30 May 2018 in case M.7000 – *Liberty Global/Ziggo*, paragraph 113.

97 Commission decision of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets*, recital 273; Commission decision of 30 May 2018 in case M.7000 – *Liberty Global/Ziggo*, paragraph 111; Commission decision of 7 April 2017 in case M.8354 – *Fox/Sky*, paragraph 80, 81 and 85; Commission decision of 18 August 2014 in case M.7194 – *Liberty Global/Corelio/W&W/De Vijver Media*, recitals 90 and 91.

98 Commission decision of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets*, recital 273; Commission decision of 30 May 2018 in case M.7000 – *Liberty Global/Ziggo*, paragraph 112; Commission decision of 7 April 2017 in case M.8354 – *Fox/Sky*, paragraphs 82 to 85; Commission decision of 24 February 2015 in case M.7194 – *Liberty Global/Corelio/W&W/De Vijver Media*, recital 92; Commission decision of 21 December 2010 in case M.5932 – *News Corp/BskyB*, paragraph 81; Commission decision of 26 August 2008 in case M.5121 – *News Corp/Premiere*, paragraph 35; Commission decision of 18 July 2007 in case M.4504 – *SFR/Télé 2 France*, recitals 41 and 42; Commission decision of 2 April 2003 in case M.2876 – *Newscorp/Telepiù*, recitals 74 to 76.

99 Commission decision of 18 August 2014 in case M.7194 – *Liberty Global/Corelio/W&W/De Vijver Media*, recital 94.

100 In Commission decision of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets*, recital 273, the Commission left such question open for Romania and discussed it further for Germany in section VIII.2.11; In Commission decision of 30 May 2018 in case M.7000, *Liberty Global/Ziggo*, paragraph 114, the Commission considered that at least cable, IPTV over DSL, fiber and possibly satellite (DTH) are part of the same product market; In Commission decision of 7 April 2017 in case M.8354 – *Fox/Sky*, paragraphs 84 and 85 Commission decision of 24 February 2015 in case M.7194 – *Liberty Global/Corelio/W&W/De Vijver Media*, recital 98 and Commission decision of 18 July 2007 in case M.4504 – *SFR/Télé 2 France*, recital 44, the Commission left a segmentation by infrastructure open.

101 Form CO, paragraph 327.

4.8.1.3. The results of the market investigation and the Commission's assessment

(106) Based on the replies to the market investigation,[102] the Commission considers that the segmentation of the value chain for audio visual content in Romania into i) the (upstream) market for the licensing of audio visual content; ii) the (intermediate) market for the wholesale supply of TV channels; and iii) the (downstream) market for the retail supply of TV services is accurate.

(107) With regard to the distinction between FTA TV channels and Pay TV channels, the majority of distributors and of suppliers of TV channels indicated that the distinction is relevant in Romania.[103] In particular, a number of responses by suppliers of TV channels pointed to financial differences between FTA TV and Pay TV channels (i.e., in terms of investments needed, pricing models for end consumers).[104]

(108) However, a number of responses by TV channel suppliers indicated that the development of new platforms and technologies might justify disregarding a distinction between FTA TV channels and Pay TV channels.[105] Furthermore, a supplier of TV channels indicated that there is no significant difference, from a demand-side perspective, between FTA TV channels and Pay TV channels in Romania. This is because FTA and Pay TV channels are packaged the same way and offer similar programming suited for similar target audiences.[106]

(109) With respect to a further segmentation between basic Pay TV channels and premium Pay TV channels, the results of the market investigation are inconclusive. While a majority of respondents supported such further segmentation, several well substantiated responses submitted that the distinction is not relevant in Romania.[107]

(110) On the one hand, a number of market participants indicated that basic and premium Pay TV channels had different wholesale prices and that certain premium Pay TV channels would be made available to end consumers for an additional fee. One response in particular suggested different target audiences and different levels of local content between basic and premium TV channels.

(111) On the other hand, a supplier of TV channels indicated that more generalist channels attract the highest audience shares and that high quality local content attracts audience shares at least on par with major US films. In addition, local "basic" channels have a significantly high content-refresh rate. Moreover, according to this submission, the hypothetical distinction between basic and premium would not be clear-cut, that both types of channels compete for the same audience and that "premium" content is also available via non-linear services. Finally, from a wholesale perspective, the total fees paid by retail TV distributors for "premium" channels would be comparable or even lower than the total fee for basic packages.[108]

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102 Replies to Questionnaire Q3 to suppliers of TV channels, question 3.

103 Replies to Questionnaire Q1 to competitors, question 36, Questionnaire Q3 to suppliers of TV channels, question 4.

104 Replies to Questionnaire Q3 to suppliers of TV channels, question 4.1.

105 Replies to Questionnaire Q3 to suppliers of TV channels, question 4.1.

106 Reply to Questionnaire Q3 to suppliers of TV channels, question 4.1.

107 Replies to Questionnaire Q1 to competitors, question 36.1, Questionnaire Q3 to suppliers of TV channels, question 4.2.

108 Reply to Questionnaire Q3 to suppliers of TV channels, question 4.2.1.

(112) Based on the above, the Commission considers that the wholesale market for the acquisition and supply of TV channels in Romania should be segmented between FTA channels and Pay TV channels, as well as between premium Pay TV and basic Pay TV channels.

(113) With respect to a distinction of separate markets based on genre or thematic content, the results of the market investigation were mixed. On the one hand, the market investigation indicated that certain types of content might be distinctive due to their particularly high cost and that the Romanian regulator would require operators to group TV channels by type of content offered. On the other hand, while there are many specialised channels, "generalist" channels which cross-cut the discussed distinction also exist. In addition, there might be partial, temporary competition, e.g., between a news channel and an entertainment channel, if the news channel offers a sports competition. Finally, the switching behaviour of viewers who are unhappy with the program they watch, would indicate high demand side substitutability for several switching scenarios.[109] The Commission therefore considers that the distinction of separate markets based on genre or thematic content remains relevant.

(114) Generally, with respect to a distinction of separate markets based on the infrastructure/platform used for the delivery to the viewer (cable, satellite, digital video broadcasting, IPTV), the results of the market investigation were inconclusive.[110]

(115) On the one hand, the market investigation indicated differences in terms of image quality and number of channels as well as the fact that the must-carry status of a channel does not apply to delivery via satellite infrastructure. Moreover, satellite is the prevalent infrastructure in rural areas, representing 27% of total Romanian households, while cable is prevalent in urban areas. Even in areas where both satellite and analogue cable infrastructure are available, the signal quality and number of channels via satellite infrastructure would be better than via cable networks. The following switching barriers were indicated i) technical barriers due to satellite signal reception, ii) administrative barriers due to the need for permission by owners' associations and/or local authorities, iii) aesthetic barriers due to the visibility of satellite reception equipment, and iv) legal barriers due to cancellation fees payable by customers who would cancel their subscription before the minimum term of usually two years. Also, it was submitted that satellite TV offers are usually sold on a standalone basis, rather than part of a multiple-play bundles (unlike other infrastructures).[111]

(116) On the other hand, a number of respondents to the market investigation indicated that major distributors provide TV signal through at least two types of infrastructures/platforms and that the variation in terms of quality is insignificant. Moreover, it was also suggested that customers, especially in urban areas, have multiple types of infrastructures/platforms to choose from. In that context, even though customer choice could be limited in areas where only one type of technology would be available, the breadth of types of infrastructures/platforms available to

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109 Replies to Questionnaire Q1 to competitors, questions 37 and 37.1, Questionnaire Q3 to suppliers of TV channels, questions 5 and 5.1.

110 Replies to Questionnaire Q1 to competitors, questions 38 and 38.1, Questionnaire Q3 to suppliers of TV channels, questions 6 and 6.1.

111 Replies to Questionnaire Q3 to suppliers of TV channels, questions 6.1 and 7.

customers increases steadily at national level. Further, in terms of pricing, different types of infrastructures/platforms do not differ to a degree that would suggest the existence of separate markets.[112]

(117) Based on the above, the Commission considers that the wholesale market for the supply of TV channels should not be further segmented by type of infrastructure used for the delivery of the signal to the end-customer. This is because several types of infrastructure are available to almost all end-customers and the barriers to switching mentioned under paragraph (116) do not appear to be significant.

(118) With regard to the distinction between the wholesale supply and acquisition of TV channels for linear and non-linear distribution, the market investigation did not provide any elements indicating that the Commission should depart from its precedents.

(119) In light of the above, the Commission considers that, for the purpose of this Decision, the relevant product market for the wholesale supply and acquisition of TV channels encompasses all infrastructures/distribution technologies. The question whether the product market should be further segmented i) between FTA TV channels and Pay TV channels; ii) between basic Pay TV channels and premium Pay TV channels; iii) by genre/thematic content; and (iv) between linear and non-linear can be left open as the Transaction does not raise serious doubts as to its compatibility with the internal market under any possible product market definition.

4.8.2. Geographic market definition

(120) In previous decisions, the Commission considered that the wholesale supply and acquisition of TV channels is either national in scope or comprises a broader (or narrower) linguistically homogeneous area,[113] including for Romania.[114]

(121) The Notifying Party considers that the relevant geographic market for the wholesale supply and acquisition of TV channels corresponds to the territory of Romania.

(122) A majority of responses by suppliers of TV channels indicated that they would license (most of) their TV channels on a national basis. In particular, a number of respondents noted that content produced in-house could be distributed worldwide, while acquired content could only be distributed on a geographic/territorial basis, in compliance with the rights granted by the licensors. At the same time, another respondent noted that certain distributors with operations in several countries prefer EEA-wide or regional licenses.[115]

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112 Replies to Questionnaire Q3 to suppliers of TV channels, question 6.1

113 Commission decision of 21 December 2010 in case M.5932 – *News Corp/BSkyB*, paragraphs 72 to 75; Commission decision of 2 April 2003 in case M.2876 – *Newscorp/Telepiù*, recitals 62 and 63..

114 In Commission decision of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets*, recital 328, the Commission found that with regard to Germany and Romania, most respondents to the market investigation pointed to a national dimension of the contract for the acquisition of sports rights, while for film and other content the market would include a linguistic region (in particular German speaking countries).

115 Replies to Questionnaire Q1 to competitors, questions 39 and 39.1, Questionnaire Q3 to suppliers of TV channels, questions 8 and 8.1.

(123) In light of the above, the Commission considers that, for the purpose of this Decision, the relevant geographic market for the wholesale supply and acquisition of TV channels is the territory of Romania.

4.9. Wholesale supply of broadband access

4.9.1. Product market definition

(124) Wholesale broadband access includes different types of access to fixed connections that allow internet service providers to provide services to end consumers. It comprises physical access at a fixed location, such as LLU; non-physical or virtual network access, such as bitstream access, at a fixed location; and resale of a fixed provider's internet access services.

(125) In previous decisions, the Commission defined a separate market for wholesale broadband access. The Commission considered to further segment such market by i) type of access (LLU, bitstream, resale of the incumbent's offering); and ii) infrastructure (standalone access to DSL, standalone access to cable, access to cable for TV and internet together) but ultimately left the exact product market open.[116]

(126) The Notifying Party considers that the relevant product market to be taken into account is the market for wholesale broadband access.

(127) The results of the market investigation did not provide reasons to depart from the Commission's previous approach.

(128) In light of the above, the Commission considers that, for the purpose of this Decision, the relevant product market is the market for the wholesale supply of broadband access. The question whether such market should be segmented by i) type of access or ii) infrastructure can be left open as the Transaction does not raise serious doubts as to its compatibility with the internal market under any possible product market definition.

4.9.2. Geographic market definition

(129) In previous decisions, the Commission found indications that the market for the wholesale supply of broadband access is national in scope, but ultimately left open the exact geographic market definition.[117]

(130) The Notifying Party considers that this definition can be left open given that the Transaction will not give rise to any competition concern.

(131) The results of the market investigation did not provide reasons to depart from the Commission's decisional practice.

116 Commission decision of 29 September 2019 in case M.6990 – *Vodafone/Kabel Deutschland*, paragraph 161; Commission decision of 9 July 2018 in case M.8808 – *T-Mobile Austria/UPC Austria*, paragraphs 74 to 76;Commission decision of 26 June 2009 in case M.5532 – *Carphone Warehouse/Tiscali UK*, paragraphs 28 to 34.

117 Commission decision of 9 July 2018 in case M.8808 – *T-Mobile Austria/UPC Austria*, paragraphs 77 to 79; Commission decision of 29 June 2009 in case M.5532 – *Carphone Warehouse/Tiscali UK*, paragraphs 48 to 53.

(132) In light of the above, the Commission considers that, for the purpose of this Decision, the exact geographic scope of the market for the wholesale supply of broadband access can be left open as the Transaction does not raise serious doubts as to its compatibility with the internal market under any possible product market definition.

4.10. Wholesale supply of call termination services on fixed networks

4.10.1. Product market definition

(133) Call termination is the service provided by a network operator on the supply side to other network operators on the demand side, whereby a call originating in a demand side operator's network is delivered to a user in the supply side operator's network. This service is required by every originating operator, as it is necessary for its customers to be able to communicate with the customers located on other networks. Call termination is therefore a wholesale service that is resold or used as an input for the provision of downstream retail telephony and mobile services.[118]

4.10.1.1. Commission precedents

(134) In the past, the Commission has concluded that each individual network (both in mobile and in fixed networks) constitutes a separate market for termination, as there is no substitute for call termination in each individual network as the intended recipient can only be reached by the operator transmitting the outbound call through the operator of the network to which the recipient is connected.[119] Each individual network constitutes a separate product market.

(135) Further, in previous decisions, the Commission considered wholesale call termination services on fixed network to be a distinct market from the market for the wholesale supply of international voice carrier services.[120]

4.10.1.2. The Notifying Party's view

(136) The Notifying Party considers that termination in each individual fixed network constitutes a separate product market.

4.10.1.3. The results of the market investigation and the Commission's assessment

(137) The results of the market investigation did not provide reasons to depart from the Commission's decisional practice.

118 Commission decision of 26 October 2020 in case M.9963 – *Iliad/Play Communications*, paragraphs 35 to 36.

119 Commission decision of 26 October 2020 in case M.9963 – *Iliad/Play Communications*, paragraphs 42 to 44; Commission decision of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets*, recitals 190 to 193; Commission decision of 3 August 2016 in case M.7978 – *Vodafone/Liberty Global/Dutch JV*, paragraphs 206 to 208; Commission decision of 3 July 2012 in case M.6584 – *Vodafone/Cable & Wireless*, paragraphs 47 to 48; Commission decision of 3 July 2012 in case M.5650 – *T-Mobile/Orange UK*, paragraphs 36 and 37.

120 Commission decision of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets,* recitals 217 to 219, Commission decision of 4 February 2016 in case M.7637 – *Liberty Global/Base Belgium*, recitals 131 to 133; Commission decision of 3 July 2012 in case M.6584 – *Vodafone/Cable & Wireless*, paragraph 26. In Commission decision of 14 April 2014 in case M.7109 – *Deutsche Telekom/GTS,* paragraphs 75 to77, the Commission considered that, in the specific circumstances of the case, the exact definition of the relevant market for the provision of wholesale domestic call transit services of fixed networks could be left open, as the transaction did not give rise to competition concerns on the basis of any alternative plausible market definitions.

(138) In light of the above, the Commission considers that, for the purpose of this Decision, the relevant product market is the market for wholesale supply of call termination services on fixed networks that is a distinct market from the market for the wholesale supply of call termination services on mobile networks.

4.10.2. Geographic market definition

(139) In previous decisions, the Commission considered the geographic market for the wholesale supply call termination services in fixed networks to be national in scope,[121] including for Romania.[122]

(140) The Notifying Party considers that the relevant geographic market for the wholesale supply of call termination services on fixed network corresponds to the territory of Romania.

(141) The results of the market investigation did not provide reasons to depart from the Commission's previous approach.

(142) In light of the above, the Commission considers that, for the purpose of this Decision, the relevant geographic market for the supply of wholesale call termination services on fixed networks is the territory of Romania.

4.11. Wholesale supply of termination and hosting of calls to non-geographic numbers

4.11.1. Product market definition

(143) Voice calls are not only made to geographic numbers but also to non-geographic numbers. A non-geographic number is a number associated with a country, but not to any single geographic location within that country. Non-geographic number services are less frequently used than standard services and are typically used for free and paid information services, for example, for helpdesks, subscription services, TV voting lines etc.

(144) When a caller initiates a call to a non-geographic number, the call is automatically transferred from the originating operator to the terminating operator hosting the service provider that operates the service related to the non-geographic number, irrespective of the location.

(145) Unlike ordinary call termination services, call origination and call termination regulation does not apply to these numbers. Therefore, different revenue sharing

121 Commission decision of 26 October 2020 in case M.9963 – *Iliad/Play Communications*, paragraphs 45 to 47; Commission decision of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets*, recital 195; Commission decision of 3 August 2016 in case M.7978 – *Vodafone/Liberty Global/Dutch JV*, paragraph 210; Commission decision of 20 September 2013 in case M.6990 – *Vodafone/Kabel Deutschland*, paragraph 121; Commission decision of 4 February 2016 in case M.7637 – *Liberty Global/Base Belgium*, recitals 128; Commission decision of 3 July 2012 in case M.6584 – *Vodafone/Cable & Wireless*, paragraph 48; Commission decision of 3 July 2012 in case M.5650 – *T-Mobile/Orange UK*, paragraph 38.

122 Commission decision of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets*, recital 195.

agreements exist between the originating operator, the terminating operator, and the service provider.[123]

4.11.1.1. Commission precedents

(146) In previous decisions, the Commission considered that there is a product market for the wholesale supply of termination and hosting of calls to non-geographic numbers without it being necessary to consider further possible segmentations.[124]

4.11.1.2. The Notifying Party's view

(147) The Notifying Party considers that the relevant product market to be taken into account is the market for the wholesale supply of termination and hosting of calls to non-geographic numbers.

4.11.1.3. The results of the market investigation and the Commission's assessment

(148) The results of the market investigation did not provide reasons to depart from the Commission's decisional practice.

(149) In light of the above, the Commission considers that, for the purpose of this Decision, the relevant product market is the market for the wholesale supply of termination and hosting of calls to non-geographic numbers that is distinct from other wholesale termination services.

4.11.2. Geographic market definition

(150) In previous decisions, the Commission considered that the geographic scope of the wholesale market for the supply of termination and hosting of calls to non-geographic numbers is national.[125]

(151) The Notifying Party considers that the relevant geographic market for the wholesale supply of termination and hosting of calls to non-geographic numbers corresponds to the territory of Romania.

(152) The results of the market investigation did not provide reasons to depart from the Commission's decisional practice.

(153) In light of the above, the Commission considers that, for the purpose of this Decision, the relevant geographic market for the wholesale supply of termination and hosting of calls to non-geographic numbers is the territory of Romania.

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123 Commission decision of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets*, recitals 204 to 206.

124 Commission decision of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets*, recitals 209 to 211; Commission decision of 4 February 2016 in case M.7637 – *Liberty Global/BASE Belgium*, recitals 137 to 139; Commission decision in case M.6584 – *Vodafone/Cable & Wireless*, paragraphs 14 to 18; In Commission decision of 3 July 2012 in case M.6584 – *Vodafone/Cable & Wireless*, paragraphs 58 to 60, the Commission considered that market shares could be defined differently depending on whether one considered one overall market across networks, or distinguishing each terminating network as a separate market.

125 Commission decision of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets*, recital 213; Commission decision of 4 February 2016 in case M.7637 – *Liberty Global/BASE Belgium*, recital 142; Commission decision of 3 July 2012 in case M.6584- *Vodafone/Cable & Wireless*, paragraph 18.

4.12. Wholesale supply of domestic call transit services on fixed networks

(154) Domestic call transit on a fixed network is a wholesale service provided by a third party where there is no direct connection between originating communication providers and terminating communication providers.

(155) In previous decisions, the Commission found that the market for the wholesale supply domestic transit services in fixed networks to be a separate product market, notably from the market for global telecommunications services.[126]

(156) The Notifying Party considers that the relevant product market to be taken into account is the market for the wholesale supply of domestic call transit services on fixed networks. The Notifying Party notes that the market for the call transit services on fixed networks is shrinking and likely to disappear in the future.

(157) The results of the market investigation did not provide reasons to depart from the Commission's decisional practice.

(158) In light of the above, the Commission considers that, for the purpose of this Decision, the relevant product market is the market for the wholesale supply of domestic call transit services on fixed networks.

4.12.1. Geographic market definition

(159) The Commission found that the market for the wholesale supply of domestic transit services in fixed networks is national in scope.[127]

(160) The Notifying Party considers that the relevant geographic market for the wholesale supply of domestic call transit services on fixed networks corresponds to the territory of Romania.

(161) The results of the market investigation did not provide reasons to depart from the Commission's decisional practice.

(162) In light of the above, the Commission considers that, for the purpose of this Decision, the relevant geographic market for the wholesale supply of domestic call transit services on fixed networks is the territory of Romania.

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126 Commission decision of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets*, recitals 217 to 219; Commission decision of 4 February 2016 in case M.7637 – *Liberty Global/Base Belgium*, recitals 130 to 133; Commission decision of 3 July 2012 in case M.6584 – *Vodafone/Cable & Wireless*, paragraphs 26 to 27. In Commission decision of 14 April 2014 in case M.7109 – *Deutsche Telekom/GTS*, paragraphs 75 to 77, the Commission considered that, in the specific circumstances of the case, the exact definition of the relevant market for the provision of wholesale domestic call transit services of fixed networks could be left open, as the transaction did not give rise to competition concerns on the basis of any alternative plausible market definitions.

127 Commission decision of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets*, recital 221; Commission decision of 4 February 2016 in case M.7637 – *Liberty Global/Base Belgium*, recitals 134 and 135; Commission decision of 14 April 2014 in case M.7109 – *Deutsche Telekom/GTS*, paragraph 77; Commission decision of 3 July 2012 in case M.6584 – *Vodafone/Cable & Wireless*, paragraph 27.

4.13. Supply of global telecommunications services

4.13.1. Product market definition

(163) Global telecommunications services (GTS) are telecommunications services linking a number of different customer locations, generally in at least two different continents and across a larger number of different countries. They are generally purchased by multinational companies with presence in many countries and a number of continents. The services provided are enhanced services to provide customers with package solutions including virtual private networks ("VPN") for both voice and data services and advances functionalities.[128]

(164) Global telecommunications services are supplied at retail level and wholesale level. In the latter case, they can also be referred to as "international carrier services". Wholesale global telecommunications services comprise (i) the lease of transmission capacity and (ii) the provision of related services to third party telecommunications traffic carriers and service providers and are an input for retail global telecommunications services.[129]

(165) While leaving the exact product market definition open, the Commission considered a possible distinction between the retail supply global telecommunications services and the wholesale supply of global telecommunications services[130] as well as between the lease of transmission capacity and the provision of related services to third-party carriers.[131]

(166) The Notifying Party considers that the relevant market to be taken into account is the overall market for the supply of global telecommunications services comprising both retail and wholesale services as well as that the exact definition may be left open in the present case.

(167) The results of the market investigation did not provide reasons to depart from the Commission's decisional practice.

(168) In light of the above, the Commission considers that, for the purpose of this Decision, the relevant product market is the market for the supply of global telecommunications services. The question whether to segment such market between i) retail and wholesale services; and ii) the lease of transmission capacity and the provision of related services to third parties can be left open as the Transaction does not raise serious doubts as to its compatibility with the internal market under any possible product market definition.

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128 Commission decision of 9 July 2018 in case M.8808 – *T-Mobile Austria/UPC Austria*, paragraph 176.

129 Commission decision of 9 July 2018 in case M.8808 – *T-Mobile Austria/UPC Austria*, paragraph 177.

130 Commission decision of 9 July 2018 in case M.8808 – *T-Mobile Austria/UPC Austria*, paragraphs 179 and 180; Commission decision of 14 April 2014 in case M.7109 – *Deutsche Telekom/GTS*, paragraphs 13 and 14; Commission decision of 3 July 2012 in case M.6584 – *Vodafone/ Cable & Wireless*, paragraph 334.

131 Commission decision of 9 July 2018 in case M.8808 – *T-Mobile Austria/UPC Austria*, paragraph 179 to 180; Commission decision of 14 April 2014 in case M.7109 – *Deutsche Telekom/GTS*, paragraphs 13 and 14; Commission decision of 3 July 2012 in case M.6584 – *Vodafone/Cable & Wireless*, paragraph 33.

4.13.2. Geographic market definition

(169) In previous decisions, the Commission considered that the geographic market for the supply of global telecommunications services, both at retail and wholesale levels, is likely worldwide while leaving its exact geographic scope open.[132]

(170) The Notifying Party considers that the market for the supply of global telecommunication services is worldwide in scope.

(171) The results of the market investigation did not provide reasons to depart from the Commission’s decisional practice.

(172) In light of the above, the Commission considers that, for the purpose of this Decision, the exact geographic scope of the market for the supply of global telecommunications services can be left open as the Transaction does not raise serious doubts as to its compatibility with the internal market under any possible product market definition.

4.14. Wholesale supply of internet connectivity services

(173) Internet connectivity services allow corporate customers to be present on the internet by providing access to the entire routing table of the global internet or to a subset of the same, in which case the customer will need to cover the totality of its needs by means of a multi-homing strategy. Connectivity to the internet can be achieved (i) by the purchasing of transit services, (ii) by means of peering with selected networks, or (iii) by means of a combination of the two. Entities which do not connect directly to the internet may also call upon hosting providers, who aggregate hosting needs and procure in turn internet connectivity for their customers.[133] Whilst global coverage is a primary requirement, more specific performance criteria also enter into a customer's internet connectivity strategy such as latency, reliability, speed and minimization of traffic-related costs.

(174) Transit is a service whereby a customer pays for access to all or a large part of the internet, with performance characteristics which may vary according to the destination of the traffic. Peering, on the other hand, whether settlement-free or paid, provides access to individual networks but no further onward connectivity. Providers of transit services will in turn use a combination of peering relationships and paid commercial relationships with other transit providers in order to provide global internet coverage. A transit provider which does not purchase transit services from other providers because it is able to reach the entire internet merely by means of peering relationships is referred to as a "Tier 1" transit provider.

(175) Operators of retail internet access networks, sometimes referred to as "eyeball networks", procure internet connectivity in the same way as any other corporate customer, and may themselves also provide wholesale internet connectivity services. Certain internet access providers ("IAPs") offer transit services, whereas many offer direct connectivity to their own network and subscribers. To the extent that the IAP

132 Commission decision of 9 July 2018 in case M.8808 – *T-Mobile Austria/UPC Austria*, paragraphs 182 and 183; Commission decision of 14 April 2014 in case M.7109 – *Deutsche Telekom/GTS*, paragraphs 15 to 18; Commission decision of 3 July 2012 in case M.6584 – *Vodafone/Cable & Wireless*, paragraph 34.

133 Commission decision of 3 August 2016 in case M.7978 – *Vodafone/Liberty Global/Dutch JV*, paragraph 260; Commission decision of 14 April 2014 in case M.7109 - *Deutsche Telecom/GTS*, paragraph 19.

purchases transit services, these may also be used to reach its users. The end users of a given IAP can also be reached by means of relationships with those networks which peer with the IAP in question.[134]

4.14.1. *Product market definition*

(176) In previous decisions, the Commission considered the existence of an overall market for the wholesale supply of internet connectivity services, including both transit and peering services and potentially further segmented between transit and peering services but ultimately left the exact product market definition open.[135] Further, the Commission considered, but ultimately left open a possible segmentation of the product market for wholesale internet connectivity services between Tier-1 transit providers and Tier-2 transit providers.[136]

(177) The Notifying Party considers that the relevant product market to be taken into account is the market for the wholesale supply of internet connectivity services.

(178) The results of the market investigation did not provide reasons to depart from the Commission's decisional practice.

(179) In light of the above, the Commission considers that, for the purpose of this Decision, the relevant product market is the market for the wholesale supply of internet connectivity services. The question whether such market a) includes both transit and peering services; b) should be further segmented between transit and peering services; and c) can be further segmented between Tier-1 transit providers and Tier-2 transit providers can be left open as the Transaction does not raise serious doubts as to its compatibility with the internal market under any possible product market definition.

4.14.2. *Geographic market definition*

(180) The Commission previously found the market for the wholesale supply of internet connectivity services to be either global or regional in scope.[137]

(181) The Notifying Party considers the relevant market to be at least regional if not global in scope but submits that the market definition may be left open given the absence of overlap.

(182) The results of the market investigation did not provide reasons to depart from the Commission's decisional practice.

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134 Commission decision of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets*, recitals 232 to 234.

135 Commission decision of 18 July 2019 in case M.8864 – *Vodafone/ Certain Liberty Global Assets*, recitals 237 to 238; Commission decision of 14 April 2014 in case M.7109 – *Deutsche Telekom / GTS*, paragraphs 21 and 22; Commission decision of 7 October 2005 in case M.3752 – *MCI/Verizon*, paragraphs 17 to 24.

136 Commission decision of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets*, recitals 237 to 239; Commission decision of 20 September 2013 in case M.6990 – *Vodafone/Kabel Deutschland*, paragraphs180 and 181; Commission decision of 7 October 2005 in case M.3752 – *Verizon/MCI*, paragraphs 14 to 24.
Tier-1 transit providers are capable of delivering complete internet connectivity entirely or in the great majority through their own network or under mutual traffic transit agreements with other Tier-1 providers. Tier-2 providers supplement the reach of their own network by purchasing transit rights from Tier-1 transit providers.

137 Commission decision dated 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets*, recitals 242 and 243; Commission decision of 14 April 2014 in case M.7109 – *Deutsche Telekom/GTS*, paragraphs 24 and 25.

(183) In light of the above, the Commission considers that, for the purpose of this Decision, the exact geographic scope of the market for the wholesale supply of internet connectivity services can be left open as the Transaction does not raise serious doubts as to its compatibility with the internal market under any possible product market definition.

4.15. Wholesale supply of access and call termination services on mobile networks

(184) Call termination is the service provided by a network operator on the supply side to other network operators on the demand side, whereby a call originating in a demand side operator's network is delivered to a user in the supply side operator's network. This service is required by every originating operator, as it is necessary for its customers to be able to communicate with the customers of other networks. Call termination is therefore a wholesale service that is resold or used as an input for the provision of downstream retail telephony and mobile telecommunications services.[138]

4.15.1. Product market definition

(185) In previous decisions, the Commission has identified relevant markets for the wholesale supply of access and call termination services on mobile and fixed networks. Further, the Commission found that there is no substitute for call termination on each individual network, as the operator transmitting the call can reach the intended recipient only through the operator of the network to which the recipient is connected and thus concluded that each individual network, either fixed or mobile, constitutes a separate market. [139]

(186) The Notifying Party considers that the relevant product market to be taken into account is the market for wholesale supply of access and call termination services on mobile networks.

(187) The results of the market investigation did not provide reasons to depart from the Commission's decisional practice.

(188) In light of the above, the Commission considers that, for the purpose of this Decision, the relevant product market is the market for the wholesale supply of access and call termination services on mobile networks.

138 Commission decision of 26 October 2020 in case M.9963 – *Iliad/Play Communications*, paragraph 35. Accordingly, the 2003 Commission's Recommendation on the relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with the Framework Directive (Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services) has distinguished call termination on individual networks, mobile or fixed as separate markets. A distinction between termination on these networks is further justified by the characteristics of the terminals themselves such as the different functionalities and the mobility guaranteed by the mobile service.

139 Commission decision of 26 October 2020 in case M.9963 – *Iliad/Play Communications*, paragraphs 36 to 38; Commission decision of 15 July 2019 in case M.9370 – *Telenor/DNA*, paragraphs 68 to 70; Commission decision of 27 November 2018 in case M.8792 – *T-Mobile NL/Tele2 NL*, recitals 255 to 259; Commission decision of 27 July 2018 in case M.8883 – *PPF/Telenor Target Companies*, paragraph 24 to 26; Commission decision of 12 December 2012 in case M.6497 – *Hutchison 3G Austria/Orange Austria*, recitals 68 to 70.

4.15.2. Geographic market definition

(189) In previous decisions, the Commission considered the geographic market for the wholesale supply of access and call termination services on mobile networks to be national in scope,[140] including for Romania.[141]

(190) The Notifying Party agrees with the Commission and considers that the relevant geographic market for the wholesale supply of access and call termination services on mobile networks corresponds to the territory of Romania.

(191) The results of the market investigation did not provide reasons to depart from the Commission's decisional practice.

(192) In light of the above, the Commission considers that, for the purpose of this Decision, the relevant geographic market for the wholesale supply of access and call termination services on mobile networks is the territory of Romania.

4.16. Wholesale supply of access and call origination services on mobile networks

4.16.1. Product market definition

(193) MNOs provide wholesale access and call origination services which enable operators without their own network, namely MVNOs and Service Providers, to have access to one or more of the MNOs' networks in order to provide mobile telecommunications services to end customers. "Full" or "thick" MVNOs maintain their own core infrastructure and use MNOs only for access to a radio network. By contrast, "light" or "thin" MVNOs do not have their own infrastructure and rely entirely on the infrastructure of an MNO.[142]

(194) In previous decisions, the Commission considered network access and call origination to be part of the same product market as both services are considered as key elements required for non-MNOs to be able to provide retail mobile telecommunications services and are generally supplied together.[143]

(195) The Notifying Party considers that the relevant product market to be taken into account is the market for the wholesale supply of access and call origination services on mobile networks.

(196) The results of the market investigation did not provide reasons to depart from the Commission's decisional practice.

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140 Commission decision of 26 October 2020 in case M.9963 – *Iliad/Play Communications*, paragraph 39; Commission decision of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets*, recital 259; Commission decision of 3 July 2012 in case M.6584 – *Vodafone/Cable & Wireless*, paragraph 48; Commission decision of 3 July 2012 in case M.5650 – *T-Mobile/Orange UK*, paragraph 38.

141 Decision of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets*, recital 259.

142 Decision of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets*, recital 244.

143 Commission decision of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets*, recital 248; Commission decision of 3 August 2016 in case M.7978 – *Vodafone/Liberty Global/Dutch JV*, paragraphs 185 to 187; Commission decision of 11 May 2016 in case M.7612 – *Hutchison 3G UK/Telefónica UK*, recitals 296 to 300; 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 UK*, paragraphs 27 to 30; Commission decision of 27 November 2007 in case M.4947 – *Vodafone/Tele2 Italy/Tele2 Spain*, paragraph 15.

(197) In light of the above, the Commission considers that, for the purpose of this Decision, the relevant product market is the market for the wholesale supply of access and call origination services on mobile networks.

4.16.2. Geographic market definition

(198) In previous decisions, the Commission held that the geographic scope of the market for the wholesale supply of access and call origination services on mobile networks national due to regulatory barriers,[144] including for Romania.[145]

(199) The Notifying Party considers that the relevant geographic market for the wholesale supply of access and call origination services on mobile networks corresponds to the territory of Romania.

(200) The results of the market investigation did not provide reasons to depart from the Commission's decisional practice.

(201) In light of the above, the Commission considers that, for the purpose of this Decision, the relevant geographic market for the wholesale supply of access and call origination services on mobile networks is the territory of Romania.

4.17. Wholesale supply of international roaming services

(1) In previous decisions, the Commission found that international roaming services constitute a distinct product market.[146]

(2) The Notifying Party considers that the relevant product market to be taken into account is the market for wholesale supply of international roaming services.

4.17.1.1. The results of the market investigation and the Commission's assessment

(202) The results of the market investigation did not provide reasons to depart from the Commission's decisional practice.

(203) In light of the above, the Commission considers that, for the purpose of this Decision, the relevant product market is the market for the wholesale supply of international roaming services.

4.17.2. Geographic market definition

(204) In previous decisions, the Commission held that the relevant geographic market for the wholesale supply of international roaming is national in scope due to regulatory barriers,[147] including for Romania.[148]

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144 Commission decision of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets*, recitals 249 to 251; Commission decision of 3 August 2016 in case M.7978 – *Vodafone/Liberty Global/Dutch JV*, paragraphs 188 to 190; Commission decision of 11 May 2016 in case M.7612 – *Hutchison 3G UK/Telefónica UK*, recitals 302 to 305; Commission decision of 12 December 2012 in case M.6497 – *Hutchison 3G Austria/Orange Austria*, recitals 74 to 77.

145 Commission decision of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets*, recital 251.

146 Commission decision of 26 October 2020 in case M.9963 – *Iliad/Play Communications*, paragraphs 29 to 31; Commission decision of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets*, recital 264; Commission decision of 2 July 2014 in case M.7018 – *Telefónica Deutschland/E-Plus*, recital 97; Commission decision of 12 December 2012 in case M.6497 – *Hutchison 3G Austria/Orange Austria*, recitals 64 to 67.

(205) The Notifying Party considers that the relevant geographic market for the wholesale supply of international roaming services corresponds to the territory of Romania.

(206) The results of the market investigation did not provide reasons to depart from the Commission's decisional practice.

(207) In light of the above, the Commission considers that, for the purpose of this Decision, the relevant geographic market for the wholesale supply of international roaming services is the territory of Romania.

5. COMPETITIVE ASSESSMENT

5.1. Analytical Framework

(208) 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.

(209) In this respect, a merger may entail horizontal and/or non-horizontal (namely, vertical or conglomerate) 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. Conglomerate effects are those deriving from a concentration where the undertakings concerned are in a relationship which is neither horizontal nor vertical. A concentration may involve all three types of effects. In such a case, the Commission will appraise horizontal and non-horizontal effects in accordance with the guidance set out in the relevant notices, that is to say the Horizontal Merger Guidelines[149] and the Non-Horizontal Merger Guidelines.[150]

(210) In assessing the competitive effects of a merger, the Commission compares the competitive conditions that would result from the notified merger with the conditions that would have prevailed without the merger. In most cases the competitive conditions existing at the time of the merger constitute the relevant comparison for evaluating the effects of a merger. However, in some circumstances,

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147 Commission decision of 26 October 2020 in case M.9963 – *Iliad/Play Communications*, paragraphs 32 to 34; Commission decision of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets*, recital 266; Commission decision of 4 February 2016 in case M.7637 – *Liberty Global/Base Belgium*, recitals 120 to 122; Commission decision of 2 July 2014 in case M.7018 – *Telefónica Deutschland/E-Plus*, recitals 99 to 100; Commission decision of 20 September 2013 in case M.6990 – *Vodafone/Kabel Deutschland*, paragraphs 251 to 252; Commission decision of 12 December 2012 in case M.6497 – *Hutchison 3G Austria/Orange Austria*, recitals 78 and 79; Commission decision of 1 March 2010 in case M.5650 – *T Mobile/Orange UK*, paragraph 35.

148 Commission decision of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets*, recital 266; Commission decision of 2 August 2008 in case M.5148 – *Deutsche Telekom/OTE*, paragraphs 18 to 20.

149 Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings ("Horizontal Merger Guidelines"), OJ C31, 5.2.2004, p. 5.

150 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.

the Commission may take into account future changes to the market that can reasonably be predicted.[151]

5.2. Identification of affected markets

5.2.1. Horizontally affected markets

(211) Based on the market shares submitted by the Notifying Party, the Transaction gives rise to the following horizontally affected markets.

Table 1: Horizontally affected markets in Romania (2020)

	Value			Volume		
	Orange	**TKR**	**Combined**	**Orange**	**TKR**	**Combined**
Retail supply of mobile telecommunications services[152]	[40-50]%	[0-5]%	[40-50]%	[30-40]%	[0-5]%	[40-50]%
Retail supply of fixed telephony services[153]	[0-5]%	[50-60]%	[50-60]%	[0-5]%	[30-40]%	[30-40]%
Retail supply of fixed internet access services	[0-5]%	[10-20]%	[20-30]%	[0-5]%	[10-20]%	[10-20]%
Retail supply of audio visual services[154]	[5-10]%	[10-20]%	[20-30]%	[5-10]%	[10-20]%	[20-30]%
Retail supply of FMC services	-	-	-	[10-20]%	[10-20]%	[30-40]%
Retail supply of business connectivity services	[10-20]%	[20-30]%	[30-40]%	-	-	-
Wholesale supply of leased lines	-	-	-	[0-5]%	[20-30]%	[20-30]%
Wholesale supply and acquisition of TV channels (acquisition side)[155]	[5-10]%	[10-20]%	[20-30]%	[5-10]%	[10-20]%	[20-30]%

5.2.2. Non-horizontally affected markets

(212) In addition, the Transaction gives rise to the following vertically affected markets.

Table 2: Vertically affected markets in Romania (2020; 2019 where indicated)

Upstream markets	**Downstream markets**
Wholesale supply of broadband access services **Volume:** Orange: [0-5]%; TKR: [0-5]%; **Combined: [0-5]%**	**Retail supply of fixed telephony services** **Value:** Orange: [0-5]%; TKR: [50-60]%; **Combined: [50-60]%** **Volume:** Orange: [0-5]%; TKR: [30-40]%; **Combined: [30-40]%**

151 Horizontal Merger Guidelines, paragraph 9; Non-Horizontal Merger Guidelines, paragraph 20.

152 Market shares in value exclude M2M and OTT services; market shares in volume exclude M2M services.

153 Orange is mainly active as FVNO, based on an agreement with TKR (mainly for residential customers); it also does not offer fixed telephony services on a standalone basis.

154 Market shares exclude OTT services.

155 Parties' estimates based on market shares in the market for the retail supply of audio visual services in 2020.

Upstream markets	Downstream markets
	Retail supply of business connectivity services **Value:** Orange: [10-20]%; TKR: [20-30]%; **Combined: [30-40]%**
Wholesale supply of leased lines **Volume:** Orange: [0-5]%; TKR: [20-30]%; **Combined: [20-30]%**	**Retail supply of mobile telecommunications services** **Value:** Orange: [40-50]%; TKR: [0-5]%; **Combined: [40-50]%** **Volume:** Orange: [30-40]%; TKR: [0-5]%; **Combined: [40-50]%**
	Retail supply of business connectivity services **Value:** Orange: [10-20]%; TKR: [20-30]%; **Combined: [30-40]%**
Wholesale supply of call termination services on fixed networks **Value:** Orange: [90-100]%; TKR: [90-100]% **Volume:** Orange: [90-100]%; TKR: [90-100]%	**Retail supply of fixed telephony services** **Value:** Orange: [0-5]%; TKR: [50-60]%; **Combined: [50-60]%** **Volume:** Orange: [0-5]%; TKR: [30-40]%; **Combined: [30-40]%**
	Retail supply of mobile telecommunications services **Value:** Orange: [40-50]%; TKR: [0-5]%; **Combined: [40-50]%** **Volume:** Orange: [30-40]%; TKR: [0-5]9%; **Combined: [40-50]%**
Wholesale supply of termination and hosting of calls to non-geographic numbers Orange […]; TKR […].	**Retail supply of fixed telephony services** **Value:** Orange: [0-5]%; TKR: 55.0%; **Combined: 59.8%** **Volume:** Orange: [0-5]%; TKR: [30-40]%; **Combined: [30-40]%**
	Retail supply of mobile telecommunications services **Value:** Orange: [40-50]%; TKR: [0-5]%; **Combined: [40-50]%** **Volume:** Orange: [30-40]%; TKR: [0-5]%; **Combined: [40-50]%**
Wholesale supply of domestic call transit services on fixed networks (2019) **Volume:** Orange: [0-5]%; TKR: [50-60]%; **Combined: [50-60]%**	**Retail supply of fixed telephony services** **Value:** Orange: [0-5]%; TKR: [50-60]%; **Combined: [50-60]%** **Volume:** Orange: [0-5]%; TKR: [30-40]%; **Combined: [30-40]%**
Supply of global telecommunications services **Value:** Orange: [0-5]0%; TKR: [0-5]%; **Combined: [0-5]%**	**Retail supply of fixed telephony services** **Value:** Orange: [0-5]%; TKR: [50-60]%; **Combined: [50-60]%** **Volume:** Orange: [0-5]%; TKR: [30-40]%; **Combined: [30-40]%**
	Retail supply of mobile telecommunications services **Value:** Orange: [40-50]%; TKR: [0-5]%; **Combined: [40-50]%** **Volume:** Orange: [30-40]%; TKR: [0-5]%; **Combined: [40-50]%**
	Retail supply of business connectivity services **Value:** Orange: [10-20]%; TKR: [20-30]%; **Combined: [30-40]%**
Wholesale supply of internet connectivity services **Value:** Orange: [0-5]%; TKR: [0-5]%; **Combined: [0-5]%**	**Retail supply of business connectivity services** **Value:** Orange: [10-20]%; TKR: [20-30]%; **Combined: [30-40]%**
Wholesale access for call termination on mobile networks **Value:** Orange: [90-100]%; TKR: [90-100]%	**Retail supply of mobile telecommunications services** **Value:** Orange: [40-50]%; TKR: [0-5]%; **Combined: [40-50]%**

Upstream markets	Downstream markets
Volume: Orange: [90-100]%; TKR: [90-100]%	**Volume:** Orange: [30-40]%; TKR: [0-5]%; **Combined: [40-50]%**
	Retail supply of fixed telephony services **Value:** Orange: [0-5]%; TKR: [50-60]%; **Combined: [50-60]%** **Volume:** Orange: [0-5]%; TKR: [30-40]%; **Combined: [30-40]%**
Wholesale access and call origination on mobile networks[156] Orange […]; TKR […].	**Retail supply of mobile telecommunications services** **Value:** Orange: [40-50]%; TKR: [0-5]%; **Combined: [40-50]%** **Volume:** Orange: [30-40]%; TKR: [0-5]%; **Combined: [40-50]%**
Wholesale supply of international roaming services Orange […]; TKR […].	**Retail supply of mobile telecommunications services** **Value:** Orange: [40-50]%; TKR: [0-5]%; **Combined: [40-50]%** **Volume:** Orange: [30-40]%; TKR: [0-5]%; **Combined: [40-50]%**

(213) The Commission notes that both Parties already offer all telecommunications and AV services that are typically offered in bundles to end-customers and both Parties already offer fixed-mobile convergent bundles:

(a) Orange relies on part of TKR's network as well as on its own nascent network to offer all three components of the fixed part of a fixed-mobile bundle (TV, fixed internet and fixed telephony) and on its own mobile network to provide the mobile part.

(b) TKR relies on its own fixed network to offer all three components of the fixed part of a fixed-mobile bundle (TV, fixed internet and fixed telephony) and on TRMC's mobile network to provide the mobile part.

(214) The Commission therefore considers that there is no new conglomerate relationship created by the Transaction.

5.2.3. Conclusion

(215) Each of these potential effects is discussed in turn in the following sections. After setting out the market shares in the relevant markets and possible sub-segments (section 5.3), the Commission will first assess the potential horizontal non-coordinated effects stemming from the Transaction (section 5.4). Then the Commission will assess the potential horizontal coordinated effects of the Transaction (section 5.5). Finally, the Commission will assess the potential vertical effects stemming from the Transaction (section 5.6).

5.3. Market shares

(216) According to the Horizontal Merger Guidelines and the Non-Horizontal Merger Guidelines,[157] in the assessment of the effects of a merger, market shares constitute a

156 Post-Transaction however, Orange is to replace TRMC and host TKR on its network.

157 Horizontal Merger Guidelines, paragraph 14; Non-Horizontal Merger Guidelines, paragraph 24.

useful first indication of the structure of the markets at stake and of the competitive importance of the relevant market players.

5.3.1. *Retail supply of mobile telecommunications services*

(217) Table 3 sets out the Parties' and their main competitors' market shares on the market for the retail supply of mobile telecommunications services in Romania by value and volume for the years 2017 to 2020.

Table 3: Market shares on the market for the retail supply of mobile telecommunications services in Romania (2017-2020)

	2017	2018	2019	2020
Market shares in value (EUR)				
Orange	[30-40]%	[40-50]%	[40-50]%	[40-50]%
TKR[158]	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Combined	***[30-40]%***	***[40-50]%***	***[40-50]%***	***[40-50]%***
Digi	[5-10]%	[5-10]%	[10-20]%	[10-20]%
Vodafone	[30-40]%	[30-40]%	[30-40]%	[30-40]%
TRMC	[10-20]%	[10-20]%	[10-20]%	[10-20]%
Total market	100.0%	100.0%	100.0%	100.0%
Market shares in volume (# of SIMs)				
Orange	[30-40]%	[30-40]%	[30-40]%	[30-40]%
TKR[159]	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Combined	***[40-50]%***	***[40-50]%***	***[40-50]%***	***[40-50]%***
Digi	[10-20]%	[10-20]%	[10-20]%	[10-20]%
Vodafone	[30-40]%	[30-40]%	[30-40]%	[20-30]%
TRMC	[10-20]%	[10-20]%	[10-20]%	[10-20]%
Total market	100.0%	100.0%	100.0%	100.0%

<u>Source</u>: Parties' best estimates based on ANCOM statistical report 2019, competitors' quarterly results and Parties' best estimates for 2020 market shares

(218) Orange is the leading retail supplier of mobile telecommunications services in Romania while TKR only offers this type of services as part of FMC bundles. Orange's market shares in value have increased from [30-40]% in 2017 to [40-50]% in 2020 but decreased in volume from [30-40]% in 2017 to [30-40]% in 2020. TKR's market shares (calculated based on the mobile part of their FMC offers) in value have increased from [0-5]% (volume: [0-5]%) in 2017 to [0-5]% (volume: [0-5]%) in 2020. Combined, the Parties' market shares in value have increased from [30-40]% (volume: [40-50]%) in 2017 to [40-50]% (volume: [40-50]%) in 2020. Meanwhile, Digi has increased its market share in value from [5-10]% (volume: [10-20]%) in 2017 to [10-20]% (volume: [10-20]%) in 2020. Vodafone and TRMC, for their part, have decreased their market shares in value from [30-40]% and [10-20]% (volume: [30-40]% and [10-20]%) in 2017 to [30-40]% and [10-20]% (volume: [20-30]% and [10-20]%) in 2020, respectively. The overall market size has decreased in value (from EUR […] to EUR […]) and in volume (from […] SIMs to […] SIMs) between 2017 and 2020.

158 TKR is not commercially active in this market on a standalone basis, but only through FMC offers. The market shares therefore include the mobile part of TKR's FMC offers.

159 TKR is not commercially active in this market on a standalone basis, but only through FMC offers. The market shares therefore include the mobile part of TKR's FMC offers.

5.3.2. *Retail supply of fixed telephony services*

(219) Table 4 sets out the Parties' and their main competitors' market shares on the market for the retail supply of fixed telephony services in Romania by value and volume for the years 2017 to 2020.

Table 4: Market shares on the market for the retail supply of fixed telephony services in Romania (2017-2020)

	2017	2018	2019	2020
Market shares in value (EUR)				
Orange	[0-5]%	[0-5]%	[0-5]%	[0-5]%
TKR	[60-70]%	[50-60]%	[50-60]%	[50-60]%
Combined	***[60-70]%***	***[60-70]%***	***[50-60]%***	***[50-60]%***
Digi	[10-20]%	[10-20]%	[10-20]%	[20-30]%
Vodafone	[10-20]%	[10-20]%	[20-30]%	[10-20]%
Others	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Total market	100.0%	100.0%	100.0%	100.0%
Market shares in volume (# of lines)				
Orange	[0-5]%	[0-5]%	[0-5]%	[0-5]%
TKR	[40-50]%	[40-50]%	[30-40]%	[30-40]%
Combined	***[40-50]%***	***[40-50]%***	***[40-50]%***	***[30-40]%***
Digi	[30-40]%	[30-40]%	[30-40]%	[30-40]%
Vodafone	[10-20]%	[20-30]%	[20-30]%	[20-30]%
Others	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Total market	100.0%	100.0%	100.0%	100.0%

Source: Parties' best estimates based on ANCOM statistical report 2019, competitors' quarterly results and Parties' best estimates for 2020 shares

(220) Orange is the fourth largest retail supplier of fixed telephony services in Romania while TKR is the leading supplier. Orange's market shares in value have increased from [0-5]% (volume: [0-5]%) in 2017 to [0-5]% (volume: [0-5]%) in 2020. TKR's market share in value have decreased from [60-70]% (volume: [40-50]%) in 2017 to [50-60]% (volume: [30-40]%) in 2020. Combined, the Parties' market shares in value have decreased from [60-70]% (volume: [40-50]%) in 2017 to [50-60]% (volume: [30-40]%) in 2020. Meanwhile, Digi has increased its market shares in value from [10-20]% (volume: [30-40]%) in 2017 to [20-30]% (volume: [30-40]%) in 2020. Vodafone has decreased its market shares in value from [10-20]% in 2017 to [10-20]%, but has increased its market shares in volume from [10-20]% in 2017 to [20-30]% in 2020. The overall market size has decreased in value (from EUR […] to EUR […]) and in volume (from […] lines to […] lines) between 2017 and 2020.

(221) Table 5 sets out the Parties' and their main competitors' market shares on the market for the retail supply of fixed telephony services in Romania on the segment for local/national calls by volume for the years 2017 to 2020.

Table 5: Market shares on the market for the retail supply of fixed telephony services on the segment for local/national calls in Romania (2017-2020)

	2017	2018	2019	2020
Market shares in volume (millions of minutes)				
Orange	[5-10]%	[5-10]%	[5-10]%	[5-10]%
TKR	[40-50]%	[40-50]%	[40-50]%	[30-40]%
Combined	***[50-60]%***	***[50-60]%***	***[50-60]%***	***[40-50]%***
Others	[40-50]%	[40-50]%	[40-50]%	[50-60]%
Total	100.0%	100.0%	100.0%	100.0%

(222) Orange is a small retail supplier of fixed telephony services on the segment for local/national calls, while TKR is among the largest retail suppliers. Orange's market shares in volume have increased from [5-10]% in 2017 to [5-10]% in 2020. TKR's market shares in volume has decreased from [40-50]% in 2017 to [30-40]% in 2020. Combined, the Parties' market shares in volume have decreased from [50-60]% in 2017 to [40-50]% in 2020. Meanwhile, the Parties' competitors' have increased their market shares in volume from [40-50]% in 2017 to [50-60]% in 2020. The overall market size has decreased in volume (from […] to […] minutes) between 2017 and 2020.

(223) Table 6 sets out the Parties' and their main competitors' market shares on the market for the retail supply of fixed telephony services in Romania on the segment for international calls by volume for the years 2017 to 2020.

Table 6: Market shares on the market for the retail supply of fixed telephony services on the segment for international calls in Romania (2017-2020)

	2017	2018	2019	2020
Market shares in volume (millions of minutes)				
Orange	[10-20]%	[10-20]%	[5-10]%	[5-10]%
TKR	[30-40]%	[30-40]%	[20-30]%	[30-40]%
Combined	***[50-60]%***	***[40-50]%***	***[30-40]%***	***[30-40]%***
Others	[40-50]%	[50-60]%	[60-70]%	[60-70]%
Total	100.0%	100.0%	100.0%	100.0%

(224) Orange is a small retail supplier of fixed telephony services on the segment for international calls, while TKR is among the largest retail suppliers. Orange's market shares in volume have decreased from [10-20]% in 2017 to [5-10]% in 2020. TKR's market shares in volume have decreased from [30-40]% in 2017 to [30-40]% in 2020. Combined, the Parties' market shares in volume have decreased from [50-60]% in 2017 to [30-40]% in 2020. Meanwhile, the Parties' competitors have increased their market shares in volume from [40-50]% in 2017 to [60-70]% in 2020. The overall market size has decreased in volume (from […] minutes to […] minutes) between 2017 and 2020.

(225) Orange has a marginal presence on the market for the retail supply of fixed telephony services on the segment for residential customers, while TKR is the largest retail supplier in value and one of the largest in value. Orange's market shares in value […] from 2017 to 2020 but its market shares in volume have increased from [0-5]% in 2017 to [0-5]% in 2020. TKR's market shares in value have decreased from [70-80]% (volume: [40-50]%) in 2017 to [50-60]% (volume: [30-40]%) in 2020. Combined, the Parties' market shares in value have decreased from [70-80]%

(volume: [40-50]%) in 2017 to [50-60]% (volume: [30-40]%) in 2020. Meanwhile, the Parties' competitors have increased their market shares in value from [30-40]% (volume: [50-60]%) in 2017 to [40-50]% (volume: [60-70]%) in 2020. The overall market size has decreased in value (from EUR […] to EUR […]) and volume (from approximately […] to […] lines) between 2017 and 2020.

(226) Table 7 sets out the Parties' and their main competitors' market shares on the market for the retail supply of fixed telephony services in Romania on the segment for non-residential customers by value and volume for the years 2017 to 2020.

Table 7: Market shares on the market for the retail supply of fixed telephony services on the segment for non-residential customers in Romania (2017-2020)

	2017	2018	2019	2020
Shares in value (EUR)				
Orange	[5-10]%	[5-10]%	[10-20]%	[5-10]%
TKR	[40-50]%	[40-50]%	[30-40]%	[30-40]%
Combined	***[50-60]%***	***[50-60]%***	***[40-50]%***	***[40-50]%***
Others	[40-50]%	[40-50]%	[50-60]%	[50-60]%
Total	100.0%	100.0%	100.0%	100.0%
Shares in volume (# of lines)				
Orange	[5-10]%	[10-20]%	[10-20]%	[10-20]%
TKR	[30-40]%	[30-40]%	[30-40]%	[30-40]%
Combined	***[40-50]%***	***[40-50]%***	***[40-50]%***	***[40-50]%***
Others	[50-60]%	[50-60]%	[50-60]%	[50-60]%
Total	100.0%	100.0%	100.0%	100.0%

(227) Orange is a small retail supplier of fixed telephony services on the segment for non-residential customers, while TKR is among the largest retail suppliers. Orange's market shares in value have decreased from [5-10]% in 2017 to [5-10]% in 2020 but its market shares in volume have increased from [5-10]% in 2017 to [10-20]% in 2020. TKR's market shares in value have decreased from [40-50]% (volume: [30-40]%) in 2017 to [30-40]% (volume: [30-40]%) in 2020. Combined, the Parties' market shares in value have decreased from [50-60]% in 2017 to [40-50]% in 2020 but have increased in volume from [40-50]% in 2017 to [40-50]% in 2020. Meanwhile, the Parties' competitors have increased their market shares in value from [40-50]% in 2017 to [50-60]% in 2020 but decreased their market shares in volume from [50-60]% in 2017 to [50-60]% in 2020. The overall market size has decreased in value (from EUR […] to EUR […]) and volume (from […] to […] lines) between 2017 and 2020.

5.3.3. *Retail supply of fixed internet access services*

(228) Table 8 sets out the Parties' and their main competitors' market shares on the market for the retail supply of fixed internet access services in Romania by value and volume for the years 2017 to 2020.

Table 8: Market shares on the market for the retail supply of fixed internet access services in Romania (2017-2020)

	2017	2018	2019	2020
Market shares in value (EUR)				
Orange	[0-5]%	[0-5]%	[0-5]%	[0-5]%
TKR	[20-30]%	[20-30]%	[20-30]%	[10-20]%
Combined	***[20-30]%***	***[20-30]%***	***[20-30]%***	***[20-30]%***
Digi	[40-50]%	[40-50]%	[40-50]%	[50-60]%
Vodafone	[10-20]%	[10-20]%	[10-20]%	[10-20]%
Others	[10-20]%	[10-20]%	[5-10]%	[5-10]%
Total market	100.0%	100.0%	100.0%	100.0%
Market shares in volume (# of connections)				
Orange	[0-5]%	[0-5]%	[0-5]%	[0-5]%
TKR	[20-30]%	[20-30]%	[10-20]%	[10-20]%
Combined	***[20-30]%***	***[20-30]%***	***[20-30]%***	***[10-20]%***
Digi	[40-50]%	[50-60]%	[50-60]%	[60-70]%
Vodafone	[10-20]%	[10-20]%	[10-20]%	[10-20]%
Others	[10-20]%	[10-20]%	[5-10]%	[5-10]%
Total market	100.0%	100.0%	100.0%	100.0%

Source: Parties' best estimates based on ANCOM statistical report 2019, competitors' quarterly results and Parties' best estimates for 2020 market shares

(229) Orange is a small retail supplier of fixed internet access services in Romania while TKR is the second largest retail supplier. Orange's market shares in value have increased from [0-5]% (volume: [0-5]%) in 2017 to [0-5]% (volume: [0-5]%) in 2020. TKR's market shares in value have decreased from [20-30]% (volume: [20-30]%) in 2017 to [10-20]% (volume: [10-20]%) in 2020. Combined, the Parties' market shares in value have decreased from [20-30]% (volume: [20-30]%) in 2017 to [20-30]% (volume: [10-20]%) in 2020. Meanwhile, Digi has increased its market share in value from [40-50]% (volume: [40-50]%) to [50-60]% (volume: [60-70]%) in 2020. Vodafone has decreased its market shares in value from [10-20]% (volume: [10-20]%) in 2017 to [10-20]% (volume: [10-20]%) in 2020. The overall market size has increased both in value (from EUR […] to EUR […]) and in volume (from […] connections to […] connections) between 2017 and 2020.

5.3.4. *Retail supply of audio visual services*

(230) Table 9 sets out the Parties' and their main competitors' market on the market for the retail supply of audio visual services in Romania by value and volume for the years 2017 to 2020.

Table 9: Market shares on the market for the retail supply of audio visual services in Romania (2017-2020)

	2017	2018	2019	2020
Market shares in value (EUR)				
Orange	[0-5]%	[0-5]%	[5-10]%	[5-10]%
TKR	[20-30]%	[20-30]%	[20-30]%	[10-20]%
Combined	***[20-30]%***	***[20-30]%***	***[20-30]%***	***[20-30]%***
Digi	[40-50]%	[40-50]%	[50-60]%	[50-60]%
Vodafone	[10-20]%	[10-20]%	[10-20]%	[10-20]%
Others	[5-10]%	[5-10]%	[5-10]%	[5-10]%
Total market	100.0%	100.0%	100.0%	100.0%
Market shares in volume (# of subscribers)				
Orange	[5-10]%	[5-10]%	[5-10]%	[5-10]%
TKR	[10-20]%	[10-20]%	[10-20]%	[10-20]%
Combined	***[20-30]%***	***[20-30]%***	***[20-30]%***	***[20-30]%***
Digi	[40-50]%	[50-60]%	[50-60]%	[60-70]%
Vodafone	[10-20]%	[10-20]%	[10-20]%	[10-20]%
Others	[5-10]%	[5-10]%	[5-10]%	[5-10]%
Total market	100.0%	100.0%	100.0%	100.0%

Source: Parties' best estimates based on ANCOM statistical report 2019, competitors' quarterly results and Parties' best estimates for 2020 market shares

(231) Orange is the fourth largest retail supplier of fixed audio visual services in Romania while TKR is the second largest supplier. Orange's market shares in value have increased from [0-5]% (volume: [5-10]%) in 2017 to [5-10]% (volume: [5-10]%) in 2020. TKR's market shares in value have decreased from [20-30]% (volume: [10-20]%) in 2017 to [10-20]% (volume: [10-20]%) in 2020. Combined, the Parties' market shares in value have decreased from [20-30]% (volume: [20-30]%) in 2017 to [20-30]% (volume: [20-30]%) in 2020. Meanwhile, Digi has increased its market shares in value from [40-50]% (volume: [40-50]%) in 2017 to [50-60]% (volume: [60-70]%) in 2020. Vodafone has decreased its market shares from [10-20]% (volume: [10-20]%) in 2017 to [10-20]% (volume: [10-20]%) in 2020. The overall market size has increased in value (from EUR […] to EUR […]) and slightly in volume (from […] to […] subscribers) between 2017 and 2020.

(232) Orange and TKR are small retail suppliers of fixed audio visual services on the segment for cable TV in Romania. Orange's market shares in value have increased from [0-5]% (volume: [0-5]%) in 2017 to [0-5]% (volume: [0-5]%) in 2020. TKR's market shares in value have increased from [5-10]% in 2017 to [5-10]% in 2020 but have decreased in volume from [5-10]% in 2017 to [5-10]% in 2020. Combined, the Parties' market shares in value have increased from [5-10]% (volume: [5-10]%) in 2017 to [5-10]% (volume: [5-10]%) in 2020. Meanwhile, Digi has increased its market shares in value from [60-70]% (volume: [60-70]%) in 2017 to [70-80]% (volume: [70-80]%) in 2020. Vodafone has decreased its market shares from [20-30]% (volume: [10-20]%) in 2017 to [10-20]% (volume: [10-20]%) in 2020. The overall market size has increased in value (from EUR […] to EUR […]) and volume (from […] subscribers to […] subscribers) between 2017 and 2020.

(233) Table 10 sets out the Parties' and their main competitors' market on the market for the retail supply of audio visual services on the segment for satellite TV in Romania by value and volume for the years 2017 to 2020.

Table 10: Market shares on the market for the retail supply of audio visual services on the segment for satellite TV in Romania (2017-2020)

	2017	2018	2019	2020
Market shares in value(EUR)				
Orange	[10-20]%	[10-20]%	[10-20]%	[10-20]%
TKR	[50-60]%	[40-50]%	[40-50]%	[40-50]%
Combined	***[60-70]%***	***[60-70]%***	***[60-70]%***	***[60-70]%***
Digi	[20-30]%	[20-30]%	[20-30]%	[20-30]%
Vodafone	[10-20]%	[10-20]%	[5-10]%	[0-5]%
Canal+ (Focusat)	-	-	[5-10]%	[10-20]%
Freesat	-	-	[0-5]%	[0-5]%
Others	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Total market	100.0%	100.0%	100.0%	100.0%
Market shares in volume (# of subscribers)				
Orange	[10-20]%	[10-20]%	[20-30]%	[20-30]%
TKR	[40-50]%	[30-40]%	[30-40]%	[30-40]%
Combined	***[50-60]%***	***[50-60]%***	***[50-60]%***	***[50-60]%***
Digi	[20-30]%	[20-30]%	[20-30]%	[20-30]%
Vodafone	[10-20]%	[10-20]%	[0-5]%	[0-5]%
Canal+ (Focusat)	-	-	[10-20]%	[10-20]%
Freesat	-	-	[0-5]%	[0-5]%
Others	[0-5]%	[5-10]%	[0-5]%	[0-5]%
Total market	100.0%	100.0%	100.0%	100.0%

Source: Parties' best estimates based on ANCOM statistical report 2019, competitors' quarterly results and Parties' best estimates for 2020 shares

(234) Orange is the third largest retail supplier of fixed audio visual services on the segment for satellite TV in Romania while TKR is the largest retail supplier. Orange's market shares in value have increased from [10-20]% (volume: [10-20]%) in 2017 to [10-20]% (volume: [20-30]%) in 2020. TKR's market shares in value have decreased from [50-60]% (volume: [40-50]%) in 2017 to [40-50]% (volume: [30-40]%) in 2020. Combined, the Parties' market shares in value have increased from [60-70]% (volume: [50-60]%) in 2017 to [60-70]% (volume: [50-60]%) in 2020. Meanwhile, Digi has decreased its market shares in value from [20-30]% in 2017 to [20-30]% in 2020 but has increased its market shares in volume from [20-30]% in 2017 to [20-30]% in 2020. Vodafone held market shares in value of [10-20]% (volume: [10-20]%) in 2017 but is absent from the segment in 2020. The overall market size has decreased in value (from EUR […] to EUR […]) and volume (from […] subscribers to […] subscribers) between 2017 and 2020.

(235) With respect to IPTV, Orange is absent from the market for the retail supply of fixed audio visual services on the segment for IP TV in Romania, while TKR is the largest supplier. TKR's market shares in value have increased from [90-100]% (volume: [90-100]%) in 2017 to [90-100]% (volume: [90-100]%) in 2020. Combined, the Parties' market shares in value have increased from [90-100]% (volume: [90-100]%) in 2017 to [90-100]% (volume: [90-100]%) in 2020. Meanwhile, the Parties' competitors have decreased their market shares in value from [5-10]% (volume: [5-10]%) in 2017 to [0-5]% (volume: [0-5]%) in 2020. The overall market size has increased in value (from EUR […] to EUR […]) and volume (from […] to […]) between 2017 and 2020.

(236) Orange and TKR each are small retail suppliers in the market for the retail supply of fixed audio visual services on the segment for OTT services. Orange's market shares in value have decreased from [5-10]% in 2017 to [0-5]% in 2020 but have increased in volume from [0-5]% in 2017 to [0-5]% in 2020. TKR's market shares in value have decreased from [0-5]% (volume: [10-20]%) in 2017 to [0-5]% (volume: [10-20]%) in 2020. Combined, the Parties' market shares in value have decreased from [10-20]% (volume: [10-20]%) in 2017 to [5-10]% (volume: [10-20]%) in 2020. Meanwhile, the Parties' competitors have increased their market shares in value from [80-90]% (volume: [80-90]%) in 2017 to [90-100]% (volume: [80-90]%) in 2020. The overall market size has increased in value (from EUR […] to EUR […]) and volume from […] subscribers to […] subscribers) between 2017 and 2020.

(237) The Parties confirm that, for the years 2017 to 2020, their market shares on the segment for the retail supply of Pay TV services do not differ significantly from their market shares on the overall market for TV services.[160]

(238) The Parties confirm that, for the years 2017 to 2020, their market shares on the hypothetical segments for the retail supply of i) basic Pay TV services; and ii) premium Pay TV services do not differ significantly from their market shares on the overall market for TV services.[161]

(239) Table 11 sets out the sets out the Parties' and their main competitors' market shares on the market for the retail supply of audio visual services on the segment for linear services in Romania by value for the years 2017 to 2020.

Table 11: Market shares on the market for the retail supply of audio visual services on the segment for linear services in Romania (2017-2020)

	2017	2018	2019	2020
Market shares in value (EUR)				
Orange	[0-5]%	[0-5]%	[5-10]%	[5-10]%
TKR	[20-30]%	[20-30]%	[20-30]%	[10-20]%
Combined	***[20-30]%***	***[20-30]%***	***[20-30]%***	***[20-30]%***
Others	[70-80]%	[70-80]%	[70-80]%	[70-80]%
Total	100.0%	100.0%	100.0%	100.0%

(240) Orange is a small retail supplier of audio visual services of audio visual services on the segment for linear services, while TKR is one of the larger suppliers. Orange's market shares in value have increased from [0-5]% in 2017 to [5-10]% in 2020. TKR's market shares in value have decreased from [20-30]% in 2017 to [10-20]% in 2020. Combined, the Parties' market shares in value have decreased from [20-30]% in 2017 to [20-30]% in 2020. Meanwhile, the Parties' competitors have increased their market shares in value from [70-80]% in 2017 to [70-80]% in 2020. The overall market size has increased in value (from EUR […] to EUR […]) between 2017 and 2020.

(241) Orange and TKR both have had a marginal presence in the market for the retail supply of audio visual services on the segment for non-linear services from 2017 to 2020. Orange's market shares in value have decreased from [5-10]% in 2017 to [0-

160 Parties' reply to RFI 10 of 7 July 2021, question 1(a)i.

161 Parties' reply to RFI 10 of 7 July 2021, questions 1(a)i and 1(a)ii.

5]% in 2020. TKR's market shares in value have decreased from [0-5]% in 2017 to [0-5]% in 2020. Combined, the Parties' market shares in value have decreased from [10-20]% in 2017 to [5-10]% in 2020. The Parties' competitors have increased their market shares in value from [80-90]% in 2017 to [90-100]% in 2020. The overall market size has increased in value (from EUR […] to EUR […]) between 2017 and 2020.

5.3.5. *Retail supply of multiple play services*

(242) Table 12 sets out the Parties' and their main competitors' market shares on the market for the retail supply of multiple play services on the FMC segment excluding fLTE technology in Romania by volume for the years 2019 to 2020.

Table 12: Market shares on the market for the retail supply of multiple play services on the FMC segment[162] in Romania (2019-2020)

	2019	2020
Market shares in volume (# of households)		
Orange	[10-20]%	[10-20]%
TKR	[10-20]%	[10-20]%
Combined	***[30-40]%***	***[30-40]%***
Digi	[50-60]%	[50-60]%
Vodafone	[10-20]%	[10-20]%
Total segment	100.0%	100.0%

Source: TKR customer information 2019, Orange customer information 2019, survey conducted by Orange in S2 2019 and Parties' best estimates for 2020

(243) Orange is the third largest retail supplier of multiple play services on the FMC segment excluding fLTE technology in Romania while TKR is the second largest supplier. Orange's market shares in volume have increased from [10-20]% in 2019 to [10-20]% in 2020. TKR's market shares in volume have decreased from [10-20]% in 2019 to [10-20]% in 2020. Combined, the Parties' market shares in volume have decreased from [30-40]% in 2019 to [30-40]% in 2020. Meanwhile, Digi has increased its market shares in volume from [50-60]% in 2017 to [50-60]% in 2020. Vodafone has decreased its market shares in volume from [10-20]% in 2017 to [10-20]% in 2020. The overall market size has not changed significantly in volume (approximately […] households) between 2019 and 2020.

5.3.6. *Retail supply of business connectivity services*

(244) Table 13 sets out the Parties' and their main competitors' market shares on the market for the retail supply of business connectivity services in Romania by value for the years 2017 to 2020.

162 In line with Commission precedents regarding the product market for fixed internet access services, which exclude fixed internet access services provided through mobile networks (i.e., fLTE) from the market, the Parties estimated the market shares for FMC bundles excluding fLTE from the fixed internet access services included in the FMC offer.

Table 13: Market shares on the market for the retail supply of business connectivity services in Romania (2017-2020)

	2017	2018	2019	2020
Market shares in value (EUR)				
Orange	[10-20]%	[10-20]%	[10-20]%	[10-20]%
TKR	[20-30]%	[20-30]%	[20-30]%	[20-30]%
Combined	***[30-40]%***	***[30-40]%***	***[30-40]%***	***[30-40]%***
Digi	[30-40]%	[30-40]%	[30-40]%	[30-40]%
Vodafone	[10-20]%	[10-20]%	[10-20]%	[10-20]%
GTS	-	-	[5-10]%	[0-5]%
Combridge	-	-	[0-5]%	[0-5]%
Others	[5-10]%	[5-10]%	[0-5]%	[0-5]%
Total market	100.0%	100.0%	100.0%	100.0%

Source: Parties' best estimates based on IDC analysis and internal information

(245) Orange is the fourth largest retail supplier of business connectivity services while TKR is the second largest supplier. Orange's market shares in value have increased from [10-20]% in 2017 to [10-20]% in 2020. TKR's market shares in value have increased from [20-30]% in 2017 to [20-30]% in 2020. Combined, the Parties' market shares in value have increased from [30-40]% in 2017 to [30-40]% in 2020. Meanwhile, Digi has decreased its market shares in volume from [30-40]% in 2017 to [30-40]% in 2020. Vodafone has increased its market shares in volume from [10-20]% in 2017 to [10-20]% in 2020. The Parties' other competitors (incl. GTS and Combridge) have increased their market shares in value from [5-10]% in 2017 to [5-10]% in 2020. The overall market size has increased in value (from EUR […] to EUR […]) between 2017 and 2020.

(246) Table 14 sets out the Parties' and their main competitors' market shares on the market for the retail supply of business connectivity services on the segment for broadband access for large customers in Romania in value for the years 2017 to 2020.

Table 14: Market shares on the market for the retail supply of business connectivity services on the segment for broadband access for large customers in Romania (2017-2020)

	2017	2018	2019	2020
Market shares in value (EUR)				
Orange	[0-5]%	[0-5]%	[0-5]%	[5-10]%
TKR	[30-40]%	[30-40]%	[30-40]%	[30-40]%
Combined	***[30-40]%***	***[30-40]%***	***[40-50]%***	***[40-50]%***
Digi	[40-50]%	[40-50]%	[40-50]%	[40-50]%
GTS	-	-	[5-10]%	[5-10]%
Combridge	-	-	[0-5]%	[0-5]%
Others	[10-20]%	[10-20]%	[5-10]%	[5-10]%
Total market	100.0%	100.0%	100.0%	100.0%

Source: Parties' best estimates

(247) Orange is the third largest retail supplier of business connectivity services on the segment for broadband access for large customers in Romania, while TKR is the second largest supplier. Orange's market shares in value have increased from [0-5]% in 2017 to [5-10]% in 2020. TKR's market shares in value have increased from [30-40]% in 2017 to [30-40]% in 2020. Combined, the Parties' market shares in value have increased from [30-40]% in 2017 to [40-50]% in 2020. Meanwhile, Digi has decreased its market shares in value from [40-50]% in 2017 to [40-50]% in 2020.

The Parties' other competitors (incl. GTS and Combridge) have decreased their market shares in value from [10-20]% in 2017 to [10-20]% in 2020. The overall market size has increased in value (from EUR […] to EUR […]) between 2017 and 2020.

(248) Table 15 sets out the Parties' and their main competitors' market shares on the market for the retail supply of business connectivity services on the segment for leased lines in Romania by value for the years 2017 to 2020.

Table 15: Market shares on the market for the retail supply of business connectivity services on the segment for leased lines in Romania (2017-2020)

	2017	**2018**	**2019**	**2020**
Market shares in value (EUR)				
Orange	[10-20]%	[5-10]%	[10-20]%	[5-10]%
TKR	[60-70]%	[50-60]%	[50-60]%	[50-60]%
Combined	***[70-80]%***	***[60-70]%***	***[60-70]%***	***[60-70]%***
GTS	-	-	[20-30]%	[20-30]%
Combridge	-	-	[0-5]%	[0-5]%
Others	[20-30]%	[30-40]%	[5-10]%	[5-10]%
Total market	100.0%	100.0%	100.0%	100.0%

Source: Parties' best estimates based on IDC analysis and internal information.

(249) Orange is the third largest retail supplier of business connectivity services on the segment for leased lines while TKR is the largest supplier. Orange's market shares in value have decreased from [10-20]% in 2017 to [5-10]% in 2020. TKR's market shares in value have decreased from [60-70]% in 2017 to [50-60]% in 2020. Combined, the Parties' market shares in value have decreased from [70-80]% in 2017 to [60-70]% in 2020. Meanwhile, the Parties' competitors (incl. GTS and Combridge) have increased their market shares in value from [20-30]% in 2017 to [30-40]% in 2020. The overall market size has decreased in value (from EUR […] to EUR […]) between 2017 and 2020.

(250) Table 16 sets out the Parties' and their main competitors' market shares on the market for the retail supply of business connectivity services on the segment for VPN services in Romania by value for the years 2017 to 2020.

Table 16: Market shares on the market for the retail supply of business connectivity services on the segment for VPN services Romania (2017-2020)

	2017	**2018**	**2019**	**2020**
Market shares in value (EUR)				
Orange	[10-20]%	[10-20]%	[10-20]%	[10-20]%
TKR	[10-20]%	[10-20]%	[10-20]%	[10-20]%
Combined	***[20-30]%***	***[30-40]%***	***[30-40]%***	***[20-30]%***
Digi	[20-30]%	[20-30]%	[20-30]%	[20-30]%
Vodafone	[30-40]%	[30-40]%	[30-40]%	[30-40]%
GTS	-	-	[0-5]%	[0-5]%
Combridge	-	-	[0-5]%	[0-5]%
Others	[10-20]%	[10-20]%	[5-10]%	[5-10]%
Total market	100.0%	100.0%	100.0%	100.0%

Source: Parties' best estimates based on IDC analysis and internal information.

(251) Orange is the third largest retail supplier for the supply of business connectivity services on the segment for VPN services in Romania, while TKR is the fourth largest supplier. Orange's market shares in value have increased from [10-20]% in 2017 to [10-20]% in 2020. TKR's market shares in value have decreased from [10-

20]% in 2017 to [10-20]% in 2020. Combined, the Parties' market shares in value were at [20-30]% in 2017 and 2020 but were higher in the meantime (2018: [30-40]%; 2019: [30-40]%). Meanwhile, Digi has decreased its market shares in value from [20-30]% in 2017 to [20-30]% in 2020. Vodafone has decreased its market shares in value from [30-40]% in 2017 to [30-40]% in 2020. The Parties' other competitors (incl. GTS and Combridge) have increased their market shares in value from [10-20]% in 2017 to [10-20]% in 2020. The overall market size has decreased slightly in value (from EUR […] to EUR […]) between 2017 and 2020.

5.3.7. *Wholesale supply of leased lines*

(252) Table 17 sets out the Parties' and their main competitors' market shares on the market for the wholesale supply of leased lines in Romania by volume for the years 2017 to 2020.

Table 17: Market shares on the market for the wholesale supply of leased lines in Romania (2017-2020)

	2017	**2018**	**2019**	**2020**
Market shares in volume (# of lines)				
Orange	[0-5]%	[0-5]%	[0-5]%	[0-5]%
TKR	[20-30]%	[20-30]%	[20-30]%	[20-30]%
Combined	***[20-30]%***	***[20-30]%***	***[20-30]%***	***[20-30]%***
Others	[70-80]%	[70-80]%	[70-80]%	[70-80]%
Total market	100.0%	100.0%	100.0%	100.0%

Source: Parties' best estimates based on ANCOM statistical report 2019 and Parties' best estimates for 2020 market shares

(253) Orange's market shares in volume have decreased from [0-5]% in 2017 to [0-5]% in 2020. TKR's market shares in volume have decreased from [20-30]% in 2017 to [20-30]% in 2020. Combined, the Parties' market shares in volume have decreased from [20-30]% in 2017 to [20-30]% in 2020. The overall market size has increased in volume (from […] to […] lines) between 2017 and 2020.

(254) Orange is a small wholesale supplier of leased lines on the segment for trunk services in Romania while TKR's presence is marginal. Orange's market shares in volume have increased from [0-5]% in 2017 to [0-5]% in 2020. TKR's market shares in volume were at [0-5]% in 2017, 2019 and 2020 but were slightly higher in 2018. Combined, the Parties' market shares in volume have increased from [0-5]% in 2017 to [0-5]% in 2020. The overall market size has increased in volume (from […] to […] lines) between 2017 and 2020.

(255) Table 18 sets out the Parties' and their main competitors' market shares on the market for the wholesale supply of leased lines on the segment for termination services in Romania by volume for the years 2017 to 2020.

Table 18: Market shares on the market for the wholesale supply of leased lines on the segment for termination services in Romania (2017-2020)

	2017	2018	2019	2020
Market shares in volume (# of subscribers)				
Orange	[0-5]%	[0-5]%	[0-5]%	[0-5]%
TKR	[30-40]%	[30-40]%	[20-30]%	[20-30]%
Combined	***[30-40]%***	***[30-40]%***	***[30-40]%***	***[30-40]%***
Others	[60-70]%	[60-70]%	[60-70]%	[60-70]%
Total market	100.0%	100.0%	100.0%	100.0%

Source: Parties' best estimates based on ANCOM statistical report 2019 and Parties' best estimates for 2020 shares

(256) Orange is a small wholesale supplier of leased lines on the segment for termination services in Romania, while TKR is among the larger wholesale suppliers. Orange's market shares in volume have decreased from [0-5]% in 2017 to [0-5]% in 2020. TKR's market shares in volume have decreased from [30-40]% in 2017 to [20-30]% in 2020. Combined, the Parties' market shares in volume have decreased from [30-40]% in 2017 to [30-40]% in 2020. The overall market size has increased in volume (from […] to […] subscribers) between 2017 and 2020.

(257) Table 19 sets out the Parties' and their main competitors' market shares on the market for the wholesale supply of leased lines on the segment for leased lines with bandwidth above 2MBit/s in Romania by volume for the years 2017 to 2020.

Table 19: Market shares on the market for the wholesale supply of leased lines on the segment for leased lines with bandwidth above 2 MBit/s in Romania (2017-2020)

	2017	2018	2019	2020
Market shares in volume (# of subscribers)				
Orange	[0-5]%	[0-5]%	[0-5]%	[0-5]%
TKR	[20-30]%	[20-30]%	[20-30]%	[20-30]%
Combined	***[30-40]%***	***[20-30]%***	***[20-30]%***	***[20-30]%***
Others	[60-70]%	[70-80]%	[70-80]%	[70-80]%
Total market	100.0%	100.0%	100.0%	100.0%

Source: Parties' best estimates based on ANCOM statistical report 2019 and Parties' best estimates for 2020 shares

(258) Orange is a small wholesale supplier of leased lines on the segment for leased lines with bandwidth above 2 Mbit/s in Romania, while TKR is among the larger wholesale suppliers. Orange's market shares in volume have decreased from [0-5]% in 2017 to [0-5]% in 2020. TKR's market shares in volume have decreased from [20-30]% in 2017 to [20-30]% in 2020. Combined, the Parties' market shares in volume have decreased from [30-40]% in 2017 to [20-30]% in 2020. The overall market size has increased in volume (from […] to […] subscribers) between 2017 and 2020.

(259) Orange is a small wholesale supplier of leased lines on the segment for leased lines with bandwidth below 2 Mbit/s in Romania, while TKR is among the larger suppliers. Orange's market shares in volume have increased from [0-5]% in 2017 to [0-5]% in 2020. TKR's market shares in volume have increased from [5-10]% in 2017 to [10-20]% in 2020. Combined, the Parties' market shares in volume have increased from [10-20]% in 2017 to [10-20]% in 2020. The overall market size has decreased in volume (from […] to […] subscribers) between 2017 and 2020.

(260) Table 20 sets out the Parties' and their main competitors' market shares on the market for the wholesale supply of leased lines on the segment for active infrastructure in Romania by volume for the years 2017 to 2020.

Table 20: Market shares on the market for the wholesale supply of leased lines on the segment for active infrastructure in Romania (2017-2020)

	2017	2018	2019	2020
Market shares in volume (# of subscribers)				
Orange	[0-5]%	[0-5]%	[0-5]%	[0-5]%
TKR	[30-40]%	[30-40]%	[30-40]%	[20-30]%
Combined	***[30-40]%***	***[30-40]%***	***[30-40]%***	***[30-40]%***
Others	[60-70]%	[60-70]%	[60-70]%	[60-70]%
Total market	100.0%	100.0%	100.0%	100.0%

Source: Parties' best estimates based on ANCOM statistical report 2019 and Parties' best estimates for 2020 shares

(261) Orange is a small wholesale supplier of leased lines on the segment for active infrastructure, while TKR is among the largest wholesale suppliers. Orange's market shares in volume have decreased from [0-5]% in 2017 to [0-5]% in 2020. TKR's market shares in volume have decreased from [30-40]% in 2017 to [20-30]% in 2020. Combined, the Parties' market shares in volume have decreased from [30-40]% in 2017 to [30-40]% in 2020. The overall market size has slightly decreased in volume (from […] to […] subscribers) between 2017 and 2020.

(262) With respect to the segments i) leased lines with traditional interfaces; and ii) Ethernet services with guaranteed bandwidth, the Parties submit to be unable to provide respective market share estimates. However, they confirm they have no reason to believe that their market shares in such segments would differ significantly from their market shares on the market for the wholesale supply of leased lines.[163]

(263) With respect to the segments i) wireless; ii) fibre; and iii) copper lines, the Parties submit to be unable to provide respective market share estimates. However, Orange does not supply copper-based wholesale leased lines while TKR does not supply wireless wholesale leased lines. Both Parties supply fibre wholesale leased lines, which the Parties consider the main segment in the overall market. The Parties confirm they have no reason to believe that their market shares in such segments would differ significantly from their market shares on the overall market for the wholesale supply of leased lines.[164]

(264) Orange and TKR are both absent from the market for the wholesale supply of leased lines on the segment for passive infrastructure in Romania. Consequently, their respective market shares from 2017 to 2020 were null. The overall market size has increased in volume between 2017 and 2020.

163 Parties' reply to RFI 11 of 22 July 2021, question 1(d)i.

164 Parties' reply to RFI 11 of 22 July 2021, question 1(d)ii.

5.3.8. *Wholesale supply and acquisition of TV channels*

Supply side

(265) TKR indicates that it has only marginal activities in the wholesale supply of TV channels – the provision of branded TV to Orange via the […] agreement[165] and very limited supply of TV channels to smaller internet service providers ("ISPs") where TKR is competing with the big channel providers such as ProTV, Clever Media (Look TV), etc. Its share on this market is thus marginal and in any event significantly below 30%.[166]

(266) TKR indicates that its share is below 30% in any plausible segmentations, including in particular in the segment for the wholesale supply of sports TV channels.[167]

(267) With respect to the segments i) linear TV channels; and ii) non-linear TV channels, the Parties submit to be unable to provide respective market share estimates. On the supply side, they further submit that Orange is not active on such market while TKR only supplies linear TV channels with a market share well below 20%.[168]

Acquisition side

(268) Table 21 sets out the Parties' and their main competitors' market shares on the market for the wholesale supply and acquisition of TV channels (acquisition side) in Romania by value and volume for the year 2020.

Table 21: Market shares on the market for the wholesale supply and acquisition of TV channels (acquisition side) in Romania (2020)

		Orange	TKR	Combined	Others	Total market
Overall acquisition of Pay TV channels	*Value*	[5-10]%	[10-20]%	**[20-30]%**	[70-80]%	100%
	Volume	[5-10]%	[10-20]%	**[20-30]%**	[70-80]%	100%
Cable	*Value*	[0-5]%	[5-10]%	**[5-10]%**	[90-100]%	100%
	Volume	[0-5]%	[5-10]%	**[5-10]%**	[90-100]%	100%
Satellite/DTH	*Value*	[10-20]%	[40-50]%	**[60-70]%**	[30-40]%	100%
	Volume	[20-30]%	[30-40]%	**[50-60]%**	[40-50]%	100%
IPTV	*Value*	[0-5]% […]	[90-100]%	**[90-100]%**	[0-5]%	100%
	Volume	[0-5]% […]	[90-100]%	**[90-100]%**	[0-5]%	100%
OTT	*Value*	[0-5]%	[0-5]%	**[5-10]%**	[90-100]%	100%
	Volume	[0-5]%	[10-20]%	**[10-20]%**	[80-90]%	100%

Source: Parties' estimates based on market shares on the market for the retail supply of audio visual services in 2020, Commission's calculations with respect to competitors' market shares and total market based on data provided by the Parties.

(269) In the market for the wholesale supply and acquisition of Pay TV channels (acquisition side), Orange's market shares in value were at [5-10]% (volume: [5-10]%) in 2020. TKR's market shares in value were at [10-20]% (volume: [10-20]%) in 2020. Combined, the Parties' market shares in value were at [20-30]% (volume: [20-30]%) in 2020. The Parties submit that they are not able to estimate the total market size due to a lack of public information.

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165 The […] Agreement is a hosting agreement enabling Orange to access part of TKR's fixed network.

166 Parties' reply to RFI 10 of 7 July 2021, question 1(b)i.

167 Parties' reply to RFI 10 of 7 July 2021, question 1(b)ii.

168 Parties' reply to RFI 11 of 22 July 2021, question 1(e)i.

(270) In the market for the wholesale supply and acquisition of Pay TV channels (acquisition side) on the cable segment, Orange's market shares in value were at [0-5]% (volume: [0-5]%) in 2020. TKR's market shares in value were at [5-10]% (volume: [5-10]%) in 2020. Combined, the Parties' market shares in value were at [5-10]% (volume: [5-10]%) in 2020.

(271) In the market for the wholesale supply and acquisition of Pay TV channels (acquisition side) on the satellite/DTH segment Orange's market shares in value were at [10-20]% (volume: [20-30]%) in 2020. TKR's market shares in value were at [40-50]% (volume: [30-40]%) in 2020. Combined, the Parties' market shares in value were at [60-70]% (volume: [50-60]%) in 2020.

(272) In the market for the wholesale supply and acquisition of Pay TV channels (acquisition side) on the IP TV segment, Orange's market shares in value and volume were […] in 2020. TKR's market shares in value were at [90-100]% (volume: [90-100]%) in 2020. Combined, the Parties' market shares in value were at [90-100]% (volume: [90-100]%) in 2020.

(273) In the market for the wholesale supply and acquisition of TV channels (acquisition side) on the OTT segment, Orange's market shares in value were at [0-5]% (volume: [0-5]%) in 2020. TKR's market shares in value were at [0-5]% (volume: [10-20]%) in 2020. Combined, the Parties' market shares in value were at [5-10]% (volume: [10-20]%) in 2020.

(274) With respect to a segmentation between i) FTA TV channels; ii) and Pay TV channels, the Parties submit that they are not active in the wholesale supply of FTA TV channels as well as that FTA TV is practically inexistent on the retail level in Romania.[169]

(275) With respect to a segmentation between i) basic Pay TV; and ii) premium Pay TV, the Parties submit to be unable to provide such market share estimates but that they have no reason to believe that such market shares would differ significantly from their market shares on the overall market for wholesale and acquisition of TV channels.[170]

(276) With respect to a segmentation by genre, the Parties submit to be unable to provide such market share estimates but that they have no reason to believe that such market shares would differ significantly from their market shares on the overall market for wholesale and acquisition of TV channels.[171]

(277) With respect to the segments i) linear TV channels; and ii) non-linear TV channels, the Parties submit to be unable to provide respective market share estimates. The Parties confirm they have no reason to believe that their market shares on such segments would differ significantly from their market shares on the overall market for wholesale supply and acquisition of TV channels.[172]

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169 Form CO, paragraph 326.

170 Parties' reply to RFI 13 of 23 July 2021, question 1.

171 Parties' reply to RFI 13 of 23 July 2021, question 1.

172 Parties' reply to RFI 11 of 22 July 2021, question 1(e)i.

5.3.9. *Wholesale supply of call termination services on fixed networks*

(278) Both Orange and TKR are active on the market for wholesale supply of call termination services on fixed networks and each have a 100% market share as each individual fixed network constitutes a separate product market.

5.3.10. *Wholesale supply of termination and hosting of calls to non-geographic numbers*

(279) Orange does not derive any revenues from the termination and hosting of calls to non-geographic numbers in Romania. TKR derived from this market revenues amounting to EUR […] in 2017, EUR […] in 2018 and EUR […] euros in 2019.

5.3.11. *Wholesale supply of domestic call transit services on fixed networks*

(280) Orange is absent from the market for the wholesale supply of domestic call transit services on fixed networks, while TKR is the largest supplier. Orange's market shares in volume were […] in 2019. TKR's market shares in volume were at [50-60]% in 2019. Combined, the Parties' market shares in volume were at [50-60]% in 2019. Meanwhile, the Parties' competitors held a market shares in volume of [40-50]% in 2019.

5.3.12. *Supply of global telecommunications services*

(281) Orange has a marginal presence on the market for the wholesale supply of global telecommunications services, while TKR has on presence on such market.

(282) With respect to the segments for i) retail supply of such services; and ii) wholesale supply of such services, the Parties submit to be unable to provide respective market share estimates. However, they confirm that their cumulated market shares in any of such segments would fall below 20%.[173]

(283) With respect to the segments for i) lease of transmission capacity; and ii) provision of related services to third parties, they Parties submit to be unable to provide respective market share estimates. However, they confirm that their cumulated market shares in any of such segments would fall below 20%.[174]

5.3.13. *Wholesale supply of internet connectivity services*

(284) From 2019 to 2020, Orange's presence in the market for the wholesale supply of internet connectivity services has been marginal while TKR has had no presence in such market.

(285) With respect to the segments i) transit services; ii) peering services; iii) Tier-1 transit services; and iv) Tier-2 transit services, the Parties submit to be unable to provide respective market share estimates. However, they confirm that their cumulated market shares in any of such segments would fall below 20%.[175]

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173 Parties reply to RFI 11 of 22 July 2021, questions 1(h)i.

174 Parties reply to RFI 11 of 22 July 2021, question 1(h)ii.

175 Parties' reply to RFI 11 of 22 July 2021, questions 1(g)i and 1(g)ii.

5.3.14. Wholesale supply of access and call termination services on mobile networks

(286) Both Orange and TKR are active on the market for wholesale supply of access and call termination services on mobile networks and each holds a market share of 100% as each individual fixed network constitutes a separate product market.

5.3.15. Wholesale supply of access and call origination services on mobile networks

(287) None of the Parties are active on the market for the wholesale supply of access and call origination services on mobile networks. TKR does not operate a mobile network and Orange is not currently active on this market as it does not host any other operator on its mobile network. Post-Transaction, however, Orange is to replace TRMC and host TKR on its mobile network.[176]

5.3.16. Wholesale supply of international roaming services

(288) TKR is not active on the market for the wholesale supply of international roaming services as it does not operate a mobile network. Orange provides international roaming services in all countries where it is active as an MNO.

5.4. Horizontal assessment

5.4.1. Introduction

(289) 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. In this respect, a merger may entail horizontal and/or vertical effects.[177]

(290) 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. The Commission appraises such effects in accordance with the guidance set out in the relevant notice, that is to say the Horizontal Merger Guidelines.[178]

(291) 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*

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176 As for the possible consequences, for the wholesale market for the supply of access and call origination services on mobile network (on which TRMC is active), of the transfer of the minority shareholding in TRMC from TKR to Orange, the Commission has assessed the possible impact of such minority shareholding on such wholesale market (see paragraph (320), below) and considers that such divestiture by Orange ensures that TRMC remains active on the market as MVNO host.

177 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.

178 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.

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".[179]

(292) Generally, a merger giving rise to such non-coordinated effects would significantly impede effective competition by creating or strengthening of the dominant position of a single firm, one which, typically, would have an appreciably larger market share than the next competitor post-merger.

(293) However, under the substantive test set out in Article 2(2) and (3) of the Merger Regulation, mergers that do not lead to the creation or the strengthening the dominant position of a single firm may create competition concerns in oligopolistic markets. Indeed, the Merger Regulation recognises that in oligopolistic markets, it is all the more necessary to maintain effective competition.[180] 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*."[181]

(294) Paragraph 24 of the Horizontal Merger Guidelines, which sets out the economic rationale underlying non-coordinated anti-competitive effects in horizontal mergers, states that a merger may significantly impede effective competition in a market by removing important competitive constraints on one or more firms. This paragraph furthermore clarifies that the most direct effect of the merger will be the loss of competition between the merging firms. In order to assess whether a notified merger will result in a significant impediment of effective competition on the basis of non-coordinated effects, the Commission therefore needs to analyse primarily the extent of the competitive constraint imposed pre-merger by each of the merging parties on each other. The following sentence of paragraph 24 of the Horizontal Merger Guidelines clarifies that the removal of the rivalry between the parties may have consequences also on the other players, who may find it profitable to increase their prices. The ultimate effect would thus typically be price increases by the merging parties but also by competitors in the relevant market.

(295) The Commission carries out an overall assessment of the likely effects of the Transaction arising from the elimination of important competitive constraints, taking into consideration the overall body of evidence in its file. The conclusion that a transaction leads to a significant impediment of effective competition is reached taking into account the degree to which all the relevant factors, including the ones

179 Horizontal Merger Guidelines, paragraph 24.

180 Merger Regulation, recital 25.

181 Merger Regulation, recital 25. Similar wording is also found in paragraph 25 of the Horizontal Merger Guidelines. 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.

listed in paragraphs 27 - 38 of the Horizontal Merger Guidelines, are present in the case under consideration.

(296) 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. However, not all of these factors need to be present to make significant non-coordinated effects likely and it is not an exhaustive list.[182]

(297) Among the factors listed in the Horizontal Merger Guidelines are included: 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; the fact that the merged entity would be able to hinder expansion by competitors; and the fact that the merger would eliminate an important competitive force.[183]

(298) As regards the elimination of an important competitive force, according to the Horizontal Merger Guidelines, 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.[184] In this respect, paragraph 37 of the Horizontal Merger Guidelines refers to the example of a firm that is a recent entrant on the market, and is expected to exert significant competitive pressure in the future. There may, however, also be other situations where a merger may lead to significant non-coordinated effects by removing an important competitive force.

(299) Finally, the Horizontal Merger Guidelines describe a number of factors, which could counteract the harmful non-coordinated effects of the merger on competition, that is, the likelihood of buyer power, entry, efficiencies and the fact that one of the merging parties is a failing firm ("failing firm defence").

5.4.2. Horizontal non-coordinated effects in the retail supply of mobile telecommunications services

5.4.2.1. The Notifying Party’s view

(300) The Notifying Party submits that the proposed Transaction would not give rise to any competitive concerns in relation to the retail market for the supply of mobile telecommunications services in Romania for the following reasons.

(301) First, the mobile telecommunications market is already mature and the Notifying Party expects it to be saturated within the next few years (2 to 3 years), because the penetration for mobile services has stagnated/decreased in the last years (from 124% in 2018 to 121% in 2020). Furthermore, because it is mature, the market experiences a fierce competition on price, which results in the lowest Average Revenue Per User (“ARPU”) of continental Europe.

(302) Second, Orange and TKR are not close competitors. TKR is only active as an MVNO on the basis of a contract it has with TRMC, and only provides mobile telecommunications services as part of FMC offers. Orange however, is mainly a

182 Horizontal Merger Guidelines, paragraph 26.

183 Horizontal Merger Guidelines, paragraphs 27 et seq.

184 Horizontal Merger Guidelines, paragraph 37.

mobile operator offering standalone mobile services, and genuine mobile operators such as Digi or Vodafone exert very significant competitive constraints on Orange. Vodafone's market positioning is similar to that of Orange (*i.e.* premium/high quality offerings), and Digi which is acting as a maverick player, tends to price more aggressively.

(303) After the proposed Transaction, instead of relying on TRMC's network, TKR will rely on Orange's network and the increment brought about by the Transaction will be minimal ([…]). Therefore, the proposed Transaction will have no impact on the competition structure of the market and Orange will continue to face intense competition.

5.4.2.2. The Commission's assessment

(304) The Commission assessment and investigation have focused on whether the addition of TKR to Orange may cause anticompetitive effects.

Competitive conditions in Romania

(305) In relation to the effects on competition of the combination of TKR and Orange, the Commission first observes that Transaction results in a relatively small market share increment, representing less than [0-5]% ([0-5]% by value and [0-5]% by volume in 2020) of the market for the retail supply of mobile telecommunications services in Romania.

(306) Second, the Transaction will not affect the number of MNOs active on the market, which will remain at four (Orange/TKR, Vodafone, Digi and TRMC). The market shares of merged entity's three competitors will range from [10-20]% to [30-40]%; Vodafone ([30-40]% market share by value, [20-30]% by volume) and Digi ([10-20]% market share by value, [10-20]% by volume) and TRMC ([10-20]% standalone market share by value, [10-20]% by volume).

(307) Third, based on the results of the market investigation, the Parties do not appear to be each other's closest competitors. In fact, the majority of respondents to the market investigation identifies Vodafone and Digi as the closest competitors of both Orange and TKR.[185] Those statements are supported by the rankings that respondents have attributed to the MNOs active in Romania, where the majority of respondents do not rank the Parties next to each other on the main qualitative parameters (*i.e.* price, quality of service, mobile data allowance, discounts and promotions and availability of bundled offers).[186] In addition, the majority of respondents identified Digi as the most aggressive player on the retail mobile market, in terms of pricing and commercial strategy.[187]

(308) All respondents agree on the fact that Romanian mobile users are price-sensitive.[188] This element explains the fact, highlighted by the Parties in their submissions, that Romania has the lowest ARPU in continental Europe. The market investigation further reveals that users of mobile services do switch (a respondent indicated that

185 Replies to Questionnaire Q1 to competitors, questions 40.1 and 40.2.

186 Replies to Questionnaire Q1 to competitors, question 41.

187 Replies to Questionnaire Q1 to competitors, question 42.

188 Replies to Questionnaire Q1 to competitors, question 44.

they often do so) for reasons linked to price and to the quality of the service.[189] In this respect, the majority of respondents agree that there are no major barriers to switching operator.[190]

(309) In general, the market investigation indicated that the Romanian market for retail telecommunications services is characterised by aggressive competition, where "*all operators are regularly offering rebates resulting in the other operators often also offering rebates in turn*",[191] where "*all operators are fighting on the offers battle, all the time*"[192] and where "*each of the operators has sustained and creative commercial campaigns* [and] *there is solid competition on the market*".[193]

Impact of the Transaction on TRMC

(310) The Transaction will have a direct impact on TRMC, for several reasons. First, the Transaction entails the transfer to Orange of a number of convergent customers of TKR (approximately […] users) previously hosted on TRMC's mobile network though an MVNO agreement between TRMC and TKR. Second, that agreement will be novated to Orange following the Transaction, resulting in a loss of wholesale revenues for TRMC. Third, the Transaction creates a structural link between Orange and TRMC, as a consequence of the 30% shareholding that TKR currently holds in TRMC.

(311) Notwithstanding the fact that four MNOs will remain active on the market post-Transaction, the Commission has sought to assess whether the Transaction may nonetheless lead to a reduction of competition as a consequence of a potential weakening of TRMC and/or of the structural link the Transaction will create between Orange and TRMC.

(312) First, through the Transaction, the MVNO agreement currently in place between TRMC and TKR will be novated to Orange. This accounted for approximately […]% of TRMC's 2020 revenues, and approximately […]% of the users hosted on its mobile network, which were hosted on its network on behalf of TKR, *i.e.*, predominantly convergent customers that also subscribed to fixed services with TKR.

(313) With respect to the possibility that the Transaction may weaken TRMC as a competitive force in the retail mobile market in Romania, the majority of respondents to the market investigation expressed negative expectations as to TRMC's business perspectives as a standalone operator after the Transaction. One respondent observed that TRMC "*will lose an important part from its subscribed customers*"[194] while another one stated that "*TRMC as a mobile-only service provider would become insignificant on the market*".[195]

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189 Replies to Questionnaire Q1 to competitors, questions 46, 46.1 and 47.

190 Replies to Questionnaire Q1 to competitors, question 48.

191 Reply to Q1 to competitors, question 51.1.

192 Reply to Q1 to competitors, question 51.1.

193 Reply to Q1 to competitors, question 51.1.

194 Reply to Questionnaire Q1 to competitors, question 83.1.

195 Reply to Questionnaire Q1 to competitors, question 83.1.

(314) However, the Commission first observes that TRMC will not lose any of its own direct mobile customers as a result of the Transaction. It will rather lose wholesale revenues previously received from TKR under the MVNO agreement. As a result, the transfer of the MVNO relationship with TKR to Orange will free up space on TRMC's network, which the Notifying Party argues will increase TRMC's incentive to compete for additional customers, […].[196]

(315) In addition, in order to safeguard its viability as a standalone operator, Deutsche Telekom, the ultimate parent company of TRMC, has provided detailed evidence […]. Deutsche Telekom's claims are all the more realistic that […].[197]

(316) As a result, the Commission considers that, in view of the evidence presented by the Parties, TRMC will not lose an important part of its own customer base, and it will have the capacity to operate and be competitive as a standalone, mobile-only MNO post-Transaction. This conclusion is further supported by the fact that a majority of the respondents to the market investigation confirmed that mobile operators do not necessarily need to offer bundled packages to be competitive.[198]

(317) Second, the Transaction establishes a structural link between Orange and TRMC, as a consequence of the 30% minority shareholding TKR currently holds in TRMC. TRMC has a market share of [10-20]% by value and [10-20]% by volume in 2020 in the retail mobile market in Romania. Had this been a controlling stake, the Transaction would have led to a significant combined share on the retail mobile market in Romania ([50-60]% by value and [50-60]% by volume, with an increment above [10-20]%). However, this minority stake will not give Orange a veto right over TRMC's strategic business decisions, and will therefore not enable Orange to exercise decisive influence over TRMC.

(318) Nevertheless, by virtue of its minority stake in TRMC, Orange will obtain board representation rights, information rights as well as certain veto rights. The Commission considers that the exercise of such rights gives rise to competition concerns in the Romanian retail mobile market.

(319) Firstly, Orange and TRMC are two out of four MNOs in Romania, respectively ranked first and third in value. Through information rights associated with the minority stake in TRMC, Orange would therefore gain access to the strategic knowledge of one of its three main competitors. For example, […].[199] Information on TRMC's future commercial strategies could thus be used by Orange not only to obtain an advantage for its own business but also to make it more difficult for Deutsche Telekom to ensure the viability of and potentially grow TRMC as a standalone MNO, thereby ultimately harming mobile consumers in Romania.[200] Accordingly, the Commission cannot exclude that such information rights may significantly impede competition in the retail mobile market in Romania.

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196 Form CO, paragraph 1300.

197 Form CO, footnote 457. The Notifying Party explains that a completely new IT infrastructure is currently being built for TRMC to allow its stand-alone operation. […].

198 Replies to Questionnaire Q1 to competitors, question 53.

199 Form CO, paragraph 188 and […].

200 In the Form CO, paragraph 1302, it is stated that […].

(320) Secondly, Orange will obtain certain veto rights over matters which, while not conferring decisive influence over TRMC, may nonetheless lead to competition concerns. These include […][201] [202]. The Commission observes that, for example, Orange's veto rights could prevent TRMC from […]. These veto rights may thus give Orange the ability to hamper or prevent the reorganization and restructuring of TRMC […], or its ultimate sale […], thereby potentially threatening the future viability of TRMC as a competitor of Orange.

(321) Thirdly, the financial gains derived from a minority shareholding in a competitor may in themselves raise competition concerns.[203] Indeed, Deutsche Telekom could be deterred from investing in the reorganisation of TRMC, as any investment injected in TRMC would, through this shareholding, also indirectly benefit Orange as the leading competitor in the Romanian mobile market.

(322) Throughout the investigation, market participants consistently expressed concerns in relation to the creation of a structural link between Orange and TRMC. Firstly, the majority of respondents considered that Orange would be able to obtain competitively sensitive commercial information on TRMC. Secondly, the majority of respondents raised concerns that Orange would have the ability to use its shareholding to block important investments by TRMC,[204] to hamper or restrain TRMC from expanding into new products areas[205] or block the acquisition of TRMC by a strategic or private equity buyer, should its restructuring need or lead to such acquisition.[206] This is the case, even though in their replies, they assumed that Orange's would only have board representation proportionate to its shareholding level in TRMC (i.e., less than a majority of the board) and that Orange would only have typical minority protection veto rights but not veto rights over strategic matters.

(323) In the light of the above considerations and of the results of the market investigation, the Commission considers that the structural link between Orange and TRMC would give Orange access to commercially sensitive information about TRMC, it may enable Orange to block or delay the restructuring of TRMC as a standalone, mobile-only business and hamper its viability as a MNO operator, and it may also alter Orange's incentive to compete with TRMC.

(324) Based on the above, the Commission therefore has serious doubts as to the compatibility of the Transaction as originally proposed with the internal market as regards the market for retail mobile telecommunication services.

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201 […].

202 […].

203 Commission Notice on remedies acceptable under Council Regulation (EEC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (OJ C 267, 22.10.2008, p. 1-27) ("Remedies Notice"), paragraph 59.

204 Replies to Questionnaire Q1 to competitors, question 84.1.

205 Replies to Questionnaire Q1 to competitors, question 84.2.

206 Replies to Questionnaire Q1 to competitors, question 84.3.

5.4.3. Horizontal non-coordinated effects in the retail supply of fixed telephony services

5.4.3.1. The Notifying Party's view

(325) The Notifying Party submits that the proposed Transaction would not give rise to any competitive concerns in relation to the retail market for the supply of fixed telephony services in Romania for the following reasons.

(326) First, the Notifying Party submits that Orange and TKR are not close competitors because Orange's own fibre network covers only a very small proportion of the Romanian households (approximately [0-5]%), and Orange is mainly active as a fixed virtual network operator ("FVNO"), largely on the basis of a contract with TKR. TKR however, is the former incumbent owner of the copper network, fixed telephony is one of its traditional activities, and the Transaction will therefore only have a marginal effect on TKR's existing position in the fixed telephony market.

(327) Second, the Notifying Party argues that fixed telephony services are becoming increasingly obsolete in Romania compared with other communications services, due to lack of need or interest. With support from recent reports of the Romanian National Authority for Management and Regulation in Communications ("ANCOM"),[207] the Notifying Party notes that telecommunications operators have diminished their investments in the fixed telephony market. Fixed telephony services accounted for only 9% of the total telecommunications revenues in 2019, and are now typically offered as a mere "add-on" to other services. In fact, TKR's position of number one in the market does not reflect any real market power. […].

5.4.3.2. The Commission's assessment

(328) The Transaction leads to a horizontally affected market in the overall market for the retail supply of fixed telephony services, where the Parties' combined market share is approximately [60-70]% in value, and below [40-50]% in volume. However, the increment brought about by Orange appears marginal (below [5-10]% in value and approximately [0-5]% in volume) due to Orange's limited presence in this market.

(329) The respondents to the market investigation did not raise any concerns with respect to the impact of the Transaction on the market for the retail supply of fixed telephony services.[208] On the contrary, they confirmed the Notifying Party's view that the fixed telephony market is declining in Romania. One respondent noted that"*[r]etail fixed telephony is decreasing every year so we don't expect some gains for Orange in this segment*".[209]

(330) Furthermore, the Commission notes that the Romanian national regulatory authority, ANCOM, has found that "*the fixed telephony market keeps following a downward trend, in terms of both number of access lines, and number of subscribers*"[210], and that the number of fixed access lines has been in decline in the past years, along with the fixed telephony penetration rate per households, and the voice traffic on fixed

207 ANCOM, Electronic communication service users' attitudes – residential clients, survey report 2019, p. 9-11..

208 Replies to Questionnaire Q1 to Competitors, question 86.2.

209 Replies to Q1 to Competitors, question 86.2.1.

210 ANCOM, Annual report 2019, p. 7.

telephony.[211] In addition, the ANCOM also recognizes that Digi is a strong competitor in the market.[212]

(331) Last, based on the market shares in Table 4, the Commission observes that TKR's market share has consistently been decreasing in the past years, and lost almost […] percentage points, both in value and in volume, between 2017 and 2020.

(332) In this context, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market, with respect to the retail market for the supply of fixed telephony services.

5.4.4. *Horizontal non-coordinated effects in the retail fixed internet access services*

5.4.4.1. The Notifying Party's view

(333) The Notifying Party submits that the proposed Transaction would not give rise to any competitive concerns in relation to the retail market for the supply of fixed internet access services in Romania for the following reasons.

(334) First, similarly to the retail fixed market for the supply of fixed telephony, Orange and TKR are not close competitors. Orange provides fixed internet access mostly on the basis of a wholesale access agreement with TKR, and has only very limited market shares (less than [0-5]%). However, as the former incumbent owner of the copper network, TKR's core activity is fixed services.

(335) Second, competition in the market is intense, and other players are imposing significant competitive constraints on TKR. Digi holds the widest network in Romania, covering 93% of Romanian households in 2020, and is largely leading the market with over [50-60]% of the market shares both in value and volume. Vodafone has recently been reinforced with the second largest VHBB network in Romania, and is committed to intense investments to further expand its coverage.

(336) Third, […].

(337) Therefore, the Notifying Party argues that proposed Transaction will not eliminate an important competitive force, but on the contrary, will create a fully integrated fixed player able to compete more efficiently through increased investments in a new generation network, and increase competition in the market.

5.4.4.2. The Commission's assessment

(338) The Transaction leads to a horizontally affected market in the retail market for the supply of fixed internet access services, where the Parties' combined market share is approximately [20-30]% both in value and in volume. However, the increment brought about by Orange is marginal (below [0-5]% both in value and in volume) due to the limited presence of Orange in this market.[213]

211 ANCOM, Statistical data report, first half of 2020 (available in Romanian at: https://statistica.ancom ro/sscpds/public/files/217_ro).

212 ANCOM, Use of telecommunication services – Quantitative reports, February 2019, p. 8..

213 See Table 8 above,

(339) The respondents to the market investigation did not raise any concerns with respect to the impact of the Transaction on the market for the retail supply of fixed internet access services.[214] On the contrary, a significant portion of the respondents think that the Transaction will have positive pro-competitive effects on the market such as decreases in prices, and/or increases in quality of services provided.[215]

(340) In addition, the Commission notes that the Romanian national regulatory authority, ANCOM, has found evidence that Digi exercises competitive constraint with respect to price in the market, because the main reason for choosing fixed internet from Digi is the price.[216] The Commission also observes that Digi is leading the market with more than [50-60]% market share in value and more than [60-70]% in volume. Furthermore, Digi's market share has been increasing in the past years, gaining more than […] percentage point in volume from 2017 to 2020, while TKR's market shares has consistently been decreasing during the same period.[217]

(341) In light of the above, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market, with respect to the retail market for the supply of fixed internet access services.

5.4.5. Horizontal non-coordinated effects in the retail supply of audio-visual services

5.4.5.1. The Notifying Party's view

(342) The Notifying Party submits that the proposed Transaction would not give rise to any competitive concerns in relation to the retail market for the supply of audio-visual services in Romania for the following reasons.

(343) First, since Orange is only a small player in the market, the increment brought about by the Transaction is limited (around [5-10]%), and the proposed Transaction will not modify the structure of competition. Indeed, the market is characterised by the important competitive constraint exerted by Digi. Digi offers good network quality and content, and is the network operator that competes most aggressively on price. It holds the leading position with market shares above [50-60]% both in volume and in value. Following the Transaction, the new entity will hold the second position instead of TKR, and Vodafone will remain the third market player.

(344) Second, the Notifying Party submits that Orange standalone competitive role in the audio-visual market is limited. Indeed, Orange is highly dependent on TKR's network for cable TV, which prevents it from having end-to-end control over customers' experience and limits its abilities to adapt and innovate. Furthermore, even if Orange is more effective in the provision of satellite TV, it is an unpopular and decreasing technology generally used in areas where no cable option is available.

(345) Third, […].

214 Replies to Questionnaire Q1 to competitors, question 86.3.

215 Replies to Questionnaire Q1 to competitors, question 86.3.

216 ANCOM, Use of telecommunication services – Quantitative reports, February 2019, p. 8.

217 See Table 8 above.

(346) For all the above reasons, the Notifying Party argues that the proposed Transaction will not eliminate an important competitive force. On the contrary, it will grant Orange the scale and the capacity to develop and invest as an independent player in the audio-visual sector, for the benefit of Romanian customers.

5.4.5.2. The Commission's assessment

(347) The Transaction leads to a horizontally affected market, given that the Parties' combined market shares on the overall market for the retail supply of AV services (excluding OTT services) were [20-30]% by value and [20-30]% by volume in 2020. The Parties confirmed that their market shares do not differ significantly on the potential segment for the retail supply of Pay AV services, or the potential sub-segments for the retail supply of basic and of premium Pay AV services.

(348) First, the Commission notes that, according to paragraph 18 of the Horizontal Merger Guidelines, in cases where the market share of the undertakings concerned does not exceed 25%, the concentration may be presumed to be compatible with the internal market.

(349) Second, the Commission considers that the Parties were not close competitors pre-Transaction. While TKR is the incumbent fixed telephony operator, Orange is a recent entrant in the fixed markets and has mainly focussed on mobile services. Orange can only offer cable TV in areas covered by its own fibre network (covering only […] or [0-5]% of households) and through wholesale access to TKR's fibre network (covering […] or [30-40]% of households). Moreover, Orange is also […] for the provision of fixed services to the subscribers themselves, as […]. For most of the AV services it supplies (over [70-80]%), Orange relies on satellite TV. On the other hand, TKR relies on its fixed network to provide cable TV (using its own fibre network) and IPTV and on satellite TV in areas where it cannot offer the first two). This was confirmed by the majority of respondents to the market investigation, who named Digi (RCS&RDS) and Vodafone as closest competitors both for Orange[218] and for TKR[219].

(350) Third, the Commission considers that customers would continue to have sufficient possibilities to switch suppliers of retail audio-visual services. In particular, they could turn to Digi with a market share of [50-60]% by value and [60-70]% by volume in 2019, and Vodafone with [10-20]% by value and [10-20]% by volume in 2019, as well as a number of smaller operators.

(351) Finally, the Commission considers that the Transaction will not eliminate an important competitive force. On the one hand, Orange is a relatively small player in the market for the retail supply of AV services, which has only managed to acquire a limited market share since its entry in 2013. It relies on wholesale access to TKR's fixed network for approximately [20-30]% of the households it serves, while for the rest it has to rely on satellite TV, which is a declining technology in Romania.[220] Moreover, Orange's ability to compete aggressively with other operators is limited

[218] Replies to Questionnaire Q3 to Suppliers of TV channels, question 10.1.

[219] Replies to Questionnaire Q3 to Suppliers of TV channels, question 10.2.

[220] Based on ANCOM annual reports for 2011 and 2019, while the percentage of households subscribing to cable TV has increased from 61% to 72% between 2011 and 2019, the percentage of households subscribing to satellite TV has decreased from 38% to 27% in the same time period.

both in terms of price and in terms of channel offering, due to its relatively small size and higher costs due to lack of own fixed network.[221]

(352) On the other hand, TKR's current competitive position also appears to be limited as a standalone player, as DT, its current majority shareholder, […].[222] At the same time, other fixed players like Digi continue to roll-out fibre, which allows them to offer both cable TV and fixed internet services using the same lines and makes them more attractive to end customers. This is reflected both by the decreasing market share of TKR in the past four years (from [20-30]% to [10-20]% in value and from [10-20]% to [10-20]% in volume), and by TKR's internal estimates, that show that close to […] of all customers switching from TKR's AV services to those of a competitor switched to Digi, who has the largest fibre network in Romania.

(353) Based on the above, the Commission considers that the Transaction does not give rise to serious doubts as to its compatibility with the internal market as a result of horizontal non-coordinated effects on the market for the retail supply of AV services in Romania, or any possible narrower affected markets.

5.4.6. *Horizontal non-coordinated effects in the hypothetical market for the retail supply of FMC services*

5.4.6.1. The Notifying Party's view

(354) The Notifying Party submits that the proposed Transaction would not give rise to any competitive concerns in relation to the hypothetical market for the retail supply of FMC services in Romania for the following reasons.

(355) First, the Transaction will not affect the number of national players relying on their own infrastructure, nor change the ranking of the players. Digi, which has been consistently gaining market shares in the past years, will remain the market leader, with a market share above [50-60]% in volume, and continue to exert an important competitive constraint, notably due to its extensive fiber network coverage and its aggressive commercial strategy. The new entity will take the place of TKR, by becoming the second largest operator.

(356) Second, the Notifying Party argues that Orange is not an important competitive force in the market, because it is only an access-seeker with respect to FMC offers, as the fixed part of its FMC services is largely dependent on the wholesale agreement it has with TKR. Orange is therefore in a disadvantaged position compared to actors that are independent in terms of infrastructures, and is not in a position to decide its own network strategy for most of its coverage. If anything, the Transaction will grant Orange with the scale and capacity to increase competition in the market for the benefit of the Romanian customers.

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221 Form CO, paragraphs 979-991. Based on the information provided by the Notifying Party, Orange's offering on cable TV (both via its own and via wholesale access to TKR's fibre network) does neither have the lowest prices, nor the highest number of channels when compared to Digi, Vodafone and TKR. The same is true for the satellite TV offers, with the exception of Orange's high pack, which has twice the price of Digi's high pack (10 EUR instead of 5 EUR), but in turn carries the highest number of channels (182 vs. TKR's 151 and Digi's 142).

222 Form CO, paragraph 992.

5.4.6.2. The Commission's assessment

(357) The Transaction leads to a horizontally affected market, given that the Parties' combined market share on the hypothetical FMC market, including fixed-mobile joint purchasing would be [30-40]% in volume, resulting from the combination of Orange's market share of [10-20]% in volume and TKR's market share of [10-20]% in volume. The merged entity would become a stronger second player on the market, after Digi with a market share of [50-60]% and before Vodafone with a market share of [10-20]%.

(358) First, the Commission notes that, pre-Transaction, both Parties rely on wholesale agreements in order to be able to offer FMC services. On the one hand, TKR offers FMC services based on its own fixed network and on an MVNO agreement with TRMC. Orange on the other hand offers FMC services based on its own mobile network, its limited fixed network and wholesale access to TKR's fixed network via the […] agreement. It therefore relies to a large extent ([60-70]% of its FMC subscribers) on satellite TV for the provision of retail AV services. Therefore, the market shares submitted above might actually overestimate Orange's strength as a supplier of FMC services. When excluding satellite TV, Orange would only have a market share of [5-10]% in volume, while TKR, Digi and Vodafone would have a market share of [10-20]%, [60-70]% and [10-20]% in volume, respectively.[223] However, the Commission will make its assessment taking into account the market shares including satellite TV.

(359) Second, the Commission considers that the Transaction will not eliminate an important competitive force. The Commission notes that FMC services appear to be most successfully developed by fixed operators, which cross-sell mobile services to their fixed customer base. For end-customers, it is easier to switch from a mobile operator to another than to change their provider of fixed services. Moreover, one fixed household can have several mobile subscriptions. Against this background, Orange's ability to compete on the hypothetical market for FMC bundles is somewhat restrained by the fact that it relies on wholesale access to TKR's fixed network and that TKR retained control of the end-to-end customer experience (services sale, installation, after-sales services).[224] Moreover, Orange was not an important player in terms of fixed infrastructure investments, in comparison with Digi and Vodafone, as it started to roll-out its fibre network only in 2019 and has been able to reach only […] households in two years.

(360) Third, the Commission notes that the Parties do not appear to have been particularly close competitors pre-Transaction. Market participants most often named Digi and Vodafone as Orange's closest competitors, and Digi as TKR's closest competitor.[225] Moreover, the respondents to the market investigation do not consider that Orange pushed TKR to lower its prices or offer better commercial conditions for FMC services.[226]

(361) Finally, the Commission considers that the Transaction would allow the merged entity to compete more effectively with Digi and Vodafone, which both rely on their

223 Form CO, paragraph 1036.

224 Form CO, paragraphs 1045 and 1047.

225 Replies to Questionnaire Q1 to Competitors, questions 57.1 and 57.2.

226 Replies to Questionnaire Q1 to Competitors, questions 58 and 58.1.

own networks both for mobile and for fixed services. The Transaction would allow the merged entity to have lower wholesale access costs and lower content costs. Accordingly, the majority of respondents to the market investigation expects the merged entity to price more aggressively[227] and to have a materially different ability and incentive to invest in FMC bundled offers (including investments in content) compared to the two standalone Orange and TKR entities[228] post-Transaction.

(362) Based on the above, the Commission considers that the Transaction does not give rise to serious doubts as to its compatibility with the internal market as a result of horizontal non-coordinated effects on the hypothetical market for the retail supply of FMC services[229].

5.4.7. Horizontal non-coordinated effects in the retail business connectivity services

5.4.7.1. The Notifying Party's view

(363) The Notifying Party submits that the proposed Transaction would not give rise to any competitive concerns in relation to the market for the supply of retail business connectivity services in Romania for the following reasons.

(364) First, customers of business connectivity services are typically large entities with significant buyer power, which often use sophisticated procurement techniques, and generally request for customized services. According to the Notifying Party, it is easy to switch operator and large customers diversify their supplies from several operators to ensure continuity in case of technical problems and to keep significant pressure on their providers.

(365) Second, the Notifying argues that a number of important competitors will continue to restrain the combined entity after the Transaction. Digi is a key player because it has the widest network in Romania, offer the cheapest prices at a good quality, and successfully addresses a large portion of the demand, in particular less sophisticated business connectivity customers. Likewise, Vodafone holds the second largest VHBB network in Romania, and still will retain a relatively high market share ([10-20]%).

(366) Third, according to the Notifying Party, the proposed Transaction will not eliminate an important competitive force in the market, because Orange is largely dependent on third party fixed networks. Indeed, mobile-based services often do not allow to compete for business connectivity services provided to sophisticated customers, because of difficulties to guarantee a quality of service.

5.4.7.2. The Commission's assessment

(367) The Transaction entails the combination of the Parties' activities in retail business connectivity services, leading to a combined market share of approximately [30-40]% in the overall market for such services, with an increment of approximately

227 Replies to Questionnaire Q1 to Competitors, questions 59 and 59.1.

228 Replies to Questionnaire Q1 to Competitors, questions 61 and 61.1.

229 The Commission notes that while Orange offers both fixed multiple-play and FMC services as soft bundles, TKR only offers FMC services as soft bundles. The Parties activities therefore only overlap with regard to FMC services.

[10-20]% by Orange. The situation is the same in relation to the possible sub-segments of broadband access for large customers (combined market share of [40-50]%, with an increment of approximately [5-10]%), VPN services (combined market share of approximately 30%, with an increment of approximately [10-20]%) and leased lines (combined market share of [60-70]%, with an increment of approximately [5-10]%).

(368) In this respect, the Commission considers that the above market shares, taken alone, do not fully reflect the status of competition in the market for retail business connectivity services in Romania.

(369) First, the Commission observes that the Transaction does not remove an important competitive force or even a close competitor of TKR. In fact, as indicated by the Notifying Party, today, Orange is largely dependent on third party networks (TKR and others) to provide business connectivity services.[230] As a competitor responding to the market investigation explains, "*Orange is foremost a mobile network operator and a relatively new entrant in business connectivity. Orange can only offer business connectivity services based on its mobile network (usually not sufficient for business connectivity purposes), its own fiber network (very limited coverage) or wholesale access to the fixed network of other operators*".[231]

(370) In terms of closeness of competition, Orange's closest competitor "*was Vodafone*" (before the latter's acquisition of the fixed network of Liberty Global), while "*now it* [Orange] *may be closer to smaller players such as GTS than to the players with a fixed network of national coverage*".[232] More in general – and this seems to apply regardless of the distinction between broadband access, VPN services and leased lines – the Parties are not seen as close competitors, because competition appears to take place, at different levels, between providers with a fixed network and national coverage, on the one hand, and smaller providers without such network, on the other hand.[233]

(371) In addition, and consistently with the observations on closeness of competition, the majority of competitors responding to the market investigation did not find that TKR had any impact on Orange's prices or commercial terms.[234] This is because "*a customer usually asks a number of providers for quotes for its business connectivity services need. The sophisticated customers compare quality and prices offered. TKR could not have a major impact on the prices or commercial terms offered by Orange as there are many other providers against which both companies compete, including market leader DIGI, Vodafone/Liberty and other, smaller players*".[235]

(372) Based on the above observations, as to the impact of the Transaction on competition, both the majority of competitors and a customer responding to the market

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230 Form CO, paragraph 27.

231 Reply by a competitor to Q1 to competitors, question 62.1.

232 Reply by a competitor to Q1 to competitors, question 62.1.

233 Reply by a competitor to Q1 to competitors, question 62.2: "*TKR can offer business connectivity services based on its own fixed network with national coverage. Thus, its closest competitors are other operators with national coverage such as Digi and Vodafone/Liberty*". See also replies to Q2 to business customers, questions 6.1 and 6.2.

234 Replies to Q1 to competitors, questions 63 and 63.1.

235 Replies to Q1 to competitors, question 63.1.

investigation consider that it is pro-competitive (both in the market for business connectivity services and in its segments).[236] In this respect, the Commission considers that, by combining its activities with TKR's, notably as regards fixed network, the Transaction will allow Orange to become a fully established B2B operator, providing business connectivity services based on its own fixed network. According to a competitor "*in light of the extended reach, it can be assumed that Orange/TKR combined will compete more effectively with the current market leader Digi and other competitors for business connectivity customers. All players including Orange/TKR will try to win new customers*".[237] One of the customers responding to the market investigation indicates that the Transaction will have a pro-competitive effect, because "*Orange is a serious partner, with professional employees and this will be seen in the improvements they will bring*".[238]

(373) With specific respect to business connectivity services provided through leased lines, where the Parties' combined market shares will be at [60-70]%, the Commission observes that such market share seems to be the legacy of TKR's incumbent position, based on a technology that is becoming obsolete, rather than the sign of a stable (or growing) market position.

(374) In fact, TKR's market shares in value have decreased from [60-70]% in 2017 to [50-60]% in 2020. Combined, the Parties' market shares in value have decreased from [70-80]% in 2017 to [60-70]% in 2020 (Orange's market shares in value have decreased from [10-20]% in 2017 to [5-10]% in 2020). Meanwhile, the Parties' competitors (including GTS and Combridge) have increased their market shares in value from [20-30]% in 2017 to [30-40]% in 2020. At the same time, the overall size of the segment for retail business connectivity services through leased lines has decreased in value between 2017 and 2020 (it is now worth EUR […]),[239] while in the same period the overall market for retail business connectivity has grown in size (due to newer technologies, such as broadband and VPN, worth EUR […] EUR […], respectively).[240]

(375) The increasing irrelevance of leased lines as technology is reflected in replies to the market investigation: "*Retail business connectivity customers can and do easily switch between these types of services. In fact, the majority of customers* […] *purchase a mix of all three services or at least broadband access and VPN services. These customers also often purchase custom-made solutions including at least two of these services. In addition, leased lines tend to be replaced by VPN and broadband access services*".[241] The Commission considers that the loss of TKR's market share can also be attributed to normal technical obsolescence, because, as a respondent indicated "*a significant part of TKR's network is based on copper while Digi and Vodafone/Liberty have cable/fiber networks*".[242] For all these reasons, the Commission considers that the Parties' market share is not an indication of market

236 Replies to Q1 to business customers, questions 64 and 64.1.

237 Reply by a competitor to Q1 to competitors, question 64.1.

238 Reply by a competitor to Q2 to competitors, question 27.1

239 Form CO, Table 7.2.

240 Form CO, Tables 7.1 and 7.3.

241 Replies to Q1 to competitors, question 28.1. Replies to Q2 to business customers, question 16.

242 Replies to Q1 to competitors, question 62.2.

power, but rather the legacy of TKR's past as an incumbent and, as such, does not raise competition concerns.

(376) The Commission also considers that the demand side of the market consists of large and sophisticated buyers that would be able to react and turn to alternatives suppliers, should the merged entity increase its prices after the Transaction. The replies to the market investigation, in fact, indicate that business customers switch operators, for reasons relating price and quality levels of the services,[243] and also multi-source such services from various providers (which, in turn are active in all three network technologies).[244] Providers alternative to the merged entity include Digi, Vodafone and smaller players such as Euroweb and DT, through its subsidiaries GTS ([5-10]% market share) and Combridge ([0-5]% market share). Digi is a key player with an approximate [30-40]% market share in value while the new entity will have a [30-40]% market share in value. Vodafone is also a strong player (approximately [10-20]% market share in value), particularly, according to the Notifying Party, as regards high-end customers with complex needs who are sensitive to the fact that Vodafone is part of a global telecommunications group.[245]

(377) Based on the above considerations, the Commission concludes that the proposed Transaction does not raise serious doubts concerning its compatibility with the internal market in relation to the retail market for business connectivity services and segments thereof.

5.4.8. Horizontal non-coordinated effects in wholesale leased lines

5.4.8.1. The Notifying Party's view

(378) The Notifying Party submits that the proposed Transaction would not give rise to any competitive concerns in relation to the market for wholesale leased lines in Romania for the following reasons.

(379) First, the Notifying Party submits that Orange is a trivial player as its leased lines activity is marginal. Its fixed network is nascent and its mobile network is not an efficient alternative. Indeed, mobile networks may only be used in limited situations as mobile technology does not allow for high symmetrical guaranteed bandwidth, low latency or high guaranteed availability.

(380) Second, the wholesale market for terminating segments of leased lines is not regulated because the competition through infrastructures is high. There are 12 operators with a significant network coverage. Therefore, the Parties will not be able to increase their prices in the wholesale market for leased lines as their customers are sophisticated telecommunications operators who could easily transfer their demand to Digi, Vodafone or alternative providers' networks.

(381) Third, the Notifying Party further argues that it is common market practice for leased lines customers to procure leased lines services in the same area from two different suppliers because leased lines performance is improved with redundancy from a second operator (notably to ensure that there no interruption of the service).

243 Replies to Q1 to competitors, questions 65 and 65.1.

244 Replies to Q1 to competitors, questions 67 and 67.1. Replies to Q2 to business customers, question 12.

245 Form CO, paragraph 121.

Customers are therefore able to leverage competition between the different leased lines providers.

5.4.8.2. The Commission's assessment

(382) The Transaction leads to a horizontally affected market in this market, where the parties' combined market share is between approximately [20-30]% and approximately [30-40]%, depending on the segmentation taken into consideration (*i.e.* by network layer, by speed or by active or passive nature of the infrastructure). However, regardless of the segmentation, the increment brought about by Orange appears marginal (between [0-5]% and [0-5]%) due to Orange's limited presence in this market.

(383) The results of the market investigation confirm that there are several alternatives in the wholesale market for leased lines used by mobile telecommunications providers to complete their networks. Replies by competitors (that is, the customers in the wholesale market in question),[246] in fact, indicate among the available alternatives Digi, Vodafone, Euroweb, Prime Telecomm, Direct One, GTS and "*many others including tower companies such as Vantage Towers*".[247] In addition, none of the parties' competitors responding to the market investigation has mentioned that the price level for leased lines is not competitive, with two indicating explicitly that the price is competitive.[248]In addition, throughout the investigation, all market participants but one raised no concerns in relation to the wholesale market for leased lines.[249] To the contrary, in particular, one respondent explained that "[t]*he transaction will not have a major impact on the market for wholesale leased lines. The overlap between the parties is very limited as Orange Romania has only marginal activities in wholesale leased lines given that its fixed network is very limited. Against this background, Orange Romania can by no means be qualified as an important competitive force. Orange Romania and TKR are also not particularly close competitors. The market for wholesale leased lines is competitive and Orange/TKR will continue to face intense competition by Digi, Vodafone/Liberty and other players such as Euroweb, Prime Telecom, S.N. Radiocomunicatii, Direct One, GTS and Combridge* (…). *All players have the incentive to compete fiercely for new customers / business*".[250]

(384) In addition, the Commission observes that customer are usually large telecommunications companies and have therefore significant bargaining power and will thus continue to constrain Orange/TKR.[251]

(385) Lastly, the Commission notes that, specifically for the terminating segments of leased lines, the Romanian national regulatory authority, ANCOM, has found that the market is competitive and thus not regulated this service.[252]

246 Replies to Questionnaire Q1 to competitors, question 72.2.1.

247 Reply to Questionnaire Q1 to competitors, question 72.2.1.

248 Replies to Questionnaire Q1 to competitors, question 72.2.

249 Replies to Questionnaire Q1 to competitors, question 86.8.

250 Reply to Questionnaire Q1 to competitors, question 86.8.1.

251 Reply to Questionnaire Q1 to competitors, question 86.8.1.

252 Reply to Questionnaire Q1 to competitors, question 86.8.1.

(386) For the reasons mentioned above, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market, with respect to the wholesale market for leased lines (and segments thereof) in Romania.

5.4.9. *Horizontal non-coordinated effects in the wholesale supply and acquisition of TV channels (acquisition side)*

5.4.9.1. The Notifying Party's view

(387) The Notifying Party submits that the proposed Transaction would not give rise to any competitive concerns in relation to the market for the wholesale supply and acquisition of TV channels in Romania for the following reasons.

(388) First, using the retail level as a proxy, the Notifying Party submits that their combined share of demand on the overall market for the wholesale supply and acquisition of TV channels is below [20-30]% in volume and in value ([20-30]% by volume and [20-30]% in volume). The increment brought about by Orange in terms of number of subscribers is very limited.

(389) Second, the Notifying Party argues that post-Transaction, the new entity will face strong competition from several other providers. Notably, the market leader Digi acquires all kinds of TV channels, and would remain a key buyer on the market given the magnitude of its customer base which encompasses more than half of Romanian TV customers. Vodafone has a good customer base to [10-20]% of the retail market in volume as well, and there is also a large number of local providers of TV services in Romania.

(390) Third, the Notifying Party further submits that suppliers of TV channels have countervailing market power because they are large key corporations. Additionally, TV providers must have a wide variety TV channels to offer compelling packages and are required by law to include certain public channels in their TV packages.

5.4.9.2. The Commission's assessment

(391) The Transaction will lead to a horizontally affected market, given that the Parties' combined market shares on the acquisition side of the overall market for the wholesale supply and acquisition of TV channels were [20-30]% by value and [20-30]% by volume in 2020. The Parties confirmed that their market shares do not differ significantly on the potential segment for the acquisition of Pay TV channels, or the potential sub-segments for the acquisition of basic and of premium Pay TV channels.

(392) First, the Commission notes that, according to paragraph 18 of the Horizontal Merger Guidelines, in cases where the market share of the undertakings concerned does not exceed 25%, the concentration may be presumed to be compatible with the internal market.

(393) Second, the Commission considers that the Parties are not close competitors as buyers of TV channel distribution rights. The majority of respondents to the market

investigation submitted that Digi and Vodafone were the closest competitors of both Orange and TKR.[253]

(394) Third, Orange had only a limited importance as an acquirer of TV channels, since, in addition to having a more limited number of subscribers than Digi, TKR and Vodafone, it only acquired TV channels outside the […] agreement, so only for distribution via satellite and its own fibre network.

(395) One TV broadcaster submitted that the merged entity would have a stronger bargaining position than its limited combined market share on the acquisition side would suggest. This is in particular because the merged entity would create a dominant position in the potential segment for distribution via satellite, with a combined market share of [50-60]% by number of TV subscribers to satellite services. Moreover, the Transaction would eliminate an important competitive force in a market that is already highly concentrated. Third, the merged entity will benefit of additional stability of the subscriber base, which will strengthen its negotiation power versus broadcasters, because customers would be locked in long-term triple-play contracts.[254]

(396) The Commission notes that, based on the market shares provided by the Notifying Party, the Transaction would lead to a combined market share of [60-70]% in value and [50-60]% in volume on the potential segment of acquisition of TV channels for the distribution via satellite, with an increment of [10-20]% and [20-30]%, respectively. Moreover, the merged entity would have a market share of [90-100]% in value and [90-100]% in volume on the potential segment of acquisition of TV channels for the distribution via IPTV, based on TKR's market shares pre-Transaction (since Orange is not active in this potential segment).[255]

(397) However, the Commission considers that these high market shares do not translate in a strong bargaining position, for the following reasons.

(398) First, distributors of satellite TV services compete with distributors relying on other technologies for the acquisition of TV channels. Moreover, cable is the distribution technology serving the largest share of TV subscribers in Romania. The majority of households subscribes to cable TV (72%), while satellite (27%) and IPTV (less than 1%) play a secondary role. Moreover, while the percentage of households subscribing to cable TV has increased from 61% to 72% between 2011 and 2019, the percentage of households subscribing to satellite TV has decreased from 38% to 27% in the same time period.[256] This is due to the fact that all main fixed operators in Romania have engaged into fibre roll-out, leading to an increasing number of households having access to cable networks. This is further reflected by the fact that all respondents to the market investigation identified cable as the most important distribution technology for them as a supplier of TV channels.[257]

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253 Replies to Questionnaire Q3 to Suppliers of TV channels, questions 10.1 and 10.2.

254 Reply to Questionnaire Q4 – Commitments market test, question 9.

255 The Notifying Party's reply to RFI 10, question 1(b)ii.

256 The Notifying Party's reply to RFI 10, question 2(a)i, based on data from ANCOM annual reports of 2011 and 2016-2019.

257 Replies to Questionnaire Q3 to Suppliers of TV channels, question 13.

(399) Second, the Commission notes that only a small percentage of Romanian households only relies on satellite TV services and cannot chose an alternative distribution technology. The Romanian market has a large fixed network coverage and in particular fibre network coverage. Based on the Notifying Party's estimates, Digi covers [90-100]% of Romanian households with fibre, Vodafone covers [40-50]% with DOCSIS, TKR covers [40-50]% with fibre and [40-50]% with DSL and Orange covers [0-5]% with fibre. Therefore, a maximum of [5-10]% of households could only rely on satellite TV.[258] Moreover, even for these households, alternative suppliers of satellite TV, such as Focus Sat and M7/Canal+, will remain active on the market post-Transaction.

(400) Third, the Commission notes that the acquisition of distribution rights for TV channels appears to be negotiated together for all technologies. Moreover, for suppliers of TV channels, the main parameter in the negotiations is price, while infrastructure does not appear to be particularly relevant. All respondents to the market investigation confirmed that, when negotiating distribution rights, the technology used by a distributor is not relevant, but rather the number of subscribers.[259] Moreover, no channel supplier that responded to the market investigation indicated having separate revenues streams or different prices according to the distribution infrastructure.[260] Accordingly, only two respondents to the market investigation suggested that the merged entity would be able to leverage its position in satellite when negotiating TV rights, allowing it to extract lower prices or better terms than its competitors. The majority of respondents submitted that even if the merged entity would be able to negotiate better volume based pricing due to its increased size, the leverage position would not be significant.[261]

(401) Fourth, the Commission notes that even if the merged entity were be able to negotiate better prices for the acquisition of TV channels, this would not lead to higher prices for end customers. The majority of respondents confirmed that a sufficient number of alternative acquirers of TV channels would remain[262] and that the merged entity would face sufficient competition downstream, although it was not clear whether the Transaction would lead to lower prices for end customers.[263]

(402) Finally, regarding the claim that the merged entity would have a stronger negotiating position because it would be able to lock in customers in long-term triple-play contracts, the Commission notes that both Parties already offer FMC services today, and will likely continue to do so post-Transaction. Moreover, as noted above in paragraph (243), this is also true for the other major acquirers of TV channels, such as Digi and Vodafone. Therefore, the fact that the Parties might be able to lock in customers with FMC offers does not appear to have an effect going beyond the increased size of the merged entity.

(403) Based on the above, the Commission considers that the Transaction does not give rise to serious doubts as to its compatibility with the internal market as a result of

258 The Notifying Party's reply to RFI 10, question 2(a)i.

259 Replies to Questionnaire Q3 to Suppliers of TV channels, question 11.

260 Replies to Questionnaire Q3 to Suppliers of TV channels, question 12.

261 Replies to Questionnaire Q3 to Suppliers of TV channels, questions 14 and 14.1.

262 Replies to Questionnaire Q3 to Suppliers of TV channels, questions 16 and 16.1.

263 Replies to Questionnaire Q3 to Suppliers of TV channels, questions 15 and 15.1.

horizontal non-coordinated effects on the acquisition side of market for the wholesale supply and acquisition of TV channels, or any possible narrower affected markets.

5.5. Horizontal coordinated effects

5.5.1. Introduction

(404) To assess coordinated effects, the case law[264] and the Horizontal Merger Guidelines,[265] require proof that the merger will make coordination more likely, more effective and more sustainable. The Commission's assessment therefore focuses on the changes in terms of these factors that the Transaction will bring about. The Commission's assessment will focus on the following factors: (i) the ability to reach terms of coordination; (ii) whether such coordination would be sustainable, based on an assessment of: (a) the ability to monitor deviations from the terms of coordination; (b) the existence of a credible deterrent mechanism if deviation is detected; and (c) 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.

5.5.2. Horizontal coordinated effects in the retail supply of mobile telecommunications services

5.5.2.1. The Notifying Party's view

(405) The Notifying Party submits that there is no plausible risk of horizontal coordination in the retail market for the supply of mobile telecommunications services.

(406) The Notifying Party notes that the market is characterized by an important asymmetry in the suppliers' market shares. After the Transaction, the new entity's market share will be higher than the share held by the second largest operator in the market (Vodafone), by more than […] percentage points, and higher than the market share of the third (TRMC) and fourth (Digi) operators, by more than […] percentage points in value, and […] percentage points in volume. According to the Party, the asymmetric market structure contributes to making it more difficult for the operators to reaching terms of coordination, and due to the very limited overlap brought about (less than [5-10]%), the Transaction will have no impact on the current asymmetry.

(407) In addition, the Notifying Party argues that any hypothetical coordination would not be sustainable, because of the high complexity of the market in terms of tariffs and offerings. There are several providers active in the market, that will remain so after the Transaction (Vodafone, TRMC, Digi, Lycamobile and the new entity), as well as a large diversity of offerings (e.g. technology, price, content, and functionalities), which participates in making the monitoring of competitors' prices information difficult. For instance, operators do not generally charge a single price for the whole duration of the contract, but often offer different pricing structures depending on the customers' situation.

264 Case C-413/06 P, *Bertelsmann AG and Sony Corporation of America v Independent Music Publishers and Labels Association* (Impala) [2008] ECRI-4951; Case T-342/99, *Airtours v Commission* [2002] ECR II-2585.

265 Horizontal Merger Guidelines, paragraphs 39-57.

5.5.2.2. The Commission's assessment

(408) During the Commission's investigation, none of the market participants has raised any concern with respect to the horizontal coordinated effects of the Transaction on the market for the retail supply of mobile telecommunications services. However, the Commission considers that if a number of factors appear to make coordination unsustainable, coordination cannot be fully excluded in the present case.

(409) First, the market shares of the parties and of the competitors remaining on the market are (and will remain) asymmetric, which makes it difficult for them to align their interests and reach a common strategy. In fact, the Parties' combined market share is above [40-50]% both in value and in volume, while the competitors' market shares are substantially different (Vodafone: [30-40]% both in volume and in value; TRMC: [10-20]% in volume, [10-20]% in value; Digi: [10-20]% in volume, [10-20]% in value).[266]

(410) Second, although a certain degree of transparency in the market cannot be excluded, for instance due to the possibility to access rivals' retail offers on their website, the Commission notes that the presence of regular commercial and loyalty offers limit this transparency.[267] There is also no evidence to suggest that the Transaction will alter the existing degree of transparency.

(411) Third, the Commission observes that the Romanian retail market for the supply of mobile telecommunications services is characterised by a relatively high competition which led to prices and an average revenue per user ("ARPU") that are among the lowest in Europe.[268] Additionally, the Commission notes that, by already adopting an aggressive and disruptive behaviour with respect to prices, Digi acts as an independent player and a maverick competitor, which further weakens the sustainability of any hypothetic coordination in the market.

(412) However, as already mentioned in the assessment of the horizontal non-coordinated effects in the retail supply of mobile telecommunications services, the Commission further observes that the Transaction establishes a structural link between Orange and TRMC, as a consequence of the 30% minority shareholding TKR currently holds in TRMC. The Commission notes that structural links may help in aligning incentives among the coordinated firms.[269]

(413) The Commission concludes that the Transaction may be conducive to coordination in the retail market for the supply of mobile telecommunications services in Romania, notably due to the creation of a structural link between Orange and one of its main competitors. However, the Commission also concludes that, if this factor alone may facilitate coordination, there is not sufficient evidence to find that the proposed transaction would give rise to serious doubts as a result of coordinated effects. In addition, the Commission notes insofar as the proposed Commitments offered by the Parties (discussed in detail in sections 6 and 7 below) will ensure that the transaction will not create a structural link between Orange and TRMC, they will effectively address any potential risk of coordinated effects resulting from the

266 See Table 3 above.

267 Form CO, paragraphs 924 to 928.

268 Form CO, paragraph 628.

269 Horizontal Merger Guidelines, paragraph 48.

proposed Transaction in the retail market for the supply of mobile telecommunications services in Romania.

5.5.3. *Horizontal coordinated effects in the retail supply of fixed telephony services*

5.5.3.1. The Notifying Party's view

(414) The Notifying Party submits that there is no plausible risk of horizontal coordination in the retail market for the supply of fixed telephony services.

(415) The Notifying Party notes that the market is characterized by an important asymmetry in the market operators' market shares. After the Transaction, the new entity's market shares will be higher than the number two in the market (Digi), and the number three (Vodafone), by more than […] percentage points in value. According to the Party, the market structure participates in making it more difficult for the operators to reaching terms of coordination, and due to the very limited overlap brought about (less than [5-10]%), the Transaction will have no impact on the current asymmetry.

(416) In addition, the Notifying Party argues that most of the providers active on the market have a number of different offerings in relation to fixed telephony and that such a diversity of offerings meaning that suppliers would not be able to monitor deviations. Monitoring is further complicated, the Notifying Party argues, by the fact that there is no full transparency as regards the loyalty offers or the retention offers that operators make to their existing customers in an effort to prevent the customer to switch to an alternative operator. The Notifying Party also argues that it would be difficult to set up an effective deterrent mechanism, due to the characteristics of the market (*e.g.* low margins and ARPU, presence of aggressive competitors).

(417) Finally, the Notifying Party highlights the fact that the demand for fixed telephony services has been steadily decreasing in the last year, to the point that fixed telephony services are now offered as "add-on" to other services. Therefore, according to the Notifying Party, the current situation of the market is not sufficiently stable to make coordination likely.

5.5.3.2. The Commission's assessment

(418) During the Commission's investigation, no market participant raised any concern with respect to the horizontal coordinated effects of the Transaction on the market for the retail supply of fixed telephony services. Furthermore, the Commission considers that a number of factors make coordination unsustainable, and therefore unlikely.

(419) First, the market shares of the parties and of the competitors remaining on the market are (and will remain) asymmetric, which makes it difficult for them to align their interests and reach a common strategy. In fact, the Parties' combined market share is approximately [60-70]% in value and approximately [30-40]% in volume, while the competitors' market shares are substantially different (Digi: [30-40]% in volume,

[20-30]% in value; Vodafone: [20-30]% in volume, [10-20]% in value; other operators [0-5]%).[270]

(420) Second, as already observed above in the Commission's assessment of the horizontal non-coordinated effects in the retail market for the supply of fixed telephony services, the Commission notes that the Romanian national regulatory authority, ANCOM, has found that "*the fixed telephony market keeps following a downward trend, in terms of both number of access lines, and number of subscribers*"[271], and that the number of fixed access lines has been in decline in the past years.[272] In addition, the ANCOM also recognizes that Digi is a strong actor in the market,[273] and the Commission observes that TKR's market share has consistently been decreasing in the past years.[274]

(421) In addition to the fact that, by adopting an aggressive and disruptive behaviour with respect to prices, Digi acts as an independent player and a maverick firm, the overall market features would weaken the sustainability of any hypothetic coordination in the market.

(422) The Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to horizontal coordinated effects in the retail market for the supply of fixed telephony services in Romania.

5.5.4. Horizontal coordinated effects in the retail fixed internet access services

5.5.4.1. The Notifying Party's view

(423) The Notifying Party submits that there is no plausible risk of horizontal coordination in the retail market for the supply of fixed internet services.

(424) The Notifying Party notes that the market is characterised by Digi's leading position, and an important asymmetry in the market operators' market shares. Digi's market shares are currently higher than the number two in the market (TKR), and the number three (Vodafone), by more than […] percentage points. According to the Party, the market structure participates in making it more difficult for the operators to reaching terms of coordination, and due to the very limited overlap brought about (less than [0-5]%), the Transaction will have no impact on the current asymmetry.

(425) In addition, the Notifying Party notes that any hypothetical coordination would not be sustainable, because the market for fixed internet access lacks transparency, notably with regards to loyalty offers and promotions. In addition to the important number and variety of offers, it participates to making the monitoring of deviations very difficult. The Notifying further argues that the characteristics of the market (*e.g.* very low prices, presence of aggressive competitors) prevent the implementation of a sufficiently severe deterrent mechanism.

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270 See Table 4 above.

271 ANCOM, Annual report 2019, p 7.

272 ANCOM, Statistical data report, first half of 2020 (available in Romanian at: https://statistica.ancom ro/sscpds/public/files/217_ro).

273 ANCOM, Use of telecommunication services – Quantitative reports, February 2019, p8.

274 See Table 4 above.

5.5.4.2. The Commission's assessment

(426) During the Commission's investigation, no market participant raised any concern with respect to the horizontal coordinated effects of the Transaction on the market for the retail supply of fixed internet access services. Furthermore, the Commission considers that a number of factors make coordination unsustainable and, therefore, unlikely in the present case.

(427) First, the market shares of the parties and of the competitors remaining on the market are (and will remain) asymmetric, which makes it difficult for them to align their interests and reach a common strategy. Indeed, after the Transaction, Digi will remain the leading player with more than [50-60]% market shares both in value and in volume, while the other operators' market shares will remain far behind (new entity: [10-20]% in volume, [20-30]% in value; Vodafone: [10-20]% in volume, [10-20]% in value; other operators [5-10]%).[275]

(428) Second, although a certain degree of transparency in the market cannot be excluded, for instance due to the possibility to access rivals' retail offers on their website, the Commission notes that the presence of regular commercial and loyalty offers limit this transparency.[276] There is also no evidence to suggest that the Transaction will alter the existing degree of transparency.

(429) Third, the Commission observes that the Romanian retail market for the supply of internet access services is characterised by a relatively high competition which led to prices and an average spend per user ("ASPU") that are among the lowest in Europe.[277] Additionally, the Commission notes that, by already adopting an aggressive and disruptive behaviour with respect to prices, Digi acts as an independent player and a maverick firm, which further weakens the sustainability of any hypothetic coordination in the market.

(430) The Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to horizontal coordinated effects in the retail market for the supply of fixed internet access services in Romania.

5.5.5. Horizontal coordinated effects in the retail supply of audio-visual services

5.5.5.1. The Notifying Party's view

(431) The Notifying Party submits that there is no plausible risk of horizontal coordination in the retail market for the supply of audio-visual services.

(432) The Notifying Party notes that the market is characterised by Digi's leading position, and an important asymmetry in the market operators' market shares. Digi's market shares are currently higher than the number two in the market (TKR), and the number three (Vodafone), by more than […] percentage points. According to the Party, the market structure participates in making it more difficult for the operators

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275 See Table 8 above.

276 Form CO, paragraphs 839 to 842.

277 Commission decision of 18 November 2020 - *Cases RO/2020/2275 and RO/2020/2276 – markets for wholesale local and central access provided at a fixed location in Romania - Commission Comments pursuant to Article 7(3) of Directive 2021/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services*, p.8.

to reaching terms of coordination, and due to the limited overlap brought about ([5-10]% in value and [5-10]% in volume), the Transaction will have no impact on the current asymmetry.

(433) In addition, the Notifying Party argues that any hypothetical coordination would not be sustainable, because of the high complexity of the market in terms of tariffs and offerings. There is a large number of providers active in the market, that will remain so after the Transaction, as well as a large diversity of offerings (e.g. technology, price, content, and functionalities), which participates in making the monitoring of competitors' prices information difficult. The Notifying Party stresses that the Parties had difficulties themselves in collecting the data for the purpose of the notification.

5.5.5.2. The Commission's assessment

(434) During the Commission's investigation, none of the market participants has raised any concern with respect to the horizontal coordinated effects of the Transaction on the market for the retail supply of audio-visual services. Furthermore, the Commission considers that a number of factors make coordination unsustainable.

(435) First, the market shares of the Parties and of the competitors remaining on the market are (and will remain) asymmetric, which makes it difficult for them to align their interests and reach a common strategy. Indeed, after the Transaction, Digi will remain the leading player with more than [50-60]% market shares both in value and in volume, while the other operators' market shares will remain far behind (new entity: [20-30]% in volume, [20-30]% in value; Vodafone: [10-20]% in volume, [10-20]% in value; Canal+: [0-5]%; other operators [0-5]%).[278]

(436) Second, although a certain degree of transparency in the market cannot be excluded, for instance due to the possibility to access rivals' retail offers on their website, the Commission notes that the important variety of offers which exist on the market limit this transparency.[279] There is also no evidence to suggest that the Transaction will alter the existing degree of transparency.

(437) Third, The Commission observes that, by already adopting an aggressive and disruptive behaviour with respect to prices, Digi acts as an independent player and a maverick firm, which further weakens the sustainability of any hypothetic coordination in the market.[280]

(438) The Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to horizontal coordinated effects in the retail market for the supply of audio-visual services in Romania.

278 See Table 9 above.

279 Form CO, paragraphs 1493 to 1499; Annex 3, 4 and 30 to the Form CO.

280 Form CO, paragraphs 1513; Annex 30 to the Form CO.

5.5.6. *Horizontal coordinated effects in the retail supply of FMC services*

5.5.6.1. The Notifying Party's view

(439) The Notifying Party submits that there is no plausible risk of horizontal coordination in the retail market for the supply of FMC services.

(440) The Notifying Party notes that the market is characterised by Digi's leading position, and an important asymmetry in the market operators' market shares. After the Transaction, the gap between Digi and the new entity will be more than […] percentage points, and this gap will be even more important between Digi and Vodafone (over […] percentages points). In the same manner, the Notifying Party notes that the gap between the new entity and Vodafone will also be significant (approximately […] percentage points). According to the Party, the market structure participates in making it more difficult for the operators to reaching terms of coordination.

(441) In addition, the Notifying Party argues that the demand and supply for FMC services in Romania are not stable. Indeed, the demand has been increasing significantly and the penetration rate, which was of 18% in 2015 and 26% in 2019, is expected to reach 40% in 2024. Operators are also heavily investing in new technologies to improve their offer and gain market shares. Furthermore, the Notifying Party notes that FMC services are usually sold as soft bundle and that there is no standard offer, leading to a complexity in terms of tariffs and offerings, which increases the difficulty for the operators to reaching terms of coordination.

5.5.6.2. The Commission's assessment

(442) During the Commission's investigation, none of the market participants has raised any concern with respect to the horizontal coordinated effects of the Transaction on the market for the retail supply of FMC services. Furthermore, the Commission considers that a number of factors make coordination unsustainable and, therefore, unlikely in the present case.

(443) First, after the Transaction, the market shares of the parties and of the competitors remaining on the market will be asymmetric, which makes it difficult for them to align their interests and reach a common strategy. Indeed, after the Transaction, Digi will remain the leading player with [50-60]% market shares in volume, higher than the other operators' market shares by at least […] percentage points (new entity: [30-40]% in volume; Vodafone: [10-20]% in volume). [281]

(444) Second, although a certain degree of transparency in the market cannot be excluded, for instance due to the possibility to access rivals' retail offers on their website, the Commission notes that the presence of regular commercial and loyalty offers, combined with the lack of transparency in the standalone markets involved limit this transparency.[282] There is also no evidence to suggest that the Transaction will alter the existing degree of transparency.

281 See Table 12 above.

282 Form CO, paragraph 1054.

(445) Third, The Commission observes that, by already adopting an aggressive and disruptive behaviour with respect to prices, Digi acts as an independent player and a maverick firm, which further weakens the sustainability of any hypothetic coordination in the market.[283]

(446) The Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to horizontal coordinated effects in the retail market for the supply of FMC services in Romania.

5.5.7. Horizontal coordinated effects in the retail business connectivity

5.5.7.1. The Notifying Party's view

(447) The Notifying Party submits that there is no plausible risk of horizontal coordination in the retail market for the supply of business connectivity services.

(448) The Notifying Party notes that the market is highly competitive, notably due to the customers' significant market power, which often achieve to get low prices for new and renewed contracts. The Notifying Party also notes that the market is characterised by an important asymmetry in the market operators' market shares, and the market structure participates in making it more difficult for the operators to reaching terms of coordination. Due to the limited overlap brought about ([5-10]% in value and [5-10]% in volume), the Transaction will have no impact on the current asymmetry. The Notifying Party further argues that any hypothetical coordination would not be sustainable, because of the high complexity of the market in terms of tariffs and offerings, which are customised to the customers' requirements.

(449) In addition, the Notifying Party submits that the sustainability of any hypothetical coordination will not be increased by the Transaction, notably because the market is not at all transparent, and the monitoring of deviations would therefore be very difficult.

5.5.7.2. The Commission's assessment

(450) During the Commission's investigation, none of the market participants has raised any concern with respect to the horizontal coordinated effects of the Transaction on the market for the retail supply of business connectivity services. Furthermore, the Commission considers that a number of factors make coordination unsustainable and, therefore, unlikely in the present case.

(451) First, the market shares of the parties and of the competitors remaining on the market (except for Digi) are (and will remain) asymmetric, which makes it difficult for them to align their interests and reach a common strategy (new entity: [30-40]% in value; Digi: [30-40]% in value; Vodafone: [10-20]% in value; GTS: [5-10]% in value; other operators [0-5]% in value).[284] After the Transaction, although Digi and the new entity will have comparable market shares, their offer will remain relatively differentiated. For instance, the Commission notes that Digi is particularly strong in addressing the demand from less sophisticated business connectivity customers, which do not need highly customised solutions, while TKR appears stronger in

283 Form CO, paragraphs 1026, 1027 and 1053; Annex 31 to the Form CO.

284 See Table 13 above.

addressing the demand from larger customers (using leased lines).[285] In addition, Vodafone which owns the second largest VHBB network in Romania, is also strong in addressing the demand from high-end customers with complex needs, and will have strong incentives to act as an independent player in order to acquire more market shares.[286]

(452) Second, the Commission notes that market shares in the market for business connectivity only capture a certain moment in the market. Indeed, the market positions of the operators are constantly challenged due to the highly complex nature of the products, the fact that business customers often multi-source services from more than one supplier at the same time, and that the market is largely a bidding market.[287] The complexity of the market, and the important variety of the existing offers, strongly limit the market's transparency. There is also no evidence to suggest that the Transaction will alter the existing degree of transparency.

(453) Third, the Commission observes that, by already adopting an aggressive and disruptive behaviour with respect to prices, Digi acts as an independent player and a maverick firm, which further weakens the sustainability of any hypothetic coordination in the market.

(454) The Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to horizontal coordinated effects in the retail market for the supply of business connectivity services in Romania.

5.5.8. Horizontal coordinated effects in the wholesale supply of leased lines

5.5.8.1. The Notifying Party's view

(455) The Notifying Party submits that there is no plausible risk of horizontal coordination in the wholesale market for leased lines.

(456) The Notifying Party notes that the market is competitive with a large number of players, and characterised by a great complexity in terms of tariffs and offerings, notably because leased lines services are tailor-made to the customer's specific needs. According to the Notifying Party, these characteristics participate in making it more difficult for the operators to reaching terms of coordination.

(457) In addition, the Notifying Party submits that the Transaction will not increase the sustainability of any hypothetic coordination, notably because the wholesale market for leased lines is opaque. Indeed, According to the Notifying Party, negotiations between providers and customers are realized through in-house dedicated teams, which prevent the monitoring of deviations.

5.5.8.2. The Commission's assessment

(458) During the Commission's investigation, none of the market participants has raised any concern with respect to the horizontal coordinated effects of the Transaction on the market for the wholesale supply of leased lines. Furthermore, the Commission

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285 Replies to Questionnaire Q1 to competitors, question 62.

286 Form CO, paragraph 1111.

287 Replies to Questionnaire Q1 to competitors, question 67; Form CO, paragraph 1518.

considers that a number of factors make coordination unsustainable and, therefore, unlikely in the present case.

(459) First, the Commission observes that Orange's increment in the market for the wholesale supply of leased lines is marginal (approximately [0-5]% in volume) because the coverage of its own network is very limited,[288] and there is no evidence to suggest that the Transaction will significantly affect the competitive environment and structure of the market.

(460) Second, the Commission notes that the absence of public information with respect to the operators' networks and prices limits the degree of transparency of the market.[289] The Notifying Party also explains that it was not able to provide the competitors' market shares for that reason, and there is no evidence to suggest that the Transaction will alter the existing market structure and degree of transparency.

(461) Third, the Commission notes that the Romanian national regulatory authority, ANCOM, confirmed that the market for the wholesale terminating segments of leased lines in Romania is dynamic in terms of number of operators, distribution of market shares and growing tendency. The ANCOM also acknowledged that significant investments in fibre networks have been made by the providers to increase their coverage, and that there are 12 operators which rolled out networks with national coverage.[290] The presence of a large number of active operators further weakens the ability of the providers to align their behaviour, as well as the sustainability of any hypothetic coordination in the market.

(462) The Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to horizontal coordinated effects in the wholesale market for the supply of leased lines in Romania.

5.5.9. Horizontal coordinated effects in the wholesale supply and acquisition of TV channels (acquisition side)

5.5.9.1. The Notifying Party's view

(463) The Notifying Party submits that there is no plausible risk of horizontal coordination in the wholesale market for the supply and acquisition of TV channels, on the acquisition side.

(464) The Notifying Party notes that the market is characterised by an important asymmetry in the market operators' market shares, which participates in making it more difficult for the operators to reaching terms of coordination. Indeed, the Notifying Party used the retail level as a proxy to submit that, after the Transaction, the new entity will be the second player with an important gap of more than […] percentage points with the number one player Digi, and a significant gap of approximately […] percentage points in value and […] percentage points in volume with the third player Vodafone.

288 Form CO, paragraph 1135 to 1138.

289 Form CO, paragraph 1138.

290 Commission decision concerning Case RO/2018/2093, 19 July 2018: Wholesale high-quality access provided at a fixed location in Romania, p. 4.

(465) In addition, the Notifying Party argues that the Transaction will not increase the sustainability of any hypothetic coordination, notably due to the important lack of transparency in the market and Digi's leading position. Indeed, the Notifying Party submits that there are no public information available in the market which prevent the monitoring of deviations, and further notes that Digi benefits from a large customer base, allowing it to get lower prices for the wholesale acquisition of channels.

5.5.9.2. The Commission's assessment

(466) During the Commission's investigation, none of the market participants has raised any concern with respect to the horizontal coordinated effects of the Transaction on the market for the wholesale supply and acquisition of TV channels. Furthermore, the Commission considers that a number of factors make coordination unsustainable and, therefore, unlikely in the present case.

(467) First, the Commission observes that the market shares of the parties and of the competitors remaining on the market are (and will remain) asymmetric, which makes it difficult for them to align their interests and reach a common strategy. Indeed, after the Transaction, Digi will remain the leading player with more than [50-60]% market shares both in value and in volume, while the other operators' market shares will remain far behind (new entity: [20-30]% in volume, [20-30]% in value; Vodafone: [10-20]% in volume, [10-20]% in value). [291]

(468) Second, the Commission notes that the level of transparency with respect to prices in the market is limited, due to the absence of public information. Distribution agreements are often confidentially negotiated, on a bilateral basis between the supplier and the provider of TV channels. If operators active in the retail supply of TV channels can observe the catalogue of TV channels offered by their competitors, information on the prices and contractual terms at which these TV channels have been acquired are hardly accessible.[292] There is also no evidence to suggest that the Transaction will alter the existing degree of transparency.

(469) Third, the Commission further notes that competition in the retail side of the market compels TV providers to acquire a wide variety of channels, in order to offer a good variety of packages and content. Additionally, the Romanian law requires certain TV channels to be included in TV packages.[293] Therefore, the suppliers of TV channels hold a certain degree of power with respect to the bilateral negotiations, which makes it more difficult for acquirers of TV channels to reaching terms of coordination, and weakens the sustainability of any hypothetic coordination in the market.

(470) The Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to horizontal coordinated effects in the wholesale market for the supply and acquisition of TV channels, on the acquisition side, in Romania.

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291 See Table 21 above.

292 Non-Horizontal Merger Guidelines, paragraph 50, and Form CO, paragraph 576.

293 Form CO, paragraph 1145

5.6. Vertical Assessment

5.6.1. Introduction

(471) In this Section, the Commission will assess whether the proposed Transaction would give rise to foreclosure in any of the markets that are vertically affected. A merger is said to result in foreclosure where actual or potential rivals' access to supplies or markets is hampered or eliminated as a result of the merger, thereby reducing these companies' ability and/or incentive to compete.[294]

(472) Two forms of foreclosure can be distinguished. The first is where the merger is likely to raise the costs of downstream rivals by restricting their access to an important input (input foreclosure). The second is where the merger is likely to result in foreclosure of upstream rivals by restricting their access to a sufficiently large customer base (customer foreclosure).

(473) Customer foreclosure may occur when a supplier integrates with an important customer in the downstream market. Because of this downstream presence, the merged entity may foreclose access to a sufficient customer base to its actual or potential rivals in the upstream market (the input market) and reduce their ability or incentive to compete.[295]

(474) In assessing the likelihood of an anticompetitive customer foreclosure scenario, the Commission examines the three following cumulative elements: first, whether the merged entity would have the ability to foreclose access to downstream markets by reducing its purchases from its upstream rivals; second, whether it would have the incentive to reduce its purchases upstream; and third, whether a foreclosure strategy would have a significant detrimental effect on consumers in the downstream market intertwined.[296]

5.6.2. Wholesale broadband access

(475) The upstream wholesale broadband access market (where only TKR is active, with a marginal presence of approximately [0-5]% in volume) is vertically affected due to its connection with the downstream markets for retail fixed telephony services (where the Parties' combined market share is approximately [60-70]% in value and approximately [30-40]% in volume) and retail business connectivity services (where the Parties' combined market share is approximately [30-40]% in value).

5.6.2.1. The Notifying Party's view

(476) The Notifying Party observes, in the first place, that the Transaction does not lead to the risk of input foreclosure, due to the merged entity's limited presence in the upstream market.

(477) As to the risk of customer foreclosure, the Notifying Party argues that vertical relationships between the Parties already exist before the Transaction, through

294 Non-Horizontal Merger Guidelines, paragraph 29.

295 Non-Horizontal Merger Guidelines, paragraph 58.

296 Non-Horizontal Merger Guidelines, paragraph 59.

- The […] Agreement under which TKR provides wholesale broadband access services to Orange, allowing the latter to provide retail fixed services (i.e. fixed telephony, internet, TV) and multiple-play services to residential customers;

- Wholesale broadband access agreements entered into on a case-by-case basis, depending on the customers' end-location, allowing Orange to provide business connectivity services to non-residential customers.

(478) The Notifying Party also submits that on the business connectivity market, there are approx. 490 ISPs (including Digi, Vodafone, TKR and Orange) seeking wholesale broadband access from fixed networks owners on a case-by-case basis, depending on the customers' end-location, to provide business connectivity services to non-residential customers. [297]

5.6.2.2. The Commission's assessment

(479) With respect to the argument raised by the Notifying Party, in relation to the risk of input foreclosure, the Commission observes that the presence of the merged entity on the upstream market for wholesale broadband access is marginal and therefore the merged entity would not have the ability to foreclose such input.

(480) With respect to the risk of customer foreclosure by the merged entity, the Commission firstly observes that the market share, in excess of 30%, existing in the two mentioned downstream retail markets (fixed telephony and business connectivity services) is largely due to TKR. Moreover, the supply relationship between TKR and Orange pre-dates the Transaction, due to the […] agreement, which allows Orange to offer fixed telephony services, and to a number of ad hoc agreements that allow Orange to provide business connectivity services. Therefore, the vertical integration of an important customer already exists before the Transaction.

(481) Based on the above considerations, the Commission observes that the Transaction is not going deprive any supplier from a significant portion of demand or any significant customer.

(482) Secondly, the Commission considers that, post-transaction, there will be a sufficiently large portion of demand to be addressed by competing providers of wholesale broadband access, as indicated by the number of ISPs (490) mentioned by the Notifying Party. The Commission also observes that, given the market share of the merged entity on the affected downstream markets, a relevant portion of demand will remain contestable after the Transaction (depending on downstream customers' recourse to their own infrastructure, a maximum demand between [40-50] and [60-70]% in retail fixed telephony services and approximately [60-70]% in retail business connectivity services).

(483) Based on the above, the Commission considers that the merged entity would lack the ability to engage into a customer foreclosure strategy.

(484) The Commission therefore concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market, in relation to the vertical

297 Form CO, paragraph 1162.

relationships between the upstream market for wholesale broadband access and the downstream markets for retail fixed telephony services and retail business connectivity services respectively.

5.6.3. *Wholesale leased lines*

(485) The Transaction leads to vertically affected markets due to the vertical links of the upstream wholesale market for leased lines (where the Parties have a combined market share of [20-30]% with an increment by Orange of [0-5]%) to the downstream markets for (i) retail business connectivity services (where the Parties have a combined market share of approximately [30-40]% in value), (ii) retail mobile telecommunications services (where the Parties have a combined market share of approximately [40-50]% in value), and (iii) wholesale fixed backhaul services[298] respectively.

5.6.3.1. The Notifying Party's view

(486) The Notifying Party argues that no competition concerns arise in relation to such vertical links, as the merged entity would lack both the ability and incentive to engage in customer foreclosure, due to the fact that the merged entity needs to source leased lines from third parties and, secondly, the contracts in place with such parties do not allow for termination in the short to medium term.[299] In particular, the Notifying Party submits that in [20-30]% of the areas where Orange provides business connectivity services, TKR's fibre is not present. Thus, in these areas, Orange will have no choice but to contract with third-party providers of leased lines.

(487) In addition, as long as impact on competition is concerned, according to the Notifying Party, a possible customer foreclosing strategy would also not have any significant impact on competition, as the majority of leased lines providers are vertically integrated with operations downstream, destine the bulk of their capacity to such downstream operations and offer to other customers only the residual capacity.[300]

5.6.3.2. The Commission's assessment

(488) The Commission observes that the Transaction does not entail a likely risk that the merged entity would engage in an input foreclosure strategy, due to the Parties' limited combined market share on the upstream market, since the merged entity will represent less than [20-30]% of the wholesale market for leased lines, with a very modest increment (below [0-5]%) added by Orange.

(489) In the paragraphs below, the Commission assesses the risk that the Transaction would lead to the adoption of a possible customer foreclosure strategy by the merged entity. As shown below, for each of the three downstream markets where wholesale

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298 The Notifying Party has not been able to estimate TKR's and its rivals' market shares as regards the wholesale provision of fixed backhaul services as, it argues, the market is particularly intransparent, ANCOM does not publish any data regarding fixed backhaul services and there are no alternative credible data sources available. The Notifying Party argues that TKR mostly provides wholesale access as such, i.e. not limited to a specific use case. Therefore, TKR does not even know whether access seekers use such wholesale access to TKR's network for fixed backhauling or services that the access seeker in turn provides to its customers.

299 Parties' reply to RFI 10 of 7 July 2021, p.10.

300 Parties' reply to RFI 10 of 7 July 2021, p.10.

leased lines are used, at least one of the three cumulative elements (ability, incentive or effects) is missing.

Ability

(490) The Commission observes that, at the moment, in order to provide mobile services at the retail level, apart from TKR, Orange relies on […] leased lines. As regards business connectivity services, apart from TKR, Orange relies on one-shot agreements with […], as well as […] for specific customers' contracts.[301]

(491) As regards these one-shot contracts at the wholesale level for the retail provision of business connectivity services, the Commission considers that Orange will have no ability to engage into a customer foreclosure strategy, because the possibility for Orange to modify or terminate an existing contract is limited, due to important deterrent penalties in case of interruption or modification during the implementation of a contract.[302] The only possibility left to Orange to terminate a contract is in case of strong degradation of the connectivity and connection to the network.[303]

(492) These limitations, the Commission notes, apply also to […].[304]

(493) The Commission therefore considers that, with respect to all three downstream markets affected (*i.e.* retail mobile telecommunications services, business connectivity services and backhaul services), the merged entity would lack the ability to engage into a customer foreclosure strategy.

Incentive

(494) With respect to incentive, the Commission considers that Orange will have no incentive to engage into a customer foreclosure strategy, because in [20-30]% of areas where Orange provides business connectivity services[305] TKR has no fibre network and the new entity will be forced to choose a third party network. Indeed, copper and xDSL equivalent do not ensure the same quality of service as fibre and are therefore almost never used by Orange to provide business connectivity services at the retail level.[306]

(495) The Commission considers that, should the merged entity decide to source leased lines exclusively from its upstream leased lines division, it should accept to replace fibre from third parties with its own copper and xDSL infrastructure, thus lowering the quality of its network and of the services it provides to business connectivity customers. A degradation in the quality of the business connectivity services offered by Orange would, in turn, trigger switching from its business customers. In fact, the results of the market investigation indicate that quality of service is the main reason for customer switching.[307]

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301 Parties' reply to RFI 10 of 7 July 2021, p.10.

302 Parties' reply to RFI 10 of 7 July 2021, p.11.

303 Form CO, paragraph 1826.

304 Parties' reply to RFI 10 of 7 July 2021, p.11.

305 Parties' reply to RFI 10 of 7 July 2021, p.11.

306 Parties' reply to RFI 10 of 7 July 2021, p.11.

307 Replies to Questionnaire Q2 to business customers, question 10.

(496) The Commission therefore considers that, with respect to the downstream market for business connectivity services, the merged entity lacks the incentive to engage into a customer foreclosure strategy.

Impact on competition

(497) With respect to the impact of a possible customer foreclosure strategy by the merged entity, the Commission considers that such impact would not be significant. In fact, as already noted, the providers of leased lines mainly use their capacity internally for their downstream divisions and destine only residual capacity to the market.[308]

(498) Second, the merged entity will have a market share of approximately [40-50]% in the market for retail mobile telecommunications services and approximately [30-40]% in the market for business connectivity services. Therefore, after the Transaction there will be a contestable market, for suppliers of leased lines, representing approximately [50-60]% of the retail market for mobile telecommunications services and of [60-70]% of the market for business connectivity services.

(499) Third, the Commission observes that a possible customer foreclosure strategy by the merged entity will not take away significant demand from competing providers of leased lines. In fact, already today, Orange is hosted on TKR's leased lines for the purpose of its retail activities on the mobile and business connectivity markets. As to TKR, it is not an important customer of wholesale leased lines services as it mainly relies on its own network for the purpose of its downstream business connectivity activities. As regards its activities on the mobile market, TKR is an MVNO hosted on TRMC's network and therefore does not need to procure any leased lines at the wholesale level.[309]

(500) For the reasons above, a possible customer foreclosure strategy implemented by the merged entity would not have a significant impact on competition, at least in relation the downstream markets for retail mobile telecommunications services and business connectivity services.

(501) The Commission therefore concludes that the Transaction does not rise serious doubts as to its compatibility with the internal market, in relation to the vertical relationships between the upstream market for wholesale leased lines and the downstream markets for retail mobile telecommunications services, retail business connectivity services and the wholesale market for fixed backhaul services respectively.

5.6.4. *Wholesale provision of call termination services on fixed networks*

(502) The vertical relationship between the Parties consists of Orange's and TKR's wholesale provision of call termination services on fixed networks and their downstream supply of (i) fixed telephony services and of (ii) mobile telecommunications services. The markets are vertically affected within the meaning of the Merger Regulation, as the Parties' combined market share is above 30% both on the upstream market for wholesale provision of call termination services on fixed

308 Parties' reply to RFI 10 of 7 July 2021, p.11.

309 Parties' reply to RFI 10 of 7 July 2021, p.11.

networks (100% on each individual fixed network) and on the downstream markets for legacy fixed telephony services ([50-60]% in value and [30-40]% in volume) and mobile telecommunications services ([40-50]% in value and [40-50]% in volume).

(503) The Commission observes that the wholesale provision of call termination services on fixed networks is regulated in Romania by ANCOM. ANCOM has imposed several remedies on each network operator, such as obligations for access to specific network facilities, transparency, non-discrimination and price control.

(504) The Commission considers that, in the present case, *ex ante* regulation excludes any vertical foreclosure scenario arising from the Transaction as the Parties will not have any ability to foreclose. Furthermore, the Parties' incentives to foreclose will not change as the competitive conditions prevailing before the Transaction are similar to the competitive conditions that would result from the proposed Transaction on the upstream market (the Parties will continue to have a 100% market share on each individual fixed network). In any event, the Parties will have no incentive to foreclose access to fixed call termination services as they will continue to require fixed termination services from rival fixed operators to ensure that their customers can receive calls from other networks. Any attempt to foreclose could therefore lead to retaliation measures.

(505) The Commission therefore concludes that the Transaction does not lead to serious doubts as to its compatibility with the internal market in relation to the vertically affected markets in question.

5.6.5. Wholesale termination and hosting of calls to non-geographic numbers

(506) The vertical relationships between the Parties consist of TKR's wholesale provision of termination and hosting of calls to non-geographical numbers (the upstream market, where the Parties' activities do not overlap, as Orange is not active, and TKR has obtained small and decreasing revenues)[310] and the downstream markets for the supply of (i) legacy fixed telephony services and of (ii) mobile services by both Orange and TKR. They are vertically affected because the Parties' downstream combined market share is above [30-40]% on the downstream markets for legacy fixed telephony services ([50-60]% in value and [30-40]% in volume) and mobile telecommunications services ([40-50]% in value and [40-50]% in volume).

(507) However, as to input foreclosure, the Commission observes that the Parties will not have any ability to foreclose competitors active in the retail markets of legacy fixed telephony and mobile services as TKR has small and decreasing revenues from this activity (nor does the Transaction improve its market position, as Orange is not active in the upstream market) and other alternative providers of termination and hosting services exist, especially Digi and Vodafone.[311]

(508) As to a possible customer foreclosure, the Commission considers that the Parties will not have any incentive to foreclose, as the competitive conditions prevailing before the Transaction will remain largely unaffected by the proposed Transaction. Indeed,

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310 Form CO, paragraph 548. Orange does not derive any revenues from the termination and hosting of calls to non-geographic numbers in Romania. On its side, TKR derived from this market revenues of EUR […] in 2017, EUR […] in 2018 and EUR […] in 2019.

311 Form CO, paragraph 1267.

(i) the market share increment resulting from the Transaction on the downstream market of legacy fixed telephony services is limited (Orange representing [0-5]% of the market in value and [0-5]% in volume in 2020) and (ii) TKR's market share increment on the downstream market of mobile services ([0-5]% in value and [0-5]% in volume in 2020) will remain minimal.

(509) The Commission therefore concludes that the Transaction does not lead to serious doubts as to its compatibility with the internal market in relation to the vertically affected markets in question.

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

(510) The vertical relationship between the Parties consists of TKR's upstream wholesale provision of domestic call transit services on fixed networks and the downstream supply of legacy fixed telephony services by both Orange and TKR. The markets are vertically affected as TKR's upstream market share amounts to [50-60]% in volume and the Parties' downstream combined market share is [50-60]% in value and [30-40]% in volume in 2020.

(511) However, the Commission considers that the Parties will not have any ability to foreclose competitors active in the retail market of legacy fixed telephony services as many alternatives exist. This has been confirmed by ANCOM in 2019, in a decision in which the regulator withdrew TKR's regulatory obligations considering the existence of viable alternatives to national transit services provided by TKR.[312] In addition, ANCOM held that there is efficient competition on the market as the market structure is heterogeneous, the operators' demand for such service is decreasing and there are a high number of direct interconnection agreements concluded between public networks operators in Romania (276 at the end of 2017).[313]

(512) With respect to the risk of customer foreclosure, the Commission notes that the majority of the Parties' market share in the downstream market is represented by TKR itself (which is the only party active in the upstream market) and Orange only brings a marginal increment in the retail market for fixed telephony services ([0-5]% in value and [0-5]% in volume). In addition, given the Parties' combined market share, a residual demand corresponding to a portion between [40-50]% and [60-70]% of the market remains contestable.

(513) The Commission therefore concludes that the Transaction does not lead to serious doubts as to its compatibility with the internal market in relation to the vertically affected markets in question.

5.6.7. *Global telecommunications services*

(514) The vertical relationship between the Parties consists, upstream, of Orange's provision of global telecommunications services (with a [0-5]% market share in value) and of their downstream supply of legacy fixed telephony services, mobiles

312 According to ANCOM, at the end of 2017, there were 8 operators providing national switched transit services in Romania, namely TKR, GTS Telecom S.R.L., Digital Cable Systems S.A. (acquired by Digi), Net-Connect Communications S.R.L., Media Sat S.R.L., Prime Telecom S.R.L. and Nooh Media S.R.L.

313 ANCOM, Annual report 2019, p. 9-10.

telecommunications services and business connectivity services. The markets are vertically affected within the meaning of the Merger Regulation, as the Parties combined market share is above 30% in these downstream markets, namely the retail supply of legacy fixed telephony ([50-60]% in value and [30-40]% in volume), mobile telecommunications ([40-50]% in value and [40-50]% in volume) and business connectivity services ([30-40]% in value in 2020).

(515) The Commission, however, observes that Orange's market share in the market for global telecommunications services is marginal ([0-5]%). Many other competitors would thus remain able to provide global telecommunications services in the event of an input foreclosure. The adoption of such a strategy would therefore result in the loss of revenue as operators active on the downstream markets would easily switch to other alternative providers.

(516) As to a possible customer foreclosure strategy, the Commission observes that, with respect to both retail fixed telephony services and retail mobile telecommunications services, the increment brought about by the Transaction is marginal (below [0-5]% both in value and volume). In addition, the Commission notes, with respect to all three downstream markets, that a residual demand corresponding to a portion between [40-50]% and [60-70]% of the market remains contestable, given the Parties' combined market shares.

(517) The Commission therefore concludes that the Transaction does not lead to serious doubts as to its compatibility with the internal market in relation to the vertically affected markets in question.

5.6.8. *Wholesale internet connectivity services*

(518) The vertical relationship between the Parties consists of Orange's wholesale provision of internet connectivity services (with a market share of [0-5]% in value) and the Parties' downstream supply of business connectivity services. The markets are vertically affected within the meaning of the Merger Regulation, as the Parties' combined market share is above 30% in the business connectivity services market ([30-40]% in value).

(519) However, with respect to the risk that the merged entity engages in a strategy of customer foreclosure, the Commission observes that the Parties' combined market share is less than [40-50]% in value, thus leaving a contestable demand representing more than [60-70]% of the downstream market for business connectivity services.

(520) The Commission therefore concludes that the Transaction does not lead to serious doubts as to its compatibility with the internal market in relation to the vertically affected markets in question.

5.6.9. *Wholesale call termination services on mobile networks*

(521) The vertical relationship between the Parties consists of Orange's and TKR's wholesale provision of call termination services on mobile networks and their downstream supply of (i) legacy fixed telephony services and (ii) of mobile services. The markets are vertically affected within the meaning of the Merger Regulation, as the Parties' combined market share is above 30% both on the upstream market for wholesale provision of call termination services on mobile networks (100% on each individual fixed network) and on the downstream markets for legacy fixed telephony

services ([50-60]% in value and [30-40]% in volume) and mobile telecommunications services ([40-50]% in value and [40-50]% in volume).

(522) With respect to a possible input foreclosure, the Commission considers that Orange will not have the ability to engage in input foreclosure on the market for the wholesale provision of call termination services on mobile networks. The Commission notes that the wholesale provision of call termination services on mobile networks was regulated in Romania by ANCOM decisions.[314] ANCOM has thus imposed several remedies on each network operator, such as obligations for access to specific network facilities, transparency, non-discrimination and price control. Furthermore, as established by Article 75 of the European Electronic Communications Code, the Commission adopted a delegated act setting the Eurorates (a single Union-wide mobile and a single Union-wide fixed termination rate).[315] The Delegated Regulation entered into force on 23 April 2021 and the termination rates therein started to apply on 1 July 2021. That means that, as of 1 July, the termination rates currently imposed by the Romanian regulator are no longer valid and are replaced by the rates set out by the Delegated Regulation. In addition, the Commission considers that the Parties' incentives to foreclose will not change as the competitive conditions prevailing before the Transaction are similar to the competitive conditions that would result from the proposed Transaction on the upstream market (the Parties will continue to have a 100% market share on each individual fixed network).

(523) With respect to the risk of customer foreclosure on the Commission considers that, after the Transaction, a sufficient portion of demand will remain contestable (corresponding to approximately [40-50]% to [60-70]% in the retail market for fixed telephony services and to approximately [60-70]% in the retail market for mobile telecommunication services). In any event, the Commission considers that the Parties will have no incentive to foreclose access to mobile call termination services as they will continue to require mobile termination services from rival MNOs to ensure that their customers can receive calls from other networks. Any attempt to foreclose could therefore lead to retaliation measures.

(524) The Commission therefore concludes that the Transaction does not lead to serious doubts as to its compatibility with the internal market in relation to the vertically affected markets in question.

5.6.10. Wholesale international roaming services

(525) The vertical relationship between the Parties consists of Orange's upstream wholesale provision of international roaming services and the downstream supply of mobile telecommunications services by both Orange and TKR. The markets are vertically affected within the meaning of the Merger Regulation, as the Parties' combined market share is above 30% on the downstream market for the retail

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314 Commission decision of 10 November 2017 regarding the cases RO/2017/2017 and RO/2017/2018; Romanian Government Emergency Ordinance no. 111/2011 approved, with amendments, by Law no. 140/2012 (as subsequently amended and supplemented).

315 Commission Delegated Regulation (EU) 2021/654 of 18 December 2020 supplementing Directive (EU) 2018/1972 of the European Parliament and of the Council by setting a single maximum Union-wide mobile voice termination rate and a single maximum Union-wide fixed voice termination rate (the „Delegated Regulation“)

provision of mobile telecommunications services ([40-50]% in value and [40-50]% in volume).

(526) The Commission observes that the Transaction creates a vertical relationship between Orange's activities in the wholesale market for international roaming services in all countries where it is active as an MNO and TKR's activity as a retailer of mobile telecommunications services. Nonetheless, in this respect, the increment brought by TKR in the latter market is virtually non-existing, as TKR does not provide retail mobile services standalone but only in bundles with fixed services, or at most negligible if FMC subscribers are accounted for ([0-5]% in value and [0-5]% in volume).

(527) Moreover, the Commission notes that the wholesale market for international roaming services is regulated by the European Regulation on roaming on public mobile communications networks within the Union.[316] In particular, the European Regulation requires MNOs to grant all reasonable requests for access which may be necessary to allow the access seeker to provide a roaming service (and relevant ancillary services) of reasonable quality and specification, charged at a fair and reasonable price. Thus, the Commission considers that Orange will not have the ability to foreclose competing providers of mobile telecommunications services in Romania as the wholesale market for international roaming services is subject to *ex ante* regulation.

(528) The Commission therefore concludes that the Transaction does not lead to serious doubts as to its compatibility with the internal market in relation to the vertically affected markets in question

5.6.11. Wholesale call origination services on mobile networks

(529) For completeness, the Commission notes that post-Transaction, a vertical relationship between the Parties will exist through the MVNO agreement under which Orange is to replace TRMC and host TKR to enable it provide mobile communications services to customers in Romania. The Commission observes, however, that Orange is currently not active on this market (as it does not host any other operator on its network) and neither is TKR.

6. PROPOSED REMEDIES

(530) In order to render the concentration compatible with the internal market, the undertakings concerned have modified the notified concentration by entering into the following commitments, which are annexed to this decision and form an integral part thereof.

(531) Orange commits to procuring TKR to divest the 30% minority shareholding in TRMC to OTE (the "Commitments"). Orange commits not to implement the Transaction before TKR has entered into a final binding sale and purchase agreement with OTE, subject to the latter being approved by the Commission as acquirer, for the sale of the 30% minority shareholding in TRMC and the

316 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, p. 10–35), article 3.

Commission has approved the terms of sale in accordance with the Commitments and Closing of the Divestment Asset has occurred.

(532) Additionally, Orange commits, for a period of 5 years after the transfer of the legal title to the TRMC Minority Stake to the Purchaser, not to acquire, whether directly or indirectly, any stake in or direct influence over TRMC, unless the Commission finds that the structure of the market has changed to such an extent that the absence of influence of Orange over TRMC is no longer necessary to rend the Transaction compatible with the internal market.

(533) Orange has identified OTE as a purchaser of the 30% minority shareholding in TRMC. Orange submits that OTE is a suitable purchaser (as defined in paragraph 48 of the Commission's Remedies Notice[317]) for the following reasons:

(a) OTE is independent of and unconnected to Orange and its affiliated undertakings.

OTE is the largest technology company in Greece. It is one of the top three listed companies with respect to capitalization, in the Athens Stock Exchange. Deutsche Telekom holds sole control on OTE and 47.9% of its share capital. The Greek State holds (directly and indirectly) 5.7% of OTE's share capital. OTE Group employs approximately 11 500 people in Greece and approximately 16 000 people in total.

OTE does not have any share or any direct or indirect ownership in Orange or any of its affiliated undertakings and vice versa. In addition, no director of Orange or any of its affiliated undertakings is on the board of OTE (or its controlling shareholders) and vice versa.

(b) OTE has the financial resources, proven expertise and incentive to operate the 30% minority shareholding in TRMC.

OTE currently holds 70% of the share capital of and sole control over TRMC. Therefore, it currently has and will continue to have, after the implementation of the Commitments, the financial resources, proven expertise, and incentive to operate TRMC.

In 2020, OTE announced a turnover of EUR 3.3 billion. OTE's credit rating by S&P is BBB and current cash reserves (as reported at end of Q1 2021) reached EUR 608 million.

Furthermore, OTE belongs to the Deutsche Telekom Group, one of the largest telecommunications groups in the world, encompassing 242 million mobile customers, 27 million fixed-network lines and 22 million broadband lines. DT is present in more than 50 countries, with over 226 300 employees throughout the world and an overall revenue of EUR 101 billion in 2020. In particular, the acquisition by OTE of TRMC's minority stake is supported by DT.

317 Commission Notice on remedies acceptable under Council Regulation (EEC) No 139/2004 and under Commission Regulation (EC) No 802/2004, OJ C 267, 22.10.2008, p. 1-27 ("Commission Notice on Remedies").

(c) The sale of the 30% minority shareholding in TRMC to OTE will not create any further competitive concerns.

OTE already has sole control over TRMC (through a 70% shareholding in TRMC). Therefore, TRMC's structure of control will not change as a result of the implementation of the Commitments. The only change will be that, pursuant to the Commitments, OTE will hold 100% of TRMC's shares, instead of 70%. Therefore, the sale of the 30% minority shareholding in TRMC to OTE will not create any horizontal, vertical and conglomerate competition concerns. As there is no change of control over TRMC, the sale of the 30% minority shareholding in TRMC to OTE will not delay the closing of the Transaction since no prior authorization is required from any competition authority.

(534) In addition, the Parties have submitted a draft of the Shares Sale Purchase Agreement ("SPA") between TKR and OTE on 9 July.

(535) Orange submits that the Commitments resolve the competition concerns identified by the Commission on the market for retail mobile telecommunications services in Romania by completely removing the structural link between Orange and TRMC that would otherwise exist as a result of the Transaction.

(536) In addition, the Notifying Party has entered into related commitments regarding the submission of written reports in English on the developments in the negotiations with the Purchaser, including the appointment of a monitoring trustee.

7. ASSESSMENT OF THE PROPOSED REMEDIES

(537) The Commission analysed the suitability of the proposed commitments to remedy serious doubts in this case against the standard set out in the Commission Notice on Remedies.

7.1. Framework for the Commission's assessment of the Commitments

(538) Where a notified concentration raises serious doubts as to its compatibility with the internal market, the parties may modify the notified concentration so as to remove the grounds for the serious doubts identified by the Commission, with a view to having it declared compatible with the internal market pursuant to Article 6(1)(b) in conjunction with Article 6(2) of the Merger Regulation.

(539) As set out in the Commission Notice on Remedies, commitments must eliminate the Commission's serious doubts entirely, they must be comprehensive and effective from all points of view, and they 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.[318]

(540) In assessing whether or not commitments will restore effective competition, the Commission considers their type, scale and scope, by reference to the structure and the particular characteristics of the market in which the Commission has identified

318 Commission Notice on Remedies, paragraph 9.

serious doubts as to the compatibility of the notified concentration with the internal market.[319]

(541) Divestiture commitments are the best way to eliminate serious doubts resulting from horizontal overlaps in the merging parties' activities.[320] Divestiture commitments may also be used for removing links between the parties and competitors in cases where these links contribute to the competition concerns raised by the merger. The divestiture of a minority shareholding in a competitor may be necessary in order to sever a structural link with a competitor.[321]

(542) Furthermore, the intended effect of the divestiture will only be achieved if and once the business is transferred to a suitable purchaser with proven relevant expertise and ability to maintain and develop the business to be divested as a viable and active competitive undertaking.

7.2. Results of the market test

(543) To assess the suitability of the Commitments to remove serious doubts in this case, the Commission launched a market test on 7 July 2021.

(544) The market test confirmed that the Commitments are sufficient to preserve competition in retail mobile telecommunications services after the Transaction[322] and that OTE is a suitable purchaser of the TRMC's minority stake[323].

7.3. Suitability of the proposed commitments to remedy serious doubts in the market for the retail supply of mobile telecommunications services

(545) The commitment to procure TKR to divest all shares that TKR holds in TRMC prior to completion of the Transaction will resolve the serious doubts identified in section 5.4.2.2 above in relation to the Transaction as originally proposed.[324]

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319 Commission Notice on Remedies, paragraph 12.

320 Commission Notice on Remedies, paragraphs 17 and 59.

321 Commission Notice on Remedies, paragraph 58.

322 Replies to Questionnaire Q4 – Commitments market test, questions 8 and 8.1. The Commission notes that certain competitors asked the Commission to impose additional remedies on the Notifying Party and on TRMC regarding the allocation of radio frequencies spectrum. However, when reviewing a concentration, the Commission only assesses the changes brought about by the proposed Transaction. In the present case, the Transaction does not have any impact on the allocation of radio frequencies spectrum, as TKR does not hold any radio frequencies spectrum license. Moreover, the Commission notes that TRMC is not a party to the Transaction. Therefore, the Commission has not identified any competition concerns brought about by the Transaction with regard to the allocation of radio frequencies spectrum.

323 Replies to Questionnaire Q4 – Commitments market test, questions 7 to 7.3.1.

324 For completeness, the Commission notes that, in the Form CO, the Parties initially proposed to put in place firewall and "ring fencing" arrangements, which would have involved relinquishing Orange's voting and information rights and its share of TKR's economic risks and benefits. In the Form CO, the Parties submitted that such measures would "last for as long as Orange Romania has a shareholding interest in TRMC". However, according to paragraph 13 of the Commission's Remedies Notice, commitments which are structural in nature, such as a commitment to sell a business unit or in this case a minority shareholding 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. The Remedies Notice also states in paragraphs 58-59 that the "divestiture of a minority shareholding in a joint venture may be necessary in order to sever a structural link with a major competitor, or, similarly, the divestiture of a minority shareholding in a competitor", noting that "the divestiture of such stakes is the preferable solution" with the Commission only being able to "exceptionally accept" non-

(546) First, the Commitments will remove the structural link between TKR and TRMC entirely, before Orange acquires control of TKR. They will therefore ensure that Orange cannot use its position as a minority shareholder to obtain any strategic knowledge about TRMC's business policy or future plans. Second, they ensure that Orange will not have veto rights that could allow it to threaten the future viability of TRMC as a competitor, for example by hampering or prevent the reorganization or restructuring of TRMC, or its sale to a strategic or private equity buyer. Third, the Commitments ensure that Orange has no financial incentive to compete less aggressively, or to coordinate its behaviour on the market, with TRMC following the Transaction. They are moreover clear cut and will not require ongoing monitoring.

(547) For the avoidance of any doubt, it should be noted that this decision does not constitute the approval of OTE as a buyer or of the draft SPA between TKR and OTE. The Commission will assess these aspects subsequently, in a separate decision.

(548) The Commission notes that the Commitments include the standard criteria for a suitable purchaser (contained in section D of the Commitments), in particular that the purchaser must be independent from Orange, have proven expertise and the incentive to operate the 30% minority shareholding in TRMC and that the sale of the 30% minority shareholding in TRMC to OTE will not create any *prima facie* competitive concerns. Moreover, the Commission notes on a preliminary basis that OTE, through the remedy, would increase its participation in TRMC from 70% to 100% and that the remedy would not lead to a change in the nature of control, as OTE already has sole control of TRMC.

7.4. Conclusion

(549) For the reasons outlined above, the Commission considers that the Commitments entered into by Orange are sufficient in scope and suitable to eliminate the serious doubts as to the compatibility of the transaction with the internal market.

7.5. Conditions and obligations

(550) Under the first sentence of the second subparagraph of Article 6(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 internal market.

(551) The fulfilment of the measures that give 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 6(3) of the Merger Regulation. The undertakings concerned may also be

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structural commitments such as the waiving of rights linked to such minority stakes. Therefore, the Commitments formally presented by Orange allow to fully eliminate in a clear and structural way the competition concern identified, leading to the divestiture of the minority shareholding in TRMC, and appear therefore preferable to the behavioural measures initially envisaged in the Form CO.

subject to fines and periodic penalty payments under Articles 14(2) and 15(1) of the Merger Regulation.

(552) As explained, the Commission is to make sure in particular that in the purchaser approval process the independence criteria of the buyer are rigorously assessed. The Commission is also to check, in close cooperation with the monitoring trustee, that no potential suitable buyer is excluded from the outset of the purchaser selection process.

(553) In accordance with the basis distinction between conditions and obligations, the commitments in section B of the Annex constitute conditions attached to this Decision, as only through full compliance therewith can the structural changes in the relevant market be achieved. The other commitments set out in the Annex constitute obligations, as they concern the implementing steps which are necessary to achieve the modifications sought in a manner compatible with the internal market.

(554) Accordingly, the Decision not to raise objections is made conditional on full compliance by the Notifying Party with Section B of the Commitments and with the remaining sections of the Commitments which constitute obligations on the Parties.

(555) The full text of the Commitments is attached as Annex I to this Decision and forms an integral part of it.

8. CONCLUSION

(556) For the above reasons, the Commission has decided not to oppose the notified operation as modified by the commitments and to declare it compatible with the internal market and with the functioning of the EEA Agreement, subject to full compliance with the conditions in section B of the commitments annexed to the present decision and with the obligations contained in the other sections of the said commitments. This decision is adopted in application of Article 6(1)(b) in conjunction with Article 6(2) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission

(Signed)
Margrethe VESTAGER
Executive Vice-President

Case M.10153 – Orange/Telekom Romania Communications

COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2) of Council Regulation (EC) No 139/2004 (the "***Merger Regulation***"), Orange S.A. ("***Orange***" or the "***Notifying Party***"), hereby enters into the following Commitments (the "***Commitments***") vis-à-vis the European Commission (the "***Commission***") with a view to rendering compatible with the internal market and the functioning of the EEA Agreement the acquisition by Orange Romania from Deutsche Telekom AG's ("***DT***") solely controlled subsidiary Hellenic Telecommunications Organizations S.A. ("***OTE***") of the entire share capital of OTE International Investments Ltd[1], a wholly-owned subsidiary of OTE, which controls approximately 54% of the shares in and sole control over Telekom Romania Communications S.A. ("***TKR***") (the "***Transaction***").

This text shall be interpreted in light of the Commission's decision pursuant to Article 6(1)(b) of the Merger Regulation to declare the Transaction compatible with the internal market and the functioning of the EEA Agreement (the "***Decision***"), in the general framework of European 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***").

The Commitments shall take effect upon the date of adoption of the Decision.

Section A. Definitions

1. For the purpose of the Commitments, the following terms shall have the following meaning:

   Affiliated Undertakings: undertakings controlled by the Notifying Party, 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 (the "***Consolidated Jurisdictional Notice***").

   Closing: the transfer of the legal title to the TRMC Minority Stake to the Purchaser.

   Confidential Information: 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: any conflict of interest that impairs the Monitoring Trustee's objectivity and independence in discharging its duties under the Commitments.

   DT: Deutsche Telekom AG.

   Divestment Asset: all shares that TKR holds in TRMC at the Effective Date, which amount to 30% of the TRMC share capital and voting rights (i.e. the TRMC Minority Stake).

   Effective Date: the date of adoption of the Decision.

   Divestiture Period: the period of […] from the Effective Date.

[1] OTE International Investments Ltd does not conduct any activities or operations other than its holding of TKR shares.

Monitoring Trustee: One or more natural or legal person(s), independent from the Notifying Party, who is approved by the Commission and appointed by the Notifying Party, and who has the duty to monitor the Notifying Party's compliance with the conditions and obligations attached to the Decision.

Orange or **the Notifying Party**: Orange S.A.

OTE: Hellenic Telecommunications Organization S.A., a subsidiary of DT, which holds 70% of the shares in and sole control over TRMC.

Purchaser: the entity approved by the Commission as acquirer of the Divestment Asset in accordance with the criteria set out in Section D.

Purchaser Criteria: the criteria laid down in paragraph 9 of these Commitments that the Purchaser must fulfil in order to be approved by the Commission.

Share Purchase Agreement: binding agreement between the Purchaser and TKR regarding the transfer of the Divestment Asset to the Purchaser.

TKR: Telekom Romania Communications S.A.

Transaction: Acquisition by Orange Romania S.A. of approximately 54% of the shares in and sole control over TKR.

TRMC: Telekom Romania Mobile Communications S.A.

TRMC Minority Stake: all equity securities held by TKR in TRMC, being 159,374,750 shares of RON 4.84 each, amounting to approximately 30 per cent. of the fully diluted share capital of TRMC as defined in Section B.

Section B. The commitment to divest and the Divestment Asset

Commitment to divest

2. Telekom Romania Mobile Communications S.A. ("***TRMC***") is a Romanian mobile network operator that is currently solely controlled by DT, through its subsidiary OTE which holds 70% of the shares in TRMC. TKR holds the remaining 30% shares in TRMC (the "***TRMC Minority Stake***"). Therefore, as a result of the Transaction, Orange would indirectly acquire a 30% interest in TRMC[2].

3. In order to maintain effective competition, the Notifying Party commits to procure TKR to divest the Divestment Asset at the latest by the end of the Divestiture Period to the Purchaser and on terms of sale approved by the Commission in accordance with the procedure described in paragraphs 10 and 11 of these Commitments. To carry out the divestiture, the Notifying Party commits to procure TKR to enter into a final binding sale and purchase agreement for the sale of the Divestment Asset within the Divestiture Period with the Purchaser. If TKR has not entered

[2] The Romanian Government currently holds – and will continue to after the Transaction – an approximatively 46% non-controlling minority stake in TKR. Therefore, the Romanian Government, through TKR, holds an indirect 13.8% interest in TRMC.

into such an agreement at the end of the Divestiture Period, subject to paragraphs 29 and 30, both the Commitments and the Decision will no longer be applicable.

4. The Transaction shall not be implemented before TKR has entered into a final binding sale and purchase agreement for the sale of the Divestment Asset, the Commission approves the terms of sale in accordance with paragraph 10, and the Closing has taken place.

5. The Notifying Party shall be deemed to have complied with this commitment if by the end of the Divestiture Period, TKR has entered into a final binding sale and purchase agreement with the Purchaser, the Commission approves the terms of sale as being consistent with the Commitments in accordance with the procedure described in paragraphs 10 and 11, and the Closing takes place.

6. In order to maintain the structural effect of the Commitments, for a period of 10 years after Closing, the Notifying Party shall 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 Divestment Asset, unless, following the submission of a reasoned request from the Notifying Party showing good cause and accompanied by a report from the Monitoring Trustee (as provided in paragraph 30 of these Commitments), the Commission finds that the structure of the market has changed to such an extent that the absence of influence of the Notifying Party over TRMC is no longer necessary to render the Transaction compatible with the internal market.

Structure and definition of the Divestment Asset

7. The Divestment Asset consists of the the TRMC Minority Stake.

Section C. Related commitments

8. The Notifying Party shall submit written reports in English on the developments in the negotiations with the Purchaser to the Commission and the Monitoring Trustee no later than 10 days after the end of every month following the Effective Date (or otherwise at the Commission's request).

Section D. The Purchaser

9. In order to be approved by the Commission, the Purchaser must fulfil the following criteria:

(a) The Purchaser shall be independent of and unconnected to the Notifying Party and its Affiliated Undertakings (this being assessed having regard to the situation following the divestiture).

(b) The Purchaser shall have the financial resources, proven expertise and incentive to operate the Divestment Asset.

(c) The acquisition of the Divestment Asset by the Purchaser must neither be likely to create, in light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed. In particular, the Purchaser must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Asset (together, the "***Purchaser Criteria***").

10. The final binding sale and purchase agreement (as well as ancillary agreements) relating to the sale of the Divestment Asset shall be conditional upon the Commission's approval of the terms of sale. Upon TKR reaching an agreement with the Purchaser, the Notifying Party shall, within one week of reaching such an agreement, submit a copy of the final agreement(s) to the Commission and the Monitoring Trustee. The Notifying Party must be able to demonstrate to the Commission that the Divestment Asset is being sold in a manner consistent with the Decision and the Commitments. For the approval, the Commission shall verify that the Divestment Asset is being sold in a manner consistent with the Commitments.

Section E. Monitoring Trustee

I. Appointment procedure

11. The Notifying Party shall appoint a Monitoring Trustee to carry out the functions specified in these Commitments for a Monitoring Trustee.
12. The Monitoring Trustee shall:

(i) at the time of appointment, be independent of the Notifying Party and its 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.

13. The Monitoring Trustee shall be remunerated by the Notifying Party in a way that does not impede the independent and effective fulfilment of its mandate.

Proposal by the Notifying Party

14. No later than two weeks after the Effective Date, the Notifying Party shall submit the name or names of one or more natural or legal persons whom they 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 12 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;

(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

15. The Commission shall have the discretion to approve or reject the proposed Monitoring Trustee 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 Notifying Party 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 Notifying Party 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 Notifying Party

16. If all the proposed Monitoring Trustees are rejected, the Notifying Party 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 paragraph 15 of these Commitments.

Monitoring Trustee nominated by the Commission

17. If all further proposed Monitoring Trustees are rejected by the Commission, the Commission shall nominate a Monitoring Trustee, whom the Notifying Party shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

II. Functions of the Monitoring Trustee

18. 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 Notifying Party, 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

19. The Monitoring Trustee shall:

(i) 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.

(ii) review and assess the progress of the divestiture process;

(iii) act as a contact point for any requests by third parties, in particular the Purchaser, in relation to the Commitments;

(iv) provide to the Commission, sending the Notifying Party a non-confidential copy at the same time, a written report within 15 days after the end of every month that shall cover the progress of the divestiture process;

(v) promptly report in writing to the Commission, sending the Notifying Party a non-confidential copy at the same time, if it concludes on reasonable grounds that the Notifying Party is failing to comply with these Commitments;

(vi) within one week after receipt of the final binding sale and purchase agreement between TKR and the Purchaser referred to in paragraph 10 of these Commitments, submit to the Commission, sending the Notifying Party a non-confidential copy at the same time, a reasoned opinion as to whether the Divestment Asset is sold in a manner consistent with the conditions and obligations attached to the Decision;

(vii) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision.

III. Duties and obligations of the Notifying Party

20. The Notifying Party shall provide and procure TKR to provide the Monitoring Trustee with all such co-operation, assistance and information as the Monitoring Trustee may reasonably require to perform its tasks. The Monitoring Trustee shall have full and complete access to any of TKR's information necessary for fulfilling its duties under the Commitments and the Notifying Party shall provide and procure TKR to provide the Monitoring Trustee upon request with copies of any document. The Notifying Party 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.

21. The Notifying Party shall indemnify the Monitoring Trustee and its employees and agents (each an "***Indemnified Party***") and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to the Notifying Party 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.

22. At the expense of the Notifying Party, the Monitoring Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to the Notifying Party's approval (this approval not to be unreasonably withheld or delayed) if the Monitoring Trustee 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 Notifying Party refuse to approve the advisors proposed by the Monitoring Trustee the Commission may approve the appointment of such advisors instead, after having heard the Notifying Party. Only the Monitoring Trustee shall be entitled to issue instructions to the advisors. Paragraph 21 of these Commitments shall apply *mutatis mutandis*.

23. The Notifying Party agrees that the Commission may share Confidential Information proprietary to the Notifying Party or TKR 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*.

24. The Notifying Party agrees 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.

25. For a period of 5 years from the Effective Date, the Commission may request all information from the Notifying Party that is reasonably necessary to monitor the effective implementation of these Commitments.

IV. Replacement, discharge and reappointment of the Monitoring Trustee

26. If the Monitoring Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Monitoring Trustee to a Conflict of Interest:

(a) the Commission may, after hearing the Monitoring Trustee and the Notifying Party, require the Notifying Party to replace the Monitoring Trustee; or

(b) the Notifying Party may, with the prior approval of the Commission, replace the Monitoring Trustee.

27. If the Monitoring Trustee is removed according to paragraph 26 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 11-17 of these Commitments.

28. Unless removed according to paragraph 26 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.

Section F. The review clause

29. The Commission may extend the time periods foreseen in the Commitments in response to a request from the Notifying Party or, in appropriate cases, on its own initiative. Where the Notifying Party requests an extension of a time period, it 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 Notifying Party. Only in exceptional circumstances shall the Notifying Party be entitled to request an extension within the last month of any period.

30. The Commission may further, in response to a reasoned request from the Notifying Party 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 Notifying Party. 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.

Section G. Entry into force

31. The Commitments shall take effect upon the date of adoption of the Decision.

Duly authorised for and on behalf of Orange S.A.

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[Signed]