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Case No COMP/M.6690 - Syniverse/ MACH

Only the English text is authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 8 (2)

Date: 29/05/2013

EUROPEAN COMMISSION

Brussels, 29.5.2013
C(2013) 3114 final

COMMISSION DECISION

of 29/05/2013

addressed to:_Syniverse Holdings, Inc.

declaring a concentration to be compatible with the internal market and the EEA agreement (Case No COMP/M.6690 - Syniverse/ MACH)

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THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings[1], and in particular Article 8(2) thereof,

Having regard to the Commission's Decision of 20 December 2012 to initiate proceedings in this case,

Having given the undertakings concerned the opportunity to make known their views on the objections raised by the Commission,

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

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

Whereas:

1. INTRODUCTION AND PROCEDURE

(1) On 16 November 2012, the Commission received a notification of a proposed concentration pursuant to Article 4 of Regulation (EC) No 139/2004 ("the Merger Regulation") by which the undertaking Syniverse Holdings, Inc. ("Syniverse" or the "Notifying Party", USA), acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of the whole of the undertaking WP Roaming III S.à r.l. ("Mach", Luxembourg), with the exception of Evenex ApS and its wholly-owned subsidiary Evenex AS (the "Evenex Companies"), by way of purchase of shares (Syniverse and Mach are referred to as the "Parties" in this Decision). The proposed concentration was notified to the Commission following a referral pursuant to Article 4(5) of the Merger Regulation.

(2) After a preliminary examination of the notification and based on the first phase ("Phase I") market investigation, the Commission concluded that the proposed

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

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

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

concentration raised serious doubts as to the compatibility of the proposed concentration with the internal market as regards the markets for data clearing ("DC") financial clearing ("FC") and Near Real-Time Roaming Data Exchange ("NRTRDE") services for roaming and adopted a decision to initiate proceedings pursuant to Article 6(1)(c) of the Merger Regulation on 20 December 2012 (the "Decision opening the proceedings").

(3) Following a request by the Notifying Party, non-confidential versions of certain key documents collected during the Phase I investigation were provided to the Notifying Party on 21 December 2012.

(4) The Notifying Party submitted its written comments to the Decision opening the proceedings on 15 January 2013 (the "Response to the Decision opening the proceedings").

(5) On 21 January 2013 the time limit for taking a final Decision in this case was extended by ten working days pursuant to the second subparagraph of Article 10(3) of the Merger Regulation.

(6) On 5 March 2013 a Statement of Objections (the "SO") was addressed to the Notifying Party pursuant to Article 18 of the Merger Regulation in which the Commission raised competition concerns only as regards DC and NRTRDE services for roaming. The Notifying Party replied to the SO on 19 March 2013 (the "Response to the SO").

(7) In order to address the competition concerns identified in the SO, the Notifying Party submitted a first set of commitments on 11 March 2013.

(8) On 26 March 2013, the Notifying Party submitted a second set of commitments. The Commission carried out a market test of these commitments on 27 March 2013 both with competitors and customers of the Parties.

(9) On 19 April 2013 the Notifying Party submitted a third set of commitments. On the same day the time limit for taking a final decision in this case was extended by 15 working days pursuant to the first subparagraph of Article 10(3) of the Merger Regulation.

(10) The Advisory Committee discussed the draft of this Decision on 13 May 2013 and issued a favourable opinion.

2. THE PARTIES AND THE PROPOSED CONCENTRATION

(11) Syniverse is a global provider of technology services to telecommunications companies. Its main services include DC and FC for roaming, SMS and number portability solutions, network signalling solutions, Internet Protocol ("IP") network services, voice and data roaming facilitation and various other technology solutions for telecommunications companies. Syniverse is based in Tampa (USA) and ultimately controlled by The Carlyle investment group. It serves its customers from its data centres in the United States, Germany and India.

(12) Mach is also a global provider of technology services to telecommunications companies. Its main services include DC and FC services, SMS solutions, fraud management and revenue protection services, business intelligence and content billing solutions. Mach is based in Luxembourg and currently controlled by Warburg Pincus, a global private equity firm. It services its customers through platform infrastructures hosted in Denmark and India.

(13) The proposed concentration consists in the acquisition by Syniverse of all shares of, and all preferred equity certificates issued by, Mach, with the exception of the Evenex Companies. As a result, Syniverse will acquire sole control over Mach. Hence, the proposed concentration constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

3. UNION DIMENSION

(14) The proposed concentration does not have a Union dimension within the meaning of Article 1 of the Merger Regulation as in 2011 Mach's Union turnover did not exceed EUR 250 million and Mach did not generate a turnover in excess of EUR 25 million in at least three Member States. Nonetheless, the proposed concentration fulfils the two conditions set out in Article 4(5) of the Merger Regulation since it is a concentration within the meaning of Article 3 of the Merger Regulation, and it has to be notified in at least three Member States, specifically in Austria, Germany, Portugal, Spain and the United Kingdom.

(15) On 6 August 2012, the Notifying Party submitted, by means of a reasoned submission, a referral request pursuant to Article 4(5) of the Merger Regulation with respect to the proposed concentration. A copy of that submission was transmitted to the Member States on 7 August 2012.

(16) As none of the Member States competent to review the proposed concentration expressed its disagreement as regards the request to refer the case, the notified concentration is deemed to have a Union dimension pursuant to Article 4(5) of the Merger Regulation.

4. INVESTIGATION OF THE CASE

(17) The Commission has conducted a detailed investigation using all tools provided for under the Merger Regulation. In Phase I, in addition to the analysis of the submissions of the Notifying Party, the Commission sent more than 140 detailed requests for information pursuant to Article 11 of the Merger Regulation to five groups of market participants (Mobile Network Operators (MNOs), Mobile Virtual Network Operators (MVNOs), roaming hubs, actual and potential competitors). The questionnaires were addressed to the various types of customers and competitors of the Parties. Over 60 responses were received and analysed.[4] In addition, the Commission held six conference calls and one meeting with third parties to follow up

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[4] The questionnaires sent in Phase I are as follows:

- Q1 – questionnaire to MNOs – Phase I, addressed to 86 MNOs; the Commission received 36 replies;
- Q2 – questionnaire to MVNOs – Phase I, addressed to 23 MVNOs; the Commission received 9 replies;
- Q3 – questionnaire to roaming hubs – Phase I, addressed to three roaming hubs; the Commission received three replies;
- Q4 – questionnaire to actual competitors – Phase I, addressed to 13 actual competitors; the Commission received 9 replies; and
- Q5 – questionnaire to potential competitors – Phase I, addressed to 18 potential competitors; the Commission received six replies.

All the counting of third parties responses to the market investigation (including Phase II responses) has been undertaken on the basis of non-confidential responses.

on their responses. These calls and meetings were documented by way of minutes. Finally, during the Phase I investigation the Commission also undertook an analysis of the DC bidding data submitted by each of the Parties for the period from 1 January 2009 to 30 April 2012 (the "Bidding Data").

(18) During the in-depth second phase ("Phase II") investigation, the Commission sent close to 100 requests for information to customers and competitors, receiving close to 40 replies,[5] and conducted 12 conference calls with customers and competitors. In addition the Commission analysed a substantial amount of the Parties' internal documents. Approximately 7 000 internal emails and other documents have been provided by the Parties and reviewed by the Commission. Finally, in Phase II the Commission conducted a more in-depth analysis of the Bidding Data and the switching data (the "Switching Data") submitted by the Parties.

(19) The Parties submitted the Bidding Data on the procurements for DC and FC services they participated in from 2009 to 2012. Each Party submitted a separate database based on its own business intelligence system. The Parties provided data for the entire year of 2012; […][*]. These datasets provide information, among others, on the name and location of the customer, the date of the procurement, the starting date of the contract, the incumbent data/financial clearing service provider, the identity of other service providers participating in the bidding process, the identity of the winning bidder and whether simultaneous bids for other services (financial clearing, fraud management, messaging services) were made. In addition, for a large fraction of the contracts won by the Parties, the dataset also includes information on the invoiced amount for the first 12 months of the contract, the actual volume during that period and the effective rate per TAP record, calculated by dividing the invoiced amount for the first 12 months by the actual volume during that period. Even though each Party used its own business intelligence system to construct its own dataset, in its Response to the Decision opening the proceedings the Notifying Party expressed concerns related to the reliability of this data and the accuracy of any analysis built on it arguing that the data often include manually collected records that do not record every bidding event in which each Party was involved and does not adequately or accurately record the identity of competing bidders. The Commission acknowledges that the Bidding Data has certain limitations. Therefore, it makes limited use of the Bidding Data and does not base its assessment solely on the Bidding Data. The Commission's assessment has established that other evidence, such as internal documents confirm the quantitative evidence of the Bidding Data, allowing the Commission to place some reliance on the results of the Bidding Data.

(20) The Parties also submitted the Switching Data on MNO switching based on information from the Parties' DC and FC platforms. These datasets provide information, among others, on the name and location of the customer, its DC/FC house, its past switching history (including time of switching and previous service

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5 The questionnaires sent in Phase II are as follows:

- Q6 – questionnaire to MNOs – Phase II, addressed to 81 MNOs; the Commission received 35 replies; and
- Q7 – questionnaire to competitors– Phase II, addressed to five actual competitors; the Commission received four replies.

* Parts of this text have been edited to ensure that confidential information is not disclosed; those parts are enclosed in square brackets and marked with an asterisk.

provider) since 2009 and total payments for DC/FC services in the last full year spent with the Parties.

5. MARKET DEFINITION

5.1. Introduction to outsourced roaming services

(21) The proposed concentration concerns the combination of two leading providers of technologies and services related to roaming.

(22) Roaming occurs when a consumer connects his or her mobile device to another mobile network when travelling abroad. That consumer can use the visited network to receive and place calls and SMSs and to download and transmit data such as Internet streams, photos and videos. Roaming is facilitated by MNOs, which conclude bilateral agreements with other MNOs, as a result of which their users can roam on the partner's mobile network.[6]

(23) The Parties are active on the upstream markets where they provide crucial roaming technologies and services to MNOs. In particular, the Parties are the main providers of roaming DC services, NRTRDE services and FC services. Section 5.1.1 provides a description of those services and their competitive landscape.

5.1.1. Description of Data Clearing Services

(24) In order to determine the retail bills for subscribers' activities whilst roaming, MNOs and MVNOs need to exchange records of their subscribers' usage of roaming systematically and determine the wholesale settlement positions between each other. They ultimately use this information to bill their subscribers for the roaming usage made. DC relates to this activity and entails the following steps.

(25) When a roaming call, SMS or data transmission is completed, the visited MNO creates what is called a Call Detail Record ("CDR"). A CDR contains subscriber identifying information, the mobile numbers involved, time and date stamps, call duration, whether the call/SMS was incoming or outgoing and all other data items needed to generate a charge to the customer. Once the CDR is created, the visited MNO applies the inter-operator tariff ("IOT") specified by the relevant roaming agreement to the CDR and packs the CDRs into a standard record and file format known as transferred account procedure (“TAP”).

(26) To enable invoicing and payments between the home and visited MNOs and subsequent retail invoicing of subscribers, TAP records containing CDRs have to be exchanged between those MNOs. MNOs tend to have a large number of network partners that their subscribers can use for roaming whilst travelling abroad ("roaming partners"). Rather than sending TAP records to and receiving them from multiple roaming partners and performing DC services in-house, MNOs tend to use the services of outsourced service providers ("OSPs"), also referred to as data clearing houses ("DCH"), such as Syniverse and Mach, which facilitate the exchange of billing information.[7] The decision of the MNOs to outsource their DC services is therefore driven by the need for a more efficient solution for the management of their roaming relationships.

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6 On the role of mobile virtual network operators, see recitals (62) onwards.

7 Responses to question 4 of questionnaire Q1 – questionnaire to MNOs – Phase I.

(27) DC providers perform several tasks. Once a DC provider receives a TAP file from its customer MNO, it first checks whether the correct charges have been applied in accordance with the relevant IOT agreement. If the DC provider finds errors, it rejects and returns (parts of) the TAP file to the MNO. If there are no errors, the DC provider sends the TAP file to the DC provider representing the home MNO. That DC provider will check that the amount payable to the operator of the visited network has been calculated correctly.[8] The home MNO typically then uses the TAP records for invoicing its subscriber. The flow of TAP records is represented in Figure 1.

Figure 1: Diagrammatic representation of GSM DC flow

Source: Form CO, figure 11

(28) As becomes clear from Figure 1, DC providers are the central agents managing roaming records of MNOs. They generally charge MNOs a fee per TAP record for their services.

(29) The Global System for Mobile Communications ("GSM") roaming process, including data clearing, is to a certain extent standardised by the MNOs' trade association, the GSMA. The GSM Association (GSMA) is the global trade association representing nearly 800 GSM mobile networks across 219 countries and territories as Full Members. The GSMA also has over 200 suppliers, vendors and manufacturers (including Syniverse and Mach) as Associate Members.

(30) GSMA's document TD.57 defines what a TAP file should look like and what it should contain. If a TAP file generated by a MNO does not comply with this standard, it may fail processing by the receiving DCH and will be returned to the sending DCH. Part of DCHs task is to verify whether the MNO's TAP files are compliant with the GSMA standard. DCHs may also offer a TAP conversion service

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8 In the Form CO, paragraph 261, the Notifying Party explains that in some instances, DCH may represent both the visited MNO and the home MNO. In such a case, the DCH checks the correctness of the TAP file separately on behalf of the visited MNO and the home MNO.

to MNOs.[9] In addition to defining the TAP standard, GSMA also sets out the entire procedure for the TAP flow (for example, the reject & return procedure under which incorrect TAP files are returned to the sending DCH).

(31) A DC provider needs to comply with the GSMA standards. This being said, interfaces between the DCH and internal IT systems of a MNO as well as the level of data reporting are not governed by standards and can be customised on the MNO's request. Moreover, prices and other conditions for DC services are not regulated, but set out in bilateral contracts concluded between an MNO and its DCH.

(32) When an MNO has to select its DCH, it can launch a tender process, issuing requests for proposal ("RFP") to potential suppliers and holding several rounds of bidding by these potential suppliers. It can also engage in bilateral negotiations with selected providers or renegotiate with its incumbent provider. Contracts for the provision of DC services are normally concluded for 2-3 years. MNOs can negotiate global framework agreements with OSPs, the terms and conditions of which are available to their local subsidiaries.

(33) DC is an important process for generating roaming revenue. It is a critical service for MNOs, whose reliability and timely delivery are key considerations in the selection of the OSP. To ensure the provision of the service at the quality required, DC contracts typically contain service level agreements ("SLAs"), which in particular set penalties for delays in the transmission of the TAP files by the DCH.

(34) The Commission has previously considered DC services and in *Syniverse/BSG*[10] it defined a separate market for GSM DC services. GSM is the predominant telecommunications standard used by MNOs in the Union.

5.1.2. Description of NRTRDE services

(35) Fraud Management is an important issue for MNOs. In 2012, fraud in relation to roaming usage is expected to amount to over EUR 7 billion.[11] Through their activities in relation to roaming, the Parties offer data feeds that are ultimately used by MNOs to detect and manage roaming fraud and unintentional roaming revenue loss ("Revenue Assurance"). Those data feeds can be used as an input for broader Fraud Management and Revenue Assurance technologies and services that MNOs use.

(36) The key data feeds that MNOs use to contain roaming fraud are the output of the DC activities. Feeds that can be used from that activity include traditional reporting derived from the DCH's platform and records of unusually high roaming usage ("High Usage Reports, HURs"). Normally, HURs are sold as part of the DC service.

(37) Another important feed used to detect roaming fraud is the NRTRDE.

(38) NRTRDE allows MNOs to exchange CDRs within a time-span of 4 hours, rather than the 36 hours typically associated with the DC activity. This is considered critical in detecting roaming fraud in a timely manner.

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9 For instance, files created by its client MNO under the previous standard (TAP2) into the new standard (TAP3).

10 Commission's decision of 4 December 2007 in Case COMP/M.4662 - *Syniverse/BSG*.

11 Notifying Party's estimate, Form CO, paragraph 97.

(39) The market features of NRTRDE are to a large extent similar to those for DC. Rather than sending individual NRTRDE files to each of the MNOs whose subscribers have roamed on the visited network, the visited MNO can send its NRTRDE files to an outsourced service provider such as the Parties. Those providers will ensure that each of the relevant home MNOs receive their individual NRTRDE file within the required 4 hour time period. They also validate the correctness of the records, produce error and file delivery reports and route the records to the home MNO.

(40) As is the case with DC services, the demand for NRTRDE by outsourced providers is driven by the following factors: enhancement of administrative efficiency and mitigation of the risk of revenue loss. Again as with DC services, customers that purchase the NRTRDE data-flow can also purchase related reporting tools that the Parties consider to be "add-ons" to the NRTRDE.

(41) NRTRDE is the only feed that GSMA mandates its members to use. NRTRDE is defined in the GSMA Permanent Reference Document BA.20 *"as the exchange of CDRs in near-real time between VPMN (Visited Public Network) and HPMN (Home Public Network) to manage its fraud risk in near-real time."* [12]

(42) The record format used for NRTRDE is defined in the GSMA Permanent Reference Document TD.35 and is commonly referred to as the "TD.35 record." BA.20 mandates the exchange of TD.35 records as of 1 October 2008. Any operator not exchanging TD.35 records as of that time is in breach of BA.20. BA.20 is a binding reference document for all GSMA MNOs.

(43) MNOs actively use NRTRDE for the detection of roaming fraud. As it is the case for DC services, rather than sending NRTRDE feeds to and receiving them from multiple roaming partners, normally MNOs procure NRTRDE services from their DCH. If entrusted to a different provider than the DCH, the awarding procedure and the duration of a contract for NRTRDE services are generally the same as described for DC services.[13]

(44) To a far lesser extent, customers use a particular feed from signalling networks, the so-called CAMEL feed, to detect roaming fraud and revenue loss.

(45) Fraud Management and Revenue Assurance services were not addressed in detail in the Commission's *Syniverse/BSG* Decision. The Parties' market position in NRTRDE is significant. The Commission therefore has assessed in its investigation whether NRTRDE is a separate market.

5.1.3. Description of Financial Clearing Services

(46) When MNOs' subscribers roam, payment obligations are generated for the home networks towards the visited networks, which in turn become entitled to payments. Each MNO creates an invoice each month with respect to those roaming services it provided as the visited network and sends that invoice to each of its roaming partners. Likewise, each MNO receives an invoice for the services provided to its subscribers while roaming.

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[12] Form CO, paragraph 695.
[13] Recital (32).

(47) FC services relate to the wholesale invoicing and settlement of accounts payable and receivable by MNOs as a result of the roaming activities of their respective subscribers.

(48) The input for FC is the output generated by the DC process. In particular, DCHs generate validated retail and wholesale billing data, that is to say a report on how much: the home MNO needs to charge its own subscribers for roaming on another (visited) mobile network (retail); and the MNO owes each of its roaming partners and how much those roaming partners owe the MNO (wholesale). This data is then used for the actual wholesale billing between MNOs.

(49) FC services entail, *inter alia*, generating an actual (wholesale) invoice, checking received invoices, making payments on behalf of the MNO and checking that invoices have been paid. As explained by the Notifying Party, the timeframe within which FC services have to be completed are much longer than for DC: whilst DC is a batch processing exercise that is normally undertaken in 24 hour periods, FC is batch processing on a monthly basis.[14] Moreover, whilst DC consists in the processing of several TAP files per roaming partner, FC consists in the processing of one invoice per roaming partner on a monthly basis.

(50) The actual wholesale billing can be performed by the MNO itself, or can be outsourced to an OSP, also referred to as a financial clearing house ("FCH"), such as the Parties. Contrary to what is the case for DC services, in-house provision of FC service is an established practice, especially in the EEA, where about 50% of EEA based MNOs currently undertake FC in-house (22% of MNOs at global level).

(51) If wholesale billing is entrusted to an OSP, the award procedure and the duration of a contract for FC services are the same as described for DC services.[15]

(52) FC services were not considered in close detail in *Syniverse/BSG*. At the time of that acquisition, Syniverse was not active in FC. There was therefore no horizontal overlap in FC between the Parties in that case. The Commission only concluded that "*data clearing and financial clearing services should be considered as different product markets*".[16] The Commission considered that the two services serve different purposes and did not seem substitutable to each other. The Commission did not further define the exact product and geographic scope of the market for FC services.

5.1.4. Description of other closely related services

5.1.4.1. Roaming Hub Services

(53) Small to medium-sized MNOs may face high transaction costs in concluding roaming agreements with each of their roaming partners because of the high number of MNOs throughout the world. To avoid the complexities of many bilateral roaming partner relationships, MNOs can connect to a roaming hub, which manages the roaming relationships of all MNOs connected to it.

(54) The GSMA provides standards for the contracts between MNOs and roaming hubs and in its document BA.62 it defines the services that must be provided by roaming hubs to their MNO clients (mandatory services) and those that may be provided to

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[14] Notifying Party, FC paper, paragraph 40.
[15] See recital (32).
[16] Case COMP/M.4662 - *Syniverse/BSG*, recitals 18 and 19.

their MNO clients (optional services). The mandatory services are the following: roaming agreement management; operations and maintenance, that is to say, assisting MNOs with troubleshooting for roaming network traffic between and among client MNOs; centralised signalling services for the authentication of identity and authorisation of usage for roaming subscribers; and IREG (network connectivity) and TADIG (billing) testing between client MNOs to ensure that end-to-end network connectivity and billing exchange functions perform appropriately.

(55) Currently there are five roaming hubs. With the exception of Comfone, all the hubs today are owned and controlled by MNO groups. In particular Vodafone and Orange operate their own roaming hubs, respectively called Vodafone Roaming Services ("VRS") and Orange. Telefónica has a […]*% stake in Link2One, which it manages together with Mach (holding […]*% shareholdings). Finally, Belgacom ([…]*), MTN and Swisscom control BICS, a global carrier of voice, data and value added services to wireless and wireline service providers which also operate a roaming hub.

5.1.4.2. Business Intelligence solutions

(56) To define their marketing strategies, tailor pricing, and obtain better understanding of consumers' demand and of market trends MNOs use specific tools and applications for tracking, analysing and managing data. Those tools and applications are generally referred to as business intelligence solutions.

(57) MNOs can also rely on business intelligence software to manage roaming data to identify strategies to attract new roaming customers, determine price sensitivities and deliver budgeting and scenario tools.

5.1.4.3. A2P and P2P SMS services

(58) Short Message Service ("SMS") messaging solutions ensure that wireless SMS messages are delivered regardless of the recipient's location, wireless network or device. The present proposed concentration involves two types of SMS messaging services: application to person ("A2P") SMS services and person to person ("P2P") SMS services.

(59) A2P SMS is an enterprise to customer messaging service for the types of messages that companies such as airlines and banks exchange with their customers. MNOs are effectively suppliers of A2P SMS messaging services to businesses (from which the MNOs derive revenue), allowing businesses to exchange messages with subscribers of the MNOs' networks. Specifically, OSPs such as the Parties route the A2P messages to the MNOs' networks on behalf of enterprises.

(60) P2P SMS messaging services provide subscribers of different MNOs with the ability to send SMS messages to other MNOs. In effect, the delivery of P2P SMS messages is a routing activity between MNOs. MNOs can send P2P SMS messages to other MNOs either via direct connections between two MNOs or via a SMS hub connected to many other MNOs. Syniverse does not offer direct connection services. Both Syniverse and Mach offer SMS hub services.

5.1.5. The customers

(61) The services described in the sections 5.1.1 to 5.1.4 are provided to two main categories of customers: MNOs and MVNOs.

(62) MVNOs, such as Virgin Mobile and Tele2, are mobile communications providers who do not own authorisations to use spectrum and have not deployed their mobile network, but rely on MNOs for essential services that they purchase on a wholesale

basis and package into their retail mobile offerings. As is the case for MNOs, MVNOs also allow their subscribers to roam on partner networks. They can do this either on the basis of their own roaming agreement with partner MNOs, or by relying on the agreement that their "host MNO" has in place with its partner MNOs. In the latter case MVNOs are not typically direct customers of DCHs and OSPs of the other roaming related services, but rather rely also for these services on their "host MNO." In contrast, those MVNOs who have their own roaming agreements tend to operate in the same way as MNOs with regard to the provision of DC and other related services.

(63) Although MVNOs currently account for a very limited part of the Parties' DC revenues, they are important in ensuring effective competition on the downstream markets for telecommunications services. They are, for instance, possible alternative roaming service providers that can, under the Union regulatory framework for roaming, reinforce the competitive pressure in the provision of retail roaming services in the EEA. Since the assessment of the effects of the proposed concentration on MVNOs is the same as for MNOs, any reference to MNOs in this Decision should be understood as including also MVNOs, unless otherwise indicated.

(64) As regards MNOs, it is possible to distinguish different types of customers according to their size. There are large MNOs (also referred to by market participants as "Tier 1" MNOs), medium MNOs ("Tier 2" MNOs) and small MNOs ("Tier 3" MNOs).[17] The SO contained the preliminary conclusion that on the basis of DC revenues that MNOs pay to their respective DCH, which appears from the market investigation to be the most reliable criterion, it seems that Tier 1 MNOs would notably include […]*.

(65) In its Response to the SO, the Notifying Party argued that the Commission had omitted to define or consistently apply the concept of "Tier 1" MNOs.[18] In addition, the Notifying Party argued that the Commission had overstated the importance of the role of Tier 1 MNOs which is considered as crucial to the theory of harm and the assessment of the Commitments.[19]

(66) The Notifying Party acknowledged the Commission's statement in the SO that there is no universally accepted classification criterion which the market uniformly uses in order to rank MNOs into Tiers[20]. However, the Notifying Party argued that the various bases that the Commission had attempted to use to distinguish Tier 1 customers, such as processing volumes, revenues, customisation and SLAs, were inconsistent, poorly correlated, and did not result in a clear distinction.[21]

(67) The Notifying Party argued that the Commission had failed to ascertain where the appropriate cut off point between Tier 1 customers and other customers should be.

(68) Moreover, the Notifying Party claimed that the SO had over-emphasised the importance of the Tier 1 MNOs to the competitive assessment. The MNOs that the

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17 The market position of MVNOs for the provision of the services considered in this Decision is comparable to the one of this type of MNOs.

18 Notifying Party's Response to the SO, paragraphs 85 to 91.

19 Notifying Party's Response to the SO, paragraph 92.

20 SO, paragraph 50.

21 Notifying Party's Response to the SO, paragraph 19.

Commission classified as "Tier 1" constitute a very small minority (four) of the total number of customers that may be affected by the proposed concentration. The Notifying Party considered that the Commission had been influenced disproportionately by a very small group of very large sophisticated MNOs. Also, the only relevance of having a Tier 1 MNO as a customer is that having such a customer evidences the characteristics that would be necessary to serve other Tier 1 MNOs.[22]

(69) The concept of “Tier 1 MNO” (or "large MNO") is relevant in the Commission's competitive analysis in Section 6 to establish the substitutability of the Parties’ products and, whether the Parties are each other's closest competitors and for establishing what are the barriers of a competitor to constrain the pricing of the merged undertaking and to expand output the coming two years.

(70) The market investigation has shown that the Parties are currently the only OSPs able to serve a distinctive category of MNOs that are characterised by a number of criteria such as: magnitude of the volume of TAP files that needs to be processed, global presence, customisation of services and extensive requirements related to quality of service and reliability.

(71) According to Comfone:

"MNOs can be classified as Tier 1, Tier 2, Tier 3 on the basis of the number of roaming partners and the roaming volume in terms of number of CDRs. Comfone classifies as Tier 1 all those MNOs with more than 350 roaming partners as well as roaming volume of more than 50 million CDRs per month"[23].

Telecom Italia adds that the relevant criterion is the "*Amount of roaming records exchanged via TAP file (both TAP IN and TAP OUT)"*[24] and gives the following classification:

"LARGE: TMobile Germany, Orange France, Telefónica Spain

MEDIUM: SFR France, KPN, Belgacom

SMALL: Wind Hellas, Bouygues Telecom, O2 Germany"[25]

TNS:

"*Categorization of MNO size as it relates to DC services is typically based on the number of roaming call detail records (CDRs) that are generated during a monthly processing cycle. As a secondary unit of measurement, the number of subscribers that provision mobile services from the MNO can be used to determine relative size.*

Examples:

*Large (greater than 20 million CDRs generated per month): […]**

*Medium (between 5 million and 20 million CDRs generated per month): […]**

*Small (less than 5 million CDRs generated per month): […]**"[26].

Nextgen:

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22 Notifying Party's Response to the SO, paragraph 92.

23 Agreed minutes of the conference call with Comfone of 15 January 2013 [ID2317].

24 Response to question 3 of questionnaire Q6– questionnaire to MNOs – Phase II [ID2215].

25 Response to question 3 of questionnaire Q6– questionnaire to MNOs – Phase II [ID2215].

26 Response to question 3 of questionnaire Q7– questionnaire to competitors – Phase II [ID2333].

"*The volume of TAP files is not a completely reliable criterion for the classification. The most reliable criterion is revenues*"[27].

"*It is somewhat difficult to differentiate the Tiers, as it depends on how much services they have outsourced to DCH. A first indication naturally is the size of roaming, especially how much outgoing TAP records they have*"[28].

EDCH:

"*Number of subscribers, Volume of roaming records, Number of Roaming Partners, Group Operator*"[29].

Vimpelcom:

"*In principle there are two main criteria to assess MNO's Tiers with regard to DC services:*

i. Inbound traffic generated by the guest roamers on the MNOs' network

ii. Outbound traffic generated by the customers of the MNOs.

Substantial volumes for one or both of these streams require dedicated operational teams within the MNO and more sophisticated DC services from the DC providers"[30].

Orange:

"*The differentiation of operators by size is made by their traffic volumes: the more traffic they have, the bigger they are*"[31].

Deutsche Telekom:

"*DT believes that the only meaningful criteria to differentiate large. medium and small MNOs with regard to their DC requirements is "number of TAP files". The number of TAP files is not directly correlated to the number of subscribers the MNOS has, but is also heavily influenced by the fact of being an operator in a holiday destination, like in Austria or Croatia*"[32].

(72) The criterion of magnitude of volume of TAP-data to be processed was identified by a significant number of respondents to the market investigation to be most relevant for why other DC competitors are unable to substitute for the Parties' DC services.

Comfone:

When asked about reputation and/or proven record requirement, Comfone replies that "Tier 1 resp. their employees are more demanding"[33].

"Tier 1 MNOs tend to have higher requirements in terms of reporting considering that they have different departments (legal department, controlling department, technical department, etc.) which have specific needs in terms of reporting. […] Tier

[27] Agreed minutes of the conference call with Nextgen of 22 January 2013[ID2223].

[28] Response to question 3 of questionnaire Q7– questionnaire to competitors – Phase II [ID2224].

[29] Response to question 3 of questionnaire Q7– questionnaire to competitors – Phase II [ID1926].

[30] Response to question 3 of questionnaire Q6– questionnaire to MNOs – Phase II [ID2253].

[31] Response to question 3 of questionnaire Q6– questionnaire to MNOs – Phase II [ID1932].

[32] Response to question 3 of questionnaire Q6– questionnaire to MNOs – Phase II [ID1940].

[33] Response to question 6 of questionnaire Q7 – questionnaire to competitors – Phase II [ID1879].

1 customers are generally more demanding with respect to customer care. Tier 1 customers call/mail more frequently their DC house"[34].

"Comfone has not been really successful in attracting Tier 1 MNOs"[35].

Nextgen:

"All criteria are in more demand by Tier 1 operators"[36] *and in particular "Experience and more technical (for example IT) skills"*[37].

"usually Tier 1 operators require a higher degree of customisation of the roaming service compared to Tier 2 and Tier 3 MNOs"[38].

"It usually takes about 1 to 2 years of work in order to win a contract from a new MNO. In order to work with Tier 1 operators an important issue is to build up a relationship with them, to build up a reputation. In order to do that, Nextgen estimates that a minimum two year period of time is needed"[39].

"the main source of confidence that Tier 1 operators look for consists in a proven record of successful outsourcing for a Tier 1 operator"[40].

(73) On that basis the Commission has concluded that the size of MNOs is relevant for its competitive analysis in Section 6.

(74) Furthermore, the Commission found, on the basis of DC revenue and volume data provided by the Notifying Party in response to the Commission's request for information of 21 December 2012, that there is a clear correlation between DC revenues and volumes of TAP files that have to be processed. While the Commission acknowledges that there is no universally accepted definition of Tier 1 operators which cuts across all market participants, it appears from the investigation that DC revenues can provide a sound basis in order to distinguish the "Tier 1" MNOs. For the sake of the analysis in this Decision, a restrictive definition of Tier 1 operators based on DC revenues will be used. That definition includes […]* which have significantly higher DC revenues than other EEA customers. The Commission notes that […]* covers its DC service needs through in-house provision. The definition excludes medium sized operators such as […]* and […]* which are considered as Tier 2 customers and also smaller MNOs such as […]* which are considered as Tier 3 customers.

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34 Agreed minutes of the conference call with Comfone of 15 January 2013 [ID2317].
35 Agreed minutes of the conference call with Comfone of 15 January 2013 [ID2317].
36 Response to question 6 of questionnaire Q7 – questionnaire to competitors – Phase II [ID2224].
37 Response to question 6 of questionnaire Q7 – questionnaire to competitors – Phase II [ID2224].
38 Agreed minutes of the conference call with Nextgen of 22 January 2013 [ID2223].
39 Agreed minutes of the conference call with Nextgen of 22 January 2013 [ID2223].
40 Agreed minutes of the conference call with Nextgen of 22 January 2013 [ID2223].

Table 1: MNOs classified according to 2012 DC EEA revenues

MNO	DC Revenue
[…]*	[…]*
[…]*	[…]*
[…]*	[…]*
[…]*	[…]*
[…]*	[…]*
[…]*	[…]*
[…]*	[…]*
[…]*	[…]*

Source: Commission's calculation based on Parties' response to question 25 of the request for information of 25 January 2013

(75) The competitive analysis focuses on those top 4 MNOs, which represent [50-60]*%[41] of the DC demand[42]. Each of the 4 MNOs must have a choice of another DC provider in order for the Parties to continue to be price constrained with regard to them. Hence, it can be left open whether the terms "Tier 1" or "large MNO" encompass other MNOs in addition to the top 4 since the extension of the competitive analysis to them would not change its outcome.

5.1.6. *The competitive landscape*

(76) The markets for the provision of the services described in section 5.1 are characterised by the presence of a few specialist providers which tend to offer the full suite of roaming services and technologies to MNOs, in addition to the Parties. Section 5.1.6 describes those providers.

5.1.6.1. Comfone

(77) Comfone AG ("Comfone") is a company headquartered in Switzerland that evolved from a management buyout from Swisscom. It has approximately 90 employees and regional offices covering Europe, Latin America, North America, Central Asia and Asia Pacific.[43] Comfone's product portfolio includes Signalling, GPRS roaming exchange ("GRX") and IP exchange ("IPX") Services, Data and Financial Clearing

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[41] Based on the Notifying Parties' response to question 25 of the request for information of 25 January 2013, the Commission finds that the four Tier 1 MNOs, namely […]* and […]*, represented [50-60]*% of total EEA DC revenues in 2012.

[42] The terms "Tier 1" and "large MNO" are used interchangeably in the remainder of this decision and refer to these 4 MNOs.

[43] Comfone's website, http://www.comfone.com/index.php/en/about-us and http://www.comfone.com/index.php/careers, visited on 20 February 2013.

and hub Services via its Key2Roam platform.[44] It also provides NRTRDE services as add-ons to its DC services.[45]

(78) Comfone entered the clearing markets in 1998, but between 2003 and 2008 it was also acting as a re-seller of EDS IOS GmbH's DC services. In August 2005, BSG acquired EDS IOS GmbH. When BSG was then acquired by Syniverse, Comfone decided to re-enter the DC market by establishing a joint venture with InfoBrain in 2008.[46] Under that joint venture agreement, the DC platform is developed and maintained by InfoBrain, but it is sold under Comfone's brand. InfoBrain provides the software and Comfone provides the relevant first level support, which requires around 10 employees, whilst InfoBrain is responsible for the second level support. The relationship between Comfone and InfoBrain is exclusive.[47]

(79) According to the Notifying Party's estimates based on operator count, Comfone's 2012 market shares for DC services were [0-5]*% at global level and [10-20]*% in the EEA, whilst they were negligible both at global and EEA level for NRTRDE services.

(80) Comfone's […]* DC customer is Tele2 Sweden.

5.1.6.2. Nextgen

(81) Nextgen Clearing Limited ("Nextgen") is a company established in August 2007. It is headquartered in London, United Kingdom, and it has offices in Croatia, U.S. and Hong Kong.[48]

(82) NextGen is active in the EEA as a provider of FC services. On 1 March 2013 Nextgen started also to provide DC and NRTRDE services. Nextgen is also a provider of business intelligence and analytics.[49] Nextgen partners with an Indian company which has developed DC software for the Indian market.[50]

5.1.6.3. TNS

(83) Transaction Network Services ("TNS") is a U.S. based company which has been delivering solutions for the payments, financial and telecommunications industries since 1990. Its corporate offices and network operating centres are in the USA, United Kingdom and Australia.

(84) In 2009 TNS acquired VeriSign's communications services division, including its DC business. TNS's own product offerings for the telecommunications industry include DC, as well as network services and P2P SMS messaging. It provides FC services as a reseller of Nextgen and NRTRDE as a reseller of Roamex.

(85) According to the Notifying Party's estimates based on operator count, TNS' 2012 market shares for DC services were [0-5]*% at global level and [0-5]*% in the EEA.

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44 Response to question 1.1 of questionnaire Q4 – questionnaire to actual competitors – Phase I [ID962].

45 Agreed minutes of the conference call with Comfone of 3 December 2012, paragraph 20 [ID1495].

46 Agreed minutes of the conference call with Comfone of 3 December 2012, paragraph 2 [ID1495].

47 Agreed minutes of the conference call with Comfone of 3 December 2012, paragraph 12 [ID1495].

48 Nextgen's website, http://www nextgenclearing.com/, visited on 20 February 2013.

49 Response to question 1.1 of questionnaire Q4 – questionnaire to actual competitors – Phase I [ID1048].

50 Agreed minutes of the meeting with Nextgen of 28 November 2012, paragraph 5 [ID1541].

5.1.6.4. ARCH

(86) Advanced Roaming Clearing House ("ARCH") is a subsidiary of China Mobile with offices in Hong Kong and in Shenzhen in the People’s Republic of China. ARCH was incorporated in the British Virgin Islands as an International Business Company on 4 April 2005.[51]

(87) ARCH has established 5 series of products, targeted at various kinds of operators around the world: FC and DC services, Global Expansion, Revenue Assurance (in particular NRTRDE and High Usage Records ("HURs"), Value-added Service and Roaming Expert (trainings).[52]

(88) ARCH services China Mobile as well as other MNOs, but it does not have any presence in the EEA. Indeed, as evidenced by the market shares estimates provided by the Notifying Party based on an operator count, ARCH's 2012 market shares for DC services were [0-5]*% at global level and [0-5]*% in the EEA, whilst for NRTRDE services ARCH's market shares were [0-5]*% at global level and [0-5]*% in the EEA.

5.1.6.5. EDCH

(89) EDCH was founded in 1994 as part of Etisalat, the United Arab Emirates telecommunications company. It offers DC, FC, revenue assurance and value added services to mobile operators in the Middle East, Africa, Asia, and Europe.[53] The processing of all its services takes place within the United Arab Emirates and the data is transferred to its destination via a secure internet connection.[54]

(90) According to the Notifying Party's estimates based on operator count, EDCH's 2012 market shares for DC services were [5-10]*% at global level and [0-5]*% in the EEA, whilst for NRTRDE services the market shares were [5-10]*% at global level and [0-5]*% in the EEA.

(91) EDCH's main DC customer in the EEA is […]*.

5.1.6.6. Other market participants

(92) A limited number of market participants are active in the stand-alone provision of single and specific services that are covered by this Decision.

(93) RoamEX is a company founded in 1993 with headquarters in Canada and facilities in the U.S. It sells a variety of near-real time roaming usage data and software applications to MNOs. RoamEX is a provider of NRTRDE services. According to the Notifying Party's estimates based on operator count, RoamEX’s market shares for NRTRDE services were in 2012 [0-5]*% worldwide and [0-5]*% in the EEA.

(94) For the providers of roaming hub services see recital (55).

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51 ARCH's website, http://www.archclearing.com/About_us/Company_Profile.xhtm, visited on 20 February 2013.

52 Footnote 51.

53 Response to question 1.1 of questionnaire Q4 – questionnaire to actual competitors – Phase I [ID958].

54 Response to question 8.1 of questionnaire Q4 – questionnaire to actual competitors – Phase I [ID958].

5.2. Product market definition

5.2.1. Data Clearing Services

5.2.1.1. Views of the Notifying Party

(95) In the Form CO, the Notifying Party submits that the definition of the relevant product market in *Syniverse/BSG* is correct and that GSM roaming DC constitutes a separate product market.

(96) In this context, the Notifying Party makes a distinction between DC services for GSM networks and DC services for Code Division Multiple Access ("CDMA") networks. GSM is the mobile network standard predominantly used in the world, whilst the use of CDMA networks is limited to certain geographic areas, principally the U.S. and Asia. There are no operational CDMA networks in the Union.

(97) The Notifying Party states that different standards for roaming records are used for DC on CDMA and GSM networks. DC on GSM networks uses the TAP format, whereas DC on CDMA networks uses the Cellular Intercarrier Billing Exchange Roamer ("CIBER") format. According to the Notifying Party, there is no substitutability between DC services for CDMA and GSM DC services because of this different standard. Therefore, the Notifying Party submits that DC services on GSM networks are in a separate product market from DC services on CDMA networks.

(98) In addition to core DC services, both of the Parties offer optional value-added services, such as TAP file creation, re-rating, enhanced reporting and extended IOT check. The Notifying Party submits that those services are purchased by MNOs as part of DC services and are hence part of the same product market.

5.2.1.2. The Commission's investigation and assessment

(99) The results of the market investigation confirmed the Commission's previous findings as regards the product market definition for DC services and therefore the existence of a separate product market for the provision of GSM roaming DC services.[55] This is in line with the Notifying Party's submission and it has not been contested either in the Notifying Party's Response to the Decision opening the proceedings or in the Notifying Party's Response to the SO.

(100) More precisely, both customers and competitors view DC services on GSM networks as a distinct service with specific characteristics. The majority of the respondents (including MNOs, MVNOs and competitors) confirmed that the DC procedure encompasses the following core services:

(a) Communication and Data Transfer (EDI/EDT Connection, File Compression and Encryption, Configuration and Testing of EDI Connections, Operating of EDI Connections between Data Clearing House, Client and RP, Tool for automated Data Transfer between Data Clearing House and Client);

(b) Data Processing (TAP File Transfers and Verification, Data Validation, Error Handling, Reject & Return Procedure, File Schedule Monitoring, Conversion between different TAP File Versions, Resending of Tap Files, Storage of all TAP Files for one year);

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55 Case COMP/M.4662 - *Syniverse/BSG*, recitals 21.

(c) High Usage Reports (monitoring and reporting);

(d) IOT Check (rate edits);

(e) Online Applications (TAP File on Demand download tool);

(f) Reporting (Standard and Customisable Reports, Export reports to MS Excel or in CSV-Format, TAP File Tracking tool in Analyzer);

(g) File processing and file retransmission.[56]

(101) Given the different standards for the exchange of roaming records, DC services on CDMA networks have different characteristics compared to DC services to GSM operators. This would indicate that they are in a separate market, consistent with the view taken by the Commission in *Syniverse/BSG*.

(102) Virtually all responding MNOs outsource their DC services.[57] The vast majority of them have not seriously considered conducting DC in-house.[58] Those customers underline the significant resources, cost and technical complexity associated with this process; several MNOs stressed the fact that DC is not their core competence, and hence they prefer to outsource it.[59] The market investigation also suggests that the provision of DC services involves large economies of scale. Hence, performing DC for a single customer, even if a large MNO group, may not reach the critical mass necessary to make such services cost-efficient for in-house provision.[60] The DC market is therefore unlikely to include the provision of DC services in-house.

(103) Therefore, it is concluded that the relevant product market for the purpose of the assessment of the impact of the proposed concentration is the market for GSM roaming outsourced DC services.

5.2.2. NRTRDE

5.2.2.1. Views of the Notifying Party

(104) In the Form CO, the Notifying Party submits that NRTRDE is part of a wider market for Fraud Management and Revenue Assurance services. Indeed, MNOs and MVNOs are interested both in containing fraud associated with subscriber behaviour whilst roaming and fraud associated with subscriber behaviour on the MNO's and MVNO's own network ("domestic fraud").

(105) In the Notifying Party's view, the only way in which NRTRDE can be seen as a relevant product market is the use of it as a mechanism to transfer liability for fraud from the visited MNO to the home MNO. As explained in recitals (37) onwards, the visited MNO needs to send the TD.35 NRTRDE record to the relevant home MNO within 4 hours of the subscriber event. Upon receipt of the NRTRDE file by the home MNO, liability for fraud committed by the subscriber of the home MNO on the visited MNO's network passes to the home MNO.

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[56] Responses to questions 3 of questionnaire Q1 – questionnaire to MNOs – Phase I, 7 of questionnaire Q2 – questionnaire to MVNOs – Phase I and 4 of questionnaire Q4 – questionnaire to actual competitors – Phase I.

[57] Responses to question 4 of questionnaire Q1 – questionnaire to MNOs – Phase I.

[58] Responses to question 4 of questionnaire Q1 – questionnaire to MNOs – Phase I.

[59] Responses to questions 23.1 of questionnaire Q1– questionnaire to MNOs – Phase I and 26.1 of questionnaire Q2– questionnaire to MVNOs – Phase I.

[60] See footnote 59.

(106) The Notifying Party however also confirms that a distinction can be drawn between the Fraud Management applications that MNOs and MVNOs use and the data feeds that are used as inputs for those platforms. NRTRDE is one of those data feeds. The Notifying Party submits that viewed from this perspective, NRTRDE is only one of a whole range of feeds that can be used by MNOs.[61] In its view, this illustrates the many substitutes to NRTRDE as a data feed for fraud detection and prevention purposes. Furthermore, the Parties are unaware of any dedicated fraud management system which addresses only NRTRDE.

(107) The Notifying Party does not repeat those arguments in its Response to the SO.

5.2.2.2. The Commission's investigation and assessment

(108) Contrary to the Notifying Party's claims, the Commission preliminarily concluded in the Decision opening the proceedings that NRTRDE constitutes a separate product market as a data feed into the MNO's Fraud Management and Revenue Assurance platforms, but left open the question whether NRTRDE is part of the same market as data feeds from the DC activity, such as high usage reports ("HURs") as further explained in recitals (124) onwards.

(109) In its Response to the Decision opening the proceedings the Notifying Party has not disputed the Commission's preliminary findings as regards the product market definition for NRTRDE. On the contrary the Notifying Party seems to agree with the possible market definition identified in the Decision opening the proceedings, whereby the NRTRDE data flow could be a substitute for data arising from the DC process. The Notifying Party undertakes the competitive assessment of those two markets together. Indeed, the only (if there is any) discussion on market definition for NRTRDE is undertaken at paragraph 36 of the Notifying Party's Response to the Decision opening the proceedings, which reads: *"As recognised in the Decision, NRTRDE services are often provided alongside DC services, and the NRTRDE data flow can be a substitute for data arising from the DC process. As such, the features described below apply to each of DC services and NRTRDE services, and their competitive assessment is undertaken jointly throughout this section."*

(110) The in-depth market investigation confirmed the Commission's findings in the Decision opening the proceedings, therefore the SO contained the preliminary conclusion that the relevant product market for the purpose of the assessment of the impact of the proposed concentration is the market for outsourced NRTRDE services, but left open whether it is part of a broader market encompassing DC services. The Notifying Party's Response to the SO has not contested this conclusion and again undertook an assessment of these the DC and NRTRDE markets together.[62]

(111) More precisely the Commission considers that the Notifying Party's claim put forward in the Form CO that MNOs can use multiple data feeds to contain roaming fraud and domestic fraud is not conclusive. Indeed, as the Notifying Party itself

[61] The Notifying Party mentions switch activity records, billing system data, activation feed, prepaid activity records, data usage (including Gateway GPRS support node or GGSN), short message service centre, toll call activity, premium number activity, interconnect feeds, re-seller activity, MVNO activity, HUR, signalling data and GSM MAP or CAMEL.

[62] The agnostic position of the Notifying Party as regards the two possible alternative market definitions is clear from paragraph 137 and footnote 142 of the Response to the SO.

underlines, MNOs and MVNOs are interested in containing both roaming fraud and domestic fraud. In other words, data feeds used to contain roaming fraud and domestic fraud may very well be complements that MNOs use to contain overall subscriber fraud. The relevant question is therefore which feeds, other than NRTRDE, MNOs can use to contain roaming fraud.

(112) The market investigation indicated that only a very small portion of the data feeds listed by the Notifying Party (such as switch activity records; interconnect feeds; reporting files generated by a NRTRDE processing (TD35 files); high usage reports; signalling data - GSM MAP; CAMEL feed; billing system data; activation feed; prepaid activity records; data usage - GGSN; SMSC; toll call activity; premium number activity; reseller activity; MVNO activity[63]) are commonly used by MNOs and MVNOs for the purposes of containing roaming fraud. More precisely, the only data feeds used by virtually all network operators to contain roaming fraud are the HURs (which are part of the DC service) and NRTRDE, whilst a wide majority of them use also GGSN data and billing system data.

(113) Table 2 illustrates which data feeds are used to detect high roaming usage and contain roaming fraud and roaming revenue loss by how many network operators out of the 18 MNOs and 3 MVNOs that responded to the relevant question. Respondents were allowed to select more than one option.

Table 2: Data feeds used to detect high roaming usage, roaming fraud and roaming revenue loss

Data Feed	**MNOs**	**MVNOs**
High usage reports	18	3
NRTRDE	17	1
Data Usage – GGSN	13	0
Billing system data	12	0
SMSC	8	0
Premium Number activity	7	0
Switch activity records	6	0
CAMEL Feed	6	1
Prepaid activity records	4	0
Signalling Data - GSM MAP	4	1
Interconnect feeds	3	0
Activation Feed	3	0
MVNO activity	1	0
Toll call activity	1	0
Reseller activity	0	0

Source: responses to question 61 of questionnaire Q1– questionnaire to MNOs – Phase I and question 63 of questionnaire Q2– questionnaire to MVNOs – Phase I.

(114) Regardless of the usage rate of each data feed, the market investigation clearly indicated that all those data feeds are complementary rather than substitutes to each other and in particular to NRTRDE.

63 Form CO, paragraph 700.

(115) Virtually all network operators indicated that they analyse more than one data feed to detect roaming fraud[64], one of which is NRTRDE.[65] However, when asked which data feeds could be used as an alternative to NRTRDE for the detection of roaming fraud among those listed by the Notifying Party[66], several options were selected by the MNOs replying to the relevant question, but none of those options was chosen by more than half of the respondents, with the exception of the gateway GPRS support node ("GGSN") and CAMEL feed.

(116) Table 3 illustrates more in detail for each data feed indicated by the Notifying Party, how many network operators out of the 15 MNOs replying to the relevant question consider that such data feed is an alternative of NRTRDE. Respondents were allowed to select more than one option.

Table 3: Data feeds as an alternative to NRTRDE

Data Feed	**Number of MNOs who see it as alternative to NRTRDE**
Data Usage – GGSN	11
CAMEL Feed	7
High usage reports	6
SMSC	5
Signalling Data - GSM MAP	4
Prepaid activity records	4
Interconnect feeds	3
Premium Number activity	3
Switch activity records	2
Billing system data	1
Toll call activity	1
Activation Feed	0
Reseller activity	0
MVNO activity	0

Source: responses to question 60 of questionnaire Q6 – questionnaire to MNOs – Phase II.

(117) Nonetheless, a closer analysis of the results of the market investigation show, that neither GGSN nor CAMEL are likely to be substitutable to NRTRDE within the timeframe relevant for merger analysis.

(118) As explained by the Notifying Party, GGSN is a data feed related to data usage and carries information related to the identity of the user, volume of data uploaded, volume of data downloaded, timing, user location and the access point name.[67]In contrast, NRTRDE is mainly used by MNOs for voice and SMS traffic and not for

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64 With the only exception of Lycamobile among MVNOs, response to question 63 of questionnaire Q2 – questionnaire to MVNOs – Phase I [ID1033].

65 With only one exception among MNOs (Tusmobil d.o.o., response to question 61 of questionnaire Q1– questionnaire to MNOs – Phase I [ID908]) and among MVNOs Lycamobile (response to question 63 of questionnaire Q2– questionnaire to MVNOs – Phase I, [ID1033]).

66 See footnote 63.

67 Notifying Party, response to the request for information of 21 December 2012, paragraph 117.

data,[68] and it is the only data feed mandated by the GSMA of these two types of traffic. Therefore, GGSN cannot be considered as a substitute for NRTRDE.

(119) As regards CAMEL, the overwhelming majority of MNOs indicated that they use this data feed.[69] However, market participants explain that due to the technical complexity and limited MNO take-up of CAMEL so far, it does not reach the fraud management performance levels that NRTRDE reaches.[70] Moreover, when they were asked to assess whether CAMEL could be considered as a substitute for NRTRDE, the overwhelming majority of MNOs expressed a negative view. More precisely, the overwhelming majority of the respondents indicated that, in the next 2-3 years, CAMEL could not be a full substitute for NRTRDE.[71] This would be in particular because such a timeframe is too short to update and test the MNOs' Fraud Management Systems for the use of CAMEL given the complexity of the CAMEL standard and the costs that such a process would entail. Moreover, the MNOs' roaming relationship would need to be re-established on the basis of the exchange of that data feed.[72]

(120) For example, Belgacom stated: "*Although the extension of the number of Camel Roaming agreements allows Belgacom to have more and more control on the fraud, it does not constitute a full substitute for NRTRDE as this would require all operators in the world to support CAMEL (Belgacom considers this will not happen within 2-3 years), all relations between roaming partners need to be live with CAMEL (Belgacom considers this to be a significant effort which will take more than 3 years) and all operators will need to update their FMS (Fraud Management System) to implement CAMEL, not only for pre-paid but also for post-paid services, which will according to Belgacom also take more than 3 years*". Bouygues stated: "*CAMEL testing is very long so it cannot be done by many MNOs in such a short period of time*". Maxis Communications stated: "*Unlikely. CAMEL may be deployed for real-time charging in the next 2-3 years but investment is still required for integration of CAMEL feeds to the operators' fraud management system. Moreover, CAMEL Phase 3 is required for SMS and there are not many operators in the world who support CAP3*". Millicom International stated: "*Absolutely not; NRTRDE traffic will grow further as more operators will get compliant to NRTRDE*", "*This will never happen - Camel is too complex, time-consuming to implement on all (100s) roaming partners. Deployment will take years of implementation. CAMEL is not a solution as primary (anti-)fraud solution; it can merely be used as an additional layer of security*"; PCCW Mobile HK Ltd stated: "*We don't anticipate the CAMEL*

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68 Responses to question 68.1 of questionnaire Q1– questionnaire to MNOs – Phase I: 13 out 23 MNOs that responded to this question indicated to use NRTRDE only for voice and SMS.

69 27 out 31 MNOs that responded to the relevant question. Responses to question 61 of questionnaire Q6– questionnaire to MNOs – Phase II.

70 Agreed minutes of the conference calls with GSMA of 23 November 2012 ([ID1542]).

71 10 out of 14 respondents. Responses to question 62 of questionnaire Q6– questionnaire to MNOs – Phase II.

72 Belgacom, response to question 62 of questionnaire Q6– questionnaire to MNOs – Phase II ([ID1903]); Bouygues, response to question 62 of questionnaire Q6– questionnaire to MNOs – Phase II ([ID1914]); Maxis Communications, response to question 62 of questionnaire Q6– questionnaire to MNOs – Phase II ([ID1749]); Millicom International, response to questions 62 and 61.4 of questionnaire Q6– questionnaire to MNOs – Phase II ([ID2337]); PCCW Mobile HK Ltd, response to question 62 of questionnaire Q6– questionnaire to MNOs – Phase II ([ID1770]); and SIA Bite Latvija, response to question 61.4 of questionnaire Q6– questionnaire to MNOs – Phase II ([ID2190]).

deployment rate will be increased significantly"; and SIA Bite Latvija stated: "*At first CAMEL service should be tested and launched with all the roaming partners: - CAMEL SIM cards need to be exchanged between the networks; - CAMEL tests are time consuming as there are many test cases which need to be performed. It would take a lot of time to perform CAMEL tests with all the roaming partners. Afterwards the changes should be made in the inner systems in order to start using CAMEL instead of NRTRDE*".

(121) In this context, market participants indicate that substitutability between NRTRDE and CAMEL, could occur in a timeframe of between 5 and 30 years, if at all.[73] Therefore, CAMEL cannot be considered as a substitute for NRTRDE.

(122) More generally, both network operators and OSPs underlined the specific features of NRTRDE over other data feeds. First of all for NRTRDE the exchange and delivery of reports has to be undertaken within 4 hours, as opposed to the 36 hours used for the exchange and delivery of High Usage Reports that are part of the DC service: therefore NRTRDE feeds allow network operators to identify fraud more quickly and therefore contain it better. In addition, as acknowledged by the Notifying Party, NRTRDE is the only data feed that GSMA mandates its members to use for voice traffic[74] and virtually all MNOs and the overwhelming majority of the MVNOs confirmed that they actively use NRTRDE to contain roaming fraud.[75] Finally, when asked what they would do if prices for NRTRDE were to increase by 5-10%, virtually all network operators confirmed that they would switch to other NRTRDRE service providers, but not to other data feeds.[76]

(123) In conclusion, it appears that none of the data feeds indicated by the Notifying Party[77] can be considered as a substitute for NRTRDE due to its specific characteristics and level of deployments. This is summed up well by Telekom Austria AG, "[*n]one of data in question number 60 can fully be alternative (substitute) for NRTRDE for detection roaming fraud. Either they have all the data but they are too late (high usage reports, billing data, IC feeds) or they are in real time but not complete i.e. they are covering one type of traffic (data usage GGSN).*"[78]

(124) The only exception could possibly be High Usage reports and other data feeds from DC activity. This is in line with the finding of the Decision opening the proceedings, which considered that, if NRTRDE were to be part of a broader market, as the Notifying Party claims, it was likely to be in one market with the data feeds from DC activity.

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73 Responses to question 61.4 of questionnaire Q6– questionnaire to MNOs – Phase II.

74 Agreed minutes of the conference call with GSMA of 23 November 2012, paragraph 9, [ID1542].

75 With only one exception among the MVNOs that replied to the relevant question, responses to question 68 of questionnaire Q1– questionnaire to MNOs – Phase I and question 70 of questionnaire Q2– questionnaire to MVNOs – Phase I. This is contrary to the Notifying Party's claim that the adoption of NRTRDE has been limited.

76 15 out of 17 MNOs and 1 out of 2 MVNOs that responded to the relevant question would switch to a current alternative provider of NRTRDE services, whilst only 2 MNOs and 1 MVNOs considered as an option to switch to alternative data feeds. Responses to question 69 and 71 of respectively questionnaires Q1– questionnaire to MNOs – Phase I and questionnaire Q2– questionnaire to MVNOs – Phase I.

77 See footnote 63.

78 Telekom Austria AG, response to question 61.4 of questionnaire Q6– questionnaire to MNOs – Phase II [ID1875].

(125) Indeed, despite the fact that NRTRDE was developed as a replacement for High Usage reports and it is the feed recommended by the GSMA, roaming agreements still provide for the exchange of HURs and MNOs are set to provide and use both feeds for fraud management purposes.. For example, Deutsche Telekom refers that "*The current GSMA standards require the operators to send NRTRDE data to the Home Network. Roaming contracts may contain the use of so called High Usage reports (HUR) that derive from a GSMA standard (GSMA PRD FF.04) from the 1990s. This standard has been frozen but is still used between many operators and required by the roaming contracts*"; as well as Belgacom N.V. reports that "*NRTRDE has been adopted by GSMA as the only standard that is binding within its organisation for voice and SMS. This does not mean that all operators are actually (already) using NRTRDE to this effect. In particular, High Usage has been used in parallel by several operators and it is understood that between operators different solutions can be agreed notwithstanding the binding standard*"[79]

(126) As indicated at recital (112), the market investigation indicated that only those two types of feeds are used by virtually all network operators. Moreover, market participants explain that the data flows on the basis of which NRTRDE and DC data feeds are created are the same. Belgacom states that "*the data flows used for both services are the same (except for the rating information that is not yet included in the NRTRDE feeds)*" and Orange states that *"The data used is the same data, NRTRDE is supposed to be delivered more quickly and excludes some all charging information."*[80]

(127) TD.35 records are in fact structurally the same TAP records.[81] Finally, the overwhelming majority of MNOs indicated that they normally procure NRTRDE along with, and from the same provider as, DC services:[82] this is also confirmed by the review of the Parties' DC contracts.[83] Therefore, if not complementary, at this stage of the development of fraud management solutions, NRTRDE and DC data feeds could possibly be substitutable.

(128) The Parties are active as OSPs of NRTRDE services. As is the case for DC, for NRTRDE services in-house provision can be excluded from the relevant market. Indeed, virtually all responding MNOs outsource the creation and the exchange of NRTRDE,[84] and would not switch to in-house provision should the price of

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[79] Responses to question 67.1 of questionnaire Q1– questionnaire to MNOs – Phase I, [ID1097] and [ID995].

[80] Belgacom, response to question 73.1 of questionnaire Q6– questionnaire to MNOs – Phase II; Orange, response to question 73.1 of questionnaire Q6– questionnaire to MNOs – Phase II; a13, paragraphs 21 onwards [ID2317].

[81] Form CO, paragraph 701.

[82] 17 out of 24 respondents to question 72 of questionnaire Q6– questionnaire to MNOs – Phase II. 14 out of 24 MNOs that responded to question 74 of questionnaire Q6– questionnaire to MNOs – Phase II also indicated that they would not consider purchasing NRTRDE from a provider that is not a DC provider at all.

[83] For Syniverse, […]* out of the […]* EEA DC contracts reviewed include NRTRDE. For Mach, […]* out of […]* EEA DC contracts include NRTRDE.

[84] 21 out of 23 MNOs responding to question 75 of questionnaire Q6– questionnaire to MNOs – Phase II. One of the two customers who replied to perform in-house NRTRDE service nonetheless explains that it "*creates NRTRDE files, however, DCH is responsible for its distribution amonf roaming partners and vice-versa*", P4 sp. z o.o., response to question 75 of questionnaire Q6– questionnaire to MNOs – Phase II [ID1746].

outsourced NRTRDE services increase by 5-10%. Only one customer who outsources NRTRDE declared that it would switch in-house in case of a price increase.[85] This is because of the resources, cost and technical complexity associated with the bilateral exchange of NRTRDE files with all roaming partners, which makes it inefficient to perform NRTRDE services in-house, for example, Bouygues Telecom-France: "*This option is far too burdensome and costly since it requires to put up the solution to supervise all the flows and monitor all the links to all the partners*" and Maxis Communications: "[i]t *would be a difficult task to manage NRTRDE bilaterally with over 500 roaming partners and keeping to the 4-hour data exchange SLA"*.[86] It does not justify an investment to set up in-house solutions whatever the price increase, especially for small MNOs. For example, Bouygues Telecom-France: "*[i]n our opinion, this option cannot be handle whatever the price increase*" [ID1914], PCCW Mobile HK Ltd: "*Being a small operator we don't see even the tens of folds of price increase by the NRTRDE vendor can justify the investment for developing and managing the 27 x 7 NRTRDE operations in-house, and the concerns of the remaining life span of NRTRDE considering IMS or near real time billing CDR file exchange which are in the development pipeline may also be a potential replacement for fraud monitoring*".[87] It follows that the relevant market for the assessment of this case is the market for outsourced NRTRDE services, excluding in-house provision.

(129) On the broader market that encompasses NRTDRE and DC data feeds, the market shares of the Parties and their competitors would be very similar to the market shares in NRTRDE when viewed separately. It follows that the exact product market definition can be left open, since the scope of any competition problems would be the same.

(130) Therefore, it is concluded that the relevant product market for the purpose of the assessment of the impact of the proposed concentration is the market for outsourced NRTRDE services, but it can be left open whether it is part of a broader market encompassing DC services.

5.2.3. Financial Clearing Services

5.2.3.1. Views of the Notifying Party

(131) The Notifying Party agrees with the Commission's finding in *Syniverse/BSG* Decision that FC services are not in the same relevant market as DC services.

(132) The Notifying Party submits that such FC services are part of an overall market for financial and accounting business process outsourcing ("F&A BPO") services provided to any industry (including energy, utilities, banking, financial and insurance services, etc.). That market consists of the outsourcing to F&A BPO service providers of F&A processes such as transactional accounting services (including accounts payable, accounts receivable, travel expenses, billing/invoicing, collections etc.), financial reporting, financial planning and financial process business consulting. Competing providers of such services include global billing vendors such as Accenture, Capgemini and IBM.

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85 Tusmobil d.o.o., response to question 76 of questionnaire Q6– questionnaire to MNOs – Phase II [ID2203].

86 Responses to question 76.1 of questionnaire Q6– questionnaire to MNOs – Phase II. For example, Bouygues Telecom-France [ID1914], Maxis Communications [ID1749].

87 Responses to question 76.2 of questionnaire Q6– questionnaire to MNOs – Phase II, Bouygues Telecom-France [ID1770].

(133) The Notifying Party submits that within the overall market for F&A BPO services, there is no ground for distinguishing a market segment related to telecoms or for F&A BPO services related to roaming. To support this claim, the Notifying Party submits that the corporate functions it uses itself to invoice and settle wholesale claims arising from mobile roaming are identical to the FC services that it provides for invoicing of any kind of balance (for example SMS interworking and Direct Operator Billing services). In the Notifying Party's view, this implies that from the supply side, FC services for roaming are part of a wider market for F&A BPO services.

(134) The Notifying Party acknowledges that FC services for GSM roaming are subject to separate specifications formulated in GSMA guidelines. Those specifications for instance cover the creation of invoices and conduct of settlement. The Notifying Party submits that this does not have any bearing on the product market definition because the steps set out in the guidelines do not differ from the steps involved in invoicing and settlement for any type of business.

(135) Nonetheless, at the Commission's request, the Notifying Party has provided market share data for the possible market for FC services related to roaming activities. Within the possible market for FC services related to roaming activities and as concerns the distinction between FC for GSM customers and FC for CDMA customers, the Notifying Party claims that FC services to CDMA customers are materially the same as for GSM FC for roaming. Therefore FC for CDMA should be considered as part of the same hypothetical FC services market.

(136) In this context, the Notifying Party submits that the extent to which FC services are accomplished by an outsourced service provider differs from MNO to MNO. The Notifying Party submits that MNOs can outsource the FC process to a “specialist” FC provider such as the Parties, Comfone or Nextgen; outsource the FC processes to generalist F&A BPO services providers; or handle those functions internally without engaging a “specialist” FC services provider. According to the Notifying Party, MNOs could undertake FC in-house by obtaining a billing platform from a global billing vendor, such as SAP and Oracle, that allows it to run part or all of the FC functions through their internal IT or F&A departments. For the purpose of this Decision, the Commission uses the term in-house in the broad sense (such as an alternative to services sourced from specialist FC services providers) as also suggested by the Notifying Party.[88]

(137) The Notifying Party explains that when MNOs do not outsource FC services to a "specialist" FC provider (approximately 22% of customers globally, 51% of customers in the EEA), the FC service provider is unaware of the exact way in which MNOs invoice and settle wholesale roaming. According to the Notifying Party, MNOs could do this either through a generalist F&A BPO service provider or by undertaking FC fully in-house. The Notifying Party considers that the capacity of those alternatives is in no way captive to the contracting MNO. When providing market shares for FC services for roaming, the Notifying Party has grouped all of the options available to MNOs, other than relying on specialised FC providers for roaming, in one category "Other".

88 Paragraph 539 of the Form CO.

5.2.3.2. The Commission's investigation and assessment

(138) In order to address the Notifying Party's arguments as to market definition, the Commission assessed the following issues:

(a) whether the market investigation confirmed that generalist F&A BPO providers are in the same relevant market as "specialist" FC providers for roaming;

(b) whether the market investigation confirmed that MNOs can handle FC functions internally without engaging a "specialist" FC services provider, for instance by engaging vendors of general billing platforms;

(c) whether the market investigation confirmed that the "in-house" option for MNOs was not captive to them and could be considered as part of the relevant market.

(139) As regards the first point (point (a)), market participants expressed doubts that generalist F&A BPO providers in other industries can serve MNO's needs for FC for roaming. Around half of the customers[89] indicated that such providers could in any event not serve them as they would lack the necessary sector-specific skills and resources: those customers indicated that a suitable provider of FC services for their roaming activities should have an understanding of DC services, roaming services or at least telecommunications services. In its Response to the Decision opening the proceedings, the Notifying Party pointed out that this finding would indicate that at least for the other half of customers companies active in F&A BPO would be suitable providers of FC services. However the Notifying Party overlooks the fact that, when asked whether they would consider contracting with specific F&A BPO providers for their outsourcing of their FC services related to roaming, the overwhelming majority of customers, both MNOs and MVNOs, replied that they would not consider any of those providers.[90] Most customers consider Comfone and Nextgen to be suitable alternative providers of FC services for those activities: those companies are, however, dedicated FC providers for roaming like the Parties.

(140) Although some competitors consider that general F&A BPO providers in other industries would have the technical ability to provide FC services for roaming, most competitors consider that they are not suitable alternative providers to dedicated FC providers or are unlikely to launch FC services for roaming in the near future.[91]

(141) Only dedicated providers of FC services considered themselves to be actual competitors to the Parties in FC services. Similarly, and more importantly, no generalist F&A BPO provider or vendor of billing software considers itself to compete with the Parties in FC. Those companies also believed they did not have the knowledge and expertise to respond to the Commission's questions on FC for roaming. When asked which FC providers they contact to exchange bills and invoices for roaming on behalf of MNOs, the Parties confirmed that they are solely

[89] 15 out 27 MNOs providing a response to question 36 of questionnaire Q1- questionnaire to MNOs – Phase I; 2 out of 4 MVNOs providing a response to question 38 of questionnaire Q2 – questionnaire to MVNOs – Phase I.

[90] Responses to question 47 of questionnaire Q1- questionnaire to MNOs – Phase I and to question 49 of questionnaire Q2- questionnaire to MVNOs – Phase I.

[91] Responses to question 38 of questionnaire Q4 – questionnaire to actual competitors – Phase I.

dedicated FC providers, like themselves.[92] The market investigation has not provided any indication of an F&A BPO provider in another industry undertaking FC for MNOs.

(142) The fact that the Parties provide FC services for roaming from platforms that they use to settle different types of financial claims does not negate these findings. All of those platforms are used to settle financial claims for MNOs and in relation to telecommunications services. It is this expertise, used across those services that may very well make them the suitable providers of FC services for roaming.

(143) In any event, in order to consider F&A BPO providers in other industries to be part of the relevant market for the assessment of the case at hand, it would need to be demonstrated that they exert an "immediate" competitive constraint on the Parties and would continue to do so on the merged entity after the proposed concentration. The market investigation has not proven this to be the case. None of the generalist F&A BPO providers sees itself as a provider of FC services to roaming.[93] Moreover, no generalist F&A BPO provider has indicated that it would consider entering in FC for roaming. [94]

(144) In the light of this, there are clear indications that the relevant market should be FC services related to roaming activities.

(145) As regards the question whether MNOs can handle FC functions internally without engaging a "specialist" FC services provider (point (b) in recital (138)), for instance by engaging vendors of general billing platforms, the market investigation revealed that a large number of MNOs undertake FC in-house[95], often with the use of billing platforms such as Oracle and SAP[96]. Customers and competitors explained, however, that, if generic billing software are used to perform FC services, it still requires customisation to suit the specific FC needs and that human resources need to be dedicated to perform the FC functions with the help of the software. Most customers, therefore, do not consider vendors of general business application software by themselves to be suitable alternatives for FC services for roaming. None of the billing vendors listed by the Notifying Party considered itself to be active in FC for roaming[97] or to have the expertise and knowledge to respond to the Commission's requests for information. This seems to be confirmed by the Notifying Party's own claim that customised reporting functionalities and ways to extract data elements from the FCH platform are usually fed into the MNO's general F&A system such as

92 The Notifying Party is able to identify outsourced FC providers on the basis of the mailing addresses to which the Parties are required by their own customers to send invoices. In the response to the request for information of 21 November 2012 the Notifying Party clarifies that the only F&A BPO providers that it is able to identify are: Comfone, Mach, Nextgen, EDCH and ARCH, namely the "specialised" FC providers.

93 Responses to question 11 of questionnaire Q5 – questionnaire to potential competitors – Phase I.

94 Responses to question 12 of questionnaire Q5 – questionnaire to potential competitors – Phase I.

95 In 2012 22% of MNOs worldwide and 52% of MNOs in the EEA.

96 Responses to questions 58 of questionnaire Q1 – questionnaire to MNOs – Phase I; 39 and 40 of questionnaire Q6 – questionnaire to MNOs – Phase II; agreed minutes of the conference call with Telecom Italia of 4 February 2013, paragraph 3 [ID2753]; agreed minutes of the conference call with Oracle of 14 February 2013 [ID2304].

97 Agreed minutes of the conference call with SAP of 13 December 2012 [ID 1543] and agreed minutes of the conference call with Oracle of 14 February 2013 [ID 2304].

SAP and Oracle, which confirms that those general systems cannot perform all of the FC functions that customers need on their own.

(146) As regards the question whether in-house provision of FC should be considered as part of the relevant product market (point (c) in recital (138)), the results of the market investigation are mixed. On the one hand, the market investigation revealed that certain MNOs who currently outsource their FC services would consider undertaking FC in-house. The internal documents of the Parties show that the in-house option is used by MNOs as a competitive threat in tender processes for FC. The Bidding Data indicates that there is a competitive interaction between the two solutions. For instance, the "in-house" option was reported as one of the "participants in the tender" for bidding events for a number of MNOs who currently outsource FC to a specialist provider[98]. The Switching Data shows that two customers ([…]*) recently switched away from using an outsourced FC service provider to undertaking FC in-house. On the other hand, the market investigation revealed that certain other MNOs responded that they would not consider taking FC in-house in the event of a significant price increase[99].

(147) In any event, the issue as to whether in-house provision of FC should be considered as part of the relevant product market can be left open since the competitive assessment would not change and, in particular, the notified concentration would not give rise to competition concerns under either scenario. The possibility for MNOs to undertake FC in-house will be assessed in the competitive assessment of the proposed concentration in FC. Likewise, although there are indications of some differences between FC clearing for GSM and CDMA operators, this is not likely to alter the competitive assessment in this case. Indeed, no CDMA customer is located in the EEA; moreover the Parties claim to be the only active providers of FC services to CDMA operators (although some of their competitors indicated to have a limited number of CDMA customers) and therefore market share data including CDMA FC services would be conservative. Thus the question as to whether the relevant market should include FC services to CDMA operators can be left open.

(148) Therefore, for the purpose of the assessment of the impact of the proposed concentration, it is concluded that the relevant product market can be left open since the proposed concentration does not give rise to competition concerns under any possible market definition.

(149) Affected markets would arise only if the Commission considered the market for FC services related to roaming activities to be relevant market. Affected markets would arise both if that market was considered to be limited to outsourced FC service providers and if it included in-house FC service provision. The Commission has undertaken the competitive assessment of this case in relation to both those alternative affected markets (that is to say outsourced FC services only or the wider market which includes in-house FC services). The assessment is set out in Section 6.3 Horizontal non-coordinated effects in the FC .

98 For example, […]* for the EEA..

99 Responses to question 43 of questionnaire Q6- questionnaire to MNOs – Phase II.

5.2.4. A2P and P2P services

5.2.4.1. Views of the Notifying Party

(150) The Notifying Party submits that there are distinct markets for the provision of: A2P SMS messaging services; and P2P SMS messaging services.

(151) The Notifying Party submits that the narrowest product market definition entails the provision of P2P SMS hub services limited to the delivery of international messages.

5.2.4.2. The Commission's investigation and assessment

(152) Considering that A2P SMS services' ultimate customers are companies and those of P2P SMS services' are MNOs and considering that those services are technically materially different, the Commission considers that those two activities constitute separate product markets.

(153) With respect to SMS hub services, it appears that there are significant differences between national and international routing of SMS. This entails in particular the fact that, in the EEA, national routing of SMS, unlike international routing of SMS, does usually not rely on SMS hub services[100].

(154) However, there is no need to take a conclusive view on the product market definition considering that there is no competitive concern in any possible product market definition (see section 6.4).

5.2.5. Roaming hub services

5.2.5.1. Views of the Notifying Party

(155) The Notifying Party does not suggest a product market definition for roaming hub services.

5.2.5.2. The Commission's investigation and assessment

(156) The Commission considers that there is no need to take a conclusive view on the product market definition considering that there is no competitive concern under any possible product market definition (see section 6.5).

5.3. Geographic Market Definition

5.3.1. Data Clearing Services

5.3.1.1. Views of the Notifying Party

(157) In the Form CO, the Notifying Party submits that the market for DC services is global in scope.

(158) The Notifying Party states that on the demand side, MNOs are large customers with global presence which may negotiate global framework agreements, the terms and conditions of which are then made available to the MNO's local subsidiaries. The Notifying Party also submits that MNOs procure DC services from suppliers located around the world rather than on a national or regional basis and do so typically by using a tender or a bidding process.

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100 Notifying Party's reply to question 19 of the Commission's request for information of 21 November 2012.

(159) On the supply-side, the Notifying Party argues that DC providers do not require a local presence. Thus, the Parties are able to serve their customers (including the EEA customers) from facilities located in a limited number of countries worldwide. Syniverse serves its customers from data centres which are located in […]* (U.S.), […]*, […]* (both in Germany) and […]* (India). Mach has DC service sites in Denmark and India.

(160) The Notifying Party states that there are also no regulatory or technical barriers for the provision of DC services. In its view, the recent and proposed changes in the Union data protection legislation do not hinder the processing of roaming data outside the EEA.

5.3.1.2. The Commission's investigation and assessment

(161) Both the Decision opening the proceedings and the SO left open the question whether the geographic scope of the market is global or EEA-wide.

(162) Neither in its Response to the Decision opening the proceedings nor in its Response to the SO has the Notifying Party disputed the Commission's preliminary findings as regards the geographic market definition for DC services. It has mainly focused its assessment on the condition of competition within the EEA and the effects of the proposed concentration for EEA as well as on the commitments of the 11 March 2013 customers.[101]

(163) The market investigation provides support to the Notifying Party's claim contained in the Form CO that the geographic scope of the DC market is worldwide. On the demand-side, the overwhelming majority of the responding customers confirmed that they send out their requests for proposals for DC on a worldwide basis.[102] Moreover, the majority of customers have indicated that they negotiate global framework agreements which set the terms and conditions available for local operating companies. This makes the conditions of competition comparable at a global level:[103] as indicated by the Notifying Party in the Form CO, this is in particular important for big group MNOs. On the supply-side, competitors state that technically, DC services can be provided remotely.[104]

(164) However, some customers indicate that they would only consider contracting with DCHs with a physical presence in the EEA.[105] Those customers explain that they require 24/7 technical and customer care support in Europe and that Union data protection rules are important in their choice of DC provider. Moreover, a number of EEA MNOs indicated that they would not select a DCH from countries with a challenging geopolitical situation and a lack of stability and adequate legal/regulatory protection (especially data protection). For this reason, they would

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101 For example, Notifying Party's Response to the Decision opening the proceedings, paragraphs 39, 41, 42, 49, 65, 74, 81, 107, 109, etc.; Notifying Party's Response to the SO, paragraphs 28, 29, 133, 141, etc., which relate to the suitability of the commitments of 11 March 2013 to solve the competition concerns raised by the Commission in the EEA.

102 Responses to questions 7 of questionnaire Q1– questionnaire to MNOs – Phase I and 10 of questionnaire Q2– questionnaire to MVNOs – Phase I.

103 8 out of 12 MNOs that responded to question 11 of questionnaire Q1– questionnaire to MNOs – Phase I.

104 Responses to question 8 of questionnaire Q4– questionnaire to actual competitors – Phase I.

105 Responses to question 8 of questionnaire Q1 – questionnaire to MNOs – Phase I and 11 of questionnaire Q2– questionnaire to MVNOs – Phase I.

not consider contracting with ARCH (China) or EDCH (Middle East).[106] This is confirmed by the fact that a significant number of the Parties' customers are served from data centres located in the EEA. These factors would rather suggest an EEA-wide scope of the DC market.

(165) With market shares of almost [90-100]*% (by operator count[107]), the market position of the merged entity would be similar at both global and EEA-wide levels. It follows that the results of the analysis as to the compatibility of the proposed concentration with the internal market are the same under both alternative geographic market definitions.

(166) Therefore it is concluded that for the purpose of the assessment of the impact of the proposed concentration the exact geographic scope of the DC market can be left open.

5.3.2. NRTRDE

5.3.2.1. Views of the Notifying Party

(167) In the Form CO, the Notifying Party submits that if considered as a separate market, the NRTRDE market would be worldwide in scope. The Notifying Party submits that the customers of those services have a global presence. On the supply-side, NRTRDE is provided from facilities located worldwide and no local presence is required to provide NRTRDE in the EEA. There are also no regulatory or technical barriers for NRTRDE providers from others parts of the world to provide NRTRDE in the EEA.

5.3.2.2. The Commission's investigation and assessment

(168) Both the Decision opening the proceedings and the SO left open the question whether the geographic scope of the market is global or EEA-wide.

(169) Neither in its Response to the Decision opening the proceedings nor in its Response to the SO has the Notifying Party disputed the Commission's preliminary findings as regards the geographic market definition for NRTRDE services. It has mainly focused its assessment on the conditions of competition within the EEA and the effects of the proposed concentration and the commitments of 11 March 2013 for EEA customers in parallel with the assessment in the market for DC services.[108]

(170) The results of the market investigation tend to indicate that the market for NRTRDE is worldwide.[109] However, some MNOs and in particular MVNOs consider that a NRTRDE provider should have a local sales/support presence in order to be considered as a suitable NRTRDE provider.[110]

(171) Irrespective of whether the market is worldwide or EEA-wide, the position of the merged entity as a NRTRDE provider would not be significantly different. At both the worldwide and EEA-wide levels, the merged entity's market share would be close

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106 Responses to questions 8.1 and 9.1 or questionnaire Q1 – questionnaire to MNOs – Phase I and 11.1 and 12.1 of questionnaire Q2– questionnaire to MVNOs – Phase I.

107 Recitals (171), (178), (179) below for further information on market shares based on operator count and market shares based on revenues. Market shares estimates for 2012.

108 See footnote 101.

109 Responses to questions 70 of questionnaire Q1– questionnaire to MNOs – Phase I and 72 of questionnaire Q2– questionnaire to MVNOs – Phase I.

110 See footnote 109.

to [90-100]*% (by operator count[111]). At both levels, only smaller competitors would remain after the proposed concentration. It follows that the results of the analysis as to the compatibility of the proposed concentration with the internal market are the same under both alternative geographic market definitions. The exact geographic scope of the NRTRDE market can therefore be left open at this stage.

(172) If NRTRDE were to be considered as part of a broader market encompassing the DC output as data feeds for Fraud Management and Revenue Assurance platforms, it would constitute by far the smallest part of that broader market. The geographic market definition is then likely to be the same as that for DC (worldwide, with indications of an EEA-wide market).

(173) Either way, it is concluded that for the purpose of the assessment of the impact of the proposed concentration the exact geographic market definition can be left open.

5.3.3. Financial Clearing Services

5.3.3.1. Views of the Notifying Party

(174) The Notifying Party submits that the relevant product market, be it the F&A BPO market or the narrower market for FC services for roaming activities, is global in scope. As in DC, the Notifying Party submits that MNOs often have a global presence, that FC services can be provided from facilities located worldwide, that a local presence is not required to compete successfully and that there are no regulatory or technical barrier to providing FC services in the EEA from other parts of the world.

5.3.3.2. The Commission's investigation and assessment

(175) The Decision opening the proceedings left open the question whether the geographic scope of the market is global or EEA-wide and in its Response to the Decision opening the proceedings the Notifying Party has not disputed the Commission's approach.

(176) More precisely, the results of the market investigation provide some support to the Notifying Party's claim that the geographic scope of the FC market is worldwide. For instance, most responding customers confirm that they send out their requests for proposals for FC on a worldwide basis. Competitors confirm that they receive requests from proposals worldwide and that technically FC services can be provided remotely. This is confirmed by the fact that the parties and their competitors serve some of their EEA customers from data centres located outside the EEA. Data protection issues do not seem as important in the selection of a FC provider as it is in the choice of a DC provider.[112]

(177) As in DC, some customers indicate that they would only consider contracting with FCHs with a physical presence in the EEA.

(178) When assessing the impact of the proposed concentration on the narrowest possible market, namely the market for FC roaming that excludes in-house FC undertaken by customers, the position of the merged entity as an outsourced provider of FC services

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[111] Market shares estimates for 2012.

[112] FCHs deal with monthly bills and invoices and not granular data related to each individual call, message and data transmission that a customer undertakes (as DCHs are processing). Therefore, data protection issues may not have the same magnitude as in DC services.

would not be significantly different on the worldwide and the EEA-wide levels. At the worldwide level, the merged entity's market share would be slightly over [80-90]*%, whereas at the EEA-level, it would be almost [70-80]*% (both by operator count)[113]. At both market levels, smaller competitors would remain. Therefore, the results of the analysis as to the compatibility of the proposed concentration with the internal market are the same under both alternative geographic market definitions and the exact geographic scope of the FC market can therefore be left open.

(179) Likewise, if considering in-house FC as part of the relevant market, affected markets would arise both at EEA and worldwide level, although the market shares would be lower (respectively [30-40]*% in the EEA market and [60-70]*% at worldwide level).[114] However, also in this case the competitive assessment would be the same regardless of the exact geographic market definition, which can therefore be left open.

(180) If FC services are considered as part of the overall market for F&A BPO no affected market would arise and therefore it would be not necessary to conclude on the geographic market definition.

(181) Therefore, it is concluded that for the purpose of the assessment of the impact of the proposed concentration the exact geographic market definition can be left open.

5.3.4. A2P and P2P services

5.3.4.1. Views of the Notifying Party

(182) The Notifying Party submits that A2P and P2P SMS messaging markets are regional or national in scope, as a result of the requirement that OSPs reach agreements with MNOs that make it possible to terminate message deliveries. According to the Notifying Party, this approach is consistent with the Commission's previous decisions in analogous markets.

5.3.4.2. The Commission's investigation and assessment

(183) The market investigation indicates that the market could have a larger scope and possibly be a worldwide market. In any event, the geographic market definition can be left open.

5.3.5. Roaming hub services

5.3.5.1. Views of the Notifying Party

(184) The Notifying Party does not specify a geographic market definition for roaming hub services.

5.3.5.2. The Commission's investigation and assessment

(185) The Commission concludes that in any event, the geographic market definition can be left open, since there is no competition concern under any possible geographic market definition.

113 Market shares estimates for 2012.
114 Market shares estimates for 2012.

5.4. Other related markets

(186) The Parties are third party intermediaries that handle technical, financial and operational aspects of transactions conducted by MNOs and alternative mobile service providers) in the global telecommunication ecosystem. The Parties' activities largely concern interoperability between mobile networks. Interoperability is required between MNOs and their networks in order to support their subscribers' activities when those activities involve communication with other networks.

(187) Beyond those interoperability related services, the Parties provide some services to MNOs that are intended to assist MNOs with efficient business management. This includes the Parties' F&A BPO, Business Intelligence ("BI") and Revenue Assurance & Fraud Management ("RA & FM").

(188) The Parties have overlapping activities within the EEA in relation to F&A BPO, RA & FM, wi-fi roaming and interconnect billing.

(189) In addition, the Parties are active in a number of related areas where there is no horizontal overlap. This includes other roaming services (such as hub provision and CIBER licence services), other messaging services (such as MMS P2P messaging, miscellaneous messaging, online photograph storage applications and video messaging), certain business intelligence and analytics services, miscellaneous services (such direct operator billing and turnkey solutions) and network services (such as network and number portability solutions).

(190) Those activities belong to separate markets from DC, NRTRDE and FC services. None of these activities are horizontally or vertically affected markets for the purpose of the Commission's assessment.

(191) In any event, the exact definition of all related neighbouring markets can be left open, as any conglomerate effects that might arise on the basis of the proposed concentration will be remedied through the remedies offered by the Parties (as set out in Section 6.6).

6. COMPETITIVE ASSESSMENT

6.1. Horizontal non-coordinated effects in the DC market

6.1.1. Introduction

(192) Sections 6.1.2 to 6.1.9 will assess the horizontal effects of the proposed concentration in the DC market. The Commission examines the Parties' combined market position, which is evidenced in particular by their very high combined market shares maintained consecutively over several years (see section 6.1.2). The Commission then considers the level of competition between the Parties and the fact that the Parties currently compete intensely with each other, with a strong offering not only in DC services but also a comprehensive suite of other products/services (see section 6.1.3). After that, the Commission examines the likely position after the proposed concentration and finds that it is unlikely that competitors will sufficiently challenge the Parties' position post-transaction, due to the difficulties for customers to switch to a suitable provider (see section 6.1.4) and for competitors to expand their supply (see section 6.1.5). The Commission then considers the likely effects of the proposed concentration in a potential increase in prices and/or a reduction of quality of service (see section 6.1.6). Following that section, the Commission examines the extent to which customers' buyer power (see section 6.1.7) or the likelihood of entry of a new competitor (see section 6.1.8) could countervail the effects of the proposed concentration. Finally, the Commission reaches its conclusion in relation to the competition concerns in the DC market (see section 6.1.9).

6.1.2. The merged entity would have very high market share

6.1.2.1. Views of the Notifying Party

(193) The Notifying Party does not dispute the high combined market share of the Parties in the DC services market. However, it states that in the contestable bidding market for DC services market shares do not reflect market power. Given that the contracts come up for renewal infrequently, the focus of competition at any point in time is on new tenders, rather than the total stock of all customers currently receiving the service in question, which merely reflects the accumulation of outcomes of historical tenders. Hence, the customer base of a competitor (that is to say market share) is no indication of the competitive constraint that provider will exert on the Parties in future bids.

(194) In its Response to the SO, the Notifying Party maintained that historical market shares do not provide a good proxy for success in winning further contracts and do not determine the level of competitive constraint but rather reflect the accumulation of outcomes of historical tenders.[115]

(195) The Notifying Party argues that Comfone's success rate in winning new tenders has considerably exceeded the number of wins that would be expected on the basis of its market shares. The Notifying Party claims that Comfone is able to exert a competitive constraint on the Parties that far exceeds what would be expected of a company with Comfone's market share.[116]

115 Notifying Party's Response to the SO, paragraphs 70 to 74.

116 Notifying Party's Response to the SO, paragraph 71.

(196) Similarly, the Notifying Party argues, although Mach has lost [10-20]*% market share in the EEA over the past four years, the SO does not acknowledge any impact from that loss in market share on the strength of the competitive constraint imposed by Mach.[117]

(197) Finally, the Notifying Party argues that having a large contract portfolio does not bear upon the ability of DC providers to compete effectively.[118]

6.1.2.2. The Commission's investigation and assessment

(198) According to the Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings ("Horizontal Merger Guidelines"), market shares and concentration levels provide useful first indications of the market structure and of the competitive importance of both Parties in relation to their competitors.[119]

(199) The Horizontal Merger Guidelines also state that according to well established case-law, very large market shares - 50% or more - may in themselves be evidence of the existence of a dominant market position.[120] The General Court has confirmed that although the importance of market shares may vary from one market to another, very large shares are in themselves, and save in exceptional circumstances, evidence of the existence of a dominant position.[121] Furthermore, the General Court confirmed the relevance of market shares for assessment of a company's market position in bidding markets. In particular, in bidding markets the fact that a company maintains its market share over a number of years in succession, in spite of bidding opportunities during that period, is an indication of market strength.[122]

(200) The DC market has experienced significant consolidation over the last decade.[123] Currently Syniverse and Mach are by far the largest market players in DC services. The market shares of the Parties and their competitors in 2010, 2011 and 2012 (as provided by the Parties) are set out in Table 4: Market shares in DC services based on operator count. The Parties have calculated market shares based on operator count.

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117 Notifying Party's Response to the SO, paragraph 72.

118 Notifying Party's Response to the SO, paragraph 74.

119 OJ C 31, 5.2.2004, pages 5, paragraph 14.

120 Horizontal Merger Guidelines, paragraph 17.

121 Case T-210/01 *General Electric v Commission* [2005] ECR II-5575, paragraph 115.

122 Case T-210/01 *General Electric v Commission* [2005] ECR II-5575, paragraphs 150-151.

123 2004 saw Syniverse acquire the EDS United States data clearing business while Mach bought DanNet. In 2005 and 2006, BSG acquired both EDS GmbH (DC services) and United Clearing (FC services) respectively. In early 2007, Mach acquired Cibernet (DC and FC services in the U.S.). In December 2007, Syniverse acquired BSG (DC and FC services). In the U.S., TNS acquired VeriSign Communication Services Group, including its DC service division, in 2009.

Table 4: Market shares in DC services based on operator count

	Globally			EEA		
	2010	2011	2012	2010	2011	2012
Syniverse	[30-40]*%	[30-40]*%	[40-50]*%	[50-60]*%	[40-50]*%	[40-50]*%
Mach	[40-50]*%	[40-50]*%	[40-50]*%	[40-50]*%	[50-60]*%	[30-40]*%
Parties combined	**[80-90]*%**	**[80-90]*%**	**[80-90]*%**	**[90-100]*%**	**[90-100]*%**	**[80-90]*%**
Comfone	[0-5]*%	[0-5]*%	[0-5]*%	[0-5]*%	[0-5]*%	[10-20]*%
EDCH	[10-20]*%	[5-10]*%	[5-10]*%	[0-5]*%	[0-5]*%	[0-5]*%
TNS	[0-5]*%	[0-5]*%	[0-5]*%	[0-5]*%	[0-5]*%	[0-5]*%
ARCH	[0-5]*%	[0-5]*%	[0-5]*%	[0-5]*%	[0-5]*%	[0-5]*%

Source: Notifying Party's estimates based on an operator count (Annex DC 7.3 to the Form CO). Note that the figures do not add up to 100% due to rounding.

(201) As becomes clear in *Table 4*, in addition to the Parties, there are currently four other DC providers in the market: ARCH, Comfone, EDCH, TNS and Nextgen.[124]

(202) Currently Syniverse and Mach are the largest DC service providers both globally and in the EEA. Each of them controls around [40-50]*% of the market, irrespective of the geographic scope of the market. After the proposed concentration, the merged entity's market share would reach near monopoly levels: [80-90]*% both worldwide and in the EEA. As shown in Table 4 the Parties' market share has been stable over time. The Bidding Data shows that there were ample bidding opportunities during the period from 2009 to 2012 and even that did not have a substantial impact on the Parties' market shares.[125]

(203) The next largest competitor in the EEA, Comfone, has a market share of around [0-5]*% on the global level and [5-10]*% in the EEA. EDCH has a small worldwide market share of [5-10]*%, and only a minor presence in the EEA (with a [0-5]*% market share). Finally, ARCH and TNS have no presence in the EEA and only a minor presence globally.

(204) Both at global and EEA levels, the increase in concentration brought about by the proposed concentration would be significant. The post-merger Herfindahl-Hirschman Index ("HHI") would be far above 2 000 ([…]* globally and […]* EEA-wide) and the change in the HHI before and after the proposed concentration (the "ΔHHI") would be above 2 300.

(205) These market shares are based on operator count. The Notifying Party has calculated market shares of third parties by assuming that the average revenue generated by a customer for third parties is the same as that of Syniverse's or Mach's customers in that country or region. The Commission considers that this methodology leads to an

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124 For a detailed description of these providers, see Section 5.1.6. The competitive landscape.

125 In particular, the Parties won in […]* tenders in 2009-2011 and participated in even more.

overestimation of the market share of the Parties' competitors and an underestimation of that of the Parties. For instance, the evidence reviewed in section 6.1.5.3. indicates that the customers acquired by Comfone in recent years are smaller than the average size of customers of the Parties. Revenue-based market shares therefore better reflect the presence of third parties such as Comfone in the DC market.

(206) The Commission has estimated revenue-based market shares for the period 2009 to 2012. For Syniverse and Mach, the Commission based its assessment on the actual revenues reported by those companies from the provision of DC services to MNOs[126]. For third party providers, the Commission considered for each customer the revenue generated by that specific customer for Syniverse or Mach in the full year before the customer switched to the third party provider and applied the relevant proportion of that amount to the third party provider. For customers who were with third party providers throughout the observation period, a country average was applied and in the absence of a country average, a regional average (EEA or non-EEA) was applied[127].

Table 5: Market shares in DC services based on revenues over time

	Globally				EEA			
	2009	2010	2011	2012	2009	2010	2011	2012
Syniverse	[40-50]*%	[40-50]*%	[40-50]*%	[50-60]*%	[50-60]*%	[50-60]*%	[50-60]*%	[50-60]*%
Mach	[40-50]*%	[40-50]*%	[40-50]*%	[30-40]*%	[40-50]*%	[40-50]*%	[40-50]*%	[30-40]*%
Parties combined	**[90-100]*%**	**[90-100]*%**	**[90-100]*%**	**[90-100]*%**	**[90-100]*%**	**[90-100]*%**	**[90-100]*%**	**[90-100]*%**
Comfone	[0-5]*%	[0-5]*%	[0-5]*%	[0-5]*%	[0-5]*%	[0-5]*%	[0-5]*%	[0-5]*%
EDCH	[0-5]*%	[0-5]*%	[0-5]*%	[0-5]*%	[0-5]*%	[0-5]*%	[0-5]*%	[0-5]*%
TNS	[0-5]*%	[0-5]*%	[0-5]*%	[0-5]*%	[0-5]*%	[0-5]*%	[0-5]*%	[0-5]*%
ARCH	[0-5]*%	[0-5]*%	[0-5]*%	[0-5]*%	[0-5]*%	[0-5]*%	[0-5]*%	[0-5]*%

Source: Commission's calculations based on data provided by the Parties in response to question 20, 23 and 25 of the request for information of 25 January 2013

(207) These estimated revenue-based market shares are set out in Table 5 and show that the Parties' combined market share has consistently been between 90% and 100% over recent years, irrespective of whether the geographic scope of the market is worldwide or EEA-wide.

(208) The Parties' combined market share provides a first indication of the competitive importance of the Parties and their competitors. In line with the General Court's judgment in *General Electric*,[128] the Commission considers that past market shares are relevant in this market because the market shares reflect experience in providing

[126] Notifying Party, response to question 23 of the request for information of 25 January 2013.

[127] The data used for these calculations was provided by the Parties in response to question 20 and 23 of the request for information of 25 January 2013. The Commission applied inflation (Eurostat – HICP euro-area) to adjust revenue figures (expressed in EUR) in years in which revenue was known to calculate revenue figures for years in which revenue was unknown.

[128] Case T-210/01 *General Electric v Commission* [2005] ECR II-5575, paragraphs 150-151.

DC services to customers. The number of bids that a DC provider has won historically provides an indication about the experience built up by that DC provider.

(209) The Commission has considered the Notifying Party's arguments in the Response to the SO and does not agree with them. The Commission has taken into consideration the fact that Comfone has won a few recent tenders[129]. However these tenders are in relation to smaller MNOs and are of lower value than the tenders for the large Tier 1 MNOs. This does not provide an indication that Comfone now has a sufficient track record to be considered a credible alternative by those customers who value reputation and experience. In fact, as the market shares show, Comfone's success in tenders during the last four years has only increased its market share marginally and not in a magnitude that indicates its ability to impair the near-monopoly position of the merged entity during the relevant period for this Decision, which is two years after the proposed concentration.

(210) The observation in the Response to the SO that Mach has lost [10-20]*% market share in the EEA over recent years does not mean that Mach no longer has a reputation or experience in providing DC services. It rather continues to enjoy an incumbency advantage. The Commission therefore maintains that the Parties' historical combined market shares provide an indication of a significant increase in market power post-merger. Competitors with market shares of often significantly less than [0-5]*% (based on revenues; see Table 5) do not hold a sufficiently strong position to act as a genuine counterweight. As will be shown in sections 6.1.3. to 6.1.8., there are also no indications stemming from the market structure and functioning that would be capable of rebutting the presumption of a significant impediment to effective competition based on the combined market share[130].

6.1.3. The merging firms are each other's closest competitors

6.1.3.1. Views of the Notifying Party

(211) The Notifying Party claims that competition between providers of DC services displays all the characteristics of the contestable price competition (also known as Bertrand competition), in particular in the light of lumpy competition, the standardised (homogeneous) nature of the product and the fact that there are, no capacity constraints and no barriers to entry[131]. It argues that the relevant GSMA standards rule out differentiation in DC services offerings.

(212) The Notifying Party disputes the relevance of the concept of closeness of competition in the assessment of the current case. It argues that the standardisation of the core DC services imposes homogeneity on the offerings of competing providers. In its view even where there is limited customisation, such customisation is specified by the MNO, and all DC services providers would have to offer the same customisation, again ensuring homogeneity across the offerings provided by competing OSPs.

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129 See the Notifying Party's Response to the SO, paragraph 102.

130 Case T-177/04, *easyJet v Commission* [2006] ECR II, 1913, paragraph 174 and case T-342/07 *Ryanair Holdings v Commission* judgment of 6 July 2010, paragraph 41.

131 Notifying Party's Response to the Decision opening the proceedings, paragraph 47 and Annex 1 "An economic analysis of Contestable Bertrand competition, within auction settings".

(213) The Commission understands the Notifying Party to mean that with perfectly homogenous products, rational customers choose the supplier that offers the lowest price. This argument of the Notifying Party hinges on the point that DC is a perfectly homogenous product, rather than a differentiated product[132].

(214) The Notifying Party claims that, in line with contestable price competition (also known as Bertrand competition), prices would not vary together with traditional measures of concentration, that is to say a more concentrated market does not necessarily lead to higher prices (as it would be the case in non-contestable markets). The presence of one other *actual or potential* competitor able, or potentially able, to offer a lower price would be sufficient to drive prices down to a competitive level. In a tender process, as soon as a competing bidder offers a lower price, the Parties are forced to match that offer. Accordingly, , the existence of Comfone and other players, as well as the threat of their entry and expansion will be sufficient to constrain Syniverse post-merger.

(215) The Notifying Party's Response to the SO maintains that the market for DC services displays the characteristics of a contestable Bertrand market.[133] The Notifying Party argues that Comfone is a credible competitor, such that the presence of Comfone as a rival to the merged entity would be sufficient to maintain effective competition.

(216) In the Response to the SO, the Notifying Party maintains that DC services are homogenous and submits that the Commission has over-stated the relevance of quality of service and customisations, where the reality is one of highly standardised and scalable services.[134]

(217) The Notifying Party argues that SLAs serve to homogenise the quality of service required by competing OSPs in a given tender. While customisations are mandated by some individual customers, it is each of the customers themselves that set customisation requirements that must be met by all potential suppliers. The result, Syniverse submits, is that competing OSPs must offer essentially homogeneous services to any given customer as all rival DC service providers must take the same quality of service and customisation requirements into account in the tender.[135]

(218) In its Response to the SO, Syniverse submits that the Commission has ignored the fundamental dynamic by which SLAs are used to homogenise the quality of service offered by all potential OSPs, in respect of any given customer.[136]

(219) The Notifying Party argues that retrospective credits given to customers for deviations from SLAs[137] are small and, calculated as a percentage of the monthly invoice, are effectively capped at the monthly revenues payable by the MNO to the DC provider.[138]

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132 The contestability assumption will be dealt with in section 6.1.3.2.

133 Notifying Party's Response to the SO, paragraph 33.

134 Notifying Party's Response to the SO, paragraphs 38 to 66.

135 Notifying Party's Response to the SO, paragraph 42.

136 Notifying Party's Response to the SO, paragraph 44

137 In its Response to the SO, the Notifying Party notes that as a result of deviations from SLAs customers' invoices are credited with the relevant amount, rather than payments being made. The Notifying Party therefore uses the term "credits" rather than "penalties".

138 Notifying Party's Response to the SO, paragraph 45.

(220) Furthermore, invoice credits for deviations from SLAs apply equally to larger and smaller OSPs, and given the cap at the revenues payable for DC services, such amounts would affect large and small OSPs equally.[139]

(221) In its Response to the SO, the Notifying Party argues that SLAs do not apply to the core provision of DC services which are set down by the GSMA. Quality of service is almost entirely standardised across different MNOs through the GSMA standards and the operational requirements of the roaming activity. Therefore, the Notifying Party submits, no MNO will tolerate any significant deviation from service delivery. Thus, according to the Notifying Party, SLAs' relevance to the analysis of whether quality of service serves as a differentiator among providers of DC services is, at best, limited.[140]

(222) The Notifying Party argues that the SO ignores the fact that Comfone has extensive experience of undertaking customisations, that it has adequate staff to be able to undertake such services and that it has confirmed to the Commission that it is capable of undertaking such customisations.[141]

(223) Similarly, the Notifying Party claims that Nextgen can also undertake the customisations required for some customers for DC services.[142]

(224) The Notifying Party also argues that there is no correlation between the level of customisations that are required and whether the customer may be considered by the Commission as a Tier 1 customer or not. Thus, according to the Notifying Party, given that smaller MNOs can have the same or even greater requirements for customisation than Tier 1 MNOs, it cannot be correct to say that Comfone (or Nextgen) have insufficient experience of providing customisation because neither has any Tier 1 customers.[143]

(225) The Notifying Party submits that price is the key parameter on which competition occurs and determines which provider wins any given tender.[144]

(226) Furthermore, the Notifying Party submits that Mach has been a diminishing competitive force for Syniverse, in comparison to Comfone and other competitors. The Notifying Party argues that Mach has shrunk significantly since the *Syniverse/BSG* Decision, both in terms of DC share and DC revenues.

(227) Additionally, the Notifying Party states that its analysis of the data extracted from the Parties' DC platforms shows that switching does not appear to occur largely between Syniverse and Mach. On the contrary, only […]* MNOs in the EEA have switched between Syniverse and Mach since January 2009, compared with the […]* MNOs gained in the EEA by Comfone during the same period.[145]

(228) Finally, according to the Notifying Party, the Bidding Data shows the increasing presence of other competitors in tenders since 2009. In 2009, in [80-90]*% of all tenders where Syniverse made a bid, Mach was the only other bidder. In 2011, that

139 Notifying Party's Response to the SO, paragraph 46.
140 Notifying Party's Response to the SO, paragraph 47.
141 Notifying Party's Response to the SO, paragraph 60.
142 Notifying Party's Response to the SO, paragraph 61.
143 Notifying Party's Response to the SO, paragraphs 62, 63.
144 Notifying Party's Response to the SO, paragraph 64.
145 The Commission notes that […]* out of these […]* MNOs are part of the […]* and switched to Comfone simultaneously as the result of one single negotiation.

decreased to [60-70]*%. Conversely, in 2009, Comfone participated in [5-10]*% of the tenders where Syniverse made a bid. In 2012, that increased to [20-30]*%. The Notifying Party expects that this growth in Comfone's participation in bids will continue in the future.

6.1.3.2. The Commission's investigation and assessment

(229) According to paragraph 24 of the Horizontal Merger Guidelines:

"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."

(230) This is in line with standard economic theories of harm arising from horizontal mergers as a result of non-coordinated effects, which predict that the elimination of competition between the merging parties will provide the merged entity with an incentive to increase price. That incentive arises from the ability of the merged firm to recapture, through the sales of the merger partner's product, some of the sales that would otherwise be lost as a result of such a price increase. The effect is stronger if the proposed concentration brings together close competitors and/or if the concentration on the market is already high.

(231) The Commission disagrees with the views of the Notifying Party. The market investigation shows that DC services are differentiating products and there is a high degree of competition between the Parties[146].

DC services are differentiated products

(232) According to the Horizontal Merger Guidelines, the closeness of competition can be inferred when products are differentiated such that some products are closer substitutes than others. The higher the degree of substitutability between the Parties' products, the more likely it is that the Parties will find it profitable to raise prices significantly. For example, a merger between two producers offering products which a substantial number of customers regard as their first and second choices could generate a significant price increase[147].

(233) The Commission's investigation has produced a significant body of evidence to indicate that DC services are differentiated by quality of service and the level of customisation.

DC services are differentiated in quality

(234) The Commission's market investigation has established that for most MNOs quality of service is of primary importance when choosing a DC provider. Reliability is the second most important criterion.[148] The Commission's investigation has revealed that this is particularly true in relation to Tier 1 MNOs, which seem to be more demanding towards their DC providers (see section 6.1.4.3.).

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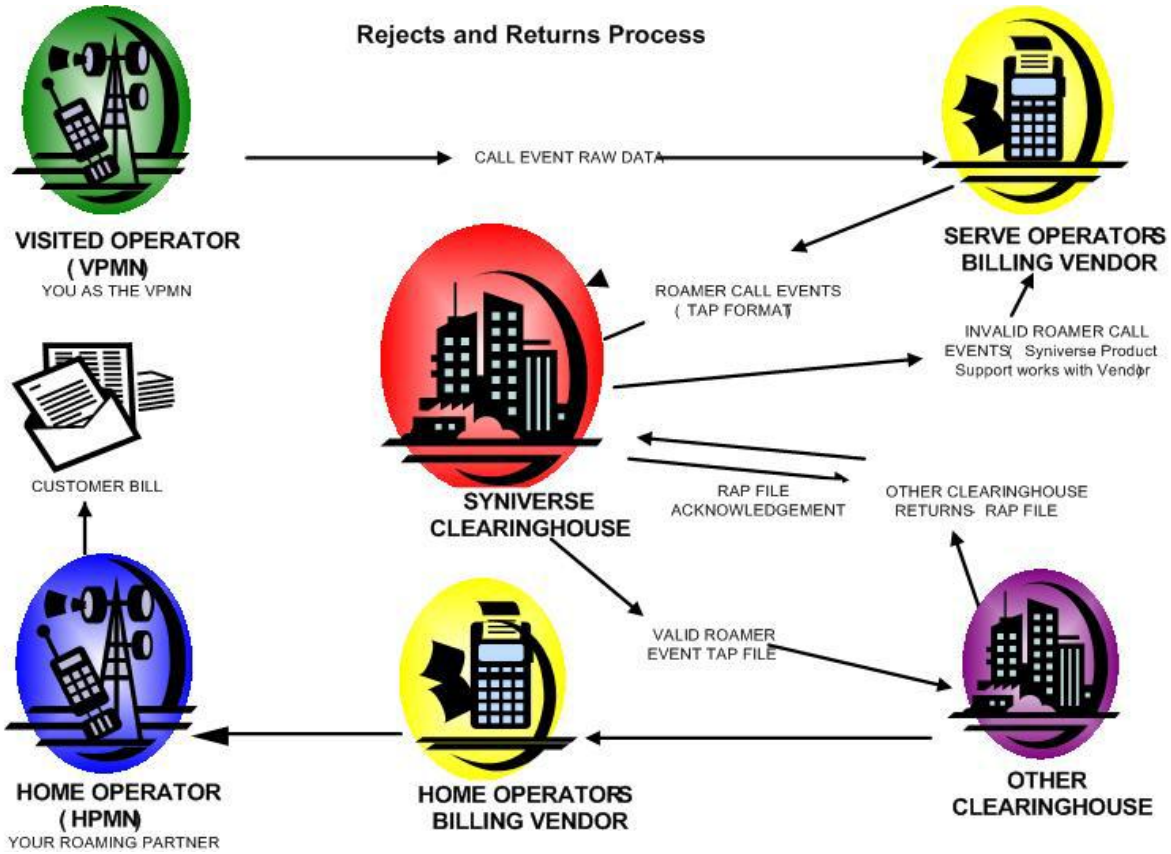
146 Horizontal Merger Guidelines, paragraph 28.

147 Horizontal Merger Guidelines, paragraph 28.

148 See section 6.1.4.3 below for a comparison of the Parties as against their smaller competitors in relation to these two factors.

(235) The reason why quality of service and reliability for DC services are so important to MNOs is because they have a direct impact on the accuracy of MNOs' retail bills to end customers. The Notifying Party submitted on 22 October 2012 the following chart illustrating the DC process:

Figure 1: The DC clearing process



Source: presentation by the Notifying Party to the Commission of 22 October 2012

(236) Figure 1 shows that TAP files are sent to roaming partners' billing systems and are directly billed to end customers. The only verification that is done by the roaming partner consists in checking whether received TAP files comply with the GSMA TD.57 standard. Hence, the accuracy of all retail roaming bills depends on the reliability of the DC provider[149].

(237) This direct link between TAP files and MNOs' retail billing is confirmed by the Notifying Parties:

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149 The reliability of the DC provider of the visited network determines the accurateness of the bill of the home network. In spite of that indirect link, MNOs still have an incentive to have a reliable DC provider for two main reasons:
(a) virtually all MNOs are both visited and home MNOs. Hence, a degraded service by roaming partners could lead MNOs to also degrade their DC process and to enter into a mutually degrading process;
(b) roaming partners have two types of interactions with each other: firstly the TAP files exchange and secondly the wholesale settlement (financial clearing). Financial clearing is not a time critical process and it can involve an in-depth verification of the TAP files that were exchanged. Hence, errors in the TAP files exchanges could potentially affect the wholesale settlement between MNOs. (Notifying Party, FC Services Paper, paragraph 40).

"Most MNOs also use the TAP record to bill their subscribers for roaming usage"[150].

(238) The importance of a reliable DC process for roaming revenues is also illustrated by the Notifying Party's own commercial document where it presents the benefits of its DC solution:

"[Syniverse DC solution] improves revenue assurance through extensive data checking[151]*".*

(239) This link between DC and MNOs' ability to charge retail customers for roaming communications is also confirmed by the market investigation. For instance:

Belgacom:

"The quality of service is the most important criterion related to the choice of a data clearing house to the extent that it could directly affect Belgacom's customers and retail roaming revenues. Quality is therefore even more important than price. Timing and precision in delivering the DC service are the main elements that define the quality of the service"[152].

Telekom Austria:

"Telekom Austria points out that the service provider's reliability is a key issue, since every possible lack of quality has a direct impact on the MNO, and it is not possible for the MNO to have a direct control over it"[153].

Deutsche Telekom:

"The main service level agreements ("SLA") are linked to processing time and penalties are foreseen when DC does not take place within a certain timeframe. For DC, time is very critical"[154].

(240) The importance of quality of service and of reliability is confirmed by the average ranking of criteria upon which MNOs make their selection of DC providers[155]. Table 6 indicates the average ranking of criteria for the selection of DC providers for all MNOs which responded to the market investigation (left section of the table) and for Tier 1 MNOs only[156] (right section of the table):

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150 Form CO, paragraph 262.

151 http://www.syniverse.com/files/service_solutions/pdf/dch_gsm_1212.pdf.

152 Agreed minutes of the conference call with Belgacom of 14 January 2013 [ID1968].

153 Agreed minutes of the conference call with Telekom Austria of 28 January 2013 [ID2268].

154 Agreed minutes of the conference call with Deutsche Telekom of 11 January 2013 [ID2162].

155 Responses to question 12 of questionnaire Q1 – questionnaire to MNOs – Phase I.

156 Tier 1 MNOs which have provided a response to this question are the following: […]*. The Commission decided to add NTT Docomo in the table which is not based in the EEA but also represents very significant DC revenues.

Table 6: Criteria taken into consideration when choosing DC provider

Most important criteria for all MNOs	Average ranking[157]	Most important criteria for Tier 1 MNOs	Average ranking
1. Quality of the service (for example speed of processing, technical support, Service Level Agreements, etc.)	4.83	1. Quality of the service (for example speed of processing, technical support, Service Level Agreements, etc.)	5
2. Reliability, data integrity and security	4.74	1. The fact that the provider has the capability to serve a high volume of TAP files for all your group	5
3. Price	4.61	3. Experience and reputation of the provider in the offering of DC services	4.67
4. Technical skills of the personnel available to the provider	4.57	4. Reliability, data integrity and security	4.33
5. Experience and reputation of the provider in the offering of DC services	4.48	4. Technical skills of the personnel available to the provider	4.33
6. Ability/willingness of the provider to customise its service according to your needs	4.35	4. Price	4.33
7. Regulatory requirements (for example data protection, data processing authorisations, data retention, other)	4.17	7. Regulatory requirements (for example data protection, data processing authorisations, data retention, other)	4
8. The fact that the provider has the capability to serve a high volume of TAP files for all your group	3.89	8. The fact that the provider already undertakes DC for a large number of MNOs/MVNOs	3.67
9. The fact that the provider already undertakes DC for a large number of MNOs/MVNOs	3.57	8. Ability/willingness of the provider to customise its service according to your needs	3.33
10. Number of personnel available to the provider	3.52	10. Number of personnel available to the provider	2.67
11. The fact that the provider has a broad range of other products and services than DC on offer	2.96	10. The fact that the provider has a broad range of other products and services than DC on offer	2.67

Source: responses to question 12 of questionnaire Q1 - questionnaire to MNOs – Phase I

(241) *Table 6* shows that MNOs consider that quality of service and reliability are the most important criteria for their choice of a DC provider. Price is not among the two highest priorities. This is particularly true for Tier 1 MNOs where price is only the fourth most important criterion. The ability to serve a large volume of TAP files and the experience and reputation becomes comparatively more important criterion together with quality of service in the case of Tier 1 MNOs. Virtually all respondents to the market investigation[158] confirmed that their requirements in terms of quality of service translate into service level agreements with DC providers.

(242) The market investigation shows that quality of service requirements commonly translate into SLA terms in the contract with DC providers. Those SLAs generally include an objective defined as a minimum % of TAP files that has to be processed

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157 A ranking of 1 is considered as not important and a ranking of 5 as very important.

158 Responses to question 15 of questionnaire Q6 - questionnaire to MNOs – Phase II.

within a maximum number of hours or days. Internal documents from the Parties show that negotiations with customers commonly focus on quality related SLA requirements and associated penalties and that they can often be a factor significant enough to terminate a negotiation,. For instance:

(243) In an email of […]*, in relation to the customer […]*, it can be read as follows:

"[…]*"[159].

(244) In the same vein is an email of […]*, in relation to the customer […]*, which reads as follows:

"[…]*"[160].

(245) The following email comes from […]* and was sent to […]*. It mentions Tier 1 MNO's SLA and explains that Syniverse had a difficult time meeting them:

"[…]*"[161]

(246) In the following email, difficulties related to SLAs negotiations appear to constitute a bottleneck in the negotiation with this customer and are escalated within the hierarchy:

"[…]*"[162].

(247) The Commission has reviewed the Notifying Party's arguments in its Response to the SO and does not agree with them. Based on the analysis of the Parties' internal documents and the other elements discussed in this Section, the Commission considers that quality of service is of utmost importance for MNOs. The Commission disagrees with the Notifying Party's argument in the Response to the SO that SLAs are used to homogenise the quality of service offered by all potential OSPs, in respect of any given customer. In fact, while OSPs are in principle capable of providing DC services that comply with the requirements of all potential SLAs (supply side substitutability), the customer would still consider that each of the DC providers provides a differentiated service as the customer has a different expectation as to the "delivered quality" of each DC provider (based on its track record, personnel, etcetera). In a situation where more than one DC provider is able to accept the SLA required by the MNO, the MNO may still choose the DC provider on the basis of which one the MNO expects to best deliver the target quality.[163] In this respect, Comfone explained that "*At the moment, Comfone has entered into discussions with [CONFIDENTIAL] Tier 1 operators. During this six-month discussion the critical points are convincing the MNOs of Comfone's ability to serve them and convincing them to abandon the old provider the MNOs have been working*

159 […]*.

160 […]*.

161 […]*.

162 […]*.

163 While the SLAs determine the verifiable features of the service there exist service features that they cannot grasp. For example, the overall friendliness of the contact person or the initiatives by the service provider to improve cooperation during the lifetime of the contract cannot be grasped by SLAs. Nonetheless, these features may be important in choosing a service provider in a tender. An MNO that is served by, say, Mach and is happy with that is fairly likely to pick Mach in the next tender even if Syniverse offers the same price for the same set of SLAs. These features differentiate service providers from each other.

with for several years"[164] which shows that MNOs do need to be convinced about the delivered quality of Comfone.

(248) In any event, even if DC products were to be considered homogenous in a given tender, and therefore the Parties before the proposed concentration would compete solely on prices, there would be no such price competition after the proposed concentration because of the barriers to expansion of the smaller competitors, that is to say Comfone would not be able to credibly compete (and potentially win) in all upcoming tenders with SLAs with different level of service requirements.

High level of customisation of DC services

(249) The high level of customisation of the DC service for each individual MNO also argues against the theory of homogeneity in this case. Each DC service is tailor-made to the specifications of the individual MNO, especially in relation to Tier 1 MNOs. There would therefore appear to be an incumbency advantage, meaning that the offerings of the different DC providers could also be considered to be differentiated in that respect.[165] This potential incumbency advantage puts the Parties (and no one else) in a preferred position in any bidding event.[166]

(250) Responses of the Notifying Party to the Commission's requests for information provide further confirmation of the importance of customisation costs. Firstly, in the Form CO[167], the Notifying Party explains that one-off customisation costs related to DC services to […]* were as high as EUR […]*. This is significant when compared to DC revenues for those customers[168]. Secondly, in its reply to the Commission's request for information of 21 November 2012, the Notifying Party confirms that the customisation costs can be very significant. In particular, in the case of Mach[169], customisation costs represented [5-10]* of total annual revenues obtained from new customers acquired in 2009 and 2010. In 2011, the costs of customisation represented [90-100]*% of Mach's total revenues obtained from new customers acquired in that year.[170] That confirms that DC services are not a unified homogenous product and as such, they can vary substantially across customers.

(251) According to the market investigation, customisation requirements essentially entail three elements:

(a) the creation/revision of TAP files considering that the relevant GSMA standard is updated on a regular basis and that MNOs do not necessarily update their IT system after each revision of the standard;

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164 Agreed minutes of the conference call with Comfone of 15 January 2013 [ID 2317]

165 This incumbency advantage comes from the fact that the MNO will have different expectation of the "delivered quality" of the customisation service by competing OSPs. In particular, if it had positive experience with its current OSP, it will think of that OSP's service as a potentially better service (at least in expectation) when comparing it to the expected service level of other OSPs in the bidding procedure.

166 Based on this argument, Tier 1 MNOs' lack of experience with Comfone's customisation experience may imply that MNOs may think of its customisation service as inferior even if it accepts the SLAs.

167 Form CO, paragraph 423.

168 According to the Notifying Party's response to the request for information of 21 December 2012, […]*'s DC payments for the first 12 months in contract were EUR […]* and […]*'s DC payments for the first 12 months in the EEA that were close to EUR […]*.

169 Notifying Party, response to question 2 of the request for information of 21 November 2012.

170 This high value should be evaluated by keeping in mind that Mach has acquired just a few number of new customers in that year.

(b) specific reporting requirements from MNOs;

(c) additional requirements for specific services developed by the MNO such as IMSI solutions or optimal call routing.

(252) The majority of the MNOs[171] confirm that customisation of DC services to their internal needs is required. All competitors who responded to the market investigation confirmed that customisation is needed for the interface with customers' internal interface[172] and for customers' reporting requirements[173]. Tier 1 MNOs in particular, tend to require more extensive customisation from their DC provider[174]. For instance:

"KPN has its own CDR format and requires a lot customisation for TAP-creation. Not only for TAP-out (inbound roaming), but also for the TAP-in direction.

[…]

KPN requires its DCH to create, validate and charge its TAP-out files. Part of this process is also the merger of Packed Switched data records.

[…]

KPN has a lot of customized reporting implemented. These reports are used in revenue assurance tools and for management information systems. A change in these reports shall have a major impact on the receiving systems"[175].

(253) The high degree of customisation also contradicts the Parties' argument that a DC service is a homogenous product for which the procurement choice rests solely on price.

(254) Contrary to the Notifying Party's claim, the market investigation shows that GSMA guidelines are focussed on the external interfaces between DC providers and on transition issues between the incumbent and the new DC provider[176]. GSMA guidelines do not address the issue of the internal interface between MNOs and their DC providers and hence customisation and reporting requirements are not standardised by GSMA guidelines. This is clearly confirmed by competitors' replies to the market investigation[177].

Conclusion on DC services as differentiated product

(255) It appears that quality of service and reliability are the two key considerations for customers when choosing their DC provider. Although some parts of the DC process are standardised by the GSMA, other parts of the service can be negotiated and are covered in the SLA between the DC provider and the specific customer. However, SLAs are not used to homogenise the quality of service offered by all potential OSPs, in respect of any given customer. Whereas customers may target a specific level of quality with the help of SLAs, the customer would still consider that each of the DC providers provides a differentiated service as the customer has a different expectation as to the "delivered quality" of each DC provider. DC services, when procured by an

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171 69% (24 out of 35) of the responses to question 12 of questionnaire Q1 – questionnaire to MNOs – Phase I.

172 Responses to question 14.4 of questionnaire Q4 – questionnaire to actual competitors – Phase I.

173 Responses to question 14.3 of questionnaire Q4 – questionnaire to actual competitors – Phase I.

174 Responses to question 9 of questionnaire Q4– questionnaire to actual competitors – Phase I.

175 Response to question 4 of questionnaire Q6 – questionnaire to MNOs – Phase II [ID1917].

176 Response to question 6.2 of questionnaire Q7 – questionnaire to competitors – Phase II.

177 Responses to question 8 of questionnaire Q7 – questionnaire to competitors – Phase II.

MNO, can therefore not be considered as a homogenous service as MNOs have different expectations as to the quality of the service which can be provided by each DC provider in terms of the reliability and timeliness.

(256) The Commission concludes that DC is a differentiated product, for the purposes of the competition analysis in the light of paragraph 28 of the Horizontal Merger Guidelines. There is evidence that the Parties, as by far the two largest firms in the overall DC market and, essentially, the only two competitors in the market segment requiring high quality, currently exercise a strong competitive force against each other. This will be considered in recital **Error! Reference source not found.**[*] onwards.

High degree of competition between the Parties

(257) In their reply to the SO, the Parties admit that in 2011 they were the only bidders in [60-70]*% of all tenders. This alone is indicative of a very high degree of competition between the Parties in 2011. Furthermore, this indicates that the Parties' rivals are not able to offer substitutable products in the market. In addition to these *prima facie* indications, the Commission carried out a more detailed analysis of the bidding behaviour in the market which further confirmed the high degree of competition between the Parties.

(258) Syniverse and Mach occupy very similar positions in the DC market. Both of them are long-established players that have been present on the DC market since it has emerged in the early 1990s. The Parties, both directly and through the DCHs that they acquired, have developed extensive expertise, an established reputation and long-standing business and personal relations with their customers. Currently Syniverse and Mach have similar market shares (40-50%) and revenues in DC services, both at worldwide and EEA-levels. Furthermore, the Parties are the main providers offering their customers a comprehensive suite of telecommunications products and services (DC, FC, revenue assurance and fraud management, business intelligence, messaging, etc.).

(259) Syniverse and Mach are widely viewed by customers and competitors as the two main providers of DC services. They seem to be the only DC providers that can offer their services to the full range of large, mid-sized and small MNOs. The market investigation revealed that Tier 1 MNOs typically do not seriously consider contracting with smaller DC providers. This seems to be due to their lack of reputation, proven track record and capability to process large volumes of TAP files. This is also confirmed by the actual market situation, where at present only Syniverse and Mach serve small, mid-sized and large MNOs.

(260) The Bidding Data and Switching Data submitted by the Parties provide further important insights into the extent to which Syniverse and Mach compete head-to head with each other.

(261) The Bidding Data suggests that the Parties are frequently the only two bidders in bidding processes organised by MNOs. The data submitted by Syniverse indicates that, in the period 2009-2012, in [70-80]*% of cases when bidders other than Syniverse were reported as participants in the bidding process ([…]* out of […]* bids), Mach was the only other bidder. Other competitors were either not invited or

[*] Should read: recital 257.

did not have the ability (or capacity) to participate. Similarly, the data submitted by Mach indicates that in [60-70]*% of cases when bidders other than Mach were reported as participants in the bidding process ([…]* out of […]* bids), Syniverse was the only other participant in the bidding process. Again, other competitors were not invited or did not have the ability (or capacity) to participate.[178] The Bidding Data also shows that instances where only one of the Parties participated with another competitor were very infrequent. Generally at least both Parties participated, either with or without another competitor.[179] Those participation patterns indicate that the Parties compete head to head and that their competitors compete much less often with them.[180]

(262) The Bidding Data also indicates that the size of the contracts for which the Parties' competitors participated in the bidding process was, on average, smaller than the size of the contracts for which only the Parties submitted a bid. In particular, the Bidding Data submitted by Syniverse indicates that average annual volumes of TAP records were lower in cases where bidders other than the Parties participated (approximately […]* as against […]* TAP records in bids where only Syniverse and Mach participated). The Bidding Data submitted by Mach also indicates that the average volume was lower in cases where OSPs other than the Parties participated in the bidding (approximately […]* against […]* TAP records).[181] This is consistent with the observation that Tier 1 MNOs typically do not seriously consider contracting with smaller DC providers.

(263) The Commission also analysed customer switching patterns. It should be noted that switching patterns are not necessarily representative of overall competitive conditions, and of competitive constraints. In particular, the Parties constrain also each other when no switching occurs[182].

178 These values were calculated on a global level. At the EEA level, the values are even higher: [80-90]*% for the Syniverse dataset ([…]* out of […]* cases) and [70-80]*% for the Mach dataset ([…]* out of […]* cases).

179 According to the Syniverse dataset, Mach submitted a bid in [60-70]*% of cases where competitors to the Parties participated ([…]* out of […]* bids). According to the Mach dataset, Syniverse submitted a bid in [30-40]*% cases ([…]* out of […]* bids) where competitors to the Parties participated. This latter value ([30-40]*%) needs to be evaluated by taking into account that [40-50]*% of cases ([…]* out of […]* bids) in the Mach dataset refer to procurement cases in Africa and Asia where EDCH was the incumbent in the majority of cases and was only challenged in the bidding process by Mach. These figures are similar at the EEA level. In the EEA, Mach submitted a bid in [90-100]*% of cases where competitors to the Parties participated ([…]* out of […]* cases) according to the Syniverse database and Syniverse submitted a bid in [60-70]*% of cases where competitors to the Parties participated ([…]* out of […]*) according to the Mach database.

180 In its Response to the Decision opening the proceedings, the Notifying Party observes "*the increasing presence of other competitors in tenders since 2009*". While it is true that competitors to the Parties increased their presence in these tenders over time, this increased participation pattern still remained very moderate. The frequency of participating in bidding processes of other providers never exceeded [20-30]*% of the frequency of participating in bidding processes of the Parties in a given year for the period 2009-2011 (except for EDCH in the year 2011 when it participated in a substantial number of tenders in Africa).

181 The same average volume figures for procurements related to DC services inside the EEA are […]* and […]* TAP records in the Syniverse dataset and […]* million and […]* million TAP records for the Mach dataset.

182 See for instance the results from the internal document review in recitals (260) onwards.

(264) The Commission's analysis of customer switching patterns based on the Bidding Data suggests that there is more switching between the Parties than between the Parties and other providers. In particular, the Syniverse data shows that when customers switched DC providers, customers switched from one Party to the other Party in [70-80]*% of the cases ([…]* out of […]* cases). The Mach data show that customers switched from one Party to the other Party in [30-40]*% of cases when a switch was identified ([…]* out of […]* cases).[183] Whilst that number is lower than the equivalent figure obtained from the Syniverse dataset, it needs to be set against the background that an additional [50-60]*% of switches identified in the Mach dataset ([…]* out of […]* cases) were from a competitor to one of the Parties.[184] Those switches from another provider to one of the Parties indicate that the Parties are successful in attracting customers away from their competitors. The remaining [10-20]*% of switches identified in the Mach dataset were from one of the Parties to one of their competitors ([…]* out of […]* cases). Overall, this analysis suggests that the Parties' competitors do not compete as strongly with the Parties as the Parties do with each other.[185]

(265) The Switching Data, which also includes the period May 2012 to December 2012, shows that, at the global level, […]* out of […]* customers lost by the Parties switched between each other.[186] At the EEA level, […]* out of […]* customers (no Tier 1 MNO included) lost by the Parties switched to Comfone rather than to the other Party. The merging parties acquired […]* out of […]* customers that switched during the period.[187] Taking into account the fact that Comfone won the […]* as a result of effectively one negotiation process, and did so with the two MNOs belonging to the […]* as well, it can be considered that Comfone effectively won […]* EEA customer groups from the Parties, as opposed to the […]* EEA customers that the Parties won from each other.[188] The customers that switched to Comfone were Tier 2 and 3 MNOs, as also shown by the fact that Comfone's share of revenues in the EEA remained below [0-5]*% prior to 2012, and reached less than [0-5]*% in 2012[189]. Recitals (307) onwards, also demonstrate the importance of experience with Tier 1 MNOs in order to build reputation and attract further Tier 1 MNOs as

183 The same figure for procurements related to DC services inside the EEA is [70-80]*% for the Syniverse dataset ([…]* out of […]* cases). The Mach dataset only provides two instances of switching in relation to DC services inside the EEA, which prevents any meaningful derivation.

184 […]* out of […]* cases refer to switches in Africa and the Middle East from EDHC to Mach. For the Syniverse database, in [10-20]*% of the switching instances ([…]* out of […]* cases), the switching occurred from one of the Parties' competitors to one of the Parties. There are no such switches for procurements related to DC services inside the EEA in either of the two datasets.

185 The same figure is [5-10]*% for the Syniverse dataset ([…]* out of […]* cases). There is one such switch for procurements related to DC services inside the EEA in each of the Syniverse and Mach datasets.

186 More generally, the Switching Data indicates overall fairly low levels of switching DC service providers ([10-20]*% ([…]*) globally and [10-20]*% ([…]*) in the EEA) that included no Tier 1 MNO switching in the EEA.

187 The remaining one customer switched to EDCH.

188 […]* out of these […]* EEA customers are […]* from Syniverse and […]* from Mach that were signed after 30 April 2012 and were therefore not included in the Bidding Data (see footnote **Error! Bookmark not defined.** [Should read: recital 19] for the reason why the Commission only considered the Bidding Data up to 30 April 2012).

189 See *Table* 5.

customers. No Tier 1 MNO switched to Comfone between 2009 and 2012.[190] Nor did any Tier 1 MNOs switch between Syniverse and Mach during the same period. However, the internal documents discussed in recital **Error! Reference source not found.**[*] onwards reveal that the MNOs currently served by one of the Parties frequently use the other Party as a credible threat in their contract renewal process. The Notifying Party did not dispute the Commission's analysis of the customers switching patterns in its Response to the SO.

(266) The internal documents submitted by the Parties confirm the quantitative evidence of the Bidding Data that the Parties compete head to head with each other. A review of the internal documents has uncovered a number of internal emails from both Syniverse and Mach personnel, where each Party tries to canvass the other's strategy and discusses the possibility of a particular MNO switching to or away from the other Party.

(267) On numerous documents the Commission found direct references to Mach and Syniverse competing without any reference to other competitors[191].

(268) One internal Syniverse email entitled "Mach Customers in Europe" requests an updated list of DCH for each operator in Europe[192]. Syniverse was forwarded an email from Mach which was aimed at Syniverse's customers and discusses Mach's benefits.[193] Another Mach email[194] discusses a new pricing mechanism for […]* and considers the possibility of a move from Syniverse to Mach. A further Mach email[195] discusses the possibility of a trial for […]* and states that "[…]*". Similarly, another Mach email[196] states "[…]*" A Syniverse email discusses a proposal created by Mach in relation to […]*[197]. Another Syniverse email discusses potential targets, including […]* (whose contract with Mach was due to expire in […]*), […]* and […]*[198] (whose contract was due to expire in […]*). Syniverse had a meeting with […]* in which […]* provided a Mach report[199].

(269) More importantly, when discussing large group MNOs, such as […]*, the discussion revolved predominantly around Syniverse and Mach. In relation to […]* (a Syniverse customer), Syniverse perceived Mach to be the main threat for switching. An email from Syniverse[200] states that "[…]*" and states "[…]*". A Syniverse email[201] discusses certain "[…]*" which Syniverse considers a great differentiator for […]* and for potentially all of Syniverse's clients and states that "[…]*" Even recruitment of key personnel by Mach is considered as a potential threat. The recruitment of […]* by

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190 This gives further support to the argument that Tier 1 MNOs do not see Comfone as a credible alternative provider of data clearing services.

* Should read: recital 267.

191 Email from […]*. Also see emails referred to below from footnote 192 onwards.

192 Email from […]*.

193 […]*.

194 […]*.

195 […]*.

196 […]*.

197 […]*.

198 […]*.

199 […]*.

200 […]*.

201 […]*.

Mach was mentioned in a Syniverse email[202] as potentially being a further reason for targeting […]*. No such emails discuss a threat by Comfone or any other DC provider.

(270) An internal Syniverse email[203] describes the […]* and discusses a potential poaching strategy "[…]*".

(271) In relation to […]*, DC business, a number of Syniverse emails[204] talk about targeting […]*'s business away from Mach: "[…]**[205]:*

(1) […]*"[206]

(272) Another Syniverse email discusses the same topic, that is to say poaching […]* from Mach.'*[207]*

(273) Other emails in relation to […]* discuss that […]* receives services both from Syniverse (via legacy […]* contract) and Mach (via a legacy […]* contract). Syniverse targets […]* and wants "[…]*"[208]. In an email[209], Syniverse considers whether to have a more aggressive pricing strategy for […]*. Another Syniverse email[210] discusses the amount of customised effort that Mach has made on the […]* side of the MVNOs. Another Syniverse email states that Mach seems to be in a much better position than Syniverse in relation to […]* and discusses pricing strategy[211]. A further Syniverse email clearly states that its intention is to win the […]* business[212] and seeks internal guidance for pricing proposals. In the end, the contract was awarded again to Mach[213].

(274) A number of strategies of Mach reflect the strategies adopted by Syniverse and *vice versa*. For example, Mach claims that a certain feature has been introduced as a key differentiator compared to Syniverse[214] and another Mach email considers that Syniverse has stuck to a proposal based on volume rather than a flat fee[215]. A further internal Mach email[216], debriefing on a contract award compares Mach's bid with that of Syniverse, states that on the technical evaluation both competitors were "[…]*" Another example relates to Mach's attempt to convince […]* to move its business from Syniverse to Mach[217]. Finally, a Syniverse email suggests investigating the Mach current tariff process as a reference for Syniverse's proposal[218].

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202 […]*.
203 […]*.
204 […]*.
205 […].*
206 […]*.
207 […]*.
208 […]*.
209 […]*.
210 […]*.
211 […]*.
212 […]*.
213 […]*.
214 […]*.
215 […]*.
216 […]*.
217 […]*.
218 […]*.

(275) It is clear from a number of internal documents that Syniverse and Mach compete strongly with each other in terms of pricing levels. An internal Mach email discussing the […]* contract with […]* states that "[…]*"[219]. A previous email in relation to […]* states that "[…]*"[220].

(276) In relation to another provider, […]*, Mach was concerned that "[…]*"[221]. In another email[222], a representative of Mach asks "[…]*" Similarly, in relation to […]*, a Mach representative asks in an email[223] "[…]*?" A Mach email states that Mach acknowledges that "[…]*"[224]. Similarly, a Syniverse email raises concerns that "[…]*". In relation to […]*, an email from Syniverse[225] accepts that "[…]*".

(277) Syniverse and Mach also compete very fiercely and very innovatively in terms of pricing structures. In an email[226] regarding […]*[227], Syniverse comments that Mach offered a bundled price and proposes the same strategy. In a discussion about adding a monthly fee for a Syniverse client for modifying TAP files[228], it is explained that "[…]*". In a Syniverse email in relation to the pricing for […]*[229], it was agreed to submit aggressive pricing for a two year contract: "[…]*"

(278) Sometimes services are offered for free in order to beat the competition of the other Party. For example an internal Syniverse email[230] concerning […]* states that Syniverse regards certain services "[…]*". Another Syniverse email[231] states that Syniverse's "[…]*."

(279) Syniverse and Mach seem to be competing most intensely between each other in a number of different areas, such as quality, customer support, local presence etc. This is evident from several internal documents. In an internal Syniverse email[232] Syniverse's customer service is compared to Mach's and found superior. In another Syniverse email, a representative of Syniverse discusses an internal worksheet used to breakdown and considers Mach's competition features[233]. In a further Syniverse email[234], Mach's strategy of recruitment and cutting prices is discussed. Syniverse considered that "[…]*". Personal contacts are also discussed in another email[235] as having potential to influence contract award to one rather than the other Party. A further Syniverse email asks for […]* proof of the Mach pricing and the terms and conditions Mach is offering against (that is to say term, what is included etc.)[236] In

219 […]*.
220 […]*.
221 […]*.
222 […]*.
223 […]*.
224 […]*.
225 […]*.
226 […]*.
227 […]*.
228 […]*.
229 […]*".
230 Email from […]*.
231 Email form […]*.
232 Email from […]*.
233 Email from […]*.
234 Email from […]*.
235 Email from […]*.
236 Email from […]*.

relation to […]*, Syniverse stated in an internal email[237] that some of the reasons for […]* leaving Mach for Syniverse are as follows "[…]*"

(280) In contrast, the Commission has identified relatively few internal documents in which the Parties refer to Comfone as a competitor. The frequency of such emails is significantly lower than those containing references to Syniverse or Mach. Moreover, any comparison with Comfone almost always relates to smaller MNOs, such as […]*[238], which recently switched from Mach to Comfone, […]*[239] […]*[240], […]*[241], […]*[242], […]*[243] and […]*[244]. This demonstrates that Comfone is not viewed as a threat for large Tier 1 MNOs. While the Commission accepts that for a few small or medium sized MNOs, Comfone might be a viable option, the main competition for medium, large and, especially large group MNOs, focuses only around Syniverse and Mach, as evidenced by the internal document review and the Bidding Data.

(281) A number of responses from customers to the market investigation confirm this evidence. A number of MNOs have stated that they only consider the Parties as credible competitors for their DC services.

(282) In the renewal of its DC contract, […]* only contacted and requested quotes from Mach ([…]*'s DC provider at the time) and Syniverse. Telecom Austria stated that it did not seriously consider contacting other DC providers[245]. Vodafone explained that "*The only Syniverse alternative DC service provider Vodafone Group could take in consideration is MACH. In fact, it is the only player, beyond Syniverse, who can guarantee Vodafone Group the required level of service quality and the relevant service features*"[246]. Belgacom explained that there is a big gap between large DCHs such as Syniverse or Mach and small DCHs, because small DCHs do not have enough resources and achieve no or only minor economies of scale[247]. Maxis Communications (Malaysia) confirmed that Syniverse and Mach are the two biggest players in the DC space. Digicel Group argued that *"the merger would create almost a de facto monopoly which would give them* [that is to say Syniverse and Mach] *the ability to set prices and other T&C as per their discretion."*[248]

Conclusion

(283) On this basis, the Commission considers that Syniverse and Mach currently compete intensely with each other in the DC market. In contrast, other providers are either seen by the Parties as remote competitors or not even considered at all. This is so in relation to large Tier 1 MNOs, but also in relation to most of the Tier 2 and 3 MNOs that DC providers need to serve in parallel. This conclusion applies irrespective of whether the geographic scope of the market is worldwide or EEA-wide.

237 Email from […]*.
238 Email from […]*.
239 Email from […]*.
240 Email from […]*.
241 Email from […]*.
242 Email from […]*.
243 Email from […]*.
244 Email from […]*.
245 Agreed minutes of conference call with Telekom Austria of 28 January 2013 [ID2268].
246 Agreed minutes of conference call with Vodafone of 6 February 2013 [ID2325].
247 Agreed minutes of meeting with Belgacom of 14 January 2013 [ID1968].
248 Response to question 89.1 of questionnaire Q1 – questionnaire to MNOs – Phase I [ID1093].

6.1.4. *Customers' possibility to switch supplier*

6.1.4.1. Introduction

(284) The previous section 6.1.3 shows that the Parties are each other's closest competitors and that the proposed concentration would therefore remove the Notifying Party's closest competitor. The direct effect of that removal would be the loss of competition between the Parties[249]. In order to assess whether the proposed concentration is likely to significantly impede effective competition, this section and in section 6.1.5 will examine whether the Parties' competitors could compensate for the loss of competitive pressure. This section assesses whether current customers of the Parties may have difficulties switching to other suppliers[250] and the (Section 6.1.5. Competitors' limited ability to increase supply if prices increase and/or quality decreases) will assess whether competitors of the Parties will have the ability, within two years, to increase their supply to such an extent[251] that they could actually deter or defeat the anticompetitive effects of the proposed concentration [252].

(285) In this section, the Commission finds that quality of service, reliability and proven reputation are of major importance to MNOs and in particular to Tier 1 MNOs. The Commission's investigation has established that MNOs look for DC providers that have the resources and skills in place to fulfil customers' quality requirements. In the case of Tier 1 MNOs, the scale of DC operations and volume of TAP files is considerably higher than those of smaller MNOs and so are the risks in case of an interruption of the DC service. The Commission has found evidence that Tier 1 MNOs set higher standards in terms of proven record, quality of service, reliability and SLAs.

(286) The Commission also finds in this section that smaller DC providers are not likely to meet MNOs' quality related requirements, in particular Tier 1 MNOs' requirements. In addition, the Commission concludes that customers would face substantial risks and costs when switching to smaller DC providers related in particular to the customisation and migration process.

6.1.4.2. Views of the Notifying Party

(287) The Notifying Party submits that there would be a significant number of competitors remaining after the proposed concentration to constrain the merged entity, including ARCH, Comfone, EDCH, Nextgen and TNS. The Notifying Party claims that these alternative DC providers have all the capabilities to be considered as credible competitors, in particular in terms of quality, experience, track record, 24/7 customer support, etc. Moreover, the Notifying Party argues that the assertion that switching to an OSP other than Syniverse or Mach is more risky, or implausible, is technically and factually incorrect.

(288) The Notifying Party claims that switching DC provider is easy and happens frequently.[253] GSMA has standardised the migration process, including the testing

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[249] Paragraph 24 of the Horizontal Merger Guidelines.

[250] Paragraph 31 of the Horizontal Merger Guidelines.

[251] Paragraph 32 to 35 of the Horizontal Merger Guidelines.

[252] Footnote 45 and Paragraph 75 of the Horizontal Merger Guidelines.

[253] The Notifying Party notes that the Commission's conclusion in the Decision opening the proceedings that switching is costly and time-consuming is in direct contradiction with the findings in *Syniverse/BSG*.

procedures and telecommunications procedures for timely and efficient switching. Contrary to what is stated in the Decision opening the proceedings, the transfer of historical files is not a barrier to switching and is required by customers only in extremely rare cases. Furthermore, the risk of data loss during migration is no higher than during the whole DC process. The overall migration process would take about two to three months.

(289) The Notifying Party submits that during the period 2009-2012, MNOs switched DC providers fairly frequently, that is to say in 18% of the cases on average. There have been a number of large scale switches in the past (for example migration of […]* BSG customers to Syniverse's platform and switching associated with Comfone's rapid expansion). The Notifying Party also refers to the platform Switching Data to show that the Parties regularly lose DC customers to competing providers, in particular to Comfone, and *vice versa*. For example, between 2009 and 2012, the Parties collectively lost […]* DC contracts in the EEA of which […]* were won by competitors ([…]* of which were won by Comfone)[254].

(290) The Notifying Party devotes special attention to Comfone, as the DC service provider to which MNOs would most likely to switch. In particular, the Notifying Party states that it would take a maximum of 6-12 months for Comfone to expand in order to serve Tier 1 customers. The Notifying Party highlights that Comfone already provides a number of services to a large pool of MNOs and is hence known to them. The credible competitive threat of Comfone is demonstrated in particular by its win and successful migration of […]*. In general, according to the Notifying Party, Comfone has won significantly more new customers in the EEA than either Mach or Syniverse in the period 2009–2012. In the Notifying Party's view, Comfone can service MNOs of all sizes: small, mid-sized and large. According to the Notifying Party, Comfone consistently qualifies to participate in tenders, including the most high-profile and complex ones (for example […]* and […]*). Hence, Comfone places a credible constraint on the Parties.

(291) In its Response to the SO, the Notifying Party contests the Commission's argument that the merged entity would effectively become an unavoidable trading partner.[255]

Importance of quality in terms of SLAs and customisation requirements

(292) The Notifying Party in its Response to the SO disputes the Commission's analysis in relation to the importance of quality and customisation requirements, in particular for Tier 1 MNOs. In particular, the Notifying Party notes that the Commission has limited its analysis to one particular SLA, namely time limits on TAP processing, as this was the only SLA that could ostensibly be meaningfully compared across customers. The Notifying Party argued in its Response to the SO that this was an incorrect approach as it did not provide a full picture of SLAs negotiated with customers.[256] Indeed, the Notifying Party argues that:

(1) SLAs are negotiated collectively and therefore it is not meaningful to analyse only one particular SLA in isolation.

[254] However, as noted in recital (227), […]* out of these […]* MNOs are part of the Tele2 Group and switched to Comfone simultaneously as the result of one single negotiation.

[255] Notifying Party's Response to the SO, paragraph 69.

[256] Notifying Party's Response to the SO, paragraphs 48 to 50

(2) The fact that time limits on TAP processing is the SLA that can be most meaningfully compared across customers does not mean that it is the most meaningful SLA to assess. The Notifying Party argues that within the deadlines set by the GSMA, the time within which TAP files are processed is not material

(3) The Commission's analysis of the SLAs is flawed. The Notifying Party submits that the sample size is far too small and that the Commission has selectively quoted the data points that are favourable to its claim that Tier 1 MNOS are more demanding than non-Tier 1 MNOs.

(293) In its Response to the SO, the Notifying Party argues that the SO contains similar faults in the analysis of penalty caps (that is to say it considers only one element of SLAs' package and based its conclusions on a sample of limited size). The Notifying Party submits that in the analysis regarding the caps on penalty amounts for Tier 1 MNOs, compared to non-Tier 1 MNOs, the Commission overlooks a key fact that many of the MNOs that the Commission considers as smaller have no cap on the liability that the DC provider faces.[257]

(294) The Response to the SO also discusses the Commission's analysis regarding customisations. The Notifying Party submits that customisation is not common and that its implications have been mischaracterised. The Notifying Party argues that customisations and reporting are not related to the size of an MNO.[258] The Notifying Party argues that customisation of DC services for the new DC provider is part of the migration process for which MNOs are not charged and which is not reflected in the per-TAP processing fee, which is the normal metric by which pricing negotiations and comparisons take place.[259]

(295) Similarly, the Notifying Party argues, the bulk of reporting customisation is undertaken by MNOs themselves and is therefore not reflected in the price paid by MNOs.[260]

Ability of smaller competitors to meet quality criteria of Tier 1 MNOs

(296) The Notifying Party claims that Comfone currently exerts a competitive constraint on the Parties.[261] In its Response to the SO, the Notifying Party contends that customers' own responses indicate that a majority could consider Comfone as an alternative provider for DC services. Over the past four years Syniverse and Mach collectively lost […]* contracts in the EEA, […]* of which were won by competing OSPs, […]* of which were won by Comfone. The Notifying Party argues that even if MNOs are approaching Comfone only in order to benchmark prices (rather than because they are seriously contemplating switching to Comfone), this shows that Comfone is a credible constraint on the Parties. The Notifying Party argues that in its current DC tender for […]*, it is fighting head to head against Comfone for the contract and has already cut prices significantly (by nearly […]*%) in response to reports of Comfone's own aggressive price proposition. The Notifying Party contends that using one DC provider to benchmark the price of another is a common practice and that not only Comfone is used as benchmark.

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257 Notifying Party's Response to the SO, paragraph 50.
258 Notifying Party's Response to the SO, paragraph 54.
259 Notifying Party's Response to the SO, paragraph 57.
260 Notifying Party's Response to the SO, paragraph 58
261 Notifying Party's Response to the SO, paragraphs 101 to 103.

(297) In addition, there are many examples of Comfone competing head to head with the Parties.[262] The Notifying Party claims that none of the respondents to the Commission's investigation have expressed problems in relation to Comfone's quality of service as a DC provider. The vast majority of respondents who commented specifically on the credibility of Comfone have not yet received DC services from Comfone. This lack of experience is likely to colour their view on the credibility of Comfone as an alternative provider. Even if MNOs do not see Comfone as a credible alternative now (a fact which the Notifying Party disputes), once Comfone has taken even a fraction of those customers, it will be able to demonstrate to others that it has the necessary characteristics to take on more customers and that proportion would increase even further. The fact that Comfone has started to serve groups of customers, such as Tele2 Sweden, already demonstrates that Comfone is on the cusp of winning more and bigger contracts. In addition, MNOs could award Comfone a smaller operator within the group and then award it the rest of the group off the back of the trial.

Switching costs

(298) The Notifying Party claims that the cost of the migration process would be supported usually by DC providers depending on the results of the commercial negotiations with MNOs. The Notifying Party submits that generally there is no customisation cost for MNOs migrating to a standard clearing service. The Notifying Party submits that, at the request of the customer, there may be some customisation involved in a switching process. However, DC service providers usually cover the cost of the development and the corresponding investment and time needed is considered as minor and proportionate to the annual contract value of the DC MNO customer.

(299) In its Response to the SO the Notifying Party submits that smaller players such as Comfone and Nextgen have the ability to undertake the customisations required for some customers for DC services.[263]

(300) The Notifying Party argues that there is no correlation between the level of customisations that are required for Tier 1 and non-Tier 1 MNOs. Therefore, the Notifying Party argues it cannot be correct to claim that Comfone or Nextgen have insufficient experience of providing customisation because neither has any Tier 1 customers.

(301) The Notifying Party further argues that any switching costs, and in particular costs that are internal to the MNO, would not be consequences of the proposed concentration. In addition, the Notifying Party notes that MNOs claim that they cannot and do not switch because of these barriers to switching, until they do switch. Finally, despite these alleged barriers to switching, MNOs have still been able to extract large discounts from the Parties over previous years.[264]

(302) Finally, the Notifying Party disputes a number of elements of the Commission's assessment of the costs and risks associated with switching providers, such as a requirement to transfer historical data, that loss of data ever resulted in lost revenues and that customers have to pay for both DC providers during the migration process.

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[262] Notifying Party's Response to the SO, paragraphs 104 to 111.
[263] Notifying Party's Response to the SO, paragraphs 59 to 63.
[264] Notifying Party's Response to the SO, paragraphs 121 to 123.

Finally, the Notifying Party disputes the average amount of time and costs required for a switch.[265]

6.1.4.3. The Commission's investigation and assessment

(303) The Commission's in-depth investigation confirms that the Parties' customers would have significant difficulties switching to smaller DC providers for the following reasons:

(a) quality of service, reliability and proven reputation are of major importance to MNOs, in particular to Tier 1 MNOs;

(b) smaller DC providers are not likely to meet MNOs' quality related requirements, in particular Tier 1 MNOs' requirements;

(c) customers would face substantial risks and costs when switching to smaller DC providers related in particular to the customisation and migration process.

(304) Therefore, MNOs would have limited possibilities to switch to alternative suppliers and would be vulnerable to any price increase and/or quality decrease by the merged entity.

(305) Those findings are based on a large and consistent set of evidence from various sources:

(a) the results of the market investigation;

(b) internal documents from the Parties;

(c) the Notifying Party's replies to the Commission's requests for information;

(d) a review of the Parties' contracts with customers;

(e) an analysis of DC Switching Data.

Quality of service, reliability and proven reputation are of major importance to MNOs, in particular to Tier 1 MNOs

(306) As demonstrated in section 6.1.3.2., quality of service and reliability are overall the two most important criteria for MNOs when selecting a DC provider. MNOs therefore look for DC providers that have the resources and skills in place to fulfil these requirements by serving customers in parallel whilst not jeopardising the individual quality levels that they require. In order to ensure that their DC provider will fulfil these criteria, MNOs require high quality of service from their DC suppliers. This in particular the case for Tier 1 MNOs. .

(307) In the case of Tier 1 MNOs, the scale of DC operations is significantly higher than in the case of smaller MNOs. The volume of TAP files to handle is considerably higher and so are the risks in the event of an interruption of the DC service. In order to ensure a reliable DC process, Tier 1 MNOs have higher requirements in terms of proven record, quality of service, reliability and SLAs. Those customers therefore have a particularly stringent requirement that DC providers have the resources and skills in place to serve them. An established reputation with smaller MNOs is not sufficient for Tier 1 MNOs as they generally require a successful experience with another Tier MNO. Tier 1 operators themselves confirm this. For example, Deutsche

[265] Notifying Party's Response to the SO, paragraph 120.

Telecom does not consider that smaller operators such as Comfone and Nextgen, are large enough to handle the huge amount of data.

Deutsche Telecom

"According to DT, companies that entered the market recently between the tenders organized by Deutsche Telekom in 2005 and 2008. However, Comfone and Nextgen (Nextgen at present has just one minor customer in DC operations) are not big enough to handle the huge amount of data. This applies especially for DC because DC is more customized and has to meet more specific requirements whereas this is not as important for FC. The smaller the company, the bigger the risk."[266]

(308) This is also confirmed by the Parties' competitors:

Comfone:

When asked about reputation and/or proven record requirement, Comfone replies that "Tier 1 resp. their employees are more demanding"[267].

"Tier 1 MNOs tend to have higher requirements in terms of reporting considering that they have different departments (legal department, controlling department, technical department, etc.) which have specific needs in terms of reporting. [...] Tier 1 customers are generally more demanding with respect to customer care. Tier 1 customers call/mail more frequently their DC house"[268].

"Comfone has not been really successful in attracting Tier 1 MNOs"[269].

Nextgen:

"All criteria are in more demand by Tier 1 operators"[270] *and in particular "Experience and more technical (for example IT) skills"*[271].

"usually Tier 1 operators require a higher degree of customisation of the roaming service compared to Tier 2 and Tier 3 MNOs"[272].

"It usually takes about 1 to 2 years of work in order to win a contract from a new MNO. In order to work with Tier 1 operators an important issue is to build up a relationship with them, to build up a reputation. In order to do that, Nextgen estimates that a minimum two year period of time is needed"[273].

"the main source of confidence that Tier 1 operators look for consists in a proven record of successful outsourcing for a Tier 1 operator"[274].

(309) Tier 1 MNOs usually require SLA "*with severe penalties*"[275], whereas Tier 2 MNOs require "*medium penalties*"[276] and Tier 3 MNOs do not require any penalty.

266 Agreed minutes of the conference call with Deutsche Telecom of 11 January 2013 [ID2162].
267 Response to question 6 of questionnaire Q7 – questionnaire to competitors – Phase II [ID1879].
268 Agreed minutes of the conference call with Comfone of 15 January 2013 [ID2317].
269 Agreed minutes of the conference call with Comfone of 15 January 2013 [ID2317].
270 Response to question 6 of questionnaire Q7 – questionnaire to competitors – Phase II [ID2224].
271 Response to question 6 of questionnaire Q7 – questionnaire to competitors – Phase II [ID2224].
272 Agreed minutes of the conference call with Nextgen of 22 January 2013 [ID2223].
273 Agreed minutes of the conference call with Nextgen of 22 January 2013 [ID2223].
274 Agreed minutes of the conference call with Nextgen of 22 January 2013 [ID2223].
275 Response to question 20 of questionnaire Q7 – questionnaire to competitors – Phase II [ID2224].
276 Response to question 20 of questionnaire Q7 – questionnaire to competitors – Phase II [ID2224].

Competing DC providers confirm that Tier 1 MNOs usually require a higher level of customer care and quality of service.[277] TNS:

"*Yes, specifically a proven track record with at least another Tier 1 MNO*"[278] [is required].

"*Yes, the expectation for quality is directly proportional to the volume of traffic and associated revenue*"[279].

"*Yes, Tier 1 MNOs will expect the DC provider to offer an SLA that defines very stringent remedies for service degradation*"[280].

EDCH:

"*Yes, [Tier 1 MNOs demand] a combination of the above."* [281].

(310) Nextgen indicates that it is not likely to be selected as DC provider by Tier 1 MNOs exactly because they have such extensive requirements[282].

(311) TNS further explains that Tier 1 MNOs usually require strict SLAs, expect the presence of dedicated personnel and have high expectations regarding value-added tools and reporting, as well as the development of and support for back-end reporting and processes.

(312) A review of the Parties' contracts with their top 20 customers in the EEA[283] confirms that there are significant differences between terms that are agreed upon with Tier 1 MNOs and those agreed with other MNOs. These discrepancies include SLA requirements and related SLA penalties for DC providers. For smaller MNOs, Mach and Syniverse tend to offer standard SLA terms with rather moderate requirements and penalties. In the case of Tier 1 MNOs, the situation is different to the extent that SLA requirements and the corresponding penalties are defined on an *ad hoc* basis for each customer. The maximum SLA penalties for Tier 1 customers can cumulate according to various quality criteria and can represent a significant part of DC revenues.

(313) In order to compare SLAs between different customers, it is necessary to focus on criteria that are significant for DC services and that provide a comparable basis across customers. The review of commercial agreements shows that SLAs entail essentially the following three main elements:[284]

(a) objectives in terms of % of TAP files that have to be treated within a certain period of time;

(b) timely reporting objectives; and

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277 Response to question 21 of questionnaire Q7 – questionnaire to competitors – Phase II [ID2224].

278 Response to question 6 of questionnaire Q7 – questionnaire to competitors – Phase II [ID2333].

279 Response to question 6 of questionnaire Q7 – questionnaire to competitors – Phase II [ID2333].

280 Response to question 6 of questionnaire Q7 – questionnaire to competitors – Phase II [ID2333].

281 Response to question 6 of questionnaire Q7 – questionnaire to competitors – Phase II [ID1926].

282 Response to question 23 of questionnaire Q7 – questionnaire to competitors – Phase II [ID2224].

283 The list includes the following customers:
For Mach: […]*.
For Syniverse: […]*.

284 Therefore, focusing on these three main elements allows a meaningful comparison of SLAs across MNOs.

(c) problem solving objectives.

(314) According to the market investigation, SLAs are generally expressed in a % of TAP files that must be processed by the DC provider within a certain period of time. SLAs may also include objectives in terms of customer care and responsiveness of the DC provider in case of quality issues.

(315) Furthermore, SLAs generally include penalties in the event that the DC providers do not achieve their objectives. The penalties can be cumulated in the event that several objectives are not achieved and in certain contracts, there is a cap that protects the DC provider from excessive penalties payments.

(316) When comparing different customers, the review of commercial agreements shows the following:

(a) the objectives expressed as % of TAP files that have to be processed within a certain period of time, are present across the board of customers and can be compared to a certain extent;

(b) SLAs related to reporting obligations cannot be compared easily because they are largely customised and specific to each MNO;

(c) SLAs related to the resolution of problems cannot be compared easily across the board for all customers;

(d) penalties related to the % of TAP files that have to be processed within a certain period of time are present in a majority of contracts and can be compared;

(e) the cap on penalties can be compared among customers;

(f) other penalties cannot be compared easily as they relate to the SLA requirements that cannot be compared easily.

(317) Against this background, the comparison of SLA terms across customers has relied on three elements: the TAP processing requirements, the related penalties and the global penalty cap.

(318) The Commission considers that these terms are significant for the following reasons.

(319) The processing of TAP files constitutes DC's core activity, which makes the related quality requirement highly significant to DC providers and MNOs. MNOs expect timely and accurate treatment of their TAP files as a failure to do so is likely to have a major impact on their ability to charge their retail customers for their roaming communications. The fact that MNOs rank this criterion highly amongst their criteria for the selection of a DC provider (see *Table 6*) confirms this.

(320) The major importance of that criterion is also confirmed by the market investigation[285]. In particular, Bouygues Télécom underlines that:

"As regards major services, the Quality of service is defined by reference to: -the transfer of x % of TAP in less than y hours"[286].

Digicel Group:

[285] Responses to question 15 of questionnaire Q6 – questionnaire to MNOs – Phase II.

[286] Bouygues Télécom's response to question 15 of questionnaire Q6 – questionnaire to MNOs – Phase II [ID: 1914].

"*In terms of DC, the expected quality of services are defined by the timely validation and transmission of billing data between our connected roaming partners*"[287].

TDC:

"*The present agreement focuses on SLA for: 1) Processing time for tap-files*"[288].

Telenor ASA:

"*Processing time*"[289].

Verizon:

"*Verizon expects all data clearing reports to be accurate and timely*"[290].

(321) The fact that SLAs are negotiated as a bundle does not change the fact that certain requirements are more important than other and in particular that having a timely and reliable treatment of their TAP files is the most important criterion for MNOs. This is notably illustrated by Table 6 which details the most important criteria that MNOs consider when choosing their DC provider. With respect to the results of the market investigation, the Commission does not consider it credible that MNOs would accept from their DC provider a trade-off between TAP files treatment SLAs and other SLAs such as the timely reporting.

(322) As concerns the penalty payments included in the contracts, these are important as they provide MNOs with a guarantee that the DC providers will offer a reliable and swift DC process. During the market investigation, MNOs expressed the view that the penalties are the main tool for MNOs to ensure that the corresponding SLAs are respected. For instance:

Belgacom:

"*Monthly reviews are organised and ad-hoc meetings with account managers are set up in case of deviation from agreed SLA levels. Penalties are applied if no appropriate solution can be found. Belgacom already applied these penalties towards both its DC providers in the past*"[291].

SFR-Cegetel:

"*Monthly meetings with* […]*. *Financial penalties in case of SLA not met*"[292].

Telekom Austria AG:

"*Reports on monthly basis are implemented – any deviation requests high penalty*"[293].

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287 Digicel Group's response to question 15 of questionnaire Q6 – questionnaire to MNOs – Phase II [ID: 2098].

288 TDC's response to question 15 of questionnaire Q6 – questionnaire to MNOs – Phase II [ID: 2206].

289 Telenor's response to question 15 of questionnaire Q6 – questionnaire to MNOs – Phase II [ID: 2247].

290 Verizon's response to question 15 of questionnaire Q6 – questionnaire to MNOs – Phase II [ID: 2197].

291 Belgacom's response to question 17 of questionnaire Q6 – questionnaire to MNOs – Phase II [ID: 1903].

292 SFR-Cegetel's response to question 17 of questionnaire Q6 – questionnaire to MNOs – Phase II [ID: 2226].

293 Telekom Austria AG's response to question 17 of questionnaire Q6 – questionnaire to MNOs – Phase II [ID: 1875].

(323) Finally, the Commission considers that the maximum penalty is also a significant criterion as it gives the maximum financial risk that a DC provider will take should it fail to deliver the quality of service that customers require.

Comparison of TAP files processing requirements and related penalties

(324) The Notifying Party provided information on SLA requirements in response to the Commission's request for information of 6 February 2013. In its response, the Notifying Party provided information related to the following MNOs: […]*. The Commission analysed all the data provided by the Notifying Party. The dataset includes information relating to all of Syniverse's EEA customers, including two Tier 1 MNOs. In order to have a sound basis for a comparison between Tier 1 MNOs and non-Tier 1 MNOs, the Commission added the analysis of the two other Tier 1 MNOs, namely […]* and […]*, on the basis of the contracts between those two MNOs and Mach. The DC revenues generated by those MNOs is set out in Table 7:

Table 7: MNOs classified by DC revenues

MNO	DC revenues in EUR in 2012
*[…]**	*[…]**
*[…]**	*[…]**
*[…]**	*[…]**
*[…]**	*[…]**
*[…]**	*[…]**
*[…]**	*[…]**
*[…]**	*[…]**
*[…]**	*[…]**
*[…]**	*[…]**
*[…]**	*[…]**
*[…]**	*[…]**
*[…]**	*[…]**
*[…]**	*[…]**

Source: 2012 DC revenues based on Notifying Party's response to the Commission's request for information of 25 January 2013, questions 25 and 26

(325) Based on revenues, […]*, […]*, […]* and […]* are clearly Tier 1 MNOs. Other operators such as […]*and […]* are rather Tier 2 operators and […]* and […]* Tier 3 operators. According to this classification, Table 8 and Table 9 show the

corresponding TAP file processing requirements and penalties. They clearly illustrate that Tier 1 requirements are more stringent and that the related penalties are higher:

Table 8: High requirements from Tier 1 customers

MNO	Requirements	Penalties
[…]*	[…]*% of TAP files sent within […]* hours	[…]*
	[…]*% of TAP files sent within […]* hours	
	[…]*% of TAP files sent within […]* hours	
[…]*	[…]*% of TAP files sent within […]* hours	[…]*e
	[…]*% of TAP files sent within […]* hours	
	[…]*% of TAP files sent within […]* hours	
[…]*	[…]*% of TAP files sent within […]* hours	[…]*
	[…]*% of TAP files sent within […]* hours	
	[…]*% of TAP files sent within […]* hours	
[…]*	[…]*% of TAP files sent within […]* hours	[…]*
	[…]*% of TAP files sent within […]* hours	
	[…]*% of TAP files sent within […]* hours	

Source: Notifying Party's reply to the Commission's request for information of 6 February 2013, the annex 6 "Service level agreement and service credits" of the […]**, the Service Level Agreement between Mach and* […]* *and the* […]* *purchasing terms between Syniverse and* […]*.

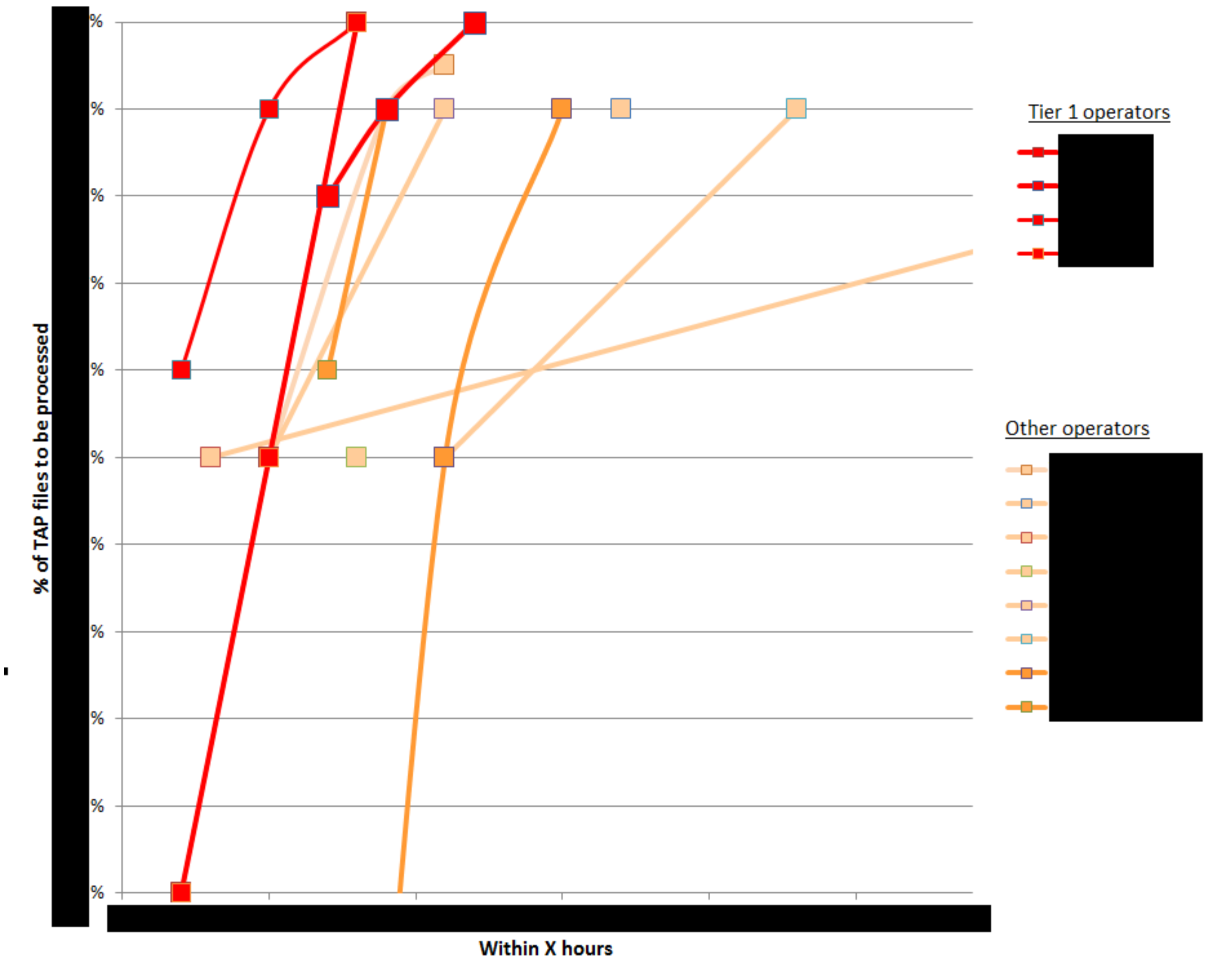
Table 9: Lower requirements from non-Tier 1 customers

MNO	Requirements	Related penalties
[…]*	[…]*% of TAP files sent within […]* hours	[…]*
	[…]*% of TAP files sent within […]* hours	
	[…]*% of TAP files sent within […]* hours	
[…]*	[…]*% of TAP files sent within […]* hours	[…]*
	[…]*% of TAP files sent within […]* hours	
[…]*	[…]*% of TAP files sent within […]* hours	[…]*
	[…]*% of TAP files sent within […]* hours	
[…]*	[…]*% of TAP files sent within […]* hours	[…]*
	[…]*% of TAP files sent within […]* hours	
	[…]*% of TAP files sent within […]* hours	
[…]*	[…]*% of TAP files sent within […]* hours	[…]*
[…]*	[…]*% of TAP files sent within […]* hours	[…]*
	[…]*% of TAP files sent within […]* hours	
[…]*	[…]*% of TAP files sent within […]* hours	[…]*
	[…]*% of TAP files sent within […]* hours	[…]*
[…]*	[…]*% of TAP files sent within […]* hours	[…]*
	[…]*% of TAP files sent within […]* hours	

Source: Notifying Party's reply to the Commission's request for information of 6 February 2013

(326) Table 8 and Table 9 show that there is a correlation between DC revenues related to customers and their SLA requirements and related penalties. Even if certain Tier 2 customers such as […]* or […]* manage to negotiate SLA terms that are close to Tier 1 MNOs' terms, this does not change the average result according to which Tier 1 MNOs have more stringent SLA conditions than other MNOs. The tables' results are summarised Figure 2:

Figure 2: SLA processing requirement by customers[294]



Source: Commission's graph based on Notifying Party's reply to the Commission's request for information of 6 February 2013, the annex 6 "Service level agreement and service credits" of the […]* *and Syniverse, the Service Level Agreement between Mach and* […]* *and the* […]* *supplemental Agreement to* […]* *purchasing terms between Syniverse and* […]*.

(327) Figure 2 indicates that the Notifying Party's Tier 1 customers (red lines) tend to be more demanding to the extent that a greater percentage of TAP files have to be processed (red lines tend to be located in the upper part of the graph) within a shorter period of time (red lines tend to be located in the left part of the graph). Tier 2 and Tier 3 MNOs (orange lines) tend to be less demanding (orange lines tend to be located below and to the right of the red lines).

Maximum penalty caps

(328) The same comparison applies to the maximum penalty cap across customers. Table 10 and Table 11 list the maximum caps per customer (both for Syniverse and Mach):

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294 This graph includes all MNOs for which the Notifying Party provided information in response to the Commission's request for information of 6 February 2013 except […]*. […]*'s SLA agreements are based on a different timeframe, namely 3 months instead of 1 month. Hence, […]*'s SLAs are not directly comparable to the SLAs of other MNOs.

Table 10: High penalty caps for Tier 1 customers

MNO	DC provider	Maximum penalty cap
[…]*	Mach	[…]*%
[…]*	Mach	[…]*%
[…]*	Syniverse	[…]*%
[…]*	Syniverse	[…]*%

Source: Parties' contract with customers and Notifying Party's reply to the Commission's request for information of 6 February 201, the annex 6 "Service level agreement and service credits" of the […]* *and Syniverse, the Service Level Agreement between Mach and* […]* *and the* […]* *supplemental Agreement to* […]* *purchasing terms between Syniverse and* […]*.

Table 11: Lower penalty caps for non-Tier 1 customers[295]

MNO	DC provider	Maximum penalty cap
[…]*	Syniverse	[…]*%
[…]*	Syniverse	[…]*%
[…]*[296]	Mach	[…]*%
[…]*	Syniverse	[…]*%
[…]*	Syniverse	[…]*%
[…]*	Syniverse	[…]*%*
[…]*	Mach	[…]*%*
[…]*[297]	Mach	[…]*%*
[…]*	Mach	[…]*%*
[…]*	Mach	[…]*%*
[…]*	Mach	[…]*%*

Source: Parties' contract with customers and Notifying Party's reply to the Commission's request for information of 6 February 2013

** These customers either do not benefit from any penalty scheme in the case that their DC provider does not meet the SLA requirements or do not benefit from any SLA.*

(329) Table 10 and Table 11 clearly indicate the discrepancy between maximum penalty caps that are required by Tier 1 MNOs compared to non-Tier 1 MNOs. The combination of those higher maximum penalties and the higher DC revenues generated by tier 1 MNOs result in a greater financial risk for DC providers when providing services to these MNOs. This is particularly the case if DC providers are not able to meet the related SLA requirements.

295 This list includes all MNOs for which the Notifying Party provided information in response to the Commission's request for information of 6 February 2013 except […]* for the reason explained in the previous footnote.

296 […]*.

297 […]*.

Conclusion on reliability and quality of service

(330) Contrary to the Notifying Party's view as expressed in its Response to the SO, the Commission maintains that MNOs and particularly Tier 1 MNOs expect their DC provider to provide reliable and quality DC services. Those expectations translate into extensive quality related requirements in particular for Tier 1 MNOs.

(331) Although the corresponding requirements of some non-Tier 1 MNOs may be less stringent, given the critical nature of DC services, they still require a DC provider that has the resources and skills in place to serve its customers in parallel, whilst not jeopardising the individual quality levels that they require.

Smaller DC providers are not likely to meet MNOs' quality related requirements, in particular Tier 1 MNOs' SLA requirements

(332) Considering MNOs' quality related requirements, it appears from the market investigation that MNOs generally do not consider that smaller DC providers will meet their requirements and offer reliable and quality DC services. In more details:

(1) None of the customers confirmed that they are currently negotiating with EDCH. This DCH is not based in the EEA nor does it focus on DC operations in the region. No customer has carried out a thorough review of the eligibility of this DCH to be its DC provider.

(2) The majority of customers[298] would not consider switching to ARCH. Only a few MNOs have actually analysed the strengths and weaknesses of this DC provider, among which Telecom Italia which considers that ARCH is "*Serving a limited number of MNOs*"[299] and PCCW Mobile which submits that ARCH has an "*Operator background,* [and therefore a] *conflict of interest*"[300]. Vodafone adds that ARCH has several weaknesses namely:

"Location

Capability

Scalability

Size

Focussed on APAC Region"[301].

(3) A clear majority of customers would not consider switching to TNS[302]. Very few MNOs have actually analysed the suitability of this DC provider. Essentially, only Vodafone has carried out the examination. It considers that TNS has the following weaknesses:

"Capability

Scalability

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298 67% (8 out of 12) of respondents to question 16.1 of questionnaire Q1 – questionnaire to MNOs – Phase I.

299 Response to question 16.1.2 of questionnaire Q1 – questionnaire to MNOs – Phase I [ID1017].

300 Response to question 16.1.2 of questionnaire Q1 – questionnaire to MNOs – Phase I [ID807].

301 Response to question 16.1.2 of questionnaire Q1 – questionnaire to MNOs – Phase I [ID2274].

302 69% (9 out of 13) of respondents to question 16.5 of questionnaire Q1 – questionnaire to MNOs – Phase I.

Size

Focussed on American Market and has few GSM Operators connected"[303].

(4) As regards Nextgen, a clear majority of customers would not consider switching to Nextgen in the event of a 5% to 10% price increase[304]. This is in line with the results of the Phase I market investigation where a majority of customers[305] expressed the view that they would not consider switching to Nextgen for DC services. Digicel group explains that Nextgen is "*less experienced*"[306]. Meteor Mobile Communications adds that Nextgen is "*new to the market,* [and has] *no track record*"[307]. TeliaSonera explains that they are "*Still too little to take seriously*"[308] and Vodafone comments that they are "*New to the market and as such would be a risk for Vodafone to migrate to a non tried and tested platform*"[309].

(5) With respect to Comfone, a majority of respondents would not exclude them when procuring DC services[310] and it appears that some non-Tier 1 MNOs[311] consider them to be reliable and to offer good technical skills. However, a slight majority of customers, excluding Tier 1 MNOs, confirmed that in the event of price increase of 5% to 10% by the merged entity, they would not consider switching to Comfone[312]. Tier 1 MNOs tend to explain that factors other than price should be taken into account. Some other customers such as Maxis Communications (Malaysia) add that a larger price increase, such as 20% to 30%, would be necessary before they would envisage switching to this DC provider.

(333) In particular, Tier 1 MNOs have higher requirements notably regarding SLAs, ability to handle higher volumes of TAP files and proven reputation. The consequence is that none of the Tier 1 MNOs considers switching to any other DC provider than the Parties. Even if a Tier 1 MNO did consider switching to a smaller DC provider, it would lead to high financial risk considering that Tier 1 MNOs also require higher financial penalties in the event that their quality related requirements are not met. Smaller alternative DC providers might not be able to endure such penalties. This barrier to switching is largely confirmed by the results of the market investigation for Nextgen, TNS, ARCH and EDCH.

(334) In the case of Comfone in particular, none of the Tier 1 customers confirmed that they are actually negotiating with Comfone for their DC operations.

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303 Response to question 16.5.2 of questionnaire Q1 – questionnaire to MNOs – Phase I [ID2274].

304 64% (7 out of 11) of respondents to question 35.1 of questionnaire Q6 – questionnaire to MNOs – Phase II.

305 69% (9 out of 13) of respondents to question 16.4 of questionnaire Q1 – questionnaire to MNOs – Phase I.

306 Response to question 16.4.2 of questionnaire Q1 – questionnaire to MNOs – Phase I [ID1093].

307 Response to question 16.4.2 of questionnaire Q1 – questionnaire to MNOs – Phase I [ID1009]

308 Response to question 16.4.2 of questionnaire Q1 – questionnaire to MNOs – Phase I [ID1928].

309 Response to question 16.4.2 of questionnaire Q1 – questionnaire to MNOs – Phase I [ID2274].

310 67% (10 out of 15) of respondents to question 16.2 of questionnaire Q1 – questionnaire to MNOs – Phase I.

311 Replies to Phase II questionnaire to customers: Bouygues Télécom, Free SAS, SFR, TMN and Tušmobil.

312 55% (6 out of 11) of respondents to question 29.1 of questionnaire Q6 – questionnaire to MNOs – Phase II.

(335) […]* in particular confirms the importance of quality related requirements and the great financial risk for smaller DC providers:

"[…]* *perceives Comfone AG as being too small to serve them. Beyond customisation and capacity issues,* […]* *also expresses concerns about the ability of smaller DCHs in providing and guaranteeing the same SLA that the big DCHs assure thanks to strict penalties schemes. In fact, in most cases, small DCHs do not have the necessary financial and human resources to provide the same level of service. (for example 90% of CDRs processed within 8h and 100% processed in 13h). SLAs are absolutely crucial in DC business.*

[...]

Furthermore, […]* *would never consider switching to Comfone, since the latter is a Roaming Hub competing with* […]**. Hence, if Comfone were to become also the* […]**'s DCH, it would have full access to and visibility of* […]**'s roaming business*

[...]

The only Syniverse alternative DC service provider […]* *could take in consideration is MACH. In fact, it is the only player, beyond Syniverse, who can guarantee* […]* *the required level of service quality and the relevant service features"*[313].

(336) […]* indicates:

"Comfone and Nextgen (Nextgen at present has just one minor customer in DC operations) are not big enough to handle the huge amount of data.

[...]

The smaller the company, the bigger the risk. Although a contract is signed with the (small) company providing the services, this document does not eliminate […]**'s risk. If a big failure occurs, the small company will in theory be liable for the losses, however if you hold the small company liable, the small company may as a consequence go bankrupt.*

[...]

[…]* *would only switch to an experienced DC provider. Comfone and Nextgen may now have found personnel, however, these people lack experience.*

[...]

[…]* *does not believe that SLAs are sufficient in order to ensure quality of service by smaller DC providers such as Nextgen or Comfone. For these providers, significant penalties could result in bankruptcy and interrupt DC' process"*[314].

(337) […]* assessed not only the past offer from Comfone but also its likely DC offer within the next three years:

"*In considering possible alternative DCH to MACH and Syniverse,* […]* *does not consider Comfone as a competitor of the same size. Even if Comfone has a good quality reputation, there are serious capacity concerns.* […]* *believes that Comfone might not handle its high roaming traffic volumes in the next 3 years. If Comfone's*

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313 Agreed minutes of conference call with […]* of 6 February 2013 [ID2325].

314 Agreed minutes of the conference call with […]* of 11 January 2013 [ID2162].

expansion occurs too quickly, this may compromise its service quality. For these reasons, Comfone has not been invited to the last tender launched by […]*"[315].

(338) […]* has never purchased any DC services from Comfone and has never evaluated that provider as a potential DC provider[316].

(339) When asked what Comfone would need to improve in order to enable itself to serve several Tier 1 MNOs in parallel, […]* replied as follows:

"This demonstration implies two issues:

-Comfone having to make the necessary investment without, necessarily, any secured business opportunity behind it (only as a necessary first step to be a relevant player in the industry), and

-Convincing a first big set of operators to prove the previous investment has been done and it has the desired result. They would have to face the migration costs (and its impact on the operations) without any previous reference, but, after this first big customers, the industry would have a reference"[317].

(340) When asked what Comfone would need to improve to win […]*'s order and how could it demonstrate the improvement, […]* adds the following:

"The references of similar sized operators are crucial to understand the change at Comfone's structure has been successful for operators' needs. Comfone would need to have a larger amount of big customers"[318].

(341) […]* is one of the large MNOs identified by the Notifying Party as negotiating with Comfone. It states that it has never entered into concrete negotiations with Comfone.[319] It also does not consider that given Comfone's current size, it would be able to increase its operations within 2 to 3 years to the level necessary to serve a number of Tier 1 MNOs in parallel. The Commission considers this to be a further indication of the barriers that Comfone faces in reaching the current size of Mach and in replicating its ability to serve several Tier 1 MNOs in parallel. There are no indications that other Tier 1 MNOs are seriously considering giving their DC business to Comfone.

(342) One MNO which asked to remain anonymous, adds that:

"Comfone has a (very) limited customer basis, no proven track [record of] *successful experience with Tier 1 MNOs, and only a small number of personnel for DC services. Even Swisscom, that holds a 25% stake in Comfone, does not appear to use Comfone as a DC provider, which is a factor that tends to underscore that Comfone's services are characterised by weaknesses"*[320].

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315 Agreed minutes of the conference call with […]* of 2 February 2013 [ID2307].
316 Response to question 23 of questionnaire Q6 – questionnaire to MNOs – Phase II [ID2219].
317 Response to question 26.1.5.2 of questionnaire Q6 – questionnaire to MNOs – Phase II [ID1932].
318 Response to question 26.1.5.3 of questionnaire Q6 – questionnaire to MNOs – Phase II [ID1932].
319 Response to question 23 of questionnaire Q6 – questionnaire to MNOs – Phase II [ID1756].
320 Response to question 21.2 of questionnaire Q6– questionnaire to MNOs – Phase II [ID2256].

(343) Furthermore, a majority of MNOs also expressed the view that Comfone is currently not able to serve several Tier 1 MNOs in parallel and that it will not be in a position to do so within the next three to five years.[321].

(344) Finally, it appears from the market investigation that Tier 1 MNOs expect their DC provider to already have had a successful experience with another Tier 1 MNO (see section 6.1.5.3 in particular the replies from competitors to market investigation) and that none of them are willing to take the risk of selecting DC provider without that experience.

(345) In addition, the market investigation reveals that a slight majority of MNOs consider that geographic location can be important when selecting their DC providers. In particular, data centres and customer care services located in the EEA are commonly considered as important for MNOs[322]. Accordingly, competitors without any physical presence in the EEA, namely ARCH, TNS and EDCH, may be considered less credible competitors than the Parties.

(346) The analysis of the Bidding Data and the Switching Data provides further evidence on the low level of switching to smaller competitors. As described in recitals (264) onwards, the analysis of the data shows that the level of switching to DC providers other than the Parties is limited and the customers that switched to other DC providers were non-Tier 1 MNOs.

Customers would face substantial risks and costs when switching to smaller DC providers related in particular to the customisation and migration process.

(347) In addition to their extensive SLA requirements, the market investigation reveals that customers would also face significant risks and costs when switching to smaller DC providers. This relates in particular to customisation of DC services and migration process. Already when switching between the Parties, the MNO would face costs related to the customisation provided by the incumbent DC provider and the migration from one platform to another. When switching to a smaller DC provider, the MNO would in addition face the switching risk that is associated with the limited experience of the smaller DC provider in providing the required customisation and assisting the MNO in the migration process, and the limited capacity it is likely to have in this regard.

Customisation requirements can be significant and complex

(348) As described in recitals (252) onwards, MNOs and competitors confirmed that customisation is needed for the interface with customers' internal interface[323] and for customers' reporting requirements[324], that Tier 1 MNOs, in particular, tend to require more extensive customisation from their DC provider[325] and that GSMA guidelines do not address customisation and reporting requirements. Contrary to the Notifying Party's view, a slight majority of MNOs indicated that customisation costs are not solely supported by DC providers but are supported by both the customer and the

[321] 67% (4 out of 6) of respondents to question 26.1.5.1 of questionnaire Q6– questionnaire to MNOs – Phase II.

[322] 52% of respondents to question 8 of questionnaire Q1 – questionnaire to MNOs – Phase1.

[323] Responses to question 14.4 of questionnaire Q4 – questionnaire to actual competitors – Phase I.

[324] Responses to question 14.3 of questionnaire Q4 – questionnaire to actual competitors – Phase I.

[325] Responses to question 9 of questionnaire Q7 – questionnaire to competitors – Phase II.

new DC provider[326]. This is also confirmed by a majority of competitors[327]. Even if some of the costs are born by the customers, a proportion of the customisation costs are therefore also supported by the new DC provider who has acquired the customer.

(349) The market investigation confirms that the cost of customisation, especially for Tier 1 MNOs, is far from immaterial. For instance, Vodafone explains that:

"it is estimated that the IT for each Operating Company to implement the required changes to TAP, technical connectivity / IT interfaces and reporting was in the region of €150K. For some Operators it would have been much higher due to the complexity and age of platforms and could have reached as much as €500K in the UK, Germany and Spain"[328].

(350) Responses of the Notifying Party to the Commission's requests for information provide additional confirmations of the importance of customisation costs. Firstly, in the Form CO[329], the Notifying Party explains that customisation costs related to DC services to […]* and […]* were as high as EUR […]*. This is significant when compared to DC revenues for those customers.[330] Secondly, in its reply to the Commission's request for information of 21 December 2012, the Notifying Party confirms that the customisation costs can be very significant. In particular, in the case of Mach[331], customisation costs represented […]*% to […]*% of total annual revenues for new customers in 2010 and 2011. In 2012, customisation costs represented […]*% of Mach's total revenues derived from new customers.

(351) The Notifying Party has challenged this figure by explaining that it was due to an exceptionally low number of new customers in 2011. Nevertheless, even with revenues generated from new customers during other years such as 2012 instead of 2011, it would still represent […]*% of total DC revenues derived from new customers. Hence, it confirms that initial tailor-made IT and reporting developments generally represent a material part of costs (above […]*% of yearly DC revenues derived from those customers and potentially much higher) and therefore likely constitute a barrier to switching.

(352) In addition to the costs, there is evidence from competitors' replies to the market investigation that reproducing customisation made by an incumbent DC provider can be complex[332]. This would appear to be specifically the case for smaller DC providers with limited experience in providing DC services to Tier 1 customers, implying in turn that switching is more costly to smaller DC providers than between Syniverse and Mach.

(353) This is significant not only because alternative providers might not be able to meet customers' requirements but also because Syniverse and Mach appear to have used

326 53% (9 out of 17) responses to question 13.1.2 of questionnaire Q1 – questionnaire to MNOs – Phase I.

327 67% (2 out of 3) responses to question 14.5.2 of questionnaire Q4 – questionnaire to actual competitors – Phase I.

328 Response to question 13.1.3 of questionnaire Q1 – questionnaire to MNOs – Phase I [ID2274].

329 Form CO, paragraph 423.

330 According to the Notifying Party response to the request for information of 21 December 2012, […]*'s DC payments for the first 12 months in contract were EUR […]* and […]*'s DC payments for the first 12 months in the EEA that were close to EUR […]*.

331 Notifying Party, response to question 2 of the Commission's request for information of 21 November 2012.

332 Response to question 7 of questionnaire Q7– questionnaire to competitors – Phase II.

customisation as an argument to attract new customers. In an internal email of 21 June 2012, […]* at Mach explains that customisation can be used as an argument in seeking to acquire a client:

"[…]*"[333] *(emphasis added).*

(354) It appears more difficult for smaller DC providers to make such an offer given their smaller resources and their more limited experience in providing customised solutions.

(355) In addition to the costs and the technical difficulties, it also appear from the investigation that, once a DC OSP has developed a customised interface with its customer, the MNO becomes reluctant to switch because it has no guarantee that the new OSP will reproduce that customisation layer in a satisfactory manner. MNOs would be even more reluctant to switch to a smaller DC provider as there would be even greater uncertainty as to whether the smaller DC provider would be able to reproduce the required customisation.

Resources needed for a faultless migration process

(356) Contrary to the Notifying Party's view, customers' replies to the market investigation and the Parties' internal documents indicate that switching costs and required timeframe are very significant. In particular, the market investigation indicates that migration to a smaller DC provider does not only require reproduction of the customisation layer but also involves a complex migration process. During that process, the new DC provider will set up a secure connection with the MNO, the interface will be tested, data will be transferred to the new DC provider and eventually the incumbent DC provider will cease its services. For instance NTT Docomo Inc. describes the steps as follows:

"-To connect network with the new DC provider

- To change internal billing system setting

- To share all roaming agreements and IOT discount agreements

- To change of DCH info in AA14

- To hand over the outstanding data from old DC provider to new provider

- Training"[334].

(357) The first step alone, namely setting up a secure connection with the new DC provider, costs about EUR […]*, which is already significant compared to DC revenues[335]. Then, completion of the other different steps is a complex and lengthy process, especially for Tier 1 MNOs. For instance, Deutsche Telekom explains that:

"The implementation [of a DC switch] would constitute a huge overall project, subdivided into dedicated subprojects per affiliate company. The switch itself in each affiliate company would have to be made step by step in several smaller projects involving separate project teams (for example for new interfaces and testing the new provider for some time in parallel).

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333 Email from […]*.

334 Response to question 9 of questionnaire Q6 – questionnaire to MNOs – Phase II [ID1759].

335 Response to question 13.1.3of questionnaire Q6 - questionnaire to MNOs – Phase II [ID1759].

Although certain switching costs could be taken over by the new provider, this would not apply to the internal costs, for instance for DT personnel involved in writing specifications, the testing phase or for project management"[336].

(358) According to the market investigation, these different steps take at least a few months and can last up to one year or more in the case of Tier 1 MNOs. During the migration process, customers have to pay for two parallel DC providers in order to test the reliability of the new DC provider. In the market investigation, customer and competitor estimates of migration cost range from EUR 70,000 (for a smaller MNO) to EUR 5-6 million (for a Tier 1 MNO). For instance, Vodafone explains that:

"Vodafone Group would expect the migration to take years to be completed (9 to 24 months for each operating company) and would come at significant costs (for instance in light of the need to establish new VPN connections for EUR 100K each, etc.). The migration process may also trigger certain data protection issues with national authorities, in case the data has to be moved from one country to another (even within the EEA)"[337].

"The costs to switch DC providers when Vodafone centralised are estimated to be €1,5 to €2M based on the cost estimation to centralise Vodafone Operating companies to Syniverse

[…]

The quickest implementation took 9 months from start to finish and the longest nearly 2 years to complete

[…]

Resource Costs estimated to be in the region of €6M"[338].

(359) Internal documents from the Parties provide further evidence on the importance of migration costs. They confirm the complexity and the importance of resources that are required in certain cases in order to complete the migration process. For instance, in an email of 12 May 2011, […]* at Mach, summarises the state of negotiation with […]*, a client in […]*. Even for this relatively small customer, the migration process is complex and involves significant resources from Mach in order to cover the customer's risks and investment required by the switch:

"[…]*"[339]. (emphasis added)

(360) In the following exchange of emails between […]*, and […]*, it appears that migration of DC traffic for the MNO Everything everywhere would take up to 18 months:

"[…]*

[…]

[…]*"[340].

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[336] Agreed minutes of the conference call with Deutsche Telekom of 11 January 2013 [ID2162].

[337] Agreed minutes of conference call with Vodafone Group of 6 February 2013 [ID2274].

[338] Responses to questions 14.1.2, 14.1.4 and 15.2 of questionnaire Q1 – questionnaire to MNOs – Phase I [ID2274].

[339] Email from […]*.

[340] Email from […]*.

(361) Switching involves not only direct IT costs, but also the dedication of the internal team in order to complete the migration process. The cost and timeframe required for a procurement process for the selection of the DC provider also has to be added. The process generally takes about 6 months to be completed.

Risk of data loss during a switch

(362) In addition to customisation and migration costs, the market investigation shows that commercial risks associated with switching DC OSP may be even more important than the direct costs of switching. The most frequently cited risk in switching relates to potentially lost revenue due to errors, delays and miscommunication in TAP files exchange. The market investigation provided evidence that such potential errors, following a change of DC provider, may result in significant lost revenue for MNOs.[341] For instance, Deutsche Telekom submits that:

"we expect the risk of lost data to be very high due to the loss of knowledge of our business and processes in the migration process and the high level of customisation. Knowledge that has been built up over time with the current provider would necessarily stay with this provider.

We have made a similar experience when the responsibilities for key positions (technical support, invoice verification) were switched within our current provider. The quality of service dropped instantly and we suffered a loss of [CONFIDENTIAL]"[342].

Vodafone adds the following:

"Vodafone Group also describes the additional risks that are associated with migration from a DCH to a new one, i.e. the risk of losing data records. For example, when Vodafone Spain switched from […] to […]* in 2005, a number of call records were lost, causing Vodafone significant revenue losses […]. Vodafone Group acknowledges that this migration took place before the introduction of GSMA standards, which reduce the risk associated with the switching process. Nonetheless, migration process is still risky and time and resource-consuming, especially for a large group like Vodafone Group"*[343].

Further risks may include potential data protection issues and disruption of reporting continuity. A competing DC provider referred to the need to obtain historical TAP files from the previous DC provider, in order not to lose reporting history, which adds to the risks related to migration.

(363) In conclusion, the switch to a smaller DC provider involves high switching risks and costs related primarily to customisation requirements and the migration process. Those higher switching risks can be attributed to the more limited experience and capacity of smaller DC providers.

Conclusion on customers' possibility of switching to other suppliers

(364) Considering the various and consistent pieces of evidence presented above in recitals (347) to (363), the Commission considers that customers, in particular Tier 1 MNOs

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341 The likelihood of such errors is potentially higher in case of smaller DC providers that have more limited experience.

342 Response to question 13 of questionnaire Q7– questionnaire to competitors – Phase II [ID1940].

343 Agreed minutes of conference call with Vodafone Group of 6 February 2013 [ID2325].

but also smaller MNOs, would have limited possibility of switching to smaller alternative suppliers because those suppliers are unlikely to be able to provide the required reliability of services. In addition, MNOs would be likely to face substantial risks and costs when switching to smaller DC providers. This conclusion applies irrespective of whether the geographic scope of the market is worldwide or EEA-wide.

6.1.5. Competitors' limited ability to increase supply if prices increase and/or quality decreases

6.1.5.1. Introduction

(365) Section 6.1.4 shows that alternative DC providers are currently not likely to constitute credible alternatives for customers, in particular for Tier 1 MNOs but also for smaller MNOs. In this section, the Commission's assessment focusses on competitors' ability to replace, within the next two years, the loss of competitive pressure that would result from the removal of Syniverse's closest competitor.[344]

6.1.5.2. Views of the Notifying Party

(366) The Notifying Party claims that the DC market has all the characteristics of a contestable bidding market:

(a) MNOs' requests for proposals for DC contracts are sent to a number of viable competitors;

(b) the tender process occurs infrequently, normally every 2 to 3 years;

(c) there are low barriers to expansion by existing competitors as the technology makes expansion easy.

(367) The Notifying Party considers that contestability of the DC market is not undermined by the fact that sometimes no formal tender process takes place (for example, when MNOs negotiate contracts) or that some requests for proposals are issued purely to establish the current market price with no intention to switch.

(368) The Notifying Party argues that the DC services business is highly scalable. The Notifying Party claims that in order to be able to process a greater volume of TAP files, a DC service provider would just have to purchase more generic hardware. The variable costs associated with increased volumes are minimal.

(369) Similarly, the Notifying Party considers that, following its recent entry, Nextgen also exerts an important competitive constraint in the DC market. In particular, Nextgen's DC platform is not un-tried, since it has been used for a number of years to support intra-India GSM roaming. Furthermore, being headquartered in the United Kingdom, Nextgen is able to provide "*European*" style customer service.

(370) The Notifying Party's Response to the SO argues that Comfone and other DC providers such as Nextgen, ARCH and EDCH will be able to exert an important competitive constraint in the DC market.[345]

(371) The Notifying Party argues that Comfone and other DC providers will be able to expand and replicate the competitive constraint on Syniverse post-merger. The

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[344] Paragraph 34 of the Horizontal Merger Guidelines in relation to output expansion (including footnote 45) and the factors described in Section VI of the Horizontal Merger Guidelines on entry.

[345] Notifying Party's Response to the SO, paragraphs 125 to 130..

Notifying Party claims that the correct assessment is not whether other players have the same personnel, customer portfolio and range of products as the Parties today to serve the same number of customers that the Parties have, but whether they have sufficient capabilities to compete in tenders. The Notifying Party submits that they have.[346]

(372) The Notifying Party disputes that adequate personnel is an issue that MNOs take into account when considering to contract with a DC provider. The Notifying Party argues that in any event Comfone has many staff with many years' experience in providing a high level of customer service to their non-Tier 1 MNOs. Thus Comfone could leverage the existing experienced resources it already has.[347]

(373) Furthermore, the Notifying Party argues that other players, such as Nextgen, TNS, EDCH and ARCH do, and will continue to, place a competitive constraint on Syniverse.[348] Nextgen is a very recent entrant and has already won a number of contracts for DC services. It has an EEA focus and the ability to undertake customisations and provide a high quality of service and expand its capabilities.

(374) The non-EEA DC providers such as EDCH and ARCH, could easily enter the EEA market by making limited incremental investments such as those related to regional offices and staffing. Moreover, TNS's acquisition by a private equity buyer is likely to enable it to expand both geographically and into new product markets (for example, DC services in the EEA and globally). Finally, each of those competitors has substantial other activities that lend commercial and financial scale to expand and invest.

(375) In relation to the customer portfolio, the Notifying Party submits that the fact that a DC provider already undertakes DC for a large number of MNOs / MVNOs is not an important criterion taken into account by MNOs when considering a DC service provider. The Notifying Party argues that the speed of expansion is limited by the tender process designed by MNOs.[349]

6.1.5.3. The Commission's investigation and assessment

(376) The Commission has assessed whether the Parties' competitors would be able to replace the loss of competitive pressure resulting from the removal of Syniverse's closest competitor. In its market investigation the Commission assessed whether this could occur within a period of up to three years.

(377) In order to make this assessment, it is necessary to analyse to what extent DC business is scalable and competitors such as Comfone and Nextgen could expand their operations to a sufficient scale. According to paragraph 32 of the Horizontal Merger Guidelines, when market conditions are such that the competitors of the merging parties are unlikely to increase their supply substantially if prices increase, the merging firms may have an incentive to reduce output below the combined pre-merger levels, thereby raising market prices.

(378) As explained in section 6.1.2.2, Mach had in 2012 a market share of [40-50]*% at EEA level and [40-50]*% at global level based on operator count in 2012. On the

346 Notifying Party's Response to the SO, paragraphs 112,113.

347 Notifying Party's Response to the SO, paragraphs 115,116.

348 Notifying Party's Response to the SO, paragraphs 125 to 130.

349 Notifying Party's Response to the SO, paragraph 118.

basis of 2012 revenues, Mach's market share is [40-50]*% at EEA level and [40-50]*% at global level. Mach currently serves several Tier 1 MNOs including […]*, […]* and […]*. The Bidding Data submitted by the Notifying Party indicates that in a vast majority of bids Mach participated as the only other bidder[350]. Other competitors were either not invited or did not have the ability to serve those customers. The market investigation also demonstrated that Mach constrains Syniverse in its negotiations with all MNOs, irrespective of whether an actual switch between the two Parties occurs. It is this constraint that the competitors of the parties would have to replace after the proposed concentration.

(379) The Commission's investigation shows that the DC business is not as scalable as the Notifying Party claims. In particular, the scalability of DC hardware and software is certainly not the only factor that drives the expansion of DC providers.

(380) The main resources that a DC provider would need to have in place in order to impose a competitive constraint on the merged entity are the following:

(a) hardware;

(b) software;

(c) human resources;

(d) contract portfolio.

(381) Hardware and software are key ingredients of the DC business as it involves the exchange of a large volume of electronic files. Human resources, in turn, are required to manage the exchange and solve any problems which arise in the data exchange as described by the SLAs. A large contract portfolio would allow a DC provider to spread the risks of penalty payments triggered by a deviation from the SLAs of a large (Tier 1) MNO. Also, the incoming revenue from a larger contract portfolio would allow the DC provider to invest in hardware, software and human resources.

(382) Past experience in the DC market shows that organic growth on the market tends to be slow. Syniverse itself entered the DC business in the EEA in 2003, by winning the DC contract with SFR. At that time, Syniverse already had a major DC operation.

(383) Even with all of those resources in place, Syniverse's organic growth in the EEA was slow. Until 2007, Syniverse acquired 1 to 2 MNOs per year, boosting its market share to [10-20]*% in that five-year period.[351] If the proposed concentration were to go ahead, the remaining competitors would be in a far more challenging position than Syniverse was at the time, given that the remaining competitors could not rely on an existing extensive DC platform as Syniverse did in 2003. Considering the past growth rates of both Syniverse and other competitors, it is not likely that Comfone and/or Nextgen will achieve a considerably higher growth rate over the next two years.

(384) As concluded in section 6.1.4, the market investigation indicates that even the size and experience of those competitors that are considered to be the most credible in competing with the parties in the EEA (Comfone and Nextgen) are of great concern

350 In [70-80]*% of the cases where bidders other than Syniverse were reported ([…]* out of […]* bids), in the period 2009-2012, Mach was the only other bidder.

351 It seems likely that Syniverse had already built up its reputation via large customer contracts in other parts of the world.

to customers, especially for large customers. As described in recital (82) Nextgen is only currently entering the DC market, whereas Comfone entered the global DC market in 2008 and the EEA DC market in 2010. Therefore, Comfone is in theory in a more advanced position than Nextgen to become the service provider that is able to constrain the merged entity. This section will assess the current position of Comfone and the likelihood of its timely expansion to a sufficiently large and established DC provider which could replace, in the next two years, the competitive constraint that Mach currently imposes on Syniverse in tender processes for all types of MNOs.

(385) In recitals 384 to 417, the Commission explains why it is unlikely that Comfone could increase its supplies to such a level that it could replicate that constraint. In recitals 418 to 427, the Commission explains that that this would apply with even stronger force to the other remaining competitors to the Parties, such as Nextgen, TNS and EDCH.

(386) In this context, the Commission considers that only a competitor of comparable scale and reputation to Mach would be able to defeat the anti-competitive effects of the proposed concentration. The Commission considers that small-scale expansion is not sufficient in this regard.[352]

Comfone's current position

(387) The Commission has reviewed the Notifying Party's arguments in its Response to the SO and does not agree with them. Comfone entered the DC market in 2010 and has so far focused on smaller mobile operators as possible customers[353]. Comfone is currently providing DC services to 42 customers[354] and has been growing gradually over time[355]. At the moment, Comfone is not providing DC services to any Tier 1 customer[356]. The largest contract served by Comfone is a contract for Tele 2. As Comfone itself confirms, Tele 2 can be considered a group of medium sized Tier 2 MNOs with little need of customisation[357].

(388) Comfone currently employs around 90 people.[358,359,360] The number of persons involved in DC services to EEA customers will likely be in the region of at most 20 to 30 persons.[361]

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352 Footnote 45 and paragraph 74 of the Horizontal Merger Guidelines.

353 Agreed minutes of the conference call with Comfone of 3 December 2012: "*So far Comfone has looked at smaller mobile operators as possible customers*" [ID1495].

354 Agreed minutes of the conference call with Comfone of 15 January 2013 [ID2317].

355 According to the Switching Dataset, Comfone served […]*2012 belong to the Tele2 Group and were signed following the same negotiation process.

356 Agreed minutes of the conference call with Comfone of 3 December 2012: "*At the moment, Comfone is not providing services to Tier 1 customers*" [ID1495].

357 Agreed minutes of the conference call with Comfone of 15 January 2013: "*Tele2 is considered to be Tier 2, but is an easy customer with respect to customisation*" [ID2317].

358 Comfone's website, http://www.comfone.com/index.php/en/careers, viewed on 19 February 2013

359 The total of 90 people includes people across all services (DC services, FC services, signaling services, roaming hub services, IPX backbone services), five persons in the executive board and five local representatives in regional offices outside of the EEA.

360 As a comparison, Syniverse employed […]* people in DC related services (sales excluded), while Mach had […]* people assigned to DC services in 2012-2012.

361 Agreed minutes of the conference call with Comfone of 3 December 2012: In relation to service support for DC services Comfone claims that it *"provides the relevant first level support, which requires around 10 employees"* [ID1495].

(389) Comfone itself considers that the provision of roaming related services is a rather closed market, which is hard to penetrate for companies not active in it since the beginning[362,363]. Comfone is not always invited for tenders organised by MNOs[364]. Even within the limited subset of tenders to which it is invited, , Comfone believes that they are often invited to a tender only for the purpose of price benchmarking[365].

Comfone's ability to expand

(390) As described above in recital (33) reliable and timely service is very important in the DC market. MNOs explain that an error made in DC services, for example, in processing TAP-files, may easily cause financial losses for the MNO as it affects the charges billed to retail customers, and ultimately can even harm their reputation[366]. Therefore, in order to mitigate the risk of such losses, MNOs prefer to choose a service provider with a good reputation and track record in the DC market.

(391) Given that it is difficult for MNOs to evaluate the quality of a DC provider in advance, it is natural that MNOs (especially those with more complex needs and higher quality requirements) prefer to deal with incumbent DC providers with an

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362 Agreed minutes of the conference call with Comfone of 3 December 2012: "*Comfone considers that the provision of roaming related services to M(V)NOs is a rather closed market (only 900 customers worldwide), which is hard to penetrate for companies not active in it since the beginning*" [ID1495].

363 This is in line with the evidence from the Bidding Data, which confirms the current limited presence of Comfone in the DC market. The participation of Comfone in bidding processes is still modest as compared to the participation rates of Syniverse and Mach. The frequency of participating in bidding processes of other providers never exceeded […]*% of the frequency of participating in bidding processes of the Parties in a given year for the period 2009-2011 (except for EDCH in the year 2011 when it participated in a substantial number of tenders in Africa).

Furthermore, while the Bidding Data shows an increase in the participation of the Parties' competitors in procurements in the 2009-2011 period, the same dataset also shows that this increased participation has not resulted in a significant increase in the winning rate for Comfone.

At first sight, this last finding is in some contrast with the insights provided by the Switching Data, according to which the number of MNOs served by Comfone in the EEA has increased over time (the reason for this apparent difference is that the Commission's analysis of the Bidding Data included procurement events up to 30 April 2012 (see footnote **Error! Bookmark not defined.**) *[Should read: recital 19], and does not include, therefore, the switch of […]* from Syniverse to Comfone and the switch of […]* (incl. […]*) from Mach to Comfone). Furthermore, the Bidding Data does not include the switch of two MNOs of the […]* ([…]* and […]*) and that of […]* from Mach to Comfone (completed in 2011q3 and 2012q2 respectively).

Finally, it must be noted that the size of MNOs served by Comfone remains several magnitudes below the size of MNOs served by the Parties and Comfone does not serve any Tier 1 MNOs (also see recital (387)).

364 Agreed minutes of the conference call with Comfone of 15 January 2013 [ID2317].

365 Agreed minutes of the conference call with Comfone of 15 January 2013 [ID2317].

366 For example, in its responses on risk of loss of data or other errors occurring during the migration process (response to question 13 of questionnaire Q6 – questionnaire to MNOs – Phase II), Hutchinson 3G claims that these losses would be *"very significant – loss of data would impact our ability to invoice accurately"* [ID1863]. In its response to the same question, SFR-Cegetel claims that *"TAP information is a key input so if there would be a loss in either the data and/or other errors, it might have a significant risk of loss (either real loss, errors, delays or loss of significant information of the activity for data)"* [ID2226]. Furthermore, in agreed minutes of the conference call with Telekom Austria of 28 January 2013, it *"points out that the service provider's reliability is a key issue, since every possible lack of quality has a direct impact on the MNO"* [ID2268]. Finally, in agreed minutes of the meeting with Belgacom and BICS of 14 January 2013, it claimed that *"for Belgacom the quality of service is the most important criterion related to the choice of a DCH to the extent that it could directly affect Belgacom's customer and retail roaming revenues"* [ID1968].

established track record.[367] The need to develop credibility and build up reputation is a recurrent factor in responses to the market investigation[368]. Customers consistently refer to the limited experience of Comfone, in particular with large customers[369]. Accordingly, Tier 1 MNOs do not generally consider Comfone as a real alternative to provide them with DC services because they believe Comfone is not able to deal with the large amount of TAP files which need to be processed for them in a reliable and timely fashion[370].

(392) Irrespective of its resources, which already seem limited, Comfone does not have the required experience for Tier 1 MNOs to trust its ability to deal with the large amount of TAP files required. Comfone's lack of experience with Tier 1 MNOs also reduces its ability to make competitive offers for complex DC tenders, matching the combination of the price, experience and quality offered by the Parties.

(393) Comfone's ability to expand is hindered both by its smaller contract portfolio and its smaller pool of human resources.

(394) In particular, with a significantly smaller portfolio of contracts[371], it is more difficult to manage risks related to deviations from the SLAs in the DC contracts. The penalties associated with deviations from SLAs can naturally be interpreted as being intended to incentivise the DC providers to undertake great effort in supplying the service. However, as the DC providers' higher efforts do not correlate perfectly with better performance under SLAs, the contracts effectively share performance risk between the MNO and the DC provider.[372] This, however, implies that the DC house bears some of the risk associated with the fact that its greater efforts do not always translate into fewer deviations from the SLA. A small portfolio of contracts does not allow diversification of risks imposed by deviations from the SLAs and triggered penalty payments cannot be spread over a wide base of incoming revenue.[373]

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367 The Commission considers that the established position of incumbent firms, in particular due to their reputation, can be both a barrier to entry and to expansion (Horizontal Merger Guidelines, paragraph 71(c)).

368 See, for example, responses to questions 12, 16.2 of the questionnaire Q1 – questionnaire to MNOs – Phase I, and responses to questions 26.1.5.2 of the questionnaire Q6 – questionnaire to MNOs – Phase II, as well as agreed minutes of the conference call with Nextgen on 22 January 2013 [ID2223], with Telenor on 13 January 2013 [ID2317] and of the meeting with Comfone on 15 January 2013 [ID2317] and of the meeting with Belgacom and BICS on 14 January 2013 [ID1968].

369 See recitals (332) to (344) which detail the reasons why MNOs and in particular Tier 1 MNOs do not consider Comfone as a credible alternative to the Parties.

370 Comfone is only invited to a fraction of procurement events by Tier 1 MNOs and in some of those cases even Comfone acknowledges that it is invited only for the purpose of price benchmarking. Agreed minutes of the conference call with Comfone of 15 January 2013 [ID2317].

371 The Switching Data submitted by the Notifying Party currently indicates […]*, […]* and […]* global DC contracts for Syniverse, Mach and Comfone respectively, out of which […]* are in the EEA. None of Comfone contracts are with Tier 1 MNOs.

372 In economic terms, this is the standard risk-sharing feature that is present in a "moral hazard" framework.

373 Based on the data provided by the Parties in response to question 19 to the request for information of 25 January 2013, these penalty payments can result into payments (or credits) of up to about EUR […]* per MNO group per year.

Gradually adding more contracts would allow the DC provider to mitigate the additional risk of each contract.[374]

(395) Moreover, the complex SLAs required by Tier 1 MNOs can also be understood as "screening" mechanisms that separate high-quality DC providers from low-quality suppliers. This means that smaller providers like Comfone may find it simply too costly or too risky to accept those SLAs, given their expectations on their ability to fulfil them. This is consistent with the observation that Tier 1 MNOs and Comfone have not entered into contracts of this type in the past.

(396) Finally, with a smaller pool of human resources, a small DC provider also faces greater difficulties in controlling the quality of its pool. The risk that a newly hired member of personnel brings down the overall average quality of the personnel (and harming the reputation of the DC provider) is higher when that overall pool is small.

(397) Furthermore, assuming similar utilisation rates of human resources, assigning the required experts to a new upcoming task is more difficult when the pool of experts is smaller because the number of experts that can be freed up by re-allocating tasks is smaller.[375]

(398) Finally, a larger pool of human resources allows for more efficient matching of labour and skills to required tasks, simply because a larger pool of experts allows for a larger variation in skills and experience across experts, which increases the probability that an employee with the necessary skills for a special task can be found within the pool and can be allocated to the new special task if required.

Building up a track record and reputation

(399) As explained in recitals (391)-(392), a track record of serving Tier 1 MNOs appears crucial in order for Comfone to expand to a position where it could impose an effective competitive constraint on the merged entity in tender processes organised by Tier 1 MNOs.

(400) While building up such a track record, Comfone would need to scale up its resources in order to credibly participate in tenders for all types of MNOs.[376] Building up a track record is a time-consuming process. Particularly in the early stages, while still learning what it takes to provide DC services to Tier 1 MNOs in particular (including the need to comply with complex and demanding SLAs), it would be easy for a small DC provider to severely damage its reputation as a reliable supplier and undermine its prospects for future growth. The detailed SLAs were described in recital (325) and Table 8 and Table 9.

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374 This argument explains the motivation for gradual growth for data clearing houses and does not refer to the weight given to the large number of MNOs served by the data clearing house by MNOs when choosing their service provider.

375 For example, if two companies employ 100 and 10 FTEs respectively, and both of them are working with a utilisation rate of 90% that means that they have 10 and 1 "free" FTEs that could be assigned to an upcoming task on a short notice. If an upcoming task requires, say, 4 FTEs, the first company, which is larger will be able to undertake the task by re-allocating various tasks among its employees and assigning 4 FTEs to the new task. In contrast, the second company, which is smaller, has only got 1 "free" FTE, which is not sufficient to undertake the upcoming task.

376 In fact, the relevant test here is the replication of the constraint exercised by the Parties on each other pre-merger. The evidence presented earlier in this document suggests that this constraint is very extensive, and it affects all or most major tender opportunities, including those where no switching is observed.

(401) Section 6.1.4 shows the strict requirements imposed by MNOs on their DC provider. Frequent deviations from the SLAs cause harm to the DC provider's reputation and trigger the payment of penalties.

(402) Any profit-maximising small DC provider would therefore decide to grow gradually over time in order to manage the risk of harming its reputation or facing serious financial difficulties. With a slower growth, deviations from the SLAs are easier to control.[377,378] Especially the size of the portfolio of contracts and the size of the pool of human resources would limit the possibility to build up reputation quickly in the early stages.

(403) Given its small portfolio of contracts and its small pool of human resources, it is natural for Comfone to grow gradually.[379] Today, Comfone has no experience at all in serving Tier 1 customers, but it has recently acquired a customer of medium size. A careful focus on building up a track record would prevent Comfone from growing too fast. Comfone's slow growth path supports this finding.

Scaling up resources

(404) While building up a track record to serve several Tier 1 customers, Comfone would need to expand up to the level at which it imposes an effective competitive constraint on the merged entity in most or all upcoming tenders.[380]

(405) The ability of Comfone to impose a competitive constraint in some tenders or for certain types of MNOs would not mean that such a competitive constraint would exist in other tenders or for other MNOs given that price and quality are set on the basis of individual negotiations.

(406) In order to expand its DC business, Comfone would need to scale up the resources mentioned in recital (380):

(a) hardware;

(b) software;

(c) human resources;

(d) contract portfolio.

(407) The market investigation suggests that even if the first two resources are relatively more scalable than the others, their scalability is not unlimited. There are limits to

377 For example, the company can avoid situations where it would need to promptly hire and assign new experts with untested on-the-job quality to serve large clients with complex and demanding SLAs just because Tier 1 MNOs with complex and demanding SLAs start to come in too quickly.

378 This is in line with past evidence of growth in the industry as described in recitals (382) and (383).

379 Note, however, that "try-and-buy" types of strategies by MNOs (when they first buy a service from a service provider and if they have a good experience they switch to the next product of that service provider) could help Comfone in expanding. For example, Tele2 tried Comfone with signalling service first and a positive experience with that service persuaded it to switch to Comfone for DC services too.

380 This expansion should be a major expansion rather than an incremental one that would include 3 or 4 new employees (claimed by Comfone to be enough to serve a Tier 1 customer (paragraph 8 of the Agreed minutes of the conference call with Comfone of 3 December 2012)). As mentioned above, the relevant test here is the replication of the constraint exercised by the Parties on each other pre-merger. The evidence presented earlier in this document suggests that this constraint is very extensive, and it affects all or most major tender opportunities, including those where no switching is observed.

hardware expansion to accommodate additional customers.[381] In order to serve credibly the wide variety of MNOs, including large groups, DC providers need to build customisation that MNOs require into their software and make it compatible with MNO's internal systems. As explained in section 6.1.4.2, a significant amount of configuration and/or adaptions to proprietary software of a DC provider are needed to customise DC operations to MNO's requirements. This is also confirmed by the Notifying Party.[382] Those adaptations to the software of the DC provider come on top of the investments that are necessary to establish private interfaces and customised reporting tools for customers. All of this requires development and hence time and human resources. In this sense therefore, there is a link between the scalability of software and human resources that support the software.

(408) Human resources, required to manage the data exchange and resolve any problems which arise in the exchange of data as described by the SLAs, are more difficult to scale up substantially in the short run, especially up to the level to become an effective competitor for the merged entity in all upcoming tenders.[383] The hiring and training of reliable DC experts and assuring that they also accumulate the required on-the-job expertise is time consuming and difficult even if only one or two experts would be added to an existing DC team. Scaling up human resources by several magnitudes would be a particularly long and complex process. The personnel base of Syniverse's and Mach that is DC-related is currently at least […]* times as big as that of Comfone.[384]. Comfone would therefore have to increase its pool of human resources at an implausible rate within the next two years to replicate the competitive constraint that would be lost with the proposed concentration.

(409) *Table 12* shows information submitted by the Parties on the required timeframe for hiring and training the required personnel as well as the Parties' view on the required on-the-job experience for serving Tier 1 MNOs[385].

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381 The Notifying Party recognises that the overall capacity of a DC platform is defined as the total TAP volume that the platform can handle without violating any applicable service level agreements (Parties' response to the Commission's request for information of 25 January 2013, points 6 and 8). Competitors confirm that platforms are usually run far below full capacity utilisation in order to achieve this.

382 Parties' response to the Commission's request for information of 25 January 2013, point 20.

383 The scaling up of human resources does not refer to just increasing the number of employees of a DCH. Instead, these newly added employees need to have the required technical skills as well as experience in providing high quality services. The high ranking of the quality service (incl. speed of processing, technical support, etc.), reliability, technical skills of the personnel, experience and reputation of the provider are all highly ranked by respondents to the market investigation.

384 For Syniverse, see *Table 3* in response to Q9 in the Notifying Party's response to the request for information of 25 January 2013. For Mach, see *Table 14* in response to question 32 of the Notifying Party's response to the request for information of 6 February 2013. For Comfone, see recital (388) above.

385 Note that while there is no evidence that highly specialised DC skills are needed to serve Tier 1 MNOs, compliance with the strict SLAs prescribing the processing of large amount of data in a very tight timeframe requires a high degree of comfort in providing DC services, which can be developed through on-the-job practice.

Table 12: Average time span for hiring and training DC experts to serve Tier 1 MNOs

	Average hiring time	**Average training time**	**Average on-the-job experience required for serving Tier 1 customers**
Syniverse	[…]* months	[…]* weeks	[…]*
Mach	[…]* weeks (the longer for service support personnel)	[…]* months (longer for service support personnel to be on 100% of expectations)	[…]* months (longer for service support personnel)

Source: The Notifying Party's response to the request of information of 23 January 2013 and 6 February 2013

(410) Table 12 suggests that […]* that the time involved in finding a DC expert and training him or her up the level of serving Tier 1 customers is no more than […]* months, Mach is of the view that the hiring and training period may add up to […]* months (particularly in the case of service support personnel). In addition, Mach also considers on-the-job experience and training to be required for serving Tier 1 MNOs. Even though there is an overlap between training and on-the-job experience (as also suggested by the Parties), the timeframe between the identification of the need for an expert able to serve a Tier 1 MNO and the same expert becoming ready for the task can easily extend to two years or longer.

(411) The figures presented in Table 12 refer to the hiring and training of individual DC experts. However, as explained in recital (407), in order to develop its pool of human resources to such a level that it is able to impose an effective competitive constraint on the merged entity for all tenders [, Comfone would need to increase its size by several magnitudes.

(412) The hiring and training of a large number of additional experts (at least compared to the current size of the pool of experts in the company) in the short-term would likely raise significant challenges. For example:

(a) the large number of experts (of required quality) may not be available in the market in the short term;

(b) the simultaneous addition of a large number of new experts (with some uncertainty regarding their true quality) jeopardises the average quality of the company's expert pool;[386]

(c) organisational changes would be required to manage a workforce that has been quickly multiplied.

(413) It must be borne in mind that this assessment is conservative, as the Notifying Party has highlighted that the Parties can also use personnel that is currently devoted to

[386] For example, if a company employs 20 workers and hires an additional one that turns out to be of lower quality, the average quality of the company's workforce will be affected very weakly. However, if the company hires 10 workers that turn out to be of low quality, the average quality of the company's workforce would be much more strongly affected. While it is true that if a company hires 10 workers, the chances of each of them turning to be of low quality are low, however, if there is a shortage of experts of required quality in the market and the company "has to" hire a certain number of experts in the short-term, the risk of a sufficiently large fraction of new hires being of low quality is higher.

other activities in order to address DC-related business. This would make it even more difficult for Comfone to replicate the constraint the Parties exert on each other, as its overall pool of human resources is far smaller than that of the Parties.

(414) Increasing the size of the contract portfolio is also a time-consuming and gradual process. As described in Section 6.1.4, opportunities to sign Tier 1 MNOs come up infrequently given the length of DC contracts and the migration process can take a considerable time.[387]

(415) In sum, even if the hardware and software component of the DC service provision were sufficiently scalable for a competitor to expand sufficiently to provide an effective competitive constraint to the Parties post-merger, human resources and the contract portfolio are in any event also key and substantially more difficult to expand. In particular, it seems highly implausible that Comfone would be able, in the next two years, to scale up its human resources and contract portfolio to the level of being able to serve a number of Tier 1 MNOs in parallel (while continuing to serve and develop its current customer base of smaller MNOs)[388].

(416) Comfone would have to invest in those resources whilst not having guaranteed revenue opportunities from a large number of MNOs, in particular Tier 1 group MNOs. Tier 1 MNO identify this as a serious problem:

(a) France Telecom/Orange claims: "*This demonstration (that it can serve in parallel a number of Tier 1 MNOs) implies two issues: 1) Comfone having to make the necessary investment without, necessarily, any secured business opportunity behind it (and only as a necessary first step to be a relevant player in the industry and 2) convincing a first big set of operators to prove the previous investment has been done and it has the desired result. They would have to face the migration cost (and its impact on the operations) without any previous reference.*"[389]

(b) A MNO who asked to remain anonymous indicates: *"Even if it were to make all required investments, Comfone may be faced with a situation in which it establishes additional resources but is not in a position to convince a large number of Tier 1 operators, given a lack of proven track record and the required levels of expertise, so that its investments would actually not result in any return but would prove to be sunk and useless."*[390]

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387 Taking into account that the typical length of a DC service contract is 3 years, a major (top 4) EEA Tier 1 contract may come up for renewal every 9 months.

388 Again, these findings are consistent with market evidence, according to which the industry is characterised by slower organic growth (as described in recitals (382) and (383)) and fast expansion is always completed through M&A activity. Moreover, although customers are not in the best position to estimate the investment needed to scale up DC operations, the majority of customers that responded to the relevant question in the Commission's questionnaire estimate that it would take Comfone at least 3-5 years to scale up its operations to a level where it can serve a number of Tier 1 MNOs in parallel. This does not even take into account that Comfone would have to serve and develop its current customer base of smaller MNOs in parallel. It is also far from an estimate that would be required for Comfone to fully replicate the constraint that Mach is exerting on Syniverse today.

389 Orange, response to question 26 of questionnaire Q6 – questionnaire to MNOs – Phase II [ID1932].

390 Response to question 26.1.5.2. of questionnaire Q6 – questionnaire to MNOs – Phase II [ID 2256].

(417) The Notifying Party in its Response to the SO[391] refers to the Syniverse/BSG Decision[392]. The Notifying Party interprets the Syniverse / BSG Decision as stating that the provision of DC services is an easily scalable business and capacity for TAP volume is increased by the addition of extra hardware and not extra personnel. The Commission notes that, while it may be possible to achieve a limited expansion by only increasing the business' hardware and software capabilities, the market investigation in this case has clearly demonstrated that, for large scale expansions, additional personnel is key. In relation to this case, the expansion would need to be of such scale as to replicate the loss of Mach as a competitor. The Commission considers on the basis of the evidence that such a large scale expansion would definitely require additional personnel. Additional personnel is not easily scalable and is, according to the Commission's investigation, a barrier to expansion.

(418) These considerations make the investments that would be necessary, which are already at very high levels, even riskier. It is therefore unlikely that Comfone would be in a position to replace the competitive constraint that Mach currently imposes on Syniverse for all tender opportunities.

(419) On this basis, the Commission does not agree with the Notifying Party's arguments in the Response to the SO in relation to Comfone's ability to compete. As demonstrated in recitals 385 to 416, Comfone cannot compete for certain contracts and Comfone's capacity to serve a large number of customers would also affect the number of tenders it can credibly win in the future (even if it is considered for them). The Commission does not consider that this situation would change in the near future, in particular in the next two years.

Other competitors

(420) The ability for DC providers other than Comfone to expand their operations sufficiently to replace Mach as a competitive constraint would be even more problematic given their starting position today.

(421) NextGen is still in the process of launching its operations. Hence, unlike Comfone, it does not yet have any proven track record and reputation with MNOs. NextGen itself confirms that it is not likely to be selected as a DC provider by either MNOs that require a high level of customer care and quality of service or Tier 1 MNO groups.[393] Nextgen explained that it *"intends to target smaller MNOs first since it does not currently have the capability to serve large customers"*[394]. Nextgen submitted that *"[c]apacity is limited due to the complexity of DC services as well as necessary customisation and development"*[395]. Nextgen further explained that *"[g]rowth will require significant time for Nextgen. Serving a significant portion of the DC market is not a matter of simply throwing resources. Time is needed to mature in this market, learn the processes, overcome migration hurdles and gain MNOs' trust"*[396].

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[391] Notifying Party's Response to the SO, paragraph 114 and footnote 122.

[392] Commission's decision of 4 December 2007 in Case COMP/M.4662 - Syniverse/BSG.

[393] NextGen, response to questions 22 and 23 of questionnaire Q7 –questionnaire to competitors – Phase II [ID2224].

[394] Agreed minutes of the meeting with Nextgen of 28 November 2012, paragraph 7 [ID1541].

[395] Agreed minutes of the meeting with Nextgen of 28 November 2012, paragraph 7 [ID1541].

[396] Agreed minutes of the meeting with Nextgen of 28 November 2012, paragraph 8 [ID1541].

(422) The remaining competitors EDCH and TNS each suffer from their own disadvantages when competing for DC business in the EEA.

(423) The Notifying Party highlights that EDCH was able to win the DC business of Telenor Hungary. Telenor Hungary is, however, by no means comparable to the Tier 1 group MNOs that the Parties are able to serve. Moreover, the fact that EDCH serves this one customer in the EEA does not have any bearing on its ability to serve, as the Parties are doing, a wide variety of large, mid-sized and smaller customers in parallel.

(424) In its own submissions, EDCH underlines the difficulties in expanding its operations in the EEA. It is telling that EDCH lists itself as a main competitor to the Parties at the worldwide level, but does not qualify itself as a main competitor in the EEA.[397] EDCH furthermore explains that its data processing takes place in the United Arab Emirates, and that this is an area of concern for MNOs in the EEA when they select their DC providers.[398] EDCH expects no company, including itself, to expand significantly in the provision of DC services.[399]

(425) The Commission considers that despite the fact that it may be serving […]* as its sole customer in the EEA, EDCH is even less likely than Comfone to expand in such a manner that it can replace the constraint that Mach exerts on Syniverse in relation to all MNOs.

(426) TNS, which is already far smaller than the Parties and Comfone at the worldwide level, has not focussed its DC operations on the EEA. It explains:

"In order to be competitive in the EEA market, it is necessary to have sales force and technical support presence in the region. We are not aware of any customers within the EEA that are using a DC provider with infrastructure outside of the EEA."[400]

(427) TNS confirms that even if a competitor has such presence, gaining reputation and a proven track record with large MNOs is key to achieving any meaningful position in the EEA:

"Gaining credibility through initial customer acquisition (is a main step that a company would perform in order to gain a 20% share of the DC business in the EEA). (...) A DC provider cannot gain a 20% market share in the EEA with only small to mid-sized MNOs. At least one or two large MNOs would be required to gain this market share".[401]

(428) TNS is exactly lacking this presence and customer base in the EEA. The Commission therefore considers that it is unlikely that it would be able to expand its

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[397] EDCH, response to question 7 of questionnaire Q4 – questionnaire to actual competitors – Phase I [ID958].

[398] EDCH, response to questions 8 and 9 of questionnaire Q4 – questionnaire to actual competitors – Phase I: *"Our services are provided via secure internet connection. Currently, processing of all our services take place within the UAE prior to transferring the data to its destination. (...) Many European customers demand to have a service office in the region for both legal and support issues"* [ID958].

[399] EDCH, response to question 25 of questionnaire Q4 – questionnaire to actual competitors – Phase I [ID958].

[400] TNS, response to question 9 of questionnaire Q4 – questionnaire to actual competitors – Phase I [ID1629].

[401] This reference provides further evidence on the relevance of a large enough contract portfolio required for successful expansion.

operations to a level that would enable it to replace the constraint the Parties exert on each other today.

(429) Thus, the Commission does not agree with the Notifying Party's arguments in the response to the SO that other competitors would be able to compete with Syniverse post-merger.

Conclusion on competitors' ability to increase supply if prices increase and/or quality decreases

(430) On this basis, the Commission does not agree with the arguments of the Notifying Party in the Response to the SO. The Commission concludes that it is unlikely that competitors would increase their supplies to an extent that they could replicate the constraint that Mach is exerting on Syniverse today. This conclusion applies irrespective of whether the geographic scope of the market is worldwide or EEA-wide.

6.1.6. Likely effects of the proposed concentration: decrease of quality and/or increase of prices for DC services

6.1.6.1. Views of the Notifying Party

(431) The Notifying Party submits that the proposed concentration would not result in any anti-competitive effects.

(432) The Notifying Party states that its average price for DC services has continuously decreased over the period 2007-2012 in spite of an increasing concentration of the market. The Notifying Party claims that this *status quo* will be maintained post-merger due to the presence of Comfone and other competitors.

6.1.6.2. The Commission's investigation and assessment

(433) The results of the market investigation reveal that customers are overall concerned about the impact of the proposed concentration on the DC market.

(434) In response to the market investigation, the vast majority of the responding MNOs[402] indicated that they expect the proposed concentration to have an effect on their company and the provision of DC services. Hence, MNOs are concerned that as the result of the proposed concentration the prices for DC services will increase or will decrease at a slower pace than in the absence of the proposed concentration.

(435) For example, one Tier 1 MNO states that post-merger there will only be one DC provider capable of catering to the needs of MNOs with global operations and "*that will almost assuredly lead to higher prices in the market*".[403] Other illustrative examples of MNOs' expectations regarding price are set out in recitals (436), (437), (438) and (439):

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[402] 65% (11 out of 17) of the responding MNOs based in the EEA and 68% (15 out of 22) of all responding MNOs (responses to question 89 of questionnaire Q1 – questionnaire to MNOs – Phase I).

[403] Vodafone, response to question 89.1.2 of questionnaire Q1 – questionnaire to MNOs – Phase I [ID2274].

(436) *"[T]he merged entity could have the intention to increase the price offered for the services, since the merged entity will be only challenged by weaker players, having limited financial capacities."*[404]

(437) *"As they become the dominant company, they might ask us higher price."*[405]

(438) *"Due to restricted competitiveness, pricing would be increased."*[406]

(439) *"Taking into account the essential nature of DC services on the one hand and the monopoly situation upon realisation of the proposed merger on the other hand, one can easily predict that DC services prices will be directly impacted and increase."*[407]

(440) MNOs also express concerns as to the possible deterioration of the quality of DC services. In the Phase II investigation, the majority of MNOs[408] indicated their expectation that the proposed concentration would have a deteriorating effect on the quality of service and/or customer care and support. For instance, one MNO states that: "*The new entity will be the dominant player in the market and as such, in the long term, may focus less on quality of service due to the lack of a suitable alternative supplier of this service."*[409] Another MNO considers that *"if there is no viable competitor the incentive to maintain quality will disappear and <u>the quality will probably detoriate" (emphasis added)</u>.*[410] Also, some MNOs refer to the noticeable degradation of quality of service experienced after Syniverse acquired BSG.[411]

(441) In addition to MNOs, MVNOs also expressed concerns regarding the likely impact of the proposed concentration on the price and quality of DC services. As described in recital (62), some of the MVNOs do not have direct relationships with DCHs and rely on the DC services provided to their host MNO (the so-called "light" MVNOs). Concerns have been expressed that, as the result of the proposed concentration, the merged entity may charge higher prices to host MNOs which will pass this increase on to the "light" MVNOs.[412] Also "full" MVNOs, which have direct contracts with DC providers, would be directly affected by any price increase or service deterioration.[413] Moreover, one MVNO was concerned that the lack of competition post-merger may result in a lack of innovation in DC services.[414]

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404 Bouygues, response to question 89.1.2 of questionnaire Q1 – questionnaire to MNOs – Phase I [ID1038].

405 NTT DOCOMO, response to question 89.1.2 of questionnaire Q1 – questionnaire to MNOs – Phase I [ID840].

406 PCCW Mobile HK Ltd, response to question 89.1.2 of questionnaire Q1 – questionnaire to MNOs – Phase I [ID807].

407 Belgacom, response to question 89.1.2 of questionnaire Q1 – questionnaire to MNOs – Phase I [ID995].

408 69% (11 out of 16) of the responding MNOs based in the EEA and 54% (15 out of 28) of all responding MNOs (responses to question 20 of questionnaire Q6 – questionnaire to MNOs – Phase II).

409 Hutchinson 3G, response to question 20 of questionnaire Q6 – questionnaire to MNOs – Phase II [ID1863].

410 Digicel group's response to question 89.1.3 of questionnaire Q1 – questionnaire to MNOs – Phase I [ID1093].

411 KPN and Maxis Communications, responses to question 20 of questionnaire Q6 – questionnaire to MNOs – Phase II [ID1917] & [ID1749].

412 See, for example, Virgin Media, response to question 99.1.1 of questionnaire Q2 – questionnaire to MVNOs – Phase I [ID905].

413 European Association of Full MVNOs ("EAFM"), letter of 4 December 2012 [ID2258].

414 Virgin Media, response to question 99.1.1 of questionnaire Q2 – questionnaire to MVNOs – Phase I [ID905].

(442) In assessing the likelihood of the Commission's concerns materialising, it is important to consider them in the context of the overall body of evidence. The Parties hold a strong combined market position, which is evidenced in particular by their very high combined market shares maintained consecutively through several years (see section 6.1.2). Currently they compete intensely with each other, with a strong offering not only in DC services but also a comprehensive suite of other products/services (see section 6.1.3.). It is unlikely that competitors would sufficiently challenge the Parties' position post-merger, due to the difficulties for customers to switch to a suitable provider (see section 6.1.4) and for competitors to expand their supply (see section 6.1.5.).

(443) Given the strong position of the Parties and the limited possibilities for switching, the Commission considers that as the result of the proposed concentration the Parties would be likely to adversely influence prices for DC services without risking to lose their customers.

(444) This conclusion is not undermined by the Parties' claim that the average price per TAP has declined in recent years for the two following reasons:

(a) It is important to distinguish the situation pre- and post-merger. Today, even despite the increase in concentration of the DC market, there are still two significant competitors, Syniverse and Mach, which exert an important constraint on each other.[415] Several MNOs mentioned that they were able to achieve acceptable terms for DC services in their recent re-negotiations primarily by playing the Parties off against each other.[416] Post-merger, however, the market would have one dominant player which would be unlikely to be amenable to lowering its prices given the lack of sufficient competition from the remaining smaller competitors. As stated by one MNO: "it will be difficult to negotiate a reduction in pricing post-merger".[417]

(b) Furthermore, the decrease of average price per TAP in recent years has been facilitated by such important factors as the growth of roaming and hence the increased number of TAP files, and technological development and decreasing costs of processing TAP files (for example, lower cost of hardware). While these two trends may continue in the future, the price for DC services may not decline at the same rate as they would in the absence of the proposed concentration.

(445) In addition to the likely price effect, the elimination of competition between the Parties is likely to result in a negative impact on the quality of DC services. As already explained (see for example recitals (234)-(241)), quality of service is a key requirement that customers seek from their DC providers. Quality of DC service encompasses a number of elements such as the speed and accuracy of TAP

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415 This is in line with the results of the prospective assessment conducted by the Commission in the *Syniverse/BSG* decision (2005).

416 See, for example, Deutsche Telekom, response to question 21.1 of questionnaire Q1 – questionnaire to MNOs – Phase I: *"Main driver to achieve cost reductions was the existing competition, which was already narrowed down to nearly zero by the various mergers and acquisitions that took already place in the last years."* [ID2163] and agreed minutes of the conference call with Vodafone of 6 February 2013, paragraph 10 [ID2325].

417 Maxis Communications, response to question 89.1.2 of questionnaire Q1 – questionnaire to MNOs – Phase I [ID984].

processing, reliability, customer care, technical support, security and data integrity. Inadequate provision of those elements may undermine the ability of MNOs to collect their roaming revenue, which can amount to millions of euros for Tier 1 MNOs.

(446) In line with the concerns expressed by the Parties' customers, the Commission considers that the proposed concentration is likely to allow the merged entity to negatively impact the quality of DC service due to the lack of alternative providers. In the absence of the competitive constraint currently exerted by Mach, the merged entity may have a low incentive to offer improved conditions to its customers, or even to offer the same conditions as today. Rather, its incentive is likely to be to reduce (or not to improve) the quality of its service, in order to save costs and increase profits. For example, the merged entity may force its customers to accept longer processing times under the SLAs or may perform less extensive data checks than would be the case in the absence of the proposed concentration.

(447) Inadequate quality of DC services could have a negative impact on consumers using roaming services. As described in recital (235), there is a direct link between DC services and retail billing. Hence, the output of DC services is used by MNOs to issue bills to their subscribers. Errors or delays in processing of TAP files could result in incorrect bills being received by consumers.

(448) Finally, higher prices and lower quality DC services could have a wider negative impact on the development of roaming services. In particular, 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 [418] aims at encouraging the emergence of alternative roaming providers by granting the right to MNOs and MVNOs to use other operators' networks in other Member States at regulated wholesale prices. This is intended to promote competition between more operators on roaming markets. Increased prices or the lack of adequate quality of such a critical service as DC may stifle the emergence of the alternative roaming providers contrary to the objectives of the Union roaming policy and to the detriment of consumers.

Conclusion on likely effects of the proposed concentration

(449) On this basis, the Commission concludes that the proposed concentration would result in the creation of a dominant position and that, as the result of the proposed concentration, the Parties would be likely to have the ability and incentives to adversely influence prices and/or quality of DC services without risking losing their customers. This conclusion applies irrespective of whether the geographic scope of the market is worldwide or EEA-wide.

6.1.7. Countervailing buyer power

6.1.7.1. Views of the Notifying Party

(450) The Notifying Party submits that MNOs are currently able, and would continue to be able, to exercise their bargaining strength against DC providers.

(451) The Notifying Party points out that large MNOs can centralise their procurement process at group level and, in this manner, exert bargaining strength vis-à-vis DC providers. According to the Notifying Party, the number of MNOs, such as

[418] OJ L 172, 30.06.2012.

Vodafone, Telefónica and Orange, which operate as single global entities and employ sophisticated procurement systems, has increased since 2007.

(452) The Parties are much smaller in size than the MNOs they serve. For example, by revenue Deutsche Telekom is approximately 97 times larger than Syniverse. Buyer power can be exercised also by 'smaller' MNOs.

(453) According to the Notifying Party, the ability of MNOs to threaten to switch (for example, to Comfone) is sufficient to allow significant buyer power.

(454) The Notifying Party claims that MNOs also exercise their bargaining strength against DC providers in a variety of other ways, including the use of sophisticated bidding contests and credible threats to stop purchasing non-DC services from DC service providers, or sponsoring the entry or expansion of new or existing DC providers. The Notifying Party points out that Swisscom and Vodafone launched Comfone in 1997 as a provider of DC services. It claims that in 2004, Syniverse itself was effectively sponsored by SFR and Vodafone to expand its DC services in the EEA. Furthermore, the Notifying Party submits that MNOs' bargaining power is further strengthened by the fact that through the GSMA, they govern the operation and performance criteria of DC and other products and services related to GSM mobile networks. As a result, the Notifying Party submits that MNOs are able to secure price reductions even upon uncontested renewals of contracts.

(455) The Notifying Party's Response to the SO contends that the Commission's assessment is targeted on four very large and sophisticated Tier 1 MNOs. Those MNOs have significant countervailing buyer power according to the Notifying Party. In addition, competition is focused around new contracts or renewal tenders.[419] The effective choice of MNOs to play OSPs off against one another is the primary basis of an MNO's buyer power. That dynamic results in intense competition, in particular on price, between credible competitors.

(456) Finally, the Notifying Party submits in its Response to the SO that the Commission should not dismiss the possibility for an MNO to provide DC services in-house, as from the four Tier 1 MNOs one, […]*, already performs DC in-house.[420]

6.1.7.2. The Commission's investigation and assessment

(457) The results of the market investigation do not confirm that customers would be able to exert sufficient countervailing buyer power after the proposed concentration.

(458) The market investigation suggests that at present some Tier 1 MNOs may enjoy a certain degree of bargaining power *vis-à-vis* DC suppliers because of their central procurement policies and the centralised negotiation of framework contracts for their entire groups with advantageous terms. Several Tier 1 MNOs stated that they have been able in the past to achieve better contractual terms due to the size of their groups or their purchases of other services from the DC supplier.

(459) What is relevant for the Commission's assessment, however, is whether there are indications that customers could exert sufficient countervailing buyer power after the

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419 Notifying Party's Response to the SO, paragraphs 36,37.

420 Notifying Party's Response to the SO, paragraph 69.

proposed concentration.[421] Furthermore, as ruled by the General Court, the buyer power of customers may compensate for the market power of the supplier "*if those customers have the ability to resort to credible alternative sources of supply within reasonable time"*.[422]

(460) This proposed concentration would significantly alter the balance of power between DC providers and MNOs. As demonstrated in section 6.1.4, this proposed concentration would eliminate Mach as the most credible alternative supply source to Syniverse. The market investigation indicates that, in the past, buyer power could mainly be exercised due to the presence of two equally credible providers on the market, Syniverse and Mach. Thus, several MNOs, including Tier 1 MNOs, stated that the main driver behind cost reduction in the past was the existing competition between Syniverse and Mach on the market.[423]

(461) With the proposed concentration, the ability of customers to play those main competitors off against each other would disappear. As explained in section 6.1.4.3, the market investigation indicates that a large number of MNOs would have limited possibilities to switch due to the lack of credible DC providers remaining after the proposed concentration, as well as the cost and risk involved in such a switch. For many MNOs (for example, those with large roaming volumes or high customisation requirements) the merged entity would effectively become an unavoidable trading partner, in particular given the essential nature of DC services. This makes it doubtful that post-merger such MNOs would be able to threaten credibly to cease purchases of DC (and also non-DC) services from the merged entity in an attempt to extract more favourable conditions. Hence, following the proposed concentration many MNOs and in particular Tier 1 MNOs would become more dependent on the DC services of the merged entity, which would decrease their bargaining power.

(462) While MNOs are generally of a larger size than DC providers, there is a significant asymmetry in the concentration levels between the two groups. Thus, the DC market has only a handful of DCHs with the Parties controlling around [90-100]*% of the market. On the other hand, there are nearly 800 GSM MNOs. This shows that the Parties have a much larger pool of existing and potential clients which they can target, which allows them to negotiate from a strong position.

(463) The market investigation has not confirmed that MNOs would have any other means at their disposal to countervail the likely negative effects of the proposed concentration.

(464) On this basis, the Commission dismisses the Notifying Party's argument in its Response to the SO that Tier 1 customers exercise countervailing power because of their size and sophistication and because the competition turns around contract renewal. Size and sophistication have relatively little value when there is no credible alternative in the market. As set out in section 6.1.3, the market investigation has demonstrated that Tier 1 MNOs do not consider any DC providers other than the Parties as credible competitors.

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421 See, for example, Horizontal Merger Guidelines, paragraph 67: "*it is not sufficient that buyer power exists prior to the merger, it must also exist and remain effective following the merger*".

422 Case T-282/02 *Cementbouw Handel & Industrie BV v Commission* [2006] ECR II-319. 230.

423 See footnote 416 above.

(465) The investigation has produced no indication of the likelihood of MNOs sponsoring entry of alternative DC providers if the proposed concentration were to go ahead. Hence, virtually no MNOs indicated that they would consider sponsoring entry in reaction to a 5-10% price increase by the merged entity.[424] Vodafone noted that the situation today is much different from the one in 2005 when it awarded its DC contract to the recently entered Syniverse. In particular, in 2005 the roaming business was smaller and Syniverse had already won its first Tier 1 customer in the EEA (that is to say SFR) and proven its readiness to undertake the required investments.[425] It is doubtful that today and post-merger a Tier 1 MNO would sponsor and switch to a new or existing DC provider unless that provider had a proven track record of serving Tier 1 customers.

(466) Similarly, according to the results of the market investigation, provision of DC services in-house is not considered to be a viable alternative for the vast majority of MNOs.

(467) As explained in recital (102), today virtually all MNOs outsource their DC services. Setting up a DC solution in-house would require significant resources and investments on the MNOs' side. In particular, to create an own DC platform MNOs would need to purchase and customise software and hardware solutions and to hire specialised resources.[426] MNOs would also have to establish VPN connections with the DC providers of each of their roaming partners, whereas for the outsourced DC service only a connection with one DC provider is necessary. Moreover, DC providers derive economies of scale from servicing hundreds of MNOs that would exceed the economies even of a large-sized MNO if it were to undertake DC in-house.[427] In general, DC is not part of the core activities of MNOs and requires specific expertise. These difficulties explain why during the market investigation virtually no MNOs indicated that they would consider carrying out DC in-house even assuming a 5-10% price increase post-merger.[428] Therefore, a threat to self-supply DC services by an MNO is likely to lack credibility during negotiations with the merged entity. On this basis, the Commission does not agree with the Notifying Party's arguments in the Response to the SO that the Commission should consider in-house provision of DC services as a credible alternative to MNOs.

(468) The only exception is Telefónica Spain which does DC in-house. Telefónica Spain explained that it started to provide in-house DC services a few years ago because it was cheaper than the standard DC contracts. After having taken that internalisation decision, the TSP billing system has been integrated with the in-house DC system[429]. The reasoning behind that decision was that Telefónica decided to provide in-house DC services years ago at a time when volume and the number of roaming partners were significantly lower. Today, such a decision would not make any sense. Vodafone, for example, states:

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424 Responses to question 20 of questionnaire Q1 – questionnaire to MNOs – Phase I.

425 Agreed minutes of the conference call with Vodafone of 6 February 2013, paragraph 12 [ID905].

426 Belgacom, response to question 23 of questionnaire Q1 – questionnaire to MNOs – Phase I [ID995].

427 Vodafone, response to question 23 of questionnaire Q1 – questionnaire to MNOs – Phase I [ID1233]. Also Orange "*does not consider it efficient to undertake DC service in-house*" (agreed minutes of the conference call with Orange of 6 February 2013, paragraph 12 [ID2307].).

428 Responses to question 20 of questionnaire Q1 – questionnaire to MNOs – Phase I.

429 Telefónica, response to question 25 of questionnaire Q1 – questionnaire to MNOs – Phase I [ID1064].

"We have had Opcos providing their own DC services but Group centralisation has led to use of a common solution, i.e. DC SP [DC service provider]. Data clearing is a high volume, low margin business with highly sophisticated entrenched providers (Syniverse and MACH). There would be substantial investment required by Vodafone to replicate the services available from these two entities. DC providers have economies of scale from servicing hundreds of networks that exceed the economies Vodafone could achieve despite its size.[430]"

(469) Vodafone continues:

"the cost of moving DC in-house for Vodafone is likely to be €10-15 million and take several years to implement.[431]"

(470) The Commission considers that if it is not worth it to move DC operations in-house for the largest EEA operator, namely Vodafone, then there is no rationale *a fortiori* for any other EEA operator.

(471) The market investigation has also not confirmed the ability of MNOs to exercise considerable power through the GSMA.

(472) First, only a negligible number of MNOs considered the working groups of the GSMA to constitute a viable forum to counter a potential price increase post-merger.[432]

(473) Second, the Parties themselves are associate members of the GSMA contributing their specialised technical expertise in the GSMA's working groups.[433] The interaction between MNOs and DC providers within the GSMA can be described as customer-vendor relationship, where the latter have an important say. During the market investigation concerns have been expressed that, post-merger, it would actually be the merged entity that would be in a position to influence the GSMA in developing DC guidelines to its favour.[434]

(474) Third, as described in recital (29), the GSMA standardises only certain aspects of DC services. It does not regulate many of the negotiated terms (and in particular SLAs), or tailor-made customisation requirements or commercial conditions.

(475) Therefore, it is unlikely that MNOs could exert a significant pressure on the provision of DC services through the GSMA.

(476) Finally, as described in section 6.1.6, the majority of MNOs expect the proposed concentration to affect their company and the price and quality of DC services. This also indicates that post-merger, customers do not expect to be able to exert sufficient countervailing buyer power on the merged entity.

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430 Vodafone, response to question 23 of questionnaire Q1 – questionnaire to MNOs – Phase I [ID1233].

431 Vodafone, response to question 24 of questionnaire Q1 – questionnaire to MNOs – Phase I [ID1233].

432 Responses to question 22 of questionnaire Q1 – questionnaire to MNOs – Phase I.

433 Agreed minutes of the conference call with GSMA of 23 November 2012 [ID1542].

434 Belgacom, response to question 86.3 of questionnaire Q1 – questionnaire to MNOs – Phase I: "*The merged entity would more specifically be able to strongly influence the development of any new, revised or adapted standards within the GSMA, including the imposition of certain features, services and/or standards that would lead to additional advantages that are unique or particularly beneficial to them*" [ID995].

Conclusion on countervailing buyer power

(477) On this basis, the Commission concludes that the countervailing buyer power would not sufficiently offset the likely significant impediment to effective competition resulting from the proposed concentration.

6.1.8. Other countervailing factor: entry

6.1.8.1. Views of the Notifying Party

(478) The Notifying Party submits that a number of providers of outsourced services for the telecommunications industry could easily and swiftly enter the DC market. This would include BICS, InfoBrain, IBM/Comptel, Gemalto, Aicent, Aricent, Comarch and Total Software Solutions.

(479) The Notifying Party claims that the barriers to new entry are low. Recent developments have served to reduce the costs of establishing a platform capable of handling large transaction volumes. In particular, the industry has moved away from the large mainframe computer systems in use at the time of the Syniverse/BSG Decision and competitors can now employ much less expensive "off the shelf" servers and software provided notably by InfoBrain.

(480) The Notifying Party estimates that the investment required for an entrant is as low as EUR […]* (EUR […]* for hardware and infrastructure and EUR […]* for annual software licence fees).[435] Further recurring annual costs are estimated as EUR […]* for up to […]* operators plus a cost per TAP record of around EUR […]*. The Notifying Party claims that typically, […]* months are needed to set up a DC offering.

(481) The Notifying Party also considers that a number of companies already providing services to MNOs areas possess suitable credibility and reputation to become DC service providers. One such company is BICS.

(482) The Notifying Party submits that the amount of DC specific knowledge required to enter the market is minimal. A new entrant in the DC market could easily comply with the GSMA standards. Furthermore, it claims that there are no restrictions related to the existence of patents or other intellectual property rights.

(483) As already indicated in recitals (288)-(289), the Notifying Party considers that there are not sufficient difficulties of customer switching and migration to constitute a barrier to entry.

(484) The Notifying Party does not believe that bundling of services by incumbents constitutes a barrier to entry. It states that in comparison to other providers in the telecommunications sector, Syniverse's product range is not material. In particular, when established in either the DC or FC market, it is easy to enter the other one, as the example of Nextgen demonstrates.

(485) The Notifying Party stresses that the Commission recognised the constraint that potential entry poses in the DC market when it cleared its merger with BSG in 2007.

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[435] The Notifying Party also indicates that annual labour costs amount to EUR […]*.

(486) In the Response to the SO, the Notifying Party argues that the Commission's claim that it is necessary for a new DC provider to be able to offer a range of products is not supported by the market investigation.[436]

6.1.8.2. The Commission's investigation and assessment

(487) As a preliminary observation, the Commission notes that this proposed concentration is very different from the concentration between Syniverse and BSG, which it cleared in 2007. The Commission could clear that concentration because Mach would remain as the strongest competitor to the merged entity and there were indications of potential entry into the DC market. The potential entry that the Commission identified was therefore an additional element that allowed it to clear the merger between Syniverse and BSG.

(488) This proposed concentration would eliminate the competitor, the presence of which was deemed crucial to clear the merger between Syniverse and BSG. In section 6.1.5., it is explained in great detail that smaller DC providers such as Comfone, which entered the market after the clearance of the Syniverse/BSG merger, would face difficulties in replacing the constraint that Mach is imposing on Syniverse today. Any additional new entrant would have to overcome all the barriers to expansion presented in that section, and would, in addition, need to launch DC operations to even start providing DC services to its first customers.

(489) According to the Form CO[437], the following elements are required in order to start a DC activity:

(1) a software platform for a wide array of clearing and roaming management services;

(2) hardware and infrastructure, including servers, electronic data transfer solution and a minimum data centre commitment (rack space, cage, IP address);

(3) a commodity database software; and

(4) a software license for a GSM TAP application based on the GSMA standard.

(490) Respondents to the market investigation[438] added the following elements that are also necessary in their view:

(5) setting up a development team;

(6) setting up a client support team;

(7) setting up the sales and marketing organisation;

(8) defining the operation procedures (methodology); and

(9) defining the business strategy, business plan and financing.

(491) When asked about the possibility to internalise the DC service, some MNOs provided relevant information about set up fees of a DC activity:

Vodafone:

436 Notifying Party's Response to the SO, paragraph 124

437 Form CO, paragraph 418.

438 Responses to questions 17 and 19 of questionnaire Q4 – questionnaire to actual competitors – Phase I.

"*The cost of moving DC in-house for Vodafone is likely to be €10-15 million and take several years to implement*"[439].

Belgacom:

"*Creating an own DC platform would indeed involve purchasing and customising both software and hardware solutions. The development of such a project and its implementation, including the deployment of a complex technical infrastructure, would also require skilled and dedicated resources*

[…]

it would necessarily be a costly exercise that would need to run over a substantial period of time (that could take up to 24 months or costly exercise that would need to run over a substantial period of time (that could take up to 24 months or even more).

Given the essential nature of the roaming service and DC services being situated at the heart of these services, Belgacom also considers that it would be unacceptable to take any risks with this type of service. Therefore, any self-developed and self-deployed solution would most likely need to go through a lengthy period of testing"[440].

(492) According to Comarch, any new business would have "*to have a better product or much better prices (40%-50% of market prices) or lot of money for acquisitions. If we have situation when no new technology forces customers to buy new products it could take 5-10 years to achieve significant position. In my opinion it's very difficult (almost impossible in organic way) to achieve this position on consolidated market like DC/FC market is at the moment*"[441].

(493) BICS itself considers that there is a big gap between DC providers such as Syniverse or Mach and small DC providers, because small DC providers do not have enough resources and achieve no or only minor economies of scale. BICS argued that in theory, small DC providers could invest in order to be able to serve Tier 1 customers, but this would be a significant and risky investment and it would take approximately ten years to get the same performance level as large DC houses like Syniverse and Mach.[442]

(494) The Commission also notes that a number of MNOs do not consider BICS as a potential alternative DC provider because of its structural links with Belgacom, an MNO and thus a competitor. A number of MNOs have expressed concern that if an MNO or big MNO group were to become a DC provider there would be a risk of it gaining a competitive advantage over other MNOs by having access to business sensitive information like traffic data, solutions used by their competitors, etc. According to the market investigation, a number of MNOs are concerned that even if

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439 Response to question 24 of questionnaire Q1 – questionnaire to MNOs – Phase I [ID2274].
440 Response to question 23 of questionnaire Q1 – questionnaire to MNOs – Phase I [ID995].
441 Response to question 20 of questionnaire Q4 – questionnaire to actual competitors – Phase I [ID976].
442 Agreed minutes of the meeting with Belgacom and BICS on 14 January 2013 [ID1968].

strict procedures are used to prevent such information leakages, it is very likely that such leaks will occur[443].

(495) On the basis of the evidence, the Commission considers that there are significant set up costs which create a barrier to entry for new DC service providers.

(496) Furthermore, in order to successfully enter and start exercising a competitive constraint in all tenders, an entrant would need to enter across different roaming-related services given that some MNOs have a preference for obtaining such services from the same provider. The ability to exert a competitive constraint in tenders only for MNOs who are willing to buy the services separately would not mean that such a competitive constraint would exist in all tenders given that price and quality are set based on individual negotiations.

(497) A significant proportion of MNOs, for example, source their requirements for DC and FC together: […]*% of Syniverse's customers and […]*% of Mach's customers bought DC and FC together in 2011. Two thirds of competitors consider that an FC solution is necessary in order to start a DC business[444].

(498) Internal documents from the Notifying Party also indicate that an offer entailing several different roaming services, such as DC and FC services, is important for attractiveness to customers. An email exchange within Syniverse shows the preference of some customers to buy FC and DC together in a bundle: "[…]*."[445]

(499) Another email discussion between Syniverse employees discusses: "[…]*."[446]

(500) Similarly, a significant proportion of MNOs source their requirements for DC and NRTRDE together: […]*% of Syniverse's customers and […]*% of Mach's customers bought DC and NRTRDE together in 2011. All competitors who responded to the market investigation submit that it is necessary to also offer a NRTRDE solution in order to start a DC business[447].

(501) An internal email exchange at Syniverse refers to the benefit of such a bundle of DC and NRTRDE: […]*"[448]

(502) Therefore, for MNOs who have a preference to buy services in a bundle, the entrant would have to enter across different services in order to compete with the merged entity to the same extent as Mach competes with Syniverse today.

(503) The Notifying Party argues in its Response to the SO[449] that the MNOs did not rank bundling very highly in the ranking of criteria taken into consideration when choosing DC provider, as set out in *Table 6*. The Notifying Party is interpreting this as meaning that the offer of bundled services is not important for MNOs. The Commission does not agree with this assessment. In spite of the list of priorities, some MNOs ranked other criteria higher in particular the fact that the DC provider offers a broad range of products and services. On the basis of the evidence submitted

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443 Responses to questions 24 and 25 of questionnaire Q8 – market test of remedies submitted on 26 March 2013 – Customers

444 Response to question 21of questionnaire Q4 – questionnaire to actual competitors – Phase I.

445 Email from […]*.

446 Email from […]*.

447 Response to question 21 of questionnaire Q1– questionnaire to competitors – Phase I.

448 Email from […]*.

449 Notifying Party's Response to the SO, paragraph 124

to the Commission, it is necessary for a new DC provider to be able to offer a range of products. In particular, the market test further confirmed the importance of a DC provider providing a range of related services. A number of responses to the market investigation also argued that a pure DC business would not constitute a viable standalone business if it did not include other complementary services such as financial clearing or other roaming services.[450]

(504) The Commission has examined whether entry is likely on the basis of the potential entry barriers, in particular economic, commercial or financial barriers, which are likely to expose potential competitors of the established undertakings to risks and costs sufficiently high to deter them from entering the market within a reasonable time or to make it particularly difficult for them to enter the market, thus depriving them of the capacity to exert a competitive constraint on the conduct of the established undertakings.[451] On the basis of that analysis, the Commission concludes that there are significant barriers to entry which render the likelihood of such entry low.

(505) This is confirmed by the market investigation which has not revealed any firm intention from new players to enter the DC market. The vast majority of respondents claimed that they did not expect any entry to occur in the next two years[452]. The few respondents claiming that entry is possible essentially named Nextgen as an entrant in 2013. Neustring was also mentioned but the Commission's investigation did not confirm the likelihood of timely entry by Neustring.

(506) Another option for entry would be sponsored entry. However, when asked about potential responses to the hypothetical possibility of the proposed concentration taking place and the merged entity raising its prices by 5-10%, sponsoring entry was not considered a viable option by any of them[453].

Conclusion on entry

(507) Considering the various and consistent pieces of evidence presented in this section, the Commission considers that sufficient, timely entry of new DC providers is unlikely. In the unlikely event that a new entrant would enter the DC market, the strong barriers to expansion, discussed in section 6.1.5., would make it impossible for the new entrant to grow to the extent that it would exert a similar competitive constraint as the Parties exert on each other today. This conclusion applies irrespective of whether the geographic scope of the market is worldwide or EEA-wide.

6.1.9. Conclusions

(508) On this basis, the Commission considers that the proposed concentration would significantly impede effective competition on the market for GSM DC for roaming through the creation of a dominant position, irrespective of whether the geographic scope of the market is worldwide or EEA-wide.

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450 Responses to questions 23 of questionnaire Q8 – market test of remedies submitted on 26 March 2013 – Customers and 19 of questionnaire Q9 – market test of remedies submitted on 26 March 2013 – Competitors.

451 Case T-282/02 *Cementbow Handel & Industrie BV v Commission*, 23 February 2006.

452 83% (19 out of 23) respondents to question 19.1 of questionnaire Q1– questionnaire to MNOs – Phase I.

453 0 out of 20 responses to question 20 of questionnaire Q1 – questionnaire to MNOs – Phase I.

6.2. Horizontal non-coordinated effects in the NRTRDE market

6.2.1. Introduction

(509) As explained in section 5.2.2, the Commission has left open whether there is a separate market for NRTRDE, or a market that encompasses NRTRDE and the data feeds from the DC activity that are used for fraud management and revenue assurance purposes.

(510) The Commission assesses in the following sections 6.2.2, 6.2.3 and 6.2.4, the horizontal effects of the proposed concentration in NRTRDE. The Commission starts its analysis on the separate NRTRDE market, and then sets out its analysis on the possible broader market that encompasses NRTRDE and the data feeds from the DC activity.

(511) On the NRTRDE market, the Commission examines the Parties' combined market position, which is evidenced in particular by their very high combined market shares maintained consecutively through several years (see section 6.2.2.). The Commission considers the risk of horizontal non-coordinated effects (see section 6.2.3.). The Commission considers the level of competition between the Parties and the fact that currently the Parties compete intensely with each other, with a strong offering not only in NRTRDE services but also a comprehensive suite of other products/services, in particular DC services (see recital (540) onwards). The Commission then examines the likely position post-merger and finds that it is unlikely that competitors will sufficiently challenge the Parties' position post-merger, due to the difficulties for customers to switch to a suitable provider (see recitals (551) onwards) and for competitors to expand their supply (see recitals (555) onwards). Then, the Commission examines the extent to which customers can exercise buyer power to countervail the effects of the proposed concentration (see recitals (567) onwards) and considers the likelihood of competitive entry (see recitals (574) below). The Commission finally considers the likely effects of the proposed concentration in a potential increase in prices or a reduction of quality of service (see recitals (565) onwards).

(512) On the broader market that encompasses NRTRDE and the data feeds from the DC activity, the Commission concludes that its assessment on the DC market applies (see section 6.1.9.).

(513) Finally, the Commission reaches its conclusion on the competition concerns in the NRTRDE market and the potential broader market that encompasses NRTRDE and the data feeds from the DC activity (see section 6.2.5.).

6.2.2. Market Shares

6.2.2.1. Views of the Notifying Party

(514) As in DC, the Notifying Party does not dispute the high combined market share of the Parties in NRTRDE. However, it states that in the contestable bidding market for NRTRDE services market shares do not reflect market power. Given that the contracts come up for renewal infrequently, the focus of competition at any point in time is on new tenders, rather than the total stock of all customers currently receiving the service in question, which merely reflects the accumulation of outcomes of historical tenders. Hence, the customer base of a competitor (that is to say, market share) is no indication of the competitive constraint that provider will exert on the Parties in future bids.

6.2.2.2. The Commission's investigation and assessment

(515) With regard to the relevance of market shares for the merger analysis, see section 6.1.2. and recital (199).

(516) On a separate market for NRTRDE, the market shares of the Parties and their competitors at worldwide and EEA-wide levels are as set out in Table 13.

Table 13: Market shares for the market of NRTRDE

	Globally			**EEA**		
	2010	2011	2012	2010	2011	2012
Syniverse	[30-40]*%	[30-40]*%	[30-40]*%	[50-60]*%	[50-60]*%	[50-60]*%
Mach	[40-50]*%	[50-60]*%	[40-50]*%	[40-50]*%	[40-50]*%	[40-50]*%
Parties combined	[80-90]*%[454]	[80-90]*%	[80-90]*%	[90-100]*%	[90-100]*%	[90-100]*%
Comfone	[0-5]*%	[0-5]*%	[0-5]*%	[0-5]*%	[0-5]*%	[5-10]*%
EDCH	[5-10]*%	[5-10]*%	[5-10]*%	[0-5]*%	[0-5]*%	[0-5]*%
RoamEx	[5-10]*%	[5-10]*%	[0-5]*%	[0-5]*%	[0-5]*%	[0-5]*%
ARCH	[0-5]*%	[0-5]*%	[0-5]*%	[0-5]*%	[0-5]*%	[0-5]*%

Source: Notifying Party' estimates based on operator count (Annex NRTRDE 7.1 to the Form CO)

(517) Table 13 shows that at the global level in 2012, the merged entity's market share would be close to [90-100]*%. The increment brought about by the proposed concentration would be [30-40]*%. None of the remaining competitors would reach a [10-20]*% market share. At the EEA-wide level, on the basis of 2012 figures, the merged entity would have a market share of over [90-100]*%, whilst the merger increment would be [40-50]*%. In the EEA, only Comfone would remain as a competitor with a market share of [5-10]*%.

(518) Both at the global and EEA levels, the increase in concentration brought about by the proposed concentration would be significant. The post-merger HHI would be far above 2 000 ([…]* globally and […]* EEA-wide) and the ΔHHI would be above 2 300.

(519) Hence, the Parties' combined market share and the post-merger level of concentration in the NRTRDE market would be very high and indicative of a dominant position of the merged undertaking. The Commission has investigated whether, in the light of the market features of NRTRDE, those market shares give a correct indication of the effects of the proposed concentration. The Commission concludes that this is the case.

[454] The 2010 figures for Mach include the market share of Optel which was acquired by Mach.

6.2.3. Horizontal non-coordinated effects in the narrower market for NRTRDE services

6.2.3.1. Views of the Notifying Party

(520) The Notifying Party submits that the proposed concentration would, despite the very high combined market share, not result in a significant impediment to effective competition. The arguments to support that claim are similar to the arguments put forward for DC. The Notifying Party submits that the NRTRDE market has the characteristics of a contestable bidding market:

(a) there are a number of existing and credible competitors, such as Comfone, EDCH, RoamEx, ARCH and Nextgen;

(b) MNOs organise tender processes infrequently, normally every 2 to 3 years;

(c) there are no meaningful technical or other inherent barriers to expansion by existing rivals and the technology is scalable; this is illustrated by the rapid growth of Comfone since it entered into the market.

(521) The Notifying Party submits that switching NRTRDE providers is easy and occurs fairly frequently. The Notifying Party claims that the migration of suppliers is easy given the standardised nature of NRTRDE. In its view, the process takes about […]* days, whilst switching costs are generally paid by NRTRDE providers and not by MNOs.

(522) The Notifying Party also claims that customers could exert countervailing buyer on the merged entity.

(523) The Notifying Party finally submits that there are low barriers to new entry in the NRTRDE market. In its view, there are a number of potential competitors such as Comptel, Agilis, Allround and Aricent.

(524) In its Response to the SO, the Notifying Party considers that as NRTRDE services are often provided alongside DC services, the NRTRDE data flow can be a substitute for data arising from the DC process and negotiations for DC and NRTRDE often take place together. Accordingly, each of the arguments that the Notifying Party has made regarding the impact of the proposed concentration on the DC market can be read as also being applicable to any potential NRTRDE market.[455]

6.2.3.2. The Commission's investigation and assessment

(525) As a preliminary observation, the Commission's assessment on the NRTRDE market cannot ignore the close links that exist between NRTRDE and DC.

(526) As explained in section 5.2.2.2., NRTRDE is a key data feed for MNOs to contain roaming fraud and undertake revenue assurance. Although to an extent technically distinct from DC, the activity shares the same data sources, namely Call Data Records that foreign subscribers leave when using visited networks abroad. A NRTRDE file can be seen as a dressed-down version of a TAP file that includes call details but omits tariff information. As Orange explains: *"The data used is the same data, NRTRDE is supposed to be delivered more quickly and excludes some charging information"*.[456] Other customers give similar descriptions[457], as do virtually all

[455] Notifying Party's Response to the SO, paragraph 137.

[456] Response to question 73 of questionnaire Q6 - questionnaire to MNOs – Phase II [ID1932].

[457] Responses to question 73 of questionnaire Q6 - questionnaire to MNOs – Phase II.

NRTRDE competitors.[458] As explained in section 5.1.2, MNOs then exchange those files for fraud management and revenue assurance purposes. Under GSMA rules, that exchange would have to take place within 4 hours after the call event. Accordingly, the home MNOs that receive those files obtain visibility in unusual roaming patterns of their subscribers within 4 hours as opposed to the 36 hours that are typically associated with the creation and transmission of High Usage Reports from the DC activity.

(527) In its own submissions[459], the Notifying Party undertakes the competitive assessment of DC and NRTRDE together. This is already a strong illustration of the fact that the two activities are closely linked.

(528) The Commission's market investigation shows that that approach is correct. During the investigation, customers stressed the importance of the technical links between the two activities. For instance, they underline the possibility for them to set up a common interface to exchange and receive data from the DC and NRTRDE platforms of outsourced providers.[460] They also explain that the output from the DC and NRTRDE activity can be used as back-up data feeds, for instance for revenue assurance purposes.[461] The Notifying Party accepts those links.[462]

(529) In addition, the Notifying Party explains that when looking for a NRTRDE provider, customers look for similar characteristics to those that they seek from their DC provider.[463] Rather than sending individual NRTRDE files to each of the MNOs whose subscribers have roamed on the visited network, the visited MNO can send its NRTRDE files to an outsourced service provider such as the Parties. Those providers will ensure that each of the relevant home MNOs receive their NRTRDE files within the required 4 hour time period. They validate the correctness of the records, produce error and file delivery reports and route the records to the home MNO.

(530) As is the case with DC services, the demand for NRTRDE by outsourced providers is driven by enhancement of administrative efficiency and mitigation of the risk of revenue loss. Again as with DC services, customers that purchase the NRTRDE data-flow can purchase related reporting tools that the Parties consider to be "add-ons" to the NRTRDE.

(531) Virtually all NRTRDE providers are DC providers. This includes all NRTRDE providers that are active in the EEA.

(532) On top of all this, a majority of customers purchase DC and NRTRDE together from one provider. This proportion amounts to almost […]*% for Syniverse's customers and as high as […]*% for Mach's customers.[464] Overall, […]*% of their top customers that responded to the Commission's questionnaires purchase those services

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458 Responses to questions 44 and 49 of questionnaire Q7 - questionnaire to competitors – Phase II.

459 Notifying Party, Response to the Decision opening the proceedings.

460 Response to question 73 of questionnaire Q6 - questionnaire to MNOs – Phase II.

461 See for instance, America Movil and PCCW Mobile HK, responses to question 73 of questionnaire Q6 - questionnaire to MNOs – Phase II [ID1756] & [ID1770].

462 Notifying Party, response to the request for information of 21 December 2012, point 36: *"As recognised in the (Article 6(1)(c) Decision, NRTRDE services are often provided alongside DC services, and the NRTRDE data flow can be a substitute for data arising from the DC process."*

463 Form CO, paragraph 704 onwards.

464 Form CO, *Tables 12* and *13*.

together.[465] Some customers explained that DC and NRTRDE are negotiated by the same teams within the MNOs and the DC and NRTRDE providers.[466]

(533) Comfone and NextGen confirm that they identify the same purchasing pattern with their DC/NRTRDE customers:

"Given that DC and NRTRDE share the same data sources, DC customers are usually also provided with NRTRDE." (Comfone) [467]

"Even if there is not a full integration between DC and NRTRDE, NRTRDE is usually provided by the DCH." (Nextgen)[468]

(534) Customers explain that this reflects their preference to use a single source for their DC and NRTRDE supplies:

Belgacom:

"Belgacom considers that the use of the same provider allows us to avoid additional connections with other providers to be established. Furthermore, the data sources used for both services are the same (except for the rating information not yet included in the NRTRDE feeds (...) For these reasons, Belgacom considers that its NRTRDE provider should be its DC provider."[469]

Millicom:

"There is a clear benefit of NRTRDE being provided by the Data Clearing House. The VPN link is already set up, CDR conversion is already in place, legal framework is there and often there is the benefit of scale buying multiple services from one supplier.[470]

Maxis Communications:

"To purchase NRTRDE from a non-DC provider would mean additional cost in setting up a VPN link between the NRTRDE and the DC for the TAP file feed."[471]

SFR:

"It is easier and better to have the same provider"[472]

Telenor:

"There is simplicity with one vendor for similar services and processes."[473]

TDC:

"It makes most sense (if not only makes sense) to get it from the same provider"[474]

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465 Response to question 72 of questionnaire Q6 - questionnaire to MNOs – Phase II.

466 Bouygues and Austria Telekom, responses to question 73 of questionnaire Q6 - questionnaire to MNOs – Phase II [ID1914] & [ID1875].

467 Agreed minutes of the conference call with Comfone on 15 January 2013 [ID2317].

468 Agreed minutes of the conference call with Nextgen on 22 January 2013 [ID2223].

469 Responses to questions 73 and 74 of questionnaire Q6 – questionnaire to MNOs – Phase II [ID1903].

470 Response to question 73 of questionnaire Q6 – questionnaire to MNOs – Phase II [ID2337].

471 Response to question 74 of questionnaire Q6 – questionnaire to MNOs – Phase II [ID1749].

472 Response to question 74 of questionnaire Q6 – questionnaire to MNOs – Phase II [ID2226].

473 Response to question 74 of questionnaire Q6 – questionnaire to MNOs – Phase II [ID2247].

474 Response to question 72 of questionnaire Q6 – questionnaire to MNOs – Phase II [ID2206].

(535) The Parties' internal documents reflect that negotiations for DC and NRTRDE take place together and that customers request and the Parties discuss bundled offers for the two services.[475]

(536) The review of the Parties' DC contracts also confirms that, in the EEA, the vast majority of DC contracts include NRTRDE[476].

(537) Finally, the analysis of the Bidding Data indicates that DC providers in the tender process at times even simultaneously bid for DC services and NRTRDE[477].

(538) The Commission has to take those close links into account when conducting its competitive assessment on the NRTRDE market.

(539) The Commission has reviewed the Notifying Party's arguments in its Response to the SO and does not agree with them. The Commission's assessment shows that:

(1) The Parties compete head to head with each other in NRTRDE and the proposed concentration would remove Syniverse's strongest and close competitor;

(2) Customers would face barriers to switch to smaller alternative NRTRDE providers;

(3) Smaller NRTRDE providers are unlikely to increase supplies to a level where they can replace the constraint that Mach currently exerts on Syniverse;

(4) There are no indications that customers could exert countervailing buyer power; and

(5) There are no indications that there would be timely and sufficient entry that would countervail the expected negative effects of the proposed concentration on the NRTRDE market.

The Parties are each other's closest competitors

(540) The Commission considers that NRTRDE services are differentiated products, similar to DC services, for the purpose of the competition analysis in accordance with paragraph 28 of the Horizontal Merger Guidelines. NRTRDE is a critical service that allows MNOs to contain roaming fraud. Roaming fraud is a significant issue, amounting to EUR 7 thousand million in 2012.[478] NRTRDE is of great significance for MNO, in their capacity as both visited and home network MNOs. On the visited network end, NRTRDE files need to be exchanged within 4 hours in order to shift financial liability for this potentially large fraud from the visited MNO to the home MNO. At the receiving network end, home networks use NRTRDE as a key input for fraud management and revenue assurance.

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475 See, for instance, e-mail from […]*.

476 For Syniverse, […]* out of the […]* EEA DC contracts reviewed include NRTRDE. For Mach, […]* out of […]* EEA DC contracts include NRTRDE.

477 Out of the […]* tenders reported by Syniverse, Syniverse simultaneously bid for NRTRDE in […]* tenders. Syniverse won […]* out of these […]* tenders and for these contracts won by Syniverse, the start date reported for DC and NRTRDE is the same. Out of the […]* tenders reported by Mach, Mach simultaneously bid for NRTRDE in […]* tenders. Mach won […]* out of these […]* tenders, and for these contracts won by Mach the start date for the DC and NRTRDE contract is the same.

478 Notifying Party's estimate, Form CO, paragraph 97.

(541) The Commission's investigation confirmed that the NRTRDE service is not as "standard" and "simple" as the Notifying Party suggests: as in DC, customers require a degree of customisation of NRTRDE reporting and other value-added tools in order to ensure full consistency between the output of the NRTRDE process and their internal processing systems.[479] Those customisation requirements add a layer of technical complexity to the critical NRTRDE process.

(542) All competitors of the Parties in NRTRDE confirm that quality and reliability is of great importance in NRTRDE.[480] All of them confirm that Tier 1 MNOs have particularly stringent requirements when it comes to quality and reliability of NRTRDE services.[481] As in DC, a proven track record of serving other Tier 1 MNOs is important if a NRTRDE provider wishes to bid for the business of Tier 1 MNOs. As TNS explains:

"Reputation and reliability of the NRTRDE provider as it pertains to Tier 1 MNOs is a differentiating factor as the volume of TD.35 records generated by a Tier 1 MNO is exponentially higher (along with financial risk) of that than a Tier 2 or 3 MNO, therefore reliability and a proven track record to deliver uninterrupted service is paramount.

Quality of service is determined by the timeliness of delivery of data. Delivering records within GSMA defined timeframes for all MNOs, including Tier 1 MNOs, should be a differentiating factor when choosing an NRTRDE provider. An NRTRDE provider should have the infrastructure and experience necessary to handle the large amount of TD.35 files that are generated by a Tier 1 operator."[482]

(543) The Parties' own internal documents also reflect that quality of NRTRDE services is important in commercial negotiations. For instance: the following email from […]* to […]* of 16 February 2011 states that: *"*[…]**.*"

(544) Customers therefore look for a trustworthy, reputed NRTRDE provider that has the resources in place to offer a high-quality and reliable service. Those market characteristics need to be taken into account when assessing the likely effects of the combination of Syniverse and Mach's activities in NRTRDE.

(545) Syniverse and Mach occupy very similar positions in the NRTRDE market. Both of them are long-established players that have been present on the DC market since its very inception. They have developed extensive expertise, an established reputation and long-standing relationships with their customers. Their market shares and revenues are very similar, both at the EEA and worldwide levels. They also offer a comprehensive suite of telecommunication products and services to MNOs, including FC, revenue assurance/fraud management products. Importantly, they have a significant position in DC services, which given the links between DC and NRTRDE outlined in section 5.1.2, is particularly important for customers.[483]

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479 Responses to question 63 of questionnaire Q6 – questionnaire to MNOs – Phase II.

480 Responses to question 43 of questionnaire Q7 – questionnaire to competitors - Phase II.

481 Responses to question 43 of questionnaire Q7 – questionnaire to competitors - Phase II.

482 TNS, response to question 43 of questionnaire Q7 - questionnaire to competitors - Phase II [ID2333].

483 As demonstrated above, the Parties' internal documents reflect the importance of bundled offers in negotiations for NRTRDE.

(546) Syniverse and Mach are widely viewed by customers and competitors as the two main providers of NRTRDE services.[484] The Parties' customer information as well as the Switching Data they have provided confirm that they are the only providers that offer their services to the full range of large, mid-sized and small MNOs.[485]

(547) The Commission's market investigation confirms that the smaller competitors to the Parties exert a far less significant constraint on the Parties than the Parties exert on each other in the bidding process for NRTRDE services. In the last five years, virtually none of the Parties' top customers have considered bids from smaller alternative suppliers such as Comfone, Nextgen or RoamEx.[486] The very small minority that did are small MNOs.[487]

(548) Switching data between 2009 and 2012,[488] although less representative, show the same pattern. Although a switch to Comfone occurred, it concerned relatively small MNOs.[489] As in DC, Tele2 is the largest customer account that Comfone won for NRTRDE. As explained in section 5.1.5, Tele2 is by no means comparable to the larger customers that the Parties are also able to serve and is considered by Comfone itself as an *"easy customer with little customisation requirements."*[490] That switching pattern therefore does not negate the provisional conclusion that the Parties are the only providers that are able to fulfil the quality and other requirements of NRTRDE customers, especially large Tier 1 MNOs.

(549) The data indicate that the constraint that EDCH and RoamEx exert is even smaller.[491] In the time period observed, that is to day between 2009 and 2012, EDCH has only won […]* customers from the Parties, all of which are based in Africa or Asia. It has lost a total of […]* customers to the Parties. Customer switching between the Parties and RoamEx only take place outside the EEA. Again, RoamEx lost more customers to the Parties ([…]*) than it won ([…]* in the US).

(550) Based on recitals (540) to (549) above, the Commission considers that Syniverse and Mach currently compete head to head in the NRTRDE market and that Comfone and other smaller competitors do not exert a constraint that is comparable to the constraint that the Parties exert on each other.

Customers have limited possibilities to switch to smaller NRTRDE providers

(551) As follows from section 6.2.3, customers look for a trustworthy, reputed NRTRDE provider that has the resources in place to offer a high-quality and reliable service.

(552) The investigation confirms that the proposed concentration would remove Mach as the only other credible supply source for NRTRDE and that customers would face barriers to switch to alternative suppliers. As explained in section 6.2.3, virtually

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484 Responses to question 87 of questionnaire Q1 - questionnaire to MNOs – Phase I, to question 2 of questionnaire Q4 – questionnaire to actual competitors – Phase I and to question 2 of questionnaire Q5 – questionnaire to potential competitors – Phase I.

485 Form CO, Annex 8.6, and Parties' response to the request for information of 20 December 2012, Annex 15.

486 Responses to question 69 of questionnaire Q6 - questionnaire to MNOs – Phase II.

487 Namely P4 Poland [ID1746], Bite Latvija [ID2190] and Maxis Communications [ID1749].

488 Parties' response to the request for information of 21 December 2012, Annex 15.

489 The switching customers are […]*.

490 Agreed minutes of the conference call with Comfone on 15 January 2013 [ID2317].

491 Parties' response to the request for information of 21 December 2012, Annex 15.

none of the Parties' top customers have considered asking for bids from the smaller NRTRDE providers such as Comfone, NextGen and RoamEx in the past five years.[492] The Commission considers that this reflects a general reluctance of those customers to switch to those smaller providers.

(553) The Commission has also taken into account in its assessment the close links that exist between the NRTRDE and DC markets. As explained in recital (532) onwards, the majority of customers purchase NRTRDE and DC together from one provider. Customers express a preference to use a single source for those two services. As a result, any decision of a customer to switch to an alternative NRTRDE provider would be taken in the light of the synergies that would be lost if that customer would separate its DC provider from its NRTRDE provider. Customers that truly wish to stick to one single supply source for DC and NRTRDE would even only switch for those two services together. This is particularly relevant in the light of the limited cost of outsourced NRTRDE services,[493] which makes it even less likely that customers would switch to smaller NRTRDE providers without severing their links with their DC provider. The Commission demonstrated in section 6.1.4 that the proposed concentration would remove the only alternative supply source for DC services, leaving customers with no suitable alternatives to the merged entity. This would, in turn, make it difficult for customers to switch to alternative NRTRDE suppliers.

(554) For the minority of customers that do not purchase NRTRDE and DC from the same provider, the key question is whether the providers that offer NRTRDE on a stand-alone basis would be able to scale up their operations to such an extent that they can replace the constraint that Mach exerts on Syniverse in NRTRDE today. The Commission will explain in the next section that this would be unlikely.

Smaller competitors are unlikely to increase supplies

(555) The resources that a NRTRDE provider needs to offer NRTRDE are similar to those for DC namely: hardware, software, personnel and financial resources.

(556) Past experience in the NRTRDE market indicates that the expansion of smaller competitors on this market is slow. One obstacle that smaller NRTRDE providers face in expanding their operations and in challenging the entrenched position of the Parties is that a limited number of NRTRDE agreements come up for renewal. The Parties' own internal documents reflect that smaller competitor face obstacles in this regard:

"[…]*."[494]

(557) Any constraint that smaller competitors may exert outside of the formal bidding process depends on the skills and resources that they have in place to be considered a credible alternative to the Parties. In this regard, the obstacles that a smaller competitor such as Comfone faces to expansion in NRTRDE are similar to those in DC.

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492 Response to question 69 of questionnaire Q6 - questionnaire to MNOs – Phase II.

493 The total revenues for the parties in NRTRDE are EUR […]* million worldwide and EUR […]* million in the EEA (Form CO, Tables 48 and 49). These revenues are spread over hundreds of customers.

494 Syniverse email […]* and others of 7 December 2011, discussing Comfone's bid for […]*.

(558) The Parties' internal documents underline the fact that Comfone's software is considered standard and that this prevents it from credibly offering high-quality service levels, including for NRTRDE.

"[…]*" (emphasis added) [495].

(559) Therefore, investments by Comfone in its software seem necessary for it to expand its operations on this market and exert a credible constraint on the Parties.

(560) The Commission also considers it unlikely that Comfone would be able to increase its pool of human resources within the next two years to exert such a constraint. The Parties are able to use their extensive common personnel base in DC and NRTRDE to offer NRTRDE services. The Parties also confirm that they use their human resources in this manner.[496] Comfone employs 90 people for the totality of its services, including services other than DC, FC and NRTRDE. Given this shared use of human resources, the barriers that Comfone would face in expanding its operations are the same as it would face in expanding its DC operations. As explained in section 6.1.5.3., in order for Comfone to have the personnel in place that would allow it to replace the constraint that Mach exerts on Syniverse today, Comfone would have to expand its personnel base by a magnitude that should be considered as unrealistic.

(561) Importantly, the fact that the proposed concentration would give the merged entity a near-monopoly position in DC is bound to have effects on Comfone's ability to compete on the NRTRDE market as well. The majority of competitors refer to the combination of the Parties' DC and NRTRDE activities as one of the barriers to expansion in NRTRDE.[497] Those competitors highlight that, in a context where customers tend to single-source their DC and NRTRDE supplies, the increased ability of the merged entity to bundle those services together would make it significantly more difficult for them to compete.[498] That barrier to Comfone's expansion in NRTRDE would be significantly increased as result of the proposed concentration.

(562) All of the considerations presented above in recitals (556) to (561), would apply with stronger force to even smaller competitors, such as NextGen and RoamEx, which have a far weaker starting position in NRTRDE than Comfone.

(563) NextGen has just entered the NRTRDE market and offers NRTRDE combined with its DC offering. NextGen's NRTRDE offering is therefore to a large extent untested with customers. The scale of Nextgen's NRTRDE operations is marginal on all counts. Hence, the rate at which NextGen would have to increase its human and other resources in order to constrain Syniverse as Mach does today, would be even more unrealistic than what would be required from Comfone. In addition, NextGen would also face a merged entity with a near-monopoly position in both DC and NRTRDE. This would significantly increase the obstacles it faces in expanding its NRTRDE operations even further.

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495 See, for instance Syniverse email […]* to […]* of 12 December 2011, discussing Comfone's bid for […]*.

496 See, for instance, the parties' response to the request for information of 21 December 2012, paragraphs 34 onwards (for Mach) and paragraphs 38 onwards (for Syniverse).

497 Responses to question 93 of questionnaire Q4 – questionnaire to actual competitors – Phase I.

498 See footnote 497.

(564) RoamEx does not have any NRTRDE activities in the EEA. The Switching Data for 2009-2012 actually show that outside the EEA, it has lost significantly more NRTRDE customers to the Parties than it has won.[499] Importantly, it is also not a DC provider. The combination of the Parties' DC and NRTRDE offerings is bound to have an even stronger impact on RoamEx. The majority of customers already indicate that they would not purchase NRTRDE from a provider that is not a DCH.[500] RoamEx is exactly such a provider and customers highlight RoamEx' lack of a DC offering as a weakness.[501] That relative weakness would be aggravated as a result of the proposed concentration, where the Parties would combine their very strong market positions in both DC and NRTRDE. The Commission therefore also considers it unlikely that post-merger, RoamEx could constrain Syniverse in the same manner as Mach does currently.

Likely effects of the proposed concentration in NRTRDE

(565) The vast majority of customers expect that the proposed concentration would have a negative effect on price and/or quality in NRTRDE.[502]

(566) During the market investigation, customers underlined the links between their concerns in DC and NRTRDE:

P4:

"NRTRDE is very close to DCH services, so whatever happens with DCH, the same may with NRTRDE."[503]

TDC:

"As we believe that NRTRDE and DC services are most easily supplied together, the competition effects are similar to the ones for the market for DC services."[504]

No countervailing buyer power

(567) It is not likely that post-merger, customers would be able to exert a degree of buyer power that could countervail the likely negative effects of the proposed concentration in NRTRDE.

(568) While MNOs are generally of a larger size than NRTRDE providers, there would be a significant asymmetry in the concentration levels between the two groups. Thus, the NRTRDE market would only have a handful of NRTRDE providers with the merged entity controlling around [90-100]*% of the market. On the other hand, there are nearly 800 GSM MNOs. This shows that the Parties have a much larger pool of existing and potential clients to which they can switch, which allows them to negotiate from a strong position.

(569) None of the strategies that the Notifying Party has identified for MNOs to exert countervailing buyer power after the proposed concentration has been confirmed during the Commission's investigation:

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499 Parties' response to the request for information of 21 December 2012, Annex 15.

500 Responses to question 74 of questionnaire Q6 - questionnaire to MNOs – Phase II.

501 Responses to question 91 of questionnaire Q1 - questionnaire to MNOs – Phase I.

502 Responses to question 91 of questionnaire Q1 - questionnaire to MNOs – Phase I and to question 77 of questionnaire Q6 - questionnaire to MNOs – Phase II.

503 P4 Poland, response to question 77 of questionnaire Q6 - questionnaire to MNOs – Phase II [ID1746].

504 TDC, response to question 77 of questionnaire Q6 - questionnaire to MNOs – Phase II [ID2206].

(570) Given the technical complexity of undertaking NRTRDE in-house as compared to the cost of outsourcing it, the option for MNOs to undertake NRTRDE in-house is not likely to be credible. No customer confirmed that they would consider undertaking the activity in-house if prices for NRTRDE were to increase.[505]

(571) No MNO has identified a potential entrant in NRTRDE.[506] Hence, it is unlikely that they could sponsor entry in NRTRDE to countervail any negative effects of the proposed concentration in NRTRDE.

(572) It is also unlikely that MNOs could credibly use the threat to not purchase other services from the merged entity should it seek to increase the price or decrease the quality of its NRTRDE services. Given its near-monopoly position in DC and NRTRDE and the lack of suitable alternatives, the merged entity would become an unavoidable trading partner for those critical services for MNOs. This would make it unlikely that customers could resist its attempts to increase prices or decrease quality in NRTRDE.

(573) All of these findings are confirmed by the fact that the vast majority of Tier 1 MNOs expect the proposed concentration to have a negative effect on price and/or quality in NRTRDE.[507]

No likely timely and sufficient entry and expansion

(574) The Commission's investigation has not confirmed any firm intention of the companies identified by the Notifying Party to enter into NRTRDE. In fact, the investigation has not confirmed a firm intention of any company to enter into NRTRDE.[508] Virtually no customer expects further entry in NRTRDE to occur in the next two years.[509]

(575) Past experience suggests that such entry would be unlikely. As regards past occurrences of entry of non-specialist fraud management services providers into the NRTRDE, the Notifying Party itself notes that it is "*unable to identify a concrete example of this kind of entry*"[510]. Entry by such and other types of service providers seems unlikely given the investment needed to enter into NRTRDE compared to the very limited revenue base for those services.[511]

(576) Moreover, given the fact that DC and NRTRDE services are closely linked and to a large extent purchased together, any new entrant would face a merged entity with a near-monopoly position in DC, which it could use to bundle NRTRDE services to its DC offering. This bundling would increase the barriers to expansion into NRTRDE and decrease the likelihood of timely and sufficient entry even further.[512]

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[505] Responses to question 76 of questionnaire Q6 - questionnaire to MNOs – Phase II.

[506] Responses to question 71 of questionnaire Q6 - questionnaire to MNOs – Phase II.

[507] Responses to question 91 of questionnaire Q1 - questionnaire to MNOs – Phase I and to question 77 of questionnaire Q6 - questionnaire to MNOs – Phase II.

[508] Responses of to question 22 of questionnaire Q5 - questionnaire to potential competitors – Phase I.

[509] Responses to question 70 of questionnaire Q6 - questionnaire to MNOs – Phase II.

[510] Form CO, paragraph 777.

[511] The total revenues for the parties in NRTRDE are EUR […]* million worldwide and EUR […]* million in the EEA (Form CO, *Tables 48 and 49*). These revenues are spread over hundreds of customers.

[512] As confirmed by the competitors' responses to question 93 of questionnaire Q4 - questionnaire to actual competitors – Phase I.

Conclusion

On this basis, the Commission considers that the proposed concentration would significantly impede effective competition through the creation of a dominant position in the market for NRTRDE.

6.2.4. Horizontal non-coordinated effects in the broader market for NRTRDE and DC data feeds

(577) As set out in section 5.2.2, the Commission left open the question whether NRTRDE may belong to the same market as the data feeds from the DC services that are used for fraud management and revenue assurance purposes.

(578) On such a broader market, NRTRDE would be by far the smaller fraction of that market. The market would mostly be accounted for by the data feeds from the DC service. The Commission already concluded in section 6.1.9 that the proposed concentration would significantly impede effective competition on the DC market. Hence, the proposed concentration would also significantly impede effective competition on the broader market that encompasses NRTRDE and feeds from the DC service.

6.2.5. Conclusions

(579) On this basis, the Commission concludes that the proposed concentration would lead to the creation of a dominant or near-monopoly position and thus significantly impede effective competition on both a separate market for NRTRDE and a market that encompasses NRTRDE and the data feeds from DC that are used for fraud management and revenue assurance purposes.

6.3. Horizontal non-coordinated effects in the FC market

6.3.1. Introduction

(580) As explained in section 5.2.3, the Commission has left open whether in-house provision of FC should be considered as part of the relevant market.

(581) The Commission assesses the horizontal effects of the proposed concentration in FC services. The Commission starts by examining the Parties' combined market position under both relevant markets (see section 6.3.2 below) and then sets out its analysis first on the narrower market excluding in-house provision (see section 6.3.3. below) and then on the broader market encompassing also in-house provision (see section 6.3.4 below).

(582) On the market excluding in-house provision of FC services, the Commission considers the level of competition in the relevant market and the fact that currently the Parties' competitors seem to be able to exert a certain degree of competitive constraint on the Parties and to represent a more credible alternative for customers to switch to than in the DC market (see section 6.3.3.1). The Commission then examines the extent to which customers can exercise buyer power to countervail the effects of the proposed concentration by switching in-house (see section 6.3.3.2) and considers the likelihood of competitive entry and expansion (see section 6.3.3.3.).

(583) On the broader market that encompasses in-house provision of FC, the Commission concludes that its assessment on the narrower market excluding in-house provision applies (see section 6.3.4.).

(584) Finally, the Commission reaches its conclusion on the competition concerns in the market for FC services, both excluding and including in-house provision (see section 6.3.3.4 below

6.3.2. Market Shares

6.3.2.1. Views of the Notifying Party

(585) As in DC and NRTRDE, the Notifying Party does not dispute the high combined market share of the Parties in both alternative relevant markets. However, it states, similarly as for DC and NRTRDE, that in the contestable bidding market for FC services market shares do not reflect market power. Given that the contracts come up for renewal infrequently, the focus of competition at any point in time is on new tenders, rather than the total stock of all customers currently receiving the service in question, which merely reflects the accumulation of outcomes of historical tenders. Hence, the customer base of a competitor (that is to say, market share) is no indication of the competitive constraint that provider will exert on the Parties in future bids.

6.3.2.2. The Commission's investigation and assessment

(586) With regard to the relevance of market shares for the merger analysis, see recitals (198) and (199).

(587) On the market for FC for roaming excluding in-house provision, the market shares of the Parties and their competitors at EEA and worldwide level are as set out in Table 14:

Table 14: Market shares for the market of FC services excluding in-house

	Globally			EEA		
	2010	2011	2012	2010	2011	2012
Syniverse	[20-30]*%	[10-20]*%	[10-20]*%	[30-40]*%	[30-40]*%	[20-30]*%
Mach	[60-70]*%	[60-70]*%	[60-70]*%	[40-50]*%	[40-50]*%	[40-50]*%
Parties combined	[80-90]*%	[80-90]*%	[80-90]*%	[80-90]*%	[70-80]*%	[60-70]*%
Comfone	[5-10]*%	[5-10]*%	[5-10]*%	[10-20]*%	[10-20]*%	[10-20]*%
EDCH	[10-20]*%	[5-10]*%	[5-10]*%	[0-5]*%	[0-5]*%	[0-5]*%
NextGen	[0-5]*%	[0-5]*%	[0-5]*%	[5-10]*%	[10-20]*%	[10-20]*%
ARCH	[0-5]*%	[0-5]*%	[0-5]*%	[0-5]*%	[0-5]*%	[0-5]*%

Source: computation on the basis of the Notifying Party' estimates based on operator count (Annex FC 7.2 to the Form CO)

(588) At the global level, the Parties' combined market share was consistently over [80-90]*% over the years 2010 to 2012. The increment brought about by the proposed concentration would be about [20-30]*%. None of the other market players would reach a [10-20]*% market share. At the EEA level, the Parties' combined market share dropped to just below [70-80]*% in 2012. The merger increment would be

about [30-40]*%. Comfone and Nextgen have gained a market share of just below [20-30]*% and above [10-20]*% respectively over the last couple of years.

(589) Both at the global and EEA levels, the increase in concentration brought about by the proposed concentration would be significant. The post-merger HHI would be far above 2 000 (respectively 6 824 and 5 190) and the ΔHHI would be above 2 300. Therefore none of the presumptions set out in paragraphs 18 and 20 of the Horizontal Merger Guidelines as to the low likelihood of competition concerns applies in this case.

(590) On the market for FC for roaming including in-house provision, the market shares of the Parties and their competitors at EEA and worldwide level are as set out in Table 15:

Table 15: Market shares for the market of FC services including in-house

	Globally			EEA		
	2010	2011	2012	2010	2011	2012
Syniverse	[10-20]*%	[10-20]*%	[10-20]*%	[10-20]*%	[10-20]*%	[10-20]*%
Mach	[40-50]*%	[40-50]*%	[40-50]*%	[20-30]*%	[20-30]*%	[10-20]*%
Parties combined	[60-70]*%	[60-70]*%	[60-70]*%	[30-40]*%	[30-40]*%	[30-40]*%
Comfone	[0-5]*%	[5-10]*%	[5-10]*%	[5-10]*%	[5-10]*%	[5-10]*%
EDCH	[5-10]*%	[5-10]*%	[5-10]*%	[0-5]*%	[0-5]*%	[0-5]*%
NextGen	[0-5]*%	[0-5]*%	[0-5]*%	[0-5]*%	[5-10]*%	[5-10]*%
ARCH	[0-5]*%	[0-5]*%	[0-5]*%	[0-5]*%	[0-5]*%	[0-5]*%
In-house	[20-30]*%	[20-30]*%	[20-30]*%	[50-60]*%	[50-60]*%	[50-60]*%

Source: Notifying Party' estimates based on operator count (Annex FC 7.2 to the Form CO)

(591) At the global level, the Parties' combined market share has been consistently over [60-70]*%. The increment brought about by the proposed concentration would be about [10-20]*%. None of the other market players would reach a [10-20]*% market share, but in-house supply would represent [20-30]*% of the market. At the EEA level, the Parties' combined market share dropped to just below [30-40]*% in 2012. The merger increment would be about [10-20]*%. None of the other market players would reach a [10-20]*% market share, but in-house supply would represent over [50-60]*% of the market.

(592) Both at the global and EEA levels, the increase in concentration brought about by the proposed concentration would be significant. The ΔHHI would be above 500 at global and EEA levels based on 2012 figures. Therefore, the presumptions set out in paragraphs 18 and 20 of the Horizontal Merger Guidelines would also not apply to the broader FC market including in-house supply.

6.3.3. Horizontal non-coordinated effects in the narrower FC market excluding in-house provision

6.3.3.1. Competitor's ability and incentive to exert a competitive constraint

Views of the Notifying Party

(593) The Notifying Party submits that the proposed concentration would not significantly impede effective competition.

(594) Firstly, the Notifying Party argues that even in the narrow market for FC services for roaming, a number of established specialist FC providers (that is to say Comfone, EDCH and Nextgen) would remain to exert a significant constraint on the merged entity. According to the Notifying Party, the current size of a rival has no bearing on its technical viability as a potential FC provider and hence on the plausibility of the threat that customers would switch to it. Costs associated with the provision of FC services are not substantial and the addition of one customer would result in a very limited increase in cost. Barriers to expansion for existing FC competitors are low. In the Notifying Party's view, this is shown by the fact that Comfone and Nextgen have already won significant contracts, such as Tele 2 and […]* respectively.

(595) Secondly, the Notifying Party claims that the market for FC to roaming is highly contestable. The Notifying Party submits that MNOs tend to organise competitive bidding process, normally every two years, where requests for proposals are sent to a number of viable competitors. The competition for the contracts results in a "winner takes all" situation. In such a context, the presence of one other viable competitor that is able or potentially able to offer a lower price is sufficient to drive prices down to a competitive level.[513] Moreover, each individual contract represents a significant proportion of the total FC revenues.[514] Therefore, according to the Notifying Party, the mere threat of customers switching to another FC provider would be sufficient to prevent the merged entity from raising prices or slowing the speed of price decline.

(596) Thirdly, the Notifying Party claims that switching FC provider is both easy and frequent. It submits that since 2009, 123 switches have been observed. In 61% of those cases MNOs switched between "specialist" FC providers. Switching costs are negligible because the service is standardised, with no customisation required. The Notifying Party only mentions two types of customisation needed in FC. The first category of customisation is associated with the fact that due to specific country regulations some MNOs are not allowed to outsource the creation of their invoices and are required to create invoices themselves. The second category is associated with reporting functionalities and the extraction of data elements in a particular manner from the FCH platform. These functionalities and data elements would feed into an MNO's F&A system such as SAP. The cost of such customisation is small compared to the overall value of the FC contract and does not affect the incentive of MNOs to switch provider.

The Commission's investigation and assessment

[513] The Notifying Party does not provide details on the assumptions under which the possibility of the presence of one other viable competitor would indeed drive prices down to a competitive level.

[514] For Syniverse, the top 5 customers for FC represent over [50-60]*% of its FC revenue, with the […]* and […]* alone accounting for [30-40]*% in total.

(597) The results of the Phase I market investigation provided a mixed picture as to whether alternative outsourced FC providers, in particular Comfone and Nextgen, could fully replace the competition between Syniverse and Mach, especially in relation to Tier 1 MNOs. The large majority of those customers that do not currently undertake FC in-house expected the proposed concentration to have a negative impact on price and/or quality in FC. For those reasons, the Decision opening the proceedings raised serious doubts also in relation to FC.

(598) The in-depth market investigation has provided indications that specialist FC providers such as Comfone and NextGen can exert a more effective constraint on the Parties than they can in relation to DC. This is in particular due to the fundamental difference in the essence of the two services. The in-depth investigation has shown that FC is a simpler and more standardised process to implement than DC, which makes it easier for small providers to expand their FC services. Given that the services to be provided are simpler and more standardised, reputation and track record is less important for the provision of FC services than for DC services.

(599) FC services for roaming consist of the invoicing and settlement of wholesale roaming charges. Such a process involves sending and receiving a much lower number of files each month compared to DC. Moreover, the timeframe for the performance of such activity is much longer than for DC, reflecting the fact that FC is a less critical service: whilst DC is a batch processing exercise that it is undertaken normally in 24 hours, FC is undertaken on a monthly basis.[515] Those features allow competitor and customers to qualify FC as a simple and less complex process than DC: for example, Comfone describes FC services as services which "*embody a low level of technical complexity;*"[516] in the same vein Deutsche Telekom explained "*FC is [..] less technically complex compared to DC.*"[517]

(600) The less critical nature of FC services is also evidenced by the fact that the wholesale billing cycle between MNOs, which FC relates to, is separate from that of retail billing for subscribers and significantly longer (3 months as opposed to 1 month).. The starting point for both wholesale and retail billing is the output of DC services by a DC services provider, which indeed consists of validated retail and wholesale billing data in a format specified by the GSMA.[518] Therefore the impact of the FC process on MNOs' business is less direct and critical. Ultimately, the only risk that a MNO would face in case of errors in the process would be delayed payment of wholesale bills exchanged with other MNOs. Importantly, errors in the FC process do not affect subscriber bills and general subscriber experience. In this regards, Belgacom, when explaining that switching FC provider is easier than in DC, indicates that this is due to the fact that FC "*does not have direct impact on the final consumer: if a delay occurs, this does not affect negatively the final consumer*."[519]

(601) The simpler and less critical nature of FC is also reflected by the SLAs which are simpler compared to the SLAs for DC services. The review of the Parties' contracts shows that SLAs for FC are based on a limited number of performance indicators.

515 Notifying Party, FC paper, paragraph 40.
516 Agreed minutes of the conference call with Comfone of 15 January 2013, paragraph 19 [ID2317].
517 Agreed minutes of the conference call with Deutsche Telekom of 11 January 2013, paragraph 9 [ID2162].
518 Notifying Party, response to question 9 of the request for information of 23 January 2013.
519 Agreed minutes of the conference call with Belgacom of 14 January 2013, paragraph 22 [ID1968].

(the SLAs for FC appear to be mainly limited to processing of invoices within a reasonable timeframe) and that there are no meaningful differences in service level and penalties across the different customer type, that is to say small, medium and large MNOs. This indicates that quality issues are less important in FC than in DC, which in turn would make it easier for Comfone and Nextgen to present themselves as alternative suppliers.

(602) Furthermore, the metric which indicates whether a MNO is a large or complex customer is the number of roaming agreements processed, whereas, as explained above from recital (317) onwards, in DC the metric is rather the number of TAP files processed. When comparing the number of roaming agreements associated with customers switching FC provider over the period from January 2009 until June 2012, it is worth noting that Comfone and Nextgen actually acquired customers with, on average, more roaming agreements than Syniverse and Mach, as shown in *Table 16.*

Table 16: Average number of roaming agreements per FC customer

FC service provider	Average number of roaming agreements
Comfone	[…]*
EDCH	[…]*
Mach	[…]*
Nextgen	[…]*
Syniverse	[…]*

Source: Notifying Party, Response to the Decision opening the proceedings, table 7

(603) The figures in Table 16 show how Comfone is already a credible option for MNOs with a larger number of roaming agreements.

(604) The Phase II market investigation also revealed that the level of customisation required by MNOs in FC is far lower than in DC. During the Phase II market investigation the overwhelming majority of customers indicated that they do not require a particular level of customisation for the provision of FC services.[520] This, in turn, means that the investment required to serve additional customers is more limited for FC providers smaller than the Parties, because the nature of the service to be provided is highly standardised and set by the GSMA standards. It also indicates that there are fewer risks involved in switching to less experienced FC providers.

(605) Moreover, the Phase II investigation has demonstrated that the financial stability of the FC provider is not strictly relevant for its selection since FC providers normally set up "client reference accounts" that ring-fence monies used for invoice payment between MNOs, which rules out the possibility of liability issues that may limit the trust that MNOs put in them.[521]

(606) As a result, although the analysis of current Bidding and Switching Data in FC do not show a significantly higher participation rate of Comfone and NextGen as compared to DC, it still seems more likely that those players could constitute an

[520] Responses to question 44 of questionnaire Q6 – questionnaire to MNOs – Phase II.

[521] Notifying Parties, reply to question 13 of the request for information of 23 January 2013

alternative to the merged entity for customers and could increase their supplies to MNOs post-merger.[522,523]

(607) This view has been confirmed by customers. When asked whether they would switch to Comfone or Nextgen for the provision of outsourced FC services in the event of a price increase of 5 to 10 % or a decrease of quality by the merged entity, the majority of the customers replied that they would consider switching to those alternative outsourced service providers.[524] Customers have also indicated that switching FC provider is much simpler and less risky than switching DC provider. For example, as already mentioned, Belgacom explains that "[a] *switch to another FC provider would not be as difficult as a switch of DC providers because it does not have direct impact on the final consumer: if a delay occurs, this does not affect negatively the final consumer*."[525] The same opinion is expressed by Telekom Austria, which sees Comfone as a credible alternative OSP of FC services and states that "*switching FC provider is not really difficult, mainly thanks to the higher degree of standardization of the service. In assessing potential credible FC service providers, Telekom Austria considers Comfone as one of them*."[526]

(608) In the light of recitals (593) onwards, it appears that, post-merger, other competitors such as Comfone and Nextgen are likely to exert to a certain degree a competitive constraint on the ability and incentive of the merged entity to increase prices or decrease the quality of FC services.

6.3.3.2. Countervailing buyer power: customers' possibility to switch in-house

Views of the Notifying Party

(609) The Notifying Party submits that MNOs are currently able to, and will continue to be able to, exercise countervailing buyer power vis-à-vis FC providers. As with DC,[527] such buyer power would be exerted in a variety of ways, including the use of sophisticated bidding contests, credible threats to stop purchasing non-FC services from FC service providers, sponsoring entry or facilitating expansion of rivals and the possibility for MNOs to influence the standards that govern FC through their membership of the GSMA.

(610) Moreover, the Notifying Party claims that, due to the limited customisation and technical resources required for FC, customers can easily switch their demand away from specialist FC providers by undertaking FC in-house. Customers could do this on the basis of off-the-shelf software from SAP or through partnerships with B&A and FO providers such as Accenture. The Notifying Party notes that 22% of MNOs worldwide and 51% of MNOs in the EEA undertake FC in-house. 15% of customer

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522 In particular, in 2009, in [60-70]*% where Syniverse made a bid, Mach was the only other bidder. In 2011, this figure decreased to [40-50]*%. Comfone's and Nextgen's participation rate increased from [5-10]*% to [10-20]*% and from [5-10]*% to [10-20]*% between 2009 to 2011, according to the Syniverse database.

523 In particular, the Switching Data indicates that [20-30]*% ([…]*/[…]*) of switching MNOs switched from one of the Parties to a specialised competitor.

524 Responses to question 51 of questionnaire Q6 – questionnaire to MNOs – Phase II.

525 Agreed minutes of the conference call with Belgacom of 14 January 2013, paragraph 22 [ID1968].

526 Agreed minutes of the conference call with Telekom Austria of 28 January 2013, paragraph 12 and 13 [ID2268].

527 For the analysis of countervailing buyer power in the FC market, the Form CO makes reference to its section related to GSM DC services.

switches in FC since 2009 have been from specialist providers to alternative methods of securing FC services. As a result, the Notifying Party submits that MNOs are able to secure price reductions even upon uncontested renewals of contracts. According to the Notifying Party, MNOs would be able to continue to exercise such buyer power even after the proposed concentration.

The Commission's investigation and assessment

(611) The market investigation has revealed that customers would be able to exert sufficient countervailing buyer power post-merger. This is because MNOs appear to be able to, and actually do, undertake FC in-house: such ability is a crucial factor that distinguishes FC from DC. In contrast, other forms of customers' behaviour that in the Notifying Party's view would allow MNOs to exert significant buyer power have not proved to constitute a sufficient threat to countervail the merged entity's position.

(612) More precisely, the Notifying Party submits that a large number of MNOs centralise their procurement processes. The market investigation provides some indications that customers can currently exercise a certain degree of buyer power: centralised negotiation at group level seems to be a wide spread practice among customers[528] and the main reason for this practice is related to the advantages that negotiation with larger scale have in order to obtain better terms. However, as in DC, this seem to be mainly due to the fact that currently, customers can benefit from the competition between the Parties as two equally credible players on the market. The vast majority of customers who outsource FC services today still expect the proposed combination of the Parties to have a negative effect on price and/or quality for FC services.[529] Moreover, the number of the Parties' customers which are in fact serviced under a framework agreement is limited. It amounts to [0-5]*% of Syniverse's customers ([…]* out of […]* contracts) and [20-30]*% of Mach's ([…]* out of […]* contracts).[530]

(613) Likewise, the proposed concentration would also remove another threat that customers, in the Notifying Party's view, could exercise to negotiate better terms for FC services, namely the threat to not purchase other services from the FCHs, in particular DC services. As explained in Section 6.1.3., the proposed concentration would remove the main competitor of Syniverse in DC. Accordingly, possibility for customers to exert buyer power on this basis after the proposed concentration would be significantly reduced.

(614) As concerns the possibility for MNOs to undertake FC in-house, the Phase I market investigation indicated that, in contrast to DC, two categories of customers could be identified as regards FC services namely the MNOs that already undertake FC in-house, and would therefore be out of the market under the narrow market definition assessed in this section, and those that do not. During the Phase I market investigation the latter category of customers generally indicated that they would not switch in-house if the proposed concentration resulted in a price increase for decrease in the quality of FC and the vast majority of them expressed concerns about

528 Responses to questions 42 and 44 of respectively questionnaire Q1 – questionnaire to MNOs – Phase I and questionnaire Q2 – questionnaire to MVNOs – Phase I.

529 Responses to questions 90 and 100 of respectively questionnaire Q1 – questionnaire to MNOs – Phase I and questionnaire Q2 – questionnaire to MVNOs – Phase I.

530 In terms of revenues, the percentage of the Parties' revenues for FC services for roaming arising from global framework contracts in 2011 was [10-20]*% for Syniverse and [30-40]*% for Mach's. Notifying Party, response to the request for information of 21 November 2012.

the effects of the proposed concentration on their businesses. In particular in the light of those concerns, and taking into account the significant market position of the merged entity, the Decision opening the proceedings contained the conclusion that, at that stage, the results of the market investigation on the possibility for customers to exert buyer power post-merger were not sufficiently clear to dispel the serious doubts with regard to FC.

(615) However, undertaking FC in-house appears to be an established business practice and not a mere theoretical possibility: indeed FC has been insourced by 22% of MNOs worldwide and 52% of MNOs in the EEA. Therefore the Phase II investigation sought to determine the actual ability for MNOs to undertake FC in-house and therefore the constraint exerted by such option on the Parties.

(616) As explained above in recital (598), the in-depth investigation has shown that FC is a simpler process than DC.[531] FC services for roaming consist of the invoicing and settlement of wholesale roaming charges which entails sending and receiving a much lower number of files each month compared to DC. Also the timeframe for the performance of such activity is much longer than for DC, reflecting the fact that FC is a less critical service: whilst DC is a batch processing exercise that it is undertaken normally in 24 hours, FC is undertaken on a monthly basis.[532]

(617) This is reflected by the limited amount of resources needed to perform FC in-house. Customers can undertake this process by using a generic billing platform from a global billing vendor, such as SAP and Oracle,[533] whose costs are therefore shared with other business units using the same billing platform. Even a simple excel table can be used to undertake FC services.[534] A sample of large, mid-sized and small MNOs[535] also indicated that the human resources[536] and total set-up[537] and running

[531] For example, agreed minutes of the conference call with Deutsche Telekom of 11 January 2013 [ID2162], which partly undertake FC in-house and explains that "*FC is less customized and less technically complex compared to DC*."

[532] Notifying Party, FC paper, paragraph 40.

[533] Responses to questions 58 of questionnaire Q1 – questionnaire to MNOs –Phase I and 39-40 of questionnaire Q6 - questionnaire to MNOs –Phase II; also agreed minutes of the conference call with Telecom Italia of 4 February 2013 [ID2753] and agreed minutes of the conference call with Oracle of 14 February 2013[ID2304].

Customers indicate only to buy from SAP and Oracle a generic software licence and to undertake the limited level of customisation required to perform FC internally, without any assistance from global billing vendor; agreed minutes of the conference call with Bouygues of 6 February 2013 [ID2299]; agreed minutes of the conference call with Telecom Italia of 4 February 2013 [ID2753] and agreed minutes of the conference call with Telecom Austria of 28 January 2013 [ID2268].

[534] Agreed minutes of the conference call with Nextgen of 22 January 2013, paragraph 20 [ID2223].

[535] Orange (agreed minutes of the conference call of 6 February 2013 [ID2307]), Telecom Italia (agreed minutes of the conference call of 4 February 2013 [ID2753]), Belgacom (response to question 40 of questionnaire Q6 – questionnaire to MNOs – Phase II, [ID1903]) and Bouygues (agreed minutes of the conference call of 6 February 2013 [ID2299]). Also responses to question 57 of questionnaire Q1- questionnaire to MNOs – Phase I.

[536] For example both Belgacom (response to question 40 of questionnaire Q6 – questionnaire to MNOs – Phase II [ID1903]) and Telecom Italia (agreed minutes of the conference call of 4 February 2013 [ID2753]), medium size MNOs, indicated to employs 4 FTEs for their FC operations at level of operating company, Telekom Austria, 7 FTEs at group level (response to question 40 of questionnaire Q6 – questionnaire to MNOs – Phase II [ID1875]).

[537] For example Belgacom explains that "[i]*n as far as the persons involved at the time can recollect, the set-up costs were limited as the set-up and the resources required for it were rather straightforward*", response to question 57.2 of questionnaire Q1 – questionnaire to MNOs – Phase I, [ID995]. Likewise,

cost[538] required for their in-house operations are limited. Those costs do not seem significantly different from the price that MNOs pay for outsourced FC services,[539] in particular if considering that certain FTEs have to be employed by MNOs even when outsourcing FC in order to follow up the FC process.[540] In this regard Telecom Italia explains that "*there would not be a great difference in terms of personnel cost between in-house and outsourced FC*."[541] Finally, also the time to set up in-house solutions has been indicated to be limited.[542]

(618) Several MNOs who undertake FC in-house have set up their in-house solutions since they established the roaming business. Therefore, the Decision opening the proceedings raised doubts as to whether the cost and time that MNOs needed to undertake FC in-house in the past reflected the current difficulties in setting up and running an in-house solution, in particular due to the increasing number of roaming agreements to be managed. The in-depth market investigation has revealed that this is not the case. First, regardless of changes in the roaming business, certain MNOs have recently switched away from using an outsourced FC service provider to undertaking FC in-house with limited costs. This is the case of Orange Romania and Wind Italy. In this regard, Orange explains that "[t]*he settlement internalisation costs faced by Orange Romania have not been too high. Indeed it was a CFO decision to slightly reorganise the payment and collection team (max 0.5 HC) and track the financial settlement just like any other general activity*."[543] Other customers are currently considering internalising FC operations to the whole group and indicate that "[i]*nternalizing FC services is a feasible task*".[544] Secondly, internal FC systems appear to be scalable and able to cope with the increasing roaming business of an MNO.[545] For example, Bouygues, which has performed FC in-house since the start of its roaming business, explains that when the number of roaming partners was growing it considered whether to externalise the service and launched a tender for benchmarking the in-house solution it developed and the outsourcing option. In the end, Bouygues evaluated that no significant benefits would be brought from the

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Orange, with regard to the internalisation recently undertook by its Romanian affiliate, explains that the "*internalisation costs faced by Orange Romania have not been too high. Indeed it was a CFO decision to slightly reorganise the payment and collection team (max 0.5 HC) and track the financial settlement just like any other general activity*" (agreed minutes of the conference call of 6 February 2013, paragraph 4 [ID2307]).

538 For example Telecom Italia has estimated running costs in EUR 250,000, of which EUR 50,000 per year for the software and EUR 50,000 per FTE per year (agreed minutes of the conference call of 4 February 2013 [ID2753]). Likewise, Belgacom has estimated running costs in EUR 400,000 per year (response to question 39 of questionnaire Q6 – questionnaire to MNOs – Phase II, [ID1903]).

539 Responses to question 41 of questionnaire Q6 – questionnaire to MNOs – Phase II. Based on the data of the Parties in response to question 26 of the request for information of 25 January 2013, the average annual fee paid for FC is about EUR […]* globally and EUR […]* in the EEA based on 2012 figures.

540 For example Millicom indicated to employ 8 FTEs to plan, implement and oversee even though it outsources FC to Mach (response to question 39 of questionnaire Q6 – questionnaire to MNOs – Phase II, [ID1737]).

541 Agreed minutes of the conference call with Telecom Italia of 4 February 2013, paragraph 6 [ID2753].

542 For example Belgacom indicated that the time it took to implement this project but it was approximately six months (response to question 57.4 of questionnaire Q1 – questionnaire to MNOs – Phase I, [ID995]).

543 Agreed minutes of the conference call with Orange of 6 February 2013, paragraph 4 [ID2307].

544 Agreed minutes of the conference call with Telecom Austria of 28 January 2013 [ID2268].

545 Agreed minutes of the conference call with Bouygues of 6 February 2013 [ID2299] and agreed minutes of the conference call with Telecom Italia of 4 February 2013 [ID2753].

outsourced solution and hence it decided to maintain it in-house: indeed "*even facing an increasing number of roaming partners, Bouygues' internal FC system is scalable and not particularly costly*."[546]

(619) It appears that insourcing FC services is a relatively easy process that can be undertaken by all MNOs, with no distinction between large, medium or small MNOs.[547] As a customer states, "*every MNO could, at least in theory, internalize its FC services*."[548] Likewise, Nextgen explained that "*there is no clear correlation between specific characteristics of MNOs and the fact that they internalize their FC services*."[549] Any MNO is theoretically able to internalise its FC services. This suggests that the in-house option can be considered a credible threat for FC specialist providers such as the Parties.

(620) The existence of such a threat is confirmed by the analysis of the internal documents of the Parties. Indeed such analysis shows instances where MNOs who currently outsource FC use the threat that they will take FC in-house. For example, in an email from […]* to […]* it is apparent how the in-house solution is discussed with the procurement department of MNOs as an alternative to of renewing the contract with an OSP; indeed in that email […]*, after having Talked with […]*, explained that "[…]*."[550] The threat to move FC in-house appears more clearly in an email of […]*, where they discuss how to respond to avoid the possibility that […]* move certain of its affiliates to an in-house FC solution: "[…]*".[551]

(621) Conversely, some MNOs that undertake FC in-house still organise tenders to assess prices of outsourced service providers whilst in the end deciding to stick to their in-house solutions. The case of Bouygues, mentioned at recital (618), is a good example. Other examples are apparent from an analysis of the Bidding Data, which shows 18 and respectively 25 bidding events in the two databases, in which a MNO who uses an in-house solution organised a tender to invite outsourced service providers to provide quotes.

(622) The analysis of the Bidding Data also indicates that, the "in-house option" was reported for a number of MNOs currently outsourcing FC to a specialist provider as one of the "participants in the tender" for bidding events. This was the case, for instance, for […]* in the EEA.

(623) Finally, over the period from 2009 to 2012, the Switching Data provided by the Parties shows that 15 MNOs actually switched away from using an outsourced FC service provider to undertaking FC in-house. As mentioned in recital (618), those switchers included […]* and […]* in the EEA.

(624) All these elements indicate that there is a credible competitive interaction between the in-house and outsourced FC services. The credibility of this threat is enhanced by the fact that no clear pattern can be identified to understand which type of MNO

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546 Agreed minutes of the conference call with Bouygues of 6 February 2013, paragraph 3 [ID2299]

547 Both small MNOs (such as Base Belgium, Bouygues France, Elisa Estonia, Bite Latvia, Optimus Portugal, Wind Hellas Greece) as well as large MNOs (such as Vodafone UK, Orange France, KPN Netherlands) currently undertake FC in-house

548 Agreed minutes of the conference call with Belgacom of 14 January 2013, paragraph 21 [ID1968]

549 Agreed minutes of the conference call with Nextgen of 22 January 2013, paragraph 24 [ID2223]

550 Email of […]*

551 Email of […]*

typically undertakes FC in-house, but small, medium and large MNOs all can and do undertake FC in-house.[552] Hence, even if a MNO does not explicitly mention during the tender process that they are considering the in-house FC option, the FC provider is likely to take this option into account when making its offer.

(625) Therefore, it appears that, after merger, the Parties are likely to be constrained by the MNO's ability to take FC in-house with respect to all MNOs, whether the threat is actual or potential, and that buyer power constitutes a countervailing factor mitigating the ability and incentive of the merged entity to raise prices in the market for FC services for roaming post transaction.

6.3.3.3. Other countervailing factor: entry

Views of the Notifying Party

(626) According to the Notifying Party, FC services for roaming are conducted in the same way as any other invoicing and settlement functions for MNOs, or in fact the invoicing and settlement function of any other businesses. Therefore entry into the market for FC services for roaming would be easy for generalist F&A BPO providers such as Accenture and retail billing vendors such as Amdocs and CSG.

(627) The Notifying Party claims that there would be no legal or regulatory barrier to entry in FC services for roaming. According to it, a FC provider would only need to comply with the requirements of the Service Organization Control Reports[553] and have standard billing software.[554]

(628) The Notifying Party estimates that the investment required for an entrant would consist mainly of costs associated with generic hardware and off-the-shelf accounting software and would amount to less than EUR […]*. The time required to obtain such resources is estimated to be less than two months. The Notifying Party also considers that no specific expertise is required for the provision of FC services to roaming. Staff recruitment would be easy. According to the Notifying Party, the cost of entry by an F&A BPO provider would be far lower, given that hardware and off-the-shelf accounting software would already have been purchased for preforming its F&A BPO activities. In its view, their launch of FC services for roaming could occur in less than three months from the initial planning.

The Commission's investigation and assessment

(629) The market investigation has not revealed any indication of a likely, timely and sufficient entry into the market for FC for roaming. In particular, the market investigation has not revealed any firm intention of potential competitors, be it F&A BPO providers in other industries or general billing vendors, to enter into FC for roaming.[555] Moreover, the overwhelming majority of both customers[556] and

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552 See footnote 547.

553 Service Organization Control ("SOC", formerly Statement on Auditing Standards No. 70) Reports are internal control reports on the services provided by a service organisation and the risks associated with the outsourced service.

554 The Parties refer that the origins of some of their GSM FC platforms, which have been developed over the years, started with Microsoft Excel and an off-the-shelf database tool.

555 Responses to question 12 of questionnaire Q5 - questionnaire to potential competitors – Phase I.

556 Responses to questions 50 and 52 of respectively questionnaire Q1 – questionnaire to MNOs – Phase I and questionnaire Q2 - questionnaire to MVNOs – Phase I.

competitors[557] do not expect further entry in the next two years. However, the competitive constraints which the in-house solution and existing competitors can exert to restrict the ability and incentive of the merged entity to raise prices already seem sufficient to dispel the competition concerns.

6.3.3.4. Conclusion

(630) On this basis, the Commission concludes that the proposed concentration is not likely to significantly impede effective competition on the market for the provision of outsourced FC services related to roaming.

6.3.4. Horizontal non-coordinated effects in the broader FC market including in-house provision

(631) The Commission left open the question whether in-house provision of FC should be considered as part of the relevant product market.

(632) On the broader market including in-house provision, the Parties' combined market shares would be lower (see *Table 14* in section 6.3.2.) and the Parties would be subject to the same constraints to which they are subject to in the narrower market of outsourced FC markets, in particular the ability of customers to insource FC services. The Commission already concluded that the proposed concentration would not significantly impede effective competition on the market for the provision of outsourced FC services related to roaming. Hence, the proposed concentration would also not significantly impede effective competition on the broader market that encompasses the in-house provision of FC services.

6.4. Horizontal non-coordinated effects in A2P and P2P SMS services

6.4.1. Notifying Party's view

(633) The Notifying Party's submits that there are 24 operational SMS hubs that are active in the market.

(634) In respect of both national and international P2P SMS services, the Notifying Party submits that Syniverse has a market share in the EEA, and each of the Contracting Parties to the EEA Agreement Member States, of less than [0-5]*% and that Mach has a market share of less than [0-5]*% in the EEA, and each of the Contracting Parties to the EEA Agreement.

(635) As regards international P2P SMS services only, the Notifying Party submits that its share is just below [0-5]*% in the EEA and never more than [0-5]*% in any Member State. Mach’s share is well below [0-5]*% in the EEA and never more than 4% in any Member State. The highest combined share is never more than [0-5]*% in any Member State.

(636) Regarding A2P SMS services, the Notifying Party submits that the combined market share of the Parties is below [0-5]*% in any possible market definition.

(637) Hence, the Notifying Party considers that there no possible concerns in this market where the combined activities of the parties lead to very limited market shares.

557 Responses to question 57 of questionnaire Q4 – questionnaire to actual competitors – Phase I.

6.4.2. The Commission's investigation and assessment

(638) According to the Form CO and to the Notifying Party's response to the Commission's request for information of 21 November 2012, the combined market share of Syniverse and Mach is below [0-5]*% in every possible market definition except one: the worldwide market for international SMS exchanged via an SMS hub. In that particular market definition, Syniverse has a market share of [20-30]*% and Mach has a market share of [0-5]*%, giving a combined worldwide market share of [20-30]*%.

(639) Even though the combined market share is relatively high, the increment related to the proposed concentration is less than [0-5]*%, which is unlikely to lead to any material impact on the market.

(640) Furthermore, Syniverse' SMS hub activity is mainly focussed in the US market whereas Mach's SMS hub activity is more focussed in the EEA. In the EEA, the combined market share of the Parties is less than [0-5]*% in every possible market definition.

(641) The absence of likely anti-competitive effect in the P2P SMS market(s) is also confirmed by the market investigation and by the presence of numerous competitors including but not limited to Aicent, BICS, Comfone, France Telecom, Sybase, SVR and Tata.

(642) Hence, the Commission considers that the proposed concentration is not likely to lead to any significant impediment to effective competition related to horizontal effects in A2P and P2P SMS services.

6.5. Vertical effects in relation to roaming hub services

6.5.1. Views of the Notifying Party

(643) Mach owns and controls a roaming hub, Link2One by virtue of a joint venture with Telefónica (where Mach has a […]*% interest and Telefónica […]*%). The Notifying Party neither owns nor operates a roaming hub. Accordingly, there is no horizontal overlap (and no affected market with regard to the ownership and control of a roaming hub).

(644) The Notifying Party submits that roaming hubs have various vertical links with the Parties, including DC, FC and NRTRDE services. Roaming hubs can provide those services to MNOs on an optional basis. In those circumstances, roaming hubs are acting as agents for the sale of those services.

(645) The Notifying Party submits that, based on an operator count, the Link2One roaming hub has a market share of [20-30]*%. However, considering that Mach only has a shareholding of [40-50]*% in that roaming hub, the Notifying Party submits that the relevant market share of the roaming hub controlled by the merged entity would be limited to [10-20]*%. Hence, the Notifying Party argues that the roaming hub services markets are not affected markets, either horizontally, or vertically.

6.5.2. The Commission's investigation and assessment

(646) The Commission has examined the vertical links between Mach's roaming hub services and the markets for DC, NRTRDE and FC during the Phase I market investigation and concluded that there are no vertical links between roaming hubs, on the one hand, and DC, NRTRDE and FC services on the other. In particular, the overwhelming majority of customers indicated that, even when they are members of

one or more roaming hubs, and theoretically could purchase DC from the hubs, DC actually takes place on the basis of the same contract with the DCH that they have selected for non-hub roaming traffic.[558] This is also the case for NRTRDE and FC.[559]

(647) On this basis, the Commission concludes that there are no vertical links between roaming hub services on the one hand and DC, NRTRDE and FC services on the other.

(648) Hence, the Commission considers that the proposed concentration is not likely to lead to any significant impediment to effective competition related to vertical foreclosure in the roaming hub market.

6.6. Conglomerate effects in relation to other related markets

(649) The Commission has examined the impact of the proposed concentration in relation to conglomerate effects in relation to other related markets. The Commission analysed how important it would be for a provider of related services to be able to offer DC or NRTRDE services in order to remain a credible competitor in the markets for the related services.

(650) The Commission considers that any concerns in relation to conglomerate effects in relation to other related markets arise from the high market power that the Parties post-merger in relation to DC and NRTRDE services (as set out in sections 6.1 and 6.2). In the light of this, the remedy offered by the Parties to address the horizontal competition concerns in the markets for DC and NRTRDE services (see section 7) *ipso facto* resolves any concerns in relation to conglomerate effects.

6.7. Efficiencies

(651) To be acceptable as a countervailing factor under the Merger Regulation, efficiencies must be verifiable, likely to be passed on to consumers and be merger specific to the extent that no other practicable less anticompetitive alternatives exist to achieve the same benefits.[560] The three conditions, verifiability, merger specificity and consumer benefit, are cumulative.

(652) The Notifying Party submits that the proposed concentration would benefit MNOs and, albeit indirectly, their subscribers[561]. However, the Notifying Party has not provided further details on potential efficiency gains and has not submitted evidence that any such efficiencies would meet the criteria of the Horizontal Merger Guidelines.

(653) Accordingly, the Commission has not found verifiable evidence of adequate efficiency gains. Moreover, the Horizontal Merger Guidelines state that "*the incentive on the part of the merged entity to pass efficiency gains on to consumers is often related to the existence of competitive pressure from the remaining firms in* the *market and from potential entry"*. It is further indicated that: *"It is highly unlikely that a merger leading to a market position approaching that of a monopoly, or leading to a similar level of market power, can be declared compatible with the common market on the ground that efficiency gains would be sufficient to counteract*

[558] Responses to question 31 of questionnaire Q1 – questionnaire to MNOs – Phase I.

[559] Responses to question 3 of questionnaire Q3 – questionnaire to roaming hubs – Phase I.

[560] Horizontal Merger Guidelines, paragraph 78.

[561] Form CO, paragraph 1081.

its potential anti-competitive effects"[562]. Given the extremely high combined market shares in DC and NRTRDE, often approaching monopoly levels, and the absence of timely, sufficient, and likely entry in DC and NRTRDE markets, it appears very doubtful at this stage that any significant pass-on of alleged efficiencies to consumers would take place.

(654) Therefore, the Notifying Party did not provide sufficient evidence to demonstrate that any efficiency claims would materialise and counteract the competitive harm likely to arise from the proposed concentration in DC and NRTRDE markets.

6.8. General conclusion of the competitive assessment in the relevant markets

(655) The Commission considers that the proposed concentration would be likely to lead to a significant impediment to effective competition on the basis of horizontal non-coordinated effects in the markets for DC and NRTRDE services on an EEA-wide or global basis.

7. COMMITMENTS

(656) In order to address the likely significant impediment to effective competition identified in the SO, the Notifying Party submitted commitments pursuant to Article 8(2) of the Merger Regulation on 11 March 2013 ("the Commitments of 11 March 2013"). As will be explained below in recitals (669) to (679), the Commission considered the Commitments of 11 March 2013 to be insufficient to eliminate the likely significant impediment to effective competition that would arise from the proposed concentration.

(657) The Notifying Party submitted revised commitments on 26 March 2013 ("the Commitments of 26 March 2013"). The Commission subjected these commitments to a market test on the following day . The purpose of the market test was to gather the views of market participants on the effectiveness of the commitments, as well as their ability to restore effective competition in the DC and NRTRDE markets where competition concerns were identified.

(658) The Commission communicated the results of the market test to the Notifying Party during a meeting held on 11 April 2013. The Notifying Party submitted a third set of commitments on 19 April 2013 ("the Final Commitments").

7.1. Analytical framework

(659) The Commission's assessment of the proposed commitments and their ability to eliminate the likely significant impediment to effective competition that would arise from the proposed concentration was carried out within the analytical framework set out in the Commission's notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004[563] (the "Remedies Notice").

(660) Where a concentration raises competition concerns in that it could significantly impede effective competition, in particular as a result of the creation or strengthening

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[562] Horizontal Merger Guidelines, paragraph 84.

[563] OJ 2008/C 267/01.

of a dominant position, the parties may seek to modify the concentration in order to resolve the competition concerns and thereby gain clearance of their merger.[564]

(661) Under the Merger Regulation, it is the responsibility of the Commission to demonstrate that a concentration would be likely to significantly impede effective competition. The Commission then communicates its competition concerns to the parties to allow them to formulate appropriate remedies proposals[565]. It is ultimately for the parties to the proposed concentration to put forward such commitments.[566]

(662) The Commission only has power to accept commitments that are capable of rendering the concentration compatible with the internal market in that they will prevent a significant impediment to effective competition in all relevant markets where competition concerns were identified.[567] To that end, the commitments have to eliminate the competition concerns entirely[568] and have to be comprehensive and effective from all points of view.[569]

(663) In assessing whether proposed commitments are likely to eliminate its competition concerns, the Commission considers all relevant factors including *inter alia* the type, scale and scope of the commitments, judged by reference to the structure and particular characteristics of the market in which those concerns arise, including the position of the parties and other participants on the market.[570]

(664) Moreover, commitments must be capable of being implemented effectively within a short period of time.[571] Where the parties submit remedies proposals that are so extensive and complex that it is not possible for the Commission to determine with the requisite degree of certainty, at the time of its decision, that they will be fully implemented and that they are likely to maintain effective competition in the market, an authorisation decision cannot be granted. [572]

(665) The Merger Regulation leaves discretion to the Commission as concerns the form of acceptable commitments, as long as the commitments meet the requisite standard,

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564 Remedies Notice, paragraph 5.

565 However, Case T-209/01 *Honeywell International, Inc. v. Commission* [2005] II-05527 "*It must be held that in matters relating to merger control the Commission cannot be required, over and above the obligation to set out its objections in a statement of objections and to supplement that statement if it should then decide to adopt new objections, to indicate, after service of the statement of objections and before adoption of the final decision, its current thinking as to the possible means of resolving the problems it has identified (see, to that effect, Case 53/69 Sandoz v Commission [1972] ECR 845, paragraph 14; Joined Cases C-204/00 P, C-205/00 P, C-211/00 P, C-213/00 P, C-217/00 P and C-219/00 P Aalborg Portland and Others v Commission [2004] ECR I-123, paragraphs 192 and 193; Case T-87/96 Assicurazioni Generali and Unicredito v Commission [1999] ECR II-203*)."

566 Remedies Notice, paragraph 6.

567 Remedies Notice, paragraph 9.

568 Case C-202/06 P Cementbouw Handel & Industrie v Commission [2007] ECR 2007 I-12129, paragraph 54: "*it is necessary, when reviewing the proportionality of conditions or obligations which the Commission may, by virtue of Article 8(2) of Regulation No 4064/89, impose on the parties to a concentration, not to determine whether the concentration still has a Community dimension after those conditions or obligations have been complied with, but to be satisfied that those conditions and those obligations are proportionate to and would entirely eliminate the competition problem that has been identified.*"

569 Remedies Notice, paragraph 9 and 61.

570 Remedies Notice, paragraph 12.

571 Remedies Notice, paragraph 9.

572 Remedies Notice, paragraphs 13, 14 and 61ff.

which is that they fully eliminate the significant impediment to effective competition that would result from the proposed concentration.[573] Structural commitments, such as commitments to divest businesses and assets, will meet this standard only in so far as the Commission is able to conclude with the requisite degree of certainty that it will be possible to implement them and that it will be likely that the new commercial structures resulting from them will be sufficiently workable and lasting to ensure that the significant impediment to effective competition will not materialise.[574]

7.2. Description of the proposed commitments

7.2.1. The Commitments of 11 March 2013

7.2.1.1. Substance of the proposal

(666) The Commitments of 11 March 2013 consisted of the intended divestment to a suitable purchaser (the “Purchaser”) of Mach’s DC and NRTRDE businesses in the EEA. As the assets and personnel that comprise those businesses are not held within one legal entity within Mach, they would be consolidated under a single holding company (the “Divestment Business") and then divested to a suitable purchaser.

(667) The Commitments of 11 March 2013 aimed at the divestiture to a suitable purchaser of the remedy platform (that is to say hardware, proprietary software and intelligence reporting tools) with elements of Mach’s existing platform; […]* personnel, including an executive management team; virtually all EEA-customers currently served by Mach and the Mach brand.

(668) The Notifying Party claimed that the Commitments of 11 March 2013 contained all the assets and elements that are necessary for a viable and effective competitor that can immediately replace the constraint that Mach exerts on Syniverse today.

7.2.1.2. The Commission's assessment

(669) The Commission deemed the Commitments of 11 March 2013 to be insufficient to eliminate the significant impediment to effective competition that the proposed concentration would be likely to give rise to.

(670) The Commission's most serious concern related to the customer base that was to be divested. On the basis of the Commitments of 11 March 2013 the Notifying Party undertook to divest virtually all of Mach's DC and NRTRDE customers in the EEA. However, it was not sufficiently certain that the divested customer base would include a single Tier 1 MNO that is currently served at the group level by Mach.

(671) The two largest DC and NRTRDE customers of Mach in the EEA ([…]* and […]*) needed to give their consent for their contract with Mach to be transferred to the Divestment Business. […]* is the only EEA Tier 1 customer of Mach that meets the criteria identified by the Commission to distinguish such MNOs. If […]* were not to give its consent to remain with the Divestment Business, the Notifying Party proposed to include alternative contracts with revenues that approximated its

[573] Case T-177/04 *easyJet v Commission* [2006] ECR II-1913, paragraph 197: "*Article 6(2) of Regulation No 4064/89 provides that the Commission may authorise a merger if the commitments proposed by the parties dispel the serious doubts as to the compatibility of the merger with the common market. Regulation No 4064/89 thus lays down the objective to be achieved by the Commission, but leaves it a wide discretion as to the form which the commitments in question may take.*"

[574] Remedies Notice, paragraph 10.

DC/NRTRDE revenues. Those replacement contracts would however be a combination of contracts with smaller (mainly non-EEA) operators, and not one contract with an operator of the same size. In addition, the replacement contracts expire much earlier than the […]* contracts.[575]

(672) In this context, the Commission reiterates that the likely significant impediment to effective competition that would arise from the proposed concentration in this case is significant. The proposed concentration would result in a near-monopoly position in the DC and NRTRDE markets.

(673) The Commitments should allow for the emergence or strengthening of a competitor that could replace the constraint that Mach exerts on Syniverse today. As set out above in recital (259), Syniverse and Mach are currently the only providers that serve the full variety of small, mid-sized and large, that is to say Tier 1 MNOs. In particular in relation to the last group of customers, the Commission demonstrated in recitals (284) to (430) that smaller competitors do not currently exert any constraint and that this would remain the case after the proposed concentration.

(674) The Commission considers that it had to be sufficiently clear that the Divestment Business would include at least one Tier 1 MNO. The inclusion of such a Tier 1 MNO is crucial to allow any Purchaser of the Divestment Business to replace the particular constraint that Mach exerts on Syniverse in relation to such MNOs. This is essential to allow the Purchaser to both immediately replace Mach as it operates in the EEA today, and to be a credible and effective competitor for large, Tier 1 MNOs in the future. During the Commission's investigation, Tier 1 MNOs confirmed that they are only willing to contract with a provider of DC services, if it has a proven track record and reputation with other Tier 1 MNOs. A smaller competitor on the DC and NRTRDE markets (Comfone) confirmed that the fact that it missed a Tier 1 MNO reference has been its main obstacle in winning a Tier 1 MNO as a customer for DC and NRTRDE services[576].

(675) The Commission considers that the inclusion of a number of other sizeable MNOs that together would represent approximately the same revenues of the relevant Tier 1 MNOs would not remedy that concern. Tier 1 MNOs as identified by the Commission are the only group of customers that combine a different set of characteristics that make the provision of DC and NRTRDE services to them particularly challenging. Those characteristics are their high TAP volumes that accrue globally across different operational companies, coupled with stringent SLA, related penalties and other quality requirements and high demands for customised DC and NRTRDE services and for complex reporting. In order to serve a Tier 1 MNO, a provider is likely to need the ability to process those volumes against those strict SLAs and other quality requirements, whilst being able to implement, supervise and provide technical and customer support for customised solutions. A collection of sizeable MNOs that in combined revenue terms would approximate a Tier 1 MNO is unlikely to provide a DC provider with a proven track record that it can serve all of those parallel needs.

575 The […]* contract expires in […]*, whereas the bulk of the […]* contracts are set to expire in July/August 2013, December 2013 and between January and October 2013, respectively.

576 Comfone's reply to question 12 of the Phase II questionnaire to competitors [ID2690].

(676) The Commission considers that this conclusion is borne out by the fact that Tier 1 MNOs confirm that it is the proven track record and reputation with another Tier 1 MNO that is relevant in their choice of DC and NRTRDE provider, and not a track record or reputation with a collection of MNOs that approximate them in terms of revenues. Likewise, it is the absence of a reference from another Tier 1 MNO that a smaller DC and NRTRDE competitor identified as being the obstacle to winning a Tier 1 MNO.

(677) In any event, the alternative contracts that the Notifying Party proposed to include in the place of the […]* contract expired much earlier. Including them would therefore not have been effective to allow the Divestment Business to replace the constraint that Mach exerts today on a lasting basis.

(678) Moreover, the Commission had serious doubts whether the Commitments of 11 March 2013 could be effectively implemented and it considered that the viability and effectiveness of the Divestment Business would be threatened, should those doubts materialise.

(679) For all these reasons, the Commission considered that the Commitments of 11 March 2013 were insufficient to fully eliminate the significant impediment to effective competition that would be likely to arise from the proposed concentration.

7.2.2. The Commitments of 26 March 2013

7.2.2.1. Substance of the proposal

(680) Syniverse submitted revised Commitments on 26 March 2013. Those Commitments consisted of the structural divestment to a suitable purchaser (the “Purchaser”) of essentially the entirety of Mach’s DC and NRTRDE businesses in the EEA. Importantly, it was sufficiently clear that the divestiture would include […]*. […]* is the largest EEA Tier 1 MNO that is currently served by Mach.[577]

(681) The Divestment Business as included in the Commitments of 26 March 2013 would comprise: the remedy platform (that is to say hardware, proprietary software and intelligence reporting tools) with elements of Mach’s existing platform; […]* personnel, including an executive management team; virtually all of Mach's DC and NRTRDE customers in the EEA (including small, medium and large MNOs); and the Mach brand.

(682) As with the submission of the Commitments of 11 March 2013, Syniverse explained that the assets and personnel that comprise these businesses are currently not held within one legal entity within Mach. They would therefore have to be consolidated in a single holding company (the “Divestment Business") and then divested to a suitable purchaser.

(683) In more detail, the Divestment Business as included in the Commitments of 26 March 2013 would consist of the following assets.

(684) Operational assets: The Divestment Business would own hardware loaded with Mach software to undertake DC and NRTRDE processing, as well as to deploy intelligence

[577] As explained in recital (694), Syniverse would seek to acquire […]*'s prior explicit consent to be moved. Alternatively, Syniverse would divest Mach S.a r.L., the Luxembourg entity that holds this contract. Syniverse would remove from this entity the assets that it would retain by means of a reverse carve-out.

reporting tools used for downstream technology solutions such as Fraud Management and Business Intelligence/Analytics.

(685) That hardware would be located in a data centre in […]*. The data centre facilities would be managed by a third party provider, […]*. The supply contract with the outsourced data centre provider would be assigned to the Purchaser, unless the Purchaser did not want to take it.

(686) Proprietary software: The Divestment Business would own the Mach software that undertakes DC and NRTRDE processing. Syniverse certifies that that software includes all customisations that Mach's customers require as well as optional extra services. Although the Divestment Business comprises virtually all EEA customers of Mach, the software would also include the customisations required by the non-EEA customers that Syniverse would retain if the Commitments of 26 March 2013 were accepted by the Commission.

(687) The Mach software that undertakes DC and NRTRDE processing is used for all of Mach's current customers, both within the EEA and outside. As Syniverse would retain the non-EEA customers of Mach if the Commitments of 26 March 2013 were accepted by the Commission, Syniverse proposed an arrangement that would allow it to migrate those retained customers onto its own platform. Under that arrangement, the Purchaser would grant Syniverse a […]*-year, non-exclusive and royalty-free licence for the software. Syniverse argues that it needs the licence to complete the migration of the retained Mach DC and NRTRDE customers onto its own systems. After […]* years, Syniverse would shut down the Mach DC and NRTRDE applications running on its hardware and exclusively use its own platforms.

(688) In addition to the Mach DC and NRTRDE platforms, the Divestment Business would own the proprietary framework layer that supports Mach DC and NRTDE services. That layer however also supports some of the Mach services that Syniverse would retain after the proposed concentration. The Divestment Business would also own Mach intelligence services,[578] which are used in downstream technology solutions, for instance for Fraud Management and Business Intelligence/Analytics.[579] Those downstream Fraud Management and Business Intelligence/Analytics services of Mach would also be retained by Syniverse after the proposed concentration.

(689) For both software items listed in the preceding recital, the Divestment Business would grant Syniverse a sole, perpetual, irrevocable, transferrable, royalty-free licence. According to Syniverse, this would allow it to operate and develop the Mach services that it would retain after the proposed concentration. Syniverse and the Divestment Business would each own their own derivative works of the software.[580]

(690) Third party licenses: Syniverse would commit to include in the Divestment Business third party licenses that are necessary to carry out its activities, and to procure that

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578 The relevant tools are […]*, an intelligence tool that provides for basic and enhanced reporting, […]*, which is a roaming agreement management service; and […]*, an ad hoc customer service tool.

579 Customer configurations for these intelligence tools for all current Mach DC and NRTRDE customers (namely both retained and divested customers) would be included. On the contrary, customer configurations for these intelligence tools for the divested customers would be expunged to the greatest extent possible from Syniverse's licensed version.

580 Syniverse and the Purchaser would each independently develop these solutions, and own the derivative works that result from this independent development. There would therefore be no co-ownership or co-development of these IP rights.

Mach would use its reasonable commercial endeavours to assist the Purchaser to procure new licences on commercially reasonable terms.[581]

(691) Supplier contracts: the Divestment Business would include all necessary supplier contracts, including contract for outsourced data centre services, should the Purchaser wish to take it.

(692) Personnel: The Divestment Business would include all Mach personnel dedicated to DC and NRTRDE services in the EEA. It would include an executive management team and a number of "captains" that would have senior management responsibilities for the operation of the Divestment Business. It would finally include personnel with functions such as group development and IT, which are currently shared with other Mach business units. In total, the Divestment Business would have […]* transferred personnel comprising […]* Key Personnel[582] and […]* Other Personnel.[583]

(693) Customers: If successfully implemented, the Divestment Business would include the contracts and associated assets and personnel for […]* and […]* and a range of mid-sized and smaller MNOs.

(694) Syniverse submits that virtually none of the contracts require customer consent for inclusion in the Divestment Business. As explained above in recital (671), this was not the case for the two largest EEA customers of the Divestment Business, namely […]* and […]*. The Notifying Party made further commitments to ensure that […]* would be included in the Divestment Business. In particular, Syniverse would seek to acquire […]*.[584] If […]*, the sole remaining Mach customer in the EEA for which consent would be required, were not to agree to remain with the Divestment Business, two alternative contracts with equivalent revenues would be divested.[585]

(695) The Divestment Business, including […]* and […]*, would account for around […]*% of Mach's EEA DC and NRTRDE revenues in 2011, that is to say EUR […]* million.[586]

(696) […]*.[587]

(697) Mach brand: The Mach name and all Mach trademarks relating to DC and NRTRDE would be transferred to the Divestment Business. The Divestment Business would grant Syniverse a sole royalty-free licence for […]* years to allow Syniverse to phase out and expunge all Mach branding from materials associated with the Mach non-DC and NRTRDE services that Syniverse would retain.

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581 Such licences relate to commercially available off-the-shelf software packages sold by vendors including […]*.

582 […]*.

583 Other Personnel would consist of mainly development, systems management and technical services. Syniverse commits that this other personnel will have experience developing the Mach source code to provide processing customisation specific to DC and NRTRDE customers in the EEA, and that it will have sufficient expertise to perform any future customisations.

584 Syniverse would remove from this entity the assets that it would retain by means of a reverse carve-out.

585 […]*.

586 All MNO groups, of which a subsidiary has been included in the remedy package, would be included in their entirety and no contracts or groups would be split. Moreover, the Divestment Business would include all new DC/NRTRDE customer wins in the EEA that Mach has achieved between the date of the submission of the remedies and the closing of the proposed Syniverse/Mach merger.

587 […]*.

7.2.2.2. The results of the market test

(698) On 27 March 2013, the Commission launched the market test of the Commitments of 26 March 2013. The market test evidence confirmed that significant improvements to the Commitments of 26 March 2013 were needed.

Serious doubts about the viability of the Divestment Business as a stand-alone entity

(699) The market test confirmed that hardware, software, personnel and customer contracts are the key ingredients for a viable and effective competitor in DC and NRTRDE services.

(700) Nonetheless, over half of the customers and virtually all competitors expressed doubts about the viability of the Divestment Business as a stand-alone business.[588] Most of those respondents indicated that after the proposed concentration, Syniverse would remain as the only entity with a global market presence in DC and NRTRDE services.[589] That presence would be reinforced by the acquisition of the non-EEA DC and NRTRDE businesses of Mach. The relevant customers and competitors also explain that Syniverse would continue to be the only company could credibly combine its DC/NRTRDE offerings with complementary services, such as Financial Clearing and Business Intelligence services. Customers and competitors alike doubt that the Divestment Business could be a viable and effective competitor to such an entity.

The purchaser needs to fulfil certain requirements

(701) Customers confirm that the divested assets would only be viable and competitive in the hands of a purchaser that meets certain specified requirements.[590]

(702) Some of the requirements that the customers mentioned correspond to the standard purchaser criteria that are typically included in commitments accepted by the Commission, namely financial stability, independence from the merging parties and the requirement that the acquisition of the Divestment Business by that purchaser would not give rise to *prima facie* competition concerns . However, customers also mention additional requirements that the purchaser must meet.

(703) Customers confirm that in order to be a viable and effective competitor to the merged entity, the Purchaser would have to be a player that is not a purely financial investor.[591] The Purchaser would need to have the capacity and willingness to invest in the development of the Divestment Business, including by keeping pace with industry relevant innovations, such as the move of the industry to LTE and increased use of wi-fi communications.[592]

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[588] Almost 60% of customers expressed this view, customers' response to Question 1 of Questionnaire 8, 90% of the competitors shared this view, competitors' response to Question 1 of Questionnaire 9.

[589] See, for instance, Vodafone's response to Question 1 of Questionnaire 8.

[590] Customers' response to Question 21-26 of Questionnaire 8.

[591] The intended flagship customer […]* was adamant that the assets are not purchased by a financial investor and confirmed that it would switch away from the Divestment Business if such an investor would buy it.

[592] See, for instance, Belgacom's reply to Question 11 of Questionnaire 8: "(in order to have the necessary credibility to win new DC and NRTRDE contracts), "the Divestment Business would need to demonstrate its ability and capacity to keep up with the future technological evolutions and the customers would require assurances in this respect." Especially competitors, including potential purchasers identified by the Notifying Party, underline that the Divestment Business would only stay

(704) Customers[593] and competitors[594] confirm that the Purchaser would need to be able to offer a sufficient range of related services, which has to include either Financial Clearing or Business Intelligence Analytics, and a range of other related services such as Fraud Management/Revenue Assurance, Interconnect services, SMS and signalling services. The Purchaser would also have to have the capacity to expand its presence in DC and NRTRDE in other regions of the world in the short term.

(705) The market investigation confirmed that the Purchaser of the Divestment Business should not be controlled by or affiliated to a MNO.[595] MNOs are highly reluctant to allow a competing MNO to have access to and insight into their sensitive and business-critical roaming data.

Risk to the effective implementation of the Commitments of 26 March 2013

- Impact of the additional purchaser criteria on the pool of suitable purchasers

(706) During the market test, a number of market participants expressed their interest in purchasing the Divestment Business.

(707) However, only some of them would meet the additional purchaser requirements that the DC and NRTRDE customers identified as necessary as described in recitals (701) to (705) . Moreover, some of the remaining suitable Purchasers indicated that they would only bid for the Divestment Business if it were to include Financial Clearing and/or other services such as Business Intelligence and Analytics.

(708) The combination of these two factors could reduce the pool of suitable Purchasers of the Divestment Business.

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relevant for its customers if it is able to keep pace with the LTE and Wi-Fi trends in the industry (Competitors' response to Questions 1-4 of Questionnaire 9).

593 See, for instance, the following responses to Question 22 of Questionnaire 8: "In a procurement process, an operator would often consider a package of products and services, mainly including (but not limited to) Financial Clearing services and should that be the case, than the Divestment Business, stand-alone, would not constitute a strong alternative to the merged entity" (Digicel) "If the Divestment Business is to be competitive, it should provide other value-added services that Mach currently provides, like Mobile Messaging services, Data Optimisation, Roaming Hub, Interconnect Billing. Many operators purchase services in a bundle, so a provider with a limited portfolio of services may be regarded as less attractive." (Cyfrowy Polsat). "Deutsche Telekom considers it important the Divestment Business is in a position to offer not only the current products but has the possibility to expand its product portfolio and to invest in new products as required by the market. A broad existing portfolio facilitates this. Only offering DC and NTRTRDE services may not be viable over time." "There are concerns about the divestment of only DC and NRTRDE services. Many customers will have an integrated contract for (Financial Clearing and other services) and the proposed Divestment Business would leave those customers with a fragmented set of services, needing to obtain Financial Clearing services from Syniverse or another Financial Clearing house." (Vodafone). "Verizon believes that for the Divestment Business to be an effective competitor in the long-run, it will need to be purchased by or partner with a company that offers complementary telecom roaming services, such as, but not limited to, signalling/GRX, roaming hub and financial clearing services." "We think that DC and NRTRDE services are not sufficient as standalone services. MNOs and MVNOs are looking for turnkey solutions including all relevant parts, for instance Bill Shock Prevention." (Freenet). "We would need a DC provider having a similar customer base as Mach today and offering the same services (not only DC and NRTRDE) that Mach does." (PT Luxembourg). "For Telefónica, (the Purchaser) should be reliable, with high experience and knowledge of the roaming market and strong fraud tools/protection systems."

594 See, for instance, responses of TNS, TATA and CSG to questions 1-4 of Questionnaire 9.

595 Almost 90% of responding MNOs has this opinion. Customers' response to Question 24 of Questionnaire 8.

- Implementation risk

(709) As the assets and personnel that comprise the Divestment Business are not held within one legal entity within Mach, they would have to be consolidated under a single holding company and then divested to the Purchaser. This means that assets and personnel would have to be combined from different legal entities, geographies and business reporting lines, then assigned to the new holding company and, finally, divested to a suitable purchaser. The market test confirmed that this remedy structure carries significant implementation risks.

(710) Important customers such as […]* highlighted the uncertainty that the personnel to be transferred would have about their fate during the implementation process. […]* believed that there would be a significant risk that personnel would leave the Divestment Business in the interim. […]* also explained that customers want to have stability of supply for the business-critical DC and NRTRDE services and would be likely to switch back to the merged entity as soon as any implementation issue arose.[596] This would be facilitated by the fact that Syniverse would retain their contracts for non-DC/NRTRDE services. Similarly, […]* indicates that there is a significant risk to the viability of the Divestment Business if the divestiture process is not short and simple, and increases customers' concerns about the ease of the transition process.[597]

(711) Other customers indicate that it would be challenging for a purchaser to launch a completely new hardware/software platform in Germany, which has not been tested in practice. The software arrangements for the divestiture are particularly complex, with multiple platforms that serve the divested customers co-existing at the same time. The severance of the links between these platforms may prove challenging.

(712) The majority of competitors, including market players that the Notifying Party has identified as potential purchasers (such as […]*) also highlight the risks in the implementation of the Commitments of 26 March 2013. […]* underlines that customers may switch back to the merged entity if uncertainties on the identity of the purchaser of the assets remain[598]and […]* is of the view that for this reason, the customer migration should be completed before the divestiture takes place.[599] […]* underlines that the envisaged carve-out and divestiture would leave key issues unresolved, and that there would be a risk that the competition concerns arising from the proposed concentration would already materialise if those issues were not resolved in a timely manner.[600]

(713) The customer […]* indicated that given those implementation risks, an upfront buyer clause would be needed.[601] The competitor […]* even argues in favour of a "fix-it-first" approach, according to which the Notifying Party would have to conclude a binding sales and purchase agreement with a suitable purchaser before the Commission adopts its Decision in this case.[602]

596 […]*'s response to Question 32 of Questionnaire 8.
597 […]*'s response to Question 1 of Questionnaire 8.
598 […]*' response to Question 7 of Questionnaire 9.
599 […]*s' response to Questions 1-4 and 25 of Questionnaire 9.
600 […]*'s response to Question 30 of Questionnaire 9.
601 […]*'s response to Questions 1 and 24 of Questionnaire 8.
602 […]*'s response to Question 30 of Questionnaire 9).

(714) The market test thus reveals serious doubts that the Commitments of 26 March 2013 can be effectively implemented and that the viability and effectiveness of the Divestment Business would be threatened, should these doubts materialise.

Further improvements to the content of the Divestment Business

(715) The market test confirmed that further improvements to the content of the Divestment Business were needed.

(716) Scope of the Divestment Business. […]*, which is supposed to be the flagship customer of the Divestment Business, indicated that it would be induced to remain with the Divestment Business if it were to also include Mach Optimiser. Mach Optimiser is a Business Intelligence product that relies on the output of Mach's DC platform (Mach Optimiser). Other customers also indicate that the Divestment Business would be a more effective competitor to the merged entity if it were to offer that product.[603]

(717) Hardware arrangements. The market test broadly indicates that the hardware arrangements foreseen in the remedies are sufficient.[604] It revealed no material concerns about the fact that the relevant hardware would be hosted by a third party. This result is in line with market practice. Syniverse itself conducts its DC operations in a hardware environment that is leased from a third party.

(718) Belgacom stressed that Syniverse should make a more explicit commitment that the divested hardware would allow for seasonal variation and capacity expansion. Two competitors that were identified by the Notifying Party as potential purchasers of the Divestment Business ([…]*) highlighted that Syniverse should commit more clearly to guaranteeing adequate service quality levels and equitable commercial terms in the supply contract with the envisaged data centre host.[605]

(719) Software arrangements. The Commitments of 26 March 2013 foresaw that for a period of […]* years, Syniverse would retain a copy of Mach's DC and NRTRDE software platform, including all customer customisations. The market test indicated that this period may be too long in the specific situation where Syniverse would transfer the retained customers onto its own platforms.[606]

(720) Finally, the remedies provide that Syniverse would obtain the sole licence for both the software layer that supports the retained Mach services and the additional Mach intelligence software from the Purchaser. […]* submitted that this unduly limits the freedom of the Purchaser to dispose of its IP rights and grant further licences if it so wishes. In its view, the reverse licences should be non-exclusive.

(721) Personnel issues. Customers generally underline that it is crucial for the viability of the Divestment Business to have sufficient personnel with the skills and experience to deal with the requirements of the customers that are to be transferred.[607] This is in line with the Commission's findings that service quality, reputation and track record, which are ultimately secured by the personnel of the DC providers, is a crucial factor in ensuring success on the DC and NRTRDE markets. Competitors also underline

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603 For instance, response of Cyfrowy Polsat SA to Question 12 of Questionnaire 8.
604 Customers' response to Question 15 of Questionnaire 8.
605 […]*'s response to Question 1 of Questionnaire 9. […]*'s response to Question 4 of Questionnaire 9.
606 Customers' response to Question 20 of Questionnaire 8.
607 Customers' response to Questions 1-4 and 13-14 of Questionnaire 8.

that the Divestment Business should include sufficient skilled personnel, in particular development personnel.[608]

(722) The divested customers identified a total number of […]* personnel that they considered to be of key importance for the Divestment Business, but that were not (visibly) included in the Commitments of 26 March 2013. This concerns both customer-facing support staff and staff that operate at a more strategic business management level and serve as escalation points for customer-related questions. These customers considered it indispensable that those staff be included in the Divestment Business in order to secure its viability and competitiveness going forward.[609]

(723) Financial Clearing and Business Intelligence services. A number of players that were identified by the Notifying Party as potential purchasers of the assets indicate that in order for the Divestment Business to be an effective competitor to the merged entity, it would have to include the EEA contracts and associated assets for Financial Clearing and Business Intelligence and other value-added services.

(724) The Commission communicated these results of the market test to the Notifying Party during a meeting on 11 April 2013**.** Syniverse subsequently improved the Commitments in the light of those results, and submitted revised Commitments on 19 April 2013.

7.2.3. The Commitments of 19 April 2013 ("The Final Commitments")

7.2.3.1. Substance of the proposal

(725) The Final Commitments contain the following improvements to the Commitments of 26 March 2013.

The inclusion of strict purchaser criteria

(726) The Notifying Party included additional purchaser criteria in the Final Commitments. These criteria add to the standard criteria (financial stability, independence and no prima facie competition concerns). These additional criteria specify that in order to ensure the immediate restoration of effective competition on the DC and NRTRDE markets, the Purchaser must:

- not be a purely financial investor;
- have the ability and willingness to develop the Divestment Business and keep pace with industry innovation (for example roll-out of LTE and wi-fi);
- offer either Financial Clearing or Business Intelligence solutions (such as Bill Shock Prevention or Dual-IMSI);
- offer a sufficient range of additional services relevant to wireless communications (such as SMS, fraud management, revenue assurance or signalling);
- not be controlled by, or in the same corporate group as, a MNO;
- have the ability and willingness to develop DC and NRTRDE outside the EEA in the short term.

608 Competitors' response to Questions 1-4 of Questionnaire 9.
609 Customers' response to Questions 13-14 of Questionnaire 8.

Inclusion of an upfront buyer clause

(727) In order to address the significant risk in the effective implementation of the commitments that the Commission identified and that respondents to the market test confirmed, the Notifying Party included an upfront buyer clause. Pursuant to that clause, the Notifying Party cannot complete the acquisition of Mach until it has signed a binding sales and purchase agreement for the Divestment Business with a suitable purchaser that meets the strict purchaser criteria, and the Commission has approved both the purchaser and the terms of sale of the Divestment Business.

Improvements to the content of the Divestment Business

(728) The Notifying Party also included improvements to the content of the Divestment Business.

(729) Hardware arrangements. In line with submissions by respondents to the market test, the Notifying Party explicitly gives a commitment that the hardware to be divested has sufficient capacity for seasonal variation and expansion through the addition of new DC and NRTRDE customers. The Notifying Party now gives a commitment that the service contract for out-sourced data centre services that is at the disposal of the Purchaser will be on commercially reasonable terms and will contain customary terms sufficient to ensure quality and service and security for the Divestment Business.

(730) A Purchaser that meets the strict purchaser criteria will have to offer either Financial Clearing or Business Intelligence solutions, as well as a sufficient range of other services that are relevant to wireless communications. The Commission considers that a Purchaser that has such a wider market presence may wish to integrate the divested hardware with existing hardware at alternative locations in the EEA that that Purchaser may have at its disposal. In order to ensure this flexibility, the Notifying Party undertakes to retain any liabilities under the service contract should the Purchaser choose to locate the hardware in an alternative EEA location.

(731) Software arrangements. As explained in recital (719), the majority of customers confirmed that the […]* year-duration of the licence that Syniverse would obtain for the Mach DC and NRTRDE platforms was too long. For its part, the Notifying Party explains that it needs that arrangement in order to migrate the Mach customers it would retain to its own platform.

(732) In order to strike a balance between the two interests, the Notifying Party has decreased the duration of the relevant licence from […]* years. In addition, the Final Commitments specify clearly that Syniverse would be limited to using the platform exclusively for the retained Mach customers until such time as they can be migrated off the Mach platform. Syniverse could, therefore, not use that platform to win divested Mach customers back from the Purchaser, nor to serve its own customers that are served from its own platforms. […]*. The Final Commitments make explicit that there would be no continuing link between the processing platform of the Divestment Business and Syniverse.

(733) The Final Commitments specify that the reverse licences that Syniverse would obtain from the Purchaser for the use of the software layer that supports the other Mach services that Syniverse would retain and for the Business Intelligence tools included in the divestiture are non-exclusive.

(734) The Monitoring Trustee would verify that these Commitments are adhered to.

(735) Mach Optimiser. In order to address the submissions by divested customers that the Divestment Business would have to include Mach Optimiser, the Final Commitments now foresee that if it so wishes, the Purchaser could also obtain the ownership of that technology product and its associated software. In addition, the Key Personnel of the Divestment Business would include a sufficient number of skilled personnel that can develop and support that service.[610]

(736) Personnel. Following the submissions of divested customers that the Divestment Business would lack key personnel that are necessary to ensure its viability and competitive effectiveness, the Notifying Party added a further […]* personnel to the Divestment Business.[611] As a result, the Divestment Business would now include a total number of […]* personnel.

(737) Termination rights for retained contracts for other services. Pursuant to the purchaser criteria included in the Final Commitments, the Purchaser of the Divestment Business would need to offer either Financial Clearing or Business Intelligence solutions. In addition, it must offer a sufficient range of other related services that are relevant to wireless communications. Ultimately, the services that the Purchaser offers may overlap with services that the divested customers currently obtain from Mach and that would be retained by Syniverse after the proposed concentration.

(738) The Final Commitments specify that within a time period of […]* months after the closing of the sale of the Divestment Business to the Purchaser, the divested customers can terminate the Mach contracts for the relevant other services that Syniverse would retain, with […]* months' notice. This ensures that the Purchaser can offer its full suite of services to the divested customers following its acquisition of the Divestment Business.

7.3. The Commission's overall assessment of the Final Commitments

The suitability to remove the likely significant impediment to effective competition

(739) The Commission has assessed the suitability of the Final Commitments to fully eliminate the significant impediment to effective competition that would be likely to arise from the proposed concentration.

(740) For those purposes, the Commission recalls that the significant impediment to effective competition that would be likely to arise from the proposed concentration was as follows:

- the proposed concentration would remove the competition between Syniverse and Mach, and result in a near-monopoly market position in the DC and NRTRDE markets (section 6.1.3.);
- in view of the importance of service quality, reliability and reputation in the provision of the business-critical DC and NRTRDE services, customers would face difficulties in switching to smaller competitors: particularly in the case of large Tier 1 EEA MNOs, smaller competitors do not exert any constraint on the merged entity and this would continue to be the case after the proposed concentration (section 6.1.4.);

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610 If the Purchaser exercises this option, Syniverse would obtain a reverse licence for the use of this product.

611 […]*.

- smaller competitors would face significant barriers to expanding their operations and replacing the constraint that Mach exerts on Syniverse today (section 6.1.5.);
- there would be no countervailing buyer power (section 6.1.7.);
- there would be no likely, timely and sufficient entry by new competitors, inter alia in the light of the need for such competitors to enter across a variety of roaming-related services (section 6.1.8.).

(741) The Final Commitments essentially consist of the divestiture of the totality of Mach's EEA-wide DC and NRTRDE. As a result, the Divestment Business will have a market share effectively equal to Mach's current EEA-wide market share, that is to say [40-50]*% of the DC and NRTRDE markets.

(742) The Final Commitments provide the Purchaser with all the assets that it needs to offer the service quality, reliability, reputation and track record that Mach offers to its EEA customers today. In particular:

- the Purchaser will have the hardware that was deemed sufficient by respondents to the market test, and under arrangements that have proven to work in the industry today;
- the Purchaser will have all the necessary software to offer DC and NRTRDE services to Mach's current EEA customers, including the configurations for customised solutions that these customers require: in addition, it will obtain the software to undertake certain additional Intelligence reporting functions and will be able to offer the Mach Optimiser service to customers;
- the Purchaser will have personnel that matches, in numbers and in profile, the Mach personnel that serve the DC and NRTRDE needs of its EEA customers: Those personnel have the necessary skills and experience to ensure the service quality, reliability, reputation and track record that Mach has built up over the years: moreover, the Divestment Business will include the necessary executive and operational management personnel, as well as personnel to undertake functions such as IT and product development;
- the Purchaser will have the possibility to offer its full suite of related services to the divested customers, should the divested customers opt to terminate the relevant service agreements that Syniverse would retain.

(743) The Commission considers that with the Final Commitments, DC and NRTRDE customers will have a competing supplier that can replace the constraint that Mach exerts on Syniverse today. The Purchaser of the Divestment Business will have the necessary assets to credibly and effectively bid for their DC and NRTRDE needs. Customers can choose to procure DC and NRTRDE services from the Purchaser of the Divestment Business or use the presence of such a player to obtain competitive DC and NRTRDE services from Syniverse.

(744) Crucially, the Divestment Business will include […]*, the largest Tier 1 EEA MNO that is served at the group level by Mach. After the Notifying Party submitted the improved Commitments of 26 March 2013 to secure the transfer of […]* to the

Divestment Business, […]* granted its consent to be transferred.[612] The consent was conditional upon requirements as to the identity of the purchaser, all of which the Notifying Party has included as Purchaser Criteria in the Final Commitments. The Divestment Business will have all the hardware, software and dedicated personnel that are needed to service […]* and to meet its complex requirements, including for customised solutions. Having […]* as its flagship customer will grant the Divestment Business the indispensable proven reputation and track record that is needed to credibly bid for other Tier 1 MNOs that wish to be served at the group level.

(745) The Commission concludes that the Final Commitments are suitable to remove the significant impediment to effective competition that would have been likely to result from the proposed concentration, and adequately address all the comments of the respondents to the market test.

(746) The Commission recalls that some competitors that were identified as potential purchasers of the Divestment Business indicated that it should have included Financial Clearing and "value-added" services such as Business Intelligence and Analytics.

(747) The Final Commitments specify that any Purchaser of the Divestment Business needs to offer either Financial Clearing or Business Intelligence/Analytics solutions. In addition, it needs to offer a sufficient range of other services that are relevant to wireless communications. Hence, customers can procure those services from the Purchaser of the Divestment Business. Their possibility to do so will be strengthened by the right to terminate, until […]* months after closing of the sale of the Divestment Business, all relevant Mach service contracts that Syniverse will retain. Customers can do so with […]* months' notice.

(748) Overall, the Commission considers that the strict purchaser criteria in the Final Commitments and the termination rights that allow the divested customers to procure services from the Purchaser will enable the Purchaser to have a broad presence across DC/NRTRDE and other roaming-related and wireless communication services. The Commission also recalls that there are industry players that offer those services on the basis of re-selling arrangements. A notable example is TNS, which re-sells NextGen's Financial Clearing services outside the EEA. Under those circumstances, the Commission considers that there is no need for a more onerous solution to achieve that aim, in particular an obligation for the Notifying Party to divest the entirety or parts of Mach's operations in Financial Clearing and Business Intelligence or other value-added services. Insisting upon such a solution would have been disproportionate.

(749) Finally, some respondents to the market test raised concerns that the Divestment Business would not have sufficient assets and personnel to offer DC and NRTRDE outside the EEA. The Final Commitments now specify that any Purchaser of the Divestment Business must demonstrate its capability and willingness to expand its presence in DC and NRTRDE outside the EEA.[613] As the Commission approves the Purchaser and the terms of sale of the Divestment Business, it will certify that the Purchaser does, indeed, have the assets and personnel to expand its geographic

[612] Letter of a duly authorised representative of […]* to Mach of 10 April 2013, provided by the Notifying Party to the Commission by e-mail of 15 April 2013.

[613] […]*.

presence in this manner. The Commission considers that this improvement sufficiently addresses the concerns that were voiced in the market test.

The need for the upfront buyer clause

(750) The Commission agrees with the submissions made during the market test that an upfront buyer clause is needed to ensure the effective transfer of the Divestment Business to a suitable purchaser[614].

(751) First, the additional purchaser requirements that are needed in this case can ultimately reduce the pool of suitable purchasers of the Divestment Business.

(752) Second, the Commission agrees with the respondents to the market test that there would have been considerable risks involved in preserving the competitiveness and saleability of the Divestment Business in the interim period until divestiture.

(753) The Divestment Business is effectively a combination of assets that have to be assigned from different legal entities to a holding company and then divested to a suitable purchaser. Hence, there is a need to combine assets and personnel from different entities, geographies and business reporting lines. There would have been a risk that personnel would leave the Divestment Business if it would have remained uncertain over a long period of time who the ultimate purchaser of the assets would be. There would also have been a risk that customers that have to give their consent before being transferred to the Divestment Business, which concerns the second largest customer of the Divestment Business […]*, would have switched away from the Divestment Business if uncertainties about the identity of the Purchaser remained. The merged entity would likely have been the sole alternative for that customer.

(754) The integration of the assets that make up the Divestment Business into the existing business of the Purchaser would generally have taken considerable time. The interim risks that would have existed for the viability and competitiveness of the Divestment Business would have been increased if the parties were not able to undertake the carve-out and divestiture process in that interim period. The carve-out and divestiture process will likely only commence in earnest once a sales and purchase agreement with a suitable purchaser has been entered into.

(755) The Commission therefore agrees with the indications from the market test that it would not have been possible to determine with the requisite degree of certainty, at the time of its final Decision in this case, that the Commitments of 26 March 2013 would be fully implemented and would be likely to maintain effective competition on the DC and NRTRDE markets.

(756) The Commission considers that the inclusion of an upfront buyer clause is an adequate and necessary solution for these concerns. Under that clause, Syniverse will not be able to complete its acquisition of Mach before it has concluded a binding sales and purchase agreement with a suitable Purchaser of the Divestment Business, and the Commission has approved both the purchaser and the terms of sale of the Divestment Business. This will incentivise Syniverse to ensure both that a suitable purchaser is found and that the Final Commitments are successfully implemented.

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614 Remedies Notice, paragraphs 54 and 55.

(757) On this basis, the Commission can conclude with the requisite degree of certainty that the Final Commitments will be fully implemented and maintain effective competition on the DC and NRTRDE markets.

7.4. Conclusion

(758) The Commission concludes that the Final Commitments remove the significant impediment to effective competition on the DC and NRTRDE markets that would have been likely to have arisen from the proposed concentration.

(759) As explained in recital (704), the Commission took notice of concerns from market participants that the merged entity would have been able to bundle its DC offerings with other related services that customers purchase with DC, thus foreclosing competitors that provide those services on a stand-alone basis. The Commission concluded that those concerns would have stemmed from the increased market power that the merged entity would have achieved on the DC market. This increase in market power in DC will be removed by the Final Commitments. The Commission therefore concludes that the Final Commitments also remove any possible concern related to the bundling of DC (and NRTRDE services for that matter) with related services.

7.5. Conditions and obligations

(760) Pursuant to the second subparagraph of Article 8(2) of the Merger Regulation, the Commission may attach to its Decision conditions and obligations intended to ensure that the undertakings concerned comply with the commitments they have entered into vis-à-vis the Commission with a view to rendering the concentration compatible with the internal market.

(761) The fulfilment of the measure that gives rise to the structural change of the market is a condition, whereas the implementing steps which are necessary to achieve that result are generally obligations on the parties. Where a condition is not fulfilled, the Commission's Decision declaring the concentration compatible with the internal market is no longer applicable. Where the undertakings concerned commit a breach of an obligation, the Commission may revoke the clearance Decision in accordance with Article 8(6) of the Merger Regulation. The undertakings concerned may also be subject to fines and periodic penalty payments under Articles 14(2) and 15(1) of the Merger Regulation.

(762) This Decision should be made conditional on compliance by the Notifying Party with Sections B, C and D (including Schedules 1 to 8 of the Final Commitments. All other Sections should be obligations within the meaning of Article 8(2) of the Merger Regulation. The full text of the commitments is set out in the Annex.

HAS ADOPTED THIS DECISION:

Article 1

The notified operation whereby Syniverse Holdings, Inc., acquires sole control of WP Roaming III S.à r.l. within the meaning of Article 3(1)(b) of Regulation (EC) No 139/2004 is hereby declared compatible with the internal market and the EEA Agreement.

Article 2

Article 1 shall apply on condition that the commitments entered into by Syniverse Holdings Inc., and set in sections B, C and D as well as the relevant definitions of section A of the Annex are complied with in full.

Article 3

Syniverse Holdings, Inc., is under the obligation that the other commitments set out in sections E and F as well as the relevant definitions of section A of the Annex are complied with in full.

Article 4

This Decision is addressed to Syniverse Holdings, Inc., 8125 Highwoods Palm Way, Tampa, FL 33647-1776, United States of America.

Done at Brussels, 29.5.2013

(signed)
For the Commission
Vice-President

Annex

The annex is available in a separate document.

CASE M.6690 – SYNIVERSE / MACH

COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 8(2) and 10(2) of Council Regulation (EC) No. 139/2004 as amended (the "**Merger Regulation**"), Syniverse Holdings, Inc. ("**Syniverse**") hereby provides the following Commitments (the "**Commitments**") in order to enable the European Commission (the "**Commission**") to declare Syniverse's proposed acquisition of sole control of WP Roaming III S.À R.L. ("**MACH**", and together with Syniverse referred to as the "**Parties**") compatible with the common market and the EEA Agreement by its decision pursuant to Article 8(2) of the Merger Regulation (the "**Decision**").

The Commitments shall take effect upon the date of adoption of the Decision.

This text shall be interpreted in the light of the Decision to the extent that the Commitments are attached as conditions and obligations, in the general framework of EU law, in particular in the light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under the Merger Regulation and under Commission Regulation (EC) No 802/2004.

SECTION A – Definitions

For the purpose of the Commitments, the following terms shall have the following meaning:

Affiliated Undertakings: undertakings controlled by Syniverse or MACH and/or by the ultimate parents of Syniverse or MACH, respectively, whereby the notion of control shall be interpreted pursuant to Article 3 of the Merger Regulation and in the light of the Commission Consolidated Jurisdictional Notice under the Merger Regulation.

Closing: the transfer of the legal title of the Divestment Business to the Purchaser.

Closing date: in relation to the Divestment Business, means the date on which Closing takes place.

DC: GSM Data Clearing.

Divestment Business: the business or the businesses as defined in Section B and the Schedules that Syniverse commits to divest.

Divestiture Trustee: one or more natural or legal person(s), independent from the Parties, who is appointed by Syniverse and approved by the Commission and who has received from Syniverse the exclusive Trustee Mandate to sell the Divestment Business to a Purchaser at no minimum price.

EEA Territory: the territory defined by the 27 Member States of the European Union as at the date of these Commitments, together with Norway, Iceland and Liechtenstein.

Effective Date: the date of adoption of the Decision.

First Divestiture Period: the period of […]* from the Effective Date.

Hold Separate Manager: the person appointed by Syniverse for the Divestment Business to manage the day-to-day business under the supervision of the Monitoring Trustee.

Key Personnel: all Personnel necessary to maintain the viability and competitiveness of the Divestment Business as listed in **Schedule 2**.

MACH: WP Roaming III S.À R.L. ("MACH"), incorporated under the Laws of Luxembourg ("MACH"), with its registered office at Rue Edmond Reuter 15, L-5326 Contern, Luxembourg.

MACH Trademark: the MACH global trademark(s) as set out in **Schedule 6**.

Monitoring Trustee: one or more natural or legal person(s), independent from the Parties, who is approved by the Commission and appointed by Syniverse, and who has the duty to monitor Syniverse' compliance with the conditions and obligations attached to the Decision.

NRTRDE: Near Real Time Roaming Data Exchange.

[…]*.

[…]* Contract Commitment: Syniverse's commitment pursuant to which the […]* Contract will be part of the Divestment Business by the time of the sale of the Divestment Business to the Purchaser under the following circumstances: (i) Syniverse obtains […]*'s consent to assign the […]* Contract to the Divestment Business at least with respect to the whole of the EEA territory[1] and (ii) if […]* does not agree to assign the […]* Contract to the Divestment Business at least with respect to the whole of the EEA territory, then Syniverse undertakes all necessary steps to restructure the Divestment Business in such a way that it is able to include the […]* Contract in the Divestment Business.

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[1] For the avoidance of doubt, Syniverse will have complied with the […]* Contract Commitment and no additional steps will need to be undertaken if it has obtained […]*'s consent to assign the […]*Contract to the Divestment Business with respect to at least all of [...]*'s DC and NRTRDE businesses in the EEA Territory.

Personnel: all individuals currently employed or to be hired by MACH who are dedicated to the Divestment Business, including the additional India-based personnel available at the Purchaser's option at the time of transfer of the Divestment Business, as indicated in **Schedule 3**.

Proposed Transaction: Syniverse's proposed acquisition of sole control of MACH.

Purchaser: the entity approved by the Commission as acquirer of the Divestment Business in accordance with the criteria set out in Section D.

[…]*.

[…]* **Alternative Contracts**: the […]* and […]* contracts as identified in **Schedule 5** that Syniverse will assign to the Divestment Business in the event that: (i) […]* does not agree to assign the […]* Contract to the Divestment Business; and (ii) the […]* Contract is not included in the Divestment Business as a result of the steps undertaken by Syniverse to include the […]* Contract in the Divestment Business […]*.[2]

Trustee(s): the Monitoring Trustee and the Divestiture Trustee.

Trustee Divestiture Period: the period of […]* from the end of the First Divestiture Period.

SECTION B – The Divestment Business

Commitment to divest

1. In order to restore effective competition, Syniverse commits to divest, or procure the divestiture of the Divestment Business by the end of the Trustee Divestiture Period as a going concern to a Purchaser and on terms of sale approved by the Commission in accordance with the procedure described in paragraph 17. To carry out the divestiture, Syniverse commits to find a Purchaser and to enter into a final binding sale and purchase agreement for the sale of the Divestment Business within the First Divestiture Period. If Syniverse has not entered into such an agreement at the end of the First Divestiture Period, Syniverse shall grant the Divestiture Trustee an exclusive mandate to sell the Divestment Business in accordance with the procedure described in paragraph 17 in the Trustee Divestiture Period. The Proposed Transaction shall not be implemented unless and until Syniverse or the Divestiture Trustee has entered into a final binding sale and purchase agreement for the sale of the Divestment Business and the Commission has approved the Purchaser and the terms of sale in accordance with paragraph 17.

[2] […]*

2. Syniverse shall be deemed to have complied with this commitment if: (i) by the end of the Trustee Divestiture Period, Syniverse has entered into a final binding sale and purchase agreement; (ii) the Commission approves the Purchaser and the terms in accordance with the procedure described in paragraph 17; and (iii) the Closing of the sale of the Divestment Business takes place within a period not exceeding […]* after the approval of the Purchaser and the terms of sale by the Commission.

3. In order to maintain the structural effect of the Commitments, the Parties shall, for a period of 10 years after the Effective Date, not acquire direct or indirect influence over the whole or part of the Divestment Business, unless the Commission has previously found that the structure of the market has changed to such an extent that the absence of influence over the Divestment Business is no longer necessary to render the proposed concentration compatible with the common market.

Structure and definition of the Divestment Business

4. The Divestment Business consists of MACH's DC and NRTRDE businesses in the EEA as operated to date. The present legal and functional structure of the Divestment Business is described in more detail in **Schedule 1**.

5. MACH's DC and NRTRDE businesses in the EEA will be consolidated under a single holding company (i.e. the Divestment Business). The shares of the Divestment Business will be sold to a Purchaser as an existing viable stand-alone business with fully operational DC and NRTRDE platforms including all the assets necessary to operate on a lasting basis in the relevant markets.

6. The Divestment Business that Syniverse commits to divest includes all tangible and intangible assets (including intellectual property rights) as well as personnel, which contribute to MACH's current operation of DC and NRTRDE in the EEA or are necessary to ensure the viability and competitiveness of the Divestment Business:

(a) DC and NRTRDE platform (including intelligence reporting tools): A complete, operational, and scalable DC and NRTRDE platform which has all existing elements of MACH's DC and NRTRDE platforms. The platform will comprise the following:

- Operational assets: Hardware which will be owned by the Divestment Business and will be loaded with MACH software to undertake DC and NRTRDE processing and provide related intelligence services (for a description of the hardware see **Schedule 8)**. This hardware will have sufficient capacity to undertake these services for the divested customers with additional capacity for seasonal variation and expansion through the addition of new customers. This hardware will be located in a data centre in […]* and the data centre facilities will be managed by a third party data centre provider. The service contract with the data centre provider will be transferred to the Divestment Business, unless the Purchaser does not wish to take it. Syniverse will retain any liabilities under the service contract should the Purchaser choose to locate the hardware in an alternative EEA location. This contract will be on commercially reasonable terms and will contain customary terms sufficient to ensure quality of service and security for the Divestment Business;

- Proprietary software: The Divestment Business will have complete and irrevocable ownership of the MACH MDS Framework layer that supports many MACH services including many of the retained services, as well as the proprietary MACH software applications that undertake DC and NRTRDE processing (and each of the value added services as described at **Schedule 7**);

- The Divestment Business will grant a non-exclusive, perpetual, irrevocable, transferrable,[3] royalty-free licence back to Syniverse for the use of MACH MDS Framework layer that supports many MACH services including many of the retained services. The license shall contain the appropriate guarantees to maintain the confidentiality of the MACH MDS Framework layer and allow for Syniverse's continued use of the MACH MDS Framework layer in case of bankruptcy of the Purchaser. Syniverse and the Divestment Business shall each own all rights, title and interest to any derivative works each make, or has made on its behalf, of the MACH MDS Framework layer;

- The Divestment Business will grant Syniverse a non-exclusive royalty-free licence for a period of […]* months for the DC and NRTRDE processing applications. This will only allow Syniverse to migrate the retained customers (including the retained customers' processing customisations) off the MACH DC and NRTRDE processing applications onto its own systems. Under the terms of the licence, Syniverse will be limited to using the platform exclusively for the retained customers until a time when they can be migrated off the platform. Upon the expiration of this licence, Syniverse will shut down the MACH DC and NRTRDE applications running on its hardware and will exclusively use its own DC and NRTRDE processing platform. There will be no continuing link between the processing platform of the Divestment Business and Syniverse;

- DC and NRTRDE processing customisations for all current MACH DC and NRTRDE customers (i.e. both retained customers and divested customers) will be included in the Divestment Business. DC and NRTRDE processing customisations for all MACH DC and NRTRDE divested customers will be expunged to the greatest extent possible from Syniverse's licenced version;

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[3] Limited to transfers within the corporate group to which Syniverse belongs or in the event of a change of control of Syniverse.

- Intelligence reporting tools: In addition to the MACH DC and NRTRDE platforms, ownership of the following MACH intelligence services will be transferred to the Divestment Business: (i) MACH Smart, an intelligence tool that provides for basic and enhanced reporting (including MACH Dashboards for graphic representations of MACH Smart reports); (ii) MACH Roaming Management Services ("MACH RMS"), which is a roaming agreement management service; and (iii) MACH customer consultancy services ("MCS"), an ad hoc customer service tool;

- The Divestment Business will grant a non-exclusive, perpetual, irrevocable, transferrable,[4] royalty-free licence back to Syniverse for the use of MACH Smart (including MACH Dashboards) and MACH RMS. The license shall contain the appropriate guarantees to allow for Syniverse's continued use of MACH Smart (including MACH Dashboards) or MACH RMS in case of bankruptcy of the Purchaser. Syniverse and the Divestment Business shall each own all rights, title and interest to any derivative works each makes, or has made on its behalf, of MACH Smart (including MACH Dashboards) or MACH RMS. The scope of the MACH Smart (including MACH Dashboards) and MACH RMS license will be limited to: (i) the customers of all retained MACH services; (ii) retained DC and NRTRDE customers; and (iii) any other non-DC, non-NRTRDE Syniverse products;

- Customer configurations for these intelligence tools for all current MACH DC and NRTRDE customers (i.e. both retained and divested customers) will be included in the Divestment Business. Customer configurations for these intelligence tools for the divested customers will be expunged to the greatest extent possible from Syniverse's licenced version. The licence for the intelligence reporting tools will be limited to customer configurations for retained customers and will exclude customer configurations for divested customers;

- MACH Optimiser: Ownership of MACH Optimiser, a business intelligence tool for analysing and forecasting wholesale roaming traffic will be transferred to the Divestment Business. The Divestment Business will grant a non-exclusive, perpetual, irrevocable, transferrable,[5] royalty-free licence back to Syniverse for the use of MACH Optimiser. The license shall contain the appropriate guarantees to allow for Syniverse's continued use of MACH Optimiser in case of bankruptcy of the Purchaser. Syniverse and the Divestment

[4] Limited to transfers within the corporate group to which Syniverse belongs or in the event of a change of control of Syniverse.

[5] Limited to transfers within the corporate group to which Syniverse belongs or in the event of a change of control of Syniverse.

Business shall each own all rights, title and interest to any derivative works each makes, or has made on its behalf, of MACH Optimiser.

- Customer configurations for MACH Optimiser for all current MACH Optimiser customers will be included in the Divestment Business.

- Third party rights: Insofar as rights of third parties that MACH currently licences are concerned, Syniverse will procure that MACH will use its reasonable commercial endeavours to assist the Purchaser to procure new licences on commercially reasonable terms. Such third party licences relate to commercially available off-the-shelf software packages sold by vendors including […]*;

(b) All licences, permits and authorisations issued by any governmental organisation for the benefit of the Divestment Business.

(c) Personnel: All necessary key and other personnel will be transferred to the Divestment Business.

- The necessary key and other personnel to be transferred to the Divestment Business will include MACH personnel dedicated to providing DC and NRTRDE services in the EEA as well as a sufficient proportion of personnel providing essential functions for the business such as, for instance, group development and information technology staff that are currently shared by different business units.

- Key personnel to be transferred include: (i) an experienced executive team consisting of a Chief Executive Officer, a Chief Product and Marketing Officer, a Chief Administration Officer and a Director Global Customer Care to provide overall strategic leadership and direction; (ii) directors and management who will deal with all strategic, technical, operational and commercial issues; (iii) key customer relationship personnel that are specifically dedicated to providing DC and NRTRDE customer care and development services to the divested customers; and (iv) other key personnel **(Schedule 2)**;

- Other personnel will consist of mainly development, systems management and technical services. These other personnel will have experience developing the MACH MDS Framework layer to provide processing customisation specific to DC and NRTRDE customers in the EEA, and will have sufficient expertise to perform any future customisations. This category of personnel is comprised of employees from the EEA and India. Insofar as employees from India are concerned, at the option of the Purchaser, a sufficient number of employees will also be made available at the time of the transfer of the Divestment Business from a wider group of approximately 200 employees who currently reside in India **(**for the Personnel list see

Schedule 3). In particular, Syniverse will use its reasonable best efforts to the extent permitted by law, to facilitate the transfer to the Purchaser of Indian employees desired by such Purchaser. Syniverse will provide relevant contact details for Indian employees as desired by the Purchaser, or otherwise make such employees available to the Purchaser subject to compliance with applicable laws. Prior to Closing, Syniverse will facilitate interviews between such employees and the Purchaser, will not discourage such employees from participating in such interviews, and shall not interfere in employment negotiations between such employees and the Purchaser.

(d) Customers: The Divestment Business will at the time of sale to the Purchaser comprise virtually all of MACH's current DC[6] and NRTRDE[7] customers in the EEA. It will include the […]* Contract, as well as the […]* Contract or, in the case of: (i) […]* not providing consent to being assigned to the Divestment Business ; and (ii) the […]* Contract not being included in the Divestment Business as a result of the steps undertaken by Syniverse to include the […]* Contract in the Divestment Business if it has failed to obtain […]*'s consent in accordance with the […]* Contract Commitment, the […]* Alternative Contracts replacing the […]* Contract as set out in **Schedule 5**. The EEA portion of the Divestment Business including the […]*–and […]* Contracts will at the time of sale to the Purchaser account in total for around 95% of MACH's EEA DC and NRTRDE revenues in 2011. The same holds true when taking into account the revenues of the […]* Alternative Contracts, together with the EEA portion of the Divestment Business including the […]* Contract. All new customer wins in the EEA that MACH has achieved in its DC and NRTRDE businesses between the date of the commitments and closing of the Proposed Transaction. In the event that a divested customer also currently procures non-DC and non-NRTRDE services from MACH that are also offered by the Purchaser (including the Divestment Business), Syniverse will provide that divested customer promptly, and in any case before the Closing Date, with the option to purchase the non-DC and non-NRTRDE services from either the merged entity or the Purchaser. In case the divested customer opts to procure non-DC, non-NRTRDE services from the Purchaser, it will have the right to terminate its existing contract (or contracts) with MACH for the non-DC and non-NRTRDE services to be provided by the Purchaser, at any time within […]* months of the Closing Date, by giving […]* months' notice and without penalty (the "***Termination Right***"). In addition, unless and until a relevant customer has switched to the Purchaser following the exercise of its Termination Right, Syniverse will continue to provide the non-DC and non-NRTRDE services to that customer on the same terms and conditions relating to the provision of those services for a period of […]* months from the Closing Date, or until the end of the current contract, whichever occurs sooner.

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[6] Including international and national roaming customers.
[7] Referred to by MACH as Data Express.

(e) **MACH Trademark**: Assignment of MACH global trademark(s) (for the description of MACH Trademark see **Schedule 6**). The Divestment Business will grant Syniverse a non-exclusive, royalty-free licence for […]* months for the MACH trademark(s) to allow Syniverse to phase out and expunge all MACH branding from materials associated with the retained products;

(f) **Supplier contracts**: Necessary supplier contracts, including in particular (at the option of the Purchaser), a supplier contract for outsourced data centre services, will be transferred to the Divestment Business (items referred to under (a)-(e) hereinafter collectively referred to as "***Divestment Business Assets***").

SECTION C – Related commitments

Preservation of Viability, Marketability and Competitiveness

7. From the Effective Date until Closing, Syniverse shall preserve the economic viability, marketability and competitiveness of the Divestment Business, in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential of the Divestment Business. In particular, Syniverse undertakes:

(a) not to carry out any act upon its own authority that might have a significant adverse impact on the value, management or competitiveness of the Divestment Business or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the Divestment Business;

(b) to make available sufficient resources for the development of the Divestment Business (including, for the avoidance of doubt, all supportive third-party licenses necessary to carry out the Divestment Business's activities until Closing), on the basis and continuation of the existing business plans; and

(c) to take all reasonable steps, including appropriate incentive schemes (based on industry practice), to encourage all Key Personnel to move to or remain with the Divestment Business.

Hold-separate obligations of the Parties

8. Syniverse commits, from the Effective Date until Closing, to keep the Divestment Business separate from the businesses it is retaining and to ensure that Key Personnel of the Divestment Business – including the Hold Separate Manager – have no involvement in any business retained and vice versa. Syniverse shall also ensure that the Personnel does not report to any individual outside the Divestment Business.

9. Until Closing, Syniverse shall assist the Monitoring Trustee in ensuring that the Divestment Business is managed as a distinct and saleable entity separate from the businesses retained by the Parties. Syniverse shall appoint a Hold

Separate Manager who shall be responsible for the management of the Divestment Business, under the supervision of the Monitoring Trustee. The Hold Separate Manager shall manage the Divestment Business independently and in the best interest of the business with a view to ensuring its continued economic viability, marketability and competitiveness and its independence from the businesses retained by the Parties.

Ring-fencing

10. Syniverse shall implement all necessary measures to ensure that it does not after the Effective Date obtain any business secrets, know-how, commercial information, or any other information of a confidential or proprietary nature relating to the Divestment Business. In particular, the participation of the Divestment Business in a central information technology network shall be severed to the extent possible, without compromising the viability of the Divestment Business. Syniverse may obtain information relating to the Divestment Business which is reasonably necessary for the divestiture of the Divestment Business or whose disclosure to Syniverse is required by law.

Non-solicitation clause

11. The Parties undertake, subject to customary limitations, not to solicit, and to procure that Affiliated Undertakings do not solicit, the Key Personnel transferred with the Divestment Business to the Purchaser for a period of […]* after Closing.

Due Diligence

12. In order to enable potential Purchaser to carry out a reasonable due diligence of the Divestment Business, Syniverse shall, subject to customary confidentiality assurances and dependent on the stage of the divestiture process:

(a) provide to potential Purchaser sufficient information as regards the Divestment Business; and

(b) provide to potential Purchaser sufficient information relating to the Personnel and allow them reasonable access to the Personnel.

Reporting

13. Syniverse shall submit written reports in English on potential Purchaser of the Divestment Business and developments in the negotiations with such potential 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).

14. Syniverse shall inform the Commission and the Monitoring Trustee on the preparation of the data room documentation and the due diligence procedure and shall submit a copy of an information memorandum to the Commission and

the Monitoring Trustee before sending the memorandum out to potential Purchaser.

Third-party consents

15. Syniverse shall procure MACH to use its best endeavours to obtain the consent to assign the […]* Contract to the Divestment Business. However, in case of (i) […]*-Contract customers unwilling to consent to being assigned to the Divestment Business, and (ii) the […]* Contract not being included in the Divestment Business as a result of the steps undertaken by Syniverse to include the […]* Contract in the Divestment Business if it has failed to obtain […]*'s consent in accordance with the […]* Contract Commitment, the […]* Alternative Contracts replacing the […]*-Contract as set out in **Schedule 5** will be assigned to the Divestment Business.

SECTION D – The Purchaser

16. In order to ensure the immediate restoration of effective competition, the Purchaser of the Divestment Business, in order to be approved by the Commission, must:

(a) be independent of and unconnected to the Parties;

(b) have the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as viable and active competitive force in competition with Syniverse and other competitors;

(c) neither be likely to create, in the 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, and must, in particular, reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business;

(d) not be a purely financial investor;

(e) have the ability and willingness to develop the Divestment Business and keep pace with industry innovation (e.g. rollout of LTE and WiFi);

(f) offer either Financial Clearing or Business Intelligence solutions (such as bill shock or Dual-IMSI);

(g) offer a sufficient range of additional services relevant to wireless communications (such as SMS, fraud management, revenue assurance or signalling);

(h) not be controlled by, or in the same corporate group as, a mobile network operator; and

(i) have the ability and willingness to develop DC and NRTRDE outside the EEA in the short term (the before-mentioned criteria for the Purchaser hereafter the "***Purchaser Requirements***").

17. The final binding sale and purchase agreement shall be conditional on the Commission's approval. When Syniverse has reached an agreement with a Purchaser, it shall submit a fully documented and reasoned proposal, including a copy of the final agreement(s), to the Commission and the Monitoring Trustee. Syniverse must be able to demonstrate to the Commission that the Purchaser meets the Purchaser Requirements and that the Divestment Business is being sold in a manner consistent with the Commitments. For the approval, the Commission shall verify that the Purchaser fulfils the Purchaser Requirements and that the Divestment Business is being sold in a manner consistent with the Commitments. The Commission may approve the sale of the Divestment Business without one or more Divestment Business Assets or parts of the Personnel (including, for the avoidance of doubt, the Key Personnel), if this does not affect the viability and

competitiveness of Divestment Business after the sale, taking account of the proposed Purchaser.

SECTION E – Trustee

I. Appointment Procedure

18. Syniverse shall appoint a Monitoring Trustee to carry out the functions specified in the Commitments for a Monitoring Trustee. If Syniverse has not entered into a binding sales and purchase agreement one month before the end of the First Divestiture Period or if the Commission has rejected a purchaser proposed by Syniverse at that time or thereafter, Syniverse shall appoint a Divestiture Trustee to carry out the functions specified in the Commitments for a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the expiry of the First Divestiture Period.

19. The Trustee shall be independent of the Parties, possess the necessary qualifications to carry out its mandate, for example as an investment bank or consultant or auditor, and shall neither have nor become exposed to a conflict of interest. The Trustee shall be remunerated by the Parties in a way that does not impede the independent and effective fulfilment of its mandate. In particular, where the remuneration package of a Divestiture Trustee includes a success premium linked to the final sale value of the Divestment Business, the fee shall also be linked to a divestiture within the Trustee Divestiture Period.

Proposals by Syniverse

20. No later than one week after the Effective Date, Syniverse shall submit a list of one or more persons whom Syniverse proposes to appoint as the Monitoring Trustee to the Commission for approval. No later than one month before the end of the First Divestiture Period, Syniverse shall submit a list of one or more persons whom Syniverse proposes to appoint as Divestiture Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the proposed Trustee fulfils the requirements set out in paragraph 19 and shall include:

(a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these Commitments;

(b) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks; and

(c) an indication whether the proposed Trustee is to act as both Monitoring Trustee and Divestiture Trustee or whether different trustees are proposed for the two functions.

Approval or rejection by the Commission

21. The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it

deems necessary for the Trustee to fulfil its obligations. If only one name is approved, Syniverse shall appoint or cause to be appointed, the individual or institution concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, Syniverse shall be free to choose the Trustee to be appointed from among the names approved. The Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

New proposal by Syniverse

22. If all the proposed Trustees are rejected, Syniverse shall submit the names of at least two more individuals or institutions within one week of being informed of the rejection, in accordance with the requirements and the procedure set out in paragraphs 18 – 21.

Trustee nominated by the Commission

23. If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom Syniverse shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

II. Functions of the Trustee

24. The Trustee shall assume its specified duties in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or Syniverse, give any orders or instructions to the Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

Duties and obligations of the Monitoring Trustee

25. The Monitoring Trustee shall:

(a) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision;

(b) oversee the on-going management of the Divestment Business with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by Syniverse with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:

(i) monitor the preservation of the economic viability, marketability and competitiveness of the Divestment Business, and the keeping separate of the Divestment Business from the business retained by Syniverse, in accordance with paragraphs I.7 and I.8 of the Commitments;

(ii) supervise the management of the Divestment Business as a distinct and saleable entity, in accordance with paragraph I.9 of the Commitments;

(iii) (a) in consultation with Syniverse, determine all necessary measures to ensure that Syniverse does not after the Effective Date obtain any business secrets, know-how, commercial information, or any other information of a confidential or proprietary nature relating to the Divestment Business, in particular strive for the severing of the Divestment Business' participation in a central information technology network to the extent possible, without compromising the viability of the Divestment Business; and (b) decide whether such information may be disclosed to Syniverse as the disclosure is reasonably necessary to allow Syniverse to carry out the divestiture or as the disclosure is required by law;

(iv) monitor the splitting of assets and the allocation of Personnel, the effective sale of the Divestment Business and the identification of Personnel; and

(v) monitor the assistance provided in obtaining third party consents;

(c) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision;

(d) propose to Syniverse such measures as the Monitoring Trustee considers necessary to ensure Syniverse's compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic viability, marketability or competitiveness of the Divestment Business, the holding separate of the Divestment Business and the non-disclosure of competitively sensitive information;

(e) review and assess potential Purchaser as well as the progress of the divestiture process and verify that, dependent on the stage of the divestiture process: (i) potential Purchaser receive sufficient information relating to the Divestment Business and the Personnel in particular by reviewing, if available, the data room documentation, the information memorandum and the due diligence process; and (ii) potential Purchaser are granted reasonable access to the Personnel;

(f) provide to the Commission, sending to Syniverse a non-confidential copy at the same time, a written report within 15 days after the end of every month. The report shall cover the operation and management of the Divestment Business so that the Commission can assess whether the businesses are held in a manner consistent with the Commitments and the progress of the divestiture process as well as potential Purchaser. In addition to these reports, the Monitoring Trustee shall promptly report in writing to the Commission, sending to Syniverse a non-confidential copy at the same time, if it concludes on reasonable grounds that Syniverse is failing to comply with these Commitments; and

(g) within one week after receipt of the documented proposal referred to in paragraph I.17, submit to the Commission a reasoned opinion as to the suitability and independence of the proposed Purchaser and the viability of the Divestment Business after the sale and as to whether the Divestment Business is sold in a manner consistent with the conditions and obligations attached to the Decision, in particular, if relevant, whether the Sale of the Divestment Business without one or more Assets or not all of the Personnel affects the viability of the Divestment Business after the sale, taking account of the proposed Purchaser.

Duties and obligations of the Divestiture Trustee

26. Within the Trustee Divestiture Period, the Divestiture Trustee shall sell at no minimum price any of the Divestment Business to a Purchaser, provided that the Commission has approved both the Purchaser and the final binding sale and purchase agreement in accordance with the procedure laid down in paragraph I.18. The Divestiture Trustee shall include in the sale and purchase agreement(s) such terms and conditions as it considers appropriate for an expedient sale in the Trustee Divestiture Period. In particular, the Divestiture Trustee may include in the sale and purchase agreement(s) such customary representations and warranties and indemnities as are reasonably required to effect the sale. The Divestiture Trustee shall protect the legitimate financial interests of Syniverse, subject to Syniverse's unconditional obligation to divest at no minimum price in the Trustee Divestiture Period.

27. In the Trustee Divestiture Period (or otherwise at the Commission's request), the Divestiture Trustee shall provide the Commission with a comprehensive monthly report written in English on the progress of the divestiture process. Such reports shall be submitted within 15 days after the end of every month with a simultaneous copy to the Monitoring Trustee and a non-confidential copy to Syniverse.

III. Duties and obligations of Syniverse

28. Syniverse shall provide and shall cause its advisors to provide the Trustee with all such co- operation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to any of the Syniverse's or the Divestment Business' books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments and Syniverse as well as the Divestment Business shall provide the Trustee upon request with copies of any document. Syniverse and the Divestment Business shall make available to the Trustee one or more offices on their premises and shall be available for meetings in order to provide the Trustee with all information necessary for the performance of its tasks.

29. Syniverse shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the Divestment Business. This shall include all administrative support functions relating to the Divestment Business which are currently carried out at headquarters level. Syniverse shall provide and shall cause its advisors to provide the Monitoring Trustee, on request, with the information submitted to potential Purchaser, in particular give the Monitoring Trustee access to the data room documentation and all other information granted to potential Purchaser in the due diligence procedure. Syniverse shall inform the Monitoring Trustee on possible Purchaser, submit a list of potential Purchaser, and keep the Monitoring Trustee informed of all developments in the divestiture process.

30. Syniverse shall grant or procure Affiliated Undertakings to grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee to effect the sale, the Closing and all actions and declarations which the Divestiture Trustee considers necessary or appropriate to achieve the sale and the Closing, including the appointment of advisors to assist with the sale process. Upon request of the Divestiture Trustee, Syniverse shall cause the documents required for effecting the sale and the Closing to be duly executed.

31. Syniverse shall indemnify the 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 Syniverse for any liabilities arising out of the performance of the 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 Trustee, its employees, agents or advisors.

32. At the expense of Syniverse, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to Syniverse's approval (this approval not to be unreasonably withheld or delayed) if the 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 Trustee are reasonable. Should Syniverse refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard Syniverse. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 31 shall apply *mutatis mutandis*. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served Syniverse during the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.

IV. Replacement, discharge and reappointment of the Trustee

33. If the Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Trustee to a conflict of interest:

(a) the Commission may, after hearing the Trustee, require Syniverse to replace the Trustee; or

(b) Syniverse, with the prior approval of the Commission, may replace the Trustee.

34. If the Trustee is removed according to paragraph 33, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs I.18 – I.23.

35. Beside the removal according to paragraph 33, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the Commitments with which the 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

36. The Commission may, where appropriate, in response to a request from Syniverse showing good cause and accompanied by a report from the Monitoring Trustee:

(a) grant an extension of the time periods foreseen in the Commitments; or

(b) waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments.

Where Syniverse seeks an extension of a time period, it shall submit a request to the Commission no later than one month before the expiry of that period, showing good cause. Only in exceptional circumstances shall Syniverse be entitled to request an extension within the last month of any period.

[David Hitchcock]

duly authorised for and on behalf of Syniverse Holdings, Inc.

SCHEDULE 1

Divestment Business

1. **The Divestment Business as operated to date has the following legal and functional structure:**

37. The Divestment Business involves the divestment of MACH's GSM data clearing ("DC") and Near Real Time Roaming Data Exchange ("NRTRDE") businesses in the European Economic Area ("EEA"), including at the time of sale to the Purchaser virtually all of MACH's current DC[8] and NRTRDE[9] customers in the EEA. It will include the […]* Contract, as well as the […]* Contract or, in the case of: (i) […]* not providing consent to being assigned to the Divestment Business; and (ii) the […]* Contract not being included in the Divestment Business as a result of the steps undertaken by Syniverse to include the […]* Contract in the Divestment Business if it has failed to obtain […]*'s consent in accordance with the […]* Contract Commitment, the […]* Alternative Contracts replacing the […]* Contract as set out in **Schedule 5**. The EEA portion of the Divestment Business including the […]* and […]* Contracts will at the time of sale to the Purchaser account in total for around 95% of MACH's EEA DC and NRTRDE revenues in 2011. The same holds true when taking into account the revenues of the […]* Alternative Contracts, together with the EEA portion of the Divestment Business including the […]* Contract. All new customer wins in the EEA that MACH has achieved in its DC and NRTRDE businesses between the date of the commitments and closing of the Proposed Transaction, including those services that are closely related to the provision of DC. In the event that a divested customer also currently procures non-DC and non-NRTRDE services from MACH that are also offered by the Purchaser (including the Divestment Business), Syniverse will provide that divested customer promptly, and in any case before the Closing Date, with the option to purchase the non-DC and non-NRTRDE services from either the merged entity or the Purchaser. In case the divested customer opts to procure non-DC, non-NRTRDE services from the Purchaser, it will have the right to terminate its existing contract (or contracts) with MACH for the non-DC and non-NRTRDE services to be provided by the Purchaser, at any time within […]* months of the Closing Date, by giving […]* months' notice and without penalty (the "***Termination Right***"). In addition, unless and until a relevant customer has switched to the Purchaser following the exercise of its Termination Right, Syniverse will continue to provide the non-DC and non-NRTRDE services to that customer on the same terms and conditions relating to the provision of those services for a period of […]* months from the Closing Date, or until the end of the current contract, whichever occurs sooner.

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8 Including international and national roaming customers.

9 Referred to by MACH as Data Express.

38. MACH's DC and NRTRDE businesses in the EEA will be consolidated under a single holding company (the "Divestment Business"). The shares of the Divestment Business will be sold to a Purchaser as an existing viable stand-alone business with fully operational DC and NRTRDE platforms including all the assets necessary to operate in the relevant markets.

2. **Following paragraph I.4 of these Commitments, the Divestment Business includes, but is not limited to:**

(a) the following main tangible assets:

(b) the following main intangible assets:

39. The Divestment Business that Syniverse commits to divest includes all tangible and intangible assets (including intellectual property rights) which contribute to MACH's current operation of DC and NRTRDE in the EEA or are necessary to ensure the viability and competitiveness of the Divestment Business, including to the extent necessary to fulfil the Purchaser's needs:

(a) DC and NRTRDE platform (including intelligence reporting tools): A complete, operational, and scalable DC and NRTRDE platform which has all existing elements of MACH DC and NRTRDE platform. The platform will comprise the following:

- <u>Operational assets</u>: Hardware which will be owned by the Divestment Business and will be loaded with MACH software to undertake DC and NRTRDE processing and provide related intelligence services. This generic hardware (i.e. servers) will have the same functionality as the hardware currently used by MACH and will have sufficient capacity to undertake DC and NRTRDE services for the divested customers with additional capacity for new customers (for a description of the hardware see **Schedule 8)**. This hardware will have sufficient capacity to undertake these services for the divested customers with additional capacity for seasonal variation and expansion through the addition of new customers.

- This hardware owned by the Divestment Business will be located in a data centre in […]*. The data centre facilities are managed by a third party data centre provider, […]*. The contract with this outsourced data centre provider will be assigned to the Purchaser, unless the Purchaser does not wish to take it. Syniverse will retain any liabilities under the service contract should the Purchaser choose to locate the hardware in an alternative EEA location. This service contract will be on commercially reasonable terms and will contain customary terms sufficient to ensure quality of service and security for the Divestment Business.

- The Divestment Business will have independence from Syniverse in an up to date facility with flexibility to increase or decrease the amount of space needed and requiring no up-front investment. The following hardware components will be included: […]*. The Divestment Business is being set up as fully redundant, i.e. the platform will remain fully operational even if one or several components fail, as critical components have been duplicated. The hardware for both the primary and back-up platforms is a combination of new hardware and existing MACH hardware.

- <u>Proprietary software:</u> The Divestment Business will have complete and irrevocable ownership of the MACH MDS Framework layer that supports many MACH services including many of the retained services, as well as the proprietary MACH software applications that undertake DC and NRTRDE processing (and each of the value added services as described at **Schedule 7**).

(i) *Capability*: The software transferred will have the capability to undertake DC and NRTRDE processing as well as all common optional extra services/ value added services as detailed in **Schedule 7**.

(ii) *Licencing*: The Divestment Business will grant a non-exclusive, perpetual, irrevocable, transferrable,[10] royalty-free licence back to Syniverse for the use of MACH MDS Framework layer that supports many MACH services including many of the retained services. The license shall contain the appropriate guarantees to maintain the confidentiality of the MACH MDS Framework layer and allow for Syniverse's continued use of the MACH MDS Framework layer in case of bankruptcy of the Purchaser. Syniverse and the Divestment Business shall each own all rights, title and interest to any derivative works each makes, or has made on its behalf, of the MACH MDS Framework layer. DC and NRTRDE processing customisations for all current MACH DC and NRTRDE customers (i.e. both retained customers and divested customers) will be included in the Divestment Business. DC and NRTRDE processing customisations for all MACH DC and NRTRDE divested customers will be expunged to the greatest extent possible from Syniverse's licenced version. Ownership of MACH's DC and NRTRDE applications will be transferred to the Divestment Business such that the Divestment Business will have ownership of the proprietary MACH software that specifically undertakes DC and NRTRDE processing. Without these applications, the MACH MDS Framework layer cannot undertake DC or NRTRDE processing. In order to facilitate the migration of retained DC and NRTRDE customers from the MACH DC and NRTRDE processing applications to the Syniverse platform, the Divestment Business will further grant Syniverse a royalty-free non-exclusive

[10] Limited to transfers within the corporate group to which Syniverse belongs or in the event of a change of control of Syniverse.

licence for a period of […]* months for the DC and NRTRDE processing applications. Under the terms of this licence, Syniverse will only have the right for the duration of the licence to operate MACH's DC and NRTRDE processing applications for its retained customers whilst migrating those retained customers off the remedy platform. Under the terms of the licence, Syniverse will be limited to using the platform exclusively for the retained customers until a time when they can be migrated off the platform. This licence will be limited to DC and NRTRDE processing customisations for retained customers and will exclude DC and NRTRDE processing customisations for divested customers. The DC and NRTRDE processing customisations for all MACH DC and NRTRDE divested customers will be expunged to the greatest extent possible from Syniverse's licenced version; and

- Intelligence reporting tools: In addition to the MACH DC and NRTRDE platforms, ownership of the following MACH intelligence services will be transferred to the Divestment Business: (i) MACH Smart, an intelligence tool that provides for basic and enhanced reporting (including MACH Dashboards for graphic representations of MACH Smart reports); (ii) MACH Roaming Management Services ("MACH RMS"), which is a roaming agreement management service; and (iii) MACH customer consultancy services ("MCS"), an ad hoc customer service tool.

(i) *Capability*: The inclusion of these products will immediately enable the Divestment Business to provide reporting for DC and NRTRDE and other services often sold to DC and NRTRDE customers.

(ii) *Licencing:* The Divestment Business will grant a non-exclusive, perpetual, irrevocable, transferrable,[11] royalty-free licence back to Syniverse for the use of MACH Smart (including MACH Dashboards) and MACH RMS. The license shall contain the appropriate guarantees to allow for Syniverse's continued use of MACH Smart (including MACH Dashboards) or MACH RMS in case of bankruptcy of the Purchaser. Syniverse and the Divestment Business shall each own all rights, title and interest to any derivative works each makes, or has made on its behalf, of MACH Smart or MACH RMS. The scope of the MACH Smart (including MACH Dashboards) and MACH RMS license will be limited to: (i) the customers of all retained MACH services; (ii) retained DC and NRTRDE customers; and (iii) any other non- DC, non-NRTRDE Syniverse products. Customer configurations for these intelligence tools for all current MACH DC and NRTRDE customers (i.e. both retained and divested customers) will be included in the Divestment Business. Customer configurations for these intelligence tools for the divested customers will be expunged to the greatest extent possible from Syniverse's licenced version. The licences for the

[11] Limited to transfers within the corporate group to which Syniverse belongs or in the event of a change of control of Syniverse.

intelligence reporting tools will be limited to customer configurations for retained customers and will exclude customer configurations for divested customers.

- MACH Optimiser: Ownership of MACH Optimiser, a business intelligence tool for analysing and forecasting wholesale roaming traffic will be transferred to the Divestment Business.

(i) *Capability:* The inclusion of MACH Optimiser will immediately enable the Divestment Business to undertake business intelligence services for its customers.

(ii) *Licencing:* The Divestment Business will grant a non-exclusive, perpetual, irrevocable, transferrable,[12] royalty-free licence back to Syniverse for the use of MACH Optimiser. The license shall contain the appropriate guarantees to allow for Syniverse's continued use of MACH Optimiser in case of bankruptcy of the Purchaser. Syniverse and the Divestment Business shall each own all rights, title and interest to any derivative works each makes, or has made on its behalf, of MACH Optimiser. Customer configurations for MACH Optimiser for all current MACH Optimiser customers will be included in the Divestment Business.

- Third party rights. Insofar as rights of third parties that MACH currently licences are concerned, Syniverse will procure that MACH will use its reasonable commercial endeavours to assist the Purchaser to procure new licences on commercially reasonable terms. Such third party licences relate to commercially available off-the-shelf software packages sold by vendors including […]*.

(b) **Customers:** The Divestment Business will at the time of sale to the Purchaser comprise virtually all of MACH's current DC13 and NRTRDE14 customers in the EEA. It will include the […]* Contract, as well as the […]* Contract or, in the case of: (i) […]* not providing consent to being assigned to the Divestment Business; and (ii) the […]* Contract not being included in the Divestment Business as a result of the steps undertaken by Syniverse to include the […]* Contract in the Divestment Business if it has failed to obtain […]*'s consent in accordance with the […]* Contract Commitment, the […]* Alternative Contracts replacing the […]* Contract as set out in Schedule 5. The EEA portion of the Divestment Business including the […]* and […]* Contracts will at the time of sale to the Purchaser account in total for around 95% of MACH's EEA DC and NRTRDE revenues in 2011. The same holds true when taking into account the revenues of the […]*. Alternative Contracts, together with the EEA portion of the Divestment

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12 Limited to transfers within the corporate group to which Syniverse belongs or in the event of a change of control of Syniverse.

13 Including international and national roaming customers.

14 Referred to by MACH as Data Express.

Business including the […]* Contract. All new customer wins in the EEA that MACH has achieved in its DC and NRTRDE businesses between the date of the commitments and closing of the Proposed Transaction. In the event that a divested customer also currently procures non-DC and non-NRTRDE services from MACH that are also offered by the Purchaser (including the Divestment Business), Syniverse will provide that divested customer promptly, and in any case before the Closing Date, with the option to purchase the non-DC and non-NRTRDE services from either the merged entity or the Purchaser. In case the divested customer opts to procure non-DC, non-NRTRDE services from the Purchaser, it will have the right to terminate its existing contract (or contracts) with MACH for the non-DC and non-NRTRDE services to be provided by the Purchaser, at any time within […]* months of the Closing Date, by giving […]* months' notice and without penalty (the "Termination Right"). In addition, unless and until a relevant customer has switched to the Purchaser following the exercise of its Termination Right, Syniverse will continue to provide the non-DC and non- NRTRDE services to that customer on the same terms and conditions relating to the provision of those services for a period of […]* months from the Closing Date, or until the end of the current contract, whichever occurs sooner;

(c) **MACH Trademark:** Assignment of MACH global trademark(s) (for the description of MACH trademark see Schedule 6). The Divestment Business will grant Syniverse a non-exclusive, royalty-free licence for […]* months for the MACH trademark(s) to allow Syniverse to phase out and expunge all MACH branding from materials associated with the retained products;

(d) **Supplier contracts:** Necessary supplier contracts, including in particular (at the option of the Purchaser), a supplier contract for outsourced data centre services provided by […]*, will be transferred to the Divestment Business. The contract with […]* will be on commercially reasonable terms and will contain customary terms sufficient to ensure quality of service and security for the Divestment Business.

(c) **the following main licences, permits and authorisations:**

40. No such licences, permits and authorisations are necessary to operate the Divestment Business.

(d) **the following main contracts, agreements, leases, commitments and understandings:**

(e) **the following customer, credit and other records:**

(f) **the following Personnel:**

(g) **the following Key Personnel:**

41. The Divestment Business will have all necessary key and other personnel who will be fully operational at the time of the sale of the Divestment Business to the Purchaser.

42. The necessary key and other personnel to be transferred to the Divestment Business will include MACH personnel dedicated to providing DC and NRTRDE services in the EEA as well as a sufficient proportion of personnel providing essential functions for the business such as, for instance, group development and information technology staff that are currently shared by different business units. The Divestment Business will have […]* transferred personnel comprising of […]* Key Personnel and […]* Personnel. For lists of Key Personnel and Personnel please see Schedules 2 and 3, respectively.

43. The […]* Key Personnel to be transferred comprise of: (i) a suitable executive team consisting of a Chief Executive Officer, a Chief Product and Marketing Officer, a Chief administration Officer and a Director Global Customer Care to provide overall strategic leadership and direction; (ii) eight directors and management who will deal with all strategic, technical, operational and commercial issues; (iii) […]* key customer relationship personnel that are specifically dedicated to providing DC and NRTRDE customer care and development services to the divested customers; and (iv) […]* other key personnel.

44. The […]* Personnel will consist of mainly development, systems management and technical services. These Personnel will have experience developing MACH MDS to provide processing customisation specific to DC and NRTRDE customers in the EEA, and will have sufficient expertise to perform any future customisations. The […]* personnel will include […]* EEA-based employees, and […]* India-based employees which will be selected at the option of the Purchaser from a pool of approximately 200 India-based employees (for the Personnel list see Schedule 3). In particular, Syniverse will use its reasonable best efforts to the extent permitted by law, to facilitate the transfer to the Purchaser of Indian employees desired by such Purchaser. Syniverse will provide relevant contact details for Indian employees as desired by the Purchaser, or otherwise make such employees available to the Purchaser subject to compliance with applicable laws. Prior to Closing, Syniverse will facilitate interviews between such employees and the Purchaser, will not discourage such employees from participating in such interviews, and shall not interfere in employment negotiations between such employees and the Purchaser.

(h) the arrangements for the supply with the following products or services by the Parties or Affiliated Undertakings for a transitional period of up to 24 months after Closing:

45. There will be no such arrangements.

3. **The Divestment Business shall not include**

- Customer contracts other than those listed in **Schedules 4** and **5**, accounts or pricing information (other than in any customer contracts to be assigned);
- Existing operations and operational assets outside the EEA other than those relating to any customer contract to be assigned, including but not limited to land and buildings, goodwill, and employees other than the Key Personnel and Personnel as listed in **Schedules 2** and **3**; or
- Any obligation to support or maintain any software or other IP transferred to the Purchaser except as set forth herein or in any transitional arrangements.

SCHEDULE 2

[…]*

SCHEDULE 3

[…]*

SCHEDULE 3

[…]*

SCHEDULE 4

[…]*

SCHEDULE 5

[…]*

SCHEDULE 6

MACH Trademark

Trademark	Country of Registration / Country of protection (in case of unregistered trademark)	Registration No.	Application Date	Classes
"MACH" (word mark)	International trademark designating China (pending), EU, USA and Singapore	858102	29-11-2004	• Class 09: Computer software specialised for supporting the outsourcing of interoperator solutions for the optimization of costs and maximizing revenue within the scope of the telecommunications for mobile network operators; expressly not including software of software components for Enterprice Resource Planning (ERP), Enterprice Content Management (ECM), Document Management (DMS) of Human Resources (HR), electronic apparatus for interchange of information between mobile network operators. • Class 35: Business management, business administration; management of computer databases containing inter-operator billing data or roaming data and financial clearing information; management of roaming services agreements; billing services. • Class 36: Financial affairs, monetary affairs; financial clearing and settlement of roaming data, revenue assurance.

				• Class 38: Telecommunications, including roaming services, data and financial clearing services, content management and content facilitation services enabling mobile operators to provide on-line services to their subscribers. • Class 42: Scientific and technological services; design and development of computer software and computer hardware specialised for supporting the outsourcing of interoperator solutions for the optimization of costs and maximizing revenue within the scope of mobile network operators, expressly not including software of software components for Enterprise Resource Planning (ERP), Enterprise Content Management (ECM), Document Management (DMS) or Human Resources (HR).

(figurative trade mark)	EU	008861718	15-02-2010	• Class 9: Computer software specialised for supporting the outsourcing of interoperator solutions for the optimization of costs and maximizing the revenue within the scope if the telecommunications for mobile network operators; expressly not including software components for Enterprise Resource Planning (ERP), Enterprise Content Management (ECM), Document Management (DMS) or Human Resources (HR), electronic apparatus for interchange of information between mobile network operators. • Class 36: Financial clearing services. • Class 38: Telecommunications, including roaming services, data clearing services relating to roaming services; content management and content facilitation services enabling mobile operators to provide on-line services to their subscribers.

				• Class 42: Scientific and technological services; design and development of computer software and computer hardware specialised for supporting the outsourcing of interoperator solutions for the optimization of costs and maximizing revenue within the scope of mobile network operators, expressly not including software of software components for Enterprise Resource Planning (ERP), Enterprise Content Management (ECM), Document Management (DMS) or Human Resources (HR).

SCHEDULE 7

[…]*

SCHEDULE 8

[…]*