EN

Case No COMP/M.7109 - DEUTSCHE TELEKOM/ GTS

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 14/04/2014

In electronic form on the EUR-Lex website under document number 32014M7109

Office for Publications of the European Union
L-2985 Luxembourg

EUROPEAN COMMISSION

Brussels, 14/04/2014
C(2014) 2674 final

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE

To the notifying party:

Dear Sir/Madam,

Subject: Case No COMP/M.7109 – Deutsche Telekom/ GTS
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004[1]

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.

Commission européenne, DG COMP MERGER REGISTRY, 1049 Bruxelles, BELGIQUE
Europese Commissie, DG COMP MERGER REGISTRY, 1049 Brussel, BELGIË

Tel: +32 229-91111. Fax: +32 229-64301. E-mail: COMP-MERGER-REGISTRY@ec.europa.eu.

Table of Contents

1. THE PARTIES 5
2. THE OPERATION 5
3. EU DIMENSION 5
4. PRODUCT AND GEOGRAPHIC MARKET DEFINITIONS 6
4.1. International markets 6
4.1.1. Global telecommunications services 6
4.1.1.1. Product market definition 6
4.1.1.2. Geographic market definition 7
4.1.2. Wholesale Internet connectivity 7
4.1.2.1. Product market definition 7
4.1.2.2. Geographic market definition 8
4.2. National retail markets 8
4.2.1. The retail market for business connectivity services 8
4.2.1.1. Product market definition 8
4.2.1.2. Geographic market definition 9
4.2.2. The market for retail supply of fixed voice services 10
4.2.2.1. Product market definition 10
4.2.2.2. Geographic market definition 11
4.2.3. The market for retail supply of mobile telecommunication services to end customers 11
4.2.3.1. Product market definition 11
4.2.3.2. Geographic market definition 12
4.2.4. The markets for retail supply of fixed internet access services 13
4.2.4.1. Product market definitions 13
4.2.4.2. Geographic market definition 13
4.2.5. The retail market for bulk SMS services 14
4.2.5.1. Product market definitions 14
4.2.5.2. Geographic market definition 14
4.3. National wholesale markets 15
4.3.1. The market for wholesale leased lines 15
4.3.1.1. Product market definition 15
4.3.1.2. Geographic market definition 16
4.3.2. The market for the wholesale provision of domestic call transit services on fixed networks 17
4.3.2.1. Product market definition 17
4.3.2.2. Geographic market definition 17
4.3.3. The wholesale market for end-to-end calls 18
4.3.3.1. Product market definition 18
4.3.3.2. Geographic market definition 18
4.3.4. The markets for call termination services 19
4.3.4.1. Product market definitions 19
4.3.4.2. Geographic market definitions 19
4.3.5. The wholesale market for termination and hosting of non-geographic numbers 20
4.3.5.1. Product market definition 20
4.3.5.2. Geographic market definition 20
4.3.6. The markets for call origination services 21
4.3.6.1. The wholesale market for call origination on the public telephone network at a fixed location 21

4.3.6.2. The wholesale market for access and call origination services on mobile networks 21
4.3.7. The markets for wholesale provision of broadband Internet access 22
4.3.7.1. Product market definition 22
4.3.7.2. Geographic market definition 23
5. COMPETITIVE ASSESSMENT 23
5.1. Hungary 23
5.1.1. Parties' activities 23
5.1.2. Horizontally affected markets 24
5.1.2.1. Market for wholesale leased lines 24
5.1.2.2. Market for the wholesale domestic call transit on fixed networks 30
5.1.2.3. Market for retail business connectivity 31
5.1.2.4. Market for the retail supply of fixed voice services 33
5.1.2.5. Market for the retail supply of fixed internet access 34
5.1.3. Vertically affected markets 35
5.1.3.1. Wholesale leased lines – Retail business connectivity 35
5.1.3.2. Wholesale leased lines – retail mobile telecommunication services to end customers 38
5.1.3.3. Wholesale provision of domestic call transit services on fixed network – retail supply of fixed voice services and retail supply of mobile telecommunications services to end customers 42
5.1.3.4. Wholesale market for end-to-end calls – retail supply of fixed voice services. 46
5.1.3.5. Wholesale resale of broadband offering – retail business connectivity 48
5.1.3.6. Wholesale broadband offering – retail supply of fixed voice services 50
5.1.3.7. Other vertically affected markets 51
5.1.4. Conglomerate effects 55
5.1.4.1. Markets for retail business connectivity and retail supply of mobile telecommunications services 55
5.2. Romania 56
5.2.1. Parties' activities 56
5.2.2. Horizontally affected markets 56
5.2.2.1. Wholesale leased lines market 57
5.2.2.2. Retail market for business connectivity 62
5.2.2.3. Market for retail supply of fixed voice services 65
5.2.2.4. Wholesale market for provision of call transit services on fixed networks 66
5.2.2.5. Market for retail supply of fixed internet access services 66
5.2.3. Vertically affected markets 67
5.2.3.1. Wholesale leased lines market – Retail business connectivity market 67
5.2.3.2. Wholesale leased lines market – Retail supply of mobile telecommunication services to end customers 70
5.2.3.3. Other vertically affected markets 71
5.3. The Czech Republic 76
5.3.1. Parties' activities 76
5.3.2. Horizontal overlaps 76
5.3.2.1. Retail market for business connectivity 77
5.3.2.2. Wholesale of domestic call transit services market 79
5.3.2.3. Retail bulk of SMS 81
5.3.3. Vertical overlaps 82
5.3.3.1. Wholesale regulated markets 83
5.3.3.2. Wholesale leased lines market - retail supply of mobile telecommunication services to end customers 85

5.3.3.3. Markets vertically related to the wholesale market for domestic call transit services 86
5.3.3.4. Vertical relationship between wholesale provision of domestic call transit services on fixed network and retail supply of mobile telecommunication services 87
5.3.3.5. Market for wholesale access and call origination on mobile networks – Market for the retail supply of mobile telecommunications services........ 90
5.3.3.6. Market for termination and hosting of non-geographic numbers – Market for retail supply of mobile telecommunications services........ 93
5.3.4. Conglomerate effects........ 95
5.3.4.1. Retail markets for fixed voice services and mobile telecommunications services 95
5.4. Poland 97
5.4.1. Parties' activities........ 97
5.4.2. Vertical links 97
5.4.2.1. Wholesale regulated markets........ 97
5.4.2.2. Market for termination and hosting of non-geographic numbers – Several vertically related downstream markets........ 99
5.5. International market for Global Telecommunications Services........ 102
6. CONCLUSION........ 103

(1) On 11 March 2014, the European Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004[2] by which Deutsche Telekom AG ("DT") acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of GTS Central Europe ("GTS CE")[3] by way of purchase of shares (the "Transaction").

(2) DT and GTS CE are together designated hereinafter as the "Parties".

1. THE PARTIES

(3) **DT** provides fixed and mobile telecommunication services, internet access services and internet protocol television ("IPTV") services to residential and business customers in Europe. DT also provides telecommunications services to other carriers and internet service providers ("ISPs)" at wholesale level as well as tailor-made information and communication technology ("ICT") services to large business customers on a global scale.

(4) **GTS CE** is an infrastructure-based provider of telecommunications services and tailor-made ICT solutions for business, carrier and government customers in Poland, the Czech Republic, Hungary, Romania and Slovakia. It operates a network of fibre optic and data centres in Central and Eastern Europe.

2. THE OPERATION

(5) Pursuant to a Share Purchase Agreement ("SPA") of 8 November 2013 between DT and Consortium 1 S.à.r.l, the current owner of GTS CE, DT will acquire 100% of the shares, preferred equity certificates and convertible equity certificates issued by Consortium 1 S.à.r.l. DT will thereby acquire sole control over GTS CE in Hungary, Romania, the Czech Republic and Poland . According to the SPA, GTS CE's Slovakian Business will be carved out of the proposed transaction.[4] DT will therefore acquire sole control over GTS CE in Hungary, Romania, the Czech Republic, and Poland.

(6) The proposed transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

3. EU DIMENSION

(7) The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 000 million[5] (DT: EUR 58 200 million; GTS CE: EUR […]).

---

2 OJ L 24, 29.1.2004, p. 1 (the "Merger Regulation").

3 As further explained in paragraph (5), DT does not acquire control over GTS' operations in Slovakia.

4 Although DT will initially acquire all Securities in Consortium 1 S.à r.l., the Parties have unconditionally and in a legally binding manner agreed that the Slovakian Business is not part of the proposed concentration and, after acquisition of Consortium 1 S.à r.l. by DT, the Slovakian Business instantly will be sold and transferred back to an entity that will be set up by the Sellers.

5 Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.04.2008, p1).

Each of them has an EU-wide turnover in excess of EUR 250 million (DT: EUR […] million; GTS CE: EUR […] million). Neither company achieves more than two-thirds of its aggregate EU-wide turnover within one Member State.

(8) The notified operation therefore has an EU dimension within the meaning of Article 1(2) of the Merger Regulation.

4. PRODUCT AND GEOGRAPHIC MARKET DEFINITIONS

(9) The Parties are active in the provision of telecommunication services, comprising several types of closely related services. The Parties overlap in Hungary, Romania the Czech Republic and Poland.

4.1. International markets

4.1.1. Global telecommunications services

4.1.1.1. Product market definition

(10) **Global telecommunications services** (GTS) are telecommunications services linking a number of different customer locations, generally in at least two different continents and across a larger number of different countries. They are generally purchased by multinational companies with presence in many countries and a number of continents. The services provided are enhanced services to provide customers with package solutions including virtual private networks ("VPN") for both voice and data services and advanced functionalities.[6]

(11) The Parties submit that GTS are supplied at retail level and wholesale level. In the latter case, they can also be referred to as "international carrier services". According to the Parties, wholesale GTS comprise (i) the lease of transmission capacity and (ii) the provision of related services to third party telecommunication traffic carriers and service providers and are an input for retail GTS.

(12) The Parties submit that the retail GTS market should not be segmented according to different types of services as providers generally provide a package of services and most customers require to be supplied with integrated services.

(13) In *Vodafone / Cable&Wireless*[7], the Commission considered a possible distinction between retail GTS and international carrier services but ultimately left the exact product market definition open. While the Commission considered a possible distinction between the lease of transmission capacity and the provision of services to third-party carriers, it ultimately left open the exact product market definition.[8]

(14) In the present case, the exact definition of the product market can be left open, as the proposed transaction does not raise any competitive concern under any plausible market definition.

---

6 Commission decision of 28 June 2000 in case M.1741 – Verizon / MCI, recital 70.

7 Commission decision of 3 July 2012 in case M.6584 – Vodafone / Cable&Wireless, recital 33.

8 Commission decision of 3 July 2012 in case M.6584 – Vodafone / Cable&Wireless, recital 33.

4.1.1.2. Geographic market definition

(15) The Parties submit that the geographic scope of both the wholesale and retail GTS markets is global. From a demand side perspective, multinational companies tender their retail GTS needs globally or at least EEA-wide. A DT internal analysis of the requests for proposals during the year 2012 available to DT shows that over [90-100]% of these requests had a global or Europe-wide scope. From a supply side perspective, the main providers of retail GTS offer these services across the globe. Despite the fact that their network does not cover the entire globe, such providers purchase wholesale connectivity products to put together their competitive retail solutions.

(16) One respondent to the market investigation pointed out that the retail GTS market should be defined regional in scope covering the Central and Eastern European ("CEE") countries, as demand side considerations and homogeneous prices in this area would indicate that a wider scope (global or EEA-wide) may not be relevant.

(17) In past decisions, the Commission has considered the GTS market(s) to be global in scope, although it ultimately left open the precise definition of the geographic scope of this market.[9] The Commission considered that from a demand-side perspective, retail GTS customers are mainly internationally active multinational companies.[10] It also considered that most suppliers have an international portfolio of customers and are in a position of provisioning GTS on a worldwide basis.[11] A further element supporting a global market definition is that the competitive constraints on the pricing of GTS providers come from alternative solutions available from global providers of GTS.

(18) While the Commission's past decisional practice indicates that global telecommunication services are global in scope, in the present case, the exact definition of the geographic market can be left open, as the proposed transaction does not raise any competitive concern under any plausible market definition.

4.1.2. Wholesale Internet connectivity

4.1.2.1. Product market definition

(19) The Internet works as a "network of networks". A local ISP who wants to offer Internet services to end-customers has to connect with other networks in order to allow his end-customers to exchange traffic with other end customers / content providers beyond its own local network. In order to reach networks in far distance, an ISP has to connect to larger networks which can link both ISPs to each other. Such connectivity can be acquired either by peering (the mutual and free exchange of traffic between two networks) or by transit (the provision, for a fee, of access to the Internet via a network). Peering offers access only to the customers of the other

---

9 Commission decision of 7 October 2005 in case M.3752 – Verizon / MCI, recital 55, Commission, Decision of 25 January 2005, Case No. COMP/M.3641 – *BT/Infonet*, recital 11, Commission, Decision of 28 June 2000, Case No. COMP/M.1741 – *MCI WorldCom/Sprint*, recital 98, Commission decision of 3 July 2012 in case M.6584 – Vodafone / Cable&Wireless, recital 34.

10 Commission, Decision of 30 March 1999, Case No. IV/JV.15 – *BT/AT&*T, para. 89.

11 Commission decision of 28 June 2000 in case M.1741 – Verizon / MCI, recital 54.

network whereas a transit supplier gives access to the whole Internet. Peering usually occurs between ISPs of like size and geographical reach. Smaller networks usually can obtain connectivity to the larger ones only by paying for transit.

(20) In the Parties' view, there is no need to segment the market for Internet connectivity along the possible distinction between transit and peering as they are close substitutes satisfying similar customer needs, namely Internet connectivity.

(21) In past decisions, the Commission considered a market for internet connectivity. In addition, the Commission considered a possible segmentation between peering and transit, but ultimately left the exact product market definition open.[12]

(22) In the present case, the exact definition of the product market can be left open as the proposed transaction does not raise any competitive concern under any plausible market definition.

4.1.2.2. <u>Geographic market definition</u>

(23) The Parties submit that the geographic scope of this market is global as both demand and supply are worldwide. Content providers want to reach as many end customers as possible and ISPs need connectivity to all IP addresses in the public domain in order to satisfy the demand of end customers.

(24) In past decisions, the Commission considered the geographic scope of the market for internet connectivity as being global but ultimately left the exact market definition open.[13]

(25) In the present case, the exact definition of the geographic market can be left open as the proposed transaction does not raise any competitive concern under any plausible market definition.

4.2. National retail markets

4.2.1. The retail market for business connectivity services

4.2.1.1. <u>Product market definition</u>

(26) The retail market for business connectivity includes fixed telecommunications services purchased by large businesses, enterprises and public sector customers in order to provide data connectivity between multiple sites. In its decisional practice, the Commission[14] considered potential subdivisions into: *(i)* broadband access for large business customers;[15] *(ii)* leased lines;[16] and *(iii)* VPN services.[17]

---

12 Commission decision of 7 October 2005 in case M.3752 – Verizon / MCI, recital 24.

13 Commission decision of 7 October 2005 in case M.3752 – Verizon / MCI, recital 24.

14 Commission decision of 29 January 2010 in case M.5730 – Telefónica/Hansenet Telekommunikation, recital 6 and subsequent.

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

(27) The Parties disagree with such sub-segmentation, as most customers demand a variety of products and as they actually switch from one to another. More specifically, the Parties state that there is a general trend to switch from legacy layer-2 services (primarily leased lines and Ethernet services) to layer-3 connectivity (notably VPN services) that do not specifically require leased lines.

(28) In both Hungary and Romania, the market investigation results were mixed as to whether broadband access for large customers, leased line offers and VPN service offers were comparable.[18] However, in both countries, a large majority of customers of retail business connectivity stated that they would switch from leased lines to VPN services in case the price of the former increased permanently by 5 to 10%.[19] As regards supply-side substitutability, all competitors of retail business connectivity confirmed that they offered several types of business connectivity packages.[20] In Hungary, from a demand-side perspective, the majority of customers of retail business connectivity purchase at least broadband access services and leased lines, while in Romania they purchase all three services, or at least broadband access and VPN services.[21]

(29) In the light of the results of the market investigation, the Commission considers that there are indications that different types of services such leased lines and VPN services form part of a market for business connectivity. In any event, the exact definition of the product market can be left open in this case as the proposed transaction does not raise any competitive concern under any plausible market definition.

4.2.1.2. Geographic market definition

(30) In its decisional practice, the Commission has found that the retail market for business connectivity was national in scope.[22]

(31) The Parties agree with this definition.

---

16 Leased lines are part-circuits that allow communication providers to connect their own networks to end user sites for the supply of business connectivity (commission decision of 3 July 2012 in case M.6584 – Vodafone/Cable & Wireless, recital 28 and subsequent).

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

18 See replies to Commission questionnaires Q3 Competitors – Retail Market for Business Connectivity Hungary of 13 March 2014, question 18 and Q4 Competitors – Retail Market for Business Connectivity Romania of 13 March 2014, question 16.

19 See replies to Commission questionnaires Q5 Customers – Retail Market for Business Connectivity Hungary of 13 March 2014, question 6 and Q6 Customers – Retail Market for Business Connectivity Romania of 13 March 2014, question 6.

20 See replies to Commission questionnaires Q3 Competitors – Retail Market for Business Connectivity Hungary of 13 March 2014, question 17 and Q4 Competitors – Retail Market for Business Connectivity Romania of 13 March 2014, question 15.

21 See replies to Commission questionnaires Q5 Customers – Retail Market for Business Connectivity Hungary, question 4 and Q6 Customers – Retail Market for Business Connectivity Romania of 13 March 2014, question 4.

22 Commission decisions of 3 July 2012 in case M.6584 – Vodafone/Cable & Wireless, recital 10 and of 29 January 2010 in case M.5730 - Telefónica/Hansenet Telekommunikation, recital 28

(32) Both in Hungary and Romania, all suppliers of retail business connectivity stated that they supplied these services on a national level.[23] On the demand side, in Hungary, the majority of the customers of retail business connectivity responding to the market investigation stated that they purchased these services either on a national level or at EEA-level.[24] In Romania, all customers indicated that they purchased these services on a national level.

(33) Therefore, the Commission concludes that the geographic market for retail business connectivity is national in scope.

4.2.2. The market for retail supply of fixed voice services

4.2.2.1. Product market definition

(34) Fixed line telephony retail services comprise the provision of connection services or access (at a fixed location or address) to the public telephone network for the purpose of making and/or receiving calls and related services.

(35) In its past decision-making practice, the Commission defined a market for the retail supply of fixed voice services that would comprise "access to the public telephone network at a fixed location for residential and non-residential customers".[25] The Commission has previously considered drawing a distinction between residential and non-residential customers and between local and international calls, but ultimately left the product market definition open.[26] In addition, the Commission concluded that traditional telephony and managed Voice over the Internet Protocol (VoIP) services are interchangeable within the market for the retail supply of fixed voice services.[27]

(36) In their submission, the Parties submit that the retail market for fixed voice services comprise not only legacy voice services and managed VoIP solutions provided at fixed location but also home-zone products. Home-zone products consist of a mobile voice service provided at a fixed location. Customers using this service receive a telephone number from the fixed numbering plan, containing the area code of the location where the service is provided. This type of product does not allow clients to switch between different cells of those networks.

(37) The market investigation generally confirmed the Commission's previous decisional practice. As regards the possible substitutability between legacy fixed

23 See replies to Commission questionnaire Q3 Competitors – Retail Market for Business Connectivity Hungary of 13 March 2014, question 21 and Q4 Competitors – Retail Market for Business Connectivity Romania of 13 March 2014, question 18.

24 See replies to Commission questionnaire Q5 Customers – Retail Market for Business Connectivity Hungary of 13 March 2014, question 9 and to Q6 Customers – Retail Market for Business Connectivity Romania of 13 March 2014, question 9.

25 Commission Recommendation of 17 December 2007 on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services (OJ L 344, 28.12.2007, page 65).

26 Commission decision of 29 June 2009 in case COMP/M.5532 Carphone Warehouse/Tiscali UK, recitals 35 et seq.

27 Commission Decision of 20 September 2013 in case M.6990 – Vodafone/Kabel Deutschland, recital 131

voice and managed VoIP solutions, a majority of the Hungarian fixed voice providers responding to the market investigation indicated that fixed line telephony services and managed VoIP are comparable products. In case of a 5-10% increase in the price for fixed-line telephony services, a majority of their retail customers would switch to managed VoIP solutions.[28] As regards the possible substitutability between legacy fixed voice and Home-zone products, the results of the market investigation were inconclusive. [29]

(38) The Commission concludes that traditional telephony and managed VoIP are interchangeable within the market for the retail supply of fixed voice services. With regard to other aspects of this market, there is no need to decide on the exact definition of the product market, as the proposed transaction does not raise any competition concern under any plausible market definition.

4.2.2.2. Geographic market definition

(39) In past decisions, the Commission considered the retail market for the retail supply of fixed voice services to be national in scope.[30]

(40) The Parties submit that, in an emerging all-IP world, the geographic scope of this market could be EEA-wide or even global.

(41) The results of the market investigation pointed towards a national scope of this market, since the majority of the respondents supply retail fixed voice services at national level (Hungary). [31]

(42) In light of the results of the market investigation and its previous decisional practice, the Commission considers that the relevant geographic market for the provision of fixed-line telephony services to end customers is national in scope.

4.2.3. The market for retail supply of mobile telecommunication services to end customers

4.2.3.1. Product market definition

(43) In its previous decisional practice, the Commission has identified a market for the provision of all mobile telecommunication services to end customers or "retail mobile services" comprising services for national and international[32] voice calls, SMS (including MMS and other messages), mobile Internet with data services,

28 See replies to Commission questionnaire Q15 to Retailer of fixed voice in Hungary of 20 March 2014, question 5.1 and 6.1.

29 See replies to Commission questionnaire Q15 to Retailer of fixed voice in Hungary of 20 March 2014, question 5.2 and 6.2.

30 Commission decision of 29 June 2009 in case COMP/M.5532 Carphone Warehouse/Tiscali UK, recital 56.

31 See replies to Commission questionnaire Q15 to Retailer of fixed voice in Hungary of 20 March 2014, question 11.

32 In this context "international calls" designate calls that are made by a domestic user when in his/her home country, but that terminate at destinations which are abroad, that means the receiving number is a foreign one.

access to content via the mobile network and retail international roaming services.[33] The Commission considered possible further segmentations, but eventually left the market definition open.[34]

(44) The Parties submit that for the purpose of the competitive assessment it is not necessary to conclude on the exact product market definition.

(45) All respondents to the market investigation from the supply side both in the Czech Republic and in Hungary agree with the Commission's precedents that this market comprises national and international voice calls, SMS and mobile internet with data services.[35]

(46) In the present case, the exact definition of the product market can be left open as the proposed transaction does not raise any competition concern under any plausible market definition.

4.2.3.2. Geographic market definition

(47) In line with previous Commission decisions[36], the Parties submit that the market for the provision of mobile telecommunications services to end customers is national in scope.

(48) All respondents to the market investigation from the supply side in both the Czech Republic and Hungary agree with this geographic market definition for the market for retail mobile telecommunication services.[37]

(49) The Commission therefore considers, for the purposes of the present case, that the geographic market for the provision of mobile telecommunications services to end customers is national in scope.

---

33 Commission decision of 20 September 2013 in case M.6990 – *Vodafone/Kabel Deutschland*, recital. 209; Commission decision of 14 August 2013, in case M.6956,– *Telefónica/Caixabank/Banco Santander/JV*, recital 52; Commission decision of 04 September 2012 in case M.6314 - *Telefónica UK/Vodafone UK/Everything Everywhere/JV*, recital 206; Commission decision of 3 July 2012, in case M.6584,– *Vodafone/Cable & Wireless*, recital 35 et seq.; Commission Decision of 01 March 2010 in case M.5650,– *T-Mobile/Orange*, recital 20 et seqq.; Commission Decision in case M.5730, 29 January 2010 – *Telefónica/Hansenet*, recital 18.

34 Commission Decision of 20 September 2013 in case M.6990 – Vodafone/Kabel Deutschland, recital 215.

35 See replies to Commission's questionnaire Q. 11 Retailers of mobile telecommunication services Czech Republic and Q. 12 Retailers of mobile telecommunication services - Hungary, question 4.

36 Commission Decision of 20 September 2013 in case M.6990,– *Vodafone/Kabel Deutschland*, recital 219; Commission Decision of 14 August 2013 in case M.6956,– *Telefónica/Caixabank/Banco Santander/JV*, recital 54; Commission Decision of 29 January 2010 in case M.5730,– *Telefónica/Hansenet*, recital 28.

37 See replies to the Commission's questionnaire Q. 11 – Retailers of mobile telecommunication services Czech Republic, question 7 and Q. 12 – Retailers of mobile telecommunications services Hungary, question 15.

4.2.4. *The markets for retail supply of fixed internet access services*

4.2.4.1. Product market definitions

(50) The retail supply of fixed internet access services comprises standardised fixed telecommunications services purchased by small businesses and residential customers.[38]

(51) The Parties submit that medium and large businesses with intensive and complex requirements of data transmission services require tailor-made products. On the other hand, small enterprises are satisfied with the standard products used for the residential customers. The Parties also submit that in some Member States, in particular Eastern European Member States, mobile broadband services are generally a close substitute to fixed broadband services.

(52) The Commission has previously distinguished between (i) residential and small customers and (ii) large business customers[39] based on their need for Internet services. Furthermore, it considered a possible segmentation of this market between narrowband, broadband, cable modem and dedicated lines.[40] Moreover, in the *Carphone Warehouse/Tiscali UK* decision, the Commission concluded that mobile broadband is more expensive and slower, so it may constitute a separate market, but the question was ultimately left open.[41]

(53) For the purpose of the present decision, the exact definition of the product market can be left open as the proposed transaction does not raise any competitive concern under any plausible market definition.

4.2.4.2. Geographic market definition

(54) The parties submit that the demand for retail broadband services may be local given both the nature of the demand, and the heterogeneity of competitive conditions across geographic regions.

(55) The Commission considered in previous decisions[42] that the retail supply of fixed internet access services market is national in scope.

(56) The market investigation did not provide any indication that would justify a change in the geographic market definition.

(57) The Commission therefore concludes that there is no reason to modify its previous geographic market definition of the retail market of Internet access services, i.e. that the market is national.

---

38 Case M.5730 – Telefónica/Hansenet Telekommunikation, paragraph 7.

39 Commission decision of 29 June 2009 in case COMP/M.5532 *Carphone Warehouse/Tiscali UK*, recitals 26 et seq.

40 Case M.5730 – Telefónica/Hansenet Telekommunikation, paragraph 8.

41 Commission decision of 29 June 2009 in case COMP/M.5532 *Carphone Warehouse/Tiscali UK*, recital 20.

42 Case M. 6990, 20 September 2013 – Vodafone/Kabel Deutschland, paragraph 195.

4.2.5. *The retail market for bulk SMS services*

4.2.5.1. Product market definitions

(58) The retail market for bulk SMS services comprises conveyance of messages enabling businesses to send high volumes of text messages to their customers.[43]

(59) The Parties submit that bulk messaging is a service predominantly offered by SMS aggregators and that this service is used by media companies, enterprises, banks or consumer brands for general customer information , alerts, reminders or marketing. The aggregators act as intermediary between such businesses and Mobile Network Operators ("MNOs") by aggregating demand for bulk SMS. The MNO will then effectuate the physical conveyance of the message to the selected recipients.[44]

(60) In previous decisions[45], the Commission noted that retail bulk SMS services constitute a separate market from active marketing messaging and that the former is downstream from the possible market for the wholesale supply of bulk SMS services.

4.2.5.2. Geographic market definition

(61) The Parties note that competition on this market takes place on an international level, as bulk SMS services are primarily offered by international providers (such as Acision[46], Mblox[47], HQSMS[48], TM4B SMS GATEWAY[49], Truesenses[50], bulkSMS.com[51] or Clickatell[52]), operating in this market based on international agreements with MNOs.

(62) The Commission has considered previously that this market is national or wider in scope.[53]

(63) For the purpose of the present decision, the exact scope of the geographic market can be left open as the proposed transaction does not raise any competitive concerns under any possible market definition.

---

43 Case M.6314, 4 September 2012– Vodafone UK/Everything Everywhere/JV, paragraphs 183 et seq.

44 Case M.6314, 4 September 2012 – Telefónica UK/Vodafone UK/Everything Everywhere/JV, paragraphs 184 and 188.

45 Case M.6314, 4 September 2012 – Telefónica UK/Vodafone UK/Everything Everywhere/JV, paragraph 190.

46 http://www.acision.com/Products-and-Services/Services/Enterprise.aspx.

47 See http://www.mblox.com/company/overview.

48 http://www.hqsms.com/prices-coverage/price-list/czech-republic.

49 See http://www.tm4b.com/sending-sms/message_pricing/?ISO=CZ.

50 http://www.truesenses.com/website/pages/networklist.

51 http://www.bulksms.com/int/coverage/country/39.

52 See https://www.clickatell.com.

53 Case M.6314, 4 September 2012– Vodafone UK/Everything Everywhere/JV, paragraphs 234-235.

4.3. National wholesale markets

4.3.1. The market for wholesale leased lines

4.3.1.1. Product market definition

(64) Leased lines are part-circuits that allow communication providers to connect their own networks to end user sites for the supply of business connectivity services.[54]

(65) Telecom regulators sometimes segment the wholesale leased lines between those parts that can be considered to be the customer access and backhaul (terminating segments) and those elements that can be considered the backbone network (trunk segments). In its recommendation on market definitions in the electronic communications sector, the Commission considers a separate market for terminating segments for leased lines.[55]

(66) The Parties submit that the market for wholesale leased lines encompasses traditional (analogue and digital SDH) leased lines, Ethernet circuits and dark fibre. In particular, as for dark fibre, the Parties claim that dark fibre (passive infrastructure) and managed leased lines (active infrastructure) are similar products in terms of pricing and technology and therefore belong to the same product market. Moreover, the Parties consider that trunk segments and terminating segments of leased lines should be defined as two separate markets given different technical characteristics (for instance in terms of speed) and price levels. In addition, a further distinction of terminating segments of leased lines should be made according to their transfer capacity, as the terminating segment of leased lines with bandwidth above 2 megabit per second ("Mbps") differs from terminating segments of leased lines with bandwidth below 2 Mbps in terms of characteristics (speed vs. security) and technology (fibre optic vs. copper).

(67) In previous decisions, the Commission considered that the market for wholesale leased lines could be further segmented between trunk and terminating segments but ultimately left the market definition open.[56] The Commission has not yet considered whether the wholesale leased lines market should be further divided into passive and active infrastructure as well as whether the terminating segment of leased lines could be further segmented into terminating leased lines with bandwidth above 2 Mbps and below 2 Mbps.

(68) The market investigation was not conclusive as to whether the market for wholesale leased lines should be further segmented between trunk and terminating

---

54 Case No M.6584 – Vodafone/Cable & Wireless, para. 28 and subsequent.

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

56 Case No. M. 5730, 29 January 2010 – Telefónica/Hansenet Telekommunikation, recital 23, Commission decision of 3 July 2012 in case COMP/M.6584 Vodafone/Cable&Wireless, recital 30.

segment.[57] In both Hungary and Romania, respondents to the market investigation are divided as to whether the trunk and terminating segments of leased lines are comparable products in terms of technical characteristics and price.

(69) Respondents to the market investigation indicated that separate markets may exist between (i) the terminating segment of leased lines with bandwidth below 2 Mbps and the terminating segment of leased lines with bandwidth above 2 Mbps in Hungary[58] (the replies were not conclusive in Romania)[59] and (ii) between passive infrastructure (dark fibre) and active infrastructure (traditional managed leased lines) both in Hungary and in Romania.[60]

(70) The Commission considers that in the present case the exact definition of the product market can be left open as the proposed transaction does not raise any competition concern under any plausible market definition. The competitive assessment of the proposed transaction will therefore be based on the market for wholesale leased lines further segmented into (i) trunk and terminating segments of leased lines; (ii) terminating leased lines with bandwidth below 2 Mbps and terminating leased lines with bandwidth above 2 Mbps and (iii) passive infrastructure (dark fibre) and active infrastructure (traditional managed leased lines).

4.3.1.2. Geographic market definition

(71) The Parties submit that the market for wholesale leased lines is national in scope although there may be a trend towards internationalisation in the trunk segment.

(72) Respondents to the market investigation indicated that in Romania the market for wholesale leased lines is national in scope. As for Hungary, half of respondents including almost all customers considered the market to be national in scope, while

---

57 See replies to Commission questionnaire Q1 Competitors – Wholesale leased lines Hungary, questions 5 and 6 and Q2; Competitors – Wholesale leased lines Romania, questions 5 and 6; Commission questionnaire Q3 Competitors – Retail market for business connectivity Hungary, questions 5 and 6 and Q4 Competitors – Retail market for business connectivity Romania, question 5; and Commission questionnaire Q12 Retailers of mobile telecommunications services Hungary, questions 5 and 6 and Q14 – Retailers of mobile telecommunications services Romania, questions 4 and 5.

58 See replies to Commission questionnaire Q1 Competitors – Wholesale leased lines Hungary, question 7; Commission questionnaire Q3 Competitors – Retail market for business connectivity Hungary, questions 7 and 8 and Commission questionnaire – Retailers of mobile telecommunications services Hungary, questions 7 and 8.

59 See replies to Commission questionnaire Q1 Competitors – Wholesale leased lines Romania, question 7; Commission questionnaire Q3 Competitors – Retail market for business connectivity Romania, questions 7 and 8 and Commission questionnaire – Retailers of mobile telecommunications services Romania, questions 7 and 8.

60 See replies to Commission questionnaire Q1 and Q2 Competitors – Wholesale leased lines, question 8; Commission questionnaire Q3 and Q4 Competitors – Retail market for business connectivity, questions 9 and 10 and Commission questionnaire Q12– Retailers of mobile telecommunications services - Hungary, questions 9-10 and Q14 –Retailers of mobile telecommunication services – Romania, questions 8-9.

a minority of respondents – mainly competitors - considered the market to be local in scope.[61]

(73) The Commission previously held that the market is national in scope.[62]

(74) In light of the market investigation and its previous decision practice, the Commission concludes that the market for wholesale leased lines is national in scope in both Romania and Hungary.

4.3.2. The market for the wholesale provision of domestic call transit services on fixed networks

4.3.2.1. Product market definition

(75) In its previous decisional practice, the Commission considered that the wholesale provision of domestic call transit services on fixed networks comprises services used for carrying legacy-switched voice calls from the call origination service providers to the respective call termination service provider where there is no direct connection between their respective originating and terminating networks.[63]

(76) The Parties submit that the market for call transit services on fixed networks is a legacy market but in any case consider that the product market definition in this respect can be left open.

(77) In the present case, the exact definition of the product market can be left open, as the proposed transaction does not raise any competition concern under any plausible market definition.

4.3.2.2. Geographic market definition

(78) The Parties submit that the market for domestic call transit services on fixed networks is national in scope.

(79) The majority of respondents to the market investigation in Hungary confirmed that the market is national in scope.[64] In the Czech Republic, the respondents to the market investigation have unanimously considered that the market is national.[65]

---

61 See replies to Commission questionnaire Q1 and Q2 Competitors – Wholesale leased lines; Commission questionnaire Q3 and Q4 Competitors – Retail market for business connectivity, and Commission questionnaire Q12 and Q14 – Retailers of mobile telecommunications services.

62 Commission decision of 3 July 2012 in case COMP/M.6584 *Vodafone/Cable&Wireless*, recital 31.

63 Commission Decision of 3 July 2012 in case M.6584,– Vodafone/Cable & Wireless, recital 25 et seq.; Commission decision of 29 January 2010, in case M.5730 – Telefónica/Hansenet Telekommunikation, recital 19.

64 See replies to the Commission questionnaire, Q.9 – providers of domestic call transit services Hungary, question 4 and Q. 12 – retailers of mobile telecommunications services Hungary question 17. See also minutes of the conference call with UPC, from 28 March 2014, page 2.

65 See replies to the Commission Questionnaire, Q. 10 – Providers of domestic cal transit services – Czech Republic, question 4 and to Q. 11 – Retailers of mobile telecommunications services Czech republic, question 8.

(80) Previous Commission decisions considered the market to be national in scope.[66] In the light of the market investigation and its previous decisional practice, the Commission considers, for the purposes of the present decision, that the market for domestic call transit services on fixed networks is national in scope.

4.3.3. The wholesale market for end-to-end calls

4.3.3.1. Product market definition

(81) Fixed network operators ("FNOs") package origination and termination services and provide communication providers without their own networks a package which they can use to offer retail fixed voice services to consumers without the need to invest in network infrastructure.

(82) The Commission considered the existence of a separate wholesale market for end-to-end calls, which is separate from the wholesale markets for call origination, transit and termination, but left the exact market definition open.[67] In the same decision, respondents to the market investigation expressed the view that such a market would be an intermediate wholesale market downstream from wholesale call origination, termination and domestic call transit markets and upstream from the market for retail voice services.

(83) The Parties agree with the Commission's previous decisional practice and further submit that such wholesale end-to-end calls services can the provided through either self-supply by a single operator or merely resale of other operators' wholesale products.

(84) In the present case, the exact definition of the product market can be left open, notably whether the wholesale market for end-to-end calls is a separate market from call origination and call termination and transit, as the proposed transaction does not raise any competition concern under any possible market definition.

4.3.3.2. Geographic market definition

(85) In its past decision-making practice, the Commission concluded that this market is national.[68] The Parties agrees with such a geographic market definition.

(86) A large majority of the Hungarian customers of end-to-end calls responding to the market investigation indicated that they source such services on a national level.[69]

(87) Therefore, in light of the results of the market investigation and of its past decisional practice, the Commission considers for the purpose of the present decision that the geographic scope of the wholesale market for end-to-end calls services is national.

---

66 Commission Decision of 3 July 2012, in case M.6584 – *Vodafone/Cable & Wireless*, recital 25-27.

67 Commission Decision of 3 July 2012 in case M.6584 – Vodafone/Cable & Wireless, recital 19 et seq.

68 Commission Decision of 3 July 2012 in case M.6584 – Vodafone/Cable & Wireless, recital 21.

69 See replies to Commission questionnaire Q15 to retailers of fixed voice services in Hungary of 19 March 2014, question 13.

4.3.4. *The markets for call termination services*

4.3.4.1. Product market definitions

(88) Call termination services are provided when calls originate from one network and terminate on another network in order to allow users of different networks to communicate with one another. For such calls, the operator on which network the call terminates routes the call and connects it to the called party. This service is therefore provided by the network operator of the called party on the supply side to the network operator of the calling party on the demand side.

(89) In its decisional practice, the Commission defined a market for the wholesale provision of fixed call termination services[70] and a market for the wholesale provision of mobile call termination services.[71]

(90) In previous decisions, the Commission concluded that each individual network (both in fixed and in mobile network) constituted a separate product market, as there is no substitute for call termination on each individual network since the network operator transmitting a call outgoing from its network to another network can reach the recipient only through the respective other network operator.[72]

(91) The Parties submit that the Commission's previous conclusions should be upheld.

4.3.4.2. Geographic market definitions

(92) In previous decisions, the Commission considered the markets (both fixed and mobile networks) to be national in scope.[73]

(93) The Parties submit that in the present case there is no need to decide on the exact definition of the product and geographic market, as the proposed transaction does not raise any competitive concern under any possible product and geographic market definition.

(94) The market investigation does not provide any element that would substantiate a change in the geographic market definition.

(95) The Commission therefore concludes that the wholesale markets for fixed and mobile call termination services are national in scope.

---

70 Commission Decision of 20 September 2013 in case M.6990 – Vodafone/Kabel Deutschland, recital 111 et seq., and Commission Decision of 3 July 2012 in case M.6584 – Vodafone/Cable & Wireless, recital 22 et seq.

71 Commission Decision of 20 September 2013 in case M.6990 – Vodafone/Kabel Deutschland, recital 232 et seq., and Commission Decision of 3 July 2012 in case M.6584,– Vodafone/Cable & Wireless, recital 47 et seq.

72 Commission Decision of 20 September 2013 in case M.6990 – Vodafone/Kabel Deutschland, recital 114.

73 Commission decision of 1 March 2010 in case COMP/M.5650 *T-Mobile/Orange*, recital 38; Commission decision of 3 July 2012 in case COMP/M.6584 *Vodafone/Cable&Wireless*, recital 24. Commission Decision of 20 September 2013 in case M.6990 – Vodafone/Kabel Deutschland, recitals 119 and 242.

4.3.5. *The wholesale market for termination and hosting of non-geographic numbers*

4.3.5.1. Product market definition

(96) The Commission has previously considered a market for termination and hosting of non-geographic numbers, separate from the wholesale market for fixed call termination services. These numbers are used to provide contact centres for government and businesses that provide value added services paid for through call charges. The Commission has left the precise market definition open.[74]

(97) The Parties agree with the Commission's precedents.

(98) The respondents to the market investigation in Poland[75] and in the Czech Republic[76] both from the supply and demand side have indicated that fixed call termination services is a separate product market from termination and hosting of non-geographical numbers.

(99) The Commission considers that in any event, in the present case, the exact definition of the product market can be left open, as the proposed transaction does not raise any competitive concern under any possible product market definition.

4.3.5.2. Geographic market definition

(100) The Commission previously considered that there were indications that this market would be national in scope, but ultimately left the market definition open.[77]

(101) The Parties submit that for the purpose of the competitive assessment it is not necessary to conclude on the exact geographic market definition.

(102) Respondents to the market investigation in Poland[78] and in the Czech Republic[79] expressed divergent views as to whether the market is national or wider than national.

---

74 Case No. M.6584, 3 July 2012 – Vodafone/Cable & Wireless, para. 14 et seq.

75 Replies to Commission Questionnaire Q8 - Providers of wholesale termination and hosting of non-geographical numbers to competitors in Poland, question 4 – confidential. See also Replies to Commission Questionnaire Q13 - Retailers of mobile telecommunications services in Poland, question 5.

76 Replies to Commission Questionnaire Q7 - Providers of wholesale termination and hosting of non-geographical numbers to competitors in the Czech Republic, question 4. Replies to Commission Questionnaire Q11 - Retailers of mobile telecommunications services in the Czech Republic, question 5.

77 Case No. COMP/M.6584, 3 July 2012 – Vodafone/Cable & Wireless, para. 18.

78 Replies to Commission Questionnaire Q13 - Retailers of mobile telecommunications services in Poland, question 8. See also Replies to Commission Questionnaire Q8 - Providers of wholesale termination and hosting of non-geographical numbers to competitors in Poland, question 5.

79 Replies to Commission Questionnaire Q7 - Providers of wholesale termination and hosting of non-geographical numbers to competitors in the Czech Republic, question 5. Replies to Commission Questionnaire Q11 - Retailers of mobile telecommunications services in the Czech Republic, question 9.

(103) The Commission considers that in any event, in the present case, the exact definition of the product market can be left open, as the proposed transaction does not raise any competitive concern under any possible product market definition.

4.3.6. *The markets for call origination services*

4.3.6.1. The wholesale market for call origination on the public telephone network at a fixed location

(104) In previous decisions, the Commission defined the relevant product market as the wholesale market for call origination on the public telephone network at a fixed location.[80] It consists of services for call conveyance from a fixed location on the network of the Public Switched Telephone Network ("PSTN") of the calling subscriber through the infrastructure of the same undertaking to a point of interconnection where the call is transferred into the network of another undertaking for transit and/or termination.

(105) As for the geographic scope, in a previous decision the Commission considered the market to be national in scope.[81]

(106) The Parties agree with this decisional practice.

(107) The market investigation does not provide any element that would substantiate a change in the product or geographic market definitions.

(108) The Commission therefore concludes that for the purpose of the present decision the market should be defined as the national market for call origination on the public telephone network at a fixed location.

4.3.6.2. The wholesale market for access and call origination services on mobile networks

(109) Network access and call origination are typically supplied together by a Mobile Network Operator ("MNO") to Mobile Virtual Network Operators ("MVNOs") and Service Providers who seek access to one or more of the MNO networks in order to provide their retail services to end customers.

(110) In previous decisions, the Commission considered the wholesale access and call origination services by MNOs as belonging to the same market.[82]

(111) As for the geographic market definition, the Commission considered the market to be national in scope.

---

80 Commission Decision of 2 October 2008 – Deutsche Telekom/OTE, recital 86 et subsequent. Cf. Commission Recommendation of 17 December 2007 on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services, OJ 2007, L 344/65, Annex – Market 2.

81 Commission Decision of 2 October 2008 – Deutsche Telekom/OTE, recital 15.

82 Commission Decision of 20 September 2013 in case M.6990 – Vodafone/Kabel Deutschland, recital 221 and subsequent and Commission Decision of 3 July 2012 in case M.6584 – Vodafone/Cable & Wireless, recital 41 and subsequent.

(112) The Parties concur with the Commission precedents.

(113) The market investigation did not provide any indication that the product or geographic market definitions should be modified.

(114) The Commission considers that the market should be defined as the national wholesale market for mobile access and call origination services.

4.3.7. *The markets for wholesale provision of broadband Internet access*

4.3.7.1. Product market definition

(115) Wholesale broadband access includes different types of access that allow ISPs to provide services to end customers. ISPs that do not own local loop infrastructure may have several options to reach their retail customers including (i) physical access at a fixed location such as unbundled access to the local loop (ULL); (ii) non-physical or virtual network access such as "bitstream" access at a fixed location; and (iii) resale of the fixed incumbent's broadband offering.[83]

(116) From a regulatory point of view, the Commission defines distinct markets for LLU and bitstream (respectively market 4 and 5 of the Commission Recommendation 2007/879/EC[84]).·

(117) The Parties do not concur with the Commission regulatory practice and submit that the markets for wholesale of ULL and for bitstream access show characteristics of an artificial market created by the regulatory regimes following the liberalisation of the telecom sector in Europe. Generally, only the national incumbent operator is active on this wholesale market as a supplier. Infrastructure-based competition and hence "self-supply" would need to be taken into account. The Parties submit that in any event, it is not necessary to conclude on the market definition.

(118) In the market investigation for the *Carphone Warehouse/Tiscali UK* decision, the Commission found significant differences in the characteristics, price, performance and service between different types of wholesale broadband access, but ultimately left the exact market definition open.[85] As to this question, the market investigation was not conclusive in the present case.[86]

(119) The Commission considers that in any event, in the present case, the exact definition of the product market can be left open, as the proposed transaction does not raise any competitive concern under any possible product market definition,

83 Commission Decision of 29 June 2009 in case M.5532 – Carphone Warehouse/Tiscali UK, recital 28 and subsequent.

84 Commission Recommendation 2007/879/EC of 17 December 2007 on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communication networks and services, OJ L 344, 28.12.2007, p. 65.

85 Commission Decision of 29 June 2009 in case M.5532 – Carphone Warehouse/Tiscali UK, recital 28 and subsequent.

86 Commission questionnaires Q16 Competitors - Wholesale broadband offering Hungary of 13 March 2014 and Q3 Competitors – Retail market for business connectivity Hungary. .

namely because the two possible sub-segments – ULL and bistream access – are regulated and there are alternative providers that will continue to exert competitive pressure post-transaction.

4.3.7.2. Geographic market definition

(120) In previous decisions, the Commission considered that there are several arguments to support a nation-wide geographic market definition in relation to the market for wholesale broadband Internet access, but eventually left the market definition open.[87] The Parties do not contest the Commission's previous decisional practice.

(121) Respondents to the market investigation indicated that the market for wholesale broadband offering is national in scope.[88]

(122) In light of the above, the competitive assessment of the proposed transaction will be based on the market for wholesale broadband Internet access and its sub-segments in Hungary.

5. COMPETITIVE ASSESSMENT

(123) The proposed transaction gives rise to a large number of horizontally or vertically affected markets in Hungary, Romania, Poland and the Czech Republic, which will be discussed in the following sections.[89]

5.1. Hungary

5.1.1. Parties' activities

(124) In Hungary, GTS CE focuses on providing services to business customers. In particular, at the retail level, GTS CE provides business customers with fixed line telecommunications services such as internet connectivity, data and voice services, including VPN and cloud services. At the wholesale level, GTS CE mainly provides

---

87 Commission Decision of 20 September 2013 in case M.6990 – Vodafone/Kabel Deutschland, recital 163-134 and Commission Decision of 29 June 2009 in case M.5532 – Carphone Warehouse/Tiscali UK, recital 48-53.

88 Commission questionnaires Q16 Competitors - Wholesale broadband offering Hungary of 13 March 2014 and Q3 Competitors – Retail market for business connectivity Hungary. However, please note that these questionnaires have a very low response rate.

89 When this Decision makes reference to "affected markets", it refers to instances where: for horizontal overlaps, the Parties are engaged in business activities in the same relevant market and where the concentration will lead to a combined market share of 20 % or more; for vertical overlaps, where one or more of the Parties are engaged in business activities in a relevant market, which is upstream or downstream of a relevant market in which any other party to the concentration is engaged, and any of their individual or combined market shares at either level is 30 % or more, regardless of whether there is or is not any existing supplier/ customer relationship between the Parties. See section 6.3. of Annex I (Form CO relating to the notification of a concentration pursuant to regulation (EC) No 139/2004) of Commission Implementing Regulation (EU) No 1269/2013 of 5 December 2013 amending Commission Regulation (EC) No 802/2004 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings. Official Journal OJ L 336, 14.12.2013, p. 1-36. The abbreviation "N/A" when used in this Decision means "Not Active".

data and voice services to other carriers, such as global communication carriers, regional carriers, resellers, mobile operators, ISPs, cable operators and hosting providers. GTS CE does not offer its services to residential customers. Hungary accounts for [5-10]% of GTS CE's turnover.

(125) In Hungary, DT is active through Magyar Telekom ("MT"), one of the major local fixed and mobile network operators. Along with its local T-Home, T-Systems and T-Mobile brands, DT is active in fixed line telephony, broadband internet, mobile voice and data, IPTV[90] products, as well as network-centric information and communications technology ("ICT") services for business customers. Business connectivity services amount to approximately [5-10]% of DT's turnover.

5.1.2. Horizontally affected markets

(126) The proposed transaction gives rise to five horizontally affected markets: wholesale leased lines, wholesale provision of domestic call transit services, retail business connectivity, retail supply of fixed internet access services and retail supply of fixed voice services.

5.1.2.1. Market for wholesale leased lines

(127) The Parties estimate the size of the market to be EUR 21.7 million in 2012.

(128) In Hungary, DT and GTS CE offer wholesale leased lines in the terminating segment (used for customer access and backhaul) and in the trunk segment (used for backbone transmission). The Parties' market shares are summarised in the table below.

90 IPTV means Internet Protocol Television and is a system through which television services are delivered using the Internet protocol over a packet-switched network such as the Internet, instead of being delivered through traditional terrestrial, satellite signal and cable television formats.

Table 1.- **Market for wholesale leased lines**

<table>
<tr><th colspan="2">Main Market[91]</th><th>Possible sub-segments[92]</th></tr>
<tr><td colspan="2"></td><td>Trunk segment</td></tr>
<tr><td rowspan="7">VALUE:
DT: [30-40] %
GTS CE: [10-20]%
Combined: [40-50]%[93]</td><td rowspan="7">VOLUME:
DT: [30-40]%
GTS CE: [10-20]%
Combined: [40-50]%</td><td>VALUE:
DT: [30-40]%
GTS CE: [5-10]%
Combined: [40-50]%</td></tr>
<tr><td>Terminating segment</td></tr>
<tr><td>VALUE:
DT: [30-40]%
GTS CE: [10-20]%
Combined: [40-50] %</td></tr>
<tr><td>Terminating segment of leased lines with bandwidth above 2 Mbps</td></tr>
<tr><td>VALUE:
DT: [30-40]%
GTS CE: [10-20]%
Combined: [50-60] %</td></tr>
<tr><td>Terminating segment of leased lines with bandwidth below 2 Mbps</td></tr>
<tr><td>VALUE:
DT: [30-40]%
GTS CE: [5-10]%
Combined: [40-50]%</td></tr>
</table>

Source: Parties' best estimate (2012)

91 The market shares calculated by the Parties include legacy (analogue and digital Synchronous Digital Hierarchy "SDH"), leased lines, Ethernet circuits and dark fibre. If a separate market for dark fibre were considered, the Parties' combined market share would amount to [10-20]% by revenue and volume (DT: [10-20]%; GTS CE: [0-5]%). In a separate market for dark fibre, the Parties' main competitors are: Invitel with [40-50]%, MVMNet with [10-20]% and Nokia-Siemens-Trafficom with [10-20]%.

92 With regard to market data in terms of volume, the Parties were unable to provide a reliable split between the terminating and the trunk segments of wholesale leased lines. The Parties' combined market share in terms of volume in a hypothetical market for wholesale leased lines with bandwidth below 2 Mbps would amount to [40-50]% (DT: [30-40]%; GTS CE: [5-10]%) and in a hypothetical market for wholesale leased lines with bandwidth above 2 Mbps would amount to [50-60]% (DT: [20-30]%; GTS CE: [20-30]%).

93 According to the Parties, the combined market shares of [40-50]% in the overall market for wholesale leased lines is conservative, as it includes wholesale services that the Parties are reciprocally providing to each other and that would become internal turnover after the merger. When subtracting the revenues generated by cross-sales between the Parties from their combined turnover, the combined market shares would amount to [30-40]%.

5.1.2.1.1. Parties' view

The Parties submit that in a market for wholesale leased lines, irrespective of any possible sub-segmentation, the proposed transaction does not lead to any competition concerns, as the market is characterised by intense infrastructure based competition. First, they submit that the investment required for both the access and the core network does not entail significant sunk costs since (i) passive infrastructure at competitive prices is largely available and (ii) any entrant could lease parts of the access network of the Parties' competitors. In addition, barriers to entry have been lowered by the development of more cost efficient alternatives such as IP VPN or Ethernet, which are in the process of replacing traditional leased lines. As an example of recent successful entry the Parties mention Business Telecom PLC[94] Second, the Parties submit that they face strong competition from several providers such as Invitel ([30-40]%), UPC Hungary ([5-10]%), MVMNet - NISZ ([5-10]%) and Antenna Hungária[95] ([0-5]%).[96]

(129) According to the Parties, the merger would not change the competitive landscape as regards the market for wholesale leased lines. Although DT has an extensive network[97], the Target has limited network presence in Hungary, mostly concentrated in metropolitan areas.[98] In addition, the Target relies mostly on leased infrastructure from third parties.[99] The overlaps in the Parties' networks relate to the 12 largest cities[100] in Hungary as well as to […] access points in five other cities[101], where at least five other competitors are present.

---

94 See http://www.btel hu.

95 Antenna Hungária has been recently acquired by MVMnet, see http://www.nasdaq.com/article/hungary-buys-back-antenna-hungaria-from-frances-tdf-20140326-00787.

96 The Parties were unable to provide the market share of their main competitors in the possible sub-segments of the market for wholesale leased lines.

97 DT has a country-wide access network as well as a […] km backbone network in Hungary, covering all major Hungarian cities. These are: Budapest, Székesfehérvár, Zalaegerszeg, Győr, Pécs, Szeged, Szolnok, Debrecen and Miskolc.

98 In particular, the Target's fibre network covers mainly metropolitan areas, namely Budapest, which accounts for the highest share of metropolitan network with […] km, of which […] km are owned. In addition, GTS CE operates […] km of fibre access network in eight other cities in Hungary.

99 GTS CE' network comprises […] route km of fibre, of which […] km are owned, […] km are leased and the remainder consist of indefeasible rights of use ("IRU"). In addition, GTS CE operates a […] km backbone network, of which […] Km are owned, while the remainder of its networking needs is based on long-term lease agreements.

100 Budapest, Debrecen, Miskolc, Szeged, Pécs, Győr, Nyíregyháza, Kecskemét, Székesfehérvár, Szombathely, Szolnok and Tatabánya.

101 The access points are as follows: […] in Zalaegerszeg, the country's 17th largest city (60,000 inhabitants); […] in Budaörs, an industrialised city in the close agglomeration of Budapest; […] in Sopron, the country's 18th largest city, located at the Austrian border; […] in Bicske, also close agglomeration of Budapest; and […] in Dombóvár, in the south-western part of Hungary.

(130) As regards trunk segment services, the Parties claim that this segment is marginal for the Parties' business and that in any case the overlap between the Parties' activities is minimal, as GTS CE focuses mainly on the terminating segment.[102]

(131) As regards terminating segment services, the Parties submit that Hungarian cable operators' hybrid fibre coaxial networks have similar topology to legacy copper access networks and thus are able to provide wholesale leased lines terminating services. Furthermore, fixed radio access and dark fibre, which allow operators to provide wholesale leased lines terminating segment services, are easily available to nearly every operator. In addition, they refer to previous decisional practice of NMHH (the Hungarian regulator) that acknowledged that the market and its possible sub-segments were competitive.[103]

5.1.2.1.2.Results of the market investigation

(132) First, responses to the market investigation indicated that in the market for wholesale leased lines, barriers to entry are high due to the need of an appropriate infrastructure and the high investments required to build or develop it, irrespective of any additional segmentation of the market.[104] Moreover, a majority of respondents stated that the emergence of alternative technologies such as VPN and Ethernet have not lowered barriers to entry.[105] Respondents to the market investigation took diverging views as to whether VPN or Ethernet are replacing physical leased lines.[106]

(133) Second, the market investigation indicated that the Parties are not each other's closest competitors, irrespective of any additional segmentation of the market. A majority of competitors who replied to the market investigation stated that DT's closest competitor is Invitel, followed by MVMNet-NISZ, whereas GTS CE's closest competitor is also Invitel, followed by Antenna Hungária and DT.[107] In addition, a majority of competitors considered DT to be an innovative player in the market, whereas GTS CE is perceived as a minor operator.[108]

---

102 GTS CE generates a turnover of approximately EUR […] in the trunk segment, which corresponds to [0-5]% of its total revenues in wholesale leased lines in Hungary. MT's turnover is also minimal in the trunk segment services, as it accounts for [5-10]% of its total turnover achieved with leased lines at wholesale level.

103 NMHH Regulatory Decision No. HF-1930-15/2011 of 10 January 2012 regarding the obligations imposed on operators with significant market power on the market for wholesale terminating segments of leased lines.

104 According to respondents to the market investigation, barriers to entry are high also in the trunk and terminating segments, see replies to Commission questionnaire Q1 Competitors – Wholesale leased lines Hungary of 13 March 2014, question 19.

105 See replies to Commission questionnaire Q1 Competitors – Wholesale leased lines Hungary of 13 March 2014, question 21.

106 See replies to Commission questionnaire Q1 Competitors – Wholesale leased lines Hungary of 13 March 2014, question 15.

107 See replies to Commission questionnaire Q1 Competitors – Wholesale leased lines Hungary of 13 March 2014, questions 13 and 14.

108 See replies to Commission questionnaire Q1 Competitors – Wholesale leased lines Hungary of 13 March 2014, question 17 and 18.

(134) Third, as regards the way in which wholesale leased lines contracts are awarded, the market investigation showed that customers multi-source, in order to ensure access to supplies in different parts of the country, as suppliers have a different network coverage.[109]

5.1.2.1.3. Commission's assessment

(135) The Commission considers that the proposed transaction does not result in competition concerns on the market for wholesale leased lines in Hungary.

(136) First, post-transaction, significant other competitors such as Invitel, MVMNet and Antenna Hungária remain in the market and will sufficiently constrain the merged entity. In particular, the Parties' networks overlap in urban areas[110] where there are several parallel infrastructures. In particular, infrastructure-based competition is strong in Budapest, where approximately 80% of the total market revenues are concentrated.[111] In the twelve largest cities where the Parties' networks overlap[112] at least five other competitors provide wholesale leased lines services. Among these competitors, Invitel, MVMNet, Antenna Hungária are present in all twelve cities, while Digi is present in eleven cities and UPC in nine cities. Invitel, MVMNet, Antenna Hungária and UPC operate an infrastructure of national scope and are able to offer comparable services in terms of quality as those offered by the Parties. In addition, there are local competitors that are present in certain urban areas.[113] The market investigation has largely confirmed the Parties' representation.

(137) Second, the market investigation confirmed that the Parties are not close competitors to each other on that market. Therefore, the proposed transaction will not eliminate an important competitive constraint on DT.

(138) As regards the trunk segment of leased lines, the Parties will continue to face competition from Invitel, MVMNet, Antenna Hungária and Turk Telekom International. The competitive landscape of this market is confirmed by the decisional practise of the NMHH. In its analysis of 2007, NMHH considered that "several other players have constructed significant capacities in the geographic segments which are important for leased line trunk segment service which hinders this operator [MT] in offering external customers much worse contractual conditions (primarily prices) than the other wholesale operators."[114]

---

109 See replies to Commission questionnaire Q1 Competitors – Wholesale leased lines Hungary of 13 March 2014, question 16.

110 In Hungary, DT's and GTS CE's networks overlap in metropolitan areas, namely in the following 16 cities: Budapest, Budaörs, Debrecen, Dombóvár, Győr, Kecskemét, Miskolc, Nyíregyháza, Pécs, Sopron, Szeged, Székesfehérvár, Szombathely, Szolnok, Tatabánya and Zalaegerszeg.

111 Already in Budapest alone, there are eleven providers of wholesale leased lines.

112 These are: Budapest, Debrecen, Győr, Kecskemét, Miskolc, Nyíregyháza, Pécs, Szeged, Székesfehérvár, Szombathely, Szolnok, Tatabánya.

113 Local competitors present in the largest twelve cities where the Parties' network overlap are: Trafficom, present in Budapest, Távger, present in all twelve cities, Drávanet present in eleven cities, Novotron, present in four cities.

114 NMHH, Summary of the market analysis on wholesale trunk segments of leased lines, available at http://english.nmhh.hu/dokumentum/150118/market_14_sum_en_second_round_20080410_.pdf.

(139) As regards the terminating segment of leased lines, there are several access connection technologies available from a variety of competitors. Hungarian cable operators' hybrid fibre coaxial cable networks have a similar topology to legacy copper access networks. Among others, UPC is currently providing this service. Fixed radio access and dark fibre are also access network services.

(140) With regard to the sub-segment of termination services for leased lines with bandwidth below 2 Mbps, several competitors provide termination services and will constrain the merged entity.[115] With respect to the terminating segment of leased lines above 2 Mbps, Invitel, MVMNet-NISZ, Antenna Hungária and UPC compete and will continue to compete post transaction against the merged entity in addition to local niche players.[116]

(141) As regards the possible segment of the supply of dark fibre, the Parties do not hold a significant position in the market, as their combined market share amounts to [10-20]%. In addition, there are several operators (at least 25) providing dark fibre in Hungary. Among them, Invitel and MVMNet offer national coverage, while others operators are specialised in regional urban[117] and rural[118] areas of the country. Currently, GTS CE itself leases passive infrastructure from 20 of these operators.

(142) In addition, the Parties' combined market share in a market for wholesale leased lines excluding dark fibre would not change significantly and therefore the considerations in relation to the broader market for wholesale leased lines (paragraphs (135) to (137) above) hold true.[119]

(143) Considering all of the above and the other available evidence, post-transaction, the merged entity will face competitive constraints from significant competitors on the market for wholesale leased lines and its possible sub-segments, which are able to offer nation-wide coverage and quality services to customers. Therefore, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market on the wholesale market for leased lines and any of its possible sub-segments in Hungary.

---

115 Note that this sub-segment is partially regulated. In particular, although NMHH lifted price caps obligations in 2012 as it considered the market to be sufficiently competitive, the merged entity is still subject to transparency, non-discrimination, accounting separation and access and interconnection obligations. Moreover, NMHH decided not to impose any regulatory obligations for the market for terminating segments of leased lines with bandwidth above 2Mbps. See NMHH Regulatory Decision No. HF-1930-15/2011 of 10 January 2012 regarding the obligations imposed on operators with significant market power on the market for wholesale terminating segments of leased lines.

116 Note also that in its analysis of 2012, NMHH considered that MT did not hold a dominant position in the terminating segment of leased lines with bandwidths above 2Mbps. See NMHH Regulatory Decision No. HF-1930-15/2011 of 10 January 2012 regarding the obligations imposed on operators with significant market power on the market for wholesale terminating segments of leased lines.

117 For example, Drávenet (Pécs and Budapest), Jurop Telekom (Esztergom) and DV Info (Debrecen).

118 For example, Gysev, Tarr and E-on/Édász cover West Hungary; PR Telcom is present in North Hungary and Opticon in the South of the country.

119 The Parties' combined market share in a market for wholesale leased lines excluding dark fibre would amount to [40-50]% (DT: [30-40]%; GTS CE: [10-20]%).

5.1.2.2. Market for the wholesale domestic call transit on fixed networks

(144) The Parties estimate the size of the market to be EUR 9,7 million in 2012. This market has been declining for some years and is now stagnating.

(145) In Hungary, both DT and GTS CE offer wholesale domestic call transit services to providers of telephony services, which do not have direct interconnection agreements with other carriers' network in order to terminate their voice calls. In this market, in 2012 DT had a market share of [20-30]% and GTS CE [20-30]% (combined market share of [40-50]%) in value and DT [20-30]% and GTS CE [10-20]% (combined market share of [40-50]%) in volume (number of minutes).

5.1.2.2.1. Parties' view

(146) The Parties submit that the proposed transaction will not impede effective competition on the wholesale market for domestic call transit in Hungary for the following reasons.

(147) First, the activities of DT and GTS have different business focuses and, therefore, they are not close competitors. More precisely, GTS CE serves small voice carriers with limited or even without own network infrastructure that, due to their limited demand, find it convenient to procure transit services via an intermediary. Second, the Parties submit that the Hungarian market for domestic call transit is sufficiently competitive because of the presence of alternative providers such as UPC, Invitel, Netfone or BT. Third, given the regulatory framework of the wholesale market for call termination[120], the need for call transit could be substituted partially with direct interconnections with other carriers' networks. Operators that provide wholesale call termination services on fixed networks in Hungary are under the obligation, among others, to grant access and interconnection to their networks to other operators. This would imply, according to the Parties, that no market power could be exercised on the market for call transit services because competing operators can avoid transit services by directly interconnecting with terminating networks at any geographic level.

5.1.2.2.2. Results of the market investigation

(148) A majority of respondents to the market investigation indicated that the Parties are not close competitors.[121] Clients of transit services also confirmed the Parties' argument that GTS CE would have a clear focus on smaller customers.[122]

5.1.2.2.3. Commission's assessment

(149) The Commission considers that the proposed transaction does not result in competitive concerns on the market for transit services in Hungary.

(150) First, post-merger, alternative providers of domestic call transit services will remain active on this market and will continue to exert competitive pressure on the merged

120 See NMHH regulatory decision No HF/25016-187/2012 of 12 November 2013 regarding the obligations imposed on the operator with significant power on the market for call termination on public telephone networks provided at a fixed location.

121 See replies to Commission questionnaire Q9 Competitors – Wholesale market for domestic call transit services of 13 March 2014, questions 8 and 9.

122 Minutes of the Call with a customer of domestic call transit services in Hungary – 31 March 2014.

entity. These companies include UPC (market share of [10-20]%), Invitel ([0-5]%) and Netfone Telecom ([0-5]%).

(151) Second, the transaction does not remove a close competitor of DT.

(152) Third, given the access and interconnection obligations contained in the regulatory framework of the wholesale market for call termination services on fixed networks, operators are also able to connect directly to other carrier's networks.

(153) Considering all the above, the Commission concludes that the proposed transaction does not raise serious doubts as to its compatibility with the internal market on the wholesale market for domestic call transit in Hungary.

5.1.2.3. <u>Market for retail business connectivity</u>

(154) The Parties estimate the size of the market to be EUR 117,4 million in 2012.

(155) In Hungary, both DT and GTS CE are active in the retail provision of business connectivity services to large corporate and public sector customers. Respective market shares of the Parties can be found in the table below.

Table 2.- Market for retail business connectivity in Hungary

<table>
<tr><th colspan="2">Main Market</th><th colspan="2">Possible sub-segments</th></tr>
<tr><td colspan="2" rowspan="3">Retail market for business connectivity</td><td colspan="2">Broadband access</td></tr>
<tr><td><u>VALUE:</u>
DT: [30-40]%
GTS: [5-10]%
Combined: [40-50]%</td><td><u>VOLUME:</u>
DT: [30-40]%
GTS: [0-5]%
Combined: [30-40]%</td></tr>
<tr><td colspan="2">Leased lines</td></tr>
<tr><td rowspan="3"><u>VALUE:</u>
DT: [40-50]%
GTS: [0-5]%
Combined: [40-50]%</td><td rowspan="3"><u>VOLUME:</u>
DT: [20-30]%
GTS: [0-5]%
Combined: [20-30]%</td><td><u>VALUE:</u>
DT: [40-50]%
GTS: [5-10]%
Combined: [50-60]%</td><td><u>VOLUME:</u>
DT: [20-30]%
GTS: [10-20]%
Combined: [30-40]%</td></tr>
<tr><td colspan="2">VPN</td></tr>
<tr><td><u>VALUE:</u>
DT: [30-40]%
GTS: [0-5]%
Combined: [30-40]%</td><td><u>VOLUME:</u>
DT: [5-10]%
GTS: [0-5]%
Combined: [10-20]%</td></tr>
</table>

Source: Parties' best estimate (2012)

5.1.2.3.1.Parties' view

(156) First, the Parties submit that the merged entity will continue to face strong competition. Decreasing market shares of the Parties in the last three years would further support this statement. Second, the Parties submit that barriers to entry are

low, especially given the increasing demand of VPN services that require limited infrastructure.[123] Lastly, they consider that DT and GTS CE are not close competitors.

5.1.2.3.2.Results of the market investigation

(157) First, the majority of competitors responding to the market considered that barriers to entry were high on the retail market for business connectivity and on the possible sub-segment for leased lines, given the need for the appropriate infrastructure and of the requisite know-how.[124] Competitors expressed diverging views as to whether barriers to entry were low on the possible sub-segments of broadband connectivity and VPN services. However, competitors responding to the market investigation generally confirmed that standardized and regulated wholesale products allow an easy entry into those segments/ markets.[125]

(158) Second, a large majority of customers responding to the market investigation indicated that both GTS CE and its competitor Invitel could be considered as close competitors of DT on this market.[126]

5.1.2.3.3.Commission's assessment

(159) First, post-transaction, the merged-entity will continue to face strong competitive pressure from Invitel (market share of [20-30]%). Moreover, smaller players (UPC: [5-10]%, NISZ: [0-5]%, Antenna Hungaria: [0-5]%) will remain active on this market and constrain the merged entity. Likewise, such competitors will be active on each of the possible sub-segments.

(160) Second, given that GTS CE's presence on this market is limited, the increment is relatively small ([0-5]% by value in the retail market for business connectivity and all other sub-segments except in the sub-segment for broadband access where it is [5-10]%). Likewise, the combined market share of the Parties based on volume remains [30-40]% and GTS CE's share of the number of lines is [0-5]%, with the exception of the sub-segment for leased lines ([10-20]%), where the Parties' combined market share by volume is still [30-40]%.

(161) Third, with respect to barriers of entry into the market, the Commission considers that, as regards the sub-segment of leased lines, despite the fact that duplication of infrastructure can prove costly and time-consuming, entry into this sub-segment/ market may be facilitated by the high availability of wholesale inputs.[127]

123 The Parties submit that both layer 2 Ethernet solutions and layer 3 IP VPN solutions represent a low-cost and effective alternative to leased lines, as they do not require the ownership of an entire physical (leased line) network and ensure the same level of security and data transmission speed.

124 See replies to Commission questionnaire Q3 Competitors – Retail Market for Business Connectivity Hungary of 13 March 2014, question 23.1 and 23.3.

125 See replies to Commission questionnaire Q3 Competitors – Retail Market for Business Connectivity Hungary of 13 March 2014, question 23.2 and 23.4

126 See replies to Commission questionnaire Q5 Customers – Retail Market for Business Connectivity Hungary of 13 March 2014, questions 13 and 14.

127 This is supported by the Hungarian Telecom Regulator (NMHH): in January 2012, while withdrawing remedies on MT on the retail market for leased lines services (decision no. HF-1586-12/2011), the NMHH found that "High or non-transitory barriers to entry were not identified. Despite of existence of structural barrier i.e. the infrastructure is not easily duplicated, the retail market service can be

(162) Considering all the above and the other available evidence, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market on the retail markets for business connectivity and any of its possible sub-segments, in Hungary.

5.1.2.4. Market for the retail supply of fixed voice services

(163) The Parties estimate the size of the market to be EUR 317,5 million in 2012.

(164) In Hungary, both DT and GTS CE are active on the retail market for the provision of fixed voice services. On this market, DT provides fixed line telephony services as a stand-alone product through its subsidiary DT, the former incumbent.

(165) DT has a 2012 market share of [50-60]% in value and [40-50]% in volume. GTS CE provides fixed voice as a complementary service to its offer and its presence on this market is limited to [0-5]% of the total market in value and [0-5]% in volume. The combined market share of the Parties is [50-60]% in value and [40-50]% in volume.

5.1.2.4.1. Parties' view

(166) The Parties submit that the proposed transaction will not significantly impede effective competition on this market for the following reasons. First, GTS CE's activities in Hungary are insignificant (market share [0-5]% both in value and volume), irrespective of the market definition. Second, the legacy voice market is in decline due to the advent of VoIP solutions. Third, the neighbouring market of mobile telecommunications services exerts competitive pressure on the fixed voice market.

5.1.2.4.2. The Commission's assessment

(167) The Commission considers that the proposed transaction will not result in any competition concern on this market. First, no respondent to the market investigation raised any concern related to the impact of the proposed transaction on the market for the retail supply of fixed voice services in Hungary.

(168) Second, the increment brought about by the transaction is negligible as GTS CE is a very small player.

(169) Third, despite a combined market share of the Parties exceeding 50% in this market ([50-60]% in value and [40-50]% in volume), post-transaction, the Parties will continue to face competition from significant competitors such as Invitel ([10-20]%), UPC ([5-10]%) and Digi Telecommunications ([0-5]%).

(170) Fourth, DT's activities in the market for the retail supply of fixed voice services are subject to a regulatory framework that imposes limitation on price increases

provided by utilising the wholesale terminating and trunk segments of leased lines, and this lowers entry barriers to the retail market for the minimum set of leased lines". See notification no.HU_2011_1270 to the European Commission pursuant to Art. 7(3) of the Electronic Communications framework Directive (2002/21/EC).

according to the consumer price index and prohibition of undue discrimination of subscribers.[128]

(171) Considering all the above and the other available evidence, the Commission concludes that the proposed transaction does not raise serious doubts as to its compatibility with the internal market on the market for the retail supply of fixed voice services in Hungary.

5.1.2.5. Market for the retail supply of fixed internet access

(172) The Parties estimate the size of the market to be EUR 478 million in 2012.

(173) In Hungary, both DT and GTS CE are active on the retail market for the provision of retail supply of fixed internet access. On this market, DT provides fixed broadband access through its subsidiary DT, the former incumbent.

(174) DT has a 2012 market share of [20-30]% in value and [30-40]% in volume. GTS CE provides its services mainly to business customers and, to a limited extent, to residential end-users. GTS CE's presence on this market is limited to [0-5]% of the total market both in value and in volume. The combined market share of the Parties is [20-30]% in value and [30-40]% in volume.[129]

5.1.2.5.1.Parties' view

(175) The Parties submit that the proposed transaction will not significantly impede effective competition on this market as GTS CE has a limited market presence and strong competitors exist.

5.1.2.5.2.Commission's assessment

(176) The Commission considers that the proposed transaction will not result in any competition concern on this market. First, no respondent to the market investigation raised any concern related to the impact of the proposed transaction on the market for the retail supply of fixed internet access in Hungary. Second, the increment brought about by the transaction is negligible as GTS CE is a very small player with a market share [0-5]%.

(177) Second, post-Transaction, the Parties will still face competition from significant players such as UPC ([20-30]%), Invitel ([10-20]%) and Digi Telecommunications ([5-10]%).

---

128 See NMHH regulatory decision No DH-8664-17/2010 of 8 September 2010 regarding the obligation imposed on the operator with significant power on the retail market for access to public telephone network at a fixed location for residential customers and the retail market for access to the public telephone network at a fixed location for non-residential customers.

129 In possible sub-segments comprising cable modem only, this market would not be affected as GTS CE does not offer these services. As regards the sub-segment for broadband, the increment in the market share of the merged entity would be minor, since GTS CE's share amounts to only [0-5]% of that market in value (DT's market share is [20-30]%). Finally, as regards the possible sub-segment for narrowband, the Parties have not been capable of providing data for DT. However, this market will not give rise to competitive concerns because (i) GTS CE's market share is minimal (approximately [5-10]%) and (ii) this is a dying market.

(178) Considering all the above and the other available evidence, the Commission concludes that the proposed transaction does not raise serious doubts as to its compatibility with the internal market on the market for the retail supply of fixed internet access in Hungary.

5.1.3. Vertically affected markets

5.1.3.1. Wholesale leased lines – Retail business connectivity

(179) In Hungary, the proposed transaction leads to a vertical overlap between the Parties' activities in the upstream wholesale market for leased lines and the downstream market for retail business connectivity. The Parties' shares on these markets and its possible sub-segments can be found in Table 1 and 2 in sections 5.1.2.1 and 5.1.2.3 respectively.

(180) From a technical point of view, leased lines at wholesale level are a necessary input for the provision of retail business connectivity services. However, a distinction has to be made according to the possible sub-segment of retail business connectivity. On the one hand, when providing leased lines at retail level, competing providers can either source wholesale leased lines or self-supply them. On the other hand, the retail provision of VPN services and fixed broadband access to large business customers can be carried out through alternative solutions, namely wholesale leased lines or self-supply but also via wholesale broadband access products coupled with a proprietary or leased backbone network.

5.1.3.1.1.Parties’ view

(181) As regards possible input foreclosure, that is the possibility that the merged entity could stop providing wholesale leased lines to competing providers of retail business connectivity, the Parties submit that they will not have the ability nor the incentive to engage in such a strategy.

(182) As for ability, the Parties submit that the upstream wholesale market for leased lines is characterised by strong infrastructure-based competition on the broad market for leased lines but also on each of the possible sub-segments for (i) trunk segments, (ii) terminating segments and (iii) terminating segments with bandwidth above 2 Mbps. As regards (iv) the possible sub-segment for terminating segments of leased lines with bandwidth below 2 Mbps, the Parties claim that any foreclosure effect can be ruled out from the outset given the regulatory obligations imposed by the Hungarian telecommunication regulator NMHH (transparency, equal treatment, accounting separation, access and interconnection obligations).[130]

(183) As for incentives to engage in such a foreclosure strategy, the Parties submit that the merged entity would not be able to benefit from such a strategy. Post-transaction, competing retailers of business connectivity will be able either to source wholesale leased lines from competing providers (Invitel, UPC, MVMNet, Antenna Hungaria) or to rely on substitute offers (fixed radio access, ULL or Bitstream). Finally, the Parties stress the declining importance of physical leased lines in light of the emergence of cheaper "virtual" leased lines (IP-VPN or Ethernet).

---

130 See NMHH Regulatory Decision No. HF-1930-15/2011 of 10 January 2012.

(184) As regards customer foreclosure, that is the possibility that the merged entity as a retailer of business connectivity could stop procuring wholesale leased lines from competing providers, the Parties submit that they will not have the ability (nor the incentive) to engage in such a strategy. GTS CE's market share upstream would be minor and, as a consequence, competing retailers of business connectivity will be able, post-transaction, to supply leased lines at wholesale level to competing retailers.

5.1.3.1.2. Results of the market investigation

(185) First, the majority of customers responding to the market investigation considered wholesale leased lines as a critical input.[131]

(186) Second, a large majority of respondents confirmed the existence of alternative providers upstream.[132]

(187) Third, some respondents to the market investigation complained about the impact of the proposed transaction in certain geographic areas. In their view, the merged entity would be the only provider of leased lines in certain regions, thus rendering it possible for it to exert market power.

5.1.3.1.3. Commission's assessment

(188) The Commission considers that the merged entity will not have the ability to engage in an input foreclosure scenario for the following reasons.

(189) With regard to the possible sub-segments for the (i) retail provision of VPN services and (ii) fixed broadband access to large business customers and their potential vertical overlap with terminating segments of leased lines (both with bandwidth above and below 2 Mbps), competing providers downstream will be able, post-transaction to source wholesale leased lines from alternative providers such as Invitel, UPC, MVMNet or Antenna Hungaria. Moreover, for the purpose of providing such retail services, terminating segments of leased lines can be substituted by wholesale access solutions over copper or hybrid infrastructures.[133] As explained in paragraph (180), wholesale access solutions such as ULL and Bitstream are available to potential access seekers given the regulatory obligations imposed on SMP market players.[134] As a result, there will be alternative inputs to

131 See replies to Commission questionnaire Q3 to competitors – retail market for business connectivity, question 41.

132 See replies to Commission questionnaire Q3 to competitors – retail market for business connectivity, question 43.

133 Note in this context that in its draft proposed review of the Recommendation on relevant markets susceptible to ex-ante regulation, the Commission has considered as well the existence of a possible "Wholesale high-quality access" market, which would comprise leased lines and ULL/ Bitstream access solutions, given their similarities. (See the Commission's Draft Recommendation, available at http://ec.europa.eu/information_society/newsroom/cf/dae/document.cfm?doc_id=4189 and the Draft explanatory note on relevant markets, available at http://ec.europa.eu/information_society/newsroom/cf/dae/document.cfm?doc_id=4190, section 4.2.2.3. "Wholesale high-quality access".)

134 For ULL, see NMHH Regulatory Decision No. HF-44-10/2011 of 6 May 2011 regarding the obligations imposed on operators with significant market power on the market for wholesale unbundled access (including shared access) to metallic loops and sub-loops for the purpose of providing broadband and voice services. For Bitstream, see NMHH Regulatory Decision No. HF-56-

the wholesale terminating segments of leased lines for retailers of business connectivity.

(190) As regards the possible sub-segments for the (i) retail provision of VPN services and (ii) fixed broadband access to large business customers and their potential vertical overlap with trunk segments of leased lines, the market investigation confirmed (as pointed out in paragraph (186) above) that alternative providers of leased lines (notably Invitel, MVMNet, Antenna Hungaria) will continue to exert competitive pressure on the merged entity post-transaction. Moreover, as suggested by NMHH[135] "since several other players have constructed significant capacities in the geographic segments which are important for the leased line trunk segment, they are a valid alternative to customers and can prevent any operator from offering much worse contractual conditions than the other wholesale operators". Finally, GTS CE's presence on this upstream market is limited ([5-10]%).

(191) The findings in paragraphs (189) and (190) above equally apply to the vertical overlap between both (i) the broader downstream market for retail business connectivity and (ii) the possible sub-segment for the retail supply of leased lines, on the one hand, and the upstream market for the wholesale provision of trunk segments of leased lines, on the other hand.

(192) As regards (i) the broader market for retail business connectivity and (ii) the possible sub-segment for the retail supply of leased lines, on the one hand, and their potential vertical overlap with the upstream market for the wholesale provision of terminating segments of leased lines (both with bandwidth above and below 2 Mbps), the market investigation confirmed (as pointed out in paragraph (189) that alternative providers of leased lines (notably UPC, Invitel, MVMNet, Antenna Hungaria) will continue to exert competitive pressure on the merged entity post-transaction.

(193) As to the claim that the merged entity would be the only provider of leased lines, the Commission considers the following. First of all, the existence of remote areas where only DT would be active would not be merger specific and, therefore, will not be analysed further.

(194) Second, the Commission investigated whether in all relevant geographic areas where the Parties' leased lines networks overlap, alternative providers will be able to offer competing services post-transaction.

(195) The Parties confirmed that alternative providers will be present in all the cities where DT’s and GTS CE’s networks overlap, namely the 12 major Hungarian cities of Budapest, Debrecen, Miskolc, Szeged, Pécs, Győr, Nyíregyháza, Kecskemét, Székesfehérvár, Szombathely, Szolnok, Tatabánya as well as the secondary cities of Zalaegerszeg, Budaörs, Sopron, Bicske, Dombóvár. The market investigation has largely confirmed the Parties' representation.

12/2011 of 6 May 2011 regarding the obligations imposed on operators with significant market power on the market for wholesale broadband access.

135 This market is currently not regulated. NMHH, Summary of the market analysis on wholesale trunk segments of leased lines, page 7 (available at http://english.nmhh hu/dokumentum/150118/market_14_sum_en_second_round_20080410_.pdf).

(196) Third, the Commission considers that the merged entity would have no ability to engage in any input foreclosure because some of its main competitors are already vertically integrated. In particular, the market investigation has revealed that major competing providers of retail business connectivity such as Invitel or UPC are not dependant on DT's or GTS CE's offer of wholesale leased lines but rather self-supply such input and, thus, would not be foreclosed post-transaction.

(197) Finally, considering the possible upstream sub-segment of dark fibres (with market shares of DT:[10-20]% and GTS CE: [0-5]%), the merged entity will not be able to engage in any input foreclosure since, given its limited presence upstream and the existence of alternative national competitors such as Invitel and MVMNet and regional ones, such as UPC, Antenna Hungária and Trafficon, this strategy would not prove profitable.

(198) As regards a possible customer foreclosure scenario, the Commission considers that the merged entity will not have the ability to engage in such a strategy. As explained in Section 5.1.2.3 above, the merged entity will not have the ability to foreclose competing providers of wholesale leased lines because, given its relative market presence ([30-40]% in volume) it does not constitute an avoidable customer. Indeed, several other retailers of business connectivity (as well as MNOs, see section 5.1.3.2 below) will be active, post-transaction, on this market such as Invitel, UPC Hungary or NISZ (market share of [20-30]%, [5-10]% and [0-5]% respectively).

(199) Finally, considering the possible upstream sub-segment of dark fibres, (with market shares of DT: [10-20]% and GTS CE: [0-5]%), the merged entity will not be able to engage in any customer foreclosure since, given its limited presence upstream and the existence of alternative competitors (Invitel [40-50]%, MVMNet [10-20]%, Nokia-Siemens-Trafficom [10-20]%), this strategy would not prove profitable.

(200) Considering all the above and the other available evidence, the Commission concludes that the proposed transaction does not raise serious doubts as to its compatibility with the internal market on the vertically affected markets for wholesale leased lines and retail supply of business connectivity in Hungary.

5.1.3.2. Wholesale leased lines – retail mobile telecommunication services to end customers

(201) In Hungary, the Parties activities lead to a vertical relationship between the upstream market for wholesale leased lines and the downstream market for retail supply of telecommunication services.

(202) In the 2012 upstream market of wholesale leased lines the combined market shares of the Parties amount to [40-50]% by value (DT: [30-40]%; GTS CE: [10-20]%), while in the downstream market for retail supply of mobile telecommunication services to end consumers only DT is present with market share of [40-50]% by value and of [40-50]% by volume (subscribers).

(203) In the downstream market for retail telecommunication services, DT's main competitors are Telenor and Vodafone with market shares by value of approximately [30-40]% and [20-30]% respectively.

5.1.3.2.1. Parties' view

(204) The Parties submit that this vertical relationship will not lead to any competition concerns, as the merged entity will not have the ability or the incentive to engage in any foreclosure scenario.

(205) The Parties submit that the merged entity would not have the ability to foreclose access to wholesale leased lines for the following reasons.

(206) First, the Parties could not exert significant market power on the upstream market for wholesale leased lines, which is characterised by infrastructure-based competition and where strong competitors such as Invitel, UPC, MVMNet and Antenna Hungária represent alternative suppliers for downstream retailers of mobile telecommunication services.

(207) Second, wholesale leased lines are not an essential input in order to provide retail mobile telecommunication services and in any case they do not represent an important cost factor of the overall costs of providing retail mobile telecommunication services. In that respect, the Parties submit that mobile network operators ("MNOs") purchase to a negligible extent wholesale leased lines above 2 Mbps, dark fibre or Ethernet connectivity to supply retail mobile service.

(208) Third, retailers of mobile telecommunication services do not rely on DT for the supply of wholesale leased lines.

(209) Fourth, retailers of mobile telecommunication services can provide their services through alternative input services such as wholesale call transit on fixed network services, provided by UPC and Invitel. In addition, leased lines will be progressively replaced by new generation microwave technologies and will not play a major role for the provision of retail telecommunications services.

(210) Finally, the merged entity will not have the ability nor the incentive to engage in a customer foreclosure strategy, given the large number of (potential) wholesale leased lines customers, both in mobile and fixed telecommunication services and the fact that competitors in the downstream market for retail supply of telecommunication services currently source from third parties.

5.1.3.2.2. Results of the market investigation

(211) Retailers of mobile telecommunication services responding to the market investigation source from more than one supplier wholesale leased lines.[136] In that respect, according to a respondent to the market investigation, it is essential to have several suppliers in order to ensure geographic coverage across the country.[137]

(212) Respondents to the market investigation indicated that wholesale leased lines and in particular dark fibre are an essential input in order to provide retail mobile

136 See Commission questionnaire Q12 – Retailers of mobile telecommunication services Hungary, question 23.

137 See Commission questionnaire Q12 – Retailers of mobile telecommunication services Hungary, question 23.1.

telecommunication services.[138] However, one respondent pointed out that the supply of wholesale leased lines (including dark fibre) represents a marginal cost of the overall costs for the provision of retail mobile telecommunication services.[139] In addition, retailers of mobile telecommunication services responding to the market investigation own a mobile network that covers almost all the national territory.[140]

(213) Retailers of mobile telecommunication services responding to the market investigation confirmed that an alternative to the supply of wholesale leased lines is the building of own transmission network using microwave technology for access, although it is more expensive.[141] One respondent to the market investigation indicated that the new microwave technology could not, however, replace dark fibre, which is more suited for the high capacities required in the core and backhaul and increasingly in the access termination network due to the advent of 4G technology.[142]

(214) Retailers of mobile telecommunication services responding to the market investigation took diverging views as to whether they rely on the parties for their supply of wholesale leased lines.[143]

(215) As regards the presence of alternative suppliers post transaction, a retailer of telecommunication services expressed some concerns with reference to the fact that in some rural areas of the country, where only DT is present, they could be foreclosed or discriminated against in access to leased lines, namely to dark fibre.[144] However, it also pointed out that these remote regions account for an insignificant part of the national territory.[145]

5.1.3.2.3.Commission's assessment

(216) The Commission considers that the merged entity will not have the ability to engage in any foreclosure scenario for the following reasons.

---

138 See Commission questionnaire Q12 – Retailers of mobile telecommunication services Hungary, question 28 and agreed minutes of conference call of 28 March 2014 with Retailer A of mobile telecommunication services.

139 See agreed minutes of conference call of 28 March 2014 with Retailer B of mobile telecommunication services.

140 See agreed minutes of conference calls of 28 March 2014 with Retailer A of mobile telecommunication services and with Retailer B of mobile telecommunication services.

141 See See Commission questionnaire Q12 – Retailers of mobile telecommunication services Hungary, question 29.

142 See agreed minutes of 28 March 2014 with Retailer A of mobile telecommunication services and with Retailer B of mobile telecommunication services.

143 See Commission questionnaire Q12 – Retailers of mobile telecommunication services Hungary, question 26 and 27.

144 See Commission questionnaire Q12 – Retailers of mobile telecommunication services Hungary, question 44 and agreed minutes conference call of 28 March 2014 with Retailer A of mobile telecommunication services.

145 See agreed minutes conference call of 28 March 2014 with Retailer A of mobile telecommunication services.

(217) As for an input foreclosure scenario, the merged entity will not have the incentive to engage in such a strategy since, as stated in paragraph (136) above, the upstream market for wholesale leased lines is characterised by the presence of strong competitors. Therefore, customers of wholesale leased lines, regardless of any possible sub-segmentation of the market, will be able to source from several alternative suppliers.

(218) Retailers of mobile telecommunication services may source from the Parties' main upstream competitors (Invitel, MVMNet, Antenna Hungária and UPC) wholesale leased lines and any possible sub-market, namely passive (dark fibre) and active infrastructure (managed leased lines), trunk and terminating segment as well as terminating segment of leased lines with bandwidth above and below 2 Mbps. In addition to the main competitors offering a national infrastructure, retailers of mobile telecommunication may also source from several local operators present in urban areas and rural regions of the country, as indicated in paragraph (136) above.

(219) As to the claim that the merged entity would be the only provider of leased lines and in particular dark fibre in certain remote areas of the country, the Commission considers the following. As stated in paragraph (136) above, the Parties' networks overlap in urban areas, where several alternative suppliers are present and constrain the Parties. By consequence, the existence of remote rural areas where only DT would be active would not be merger specific and, therefore, will not be analysed further.

(220) Moreover, the Parties' combined market share in a hypothetical market for the supply of dark fibre are not significant[146] and in the areas where the Parties' networks overlap retailers of mobile telecommunication services can find alternative suppliers to satisfy their needs. As stated in paragraph (141) above, there are at least 25 operators providing dark fibre across the country.

(221) In addition, possibly apart from remote areas where only DT is present, both retailers of mobile telecommunication services indicated that, if the merged entity stopped providing wholesale leased lines to third parties retailers of mobile telecommunication services, switching would be costly but still possible.[147]

(222) Finally, both retailers of mobile telecommunication services responding to the market investigation considered that the merged entity would not have the incentive to engage in an input foreclosure scenario because the costs of stopping providing wholesale leased lines in the upstream market would not be off-set by increased profits in the downstream market of retail mobile telecommunication services.[148]

(223) As regards a possible customer foreclosure scenario, the Commission considers that the merged entity will not have the ability to engage in such a strategy, since

---

146 If a separate market for dark fibre were considered, the Parties' combined market share would amount to [10-20]% by revenue and volume (DT: [10-20]%; GTS CE: [0-5]%).

147 See Commission questionnaire Q12 – Retailers of mobile telecommunication services Hungary, question 32.

148 Commission questionnaire Q12 – Retailers of mobile telecommunication services Hungary, question 33.

post transaction upstream competitors could provide wholesale leased lines services to several other customers, active in the downstream markets for retail supply of mobile telecommunication services (such as Telenor and Vodafone) or retail business connectivity services (such as Invitel, UPC Hungary or NISZ, see section 5.1.3.2 above).

(224) Considering all the above and the other available evidence, the Commission concludes that the proposed transaction does not raise serious doubts as to its compatibility with the internal market with respect to the vertical relationship between the wholesale leased lines market and the market for supply of mobile telecommunication services in Hungary.

5.1.3.3. Wholesale provision of domestic call transit services on fixed network – retail supply of fixed voice services and retail supply of mobile telecommunications services to end customers

Table 3.- Market shares in value

<table>
<tr><th colspan="2">Upstream market</th><th colspan="2">Downstream markets</th></tr>
<tr><td colspan="2" rowspan="2">Wholesale market for the supply of domestic call transit services</td><td colspan="2">Retail market for the supply of fixed voice services</td></tr>
<tr><td>DT: [50-60]%
GTS CE: [0-5]%</td><td>Combined: [50-60]%</td></tr>
<tr><td rowspan="2">DT: [20-30]%
GTS CE: [20-30]%</td><td rowspan="2">Combined: [40-50]%</td><td colspan="2">Retail supply of mobile telecommunications services</td></tr>
<tr><td>DT: [40-50]%
GTS CE: N/A</td><td>Combined: [40-50]%</td></tr>
</table>

Source: Parties' best estimate (2012)

Table 4. - Market shares in volume

<table>
<tr><th colspan="2">Upstream market</th><th colspan="2">Downstream markets</th></tr>
<tr><td colspan="2" rowspan="2">Wholesale market for the supply of domestic call transit services</td><td colspan="2">Retail market for the supply of fixed voice services</td></tr>
<tr><td>DT: [40-50]%
GTS CE: [0-5]%</td><td>Combined: [40-50]%</td></tr>
<tr><td rowspan="2">DT: [20-30]%
GTS CE: [10-20]%</td><td rowspan="2">Combined: [40-50]%</td><td colspan="2">Retail supply of mobile telecommunications services</td></tr>
<tr><td>DT: [40-50]%
GTS CE: N/A</td><td>Combined: [40-50]%</td></tr>
</table>

Source: Parties' best estimate (2012)

(225) In Hungary, the Parties activities lead to a vertical relationship between the upstream market for wholesale domestic call transit services on fixed network and

the downstream retail markets for: (i) fixed voice services and (ii) mobile telecommunications services to end customers, as can be seen from the table above.

(226) In the upstream market the Parties' main competitors are UPC (approximately [10-20]%), followed by Invitel (approximately [0-5]%) and Netfone Telecom (approximately [0-5]%).

(227) In the downstream market for fixed voice services, the Parties' main competitors are Invitel (approximately [10-20]%), UPC (approximately [5-10]%), Digi Telecommunications (approximately [0-5]%), UPC (approximately [5-10]%).

(228) In the downstream market for retail supply of mobile telecommunications services to end customers, DT faces competition from Telenor (approximately [30-40]% and Vodafone (approximately [20-30]%).

5.1.3.3.1.Parties' views

(229) The Parties submit that these two vertical relationships will not lead to any competition concerns.

(230) As regards a possible input foreclosure scenario, whereby the combined entity would stop supplying domestic call transit services to competing providers of fixed and mobile voice, the Parties submit that there would be no ability for them to engage in such a practice.

(231) First, the Parties claim that they will face competition on the upstream market for wholesale call transit services (UPC: [10-20]%, Invitel: [0-5]%, Netfone Telecom: [0-5]%) which is further evidenced by DT's drop in market share since 2010.

(232) Second, the Parties submit that DT's call termination services in Hungary are subject to regulated price caps as well as transparency, access, tariff control, accounting separation and non-discrimination obligations.[149] Therefore, wholesale call transit customers can easily switch to direct interconnections to the terminating carrier's network as an alternative source of input. In particular, MNOs are directly interconnected with other networks using their own infrastructure and therefore rely little on call transit services. As to MVNOs, these often have agreements with their host MNOs which replaces the purchasing of domestic call transit services, and can also use direct interconnection services.

(233) As regards a possible customer foreclosure scenario, whereby the merged entity as a fixed and mobile voice provider would stop procuring domestic call transit services from competing carriers, the Parties submit that there would be no ability for them to engage in such a practice. GTS has none or a negligible market share in the downstream markets (GTS CE's shares in Hungary in fixed voice services are minor amounting to approx. [0-5]% and it is not active in mobile telecommunication services).

149 See NMHH Regulatory Decision No. HF/25016-187/2012 of 12 November 2013.

5.1.3.3.2. Results of the market investigation

(234) The market investigation indicated that entry barriers on the upstream market for wholesale call transit services are low or inexistent[150] and that the wholesale call transit market is declining and losing importance due to the emergence of other alternatives.[151] The market investigation also indicated that the NMHH Decision regulating the fixed call termination market could provide call transit customers with an alternative input.

(235) The market investigation further indicated that the merged entity will continue to face competition from other competitors upstream (such as UPC [10-20]% and Invitel [0-5]%).

The downstream market for fixed voice services

(236) As regards a possible input foreclosure scenario, with regard to the relationship between the wholesale market for domestic call transit services upstream from the market for retail supply of fixed voice services, a large majority of the respondents to the market investigation confirmed that domestic call transit services do not constitute an essential input for the provision of retail fixed voice.[152] Moreover, they also confirmed that alternative providers of domestic call transit services will remain available post-merger and that switching demand towards such providers will be easy.[153]

(237) As regards a possible customer foreclosure scenario between the wholesale market for domestic call transit services and the downstream market for retail supply of fixed voice services, the market investigation revealed that DT represents a marginal proportion ([[<10-20]]%) of its competitors' total sales of domestic call transit services (or it is not even a customer).[154] DT is not an important customer of domestic call transit services, as domestic call transit services are mainly procured by small voice carriers that do not have direct interconnection agreements with other carriers' networks. Moreover, as the price of retail fixed voice services is regulated, as explained in section (170) above, any customer foreclosure would not be profitable. As for GTS CE, given its negligible market share of [0-5]% in value,

---

150 The majority of respondents to the market investigation from the supply side confirmed that entry is easy due to the fact that all operators have an obligation to provide direct interconnection to their networks (see replies to Commission Questionnaire Q. 9 Competitors – Providers of domestic call transit services in Hungary of 13 March 2014, question 7).

151 Such as VoIP services. See NMHH answers to European Commission questionnaire, of 20 March 2014, page 1.

152 See replies to Commission Questionnaire Q15 Competitors - Providers of fixed voice services in Hungary of 13 March 2014, question 24.

153 See replies to Commission Questionnaire Q15 - Providers of fixed voice services in Hungary of 13 March 2014, questions 28 and 29.

154 See replies to Commission Questionnaire Q9 - Providers of domestic call transit services in Hungary of 13 March 2014, question 19. See Parties' reply to RFI N.6 of 9 April 2014, question 3, according to which DT would source only EUR […] of wholesale domestic call transit services for its provision of retail fixed voice services in Hungary in 2012.

it cannot be considered per se as an important customer.[155] Therefore, the merged entity does not appear to have the ability to leverage its significant position in the retail market for fixed voice services in Hungary.

The downstream market for mobile telecommunications services to end-customers

(238) Respondents to the market investigation from the demand side considered that domestic call transit services are a critical input[156] for providing retail mobile telecommunication services and that DT is an important source of competitiveness.[157]

(239) However, respondents to the market investigation unanimously indicated that there are alternative suppliers such as Invitel and UPC that mobile retailers could switch to[158], although certain providers may need to build up additional capacity.

(240) In addition, respondents to the market investigation unanimously indicated that: *(i)* wholesale call transit services can be replaced by interconnection agreements with terminating operators, and that interconnection agreements are already fully used by some mobile retailers;[159] *(ii)* it would not be profitable, according to mobile service providers, for the merged entity to stop or limit offering wholesale domestic call transit services.[160]

(241) Finally, none of the upstream respondents to the market investigation raised concerns over customer foreclosure.

5.1.3.3.3.Commission's assessment

(242) The Commission considers that the merged entity will not have the ability to engage in input foreclosure for the following reasons.

(243) First, the Parties will continue to face competition on the upstream market, in particular taking into account that barriers to entry appear to be low and that the transit market is declining.

(244) Second, the market investigation confirmed that, for certain carriers, direct interconnection agreements with the terminating carrier's network could constitute a valid alternative to call transit services.

---

155 See Parties' reply to RFI N.6 of 9 April 2014, question 3, according to which GTS CE would source only EUR […] of wholesale domestic call transit services for its provision of retail fixed voice services in Hungary in 2012.

156 See replies to Commission Questionnaire Q12 – Retailers of mobile telecommunications services in Hungary of 13 March 2014, question 40.

157 See replies to Commission Questionnaire Q. 12 – retailers of mobile telecommunications services Hungary, question 41.

158 See minutes of conference call with Telenor from 28 March 2014, p. 1 and minutes of the conference call with Vodafone from 28.03.2014.

159 See Minutes of conference call with Vodafone, from 28 March 2014, p. 4 and Minutes of the conference call with Telenor from 28 March 2014, p.1.

160 See replies to Commission questionnaire Q.12 – retailers of mobile telecommunications services Hungary, question 43.

(245) Third, as regards the retail fixed voice market, the market investigation confirmed the Parties' claims that call transit is not an essential input for downstream providers of fixed voice services and that such customers could easily switch to alternative providers of domestic call transit services.

(246) Fourth, as regards the retail mobile telecommunications market, the market investigation confirmed that downstream providers of mobile services to end customers can switch to alternative providers of call transit services and can alternatively replace call transit by direct interconnection agreements.

(247) As regards potential customer foreclosure, GTS CE has negligible shares on the downstream market for fixed voice services and it is not active in mobile telecommunications services. As for DT, it could not be considered an important customer of domestic call transit services, as domestic call transit services are mainly procured by small voice carriers that do not have direct interconnection agreements with other carriers' networks.[161]

(248) Considering all the above and the other available evidence, the Commission concludes that the proposed transaction does not raise serious doubts as to its compatibility with the internal market with respect to the vertically related Hungarian markets for wholesale domestic call transit services upstream, and retail provision of fixed voice services and retail mobile communication services downstream.

5.1.3.4. <u>Wholesale market for end-to-end calls – retail supply of fixed voice services</u>

Table 5.– Market shares in value

	Upstream market		**Downstream markets**	
	<u>Wholesale supply of end-to-end calls services</u>		<u>Retail supply of fixed voice services</u>	
Value	DT: N/A GTS CE: EUR […]; <30%[162])	:	DT: [50-60]% GTS CE: [0-5]%	Combined: [50-60]%
Volume (subscribers)	DT: N/A GTS CE: […]	:	DT: [40-50]% GTS CE: [0-5]%	Combined: [40-50]%

Source: Parties' best estimate (2012)

161 See Parties' reply to RFI N.6 of 9 April 2014, question 3, according to which DT would source EUR […] of wholesale domestic call transit services for its provision of retail mobile telecommunications services in Hungary in 2012.

162 The Parties have not been able to precisely estimate their market share on this market.

(249) In Hungary, the wholesale market for end-to-end calls (GTS: <30%) overlaps vertically with the downstream retail supply of fixed voice services. On such a market, GTS CE re-sells voice traffic capacity (comprising call origination, call termination and call transit) to smaller carriers and Fixed Virtual Network Operators ("FVNO").

5.1.3.4.1. Parties' view

(250) The Parties submit that the Proposed Transaction will not raise any competitive concerns.

(251) As regards a possible input foreclosure, namely the possibility that the merged entity would stop providing its end-to-end calls services to competing retailers of fixed voice, the Parties submit that alternative providers of end-to-end calls services will continue to be active on this market post-transaction. In addition, such FVNOs will be able to procure separate call origination, call termination and transit at wholesale level. Finally, other competitors in the retail market for fixed voice are not dependant on GTS CE providing end-to-end services. Either they procure wholesale call origination, transit and termination or they self-supply such services and thus would not be foreclosed. For these reasons, the merged entity would have no ability to foreclose its competitors from the retail market for fixed voice.

(252) As regards customer foreclosure, that is the possibility that the merged entity would stop sourcing end-to-end calls services from competing providers for its retail fixed voice business, the Parties submit that GTS CE would represent too small a share ([0-5]% in value) of the market.

5.1.3.4.2. The Commission's assessment

(253) No respondent to the market investigation raised any concern related to the impact of the proposed transaction with respect to the vertically related markets for wholesale end-to-end calls services and retail provision of fixed voice services in Hungary.

(254) As regards input foreclosure, post-transaction the merged entity would not have the ability nor the incentive to foreclose competing retailers of fixed voice downstream. With respect to ability, first, the Commission considers that there are alternative providers of such services, most notably UPC. Second, customers of end-to-end calls services will be able to procure call origination, call termination and transit services separately at wholesale level, where a number of competing providers are active in Hungary. Third, call origination and call termination services are regulated, so that these services will be available at a capped price. Finally, the demand currently served by GTS CE on the downstream market for fixed voice services amounts to [0-5]%. Hence, the effect of any potential input foreclosure strategy by the merged entity would not be appreciable.

(255) As regards customer foreclosure, such a strategy can be excluded from the outset as DT currently does not rely on wholesale end-to-end services in order to provide its retail supply of fixed voice services.

(256) Considering all the above and the other available evidence, the Commission concludes that the proposed transaction does not raise serious doubts as to its compatibility with the internal market with respect to the vertically related markets for wholesale end-to-end calls services and retail provision of fixed voice services in Hungary.

5.1.3.5. Wholesale resale of broadband offering – retail business connectivity

(257) The market for wholesale broadband Internet access may be further divided into the following markets: wholesale unbundled access to the local loop ("ULL"); wholesale bitstream access and resale of broadband offering. The competitive assessment will focus only on the possible sub-market for resale of broadband offering and its vertical relationships with the markets for retail business connectivity and retail fixed voice services, as both the market for wholesale access to the ULL and the market for wholesale bitstream access (where only DT is active) are regulated.[163] These sub-markets are subject to transparency, non-discrimination, access and interconnections obligations and price caps obligations.

(258) In Hungary, the Parties' activities lead to a vertical relationship between the upstream market for resale of broadband offering and the downstream market for retail business connectivity.

(259) In the upstream market for wholesale broadband offering only GTS CE is active with a very marginal turnover and market shares likely below 25%.[164] In the downstream market for retail business connectivity the Parties' market shares amount to [40-50]% by revenue (DT: [40-50]%; GTS: [5-10]%) and to [30-40]% by volume (DT: [20-30]%; GTS: [5-10]%).

5.1.3.5.1.Parties' view

(260) The Parties submit that the proposed transaction does not result in input foreclosure as GTS CE's position in the upstream market for wholesale broadband offering is marginal and there are strong competitors such as Antenna Hungária and Enternet. Likewise, any risk of customer foreclosure would be excluded due to the Parties' marginal demand in wholesale broadband access services[165] and the existence of alternative customers active in the market for retail business connectivity such as Invitel, Antenna Hungária UPC and BT.

5.1.3.5.2.Results of the market investigation

(261) The market investigation confirmed that the vertical relationship between the market for resale of broadband offering and the market for retail business connectivity does not lead to any foreclosure scenario. A respondent active in the upstream market for wholesale broadband offering services confirmed that this

163 See NMHH Regulatory Decision No. HF-44-10/2011 of 6 May 2011 regarding the obligations imposed on operators with significant market power on the market for wholesale unbundled access (including shared access) to metallic loops and sub-loops for the purpose of providing broadband and voice services and NMHH Regulatory Decision No. HF-56-12/2011 of 6 May 2011 regarding the obligations imposed on operators with significant market power on the market for wholesale broadband access (both available at http://nmhh.hu/tart/index/194/Piacelemzesi_ hatarozatok).

164 The Parties were not able to provide an estimate of the size of the Hungarian market for wholesale broadband offering. However, GTS' turnover in the resale of others operators' DSL services amounts to EUR […] and thus it can be considered a de minimis player.

165 According to the Parties, DT spent approximately EUR […] on wholesale broadband access services provided by third party operators in 2012 and GTS EUR […].

would be a small market.[166] Furthermore, the market investigation indicated that broadband offering services are not a critical input for the supply of business connectivity services.[167]

5.1.3.5.3. Commission's assessment

(262) The Commission considers that a strategy of input foreclosure of the merged entity is unlikely for the following reasons.

(263) First, GTS CE's revenues on the upstream market are limited in absolute terms and are, according to the Parties in any case below 25%.

(264) Second, the market investigation confirmed that the wholesale offering of a reseller broadband product is not a critical input for providing business connectivity services.

(265) Third, post-transaction alternative providers of wholesale broadband offering such as Enternet will be active on this market.

(266) Finally, the demand currently served by GTS CE on the downstream market for retail business connectivity amounts to [0-5]%. Hence, the effect of any potential input foreclosure strategy by the merged entity would not be appreciable.

(267) The Commission considers furthermore that a strategy of customer foreclosure of the merged entity is unlikely. First, GTS CE's share in the downstream market is small ([5-10]%). Second, there are other players active in the downstream market such as Invitel ([20-30]%), UPC ([5-10]%), NISZ ([0-5]%) and Antenna Hungária ([0-5]%) that are likely to account for demand in wholesale offerings of a broadband product.

(268) Considering all the above and the other available evidence, the Commission concludes that the proposed transaction does not raise serious doubts as to its compatibility with the internal market on the vertically affected markets for resale of broadband offering services and retail business connectivity.

---

166 See agreed minutes of conference call of 31 March 2014 with Enternet and replies to Commission questionnaire Q16 Competitors – Wholesale Broadband offering Hungary of 20 March 2014.

167 See replies to Commission questionnaire Q3 Competitors – Retail market for business connectivity Hungary of 21 March 2014.

5.1.3.6. Wholesale broadband offering – retail supply of fixed voice services

Table 6.- Wholesale broadband offering – retail supply of fixed voice services

	Upstream market		**Downstream markets**	
	Re-sale broadband offering at wholesale level		Retail supply of fixed voice services	
Value	DT: N/A GTS CE: EUR […]; <25%)[168]	Combined:	DT: [50-60]% GTS CE: [0-5]%	Combined: [50-60]%
Volume (subscribers)	DT: N/A GTS CE: […]	Combined:	DT: [40-50]% GTS CE: [0-5]%	Combined: [40-50]%

Source: Parties' best estimate (2012)

(269) In Hungary, the upstream possible sub-market for a re-sale of broadband offering at wholesale level GTS CE: <25%) (part of the wholesale market for broadband access) overlaps vertically with the retail market for the supply of fixed voice services.

5.1.3.6.1. Parties' view

(270) The Parties submit that the proposed transaction will not lead to any input foreclosure scenario, whereby the merged entity would stop providing its wholesale broadband offering services to third-party providers of fixed voice services, for the following reasons. First, GTS CE presence on this market is limited. Second, other providers of wholesale broadband offering such as Enternet continue post-transaction to exert competitive pressure on the merged entity. Third, other suppliers of retail fixed voice are not dependent on GTS CE's offer of wholesale broadband offering to be able to compete.

(271) As regards customer foreclosure, the Parties submit that DT demand in this upstream market is very limited.[169] As regards GTS CE, given its negligible market share downstream ([0-5]% in value), it cannot be considered to be an important customer on that market either. As a result, the merged entity would not have the ability to foreclose its upstream competitors.

5.1.3.6.2. Results of the market investigation

168 The Parties have not been able to estimate precisely their market share on this market.

169 DT has spent EUR […] in acquiring broadband access services from third-party offerings 2012.

(272) The market investigation indicated that the upstream market/ segment of the resale of broadband offering is very small and qualifies as a "niche market".[170]

(273) As regards a possible input foreclosure, respondents to the market investigation indicated that the resale of broadband offering is not a critical input for the retail provision of fixed voice.[171]

5.1.3.6.3.The Commission's assessment

(274) The Commission considers that a strategy of input foreclosure of the merged entity is unlikely for the following reasons.

(275) First, GTS CE's limited revenues indicated that it is likely a small player on the upstream market.

(276) Second the market investigation confirmed that the wholesale resale of broadband offering is not a critical input for providing fixed voice service.

(277) Third, post-transaction alternative providers of wholesale broadband offering will be active on this market (Enternet).

(278) Finally, the demand currently served by GTS CE on the downstream market for retail fixed voice services amounts to [0-5]%. Hence, the effect of any potential input foreclosure strategy by the merged entity would not be appreciable.

(279) As regards a potential strategy of customer foreclosure, the Commission considers that the merged entity's demand for wholesale broadband offering would be too small for the merged entity to be able to foreclose its competitors on the upstream market.[172]

(280) Considering all the above and the other available evidence, the Commission concludes that the proposed transaction does not raise serious doubts as to its compatibility with the internal market on the vertically affected markets for wholesale broadband offering services and retail provision of fixed voice services in Hungary.

5.1.3.7. Other vertically affected markets

(281) The Parties' activities in Hungary lead to a number of vertically affected markets. However, as it will be demonstrated below, these vertically affected markets will not raise competition concerns.

(282) The following table presents vertically affected markets in relation to upstream markets that are subject to market regulation by the Hungarian telecommunication regulator NMHH.

---

170 See agreed minutes of conference call of 31 March 2014 with Enternet.

171 See replies to Commission questionnaire Q15 to retailers of fixed voice services of 13 March 2014, question 48. See agreed minutes of conference call of 31 March 2014 with Enternet, paragraph 11.

172 As submitted by the Parties, DT does not purchase any wholesale resale of broadband offering from third-party providers. As for GTS CE, its limited purchases (approximately EUR […]) of such input are not used to either provide retail business connectivity or retail fixed voice services.

Table 7.- Wholesale regulated markets					
Upstream markets			**Downstream markets**		
Wholesale ULL	DT: >30%	GTS CE: N/A	Retail GTS	DT: [0-5]%	GTS CE: [0-5]%
			Wholesale GTS	DT: [0-5]%	GTS CE: [0-5]%
			Retail business connectivity	DT: [40-50]%	GTS CE: [0-5]%
			Retail supply of fixed voice services	DT: [50-60]%	GTS CE: [0-5]%
			Retail supply of fixed internet access services	DT: [20-30]%	GTS CE: [0-5]%
			Wholesale of broadband offering	DT: N/A	GTS CE: <25%
Wholesale Bitstream Access	DT: >30%	GTS CE: N/A	Retail GTS	DT: [0-5]%	GTS CE: [0-5]%
			Wholesale GTS	DT: [0-5]%	GTS CE: [0-5]%
			Retail business connectivity	DT: [40-50]%	GTS CE: [0-5]%
			Retail supply of fixed voice services	DT: [50-60]%	GTS CE: [0-5]%
			Retail supply of fixed internet access services	DT: [20-30]%	GTS CE: [0-5]%
			Wholesale of broadband offering	DT: N/A	GTS CE: <25%
Wholesale fixed call termination	DT: 100%	GTS CE: 100%	Retail GTS	DT: [0-5]%	GTS CE: [0-5]%
			Wholesale GTS	DT: [0-5]%	GTS CE: [0-5]%

			Retail supply of fixed voice services	DT: [50-60]%	GTS CE: [0-5]%
			Retail mobile telecommunications services	DT: [40-50]%	GTS CE: N/A
			Wholesale end-to-end calls services	DT: N/A	GTS CE: <25%
Wholesale provision of mobile termination services	DT: 100%	GTS CE: N/A	Retail GTS	DT: [0-5]%	GTS CE: [0-5]%
			Wholesale GTS	DT: [0-5]%	GTS CE: [0-5]%
			Retail supply of fixed voice services	DT: [50-60]%	GTS CE: [0-5]%
			Wholesale end-to-end calls services	DT: N/A	GTS CE: <25%
Wholesale call origination at fixed location	DT: [70-80]%	GTS CE: N/A	Retail supply of fixed voice services	DT: [50-60]%	GTS CE: [0-5]%

(283) The markets for the wholesale ULL[173], Wholesale Bitstream Access[174], wholesale provision of fixed call termination services[175], wholesale provision of mobile termination services[176] and wholesale market for call origination on the public telephone network at a fixed location[177] are vertically affected to a number of other markets only on a technical basis ("*one net, one market*"). The aforementioned

173 See NMHH Regulatory Decision No. HF-44-10/2011 of 6 May 2011 regarding the obligations imposed on operators with significant market power on the market for wholesale unbundled access (including shared access) to metallic loops and sub-loops for the purpose of providing broadband and voice services.

174 See NMHH Regulatory Decision No. HF-56-12/2011 of 6 May 2011 regarding the obligations imposed on operators with significant market power on the market for wholesale broadband access.

175 See NMHH Regulatory Decision No. HF/25016-187/2012 of 12 November 2013 regarding the obligations imposed on the operator with significant power on the market for call termination on public telephone networks provided at a fixed location.

176 See NMHH Regulatory Decision No. HF-1595-34/2011 of 23 August 2011 regarding the obligations imposed on the operator with significant power on the market for voice call termination on individual mobile networks.

177 See NMHH Regulatory Decision No. HF-1948-28/2011 of 23 August 2011 regarding the obligations imposed on the operator with significant power on the market for call origination on the public telephone network provided at a fixed location.

upstream markets are regulated, which means that DT (and subsequently the merged entity) is subject to obligations with regard to transparency, equal treatment, accounting separation, access and interconnection related obligations as well as cost-based and controllable prices.

(284) From a competition point of view, this means that any risk of foreclosure in any of the markets vertically related to the abovementioned markets can be ruled out from the outset because: (i) DT will not have the ability to foreclose any downstream competitors by withholding its input services (access and interconnection obligations); (ii) DT will not have the incentive to foreclose upstream competitors by recouping losses through an increase in prices upstream given that the latter are regulated (cost-based and controllable price obligations).

(285) As regards the vertical relationship between a number of markets where the combined market share of the Parties exceeds 30% upstream or downstream, the proposed transaction is unlikely to raise any competition concerns, in particular, because in the corresponding downstream or upstream market, the Parties' presence is too limited (combined market shares [5-10]%) to give them the ability to succeed with any potential foreclosure strategy. As can be seen from the table below, this concerns the retail market for GTS (vertically related to the wholesale leased lines market, the wholesale market for domestic call transit services and the wholesale market for termination and hosting of non-geographical numbers), the wholesale market for GTS (vertically related to the wholesale leased line market, the wholesale market for domestic call transit services and the wholesale market for termination and hosting of non-geographical numbers), the wholesale market for Internet connectivity (vertically related to the retail business connectivity market).

Table 8.- Other vertically related markets not giving rise to competition concerns					
Upstream markets			**Downstream markets**		
Wholesale leased lines	DT: [30-40]%	GTS CE: [10-20]%	Retail GTS	DT: [0-5]%	GTS CE: [0-5]%
Wholesale market for domestic call transit services	DT: [20-30]%	GTS CE: [20-30]%			
Wholesale market for termination and hosting of non-geographical numbers	DT: [40-50]%	GTS CE: N/A			
Wholesale GTS	DT: [0-5]%	GTS CE: [0-5]%	Wholesale leased lines	DT: [30-40]%	GTS CE: [10-20]%
			Wholesale market for domestic call transit services	DT: [20-30]%	GTS CE: [20-30]%
			Wholesale market for termination and hosting of non-geographical numbers	DT: [40-50]%	GTS CE: N/A
Wholesale Internet connectivity: IP Transit	DT: [0-5]%	GTS CE: [0-5]%	Retail business connectivity	DT: [40-50]%	GTS CE: [0-5]%

(286) As regards the vertical relationship between the wholesale market for termination and hosting of non-geographical numbers (DT: [40-50]%) and the retail market for the supply of fixed voice services (DT: [50-60]% GTS: [0-5]%), the proposed Transaction will not raise any competition concerns. Customer foreclosure can be ruled out because the increment brought about by the transaction in the retail market for the supply of fixed voice services is insignificant ([0-5]%). Therefore, GTS CE's market presence downstream is too insignificant for it to be regarded as an important customer in that downstream market.

(287) As regards the vertical relationship between the wholesale market for domestic call transit (DT: [20-30]% GTS CE: [20-30]%) and the wholesale market for end-to-end calls services (DT: N/A GTS CE: <25%), the proposed Transaction will not raise any competition concerns. In particular, no input foreclosure will occur because (i) several other competitors upstream will continue, post-transaction, to exercise competitive pressure on the merged entity (UPC, Netfone Telecom, Türk Telecom, British Telecom, etc.). (ii) Barriers to entry are low, since the regulation of the wholesale market for the provision of fixed call termination imposes access and interconnection obligations, as well as price control, on every fixed voice operator. This regulation allows every new call transit carrier to interconnect with the networks of every other fixed voice services provider. As regards customer foreclosure, GTS CE's market presence downstream is negligible (<25%) so that it could not be considered as an important customer. In addition, several other competitors are active on the downstream market for the provision of end-to-end calls services (such as Enternet). Moreover, retailers of fixed voice services or retailers of mobile telecommunications services also demand domestic call transit services so that alternative customers will still be present post-transaction.

(288) Finally, no respondent to the market investigation raised any concern related to the impact of the proposed transaction with respect to the vertical relationships between the upstream and downstream markets listed in tables 7 and 8 above in Hungary.

(289) Considering all the above and the other available evidence, the Commission concludes that the proposed transaction does not raise serious doubts as to its compatibility with the internal market with respect to the vertical relationships assessed in section 5.1.3.7.

5.1.4. Conglomerate effects

5.1.4.1. Markets for retail business connectivity and retail supply of mobile telecommunications services

(290) In Hungary, the Parties are active in retail business connectivity (where DT's market share amounts to [40-50]% and GTS CE's market share equates [0-5]%). DT is active in mobile telecommunications services with a market share of [40-50]%.

(291) One respondent to the market investigation raised concerns about a potential bundling between mobile telecommunication services and retail business connectivity. Indeed customers of GTS CE procure mobile services separately. In the wake of the Transaction, the merged entity would be able to offer them mobile services bundled with retail business connectivity they already source from GTS CE.

(292) The Commission considers that the Transaction will not affect the ability of the merged entity to supply bundled mobile services and retail business connectivity.

(293) First, prior to the Transaction, DT is already significantly engaged in both these markets. Its market share in the market for retail supply of mobile telecommunication services amounts to [40-50]%, while its market share in the market for retail business connectivity is between [30-40]% and [40-50]% depending on the precise market definition.

(294) Second, the Transaction does not bring about any significant change in this regard. GTS CE is not active in the market for retail supply of mobile telecommunication services. As regards the market for retail business connectivity, its market share is limited and in any case between [0-5]% and [5-10]% depending on the precise market definition.

(295) Considering all the above and the other available evidence, the Commission concludes that the proposed transaction does not raise serious doubts as to its compatibility with the internal market with respect to potential conglomerate effects on the markets for retail business connectivity and retail mobile telecommunications services in Hungary.

5.2. Romania

5.2.1. Parties' activities

(296) GTS CE Romania focuses, at retail level, on providing business customers with fixed-line telecommunication services such as internet connectivity, including VPN, voice, data and cloud services. On wholesale level, GTS CE provides mainly data services and voice services to other carriers (global communication carriers, regional carriers, re-sellers etc). GTS CE does not offer its services to residential customers.

(297) The DT Group is indirectly present in Romania via Cosmote Romania Mobile Telecommunications ("Cosmote") and Romtelecom, the incumbent fixed telephony operator in Romania. Romtelecom is one of the largest local fixed network operators in Romania and focuses on the retail level on supplying both business and residential customers with fixed-network voice, internet, TV, ICT and cloud services. DT is also active on the Romanian market via Combridge, another entity within the DT Group, which operates a fibre network and offers a large set of ICT services. The Parties submit that Combridge is not active on the horizontally affected markets of wholesale leased lines and wholesale provision of domestic call transit services on fixed networks. On the markets for retail business connectivity services and retail fixed voice services Combridge's market share is [0-5]%.

5.2.2. Horizontally affected markets

(298) The parties' activities overlap horizontally on six potential relevant product markets: wholesale leased lines, retail business connectivity, retail supply of fixed voice services, wholesale provision of domestic call transit services, retail supply of fixed internet access services, and wholesale end-to-end calls. These are also horizontally affected markets, with the exception of the wholesale market for end-to-end calls (where the Parties' combined market share equates [10-20]%).

5.2.2.1. Wholesale leased lines market

(299) The Parties estimate the size of the market for wholesale leased lines to be EUR 13,1 million in 2012.

(300) In this market, the Parties offer legacy wholesale leased lines services in both the terminating segment (used for customer access and backhaul) and in the trunk segment (used for backbone transmission), as well as end-to–end circuits and POP2POP[178] links. In the wholesale leased lines market, the Parties submit that they have a combined market share of [30-40]% in value and [10-20]% in volume (number of lines). If a separate market for dark fibre were considered, the Parties' combined market share would amount to [0-5]% in value (DT: [0-5]%; GTS CE: [0-5]%). The table below gives an overview of estimated market shares of the Parties on various possible sub-segments.

Table 9. - Market shares by value and by volume in the wholesale leased lines market

Main Market		**Possible sub-segments**	
Wholesale leased lines		**Trunk segment**	
VALUE: [30-40]% DT:[20-30]% GTS CE: [10-20]%	VOLUME: [10-20]% DT: [10-20]% GTS CE: [0-5]%	VALUE: [5-10]% DT: [0-5]% GTS CE: [0-5]%	VOLUME: [0-5]% DT: [0-5]% GTS CE: [0-5]%
		Terminating segment	
		VALUE: [60-70]% DT: [40-50]% GTS CE: [10-20]%	VOLUME: :[20-30] DT: :[20-30]% GTS CE: [0-5]%
		Terminating segment of leased lines with bandwidth above 2 Mbps	
		VALUE:[60-70]% DT: :[20-30]% GTS CE: [40-50]%	VOLUME: [10-20]% DT: [5-10]% GTS CE: [5-10]%
		Terminating segment of leased lines with bandwidth below 2 Mbps	
		VALUE:[60-70]% DT: [60-70]% GTS CE: [0-5]%	VOLUME: [30-40]% DT: [30-40]% GTS CE: [0-5]%

Source: Parties' best estimate (2012)

5.2.2.1.1.Parties' view

(301) The Parties submit that the horizontal overlap in the Romanian wholesale leased lines market will not lead to a significant impediment to effective competition.

(302) The Parties claim that the wholesale leased lines market is characterised by strong presence of cable, fibre and mobile operators with national coverage and their own backbone infrastructure, capable of providing both high-speed and low speed leased lines to wholesale customers. The Parties further submit that they face strong competition from a number of providers such as RCS&RDS ([20-30]%), Orange

178 These are point-to-point, digital, transparent, and symmetric connectivities between two points located in Romtelecom PoP (Point of Presence).

([20-30]%), Vodafone ([10-20]%), UPC, Digital Cable Systems, Euroweb and Prime Telecom.

(303) Specifically with regard to the possible trunk segment, the Parties consider that it is less relevant for their activities, as the Parties generate most of their revenues from the terminating segment. Furthermore, there are 14 operators active on this market (such as RCS&RDS ([20-30]%), Orange ([10-20]%), Vodafone ([10-20]%), Prime Telecom, UPC, S.N. Radiocomunicatii, Direct One etc). The national regulator, ANCOM, has found the trunk segment to be competitive and therefore, this possible market segment is not regulated.[179]

(304) With regard to the possible terminating segment of leased lines, the Parties submit that their activities have different focuses: while GTS CE provides wholesale leased lines with bandwidth over 2 Mbps (only [10-20]% of GTS CE's revenues result from leased line with bandwidth below 2 Mbps), DT exclusively provides low bandwidth (under and including 2 Mbps) wholesale leased lines. These leased lines provided by DT are mainly provided over its copper access network. By contrast, leased lines with bandwidth above 2 Mbps[180] are provided over fibre optic infrastructure, where DT's coverage is comparably lower than the coverage of its main competitors (such as RCS&RDS and Orange).

(305) The Parties further submit that GTS CE is a small, niche player in this market, focused on providing high-speed wholesale leased lines on the basis of Ethernet and dark fibre.[181]

(306) In the terminating segment, the Parties submit that the possible sub-segment of leased lines with bandwidth below and including 2 Mbps is regulated.[182] Thus DT (Romtelecom) is subject, inter alia, to tariff control, access and non-discrimination obligations. Such obligations would thwart any attempt on the merged entity's behalf to exert market power. By contrast, the national regulator had found that the

---

179 See the Explanatory Memorandum to ANCOM's Regulatory Decision No. 15 of 10 January 2011 regarding the obligations imposed on the operator with significant power on the market of leased lines – terminating segments with a transfer capacity of up to and including 2 Mbps (available at http://www.ancom.org.ro/en/ancom-decisions_1130).

180 The Parties submit that DT does not offer wholesale leased lines in the terminating segment with bandwidth above 2 Mbps as a stand-alone service. Rather, high-speed wholesale leased lines are provided as part of an integrated service of total-circuit wholesale leased lines above 2 Mbps, comprising two terminating segments (at either end of the connection) and one trunk segment (in between the two terminating segments). The Parties further submit that end-to-end circuits provided by DT are not interchangeable with terminating services provided by GTS as these services address different customer groups. As a consequence, the Parties submit that the market share of DT in this market is therefore actually 0%. The Commission, however, still assesses this market by assuming a market share of DT of [20-30]% in the terminating segment above 2 Mbps although the Parties' combined market share could be lower.

181 The Parties submit that GTS CE currently maintains a national fibre backbone network with overall length of approximately […] route km, as well as […] km metropolitan access networks, primarily in Bucharest. However, only […] of fibre in its national backbone network are actually owned by GTS.

182 See ANCOM's Regulatory Decision No. 15 of 10 January 2011 regarding the obligations imposed on the operator with significant power on the market of leased lines – terminating segments with a transfer capacity of up to and including 2 mbps (available at http://www.ancom.org.ro/en/ancom-decisions_1130).

terminating segment of leased lines with bandwidth above 2Mbps was competitive and has not imposed any regulatory provisions on DT.

(307) In the terminating segment, the Parties further submit that they will continue to face strong competition from competitors such as RCS&RDS ([20-30]%), Orange ([10-20]%), Euroweb ([5-10]%) and Prime Telecom ([0-5]%).

(308) Finally, if a separate market for dark fibre were considered, then the Parties' combined market share on such a wholesale market is low ([0-5]%) and many strong competitors are present in the market such as Teletrans ([20-30]%), Telecomunicatii CFR ([20-30]%), Orange ([10-20]%), RCS&RDS ([10-20]%), Electrogrup ([10-20]%).

5.2.2.1.2. Results of the market investigation

(309) The overwhelming majority of respondents considered that barriers to entry on the Romanian wholesale leased lines market were high[183] on all potential market segments due to a number of factors such as strong competition, low tariffs for these services, legal requirements[184], and well-developed existing infrastructures. Moreover, the majority of the respondents were of the opinion that newer alternative solutions such as VPN and Ethernet have not lowered barriers to entry on this market.[185] Nevertheless, the majority of respondents consider that cheaper VPN and Ethernet solutions are in the process of replacing traditional leased lines.[186]

(310) Most market players do not perceive GTS CE as a very close competitor to DT, but rather as one of the smaller players in the market.[187] The closest competitors to DT would be Orange and RCS&RDS, followed by GTS CE, Prime Telecom, Euroweb and Vodafone. Some respondents perceived DT as the closest competitor to GTS CE.[188] On the other hand, some competitors indicated that GTS CE does not have a considerable national footprint in Romania, its strength rather residing in its

183 See replies to Commission questionnaires Q2 Competitors – Wholesale leased lines, Romania of 13 March 2014, question 19.

184 For instance, Government Decision No. 490/2011, supplementing the General Urbanism Regulation imposed the obligation on the operators to deploy infrastructure only underground. Many of the respondents in the market investigations pointed out at additional costs brought by the implementation of this Decision, which would make entry on this market difficult, due to the interdiction to deploy aerial infrastructure. However, ANCOM's view on barriers to entry differs from that of the competitors. ANCOM has indicated that it is rather easy to roll out infrastructure and ongoing projects in Bucharest and other cities allow operators to build their infrastructure underground. See agreed minutes of conference call of 18 March 2014 with ANCOM, paragraph 9.

185 See replies to Commission questionnaires Q2 Competitors – Wholesale leased lines, Romania of 13 March 2014, question 22.

186 See replies to Commission questionnaires Q2 Competitors – Wholesale leased lines, Romania of 13 March 2014, question 15.

187 See replies to Commission questionnaires Q2 Competitors – Wholesale leased lines, Romania of 13 March 2014, question 13; see also agreed minutes of conference call of 27 March 2014 with Orange, paragraph 6 and agreed minutes of conference call with UPC, paragraph 8.

188 This is mainly because DT offers the most complete set of services in the market, therefore it is the closest competitor to the other suppliers of wholesale leased lines services.

international focus.[189] In addition, while a few competitors consider DT as an innovative player in the market, GTS CE is not perceived as an innovative operator.[190]

(311) While all respondents indicated that it would probably be more difficult to compete against the merged entity following the transaction due to a larger network and better services portofolio[191], they also recognised the existence of other competitors on this market, including RCS&RDS, Orange, Vodafone, UPC, Prime Telecom and Euroweb[192], which have their own national infrastructure and provide wholesale services nationally. Moreover, most respondents do not expect significant changes on the wholesale market or increases of prices at wholesale level post-transaction.[193]

5.2.2.1.3. Commission's assessment

(312) The Commission considers that the proposed transaction does not result in competition concerns on the wholesale leased lines market.

(313) While the market investigation provided some indications that barriers to entry on this market may be appreciable, ANCOM's statistical report of June 2013[194] shows 27 wholesale providers of leased lines services operating on active (Ethernet/SDH based) and passive networks (dark fibre) or using alternative technologies such as fixed radio, cable, unbundled copper and VSAT operate in Romania. Accordingly, between December 2012 and June 2013, the number of wholesale providers had increased from 17 to 27. Furthermore, ANCOM confirmed that, in its assessment, barriers to entry on this market are low.[195]

(314) In any event, the market investigation confirmed that the Parties are not closest competitors and that there are a number of other competitors operating their own national network which will continue to exercise competitive pressure on the

189 See replies to Commission questionnaires Q2 Competitors – Wholesale leased lines, Romania of 13 March 2014, question 38.

190 See replies to Commission questionnaires Q2 Competitors – Wholesale leased lines, Romania of 13 March 2014, questions 17 and 18.

191 See replies to Commission questionnaires Q2 Competitors – Wholesale leased lines, Romania of 13 March 2014, question 24.

192 See replies to Commission questionnaires Q2 Competitors – Wholesale leased lines, Romania of 13 March 2014, questions 4 and 12.

193 See replies to Commission questionnaires Q2 Competitors – Wholesale leased lines, Romania of 13 March 2014, question 38.

194 ANCOM statistical data report, June 2013, page 58 (available at: https://statistica.ancom.org.ro:8000/sscpds/public/files/77).

195 ANCOM's view on barriers to entry differs from that of the suppliers. ANCOM has indicated to the Commission that it is rather easy to roll out infrastructure and ongoing projects in Bucharest and other cities allow operators to build their infrastructure underground. ANCOM does not foresee any impact of the Government Decision no. 490/2011, supplementing the General Urbanism Regulation on the competitive situation of the wholesale market for leased lines in Romania, as the operators could either ground their own cables or use for instance the underground conduits of the Netcity project. In ANCOM's view, it is unlikely that operators will leave the wholesale leased lines market because of the costs relating to the grounding of cables. See agreed minutes of conference call of 18 March 2014 with ANCOM, paragraph 9.

merged entity, such as RCS&RDS ([20-30]%), Orange ([20-30]%), Vodafone ([10-20]%), UPC, Euroweb and Prime Telecom.

(315) In relation to the trunk segment, the Commission considers that no competition concerns should arise. The combined market share of the Parties of [5-10]% is far below a level which could give rise to competitive concerns and the increment brought by the transaction is also insignificant ([0-5]%). Moreover, the competitiveness of this market segment has previously been recognised by ANCOM, which has not imposed any regulatory measures with regard to the trunk segment since the first market review of 2003. The Romanian regulator also considers that barriers to entry are low in this market segment, as exemplified by the recent entry of operator Direct One.[196]

(316) As regards the terminating segment of leased lines, while the Parties' combined market share of [60-70]% is considerably higher than in the trunk segment, competition concerns are unlikely to arise as a number of alternative providers in the terminating segment, including RCS&RDS, Orange, UPC, Prime Telecom, S.N. Radiocomunicatii and Euroweb operating their own national backbone network will continue to exercise significant competitive pressure on the merged entity.

(317) Specifically in the possible market segment of leased lines with bandwidth below and including 2 Mbps, as mentioned in paragraph (306) above, ANCOM has imposed on DT regulatory obligations comprising transparency, equal treatment, accounting separation, access and interconnection-related obligations, as well as cost-based and controllable tariffs.[197] Therefore, potential competitive concerns are captured from the outset by the regulatory provisions imposed on DT. These obligations will continue to apply to the merged entity. Furthermore, other providers are active in this segment such as Orange ([10-20]%), RCS&RDS ([10-20]%), Euroweb ([5-10]%), Prime Telecom, Interoute, Dial Telecom, and Digicom Systems (all around [0-5]%).[198]

(318) As regards the possible market segment of leased lines with bandwidth above 2 Mbps, no competition concerns are likely to arise given the number of active providers[199] in this segment: RCS&RDS ([20-30]%), Orange ([10-20]%), Euroweb ([10-20]%), Prime Telecom ([5-10]%), Teletrans ([5-10]%), Interoute ([5-10]%), Dial Telecom, Digicom Systems, Netaccess and SVF Management Prod Serv (all <5%).[200]

---

196 See agreed minutes of conference call of 18 March 2014 with ANCOM, paragraph 4.

197 See the Explanatory memorandum to ANCOM's Regulatory Decision No. 15 of 10 January 2011 regarding the obligations imposed on the operator with significant power on the market of leased lines – terminating segments with a transfer capacity of up to and including 2 Mbps (available at http://www.ancom.org.ro/en/ancom-decisions_1130).

198 Market shares as provided by the Parties for 2012.

199 Ten providers identified by ANCOM. See agreed minutes of conference call of 18 March 2014 with ANCOM, paragraph 8.

200 Market shares as provided by the Parties for 2012.

Furthermore, ANCOM has found this possible market segment to be competitive and therefore this market segment is not regulated.[201]

(319) Finally, if a separate market for wholesale dark fibre was considered, given the very low combined market share of the Parties ([0-5]%) and the presence of other suppliers of dark fibre such as Teletrans ([20-30]%), Telecomunicatii CFR ([20-30]%), Orange ([10-20]%), RCS&RDS ([10-20]%) and Electrogrup ([10-20]%)[202], no competition concerns is likely to arise on this possible market. In addition, the Parties' combined market share in a market for wholesale leased lines excluding dark fibre would not change significantly.[203]

(320) In light of the above, the Commission concludes that the proposed transaction does not raise serious doubts as to its compatibility with the internal market on wholesale leased lines market and its possible segments in Romania.

5.2.2.2. Retail market for business connectivity

(321) The Parties estimate the size of the market for retail business connectivity to be EUR 127,3 million in 2012.

(322) On this market, the Parties have a combined market share of [30-40]% (DT [20-30]%, GTS CE [0-5]%). Both Parties are active on the three possible market segments of broadband access, retail leased lines and VPN services, as shown in the table below:

Table 10. - Market shares by value and by volume in the retail market for business connectivity

<table>
<tr><th colspan="2">Main Market</th><th colspan="2">Possible sub-segments</th></tr>
<tr><td colspan="2" rowspan="2">Retail market for business connectivity</td><td colspan="2">Broadband access</td></tr>
<tr><td>VALUE: [40-50]%
DT: [30-40]%
GTS: [5-10]%</td><td>VOLUME: [20-30]%
DT: [10-20]%
GTS: [0-5]%</td></tr>
<tr><td rowspan="4">VALUE: [30-40]%
DT: [20-30]%
GTS: [0-5]%</td><td rowspan="4">VOLUME: [20-30]%
DT: [20-30]%
GTS: [0-5]%</td><td colspan="2">Leased lines</td></tr>
<tr><td>VALUE: [20-30]%
DT: [20-30]%
GTS: [0-5]%</td><td>VOLUME: [40-50]%
DT: [40-50]%
GTS: [0-5]%</td></tr>
<tr><td colspan="2">VPN</td></tr>
<tr><td>VALUE: [20-30]%
DT: [20-30]%
GTS: [0-5]%</td><td>VOLUME: [20-30]%
DT: [20-30]%
GTS: [0-5]%</td></tr>
</table>

Source: Parties' best estimates (2012)

5.2.2.2.1. Parties' view

201 See the Explanatory memorandum to ANCOM's Regulatory Decision No. 15 of 10 January 2011 regarding the obligations imposed on the operator with significant power on the market of leased lines – terminating segments with a transfer capacity of up to and including 2 Mbps (available at http://www.ancom.org.ro/en/ancom-decisions_1130).

202 Market shares as provided by the Parties for 2012.

203 The Parties' combined market shares in a market for wholesale leased lines excluding dark fibre would amount to [30-40]% (DT: [20-30]%; GTS CE: [5-10]%).

(323) The Parties submit that the horizontal overlap in the Romanian retail business connectivity market will not lead to a significant impediment to effective competition.

(324) The Parties claim that DT's market share is currently declining[204], as a result of increasing competitive pressure from higher-speed alternative technologies such as (VPN and Ethernet solutions). These technologies are becoming the preferred means for connectivity solutions.[205] Furthermore, the Parties submit that they face strong competition from many alternative providers[206] such as Vodafone ([20-30]%), Orange ([10-20]%), RCS&RDS ([5-10]%) and UPC ([0-5]%) and niche providers such as Prime Telecom and Euroweb[207], which are focusing on large customers. Moreover, the Parties submit that barriers to entry on this market are low, in total a number of 44 retail providers of data transmission services (including VPN services) and 16 active providers of retail leased lines services reported statistical data to the national regulatory authority (ANCOM) in 2012.[208]

(325) The Parties further claim that GTS CE is a rather small player in the Romanian retail business connectivity market and therefore they are not close competitors.

5.2.2.2.2. Results of the market investigation

(326) All respondents considered that incentives to enter the market for retail business connectivity, for all market segments, are low[209] due to a number of factors, including strong competition, aggressive pricing from competitors and low average revenues per user for these services compared to other European countries. Moreover, there are certain barriers to entry such as unclear procedures regarding the authorisation to deploy fixed infrastructure at national level. However, the market investigation confirmed that the Parties would continue to face significant competitive pressure from a number of mobile providers such as Vodafone and Orange, cable providers such as RCS&RDS and UPC, as well as from niche players such as Euroweb and Prime Telecom.[210] The suppliers of such services have networks covering the whole

204 DT's market share has dropped by approximately [5-10]% between 2010 and 2012.

205 IDC, Romanian Telecommunications Market Competitive Analysis, 2012, page 38.

206 These competitors are present in all market segments. Vodafone ([10-20]% broadband access to large business customers; [30-40]% VPN services and [5-10]% retail leased lines; Orange [20-30]% broadband access to large business customers, [10-20]% VPN services and [10-20]% retail leased lines; RCS&RDS [10-20]% broadband access to large business customers, [5-10]% VPN services and [0-5]% retail leased lines; UPC [5-10]% broadband access to large business customers, [0-5]% VPN services and [0-5]% retail leased lines; Euroweb [0-5]% for broadband access to large business customers and VPN services and [0-5]% leased lines; Prime Telecom [0-5]% for all market segments).

207 IDC, Romania Telecommunications Market Competitive Analysis, 2012, page 39.

208 ANCOM statistical data report "Romanian Electronic Communications Market – updated based upon the statistical data corresponding to 1 July – 31 December 2012 reporting period", 2012, page 55.

209 See replies to Commission questionnaires Q4 Competitors – Retail market for business connectivity, Romania of 13 March 2014, question 19.

210 IDC, Romanian Telecommunications Market Competitive Analysis, 2012, page 39.

country[211] and usually provide all (broadband access, dedicated capacity via leased lines and VPN services) or at least two retail business connectivity services.[212]

(327) The data gathered during the market investigation confirms that the Parties are not close competitors in this market.[213] Most market participants identified Vodafone, RCS&RDS, Orange and UPC as being closer competitors to DT. None of the customers of retail business connectivity identified GTS CE as a top player in this market.[214] Furthermore, while DT was considered an innovative player in this market by the majority of respondents, that was not the case for GTS.[215] This suggests that GTS CE is one of the small players in the Romanian business connectivity market.

(328) Finally, neither the suppliers, nor the customers of retail business connectivity expected an increase in prices of retail business connectivity following the transaction.

5.2.2.2.3. Commission's assessment

(329) The Commission considers that the proposed transaction does not result in competitive concerns on the retail business connectivity market. First, GTS CE's presence on this market is generally small ([0-5]% in the retail market for business connectivity and [5-10]% on the possible sub-segment for broadband access – in value). Likewise, GTS CE's market share in volume is always [0-5]% for all possible market segments.

(330) Second, the combined market share of the Parties based on volume remains [20-30]% for all possible market segments, with the exception of the possible segment of retail leased lines, where the Parties' combined market share by volume is [40-50]% (DT [40-50]%, GTS [0-5]%) with the increment brought about by the transaction in this possible sub-segment being insignificant. Furthermore, the terminating segment of leased lines with bandwidth below and including 2 Mbps, which is the main focus of DT, is regulated. The combined market share in value is around [30-40]% in the overall market and below or equal to [40-50]% in all possible segments.

(331) Third, a number of competitors such as Vodafone ([20-30]%), Orange ([10-20]%), RCS&RDS ([5-10]%), UPC ([0-5]%)[216] and niche players focusing on large

---

211 See replies to Commission questionnaires Q4 Competitors – Retail Market for Business Connectivity Romania of 13 March 2014, question 4.

212 See replies to Commission questionnaires Q4 Competitors – Retail Market for Business Connectivity Romania of 13 March 2014, question 15.

213 See replies to Commission questionnaires Q6 Customers – Retail Market for Business Connectivity Romania of 13 March 2014, question 13.

.214 See replies to Commission questionnaires Q6 Customers – Retail Market for Business Connectivity Romania of 13 March 2014, question 10.

215 See replies to Commission questionnaires Q6 Customers – Retail Market for Business Connectivity Romania of 13 March 2014, questions 15 and 16.

216 Market shares as provided by the Parties for 2012.

customers such as Prime Telecom and Euroweb will continue to compete and constrain the merged entity.

(332) Fourth, the market investigation confirmed that GTS CE is not a close competitor of DT.

(333) In the light of the above, and in particular given the small increment, as well as the presence of several competitors on this market, the Commission concludes that the proposed transaction does not raise serious doubts as to its compatibility with the internal market on retail market for business connectivity and its possible segments in Romania.

5.2.2.3. Market for retail supply of fixed voice services

(334) The Parties estimate the size of the market for retail supply of fixed voice services to be EUR 334,8 million in 2012.

(335) On this market, DT, as the incumbent operator for fixed voice services, has a significant market share ([70-80]% in value, [40-50]% in volume-number of lines). If managed VoIP and home zone products are excluded, the market share of DT would amount to [90-100]% in value and [60-70]% in volume. However, the increment brought by the transaction is only [0-5]% in value and [0-5]% in volume (GTS CE being a niche player) and remains [0-5]% for each of the possible market segments.

5.2.2.3.1. Parties' view

(336) The Parties submit that DT faces intense price competition from players such as Vodafone ([10-20]%), Orange ([5-10]%) or RCS&RDS ([0-5]%), which has led to a constant decrease in DT's market share since 2008. Several of these competitors offer fixed voice services bundled with other services at low prices and for free. The Parties also claim that the barriers to entry are low, as can be seen by the 32 alternative fixed operators who operate their own infrastructures to provide fixed voice services since the liberalisation of the Romanian telecommunications market in 2003.

(337) Finally, the Parties submit that there is increasing competitive pressure exercised on the market for retail supply of fixed voice services by the mobile voice market, as customers prefer to migrate to personalised and cheaper mobile services (so-called fixed to mobile conversion).

5.2.2.3.2. Commission's assessment

(338) The Commission notes, first, that no respondent to the market investigation raised any concern related to the impact of the proposed transaction with respect to the market for retail supply of fixed voice services in Romania.

(339) Second, the increment of [0-5]% brought about by the transaction is insignificant and alternative providers will remain present on this market.

(340) For these reasons, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market on the market for retail supply of fixed voice services in Romania.

5.2.2.4. Wholesale market for provision of call transit services on fixed networks

(341) The Parties estimate the size of the wholesale market for provision of domestic call transit services on fixed networks to be EUR 0,2 million in 2012.

(342) On this market, the Parties have a combined market share in value of [70-80]% (DT's [60-70]%, GTS CE [5-10]%) and [50-60]% in volume[217] (DT: [50-60]% GTS CE: [0-5]%).

5.2.2.4.1.Parties' view

(343) The Parties submit that DT's market presence has been steadily declining in the past few years, due to the competitive constraint exerted by players such as Net-Connect internet ([10-20]%) or Dial Telecom ([5-10]%). The Notifying Party moreover submits that the continued adoption of VoIP exerts a significant competitive pressure on the market for the wholesale provision of call transit services on fixed networks. This explains why no new player has recently entered this market, in spite of the low barriers to entry in technical respects.

5.2.2.4.2.Commission assessment

(344) Any potential risks of anticompetitive effects resulting from the proposed transaction in the wholesale call transit market are captured by the fact that the national regulator ANCOM has imposed on DT the duty to transit calls in its nationwide network on a non-discriminatory basis, the fees for this service being subject to strict cost-based price regulation.[218]

(345) The Commission also notes that no respondent to the market investigation raised any concern related to the impact of the proposed transaction with respect to the wholesale market for provision of call transit services on fixed networks in Romania.

(346) Given in particular the obligations imposed by the national regulator, ANCOM on DT, and the presence of alternative suppliers of call transit as listed in paragraph (343) above, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market on the wholesale market for provision of call transit services on fixed networks in Romania.

5.2.2.5. Market for retail supply of fixed internet access services

(347) The Parties estimate the size of the market for retail supply of fixed internet access services to be EUR 271,8 million in 2012.

(348) In the market for retail supply of fixed internet access services DT has a market share of [20-30]% in value and the increment brought by the transaction will be less than

---

217 Number of minutes.

218 See ANCOM regulatory decision No 1014/2009 on designating Romtelecom as a provider with significant market power on the market for services of fixed call origination on the public telephone networks and on the market for services of call switched national transit on the public telephone networks, and on imposing obligations on this provider.

[0-5]% for both the narrowband and broadband segment, as GTS is practically not active on this market.[219]

(349) The Commission also notes that no respondent to the market investigation raised any concern related to the impact of the proposed transaction with respect to the market for retail supply of fixed internet access services in Romania.

(350) Given the insignificant increment brought by the transaction, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market on the market for retail supply of fixed internet access services in Romania.

5.2.3. *Vertically affected markets*

(351) As shown in the table below, the market for wholesale leased lines is vertically related to both the market for retail business connectivity and the market retail mobile telecommunications to end customers.

Table 11. Vertically affected markets: Wholesale leased lines market – retail business connectivity and retail supply of mobile telecommunication services

<table>
<tr><th colspan="2">Upstream market</th><th colspan="2">Downstream markets</th></tr>
<tr><td colspan="2" rowspan="2"><u>Wholesale Leased Lines Market</u>

Value [30-40]*. (DT:[20-30]%, GTS CE: [10-20]%)

Volume [10-20]% (DT: [10-20]%, GTS: [0-5]%)</td><td colspan="2"><u>Retail market for Business connectivity</u></td></tr>
<tr><td>Value (DT: [20-30]%, GTS CE: [0-5]%)</td><td>Combined: [30-40]%</td></tr>
<tr><td rowspan="2"><u>Trunk segment</u>

Value: [5-10]% (DT:

[0-5]%, GTS CE: [0-5]%)

Volume: [0-5]% (DT: [0-5]%, GTS: [0-5]%)</td><td rowspan="2"><u>Terminating segment</u>

Value: [60-70]% (DT:[40-50]%, GTS: [10-20]%)

Volume: [20-30]% (DT:[20-30]%, GTS: [0-5]%)</td><td colspan="2"><u>Retail supply of mobile telecommunications services</u></td></tr>
<tr><td>DT: [10-20]%

GTS CE: N/A</td><td>Combined: [10-20]%</td></tr>
</table>

5.2.3.1. <u>Wholesale leased lines market – Retail business connectivity market</u>

(352) Both DT and GTS CE are active in the upstream market for wholesale leased lines (combined market share [30-40]%) and the downstream market for retail business connectivity ([30-40]%).

5.2.3.1.1. Parties' view

(353) The Parties submit that the proposed transaction will not give rise to any risk of input foreclosure as sufficient leased lines resources upstream remain available for

219 GTS achieved a turnover of EUR […] on this market in 2012.

* Should read [30-40]%.

the merged entities' downstream competitors. This is because: (i) other competitors remain active in the upstream market, (ii) GTS CE has a relatively small market share upstream ([10-20]%) and (iii) GTS CE has small market share ([0-5]%) in the downstream retail market for business connectivity.

(354) As regards the trunk segment, the Parties submit that neither DT nor GTS CE has significant activities in this segment.

(355) As regards the terminating segment, the Parties submit that their activities have different focuses: DT has a clear focus on transmission speeds below and including 2 Mbp, while GTS CE is primarily active in the high-speed segment. Given this complementarity upstream, the vertical links between the activities of the Parties do not lend themselves to increase DT's ability and incentive to engage in an input foreclosure strategy vis-à-vis its competitors in the retail market for business connectivity. Furthermore, as mentioned in paragraph (306) above, the terminating segment of leased lines with transmission speed below and including 2 Mbps is a regulated market.

(356) The Parties further submit that the importance of legacy leased lines at the wholesale level for the provision of retail business connectivity services will decline rapidly as a result of the increased shift towards Ethernet and IP VPN solutions. Thus, business customers' demand can be met by other solutions such as Ethernet and VPN.

(357) With regard to a hypothetical customer foreclosure scenario, the Parties submit that, as GTS CE is not an important player on the downstream market, their competitors at wholesale level will be able to continue selling their services to a number of providers of business connectivity at retail level.

5.2.3.1.2. Results of the market investigation

(358) With respect to possible customer foreclosure, suppliers of wholesale leased lines did not raise any concerns and pointed out that there were other alternative customers that they could supply.[220] Most respondents could not appreciate whether it would be profitable for the merged entity to stop acquiring wholesale leased lines services post-transaction.[221]

(359) With respect to possible input foreclosure, the market investigation revealed, first, that customers of wholesale leased lines were not concerned that, post-transaction, the merged entity would stop supplying wholesale leased lines for the purpose of retail business connectivity. Second, the majority of respondents do not consider leased lines an essential input for the purpose of retail business connectivity[222] Third, they

220 See replies to Commission questionnaires Q2 Competitors – Market for Wholesale Leased Lines Romania, of 13 March 2014, question 29. Some suppliers noted that supplying new customers (to make up for previous demand by the Parties) would not necessarily be easy as they do not expect an increase of demand for wholesale leased lines. See replies to Commission questionnaires Q2 Competitors – Market for Wholesale Leased Lines Romania, of 13 March 2014, question 30. See also agreed minutes of conference call of 28 March 2014 with Prime Telecom, paragraph 6.

221 See replies to Commission questionnaires Q2 Competitors – Market for Wholesale Leased Lines Romania, of 13 March 2014, question 31.

.222 See replies to Commission questionnaires Q4 Competitors – Retail Market for Business Connectivity Romania, of 13 March 2014, question 31.

pointed out that there are other alternative solutions such as VPN or Ethernet which can replace, or put a competitive constraint on the price of, leased lines for the purpose of offering retail business connectivity services.[223] Fourth, most respondents consider that there are other suppliers in the upstream market from whom they can source leased lines[224], even though switching their demand could involve some switching costs.[225] Fifth, customers of wholesale leased lines services generally source from more than one provider of wholesale leased lines services.[226] Sixth, all respondents were of the opinion that it would not be profitable for the merged entity to stop supplying leased lines post-transaction.[227]

5.2.3.1.3. Commission's assessment

(360) The Commission considers that the merged entity would not have the ability or the incentive to engage in a customer foreclosure strategy. First, other potential customers of wholesale leased lines such as Orange or Vodafone (see paragraph (331)) above remain present on the downstream market of retail business connectivity. Second, both DT and GTS CE are already vertically integrated on these markets and source leased lines internally to a large extent. Third, GTS CE's market share on the downstream market for retail business connectivity is low ([0-5]%). Thus, its demand for leased lines for the purpose of providing business connectivity services is too low to foreclose the merged entity's competitors in the upstream market.

(361) As regards a possible input foreclosure scenario the Commission notes, first, that most business connectivity providers do not consider leased lines as an essential input for their services. As confirmed by the market investigation, other products such as VPN or Ethernet solutions also serve as input for business connectivity services and can be expected to exercise competitive constraint on the wholesale leased lines market. Second, there are other suppliers such as Orange and RCS&RDS in the upstream market of wholesale leased lines from whom providers of retail business connectivity service can source leased lines. While this may involve some switching cost, downstream providers usually do multi-source from several upstream suppliers. Third, the Commission notes that none of the market investigation respondents considered that the merged entity would have the incentive to adopt an input foreclosure strategy.

---

223 See replies to Commission questionnaires Q4 Competitors – Retail Market for Business Connectivity Romania, of 13 March 2014, question 31.

224 See replies to Commission questionnaires Q4 Competitors – Retail Market for Business Connectivity Romania, of 13 March 2014, question 33.

225 See replies to Commission questionnaires Q4 Competitors – Retail Market for Business Connectivity Romania, of 13 March 2014, question 34.

226 See replies to Commission questionnaires Q4 Competitors – Market for Wholesale Leased Lines Romania, of 13 March 2014, question 16.

227 See replies to Commission questionnaires Q4 Competitors – Retail Market for Business Connectivity Romania, of 13 March 2014, question 35.

(362) In light of the above, the Commission concludes that the proposed transaction does not raise serious doubts as to its compatibility with the internal market as a result of the vertical relationship between the activities of the Parties on the wholesale leased lines market and the retail business connectivity market.

5.2.3.2. <u>Wholesale leased lines market – Retail supply of mobile telecommunication services to end customers</u>

(363) Both DT and GTS CE are active in the upstream market for wholesale leased lines (combined market share [30-40]%), but only DT is active, via Cosmote, on the downstream market for retail mobile telecommunications to end customers ([10-20]%).

5.2.3.2.1. Parties' view

(364) The Parties submit that, post-transaction, DT will neither have the ability, nor the incentive to foreclose its competitors on the downstream market:

(365) First, DT's competitors on the retail mobile telecommunications services to end customers dispose of extensive networks providing terminating connectivity to their base stations. Against this background, MNO's demand in the terminating segment mainly relates to limited purchases to provide additional capacity from their own existing network and to connect base stations with their core network. Moreover, there are a number of upstream providers of leased lines, from which MNOs can source their demand. Furthermore, the costs for wholesale leased lines are only a small proportion of the overall costs of providing retail mobile telecommunications.

(366) Second, DT's market share on the downstream market is limited, so there is little prospect of DT being able to recapture significant retail sales in response to an input foreclosure strategy.

(367) The Parties also submit that no concerns will arise with regard to customer foreclosure, as there are alternative customers of wholesale leased lines on the downstream market for retail mobile telecommunications such as Orange ([30-40]%), Vodafone ([30-40]%), RCS&RDS ([5-10]%).

5.2.3.2.2. Results of the market investigation

(368) The market investigation revealed that suppliers of wholesale leased lines services are not concerned by a possible customer foreclosure scenario. DT does not currently source wholesale leased lines services for the purpose of providing retail mobile telecommunication services.

(369) The market investigation revealed that customers of leased lines on the downstream market for retail mobile telecommunications are not concerned that the merged entity would stop supplying them with wholesale leased lines services. While one of two respondents considers that leased lines are an essential input[228], both respondents indicate that there are alternative solutions to leased lines - such as

228 See replies to Commission questionnaires Q17 – Retailers of mobile telecommunication services Romania, of 13 March 2014, question 27.

VPN and Ethernet (delivered via microwave technology) - that can be used to provide retail mobile telecommunication services.[229]

(370) The respondents also indicate that they multisource[230] and there are alternative providers of leased lines[231] to which they could easily switch.[232] Finally, the respondents consider that, in their opinion, it would not be profitable for DT to stop providing this input to the retailers of mobile telecommunications services.[233]

5.2.3.2.3. Commission's assessment

(371) The Commission considers that the proposed transaction is unlikely to result in a risk of input foreclosure. First, providers of retail mobile communications services consider that there are alternative technologies such as VPN or Ethernet solutions that also serve as input for mobile services. Second, there are other suppliers such as Orange and RCS&RDS (see paragraph (331)) in the upstream market of wholesale leased lines from whom providers of retail mobile telecommunications can source leased lines. Third, the Commission notes that none of the respondents to the market investigation considered that the merged entity would have the incentive to adopt an input foreclosure strategy or expressed any concern in this regard.

(372) In light of the above, the Commission concludes that the proposed transaction does not raise serious doubts as to its compatibility with the internal market as a result of the vertical relationship between the activities of the Parties on the wholesale leased lines market and the market for retail supply of mobile telecommunications.

5.2.3.3. Other vertically affected markets

(373) The Parties' activities in Romania lead to a number of vertically affected markets. However, as will be demonstrated below, these vertically affected markets will not raise competition concerns.

(374) The following table presents vertically affected markets in relation to upstream markets that are subject to regulation by the Romanian telecommunication regulator ANCOM.

---

229 See replies to Commission questionnaires Q17 – Retailers of mobile telecommunication services Romania, of 13 March 2014, question 28.

230 See replies to Commission questionnaires Q17 – Retailers of mobile telecommunication services Romania, of 13 March 2014, question 22.

231 See replies to Commission questionnaires Q17 – Retailers of mobile telecommunication services Romania, of 13 March 2014, question 30.

232 See replies to Commission questionnaires Q17 – Retailers of mobile telecommunication services Romania, of 13 March 2014, question 31.

233 See replies to Commission questionnaires Q17 – Retailers of mobile telecommunication services Romania, of 13 March 2014, question 32.

Table 12. - Vertically affected markets in Romania (I) Wholesale regulated markets					
Upstream market			**Downstream market**		
Wholesale ULL Regulated market	DT 100%	GTS N/A	International retail global telecommunications services	DT [0-5]%	GTS [0-5]%
			International wholesale for global telecommunications services	DT 0-5]%	GTS [0-5]%
			Retail business connectivity services	DT [20-30]%	GTS [0-5]%
			Retail supply of fixed voice services	DT [70-80]%	GTS [0-5]%
			Retail supply of fixed internet access services	DT [20-30]%	GTS< [0-5]%
Wholesale market for call origination at a fixed location Regulated market until 1 January 2015[234]	DT [60-70]%	GTS N/A	Retail supply of fixed voice services	DT [70-80]%	GTS [0-5]%
			End-to-end call services	DT [10-20]%	GTS [0-5]%
Wholesale market for fixed call termination services Regulated market	DT 100%	GTS 100%	International retail global telecommunications services market	DT [0-5]%	GTS [0-5]%
			International wholesale for global telecommunications services	DT 0-5]%	GTS [0-5]%
			Retail supply of fixed voice services	DT [70-80]%	GTS [0-5]%
			Retail supply of mobile telecommunication services	DT [10-20]%	GTS N/A
			End-to-end call services	DT [10-20]%	GTS [0-5]%
Wholesale market for mobile call termination services	DT - 100%	GTS - N/A	International retail global telecommunications services market	DT [0-5]%	GTS [0-5]%
			International wholesale	DT [0-	GTS

234 See ANCOM Regulatory Decision No. 1014/2009 on designating Romtelecom as a provider with significant power on the market for services of fixed call origination on the public telephone networks and on the market for services of call switched national transit on the public telephone networks, and on imposing obligations on this provider, communicated to the operator (available at http://www.ancom.org.ro/en/ancom-decisions_1130).

Regulated market			for global telecommunications services	5]%	[0-5]%
			Retail supply of fixed voice services	DT [70-80]%	GTS [0-5]%
			Retail supply of mobile telecommunication services	DT [10-20]%	GTS N/A
			End-to-end call services	DT [10-20]%	GTS [0-5]%
Wholesale market for domestic call transit services Regulated market	DT [60-70]%	GTS [5-10]%	International retail global telecommunications services	DT [0-5]%	GTS [0-5]%
			International wholesale for global telecommunications services	DT [0-5]%	GTS [0-5]%
			Retail supply of fixed voice services	DT [70-80]%	GTS [0-5]%
			Retail supply of mobile telecommunication services	DT [10-20]%	GTS N/A
			End-to-end call services	DT [10-20]%	GTS [0-5]%

(375) As can be seen from the table above, the upstream markets for wholesale ULL[235], wholesale provision of fixed call termination services and wholesale provision of mobile termination services[236] and several downstream markets are vertically affected. However, a large number of these markets is affected only on a technical basis ("*one net, one market*"). Moreover, because of their specific nature, these markets are regulated: this means that the national regulator, the National Regulatory Authority ANCOM has imposed on DT obligations with regard to transparency, equal treatment, accounting separation, access and interconnection related obligations as well as cost-based and controllable prices. These obligations will continue to apply to the merged entity.

(376) Moreover on the wholesale market for domestic call transit services[237] (DT [60-70]% and GTS CE [5-10]%), DT's activities are regulated. The regulation, as stated above, includes transparency remedies, non-discrimination, accounting separation, tariffs

235 ANCOM Regulatory Decision No. 653 of 20 September 2010 regarding the obligations imposed on the operator with significant power on the market of access services to infrastructure elements (available at http://www.ancom.org.ro/en/ancom-decisions_1130).

236 ANCOM Regulatory Decision No. 91 of 24 January 2012 regarding the identification of Romtelecom S.A. as operator with significant power on the market of fixed call termination on its own public telecommunications network; and ANCOM Regulatory Decision No. 107 of 24 January 2012 regarding the identification of Romtelecom S.A. as operator with significant power on the market of mobile call termination on its own public telecommunications network (both available at http://www.ancom.org.ro/en/ancom-decisions_1130).

237 ANCOM Regulatory Decision No. 1014/2009 on designating Romtelecom as a provider with significant power on the market for services of fixed call origination on the public telephone networks and on the market for services of call switched national transit on the public telephone networks, and on imposing obligations on this provider, communicated to the operator (available at http://www.ancom.org.ro/en/ancom-decisions_1130). In November 2013, after the second market review, ANCOM decided to maintain current obligations imposed on Romtelecom.

control and access obligations. These obligations will continue to apply to the merged entity.

(377) For these reasons, the Commission considers that no competition concerns relating to the relevant downstream markets[238] will arise.

(378) As regards the upstream market for call origination at a fixed location (where only DT is active), this market has been recently de-regulated by ANCOM[239], with a one-year transition period running until 2015 for the withdrawal of the obligations previously imposed on DT.[240] ANCOM has found this market to be competitive.

(379) This market is vertically related to the downstream markets for retail supply of fixed voice services (DT [70-80]%, GTS [0-5]%). However, any possible risk of foreclosure can be excluded. First, as GTS CE is not active on the wholesale market for call origination, DT's power on the upstream market will not increase post-transaction. Second, as confirmed by ANCOM, five alternative suppliers of call origination services are present in this upstream market (including Vodafone, Orange, UPC and RCS&RDS). Third, the increment brought about by the transaction in the retail market for the supply of fixed voice services is insignificant ([0-5]%). The same applies to the vertically affected downstream market for end-to-end calls where the Parties' combined market share is [10-20]% and the increment brought by the transaction is [0-5]%.

(380) The following table presents other vertically affected markets that do not give rise to competition concerns as the Parties' market shares are low or the increment is insignificant.

238 Notably, the International markets for wholesale and retail GTS, retail market for fixed voice services, retail supply of mobile telecommunication services and wholesale market for end-to-end calls.

239 See http://www.ancom.org ro/en/ancom-is-reviewing-a-series-of-wholesale-and-retail-markets-corresponding-to-the-telephone-services-provided-at-fixed-locations-_5042. See also ANCOM market analysis of 12 November 2013 regarding the markets for wholesale access to the unbundled local loop, wholesale call origination on the public telephone network at a fixed location and wholesale call transit on fixed networks, p. 93 (available at http://www.ancom.org.ro/en/uploads/forms_files/Decizie_2013_1154_referat1393505851.pdf).

.240 ANCOM has found that this market to be competitive due to competitors such as Orange and Vodafone, and due to the fact that DT's market share has constantly decreased over the last few years.

Table 13. - **Vertically affected markets in Romania (II)** **Other vertically related markets not giving rise to competition concerns**					
Upstream market			Downstream market		
Wholesale internet connectivity	DT [0-5]%	GTS N/A	Retail business connectivity services	DT [20-30]%	GTS 0-5]%
Wholesale leased lines	DT [20-30]%	GTS [10-20]%	International retail global telecommunications services	DT 0-5]%	GTS 0-5]%
			International wholesale for global telecommunications services	DT 0-5]%	GTS 0-5]%
Wholesale end-to-end call services	DT [10-20]%	GTS 0-5]%	Retail supply of fixed voice services	DT [70-80]%	GTS 0-5]%
Wholesale termination and hosting of non-geographic numbers services	DT [Not available]	GTS N/A	International retail global telecommunications services	DT 0-5]%	GTS 0-5]%
			International wholesale for global telecommunications services	DT 0-5]%	GTS 0-5]%
			Retail supply of fixed voice services	DT [70-80]%	GTS 0-5]%

(381) As regards the vertical relationship between the international market for retail of GTS, (downstream from the wholesale leased lines market and wholesale termination and hosting of non-geographical numbers), the proposed transaction will not raise any competition concerns. First, there will not be any ability of the merged entity to foreclose competitors as the market shares of the Parties (alone or combined) in either the upstream or the downstream market are limited ([0-5]%). Therefore, any foreclosure strategy would not succeed. The same considerations apply to the international wholesale market for GTS (downstream from the wholesale leased lines market and the wholesale market for termination and hosting of non-geographical numbers) as well as to the wholesale market for internet connectivity (upstream from the retail business connectivity market).

(382) As regards the vertical relationship between the wholesale market for termination and hosting of non-geographical numbers (DT [not available][241]) that is upstream from the

241 The Parties were unable to provide market shares for this market.

retail market for the supply of fixed voice services (DT: [70-80]%, GTS CE: [0-5]%), the proposed transaction will not raise any competition concerns. The Commission considers that a foreclosure strategy is unlikely as the increment brought about by the transaction in the retail market for the supply of fixed voice services is insignificant ([0-5]%) and GTS CE is not active in the upstream market.

(383) Finally, concerning the vertical relation between the wholesale market for end-to-end call services (DT[242] [10-20]%, GTS CE [0-5]%) that is upstream from the market for retail supply of fixed voice services (DT [70-80]%, GTS CE [0-5]%), the Commission considers that competition concerns are unlikely to arise.

(384) The Commission considers that concerns related to input foreclosure can be excluded as the Parties' combined share on the upstream market remains relatively low.[243] Other strong suppliers of end-to-end call services such as Euroweb ([20-30]%), Prime Telecom ([10-20]% and UPC ([10-20]%) are present on the upstream market.

(385) Moreover, the Commission considers that concerns related to customer foreclosure can be excluded as the incremental market share of GTS CE in the downstream retail market ([0-5] %) is insignificant and the competitive situation on the retail market will remain practically unchanged.

5.3. The Czech Republic

5.3.1. Parties' activities

(386) In the Czech Republic GTS CE is active through GTS Czech, which is a nationwide telecommunications operator and managed services provider. GTS Czech provides a complex portfolio of voice, data, hosting, Internet and ICT services.

(387) DT is active in the Czech Republic mainly as a nationwide mobile network operator, through its 61% majority shareholding in T-Mobile Czech Republic a. s ("TMCZ"). In addition, DT provides telecommunication services to Czech retail and business customers directly or indirectly through its wholly-owned subsidiary T-Systems Czech Republic a. s. ("TSCZ"). DT also provides data services, such as IP VPN and server hosting (web, mail, Domain Name Servers). DT Group's presence in the Czech fixed telecommunications services markets is limited.[244]

5.3.2. Horizontal overlaps

(388) In the Czech Republic, the proposed transaction gives rise to the following horizontally affected markets : *(i)* retail business connectivity; *(ii)* wholesale provision

---

242 Includes both Romtelecom's and Combridge's activities on this market.

243 The Parties submit that the market for end-to-end calls is in fact of limited importance in Romania, and that the broad majority of operators relies on the interconnection agreements instead.

244 In the Czech Republic, DT Group's only fixed-access network is in Prague (which also is the regional focus of DT Group's activities in fixed telecommunications services). In addition more than two thirds of DT's overall revenue in the Czech Republic relate to mobile telecommunication services.

of domestic call transit services and *(iii)* retail bulk SMS and (iv) retail supply of mobile telecommunications services[245] (See the table below).

Table 14. - Horizontally affected markets in the Czech Republic

Market/segment	DT	GTS CE	Combined share
Retail business connectivity	[5-10]%	[10-20]%	**[20-30]%**
Wholesale provision of domestic call transit services	[0-5]%	[30-40]%	**[30-40]%**
Retail bulk SMS	[20-30]%	[0-5]%	**[20-30]%**

Source: Parties' best estimates

5.3.2.1. Retail market for business connectivity

(389) The Parties estimate the size of the Czech business connectivity market to be EUR 207,4 million in 2012.[246]

(390) In the Czech Republic, both DT and GTS CE are active in the retail provision of business connectivity services to large corporate and public sector customers. Market shares of the Parties in the Czech business connectivity market and its possible sub-segments are as follows:

245 In the Czech Republic, both Parties are active on this market (DT: [30-40]%, GTS CE: [0-5]%). DT is active as a MNO whereas GTS CE is active both as an MVNO and a MVNE. The vertical relationship between GTS CE's MVNE activities and the retail market for the supply of mobile telecommunications services will be analysed in section 5.3.3.5 below. For its MVNO activities, in 2013 GTS CE had a turnover of EUR […]. However, no competition concerns will arise from this de minimis overlap. First, GTS CE has insignificant activities on this market, so that there will be no appreciable impact post-merger. Second, alternative providers of retail mobile telecommunications services will be active, post-transaction in the Czech Republic, namely MNOs such as Telefonica ([30-40]%) and Vodafone ([20-30]%), but also MVNOs such as Bleskmobile ([0-5]%) and Tesco Mobile ([0-5]%), among others. Therefore, this overlap will not be analysed further.

246 Based on IDC, Central and Eastern European Telecom Services Database 3Q13.

Table 15. - Market shares for the retail market for business connectivity and its segments

<table>
<tr><th colspan="2">Main Market</th><th>Possible sub-segments</th></tr>
<tr><td colspan="2" rowspan="3">Retail market for business connectivity</td><td>Broadband access</td></tr>
<tr><td><u>VALUE:</u>
DT: [0-5]%
GTS: [10-20]%
Combined: [20-30]%</td></tr>
<tr><td>Leased lines</td></tr>
<tr><td rowspan="3"><u>VALUE:</u>
DT: [5-10]%
GTS: [10-20]%
Combined: [20-30]%</td><td rowspan="3"><u>VOLUME:</u>
DT: [0-5]%
GTS: [5-10]%
Combined: [10-20]%</td><td><u>VALUE:</u>
DT: [0-5]%
GTS: [5-10]%
Combined: [10-20]%</td></tr>
<tr><td>VPN</td></tr>
<tr><td><u>VALUE:</u>
DT: [5-10]%
GTS: [10-20]%
Combined: [20-30]%</td></tr>
</table>

(391) As can be seen from the table, the proposed transaction would give rise to horizontally affected markets (i) in the broader market for retail business connectivity as well as in the possible sub-segments for (ii) retail fixed broadband access to large business customers and (iii) retail VPN. In contrast, the possible sub-market for retail leased lines, where the combined market share of the Parties is [10-20]% in value is not horizontally affected as the combined market share remains [10-20]% and, therefore, will not be analysed further on its own.

5.3.2.1.1.Parties' view

(392) First, the Parties submit that DT has a limited presence on the overall market ([5-10]% in value) as well as the sub-segments. Therefore, with the combined market share of the Parties just exceeding [20-30]%, the merged entity will not have a significant market share post-transaction. In this context, they note that the Czech retail market for business connectivity is characterized by strong competition with Telefonica (approximately [60-70]%) being the market leader.

(393) Second, the Parties submit that significant price decline has occurred on this market.

(394) Third, the Parties submit that DT and GTS are not close competitors.

(395) Finally, they submit that the retail market for business connectivity is highly contestable, due to the rise of IP VPN and Ethernet technologies, which would lower barriers to entry since there would not be any substantial need for investment in infrastructure.

5.3.2.1.2.Commission's assessment

(396) The Commission considers that the horizontal overlap in the market for business connectivity does not lead to any competitive concerns, for the following reasons.

(397) First, no respondent to the market investigation raised any concern related to the impact of the proposed transaction with respect to the market for retail business connectivity in the Czech Republic.

(398) Second, the Parties' combined market share is [20-30]% in most possible markets and [20-30]% in the possible sub-segment for VPN services. Furthermore, the increment is relatively small and [5-10]% in all possible markets. Second, the Parties face important competitors in this market, primarily from Telefónica with a [60-70]% market share on the overall market. Other competitors include UPC Czech Republic (with approximately [5-10]% market share), Ceske Radiokomunikace (with approximately [0-5]% market share) and CD-Telematika (approx. [0-5]% market shares).[247] These companies are active in each of the affected sub-markets.

(399) Considering all the above and the other available evidence, the Commission concludes that the proposed transaction does not raise serious doubts as to its compatibility with the internal market on the market for retail business connectivity and any of its possible sub-segments, in the Czech Republic.

5.3.2.2. <u>Wholesale of domestic call transit services market</u>

(400) The Parties estimate the size of the market to be EUR 21,2 million in 2012.

(401) In the wholesale domestic call transit services market, the Parties' combined market share amounts to [30-40]%[248], and the respective increment is [0-5]%.

5.3.2.2.1.Parties' view

(402) First the Parties submit that, due to DT's limited market presence (turnover of approximately EUR […]), the proposed transaction will not have a significant impact on the competitive situation of this market.

(403) Second, the Parties submit that this market is highly competitive. Other players active would be Telefónica (approximately [20-30]%) and Dial Telecom (approximately

247 All competitor market shares submitted by the Parties refer to 2012.

248 In the absence of public available information, the Parties' best estimates rely on the 2006 decision of the Czech telecom regulator that identified a market share for GTS of 33%. See CTU, Regulatory Decision No. CZ/2006/0448 regarding the market analysis on the wholesale market of transit services in the fixed public telephone network.

[10-20]%). Moreover, this market would be highly contestable due to the low barriers to entry: indeed, the advent of VoIP and the consequent substitution of cheaper IP interconnection solutions rather than traditional legacy transit services would explain the declining trend of this market both in volume and in revenue. In addition, customers could easily switch from one provider of call transit to another.

(404) Finally, the regulation of the wholesale market for fixed call termination[249], which imposes access and interconnection obligations as well as price caps on SMP terminating carriers, would render direct interconnection to such carriers' network a partial substitute to domestic call transit services.

5.3.2.2.2. Results of the market investigation

(405) The market investigation gave indications that GTS CE's market share could be higher than what was submitted by the Parties. However, it also confirmed that DT's presence on this market would be negligible.[250]

(406) Likewise, the market investigation confirmed the existence of alternative providers of domestic call transit services, such as Dial Telecom, CD-Telematika, BT and Telefonica.

(407) In addition, the majority of providers of wholesale call transit services have considered that incentives to enter the market are low because of low margins and, as for small operators, that entry barriers are high given that interconnection costs are high.[251]

(408) Finally, the market investigation confirmed that the wholesale market for fixed call termination is regulated.

5.3.2.2.3. Commission's assessment

(409) The Commission considers that the horizontal overlap in the market for wholesale call transit services does not lead to any competitive concerns, for the reasons laid down below.

(410) First, the market is competitive and the Parties (with a share of [30-40]%) will face, post-transaction, significant competitive constraint from players such as Telefonica (approximately [20-30]%), Dial Telecom (approximately [10-20]% market shares), BT and CD-Telematika.

(411) Second, the increment brought about by the merger is negligible and in any case [0-5]%. DT is active in this market to a highly limited extent, with total annual revenues of only EUR […].

249 CTU Regulation of General Nature No. A/3/12.2013-8 of 10 December 2013 providing the market for call termination individual public telephone networks provided at a fixed location analysis.

250 GTS, [50-60]% (in volume), BT ([20-30]%), Dial Telecom ([10-20]%) and Telefonica ([0-5]%). DT's (T-Mobile Czech Republic) market share would be around [0-5]%. See agreed minutes of conference call of 19 March 2014 with CTU – Czech Telecom Regulator, paragraph 4.

251 See replies to Commission Questionnaire Q10 - Providers of domestic call transit services in the Czech Republic, question 6.

(412) Lastly, even if the market for wholesale call transit services is not regulated as such, the Commission considers that direct interconnection agreements with the terminating carrier's network may partially substitute the need to purchase separately transit services. Alternatively, demand for transit services coming from small voice providers, for which direct interconnection costs would be too high, could be served either by (i) already existing transit carriers or (ii) by new entrants, which could aggregate such demand and would have sufficient scale to commit to direct interconnection agreements.

(413) Considering all the above and the other available evidence, the Commission concludes that the proposed transaction does not raise serious doubts as to its compatibility with the internal market on the market for domestic call transit services in the Czech Republic.

5.3.2.3. Retail bulk of SMS

(414) The Parties estimate the size of the Czech market for retail bulk SMS services to be EUR 24,6 million in 2012.

(415) In this market, DT has a market share of [20-30]% (both in value and volume) and GTS CE's share amounts to [0-5]% in value and [0-5]% in volume The combined share therefore amounts to [20-30]% in value and [20-30]% in volume.

5.3.2.3.1.Parties' view

(416) First, the Parties submit that this market is highly competitive and that they face competition from Telefónica and Vodafone, as well as from international players, in particular global SMS providers.[252]

(417) Second, the Parties also submit that the market is characterised by low entry barriers. According to them, the provision of bulk SMS gateways does not require investments into physical network infrastructure, but can be provided on software and server basis and on the basis of (international) agreements with MNOs.

(418) In addition, the Parties submit that this overlap is merely technical since GTS CE operates no mobile network itself. It therefore does not generate turnover from terminating bulk SMS. Rather, GTS CE acts as an intermediary, bundling its customers' demand for SMS services and purchasing SMS messages in bulk from SMS termination suppliers such as DT. The service would be similar to domestic call transit, but for SMS.

---

252 Such global SMS providers are Acision, Mblox, HQSMS, TM4B SMS GATEWAY, Truesenses, bulkSMS.com or US headquartered Clickatell.

5.3.2.3.2.Commission's assessment

(419) First, no respondent to the market investigation raised any concern related to the impact of the proposed transaction with respect to the market for retail bulk SMS services in the Czech Republic.

(420) Second, the Commission considers that the Parties' combined market share by value of approximately [20-30]% is not significant.

(421) Third, post-transaction, the Parties will still face strong competition from alternative providers of bulk SMS services, such as Telefónica (with a market share of approximately [40-50]%) and Vodafone (with a market share of approximately [20-30]%).

(422) Fourth, the proposed transaction leads to a limited increment (GTS CE's market is [0-5]% by value) so that the proposed transaction will not introduce a significant change in the competitive situation of the market.

(423) Considering all the above and the other available evidence, the Commission concludes that the proposed transaction does not raise serious doubts as to its compatibility with the internal market on the market for retail bulk SMS services in the Czech Republic.

5.3.3. Vertical overlaps

(424) As to vertical relationships, the Parties' activities overlap in a large number of markets, leading to vertically affected markets as listed in the tables below. Table 15 shows the markets which are regulated by the Czech telecommunication authority and where, for the reasons explained further below, competitive concerns can be excluded. Table 16 illustrates the markets where the Parties' combined market shares are limited or *de minimis*. The change brought about by the transaction is insignificant and, for the reasons explained further below, competition concerns are unlikely to arise. Finally, Table 17 shows the vertically affected markets where a competitive assessment has been undertaken.

5.3.3.1. Wholesale regulated markets

Table 16. - Wholesale regulated markets

Upstream market			**Downstream market**		
	DT	**GTS CE**		**DT**	**GTS CE**
Wholesale provision of fixed call termination services Regulated market	100%	100%	Retail Global telecommunication services	[0-5]%	[0-5]%
			Wholesale market for global telecommunications services	[0-5]%	[0-5]%
			Retail supply of fixed voice services	[0-5]%	[5-10]%
			Retail supply of mobile telecommunication services to end customers	[30-40]%	[0-5]%
			Wholesale market for end-to-end calls	[N/A]	<[20-30]%
Wholesale provision of mobile termination services Regulated market	100%	[N/A]	Retail Global telecommunication services	[0-5]%	[0-5]%
			Wholesale market for global telecommunications services	[0-5]%	[0-5]%
			Retail supply of fixed voice services	[0-5]%	[5-10]%
			Retail supply of mobile telecommunications services to end customers	[30-40]%	[0-5]%
			Retail bulk SMS services	[20-30]%	[0-5]%

(425) As illustrated by table 15 above, the upstream markets for the wholesale provision of fixed call termination services and for the provision of mobile termination services (where both Parties are active and each of them has 100% market shares) overlap with a number of downstream markets.[253]

(426) On the upstream markets, every operator has a market share of 100% based on a market definition which defines a separate market for each individual network ("one net – one market"). Because of their monopolistic intrinsic nature, these two upstream markets are regulated in the Czech Republic. This means, notably, that

253 The wholesale market for the provision of fixed call termination services is vertically related notably to (i) the market for retail global telecommunication services, (ii) the wholesale market for global telecommunication services; (iii) the market for retail supply of fixed voice services and (iv) the market for retail supply of mobile telecommunication services to end customers and (v) the wholesale market for end-to-end calls. The wholesale market for the provision of mobile termination services is vertically related to aforementioned markets (i) to (iv) as well as (v) the market for retail bulk of SMS services.

every provider of such services is subject to transparency, non-discrimination, accounting separation, tariffs control and access obligations.[254]

(427) The Commission considers that the Parties are prevented from engaging in an effective foreclosure strategy with respect to termination of fixed or mobile calls. Given the regulation of the upstream markets, (i) the merged entity will not have the ability to foreclose any downstream competitors by withholding its input services (due to access and interconnection obligations); (ii) the merged entity will not have the incentive to foreclose upstream competitors by recouping losses through an increase in prices upstream given that the latter are regulated (in the form of cost-based and controllable price obligations). In this respect, the Commission notes that its recommendation from 7 May 2009 aims at harmonising how the cost-orientation should be applied in the case of mobile and fixed termination rates.[255]

(428) Second, as regards the downstream markets where the Parties overlap, the Commission notes that the Parties' combined market share is non-significant, and that the increment is [5-10]%. The Commission considers that the limited increment in market share would unlikely allow the merged entity to engage in a foreclosure strategy.

(429) Third, in the case of the downstream market for the retail supply of mobile telecommunications services to end customers, GTS CE is not active on this market. On the wholesale market for end-to-end calls, DT is not active. Therefore, the proposed transaction does not lead to any change on those markets.

(430) Fourth, no respondent to the market investigation raised any concern related to the impact of the proposed transaction with respect to the vertically related markets for the wholesale provision of fixed call termination services and for the provision of mobile termination services and the downstream markets mentioned in footnote 253 above, in the Czech Republic.

(431) For the above reasons, the Commission concludes that the proposed transaction does not raise serious doubts as to its compatibility with the internal market with respect to the vertical relationships between the markets for the wholesale provision of fixed call termination services and for the provision of mobile termination services on the one hand, and the downstream markets mentioned in footnote 253 above on the other hand, in the Czech Republic.

254 See CTU Regulation of General Nature No. A/3/12.2013-8 of 10 December 2013 providing the market for call termination on individual public telephone networks provided at a fixed location analysis (http://www.ctu.cz/cs/download/art/oop/rozhodnuti/oop_art-03-12_2013-08.pdf) and CTU Regulation of General Nature No. A/7/12.2013-9 of 10 December 2013 providing the market for voice call termination on individual mobile networks (http://www.ctu.cz/cs/download/art/oop/rozhodnuti/oop_art-07-12_2013-09.pdf).

255 Commission Recommendation of 7 May 2009 on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EU (OJ L 124, 20.5.2009, p. 67).

5.3.3.2. Wholesale leased lines market - retail supply of mobile telecommunication services to end customers

(432) The upstream market of wholesale leased lines is vertically related to the downstream market of retail supply of mobile telecommunication services to end customers (where DT's market share amounts to [30-40]%).

(433) As can be seen from the table below, even under the narrowest market definition, the Parties' combined market share upstream does not exceed [5-10]%, with an increment no larger than [0-5]%.

Table 17. - Market shares Wholesale leased lines market - retail supply of mobile telecommunication services to end customers

Upstream market			**Downstream market**		
	DT	**GTS CE**		**DT**	**GTS CE**
Wholesale leased lines	[0-5]%	[5-10]%	Retail supply of mobile telecommunication services to end customers	[30-40]%	[0-5]%
Terminating segment	[0-5]%	[5-10]%			
Trunk segment	[0-5]%	[5-10]%			

5.3.3.2.1.Parties' view

(434) First, the Parties submit that this vertical relationship will not give rise to any foreclosure concerns given that DT could not be considered an important customer. In 2013, DT sourced leased lines from GTS CE only to a limited extent (EUR […]).

(435) Second, the Parties submit that GTS CE's limited market share in the Czech wholesale market for leased lines excludes any risk of input foreclosure. The Parties' competitors in retail mobile services will be able to source their demand of wholesale leased lines from a number of carriers on the market after implementation of the proposed concentration.

5.3.3.2.2.Commission's assessment

(436) The Commission considers that the merged entity will not have the ability to engage in a foreclosure strategy for the following reasons.

(437) No respondent to the market investigation raised any concern related to the impact of the proposed transaction with respect to the vertical relationship between the markets for wholesale leased lines and for the retail provision of mobile telecommunications services in the Czech Republic.

(438) With respect to input foreclosure, the Parties' combined market share upstream is limited. Therefore, the merged entity does not have the ability to successful foreclose its downstream competitors.

(439) With respect to customer foreclosure, GTS CE's activities are negligible on the downstream market so that there is practically no change on the downstream market. Second, DT's market presence downstream is limited to [30-40]% and alternative retailers of mobile telecommunications services will continue to be active on this market, namely Telefónica ([30-40]%) and Vodafone ([20-30]%).

(440) Third, even if DT were able to exert market power in the retail market for mobile telecommunications services to foreclose its upstream competitors, there are alternative customers of wholesale leased lines such as retailers of business connectivity or retailers of GTS.

(441) Considering all the above and the other available evidence, the Commission concludes that the proposed transaction does not raise serious doubts as to its compatibility with the internal market with respect to the vertical relationship between the markets for wholesale leased lines and for the retail provision of mobile telecommunications services in the Czech Republic.

5.3.3.3. <u>Markets vertically related to the wholesale market for domestic call transit services</u>

(442) The upstream market for the wholesale provision of domestic call transit services on fixed networks (where GTS CE's upstream market share is [30-40]%) is vertically related to the downstream markets for (i) retail GTS, (ii) wholesale international carrier services and for (iii) retail supply of fixed voice services (where the Parties' combined market share is limited and in any case [5-10]%).

Table 18. - Market shares for the wholesale market for domestic call transit services and related downstream markets

Upstream market			**Downstream market**		
Wholesale provision of domestic call transit services on fixed networks	[0-5]%	[30-40]%	Retail Global telecommunication services	[0-5]%	[0-5]%
			Wholesale market for global telecommunications services	[0-5]%	[0-5]%
			Lease of transmission capacity	[0-5]%	[0-5]%
			Carrier services	[0-5]%	[0-5]%
			Retail supply of fixed voice services	[0-5]%	[5-10]%

5.3.3.3.1. Parties' view

(443) As explained in more detail in section 5.3.2.2.1 above, the Parties submit that the upstream market for domestic call transit is a competitive market. Furthermore, they submit that alternative providers of wholesale domestic call transit such as Telefonica or Dial Telecom will exert competitive pressure on the merged entity post-transaction.

5.3.3.3.2. Commission's assessment

(444) The Commission considers that the merged entity will not have the ability to foreclose its downstream competitors using its position on the upstream market for the following reasons.

(445) First, no respondent to the market investigation raised any concern related to the impact of the proposed transaction with respect to the vertical relationships between the market for wholesale domestic call transit services on the one hand, and (i) the retail market for GTS, (ii) the wholesale market for GTS and (iii) the retail market for the supply of fixed voice services in the Czech Republic on the other hand.

(446) Second, the merged entity could not exert competitive power on the upstream market for wholesale supply of domestic call transit due to the presence of alternative providers, such as BT ([20-30]%), Dial Telecom ([10-20]%) and Telefonica ([0-5]%).[256]

(447) Third, given the negligible combined market shares of the Parties in the downstream market for (i) retail GTS, (ii) wholesale international carrier services and (iii) retail fixed voice services, any input foreclosure strategy would likely not prove profitable for the merged entity.

(448) Considering the above and the other available evidence, the Commission concludes that the proposed transaction does not raise serious doubts as to its compatibility with the internal market with respect to the vertical relationships between the market for wholesale domestic call transit services on the one hand, and (i) the retail market for GTS, (ii) the wholesale market for GTS and (iii) the retail market for the supply of fixed voice services in the Czech Republic on the other hand.

5.3.3.4. <u>Vertical relationship between wholesale provision of domestic call transit services on fixed network and retail supply of mobile telecommunication services</u>

(449) In the Czech Republic, the upstream market for the wholesale provision of domestic call transit services on fixed networks (GTS CE: [30-40]%, DT: [0-5]%) and the downstream market for the retail supply of mobile telecommunication services to end customers (DT: [30-40]%) are vertically affected.

256 See agreed minutes of conference call of 19 March 2014 with CTU – Czech Telecom Regulator, paragraph 4.

Table 19. - Market shares wholesale provision of domestic call transit services on fixed network and retail supply of mobile telecommunication services

Upstream market			Downstream market		
	DT	GTS CE		DT	GTS CE
Wholesale provision of domestic call transit services on fixed networks	[0-5]%	[30-40]%	Retail supply of mobile telecommunication services to end customers	[30-40]%	[0-5]%

5.3.3.4.1. Parties' view

(450) The Parties submit that this vertical link will not lead to any competition concerns for the reasons set out below.

(451) First, the Parties submit that the regulation of the wholesale market for fixed call termination services[257] has an impact on the wholesale market for domestic call transit services. This would ensure that calls of other operators can directly interconnect with the terminating carrier's network and, therefore, could be considered as a partial substitute to domestic call transit services.

(452) Second, as explained in further detail in section 5.3.2.2.1 above, the Parties submit that the upstream market for domestic call transit services is competitive as GTS CE faces strong competition from, amongst others, Telefónica and DialTelecom.

(453) Third, the Parties submit that domestic call transit services are not an essential input for MNOs since most operators of size do not rely on transit services in order to provide retail voice services. Due to their higher volume of minutes generated, they are generally directly interconnected with other networks through their own infrastructure. Moreover, they submit that since MVNOs rely on their hosting MNOs network, this vertical link would not affect them directly.

(454) Finally, the Parties also submit that the merged entity would have no incentive to engage in input foreclosure as the costs for call transit services represent a rather marginal factor (approximately 5%) relative to the overall costs of providing downstream retail mobile telecommunication services.

(455) As to customer foreclosure, the Parties submit that the Czech retail market for the provision of mobile telecommunications is characterised by intense competition from Telefónica ([30-40]%) and Vodafone ([20-30]%).

5.3.3.4.2. Results of the market investigation

(456) First, as mentioned in paragraph (405), the market investigation pointed towards higher upstream market shares for GTS CE but confirmed the very limited presence of DT.

257 CTU Regulatory Decision on fixed line call termination No. A/3/12.2013-8 of 10 December 2013.

(457) Second, the market investigation gave indications that the market for domestic call transit is competitive with 17 companies operating in the Czech Republic.[258] In turn, the market investigation further indicated that GTS CE's market shares have decreased significantly from 2010 to 2012 due to the competitive pressure exerted by other players in the market.[259]

(458) Third, the market investigation gave indications that the regulatory framework of the wholesale market for fixed call termination could lower entry barriers for the domestic call transit market.[260]

(459) Fourth, the majority of customers of call transit services (retailers of mobile telecommunication services) considered that *(i)* domestic call transit services are not an essential input for the retail supply of mobile telecommunications[261]; and that (*ii*) there are alternative suppliers.[262] In addition, the market investigation indicated that, for large network operators, call transit can be replaced by direct interconnections with the terminating carrier's network.[263]

(460) Fifth, none of the suppliers of call transit services responding to the market investigation was concerned by a customer foreclosure scenario. Finally, the market investigation indicated that there would be other customers to which they could supply domestic call transit services.[264]

5.3.3.4.3. Commission's assessment

(461) The Commission considers that the merged entity will not have the ability to engage on any input foreclosure for the following reasons.

(462) First, the market investigation confirmed that domestic call transit services is not an essential input for providing retail mobile telecommunications services in the Czech Republic.

---

258 See agreed minutes of the conference call of 10 March 2014 with the CTU - Czech Republic Telecom Regulator, page 1.

259 See agreed minutes of the conference call of 10 March 2014 with the CTU - Czech Republic Telecom Regulator, page 2.

260 See agreed minutes of the conference call of 10 March 2014 with the CTU - Czech Republic Telecom Regulator.

261 See replies to Commission Questionnaire Q11 - Retailers of mobile telecommunication services in the Czech Republic, question 18. See also agreed minutes of conference call of 31 March 2014 with Vodafone Czech Republic and agreed minutes of conference call of 28 March 2014 with Telefonica 02.

262 See replies to Commission Questionnaire Q11 - Retailers of mobile telecommunication services in the Czech Republic, question 19. See also agreed minutes of the conference call of 31 March 2014 with Vodafone.

263 See agreed minutes of the conference call of 31 March 2014 with Vodafone, page 2. See also agreed minutes of the conference call of 28 March 2014 with Telefonica 02, page 1.

264 See replies to Commission Questionnaire Q11 - Retailers of mobile telecommunication services in the Czech Republic, question 11. See agreed minutes of the conference call of 31 March 2014 with Dial Telecom, page 1.

(463) Second, retailers of mobile services can rely on domestic call transit services offered by other upstream providers such as BT ([20-30]%), Dial Telecom ([10-20]%) and Telefonica ([0-5]%). Competition on the upstream market is further illustrated by the fact that GTS CE's market shares have been decreasing significantly due to competitive pressure exerted by other call transit providers.

(464) Third, alternatively, retailers of mobile telecommunications services can replace the need for domestic call transit services by direct interconnection agreements with the terminating carrier's network.

(465) As to customer foreclosure, the Commission considers that the merged entity would not have the ability to engage in such a strategy. Since DT has direct interconnection agreements with the other carriers' networks, it could not be considered an essential customer of domestic call transit services.[265] Moreover, alternative customers of call transit service that are active either on the retail mobile telecommunications services market or on the retail fixed voice services market, will remain present, post-transaction.

(466) In light of the above, the Commission concludes that the proposed transaction does not raise serious doubts as to its compatibility with the internal market with respect to the vertical relationship between the markets for wholesale call transit services and for the retail supply of mobile telecommunications services to end customers, in the Czech Republic.

5.3.3.5. Market for wholesale access and call origination on mobile networks – Market for the retail supply of mobile telecommunications services

(467) On the downstream market for the retail supply of mobile telecommunications services, GTS CE acts mainly as a Mobile Virtual Network Enabling platform ("MVNE"), which is an intermediary (aggregator) between MNOs and small MVNOs, based on DT's upstream offer. Since mid-2013, GTS CE has been hosting approximately 30 small MVNOs.

(468) DT's market shares in the downstream market for retail mobile telecommunications services amount to [30-40]% and its main competitors on the downstream market are Telefónica (approximately [30-40]%) and Vodafone (approximately [20-30]%).[266]

---

265 See Parties' reply to RFI N.6 of 9 April 2014, question 3, according to which DT would source only EUR […] of wholesale domestic call transit services for its provision of retail mobile telecommunications services in the Czech Republic in 2012.

266 GTS CE would be active only marginally on the retail market for mobile telecommunications services. The turnover achieved by it by providing these services to corporate customers in 2013 was only EUR […].

Table 20. - Market shares Access and call origination and retail supply of mobile telecommunication services

Upstream market			Downstream market		
Access and call origination	[10-20]%	[5-10]%	**Retail supply of mobile telecommunications services to end customers**	**[30-40]%**	**[0-5]%**

5.3.3.5.1. Parties' view

(469) The Parties submit that there will be no ability or incentive for input foreclosure for the following reasons.

(470) First, as to ability, the market for the wholesale access and call origination on mobile networks is characterized by intense competition between the three major MNOs (DT, Telefónica and Vodafone) which would have a strong incentive to attract new MVNOs. This is supported by significant entry of MVNOs since 2012 (around 50 new entrants).

(471) Second, even if the merged entity were to stop offering access and origination services post-merger, the Parties submit that there would be viable competitors, namely Vodafone or Telefónica that would be able and willing to offer such services. There would be sufficient spare capacity in MNO's networks. Moreover, the large number of MVNOs that have entered the market in the last year would show that competitors such as Telefónica or Vodafone are valid alternatives to supply MVNOs.

(472) As regards small MVNOs which may rely on MVNE services, the Parties submit that other MVNEs such as Quadruple, DH Telecom and CD-Telematika (all operating on Vodafone's network) will continue to be active on this market. Moreover, switching MVNE provider is rather fast and easy, in particular taking into account that the services provided by MVNEs are rather homogeneous and contracts are of short duration.

(473) Fourth, the Parties submit that MVNOs in the Czech Republic represent approximately 5% of the overall retail mobile telecommunications market.[267] Apart from the four largest Czech MVNOs, which account for a joint market share of approximately 4%, the remaining small MVNOs[268] only represent approximately

267 MVNOs collectively serve approximately 700,000 subscribers and the estimated overall market volume represents approximately 14.5 million subscribers.

268 Cf. Telegeography, MVNOs flock to Czech mobile market in 2013, report says, 4 December 2013 (available at: http://www.telegeography.com/products/commsupdate/articles/2013/12/04/mvnos-flock-to-czech-mobile-market-in-2013-report-says).

1% of the overall market for retail supply of mobile telecommunication services in the Czech Republic. Therefore, any input foreclosure strategy by the merged entity would not have any appreciable effect, even if the merged entity hosted the largest MVNOs.

5.3.3.5.2. Results of the market investigation

(474) First, the market investigation confirmed the Parties' claims that there are several new entrants in the market for retail mobile telecommunications services.[269] The Czech Regulator also confirmed that there are several MVNOs in all of the three main MNOs networks.[270]

(475) Second, the market investigation confirmed that there are alternative suppliers of access and call origination services, namely other MNOs.[271] As regards small MVNOs, the market investigation indicated that, in order to be hosted by a competing MNOs' network, MVNOs need to undertake commitments of a certain amount of traffic.[272] However, alternative MVNEs aggregating demand by small MVNOs will continue to offer similar services as GTS CE post-transaction, thus allowing entry of small MVNOs.[273]

(476) In addition, some respondents to the market investigation expressed concerns regarding a potential input foreclosure for small MVNOs.[274]

5.3.3.5.3. Commission's assessment

(477) The Commission considers that the merged entity will not have the ability to engage in any input foreclosure strategy for the following reasons.

(478) First, as regards the upstream market, alternative providers are active on this market such as Telefonica and Vodafone.

(479) Second, even if small MVNOs will not be able to be hosted directly on competing MNOs' networks due to their inability to generate substantial traffic volume, alternative MVNEs such as Quadruple, DH Telecom and CD-Telematika will remain active on this market.[275]

---

269 See replies to Commission Questionnaire Q. 11- Retailers of mobile telecommunication services in the Czech Republic, question 11.

270 See agreed minutes of the conference call of 10 March 2014 with the Czech Republic Telecom Regulator page 3.

271 See agreed minutes of the conference call of 10 March 2014 with the Czech Republic Telecom Regulator page 3.

272 See agreed minutes of the conference call of 31 March 2014 with Vodafone Czech Republic, paragraph 8.

273 See agreed minutes of conference call of 31 March 2014 with CD-Telematika, page 1.

274 See replies to Commission Questionnaire Q11 - Retailers of mobile telecommunication services in the Czech Republic, question 31. See also agreed minutes of the conference call of 28 March 2014 with a retailer of communication services and agreed minutes of conference call of 31 March 2014 with another retailer of communication services.. See also replies to Commission Questionnaire Q10 – Providers of domestic call transit services in the Czech Republic, question 14.

275 These MVNEs all rely on Vodafone's network.

(480) Third, MVNOs represent approximately 5% of the overall retail mobile telecommunications market[276] and therefore even if some of these niche players were to exit the market in the future, this would not have any appreciable effects on competitive conditions on the Czech market for mobile retail services.

(481) As regards customer foreclosure, currently DT does not depend on wholesale access and call origination services in order to provide its retail mobile telecommunications services. Therefore, DT does not represent an important customer on this market.

(482) Given the above, the Commission concludes that the proposed transaction does not raise serious doubts as to its compatibility with the internal market with respect to the vertical relationship between the markets for wholesale access and call origination on mobile networks and retail supply of mobile telecommunications services in the Czech Republic.

5.3.3.6. Market for termination and hosting of non-geographic numbers – Market for retail supply of mobile telecommunications services

(483) In the Czech Republic, the proposed transaction leads to a vertical overlap between the Parties' activities in the upstream market for termination and hosting of non-geographic numbers (GTS CE: [not available] and the downstream market for retail supply of mobile telecommunication services (DT: [30-40]%, GTS CE: [0-5]%).

Table 21. - Termination and hosting of non-geographic numbers and retail supply of mobile telecommunication services

Upstream market			**Downstream market**		
Termination and hosting of non-geographic numbers	Not active	Not available[277]	Retail supply of mobile telecommunications services to end customers	[30-40]%	[0-5]%

(484) On this market, companies providing a service over the phone are attributed by suppliers of termination and hosting of non-geographic numbers with a special number (usually starting with 0800 for the Czech Republic) on which they can be reached by callers. Similar to ordinary call termination services, calls to these numbers originate from a carrier's network and terminate on the network of the host of such non-geographic number. However, contrary to ordinary calls to geographic numbers, since call origination and call termination regulation does not apply to these numbers, different revenue sharing agreements exist between (i) the originating operator, (ii) the terminating operator and (iii) the company providing the service itself. Generally, in order to maximise revenue for the companies active

276 MVNOs collectively serve approximately 700,000 subscribers and the estimated overall market volume represents approximately 14.5 million subscribers.

277 The Parties have not been capable of submitting any estimate of the market share of any of them or of their competitors. In any case, the Parties have submitted in the Form CO and in the subsequent RFI of 7 April 2014 that DT is not active on this market in the Czech Republic.

on those non-geographic numbers, such numbers are accessible by each and every caller.

5.3.3.6.1. Parties' view

(485) The Parties submit that no input foreclosure concerns will arise for the following reasons.

(486) First, the price for the termination of calls to non-geographic numbers does not represent a significant cost factor relative to the price of the downstream retail mobile telecommunication services.

(487) Second, the termination of incoming calls will always be offered to competing carriers on the downstream level, because any potential caller must be able to reach these services for this business to be viable for the carrier hosting it.

(488) Third, barriers to switching suppliers on this market are low and therefore, in case of a potential price increase by the merged entity, customers of non-geographic numbers (namely the companies offering those services over the phone) would be able to source from alternative providers.

(489) As to customer foreclosure, the Parties submit that DT is not an important customer of termination and hosting of non-geographic numbers services in the downstream market, in particular taking into account the large number of remaining customers. Thus, it could not foreclose competing providers upstream.

5.3.3.6.2. Results of the market investigation

(490) First, the majority of respondents to the market investigation indicated that GTS CE is a significant supplier of termination and hosting of non-geographic numbers.[278] Second, the market investigation confirmed that other players are active on the upstream market, including Telefónica, Vodafone and Dial Telecom. Finally, the market investigation gave indications that it would be easy to switch providers of termination and hosting of non-geographic numbers.[279]

5.3.3.6.3. Commission's assessment

(491) The Commission considers that the merged entity will not have the ability to engage in any input foreclosure strategy for the following reasons.

(492) First, the Commission considers that the merged entity will face competition from other upstream providers such as Telefónica, Vodafone and Dial Telecom.

(493) Second, non-geographic numbers must be reached from each potential caller in order for the companies that are hosted on those numbers to run a successful business. Therefore, in the case that such numbers were not reachable from each potential caller due to a restriction by the host carrier, the hosted companies would change host carrier. Furthermore, as switching provider is relatively easy, if the merged entity

278 See agreed minutes of conference call of 8 April 2014 with Telefónica CZ, and agreed minutes of conference call of 9 April 2014 with Vodafone CZ.

279 See agreed minutes of conference call of 8 April 2014 with Telefónica CZ, and agreed minutes of conference call of 9 April 2014 with Vodafone CZ.

were to engage in an input foreclosure, companies providing their services on non-geographic numbers would simply change host carrier.

(494) As regards customer foreclosure, the Commission considers that the merged entity will not have the incentive to engage in such a strategy. In particular, if the Parties were to render non-geographic numbers hosted on competing networks unreachable for their retail customers, such customers would easily switch provider of retail mobile telecommunications services.

(495) Given the above, the Commission concludes that the proposed transaction does not raise serious doubts as to its compatibility with the internal market on the vertically affected markets for termination and hosting of non-geographic numbers and the market for retail supply of mobile telecommunications services in the Czech Republic.

5.3.4. Conglomerate effects

5.3.4.1. Retail markets for fixed voice services and mobile telecommunications services

(496) In the Czech Republic, the Parties are active in fixed voice services (DT: [0-5]%; GTS CE: [5-10]%) and DT is active in mobile telecommunications services (DT: [30-40]%).

(497) The Parties' main competitors in the market for fixed voice services are Telefónica (approximately [70-80]%).

(498) DT's main competitors on the market for mobile telecommunications services are Telefónica (approximately [30-40]%) and Vodafone (approximately [20-30]%).

(499) Two respondents to the market investigation raised concerns about a potential bundling between the mobile and fixed services in the corporate customer segment.

5.3.4.1.1.Parties’ view

(500) The Parties submit that no conglomerate effects derive from the merger because, even if the merged entity would offer combined fixed and mobile services post-merger, this would not have an appreciable effect on competition. In particular, the Parties note the following.

(501) First both DT and GTS CE are small players in the market for retail supply of fixed voice services (DT: [0-5]%; GTS CE: [5-10]%), facing strong competition from Telefónica (approximately [70-80]%). There are numerous alternative operators that provide fixed voice services using a range of other technologies, in particular UPC, which offers cable technology.

(502) Second, the retail mobile telecommunications market is characterised by intense competition between three network operators (Telefónica, Vodafone and DT) and more than 50 MVNOs. This is illustrated by the significant number of MVNOs entering the market in 2012.

(503) Third, the merger does not materially change DT's position in the retail markets for the supply of fixed voice services and mobile telecommunications services because GTS CE's share in these markets is rather small and therefore there would be no material additional incentive for the merged entity to offer bundles.

(504) Fourth, several operators in the Czech republic offer combined fixed and mobile voice services and are well placed to compete with the merged entity. In particular, Telefónica would exercise a strong competitive constraint on the merged entity as it is the largest fixed operator in the Czech Republic and one of the largest mobile operators. In addition, other fixed providers could also easily collaborate with mobile operators to offer combined services.

(505) Fifth, there is in any event no appreciable impact on competition since there is ever increasing competitive pressure by the so-called Over The Top ("OTT") voice platforms[280] which aggressively market their VoIP services for both mobile and fixed networks and are therefore an alternative to business and residential customers.

5.3.4.1.2. Commission's assessment

(506) In the market for fixed voice services, the Parties' main competitor is Telefónica (approximately [70-80]%).

(507) In the market for the retail supply of mobile telecommunications services to end customers, DT faces competition from Telefónica (approximately [30-40]%) and Vodafone (approximately [20-30]%).

(508) The Commission considers that competition in the markets for mobile communications and fixed voice services would likely not be impacted if the merged entity started to bundle fixed and mobile voice services.

(509) First, given the very limited presence of GTS CE in the market for fixed voice services ([5-10]%) the merger would have a very limited incremental impact on DT's existing position.

(510) Second, DT is already – albeit to a limited extent – offering combined services, which shows it has pre-merger the ability to do so. [281]

(511) Third, other competitors currently offer combined fixed and voice services and would therefore be able to offer the same combined offers as the merged entity post-merger. Telefónica in particular, as the largest fixed operator and a large mobile operator in the Czech Republic, would be well placed to compete with the merged entity.

(512) Fourth, there appears to be little demand currently for bundled services. Moreover, even if there were an increase in customer demand for combined offers that would make them unavoidable for a competitor to succeed in the market, other fixed providers could collaborate with other mobile operators to offer such solutions.

(513) Considering all the above and the other available evidence, the Commission concludes that the proposed transaction does not raise serious doubts as to its compatibility with the internal market with respect to potential conglomerate

280 Such as Google Voice/Hangouts, Skype (Microsoft) and Facetime (Apple).

281 The fact that DT already offers combined services has been confirmed by Dial Telecom – see minutes of conference call from 31 March 2014, p.2.

effects on the markets for retail fixed voice services and retail mobile telecommunications services in the Czech Republic.

5.4. Poland

5.4.1. Parties' activities

(514) DT is active in Poland through T-Mobile Polska S.A., which is primarily active in mobile telecommunication services.[282] By contrast, GTS CE through GTS Poland supplies business connectivity services and wholesale telecommunication services. Therefore, overlaps in Poland are limited and do not lead to any horizontally affected markets.

5.4.2. Vertical links

5.4.2.1. <u>Wholesale regulated markets</u>

(515) The Parties' activities are vertically related in several markets. However, some markets are regulated, as can be seen from the following table.

Table 22.– Vertically affected markets in Poland (I)

Wholesale regulated markets

Upstream markets			**Downstream markets**		
	DT	GTS CE		DT	GTS CE
Wholesale provision of fixed call termination services	100%	100%	Retail global telecommunications services	[0-5]%	[0-5]%
			Wholesale global telecommunications services	[0-5]%	[0-5]%
			Retail supply of fixed voice services	[0-5]%	[0-5]%
			Retail supply of mobile telecommunication services to end customers	[20-30]%	[N/A]
Wholesale provision of mobile termination services	100%	[N/A]	Retail global telecommunications services	[0-5]%	[0-5]%
			Wholesale global telecommunications services	[0-5]%	[0-5]%
			Retail supply of fixed voice services	[0-5]%	[0-5]%
			Retail supply of mobile telecommunication services to end customers	[20-30]%	[N/A]

282 More than two thirds of DT's revenue in Poland pertains to mobile services provided to end customers.

5.4.2.1.1.The Parties' view

(516) The Parties submit that in the wholesale markets for call termination in fixed and mobile networks, every operator has a market share of 100%, based on a market definition limiting the product market to each individual network ("one net – one market").

(517) In any case, the Parties submit that these vertical links will have no effects on competition, as the supply relationship between the Parties is of no competitive relevance. While GTS CE is purchasing wholesale services from DT in Poland to an overall amount of approx. EUR […], and DT from GTS CE for ca. EUR […], the proposed transaction will not lead to any foreclosure scenarios.

5.4.2.1.2.The Commission's assessment

(518) The Commission considers that the proposed transaction does not lead to competition concerns arising from the vertical relationships involving fixed and mobile call termination services.

(519) First, while each of the Parties has a market share of 100% on the upstream markets (given that the market definition limits the product market to each individual network), the Polish telecommunication regulator has imposed regulatory obligations in these markets. These obligations include access obligations, non-discrimination, and tariff control.[283] Furthermore, the Commission notes that its recommendation from 7 May 2009 aims at harmonising how the cost-orientation should be applied in the case of mobile and fixed termination rates.[284] Therefore, the Commission considers that the Parties are prevented from engaging in an effective foreclosure strategy with respect to termination of fixed or mobile calls.

(520) Second, as regards the downstream markets where the Parties overlap, the Commission notes that the Parties' combined market shares are [0-5]% with a small increment not higher than [0-5]%. In the case of the downstream market for the retail supply of mobile telecommunications services to end customers, DT market shares amount to [20-30]% but GTS CE is not active on this market. The Commission considers therefore that the limited or non-existent increments in market shares in the various downstream markets would unlikely allow the merged entity to engage in a foreclosure strategy.

(521) Third, no respondent to the market investigation raised any concern related to the impact of the proposed transaction with respect to the market for the wholesale supply of mobile and fixed call termination services.

(522) For these reasons, the Commission concludes that the proposed concentration does not raise any competitive concern in relation to the wholesale supply of mobile and fixed call termination services.

283 UKE, Regulatory Decisions No DART-SMP-6040-5/11 (22) of 26 October 2011 regarding the obligations imposed on the operator with significant market power on the market for call termination on public telephone networks provided at a fixed location and Regulatory Decision No DART-SMP-6040-7/11 (82) of 14 December 2012 regarding the obligations imposed on the operator with significant power on the market for voice call termination on individual mobile networks.

284 Commission Recommendation of 7 May 2009 on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EU.

5.4.2.2. Market for termination and hosting of non-geographic numbers – Several vertically related downstream markets

(523) GTS CE but not DT[285] is active in the market for termination and hosting of non-geographic numbers. GTS CE's turnover amounted to EUR […]. However, the Parties submit that they are unable to estimate GTS CE's market share due to a lack of reliable market information. Therefore, assuming that the upstream market shares are above 30%, the vertical links will be analysed in the following section.

Table 23.– Vertically affected markets in Poland (II)

Upstream markets			**Downstream markets**		
	DT	GTS CE		DT	GTS CE
Wholesale market for termination and hosting of non-geographic numbers	[N/A]	Not available >30%	Retail global telecommunications services	[0-5]%	[0-5]%
			Wholesale global telecommunications services	[0-5]%	[0-5]%
			Retail supply of fixed voice services	[0-5]%	[0-5]%
			Retail supply of mobile telecommunication services to end customers	[20-30]%	[N/A]

5.4.2.2.1. Parties' view

(524) The Parties submit that these vertical links will not lead to any input foreclosure by the merged entity on the downstream level.

(525) First, since DT is not active on this market in Poland, GTS CE's position in the upstream market and its market power will not change post-merger.

(526) Second, the costs for the termination of calls to non-geographic numbers do not represent a significant cost factor relative to the price of the downstream retail voice services. Thus, even if the costs for the termination of calls to special rates services were hypothetically raised, this would not adversely affect prices for end-customers on the retail voice markets.

(527) Third, the Parties consider that the retail business of hosting of non-geographic numbers would not be viable without offering termination services to all carriers.

(528) Fourth, as "non-geographic numbers" are not tied to the geographic network of a certain provider, barriers to switching suppliers are low. If prices were increased, GTS CE's customers would be able to switch to alternative providers, thus rendering any foreclosure strategy ineffective.

285 Since DT was not active as a fixed network provider, DT has only started to be active in the market for wholesale termination and hosting of non-geographic numbers in Poland since 2013 and so far its turnover is minimal and of no competitive relevance.

(529) Regarding in particular the downstream market for mobile telecommunications services, the Parties submit that this market is highly competitive due to the presence of seven mobile network operators[286] and effective national regulation.[287] Parties face competition on this market from Orange (approximately [30-40]%), Polkomtel (approximately [20-30]%) and Play ([10-20]%).

(530) Regarding customer foreclosure, the Parties submit that DT's limited presence is too low for DT to be regarded as an important customer. In addition, and in particular in the retail mobile telecommunications market, there is a large number of remaining customers.

5.4.2.2.2. Results of the market investigation with respect to the downstream market for the retail supply of mobile telecommunication services to end customers

(531) As to a possible input foreclosure between the upstream market of termination and hosting of non-geographical numbers and the downstream market of retail mobile telecommunications services, the majority of respondents from the demand side considered that termination and hosting of non-geographical numbers services constitute a critical input for the provision of retail mobile telecommunications services.[288]

(532) Second, the majority of the respondents to the market investigation considered GTS CE as a significant supplier (representing more than 50% of customers' total requirements).[289]

(533) Third, the majority of the respondents to the market investigation considered that there are alternative providers of termination and hosting of non-geographic numbers.[290] They also confirmed that they multisource termination and hosting of non-geographical numbers services.[291] The market investigation was inconclusive as to whether it would be profitable for the merged entity to stop supplying such services.[292]

---

286 European Commission, Information Society and Media Directorate-General, POLAND 2011 Telecommunication Market and Regulatory Developments, 18 June 2012, page 1, available at http://ec.europa.eu/digital-agenda/sites/digital-agenda/files/PL_Country_Chapter_17th_Report_0.pdf.

287 Based on Telecommunications Act of 16 July 2004 (Journal of Laws of 03 August 2004). An unofficial consolidated English translation by the Polish Office of Electronic Communications (as of June 2013) is available at http://www.en.uke.gov.pl/files/?id_plik=41.

288 Replies to Commission Questionnaire Q13 - Retailers of mobile telecommunications services in Poland, question 16.

289 Replies to Commission Questionnaire Q13 - Retailers of mobile telecommunications services in Poland, question 15

290 Replies to Commission Questionnaire Q13 - Retailers of mobile telecommunications services in Poland, question 17.

291 Replies to Commission Questionnaire Q13 - Retailers of mobile telecommunications services in Poland, question 12.

292 Replies to Commission Questionnaire Q13 - Retailers of mobile telecommunications services in Poland, question 19.

(534) Finally, the majority of respondents from the demand side considered that the merger would not have any negative impact on the market for retail mobile telecommunications services to end customers.[293]

5.4.2.2.3. Commission's assessment

(535) As can be seen from table 22 above, the increments brought about by the Transaction in the downstream markets for retail global telecommunications services, for global telecommunications services and for retail supply of fixed voice services are minimal as they remain [0-5]%. Given that the merged entity would represent such a small demand on the downstream markets, the Commission considers that the proposed transaction is unlikely to lead to any customer foreclosure.

(536) As regards a hypothetical strategy of input foreclosure regarding downstream markets for retail global telecommunications services, for global telecommunications services and for retail supply of fixed voice services , the Commission notes that the proposed transaction does not increase the merged entity's ability to engage in such a strategy, since DT currently is not active in the upstream market. Moreover, a number of fixed network providers are active on this market and offer services for call termination and hosting of non-geographic numbers as part of their fixed and mobile retail voice business in Poland.

(537) As regards a hypothetical strategy of input foreclosure regarding downstream market of mobile telecommunication services to end customers, the Commission considers that the merged entity would have no ability to enter into an input foreclosure strategy in the market for termination and hosting of non-geographic numbers, for the following reasons.

(538) Despite indicating that GTS CE is an important supplier, the market investigation confirmed that customers of call termination and hosting of non-geographic numbers services could procure these services through alternative suppliers. The fact that they multi-source additionally would render any attempt of foreclosure ineffective.

(539) Lastly, DT's market share on the market for retail supply of mobile telecommunications services equate [20-30]%. Such a rather limited market share[294] and the number of remaining players on this market[295] rule out any risk of customer foreclosure strategy.

(540) Considering all the above and the other available evidence, the Commission concludes that the proposed transaction does not raise serious doubts as to its compatibility with the internal market with respect to the vertical relationships between the market for termination and hosting of non-geographic numbers and the

293 Replies to Commission Questionnaire Q13 - Retailers of mobile telecommunications services in Poland, question 20.

294 These market shares remain indeed below the 30% thresholds set out paragraph 25 of the Guidelines of the assessment of non-horizontal mergers under Merger Regulation.

295 The main competitors of the Parties are Orange, Polkomtel and Play with market shares by value in 2012 of approximately [30-40]%, [20-30]% and [10-20]% respectively.

markets for GTS (both retail and wholesale), retail supply of fixed voice services and retail supply of mobile telecommunication services to end customers.

5.5. International market for Global Telecommunications Services

(541) Both DT (via its subsidiary T-Systems) and GTS CE provide end-to-end telecommunications services across national borders to multinational corporations. The proposed transaction therefore results in a horizontal overlap on the market for GTS and its possible sub-segments, although market shares are such that these markets are not affected.

(542) However, this section briefly discusses this market as one respondent to the market investigation submitted that the merged entity would gain a strong position in (wholesale) GTS in the Central and Eastern European region ("CEE") through the acquisition of GTS CE. In particular, post-merger, GTS CE would be the only significant provider of cross-border leased lines in the CEE region that the respondent described as an essential input for the supply of (retail) GTS through other providers that need to rent capacity on cross-border leased lines within the CEE region. Therefore, the merged entity would be able, post-transaction, to foreclose other (retail) GTS providers by no longer supplying or discriminating against them (for instance in terms of speed and prices).

(543) The Commission considers that this concern is unfounded for the following reasons.

(544) First, as discussed in section 4.1.1 above, the geographic scope of the market for GTS is global or at least EEA-wide. In such a market, the activities of the Parties are of limited magnitude and, on any possible market definition, they would have a combined market share [20-30]%. On the worldwide retail GTS market, the Parties had a combined market share of [0-5]% in 2012 and, at the EEA-wide level, of [5-10]%. On the possible market of wholesale GTS/ international carrier services, the Parties had a share of [0-5]% worldwide and around [5-10]% at EEA-wide level. Second, a large number of competing carriers offer similar services as the Parties on both markets, including global players such as TeliaSonera, Level3, Verizon, BT, AT&T, Orange, Telefonica, Telecom Italia, as well as regional players such as Interoute, PanTel (TurkTelecom), TelekomAustria (JetStream), and EUnetworks.

(545) Even if the market for retail GTS were to have a regional dimension, quod non, the Commission considers that the proposed transaction would not significantly impede effective competition. On a possible market for retail GTS, the combined market share of the Parties at CEE level would not exceed [20-30]% (DT: [0-5]% GTS CE: [10-20]%). Likewise, on a possible wholesale market for international carrier services, the combined market share of the Parties would amount to [20-30]% (DT: [5-10]%, GTS CE: [10-20]%). In such a hypothetical market, a large number of competing carriers are active, amongst others Interoute (around [10-20]%), Level3 (around [10-20]%), British Telecom (around [5-10]%) and Verizon (around [5-10]%).

(546) Considering all the above and the other available evidence, the Commission concludes that the proposed transaction does not raise serious doubts as to its

compatibility with the internal market on the possible markets for wholesale and retail GTS.

6. CONCLUSION

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

For the Commission
(Signed)
Joaquín ALMUNIA
Vice-President