EN

Case No M.7499 - ALTICE / PT PORTUGAL

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REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) in conjunction with Art 6(2)
Date: 20/04/2015

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EUROPEAN COMMISSION

Brussels, 20.4.2015
C(2015) 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 Madam(s) and/or Sir(s),

Subject: Case M.7499 – Altice/PT Portugal
Commission decision pursuant to Article 6(1)(b) in conjunction with Article 6(2) of Council Regulation No 139/2004[1] and Article 57 of the Agreement on the European Economic Area[2]

(1) On 25 February 2015, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the undertaking Altice S.A. ("Altice" or the "Notifying Party", Luxembourg), acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of PT Portugal SGPS, S.A. ("PT Portugal", Portugal) by way of purchase of shares (the "Transaction").[3] Altice and PT Portugal are designated hereinafter as the "Parties".

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

2 OJ L 1, 3.1.1994, p.3 ("the EEA Agreement").

3 Publication in the Official Journal of the European Union No C 77, 5.3.2015, p. 10.

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I. THE PARTIES

(2) Altice is a multinational cable and telecommunications company. In Portugal, Altice operates via two subsidiaries, Cabovisão – Televisão por Cabo S.A. ("Cabovisão") and ONITelecom – Infocomunicações S.A. ("ONI"). Cabovisão provides pay TV, broadband internet access and fixed telephony services essentially to residential customers, both on a standalone basis and as multiple play packages. ONI provides business-to-business ("B2B") telecommunication services and IT services, including cloud and information and communication technology services to business customers. Its offers comprise network and fixed telecommunication services including voice, data and fixed internet access services. Neither Cabovisão nor ONI provide mobile services.

(3) PT Portugal is a telecommunications and multimedia operator with activities extending across all telecommunications segments in Portugal. PT Portugal offers to residential customers fixed and mobile voice, data services, broadband internet access services, and pay TV services, which are sold either on a stand-alone basis or as multiple play packages. PT Portugal's offer for corporate customers includes fixed and mobile voice services, data services and IT services, comprising data centre solutions, virtualisation services, cloud, business outsourcing process and other additional value-added services. PT Portugal is currently controlled by the Brazilian telecom operator Oi S.A. ("Oi").

II. THE CONCENTRATION

(4) On 9 December 2014, Altice entered into an agreement with Oi, whereby Altice will acquire sole control over PT Portugal.[4] The Transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. EU DIMENSION

(5) The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 000 million in 2013 (Altice: EUR […]; PT Portugal: EUR […]). Each of them has a Union-wide turnover in excess of EUR 250 million, but each does not achieve more than two-thirds of its aggregate Union-wide turnover within one and the same Member State. The notified operation therefore has a Union dimension.

IV. RELEVANT MARKETS

(6) The Parties' activities overlap in the following markets in Portugal: (i) the market for the retail supply of fixed voice services; (ii) the market for the retail supply of fixed internet access services; (iii) the market for the retail supply of pay TV services; (iv) the possible market for the retail supply of multiple play services; (v) the market for B2B telecommunication services; (vi) the market for the wholesale supply of leased lines; (vii) the wholesale market for call origination services at a fixed location; and (viii) the wholesale market for call transit services at a fixed location.

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[4] The African and Asian assets as well as the financing vehicle of PT Portugal SGPS will be carved out prior to the closing of the Transaction and will not be transferred to Altice.

(7) The Parties' activities are also vertically linked as regards a series of markets, which include upstream the wholesale supply of TV channels, the wholesale markets for fixed and/or mobile voice services (call transit, call origination, call termination, international roaming) and the wholesale market for leased lines, and downstream the Portuguese retail market for pay TV services, the French and Portuguese retail markets for fixed voice and mobile services, the Portuguese retail market for fixed internet access services and the Portuguese retail market for leased lines.[5]

IV.1. Retail markets

IV.1.1. Retail supply of fixed voice services

IV.1.1.1. Product market definition

(8) Retail supply of fixed voice services consist of the provision of fixed voice services to end-customers. In line with previous Commission decisions, fixed voice services include the provision of connection services or access at a fixed location or address to the public telephone network for the purpose of making and receiving calls and related services.[6]

IV.1.1.1.a. The views of the Notifying Party

(9) The Notifying Party submits that there is no reason to differentiate between local/national and international calls, nor between Voice over the Internet ("VoIP") services and traditional fixed lines. By contrast, the Notifying Party submits that a distinction should be made between residential and business customers, as these segments have clearly different needs. As Cabovisão does not sell telephony services to large business customers and ONI provides such services as part of larger solutions, the Notifying Party concludes that the relevant market in this case is the Portuguese market for the retail supply of fixed voice services for residential customers which is separated from services to business customers.

IV.1.1.1.b. The Commission's assessment

(10) In *Carphone Warehouse/Tiscali UK*, the market investigation indicated that a distinction between local/national and international calls as well as between residential and non-residential customers may not be relevant. The market investigation also suggested that fixed line telephony services and managed VoIP services were substitutable. However, the Commission ultimately left the exact scope of the product market open, as the transaction did not raise any competition concerns.[7] In *Vodafone/Kabel Deutschland*, the Commission concluded that traditional telephony and VoIP are interchangeable within a single market for the

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5 The Commission also notes that the Parties overlap in the potential wholesale market for termination and hosting of non-geographic numbers, which is upstream to the Portuguese retail markets for fixed voice services and for mobile services. In any event, the remedies arising from the commitments proposed in this case will remove any horizontal overlap or vertical link that is merger-specific in relation to these markets as they would entirely remove all overlaps between the Parties' activities in Portugal.

6 Commission decision in case M.6584 – *Vodafone/Cable&Wireless*, of 3 July 2012, paragraph 11.

7 Commission decision in case M.5532 – *Carphone Warehouse/Tiscali UK*, of 22 July 2009, paragraphs 37-39.

retail supply of fixed voice services. On the other hand, the Commission did not take a definitive view with regard to further possible segmentations of the fixed voice services market, such as between residential and non-residential customers, as the transaction did not raise competitive concerns.[8] In *Vodafone/Ono*, the Commission found that fixed voice services and VoIP services are interchangeable. It also found that there is a distinction between residential and business customers, but left the product market open, as the transaction did not raise concerns.[9] The precedents of the Portuguese Competition Authority ("PCA") support a market definition without any segmentation.[10]

(11) Respondents to the market investigation in the present case confirmed that the market for retail fixed voice services comprises managed VoIP services and voice services provided via traditional fixed lines.[11] As regards the possible segmentation between the residential and business segments, one market participant pointed out that such segmentation may be relevant, because these two categories of customers have different needs. Furthermore, on the supply side, the provision of fixed voice services to large businesses can require the addition of special services features such as access management, IP Centrex[12] and ISDN[13].[14]

(12) In the present case, the Commission takes the view that the question whether the market for retail fixed voice services should be further segmented into residential and business segments, between local/national and international calls, and between VoIP and traditional fixed voice services can be left open, as the Transaction raises serious doubts as to its compatibility with the internal market in Portugal on all alternative product market definitions and because the commitments proposed in this case by the Notifying Party on 31 March 2015 ("the Final Commitments") will remove these serious doubts.

IV.1.1.2. Geographic market definition

(13) The Notifying Party submits that the scope of the market for retail supply of fixed voice services is national.

(14) In previous cases the Commission generally considered the market for retail supply of fixed voice services to be national.[15] In some cases, the Commission considered

8 Commission decision in case M.6990 – *Vodafone/Kabel Deutschland*, of 20 September 2013, paragraphs 130-131.

9 Commission decision in case M.7231 – *Vodafone/Ono*, of 2 July 2014, paragraphs 26-28.

10 See for example PCA decision in case 5/2013 – *Kento*Unitel*Sonaecom/Zon*Optimus*, of 26 August 2013, paragraph 88.

11 Responses to Questionnaire Q1 to Competitors of 25.02.2015, question 14.

12 IP Centrex is a service where the call platform and PBX features are hosted at the service provider location. The business end users connect via IP to the provider for voice service.

13 Integrated Services for Digital Network ("ISDN") is a set of communication standards for simultaneous digital transmission of voice, video, data and other network services over the traditional circuits of the public switched telephone network.

14 Responses to Questionnaire Q1 to Competitors of 25.02.2015, question 14.

15 See for example Commission decision in case M.5532 – *Carphone Warehouse/Tiscali UK*, of 29 June 2009, paragraph 56; Commission decision in case M.5730 – *Telefonica/Hansanet Telekommunikation*, of 29 January 2010, paragraph 28; Commission decision in case M.6990 –

that the market could be either national or limited to the relevant operator's network footprint, but eventually left open the exact geographic market definition.[16]

(15) The majority of participants to the market investigation in this case confirmed the national scope of this market, in line with previous decisions of the Commission and the PCA.[17] One respondent argued that the scope of the market for retail supply of fixed voice services may be narrower, as the four major players in the Portuguese market have a distinct footprint over the national territory, which makes the conditions of competition different on a regional/local basis.[18]

(16) In the present case, the Commission takes the view that the scope of the market for retail supply of fixed voice services could be national or narrower, in which case it would be limited to the network footprint of Cabovisão, that is the houses passed by Cabovisão (as ONI is essentially active in the business segment and therefore operates nationally). Cabovisão's network is a single network covering a territory with approximately 2.7 million inhabitants and 24 000 km^2.[19] This network covers 64 municipalities, including 9 district capitals, such as Aveiro (around 60 000 inhabitants), Castelo Branco (34 000 inhabitants), Coimbra (96 000 inhabitants), Évora (41 800 inhabitants), Setúbal (87 300 inhabitants) and Viseu (52 600 inhabitants).[20] However, the exact geographic market definition can be left open, as the Transaction raises serious doubts as to its compatibility with the internal market in Portugal on all these alternative geographic market definitions and because the Final Commitments proposed in this case will remove these serious doubts.

IV.1.2. Retail supply of fixed internet access services

(17) Internet access services consist of the provision of a fixed telecommunications link enabling customers to access the internet via narrowband ("dial-up") services or broadband services.[21]

IV.1.2.1. Product market definition

IV.1.2.1.a. The views of the Notifying Party

(18) The Notifying Party submits that the relevant market is the one for the retail supply of fixed internet access services to residential customers (including small and

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Vodafone/Kabel Deutschland, of 20 September 2013, paragraph 137; Commission decision in case M. 7231 – *Vodafone/Ono*, of 2 July 2014, paragraph 31.

16 See for example Commission decision in case M. 6880 *Liberty Global/Virgin Media*, of 15 April 2014, paragraph 58.

17 Ibid, and see for example PCA decision in case 5/2013 – *Kento*Unitel*Sonaecom/Zon*Optimus*, of 26 August 2013, paragraph 90.

18 Responses to Questionnaire Q1 to competitors, of 25.02.2015, question 23.1.

19 Source: Associação Nacional de Municípios Portugueses (www.anmp.pt), Pordata (www.pordata.pt/) and Form CO, Annex 7.2.a. The municipalities of […], […] and […] are also served by Cabovisão's network, but only to a minor extent since the number of homes passed by Cabovisão in each of these municipalities is less than […]% of the total number of subscribers in the same municipalities. Therefore, these municipalities were not included in the data discussed in paragraph (16).

20 Source: Instituto Nacional de Estatística (www.ine.pt).

21 Conversely, wholesale broadband access does not lead to horizontal overlap because neither Cabovisão nor ONI offer wholesale access to their broadband networks.

medium enterprises or "SMEs"). The Notifying Party further submits that there is no need to define a market for large business customers as a separate market, as Cabovisão is not active in the latter segment and ONI provides this type of services together with other solutions (B2B services). In the Notifying Party's view, it is also not relevant to distinguish the market on the basis of the various technologies used for the provision of internet access services, or according to speed segments, as the Portuguese market is characterised by large penetration of fibre and cable technologies.

IV.1.2.1.b. The Commission's assessment

(19) In *Carphone Warehouse/Tiscali UK*, the Commission found that residential/small business customers on the one hand and large business customers on the other hand belong to separate markets.[22] In that decision, the Commission also considered whether the market should be further segmented depending on the speed (narrowband versus broadband) or the technology (mobile broadband, cable and XDSL), but ultimately left the question open, as there were no competition concerns.[23] In *Vodafone/ONO*, the Commission also considered whether the retail market for fixed internet services should be further segmented depending on the type of customer, speed of the service or technology used, but ultimately left the product market definition open, as there were no competition concerns.[24] The PCA concluded in its precedents that the relevant market is that for the retail supply of fixed internet services without further segmentations.[25]

(20) Market participants noted that, in their view, the market for retail supply of fixed internet services should not be further segmented according to speed (below or above 30Mbps) or technology employed (copper, cable or fibre).[26] On the other hand, some respondents pointed out that there are significant differences between the provision of internet access services to residential customers and to large business customers. One supplier explained that from a demand side perspective, large corporate customers require substantial investments in the network backbone to ensure an overall higher quality in data transmission.[27]

(21) In the present case, the Commission takes the view that the question as to whether the market for the retail supply of internet access services should be further segmented between residential and business customers, or depending on the speed or the technology used, can be left open, as the Transaction raises serious doubts as to its compatibility with the internal market in Portugal on all these alternative product market definitions and because the Final Commitments proposed in the case will remove these serious doubts.

22 Commission decision in case M.5532 – *Carphone Warehouse/Tiscali UK*, of 29 June 2009, paragraphs 22-26.

23 Commission decision in case M.5532 – *Carphone Warehouse/Tiscali UK*, of 29 June 2009, paragraphs 14 and 21.

24 Commission decision in case M.7231 – *Vodafone/Ono*, of 2 July 2014, paragraphs 11-18.

25 See for example PCA decision in case 5/2013 – *Kento*Unitel*Sonaecom/Zon*Optimus*, of 26 August 2013, paragraph 245.

26 Responses to Questionnaire Q1 to competitors of 25.02.2015, question 14.

27 Responses to Questionnaire Q1 to competitors of 25.02.2015, question 14.

IV.1.2.2. Geographic market definition

(22) The Notifying Party submits that the geographic scope of this market is national, in particular because the Parties' pricing policies are mostly national.

(23) In previous cases the Commission generally considered the market for retail supply of fixed internet access services to be national.[28] In some cases, the Commission considered that the market could be either national or limited to the relevant operator's network footprint, but eventually left open the exact geographic market definition.[29]

(24) Conversely, the PCA has assessed this market at local level in order to separate "competitive" from "non-competitive" areas, as defined by the sector regulator.[30]

(25) The majority of participants to the market investigation in this case indicated that the market is national. This is because the main service providers operate on a national basis and marketing, commercial and technical services are directed to the national market.[31] However, some market participants pointed out that the scope of the market could be narrower. In this sense, one market participant argued that the fact that the four existing market players have a distinct footprint over the national territory makes the conditions of competition different on a regional/local basis.[32]

(26) In the present case, the Commission takes the view that the scope of this market could be national or narrower, in which case it would be limited to the network footprint of Cabovisão (as ONI is essentially active in the business segment and therefore operates nationally).

(27) However, the exact geographic market definition can be left open, as the Transaction raises serious doubts as to its compatibility with the internal market in Portugal on all these alternative geographic market definitions and because the Final Commitments proposed in the case will remove these serious doubts.

IV.1.3. Retail supply of pay TV services

(28) The retail market for the supply of pay TV services corresponds to the provision to end users or viewers of linear and non-linear TV services, based on subscription.

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28 See for example Commission decision in case M.7231 – *Vodafone/Ono*, of 2 July 2014, paragraph 22; Commission decision in case M.6990 – *Vodafone/Kabel Deutschland*, of 20 September 2013, paragraphs 196-197; Commission decision in case M.5730 – *Telefonica/Hansenet Telekommunikation*, of 29 January 2010, paragraph 28; Commission decision in case M.5532 – *Carphone Warehouse/Tiscali UK*, of 29 June 2009, paragraph 47.

29 See for example Commission decision in case M. 6880 *Liberty Global/Virgin Media*, of 15 April 2014, paragraph 58 and Commission decision in case M. 4521 *LGI/Telenet*, of 26 February 2007, paragraph 38.

30 PCA decision in case 5/2013 – *Kento*Unitel*Sonaecom/Zon*Optimus*, of 26 August 2013, paragraphs 282-284.

31 Responses to Questionnaire Q1 to competitors of 25.02.2015, question 23.1.

32 Responses to Questionnaire Q1 to competitors of 25.02.2015, question 23.1.

(29) TV services supplied by TV distributors to end users can consist of packages of linear TV channels and content aggregated in non-linear services, such as video-on-demand ("VOD") and Pay-Per-View ("PPV").

IV.1.3.1. Product market definition

IV.1.3.1.a. The views of the Notifying Party

(30) The Notifying Party submits that the relevant market in this case is the Portuguese market for the retail supply of pay TV services to residential customers. According to the Notifying Party, it is not necessary to further distinguish between basic and premium pay TV services or between linear and non-linear programs.

IV.1.3.1.b. The Commission's assessment

(31) The Commission and the PCA have in the past identified separate markets for the retail supply of (i) free-to-air ("FTA") TV services and (ii) pay TV services.[33] More recently, the Commission has considered FTA/basic pay TV services together, as opposed to premium pay TV services, in light of the fact that customers usually subscribe to basic pay TV packages that include FTA channels, whereas premium TV channels have more exclusive content for a higher price. The Commission has however ultimately left the market definition open.[34]

(32) Moreover, in previous decisions the Commission has considered a distinction between linear and non-linear TV services. With linear TV services, viewers watch TV content at the established time it is broadcast, and on the channel on which it is presented, according to the specific schedule defined by the broadcaster, with no possibility to interact with it or change the time. In contrast, non-linear TV services allow a more enriched viewing experience by enabling the viewer to interact with TV programming and choose the time and manner of watching content according to tailored needs and demands. Non-linear TV services have gradually been integrated in traditional TV channels to enhance the viewer experience. Providers of retail TV services thus can offer viewers a vast array of functions and services as part of the experience of the TV channels. For instance, video-on-demand (“VOD”) is a pay-as-you-go service that makes the content of a TV channel available for a certain period to the viewer, who can choose when to view it.

(33) In *NewsCorp/BskyB*,[35] the Commission considered that linear and non-linear TV services belonged to separate product markets at that point in time, while in a number of other decisions it left the exact product market definition open.[36] In *Liberty Global/Ziggo*, the Commission considered again whether a distinction should be drawn between linear and non-linear pay TV services. The Commission

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33 See for example Commission decision in case M.4504 – *SFR/Télé2*, of 18 July 2007, paragraph 45; Commission decision in case M.5121 – *News Corp/Premiere*, of 28 August 2008; Commission decision in case M.6990 – *Vodafone/Kabel Deutschland*, of 20 September 2013, paragraphs 49-51; PCA decision in case 5/2013 – *Kento*Unitel*Sonaecom/Zon*Optimus*, of 26 August 2013, paragraph 323.

34 Commission decision in case M.7194 – *Liberty Global/Corelio/W&W/De Vijver Media*, of 24 February 2015, paragraphs 118-120.

35 Commission decision of 21 December 2010 in case M.5932 *NewsCorp/BskyB*, recitals 106–107.

36 Commission decision of 25 June 2008 in case M.5121 *News Corp/Premiere*, recital 21.

noted that linear pay TV services and non-linear pay TV services have a different content offering, different exhibition windows and different pricing, and that from a demand-side perspective the different types of retail content distribution services, such as linear pay TV and non-linear VOD are not necessarily substitutable with one another. The Commission, however, ultimately left the market definition open[37]

(34) Respondents to the market investigation in this case confirmed that FTA TV services and pay TV services belong to distinct product markets.[38] Respondents explained that customers tend to view FTA and pay TV services as distinct services. While FTA services consist of five channels in Portugal, pay TV subscribers have access to approximately 100 or more TV channels. Furthermore, while FTA services are predominantly financed from advertising revenues, pay TV services have as main source of revenues the monthly fees paid by TV subscribers.[39]

(35) Market participants also indicated that basic pay TV services and premium pay TV services could be considered as distinct markets in terms of customer demand, customer segmentation and price.[40] Thus, one competitor explained that premium pay TV services are distinct from basic TV services as the first ones include content that is highly valued by end users mainly related to sport events and film channels offering the main blockbuster movies. This content is included in the commercial offers of all operators providing pay TV services, as it is perceived as "must have" content that is not easily replaceable by other alternative channels. Conversely, the channels available in basic pay TV services tend to vary amongst the offers of the different operators.[41]

(36) Based on the results of the market investigation the Commission takes the view that FTA services and pay TV services belong to distinct product markets. However, as regards pay TV services, the Commission takes the view in the present case that the question as to whether the market for retail supply of pay TV services should be further segmented into basic and premium pay TV services can be left open, as the Transaction raises serious doubts as to its compatibility with the internal market in Portugal on all these alternative product market definitions and because the Final Commitments proposed in the case will remove these serious doubts.

IV.1.3.2. Geographic market definition

(37) The Notifying Party submits that the scope of this market is national, in particular because the Parties' pricing policies are mostly national.

(38) In previous decisions, the Commission has taken the view that the geographic scope of the retail supply of pay TV services market was national[42] or limited to the

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37 Commission decision of 10 October 2014 in case M.7000 *Liberty Global/Ziggo*, recitals 109–110.

38 Responses to Questionnaire Q1 to competitors of 25.02.2015, question 17.

39 Responses to Questionnaire Q1 to competitors of 25.02.2015, question 17.1.

40 Responses to Questionnaire Q1 to competitors of 25.02.2015, question 18.

41 Responses to Questionnaire Q1 to competitors of 25.02.2015, question 18.1.

42 Commission decision in case M.5121– *News Corp/Premiere*, of 25 June 2008, paragraph 24; Commission decision in case M.5734 – *Liberty Global Europe/Unitymedia*, of 25 January 2010,

coverage area of each cable operator,[43] whereas the geographic scope of the market in previous decisions of the PCA was identified as local and linked to the footprint of the relevant parties,[44] though the PCA has also previously left open the question whether the market could be segmented per municipality.[45]

(39) Respondents to the market investigation in this case argued that the scope of the retail market for pay TV services could be narrower than national, as not all four major operators are present and able to offer these services in all regions of Portugal.[46]

(40) In the present case, the Commission takes the view that the scope of this market could be national or narrower, in which case it would be limited to the network footprint of Cabovisão[47]. However, the exact geographic market definition can be left open, as the Transaction raises serious doubts as to its compatibility with the internal market in Portugal on all these alternative geographic market definitions and because the Final Commitments proposed in the case will remove these serious doubts.

IV.1.4. Multiple play offers

(41) Multiple play offers comprise a bundle of two or more of the following retail services to end-customers: fixed telephony, fixed internet access, mobile telephony, mobile internet and pay TV services. Such packaged offers may consist of so-called dual, triple, quadruple or even quintuple play offers comprising some or all of the above services.

IV.1.4.1. Product market definition

IV.1.4.1.a. The views of the Notifying Party

(42) The Notifying Party considers that the exact product market definition can be left open in this case and does not take a position as to what would be the relevant product market.

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paragraphs 40; Commission decision in case M.5932 – *NewsCorp/BskyB,* of 21 December 2010, paragraph 109; Commission decision in case M.6369 – *HBO/Ziggo/HBO Nederland,* of 21 December 2011, paragraph 42; Commission decision in case M.6880 – *Liberty Global/Virgin Media,* of 15 April 2013, paragraph 54; Commission decision in case M.7000 – *Liberty Global/Ziggo* of 10 October 2014, paragraph 118.

43 Commission decision in case M.4521 – *LGI/Telenet,* of 26 February 2007, paragraph 25; and Commission decision in case M.7194 – *Liberty Global/Corelio/W&W/De Vijver Media*, of 24 February 2015, paragraph 139.

44 PCA decision in case 5/2013 – *Kento*Unitel*Sonaecom/Zon*Optimus*, of 26 August 2013, paragraph 337.

45 PCA decision in case 56/2007 – *Tv Cabo Portugal/Bragatel/Pluricanal Leiria/Pluricanal Santarém*, of 21 November 2008, paragraph 172.

46 Responses to Questionnaire Q1 to competitors of 25.02.2015, question 23.1.

47 ONI is mainly active nationally due to its business services. The Notifying Party also submits that [commercial and distribution strategy]. The Notifying Party therefore submits that [commercial and distribution strategy]. Therefore, the assessment regarding the geographic market definition for the retail supply of pay TV services remains the same, and the market should be regarded as national or limited to the network footprint of Cabovisão.

IV.1.4.1.b. The Commission's assessment

(43) In previous decisions, the Commission left open whether there is a market for multiple play services that is separate from the markets for each of the components of the bundles,[48] while the PCA has distinguished in previous decisions separate markets for the various multiple play offers.[49]

(44) Respondents to the market investigation in this case explained that the majority of Portuguese customers have already subscribed to multiple play offers for a number of years and that they expect multiple play offers to grow in importance in the next few years.[50] Currently the most common packages that consumers in Portugal purchase are triple play offers (fixed telephony, fixed broadband access and TV services).[51]

(45) The market investigation provided mixed results as to the question whether multiple play offers constitute a distinct market from the retail supply of the respective unbundled offers.[52] One respondent observed that in Portugal substitutability between stand-alone offers and multiple play offers is asymmetric, as customers may switch from stand-alone offers to bundles, but not the other way around.[53]

(46) In the present case, the Commission takes the view that the question as to whether multiple play offers constitute a distinct market from the retail supply of the respective unbundled offers can be left open, as the Transaction raises serious doubts as to its compatibility with the internal market in Portugal on all these alternative product market definitions and because the Final Commitments proposed in the case will remove these serious doubts.

IV.1.4.2. <u>Geographic market definition</u>

(47) The Notifying Party does not take a position as regards the exact geographic scope of this market, but indicates that the Parties' pricing policies are mostly national.

(48) Previously, the Commission took the view that the geographic scope of the possible market for multiple play services could be national,[54] whereas the geographic scope of the market in the PCA precedents was identified as local, depending on the footprint of the relevant parties, although admitting the possibility of considering competitive and non-competitive areas.[55]

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48 Commission decision in case M.7231 – *Vodafone/Ono*, of 2 July 2014, paragraph 49.

49 PCA decision in case 5/2013 – *Kento*Unitel*Sonaecom/Zon*Optimus*, of 26 August 2013, paragraphs 338-395.

50 Responses to Questionnaire Q1 to competitors of 25.02.2015, questions 9.4, 11 and 12.

51 Responses to Questionnaire Q1 to competitors of 25.02.2015, question 13.

52 Responses to Questionnaire Q1 to competitors of 25.02.2015, question 16.

53 Responses to Questionnaire Q1 to competitors of 25.02.2015, question 16.1.

54 Commission decision in case M.7231 – *Vodafone/Ono*, of 2 July 2014, paragraph 50.

55 PCA decision in case 5/2013 – *Kento*Unitel*Sonaecom/Zon*Optimus*, of 26 August 2013, paragraphs 403 and 404.

(49) The results of the market investigation were inconclusive as regards the exact geographic scope of the market. Some respondents indicated that the market could be national, while others considered it narrower in scope.[56]

(50) In the present case, the Commission takes the view that the scope of this market could be national or narrower, in which case it would be limited to the network footprint of Cabovisão[57]. However, the geographic market definition can be left open, as the Transaction raises serious doubts as to its compatibility with the internal market in Portugal on all these alternative geographic market definitions and because the Final Commitments proposed in this case will remove these serious doubts.

IV.1.5. B2B telecommunication services

(51) Telecommunication operators can offer various telecommunication solutions to enterprises and public administration such as mobile and fixed, voice and data, as well as IT services ("B2B telecommunication services").

IV.1.5.1. <u>Product market definition</u>

IV.1.5.1.a. The views of the Notifying Party

(52) The Notifying Party submits that B2B telecommunication services are typically supplied in bundles and therefore considers the relevant market to be that for B2B telecommunications services at a fixed location, encompassing fixed voice, data, internet and other IT equipment and services (such as cloud computing, data center, security services).

(53) However, in line with the Commission's and the PCA's past decisions,[58] the Notifying Party submits that the retail market for leased lines can constitute a separate market.

IV.1.5.1.b. The Commission's assessment

(54) In its decisional practice, the Commission has previously considered the following markets related to various B2B telecommunication services:

- the retail market for business connectivity, which includes fixed telecommunications services purchased by large businesses, enterprises and

56 Responses to Questionnaire Q1 to competitors of 25.02.2015, questions 24 and 24.1.

57 ONI began to sell in […] multiple play offers to small offices, home offices and very small businesses […] and packages to SMEs […]. However, from […] to […], these offers were sold to […] clients in the first category and […] in the second, which represented minimal total sales of EUR […] per month and EUR […] per month on average.

58 Commission decision in case M.5730 – *Telefónica/Hansenet Telekommunikation*, of 29 January 2010, paragraph 12; Commission decision in case M.5532 – *Carphone Warehouse / Tiscali UK*, decision of 29 June 2009, paragraph 15. PCA decision in case 19/2013 – *Altice/Winreason*, of 2 August 2013, paragraph 35(i).

public sector customers in order to provide data connectivity between multiple sites, and could potentially be subdivided into:[59]

– broadband access for large business customers;

– leased lines, which are at the retail level, dedicated capacity which may be required by end-users, such as large enterprises with multiple business sites, to construct networks or link locations; and

– Virtual Private Network ("VPN") services[60].

- a potential non-residential segment in the retail market for fixed voice[61]

- the market for IT services for businesses, which could be subdivided by functionality (e.g. software maintenance and support, outsourcing) and by industry sector.[62]

(55) In its previous decisions, the PCA defined a separate market for services and solutions of business data communication, however excluding the retail provision of leased lines.[63] The PCA also stated in previous decisions that the provision of IT services belongs to a separate product market.[64]

(56) The majority of respondents to the market investigation in this case indicated that B2B telecommunication services differ from services to residential customers, due to differences in customer needs. Business customers, and more specifically large customers and public administrations, usually require more complex, flexible and integrated solutions than residential customers and small enterprises, which are therefore often tailor-made to fit their existing systems. One respondent also specified that some services to large companies and public sector are sold together in packages, providing the example of VPN services *"which are sold together with traditional communications services*".[65]

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59 Commission decision in case M.6584 – *Vodafone/Cable & Wireless*, of 3 July 2012, paragraph 8; Commission decision in case M.5730 – *Telefónica/Hansenet Telekommunikation*, of 29 January 2010, paragraphs 6 and subsequent; Commission decision in case M.4442 – *Carphone Warehouse/AOL UK*, of 7 December 2012.

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

61 See section IV.1.1 on retail supply of fixed voice services.

62 Commission decision in case M.1901 – *Cap Gemini/Ernst & Young*, of 17 May 2000, paragraphs. 8-9; Commission decision in case M.2609 – *HP/Compaq*, of 31 January 2002, paragraph. 26; Commission decision in case M.3398 – *Hewlett Packard/Triaton*, 26 March 2004, paragraphs. 6-15; Commission decision in case M.5301 – *Cap Gemini/BAS*, of 13 October 2008, paragraphs 8-16; Commission decision in case M.6127 – *Atos Origin / Siemens IT Solutions & Services*, of 25 March 2011, paragraphs 14-17; Commission decision in case M.6237 – *Computer Sciences Corporation/iSoft Group*, of 20 June 2011, paragraphs 8-15; Commission decision in case M. 6921 – *IBM Italia/UBIS*, of 19 June 2013, paragraphs 9-11.

63 PCA decision in case 19/2013 – *Altice/Winreason*, of 2 August 2013, paragraph 36.

64 PCA decision in case 19/2013 – *Altice/Winreason*, of 2 August 2013, paragraph 36; PCA decision in case 5/2014 – *Oi/PT*, of 19 March 2014, paragraphs 127-133.

65 Responses to Questionnaire Q1 to competitors of 25.02.2015, questions 20 and 20.1.

(57) In the present case, the Commission takes the view that the question as to whether the markets for business connectivity and the market for IT services should be further segmented can be left open, as the Transaction raises serious doubts as to its compatibility with the internal market in Portugal on all the alternative product market definitions and because the Final Commitments proposed in the case will remove these serious doubts.

IV.1.5.2. Geographic market definition

(58) The Notifying Party submits that the market for B2B telecommunication services is national in scope.

(59) In its decisional practice, the Commission found that the retail market for business connectivity, as well as the market segment of retail leased lines, were national in scope.[66] Regarding IT services, the Commission left open whether the geographic market should be considered as national in scope or wider.[67]

(60) The PCA considered that the market for B2B telecommunication services and the market for retail leased lines were national in scope.[68]

(61) This was confirmed by the replies to the market investigation, as most respondents consider that the market for B2B telecommunication services is national.[69]

(62) In the present case, the Commission takes the view that the geographic market definition can be left open, as the Transaction raises serious doubts as to its compatibility with the internal market in Portugal in relation to B2B telecommunication services irrespective of the exact market definition and because the Final Commitments proposed in this case will remove these serious doubts.

IV.1.6. Mobile telecommunications services

IV.1.6.1. Product market definition

(63) Mobile telecommunications services to end customers include services for national and international voice calls,[70] SMS (including MMS and other messages), mobile internet data services and retail international roaming services.[71]

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66 Commission decisions in case M.6584 – *Vodafone/Cable & Wireless*, of 3 July 2012, paragraph 10 and in case M.5730 – *Telefónica/Hansenet Telekommunikation*, of 29 January 2010, paragraphs 28, 34 and 35; Commission decisions in case M.5532 – *Carphone Warehouse / Tiscali UK*, of 29 June 2009, paragraph 59.

67 Commission decision in case M.1901 – *Cap Gemini/Ernst & Young*, of 17 May 2000, paragraphs. 11-12; Commission decision in case M.2609 – *HP/Compaq*, of 31 January 2002, paragraph 26; Commission decision in case M.3398 – *Hewlett Packard/Triaton*, of 26 March 2004, paragraph 10; Commission decision in case M.5301 – *Cap Gemini/BAS*, of 13 October 2008, paragraphs 17-21; Commission decision in case M.6127 – *Atos Origin / Siemens IT Solutions & Services*, of 25 March 2011, paragraphs 18-21; Commission decision in case M.6237 – *Computer Sciences Corporation/iSoft Group*, of 20 June 2011, paragraph 19; Commission decision in case M. 6921 – *IBM Italia/UBIS*, of 19 June 2013, paragraph 30.

68 PCA decision in case 19/2013 – *Altice/Winreason*, of 2 August 2013, paragraph 36.

69 Responses to Questionnaire Q1 to competitors of 25.02.2015, questions 25 and 25.1.

(64) In *Hutchison 3G Austria/Orange Austria* the Commission considered whether mobile telecommunications services in Austria could be segmented depending on the network technology (2G/GSM, 3G/UMTS and 4G/LTE), on the tariff (pre-paid and post-paid contracts), on the type of customers (private and business), or on the type of service (internet data services, voice and text services), but ultimately concluded that there is a single market for the provision of mobile telecommunications services to end customers.[72]

(65) More recently, in *H3G/Telefónica Ireland*, the Commission also concluded that there is a single market for the provision of mobile telecommunications services to end customers in Ireland and that in this Member State there are no separate markets by type of customers (such as business and residential), by technology (such as 2G, 3G and 4G), by type of service (i.e. voice, mobile broadband and machine to machine) or by type of contracts (such as pre-paid and post-paid).[73] In *Telefónica Deutschland/E-Plus*, the Commission found that there was an overall market for mobile telecommunications services, without further distinctions between private and business customers, between pre-paid and post-paid services, between high-value and low-value customers, or depending on the type of technology or services (voice, SMS, data services).[74]

(66) The market investigation does not provide any element that would substantiate a change in the product market definition. Therefore, the Commission considers that the relevant product market in this case is that for mobile telecommunications services, without any further sub-segmentations.

IV.1.6.2. Geographic market definition

(67) As regards the geographic scope of the market, the Commission has consistently found that the markets for retail mobile services provided to end consumers are national in scope.[75]

(68) In the present case, the Commission considers that the precise market definition of the retail market for mobile telecommunication services can left open, as the Transaction does not raise competition concerns under any plausible market definition.

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70 The term international voice calls is used for calls that are made by a domestic user when in its home country, but that terminate at destinations which are abroad such as if the receiving number is a foreign one.

71 Commission decision in case M.3245 – *Vodafone/Singlepoint,* of 16 September 2003, paragraph 12; Commission decision in case M.3530 – *Telia Sonera/Orange,* of 24 September 2004, paragraph 8; Commission decision in case M.3916 – *T-Mobile Austria/Tele.ring,* 26 April 2006, paragraph 10 .

72 Commission decision in case M.6497 – *Hutchison 3G Austria/Orange Austria,* of 12 December 2012, paragraph 58.

73 Commission decision in case M.6992 – *H3G/Telefónica Ireland,* of 28 May 2015, paragraph 141 onwards.

74 Commission decision in case M.7018 - *Telefónica Deutschland/E-Plus* of 2 July 2014, paragraphs 32-55.

75 Commission decision in case M.6990 – *Vodafone/Kabel Deutschland,* of 20 September 2013, paragraphs 218-219.

IV.2. Wholesale markets

IV.2.1. Wholesale market for leased lines

IV.2.1.1. Product market definition

(69) Wholesale 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.[76] Operators seeking to reinforce their core networks or to complete their offer of point-to-point dedicated connection for final customers can require provision of wholesale leased lines from other operators.

(70) For regulatory purposes, the Commission considered a separate market for "*wholesale terminating segments of leased lines, irrespective of the technology used to provide leased or dedicated capacity*" in its Recommendation on relevant markets of 2007,[77] as well as both "*wholesale terminating segments of leased lines*" and "*wholesale trunk segments of leased lines*" in its Recommendation on relevant markets of 2003.[78] Trunk segments of leased lines are used to join together two points in a communication core network, but to reach the premises of the end customers it is necessary to acquire another infrastructure segment, the terminating segment.

(71) The Notifying Party submits that the relevant market is the wholesale market for leased lines, without further segmentation. In particular, the Notifying Party submits that it is not necessary to distinguish trunk segments and terminating segments because ONI provides almost exclusively wholesale end-to-end circuits for leased lines, i.e. trunk and terminating segments altogether, since […].

(72) In *Vodafone/Cable & Wireless* and *Vodafone/Kabel Deutschland*, the Commission left open whether the market for wholesale leased lines should be divided into trunk and terminating segments.[79] In its precedent decisions the PCA concluded that the market for wholesale leased lines should be segmented into trunk and terminating segments.[80]

(73) Respondents to the market investigation in the present case confirmed that the market for wholesale leased lines should be considered as a separate market.

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76 Commission decision in case M.6584 – *Vodafone/Cable & Wireless*, of 3 July 2012, paragraphs 28 and subsequent.

77 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 ("Commission Recommendation on relevant markets of 2007").

78 Commission Recommendation of 11 February 2003 on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communication networks and services (2003/311/EC), OJ L 114, 08.05.2003, p.45 ("Commission Recommendation on relevant markets of 2003").

79 Commission decision in case M.6990 – *Vodafone/Kabel Deutschland*, of 20 September 2013, paragraph 150; Commission decision in case M.6584 – *Vodafone/Cable & Wireless*, of 3 July 2012, paragraph 30.

80 PCA decision in case 19/2013 – *Altice/Winreason*, of 2 August 2013, paragraph 36.

Several respondents indicated that a division into trunk and terminating segments should be considered due to a significantly different degree of competition in these two types of segments. One competitor explained that "*The free competition market prices for trunk and terminating segments are very different (price per MBit/s) with much lower prices and larger competition in trunk services.*" Another indicated that "*The trunk segment already shows some degree of competition, with several operators active in the offer of leased lines, notably in certain specific routes* […] *Conversely, in the terminating (final) segments, operators are still highly dependent on the regulated leased lines offer made available by PT.*"[81]

(74) In the present case, the Commission takes the view that the question as to whether the wholesale market for leased lines should be further segmented into trunk and terminating segments of leased lines can be left open, as the Transaction raises serious doubts in relation to the wholesale market for leased lines as to its compatibility with the internal market in Portugal irrespective of the exact market definition and because the Final Commitments proposed in this case will remove these serious doubts. However, for the purposes of this decision, the competitive assessment will focus on the overall wholesale market for leased lines given ONI's limited business presence in the trunk segment.

IV.2.1.2. Geographic market definition

(75) The Notifying Party submits that the wholesale market for leased lines is national. It submits in particular that it is not necessary to split trunk segments between competitive and non-competitive routes as considered by the national communications authority, Autoridade Nacional de Comunicações ("ANACOM").[82]

(76) The Commission previously held that the market is national in scope,[83] whereas the PCA defined the relevant geographic scope based on the segmentation between competitive and non-competitive routes.[84]

(77) In the present case, the Commission takes the view that the scope of this market could be national or narrower. However, the exact geographic market definition can be left open, as the Transaction raises serious doubts as to its compatibility with the internal market in relation to the wholesale market for leased lines in Portugal irrespective of the exact market definition and because the Final Commitments proposed in this case will remove these serious doubts.

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81 Responses to Questionnaire Q1 to competitors of 25.02.2015, questions 22 and 22.1.

82 In ANACOM, "*Mercado retalhista e mercados grossistas dos segmentos terminais e de trânsito de circuitos alugados"*, October 2010, competitive routes were defined as trunk segments connecting two of PT Portugal's local exchanges in which two or more alternative operators using lines that are not leased from PT Portugal are collocated, it being understood that PT Portugal has 110 local exchanges in Portugal falling into this category.

83 Commission decision in case M.6584 – *Vodafone/Cable&Wireless*, of 3 July 2012, paragraph 31; Commission decision in case M.5730 – *Telefónica/Hansenet Telekommunikation*, of 29 January 2010, paragraph 20.

84 PCA decision in case 19/2013 – *Altice/Winreason*, of 2 August 2013, paragraphs 32, 33 and 36.

IV.2.2. Wholesale markets for fixed call services

IV.2.2.1. Wholesale market for call origination services at a fixed location

(78) The provision of fixed call origination services consists of services for call conveyance from a fixed location to a point of interconnection where the call is transferred into the network of another undertaking for transit and/or termination.[85]

(79) According to the Commission Recommendation on relevant markets of 2014,[86] call origination services correspond, at the retail level, to the ability to make outgoing phone calls. At wholesale level, call origination is an input which is purchased by alternative operators, who do not have a direct access link to the end customer, in order to provide fixed voice services to end customers. The wholesale market for call origination on the public telephone network provided at a fixed location comprises public switched telephone networks (PSTN) and managed Voice-over-IP (VoIP) over fixed broadband lines.[87]

(80) The Notifying Party submits that the relevant market is the market for call origination services provided at a fixed location and should be regarded as national in scope.

(81) In *Deutsche Telekom/OTE*, the Commission defined the relevant product market as the wholesale market for call origination on the public telephone network at a fixed location and considered it as national.[88] In its decision *Altice/Winreason*, the PCA analysed the wholesale market for call origination services provided at a fixed location and found that it should be regarded as national.[89]

(82) In the present case, the Commission therefore concludes that the relevant market should be defined as the wholesale market for call origination services at a fixed location and should be considered as national in scope.

IV.2.2.2. Wholesale market for call transit services at a fixed location

(83) The provision of transit services consists in carrying voice calls from the call origination service providers to the relevant call termination service provider where there is no direct connection between their respective originating and terminating networks.[90]

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85 Commission decision in case M.7109 – *Deutsche Telekom / GTS*, of 14 April 2014, paragraph 104.

86 Commission Recommendation of 9 October 2014 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 (2014/710/EU), OJ L 295, 11.10.2014, p. 79 (""Commission Recommendation on relevant markets of 2014"").

87 Explanatory note (pages 24-26) accompanying the Commission Recommendation on relevant markets of 2014.

88 Commission decision in case – *Deutsche Telekom/OTE*, of 2 October 2008, paragraphs 14-15, 86 and subsequent.

89 PCA decision in case 19/2013 – *Altice/Winreason*, of 2 August 2013, paragraph 36.

90 Commission decision in case M.6584 – *Vodafone/Cable & Wireless*, of 3 July 2012, paragraphs 25 and subsequent.

(84) The Notifying Party submits that the relevant market consists of the wholesale transit services in the fixed public telephone network and is national in scope.

(85) In past cases, in line with the Commission Recommendation on relevant markets of 2007, the Commission analysed the wholesale market for domestic transit services in fixed networks and considered it as national.[91]

(86) In its decisions in *Sonaecom/PT*[92] and *Altice/Winreason*[93], the PCA analysed the wholesale market for call transit services provided at a fixed location and found that it should be regarded as national.

(87) In the present case, the Commission therefore concludes that the relevant market should be defined as the wholesale market for call transit services at a fixed location and should be considered as national in scope.

IV.2.2.3. Wholesale market for call termination services at a fixed location

(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.[94]

(89) The Notifying Party submits that the relevant markets for fixed call termination services should be each operator's fixed network at national level.

(90) In its decisional practice, the Commission considered the market for the wholesale provision of fixed call termination services. It found that each individual network constitutes 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. Each fixed termination access network constitutes a relevant market and the network operator has by definition a 100% market share.[95]

(91) In the present case, the Commission therefore concludes that for the provision of call termination services at a fixed location, each individual fixed network constitutes a separate product market and should be considered as national in scope.

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91 Commission decision in case M.6584 – *Vodafone / Cable & Wireless*, of 3 July 2012, paragraphs 25-27; Commission decision in case M.5730 – *Telefonica/Hansenet Telekommunikation*, of 29 January 2010, paragraphs 19, 40 and 41.

92 PCA decision in case 8/2006 – *Sonaecom/PT*, of 22 December 2006, paragraphs 122 and 167-169.

93 PCA decision in case 19/2013 – *Altice/Winreason*, of 2 August 2013, paragraph 36.

94 Commission decision in case M.7109 – *Deutsche Telekom/GTS*, of 14 Avril 2014, paragraph 88.

95 Commission decision in case M.6990 – *Vodafone/Kabel Deutschland*, of 20 September 2013, paragraphs 111-121, and Commission decision in case M.6584 – *Vodafone/Cable & Wireless*, of 3 July 2012, paragraphs 22-24; Commission decision in case M.5650 – *T-Mobile / Orange UK*, of 01 March 2010, paragraphs 36-38; Commission decision in case M.3920 – *France Telecom/Amena*, of 24 October 2005, paragraphs 29-30.

IV.2.3. Wholesale markets for mobile call services

IV.2.3.1. Wholesale market for call termination services on individual mobile networks

(92) Similarly to fixed call termination services, call termination on individual mobile networks consists of the connection of the called party with the calling party by the operator on which mobile network the call terminates. The Commission therefore has drawn similar conclusions as for fixed call termination services in its decisional practice.[96]

(93) The Notifying Party submits that the relevant markets for mobile call termination services should be each operator's mobile network at national level.

(94) In the present case, the Commission therefore concludes that for the provision of mobile call termination services, each individual mobile network constitutes a separate product market and should be considered as national in scope.

IV.2.3.2. Wholesale market for international roaming services

(95) For a provider of retail mobile services to be able to provide its end customers with telecommunication services outside their home countries, it enters into wholesale roaming agreements with providers of wholesale international roaming on other national markets.[97]

(96) Wholesale international roaming services are regulated through European Union regulation.[98] Mobile network operators must meet all reasonable requests for wholesale roaming access under a reference offer and wholesale charges for the making of regulated roaming services (voice, message and data roaming) are capped.

(97) The Notifying Party submits that the market for roaming services is a separate market which is national in scope.

(98) In the present case, the Commission concludes, in line with previous decisions,[99] that the market for international roaming comprising both terminating calls and originating calls constitutes a separate product market, which is national in scope.

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96 Commission decision in case M.6990 – *Vodafone / Kabel Deutschland*, of 20 September 2013, paragraphs 232-242, and Commission decision in case M.6584 – *Vodafone/Cable & Wireless*, of 3 July 2012, paragraphs 47-48; Commission decision in case M.5650 – *T-Mobile / Orange UK*, of 01 March 2010, paragraphs 36-38; Commission decision in case M.3920 – *France Telecom / Amena*, of 24 October 2005, paragraphs 10-11.

97 Commission decision in case M.7231 – *Vodafone / ONO*, of 2 July 2014, paragraph 77.

98 Regulation (EU) 531/2012 of the European Parliament and the Council of 13 June 2012 on roaming on public communications network within the Union.

99 Commission decision in case M.7231 – *Vodafone / ONO*, of 2 July 2014, paragraphs 77-84; Commission decision in case M.6992 – *H3G/Telefónica Ireland*, of 28 May 2015, paragraphs 157-158; Commission decision in case M.6990 – *Vodafone/Kabel Deutschland*, of 20 September 2013, paragraphs 244-252; Commission decision in case M.5650 – *T-Mobile / Orange UK*, of 01 March 2010, paragraphs 32-35.

IV.2.4. *Wholesale supply of TV channels*

IV.2.4.1. Product market definition

(99) TV broadcasters package TV content into TV channels. TV channels are broadcast to end users either on a FTA basis or on a pay TV basis. FTA channels are TV channels that are available to viewers free of charge. Pay TV channels are channels for which the viewer must pay a subscription fee in order to watch the content.

(100) TV broadcasters license their channels downstream to retail providers of TV services, which can either limit themselves to "carrying" the TV channels and making them available to end users, or also act as channel aggregators, which "package" TV channels and offer them to end users. Some TV broadcasters are vertically integrated, in which case they broadcast their TV channels themselves on the retail market for the provision of TV services.

(101) In previous decisions, the Commission identified a wholesale market for the supply of TV channels, where TV broadcasters (suppliers) and TV distributors (customers) negotiate the terms and conditions for the distribution of TV channels to end users.[100] Within that market, the Commission further identified two separate product markets for FTA TV channels and for pay TV channels.[101] In previous decisions, the Commission noted that FTA channels differ from pay TV ones in several aspects, including financing models, pricing and window patterns.[102]

(102) Within the market for the wholesale supply of pay TV channels, in several cases the Commission has also previously indicated that a distinction can be drawn between basic and premium pay TV channels, but ultimately left open whether those two categories of pay TV channels constitute separate product markets.[103] More recently, in *Liberty Global/Ziggo* the Commission found that within wholesale supply of pay TV, basic pay TV channels and premium pay TV channels belong to separate product markets.[104] In previous decisions, the Commission also analysed, but ultimately left open, the question whether pay TV channels should be

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[100] Commission decision in case M.5932 – *News Corp/BskyB,* of 21 December 2010, paragraphs s 76 and 85; Commission decision in case M.6369 – *HBO/Ziggo/HBO Nederland,* of 21 December 2011, paragraph 22.

[101] Commission decision in case M.4504 – *SFR/Télé 2 France,* of 18 July 2007, paragraphs 37–40; Commission decision in case M.5932 – *News Corp/BskyB*, of 21 December 2010, paragraphs 80, 83 and 85; Commission decision in case M.6369 – *HBO/Ziggo/HBO Nederland*, of 21 December 2011, paragraph 24; Commission decision in case M.6880 – *Liberty Global/Virgin Media,* of 15 April 2013, paragraph 37.

[102] Commission decision in case M.5121 – *News Corp/Premiere*, of 25 June 2008, paragraphs 17–19; Commission decision in case M.5932 – *News Corp/BskyB,* of 21 December 2010, paragraph 85; Commission decision in case M.6866 – *Time Warner/CME,* of 14 June 2013, paragraph 44,;Commission decision in case M.7000 – *Liberty Global/Ziggo,* of 10 October 2014, paragraphs 30 and 78.

[103] Commission decision in case M.2876 – *Newscorp/Telepiù, of* 2 April 2003, paragraph 76; Commission decision in case M.5932 – *News Corp/BskyB,* of 21 December 2010, paragraph 85; Commission in case M.6369 – *HBO/Ziggo/HBO Nederland,* decision of 21 December 2011, paragraphs 24 and 27.

[104] Commission decision in case M.7000 – *Liberty Global/Ziggo,* of 10 October 2014, paragraphs 82–83.

further segmented on the basis of the genre or the thematic content (such as channels for films, sports, documentaries, youth, news, etc.).[105]

(103) In the present case, the precise scope of the product market for the wholesale supply of TV channels can be left open, as the Transaction does not raise competition concerns under any plausible market definition.

IV.2.4.2. Geographic market definition

(104) In previous decisions, the Commission considered the market for the wholesale supply of TV channels to be either national in scope[106] or potentially to comprise a broader linguistically homogeneous area encompassing more Member States.[107]

(105) In the present case, the precise scope of the product and geographic market for the wholesale supply of TV channels can be left open, as the Transaction does not raise competition concerns under any plausible market definition.

V. COMPETITIVE ASSESSMENT

(106) The Transaction gives rise to several horizontal overlaps between the Parties' activities in a number of markets in Portugal and to vertical relationships in Portugal and in France. The following paragraphs identify those markets which are horizontally or vertically affected by the Transaction for the purpose of the competitive assessment, as defined in Section 6.3 of the Form CO.

(107) As regards horizontal overlaps, the Transaction gives rise to the following horizontally affected markets in Portugal: (i) the retail supply of fixed voice services; (ii) the retail supply of internet access services; (iii) the retail supply of pay TV services; (iv) the possible market for the retail supply of multiple play services, in particular in double and triple play; (v) the provision of B2B telecommunication services and its possible sub-markets; (vi) the wholesale supply of leased lines; (vii) the wholesale market for call origination services at a fixed location; and (viii) the wholesale market for call transit services at a fixed location.

(108) As regards vertical relationships, the Transaction gives rise to a number of vertically affected markets related to:

- Upstream, the Portuguese wholesale market for the supply of TV channels and downstream the Portuguese retail market for pay TV services;

105 Commission decision in case M.2876 – *Newscorp/Telepiù* of 2 April 2003, paragraph 76; Commission decision in case M.4504 – *SFR/Télé 2 France* of 18 July 2007, paragraphs 41-42; Commission decision in case M.5121– *News Corp/Premiere*, of 26 August 2008, paragraph 35; Commission decision in case M.5932 – *News Corp/BSkyB*, of 21 December 2010, paragraph 81; Commission decision in case M.6880 – *Liberty Global/Virgin Media*, of 15 April 2013, paragraphs 35-37.Commission decision in case M.6866 – *Time Warner/CME*, of 14 June 2013, paragraph 51.

106 Commission decision in case M.6369 – *HBO/Ziggo/HBO Nederland*, of 21 December 2011, paragraph 39; Commission decision in case M.6880 – *Liberty Global/Virgin* Media, of 15 April 2013, paragraph 41; Commission decision in case M.7000 – *Liberty Global/Ziggo*, of 10 October 2014, paragraph 98.

107 Commission decision in case M.5932 – *News Corp/BskyB*, of 21 December 2010, paragraphs 86–88; Commission decisions in case M.6880 – *Liberty Global/Virgin Media*, of 15 April 2013, paragraph 41.

- Upstream, each of the Portuguese wholesale markets for fixed voice services (call transit, call origination, call termination) with downstream each of the Portuguese and French retail markets for fixed voice services;

- Upstream, the Portuguese wholesale market for call termination services at a fixed location and downstream each of the Portuguese and French markets for the retail supply of mobile telecommunications services;

- Upstream, the Portuguese wholesale market for call termination services on individual mobile networks and downstream the Portuguese market for the retail supply of fixed voice services, the French market for retail supply of fixed voice services and the French market for the retail supply of mobile telecommunications services;

- Upstream, each of the French wholesale markets for call termination services at a fixed location and for call termination services on individual mobile networks with downstream each of the Portuguese markets for retail supply of fixed voice services and for retail supply of mobile telecommunications services;

- Upstream, the Portuguese wholesale market for domestic call transit services at a fixed location and downstream the Portuguese and French markets for the retail supply of mobile telecommunications services;

- Upstream, the Portuguese market for international roaming services with downstream the French market for retail supply of mobile telecommunications services;

- Upstream, the French market for international roaming services with downstream the Portuguese market for retail supply of mobile telecommunications services; and

- Upstream, the Portuguese wholesale market for leased lines with downstream each of the Portuguese markets for the retail supply of fixed voice services, for the retail supply of fixed internet access services, for the retail supply of pay TV and for the retail supply of leased lines.

V.1. Horizontal assessment

(109) This section discusses those markets that are horizontally affected by the Transaction.

V.1.1. Retail supply of fixed voice services

(110) In the market for the retail supply of fixed voice services in Portugal, the Parties offer fixed voice services as a standalone product.

(111) The Parties provided market shares for such market in the segments of fixed voice services to residential and to business customers, based on their own estimates and available ANACOM data. With regard to retail fixed voice services to residential customers (on which Cabovisão and PT Portugal are active), the Parties provided information for their market shares for 2013 and 2014, both in relation to total number of minutes and to total number of subscriptions in Portugal. These shares are indicated below in Table 1 and Table 2 respectively.

Table 1 – Market shares in Portugal for retail fixed voice services to residential customers in terms of number of minutes for 2013 and the first three quarters of 2014

Operators	2013	2014 (9 months)
PT Portugal	[50-60]%	[40-50]%
Cabovisão	[5-10]%	[5-10]%
Parties combined	**[50-60]%**	**[50-60]%**
NOS	[30-40]%	[30-40]%
Vodafone	[5-10]%	[5-10]%
Others	[0-5]%	[0-5]%
Total	100%	100%

Source: Form CO, Table 2

Table 2 – Market shares in Portugal for retail fixed voice services to residential customers in terms of number of subscriptions for 2013 and 2014

Operators	2013	2014
PT Portugal	[50-60]%	[50-60]%
Cabovisão	[5-10]%	[5-10]%
Parties combined	**[50-60]%**	**[50-60]%**
NOS	[30-40]%	[30-40]%
Vodafone	[5-10]%	[5-10]%
Others	[0-5]%	[0-5]%
Total	100%	100%

Source: Form CO, Table 3

(112) The Parties' market shares remain high also on the possible segment of retail fixed voices services to business customers (on which ONI and PT Portugal are active), which is illustrated in Table 3 below in relation to total number of minutes.

Table 3 - Market shares in Portugal for retail fixed voice services to business customers in terms of number of minutes for 2013 and 2014

Operators	2013	2014-e
PT Portugal	[60-70]%	[50-60]%
ONI	[0-5]%	[0-5]%
Parties combined	**[60-70]%**	**[60-70]%**

Operators	2013	2014-e
NOS	[10-20]-[20-30]%	[10-20]-[20-30]%
Vodafone	[5-10]-[10-20]%	[5-10]-[10-20]%
Others	[0-5]%	[0-5]%
Total	100%	100%

Source: Parties' reply to Commission's Request For Information ("RFI") of 20 March 2015

(113) The data provided by the Parties show that post-Transaction the merged entity would have a very high market share, above [50-60]% both in terms of total number of minutes and of number of subscribers in Portugal in the market for retail fixed voice services.

(114) Post-Transaction, the Parties would have a combined market share of [50-60]% (number of minutes) or [50-60]% (number of subscriptions) in the segment of retail fixed voice services to residential customers, which would strengthen PT Portugal's current market leader position in this market, with an increment of [5-10]% of the market share pre-Transaction.

(115) The Parties' closest competitor would be NOS, further followed by Vodafone, with markets shares of [30-40]% and [5-10]% respectively in terms of number of minutes, and of [30-40]% and [5-10]% respectively in terms of number of subscriptions. The remaining market players would collectively have a market share of [0-5]%.

(116) The situation is similar in the segment of retail fixed voice services to business customers, where post-Transaction the Parties would have a combined market share of [60-70]%, with the closest competitors being NOS and, to a lesser extent, Vodafone.

(117) According to the Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings (the "Horizontal Merger Guidelines"), market shares and concentration levels provide useful first indications of the market structure and of the competitive importance of the Parties and their competitors.[108] The larger the market share, the more likely a firm is to possess market power. And the larger the addition of market share, the more likely it is that a merger will lead to significant increase in market power.[109] The Horizontal Merger Guidelines indicate that very large market shares - 50 % or more - may in themselves be evidence of the existence of a dominant market position.[110]

(118) In the present case, the Parties' market share post-Transaction would be almost [60-70]% in Portugal. Only NOS would have a significant presence with [30-40]%

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108 Horizontal Merger Guidelines, OJ C 31, 5.2.2004, p. 5, paragraphs 14 and 15; Case T-79/12, *Cisco Systems v. Commission*, T:2013:635, paragraph 47.

109 Horizontal Merger Guidelines, paragraph 27.

110 Horizontal Merger Guidelines, paragraph 17. Case T-221/95, *Endemol v Commission*, T:1999:85, paragraph 134, and Case T-102/96, *Gencor v Commission*, T:1999:65, paragraph 205.

market share, while Vodafone ([5-10]%) and other players (altogether [0-5]%) would be much smaller. The pre-merger market shares could in themselves be taken as evidence of the existence of a dominant market position, which is likely to be strengthened by the Transaction and, as a result, create competition concerns.

(119) Additionally, the market investigation indicated that the Parties closely compete against each other.[111]

(120) The closeness of competition between the Parties is also evidenced by the Parties' market shares within Cabovisão's footprint.[112] According to the Parties' own estimates, in the areas covered by the Cabovisão network, PT Portugal has a share of [40-50]%, which combined with Cabovisão's own share of [20-30]% would give the merged entity post-Transaction a market share of [60-70]%. Within the same footprint, NOS is the largest competitor, with a market share of [20-30]%, whereas Vodafone's presence is limited to a share of [0-5]%.

(121) According to the Horizontal Merger Guidelines, the closeness of competition between merging firms is a factor that may indicate that post transaction the merged entity will have increased market power.[113] Therefore, it is likely that the removal post-Transaction of a significant competitor will strengthen the merged entity's market power in Portugal.

(122) Respondents to the market investigation also indicated that entry into the market for fixed voice services is difficult in Portugal, because of the significant costs required to enter, the regulatory barriers and the difficulty of acquiring a customer base in a mature market.[114] Respondents indicated that there were no new entries in the market for fixed voice services in the last three years.[115] This fact aggravates the anticompetitive effects of the Transaction, as the difficulty and unlikelihood of market entry in Portugal makes it more likely that the Transaction would pose significant anti-competitive risks.[116]

(123) Finally, the Commission notes that a significant portion of customers of fixed voice services are residential customers, which are individuals or households, or SMEs. These customers are unlikely to have any countervailing buyer power, in terms of size, or commercial significance to the seller, which would alleviate the anticompetitive effects of the Transaction.[117]

(124) Therefore, in light of the Parties' high market shares, the fact that the Parties closely compete with each other at national and local level, the existence of high barriers to enter in Portugal and the fact that customers do not have countervailing

111 Responses to Questionnaire Q1 to Competitors of 25.02.2015, question 28.

112 Altice's response to Commission RFI of 19 March 2015.

113 Horizontal Merger Guidelines, paragraph 28.

114 Responses to Questionnaire Q1 to Competitors of 25.02.2015, question 36.2.

115 Responses to Questionnaire Q1 to Competitors of 25.02.2015, question 37.2.

116 According to the Horizontal Merger Guidelines, paragraph 68, a merger is unlikely to pose any significant anti-competitive risk if entering a market is sufficiently easy. For entry to be considered a sufficient competitive constraint on the Parties, it must be likely, timely and sufficient to deter or defeat any potential anti-competitive effects of the merger.

117 Horizontal Merger Guidelines, paragraph 64.

buyer power, the Commission concludes that the Transaction raises serious doubts as to its compatibility with the internal market in relation to the retail market for fixed voice services in Portugal.

V.1.2. Retail supply of fixed internet access services

(125) In the market for the retail supply of fixed internet access in Portugal, both of PT Portugal, Cabovisão and ONI offer fixed internet access as a standalone product. PT Portugal offers fixed internet access services through its DSL and FTTH network, whereas Cabovisão relies on its own cable network to reach its customers. PT Portugal also entered into an agreement with Vodafone into 2014 enabling it to reach [details of the agreement with Vodafone].

(126) The Parties provided data for the market of retail supply of fixed internet access services in terms of number of accesses, on the basis of their own estimates and available ANACOM data. These market shares are illustrated below in Table 4 for the third quarters of 2013 and of 2014.

Table 4 – Market shares in Portugal for retail fixed internet access services in terms of number of accesses for the third quarter of 2013 and 2014

Operators	2013 (Q3)	2014 (Q3)
PT Portugal	[50-60]%	[40-50]%
Cabovisão	[5-10]%	[5-10]%
ONI	[0-5]%	[0-5]%
Parties combined	**[50-60]%**	**[50-60]%**
NOS	[30-40]%	[30-40]%
Vodafone	[5-10]%	[5-10]%
Others	[0-5]%	[0-5]%
Total	100%	100%

Source: Form CO, Table 4 and Parties' reply to Commission RFI of 8 April 2015

(127) As is illustrated by Table 4 above, in the market for fixed internet access services measured in terms of number of accesses, PT Portugal had a market share of approximately [50-60]% in 2014 in Portugal, whereas Cabovisão's market share amounts to [5-10]% and ONI's to [0-5]%. The Parties' main competitors on such market are first NOS (approximately [30-40]%), followed by Vodafone (approximately [10-20]%).

(128) The Parties also provided their sales of internet access services. They estimate that the total value of the market was EUR […] in 2014 (first three quarters). In terms of value of sales, PT Portugal's market share would thus be approximately [40-50]% at the national level, whereas Cabovisão would have a market share of approximately [5-10]% and ONI of [0-5]%. Vodafone and NOS would have [5-10]% and [30-40]% respectively.

(129) The Parties' market shares remain high also on each of the possible sub-segments of retail fixed internet access services for residential customers (on which Cabovisão is active) and of retail fixed internet access services to business customers (on which ONI is active), which are illustrated in Table 5 and Table 6 below in relation to total number of subscriptions.

Table 5 - Market shares in Portugal for retail fixed internet access services to residential customers in terms of number of subscriptions for 2013 and 2014

Operators	2013	2014-e
PT Portugal	[40-50]%	[40-50]%
Cabovisão	[5-10]%	[5-10]%
Parties combined	**[50-60]%**	**[50-60]%**
NOS	[30-40]%	[30-40]%
Vodafone	[5-10]%	[5-10]%
Others	[0-5]%	[0-5]%
Total	100%	100%

Source: Parties' reply to Commission RFI of 8 April 2015

Table 6 - Market shares in Portugal for retail fixed internet access services to business customers in terms of number of subscriptions for 2013 and 2014

Operators	2013	2014-e
PT Portugal	[60-70]%	[60-70]%
ONI	[0-5]%	[0-5]%
Parties combined	**[60-70]%**	**[60-70]%**
NOS	[20-30]%	[20-30]%
Vodafone	[10-20]%	[10-20]%
Others	[0-5]%	[0-5]%
Total	100%	100%

Source: Parties' reply to Commission RFI of 20 March 2015

(130) Therefore, post-Transaction the merged entity's market share would be above 50% in Portugal in the overall market for retail internet access services and in both sub-segments for internet access services to residential and to business customers, which may in itself indicate a dominant market position[118] and give rise to

118 Horizontal Merger Guidelines, paragraph 17.

competition concerns, with an increment of [5-10]% of the market share pre-Transaction.

(131) As for fixed voice services, respondents to the market investigation among competitors indicated that the Parties closely compete.[119]

(132) The closeness of competition between the Parties is further indicated by the fact that within Cabovisão's footprint, PT Portugal is the strongest competitor to Cabovisão, with a market share of [40-50]% against Cabovisão's share of [30-40]%. The remaining competitors within the Cabovisão footprint are NOS, with a market share of [20-30]%, and Vodafone, with a limited share of [0-5]%.[120]

(133) Respondents also indicated that market entry in the retail provision of fixed internet services is difficult and that there have not been new providers in the Portuguese market in the last three years.[121]

(134) Finally, the Commission notes that a significant portion of customers of fixed internet access services are residential customers, that is individuals or households, or SMEs. These customers are unlikely to have any countervailing buyer power, in terms of size, commercial significance to the seller or ability to switch to alternative suppliers, which would alleviate the anticompetitive effects of the Transaction.[122]

(135) In light of the Parties' high combined market shares, of the fact that the Parties closely compete in such market, that barriers to entry are high and that customers are unlikely to exercise countervailing buyer power, the Commission concludes that Transaction raises serious doubts as to its compatibility with the internal market in relation to the retail market for fixed internet access services in Portugal.

V.1.3. Retail supply of pay TV services

(136) In the market for the retail supply of pay TV services, PT Portugal and Cabovisão are active and provide offerings consisting of packages of FTA and pay TV channels, along with non-linear services such as catch-up TV, VOD and PPV.

(137) According to ANACOM data referred to by the Notifying Party, the Portuguese market for the retail supply of pay TV services consisted of approximately 3.3 million subscribers in 2014.[123] The Notifying Party provided market shares, on the basis of available ANACOM data and internal estimates, for pay TV services calculated in terms of number of subscriptions, which are illustrated below in Table **7** for 2013 and the third quarter of 2014.[124]

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119 Responses to Questionnaire Q1 to Competitors of 25.02.2015, question 27.

120 Altice's Response to Commission RFI of 19 March 2015.

121 Responses to Questionnaire Q1 to Competitors of 25.02.2015, questions 36.1 and 37.1.

122 Horizontal Merger Guidelines, paragraph 64.

123 ANACOM Subscription television – statistical information, 3rd quarter 2014, page 4, available at http://www.anacom.pt/streaming/STvS_3Q2014_v15dec2014.pdf?contentId=1341356&field=ATTACHED_FILE.

124 In the Form CO, paragraph 240, the Notifying Party noted that the market share data also included pay TV services to non-residential customers provided as part of B2B services. However, the

Table 7 – Market shares in Portugal for pay TV services in terms of number of subscriptions for 2013 and Q3 2014

Operators	2013	2014 (Q3)
PT Portugal	[40-50]%	[40-50]%
Cabovisão	[5-10]%	[5-10]%
Parties combined	**[40-50]%**	**[40-50]%**
NOS	[40-50]%	[40-50]%
Vodafone	[0-5]%	[5-10]%
Others	[0-5]%	[0-5]%
Total	100%	100%

Source: Form CO, Table 8

(138) In light of the above, post-Transaction the Parties would have a combined market share of [40-50]% in terms of number of subscriptions. This would lead to an increment of the Parties' shares by [5-10]%.

(139) Additionally, on the basis of the results of the market investigation, PT Portugal and Cabovisão closely compete in the provision of pay TV service in Portugal.[125] This is further confirmed by information provided by the Parties concerning market shares for pay TV services on the Cabovisão footprint, which show that on this footprint Cabovisão and PT Portugal have almost the same share ([30-40]% and [30-40]% respectively), with NOS having a share of [30-40]% and Vodafone having a residual share of [0-5]%.[126]

(140) The negative effects of the Transaction are aggravated by the fact that, according to respondents to the market investigation, market entry in the provision of retail pay TV services is difficult and has not occurred in the last years in Portugal.[127]

(141) Finally, as for fixed voice and internet access services, the Commission notes that the customers of pay TV services are mainly residential customers, which are individuals or households. These customers are unlikely to have any countervailing buyer power, in terms of size, commercial significance to the seller or ability to

Notifying Party confirmed that these market shares constitute a good proxy for retail pay TV services for residential customers only, given that sales for non-residential customers were consolidated for each competitor and included in the total market size provided and that sales of pay TV services to business customers can be regarded as marginal compared to residential sales, i.e., less than [0-5]% of all sales of pay TV service.

125 Responses to Questionnaire Q1 to Competitors of 25.02.2015, question 29.

126 Altice's Response to Commission RFI of 19 March 2015.

127 Responses to Questionnaire Q1 to Competitors of 25.02.2015, question 36.3.

switch to alternative suppliers, which would alleviate the anticompetitive effects of the Transaction.[128]

(142) In light of the Parties' high combined market shares, of the fact that the Parties closely compete in such market, that barriers to entry are high and that customers are unlikely to exercise countervailing buyer power, the Commission concludes that the Transaction raises serious doubts as to its compatibility with the internal market in relation to the retail market for pay TV services in Portugal.

V.1.4. Multiple play offers

(143) In the possible market for multiple play packages, the Parties' activities overlap in the provision of double and triple play packages.

(144) Both PT Portugal and Cabovisão provide double play packages consisting of: (i) fixed voice services + fixed internet access services; (ii) fixed voice services + pay TV services; and (iii) fixed internet access services + pay TV services. Additionally, the Parties also provide triple play packages consisting of a bundle of fixed voice services, fixed internet access services and pay TV services. PT Portugal also provides quadruple and quintuple-play packages, which also include mobile voice and/or internet access. However, given that neither of Cabovisão or ONI have a mobile offering, none of them provide quadruple or quintuple play packages, thus the possible markets for quadruple and quintuple packages are not horizontally affected by the Transaction.

(145) The Parties provided market shares for the possible market of multiple play offers on the basis of their own internal estimates and public data from ANACOM. With reference to market shares in terms of number of subscriptions submitted by the Notifying Party, post-Transaction the merged would have shares above 50% in the possible market for multiple play packages overall, in the possible market for triple play packages and in the possible market for double play packages overall, as illustrated by the Table 8 below.

Table 8 – Market shares in Portugal for overall multiple play, triple play and overall double play packages in terms of number of subscriptions for the third quarter of 2014

Operators	All multiple play(from double to quintuple play)	Triple play	Overall double play
PT Portugal	[40-50]%	[30-40]-[40-50]%	[30-40]%
Cabovisão	[5-10]%	[5-10]%	[10-20]%
Parties combined	**[50-60]%**	**[40-50]-[50-60]%**	**[50-60]%**
NOS	[30-40]%	[30-40]-[40-50]%	[40-50]%
Vodafone	[5-10]%	[5-10]%	[5-10]%
Others	[0-5]%	[0-5]%	[0-5]%
Total	100%	100%	100%

Source: Form CO, Tables 11 and 12

128 Horizontal Merger Guidelines, paragraph 64.

(146) The Parties' market shares in the double-play segment will be above 50% also in terms of value of sales. According to the Notifying Party's own estimates, in 2014 PT Portugal's double-play packages achieved sales of EUR […] million, which together with Cabovisão's sales of EUR […] million accounted for more than half of the total value of sales of double-play packages, which the Notifying Party estimates as being between EUR 117 and 129 million.[129]

(147) Post-Transaction, the Parties' market shares will be above 50% also in the possible narrower markets for each type of double-play package, with the exception of fixed internet access services and pay TV services, as can be seen from Table 9 below.

Table 9 – Market shares in Portugal per type of double play package in terms of number of subscriptions for the third quarter of 2014

Operators	Fixed voice + fixed internet access	Fixed voice + pay TV services	Fixed internet access + pay TV services
PT Portugal	[50-60]%	[30-40]%	[10-20]%
Cabovisão	[5-10]%	[10-20]%	[10-20]%
Parties combined	**[60-70]%**	**[50-60]%**	**[30-40]%**
NOS	[5-10]%	[40-50]%	[60-70]%
Vodafone	[20-30]%	[0-5]%	[0-5]%
Others	[0-5]%	[0-5]%	[0-5]%
Total	100%	100%	100%

Source: Form CO, Table 13

(148) In light of the above market shares, the Transaction is likely to raise competitive concerns in the Portuguese market for multiple-play packages, as the merged entity's shares would significantly increase and be above [50-60]% at the national level.[130] Post-Transaction, the only two significant competitors would be NOS and to a lesser extent Vodafone which has less than [10-20]% market shares in the overall possible market for multiple play and in any potential subsegment except in the double play fixed voice and fixed internet access where it has a market share of [20-30]%.

(149) Additionally, respondents to the market investigation indicated that PT Portugal and Cabovisão closely compete against each other.[131]

(150) This closeness of competition between the Parties is further confirmed by the fact that on the Cabovisão footprint, Cabovisão is the second player and closely competes with PT Portugal in the provision of multiple-play packages, both at an

129 Form CO, Table 14.

130 Horizontal Merger Guidelines, paragraph 17.

131 Responses to Questionnaire Q1 to Competitors of 25.02.2015, question 30.2.

overall level and within each of the triple-play and double-play packages, as is shown by Table 10 below.

Table 10 – Market shares on the Cabovisão footprint for overall multiple play, triple play and overall double play packages

Operators	Overall multiple play	Triple play	Overall double play
PT Portugal	[30-40]%	[30-40]%	[50-60]%
Cabovisão	[30-40]%	[30-40]%	[20-30]%
Parties combined	**[70-80]%**	**[60-70]%**	**[70-80]%**
NOS	[20-30]%	[30-40]%	[20-30]%
Vodafone	[0-5]%	[0-5]%	[0-5]%
Total	100%	100%	100%

Source: Altice's Response to Commission RFI of 19 March 2015

(151) Furthermore, the results of the market investigation indicated that entry in the multiple-play market in Portugal is difficult and that there have not been any entrants in the last three years.[132] This is due in particular to the fact that entry in the multiple-play sector requires significant investments for each individual service of a bundle. Additionally, the Portuguese market for multiple-play services appears to be a mature market, with customers often locked in and unwilling to change provider. The Transaction is likely to make these entry barriers even higher.

(152) Finally, the Commission considers that, given that customers of multiple play packages are mainly residential customers, that is individuals or households, such customers are unlikely to exert any countervailing buyer power, in terms of size, commercial significance to the seller or ability to switch to alternative suppliers, which would alleviate the anticompetitive effects of the Transaction.[133]

(153) Therefore, in light of the Parties' high combined market shares, the fact that the Parties closely compete, and the existence of high barriers to entry, the Commission concludes that the Transaction raises serious doubts as to its compatibility with the internal market in relation to the possible retail market for multiple-play services in Portugal.

V.1.5. B2B telecommunication services

(154) Both Parties are active in the market for the provision of B2B telecommunication services in Portugal. PT Portugal provides services to corporate customers including mobile and fixed, voice and data and convergent and integrated IT services. Altice is active through ONI, which provides fixed telecommunications services (voice, data and internet services), IT services (cloud computing, data center, security services) and converged communications and IT services.

132 Responses to Questionnaire Q1 to Competitors of 25.02.2015, question 36.3 and 37.4.

133 Horizontal Merger Guidelines, paragraph 64.

(155) The Notifying Party, on the basis of internal estimates and data available from ANACOM, provided market shares for the market for B2B telecommunication services composed of fixed-line services and solutions to business customers, including business connectivity and IT services. These market shares, provided in terms of sales value, are indicated below in Table 11 for 2013 and 2014.

Table 11 – Market shares in Portugal for fixed-line telecommunication services and solutions for B2B customers in terms of sales value for 2013 and 2014

Operators	2013	2014
PT Portugal	[50-60]%	[50-60]%
ONI	[0-5]%	[0-5]%
Parties combined	**[50-60]%**	**[60-70]%**
NOS	[20-30]%	[20-30]%
Vodafone	[0-5]%	[0-5]%
Others	[10-20]%	[10-20]%
Total	100%	100%

Source: Form CO, Table 17

(156) The Notifying Party also provided the Parties' shares in the market for business connectivity services, encompassing in particular the provision of broadband internet, VPN solutions and retail leased lines. These market shares are illustrated in table Table 12 below in terms of value of sales for 2013 and 2014.

Table 12 - Market shares in Portugal for business connectivity services in terms of value of sales for 2013 and 2014

Operators	2013	2014
PT Portugal	[50-60]%	[50-60]%
ONI	[10-20]%	[5-10]%
Parties combined	**[60-70]%**	**ca. [60-70]%**
NOS	[20-30]%	[20-30]%
Vodafone	[5-10]%	[5-10]%
Others	[0-5]%	[0-5]%
Total	100%	100%

Source: Parties' reply to Commission RFI of 26 March 2015

(157) In light of the information provided in the above Table 11, and Table 12, post-Transaction the merged entity would in any event have a market share above […] in the markets for B2B telecommunication services and for business connectivity

services in Portugal. The only two meaningful competitors of the Parties are NOS and Vodafone.

(158) The Parties' high market shares could be taken in themselves as evidence of a dominant market position.[134] Additionally, respondents to the market investigation indicated that ONI has a relevant market presence and closely competes to PT Portugal in the market for B2B telecommunications, often acting aggressively in the context of public tenders for B2B services.[135]

(159) Finally, the market investigation also indicated that the barriers to entry in the B2B market are high. This is due among others to the significant investments that are required for different infrastructures, technologies and services, the complexity and variety of the services to offer and the lock-in of most business customers.[136]

(160) Therefore, in light of the Parties' high combined market shares, of the fact that the Parties closely compete in such market, that respondents indicated that ONI is a significant competitor in the B2B telecommunications market, and that barriers to entry are high, the Commission concludes that the Transaction raises serious doubts as to its compatibility with the internal market in relation to the market for B2B telecommunication services in Portugal.

V.1.6. Wholesale supply of leased lines

(161) PT Portugal and ONI are active in the wholesale supply of leased lines to other telecommunications operators, and provide both terminating segments and trunk segments of leased lines. As already indicated in section IV.2.1, ONI's offer in this area essentially consists of wholesale of end-to-end circuits for leased lines, i.e., trunk and terminating segments altogether. Therefore, for the purpose of the competitive assessment, the Commission considers the wholesale market for leased lines as a whole.

Table 13 - Wholesale supply of leased lines (both trunk and terminating segments) in terms of number of circuits

Operators	2013	2014-e
PT Portugal	[60-70]%	[50-60]%
ONI	[0-5]-[5-10]%	[10-20]%
Parties combined	**[60-70]-[70-80]%**	**[60-70]%**
Total	100%	100%

Source: Form CO, Table 19

(162) On the market for the wholesale supply of leased lines, the Parties provided market shares based their internal estimates in terms of number of segments leased.

134 Horizontal Merger Guidelines, paragraph 17. Case T-221/95, *Endemol v Commission*, T:1999:85, paragraph 134, and Case T-102/96, *Gencor v Commission*, T:1999:65, paragraph 205.

135 Responses to Questionnaire Q1 to Competitors of 25.02.2015, question 31.

136 Responses to Questionnaire Q1 to Competitors of 25.02.2015, question 36.5.

According to the Notifying Party's estimates, in 2014 PT Portugal had a market share of about [50-60]%, whereas ONI had a market share of [10-20]%, as shown in the Table 13. Therefore, post-Transaction the Parties would have a combined market share of [60-70]% in Portugal in the overall wholesale market for the supply of leased lines.

(163) The Notifying Party submitted that the sub-segment of the wholesale supply of terminating segments of leased lines is subject to regulation by ANACOM, which has imposed obligations on PT Portugal, including obligations of access, non-discrimination and transparency.[137] The Notifying Party adds that regarding trunk segments, ONI is only active in the non-competitive routes of trunk segments of leased lines (via end-to-end offers), which are also subject to such regulatory obligations, and that therefore the Transaction does not raise concerns.

(164) However, the Commission notes that ONI competes with PT Portugal on the overall wholesale supply of leased lines. The Notifying Party recognises that when providing wholesale end-to-end circuits of leased lines, ONI and PT Portugal compete on non-competitive routes of trunk segments of leased lines, i.e. on trunk segments connecting at most one PT Portugal's local exchange at one end of the circuit.[138]

(165) As shown in the table above, the Parties' market shares are particularly high in the market for wholesale supply of leased lines. Such high market shares could in themselves be taken as evidence of a dominant market position.[139] Additionally, most respondents to the market investigation indicated that the Parties are among the main suppliers of leased lines and closely compete with each other. One respondent explained that ONI's infrastructure and Refer Telecom's infrastructure are "*the only real two alternatives to PT Portugal's own infrastructure*" in relation to leased lines. Another respondent also indicated that ONI is a particularly close competitor to PT Portugal given its well-developed, high-debit infrastructure which covers a substantial coverage of the Portuguese mainland territory.[140]

(166) Therefore, in light of the Parties' high combined market shares and of the fact that respondents indicated that ONI is a significant competitor to PT Portugal, the Commission concludes that the Transaction raises serious doubts as to its compatibility with the internal market in relation to the market for the wholesale supply of leased lines in Portugal.

V.1.7. Wholesale market for call origination services at a fixed location in Portugal

(167) On the wholesale market for call origination services at a fixed location in Portugal, both of PT Portugal and ONI are present. According to the information

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137 ANACOM Decision "Retail market and wholesale markets of terminating and trunk segments of leased lines – Product and geographic market analysis, assessment of SMP and imposition, maintenance, amendment or withdrawal of regulatory obligations" of October 2010, available at: http://www.anacom.pt/streaming/Determination28september2010_final_decision.pdf?contentId=1061287&field=ATTACHED_FILE, page 106.

138 Notifying Party's submission of 09.04.2015.

139 Horizontal Merger Guidelines, paragraph 17. Case T-221/95, *Endemol v Commission*, T:1999:85, paragraph 134, and Case T-102/96, *Gencor v Commission*, T:1999:65,, paragraph 205.

140 Responses to Questionnaire Q1 to Competitors of 25.02.2015, questions 41 and 42.

provided by the Notifying Party, PT Portugal has a market share of [60-70]%, whereas ONI has a market share of [0-5]%.

(168) However, the Commission considers that the Transaction does not raise competition concerns as regards the wholesale market for call origination services at a fixed location in light of the fact that such market is regulated.

(169) By decision of August 14, 2014, in accordance with Article 7(3) of Directive 2002/21/EC and following consultation with the Commission, ANACOM adopted a decision regarding the wholesale market of call origination at a fixed location, and concluded that PT Portugal has significant market power in such market.[141] ANACOM therefore imposed a number of regulatory obligations on PT Portugal, including:

- An obligation to meet reasonable requests for access and to provide network access under fair and reasonable conditions;
- An obligation of non-discrimination between market players offers as regards the quality of service and supply and pricing;
- An obligation of transparency, including the obligation in this respect to publish simplified information on network settings, point of interconnection and tariff structure. In addition, PT Portugal must publish a reference interconnection offer as wells as its terms, conditions, technical information and information on the quality of the service. In case of technical changes affecting interconnection or other service providers, PT Portugal must provide information on such changes in advance. PT Portugal must also publish a subscriber line resale offer; and
- An obligation to set prices based (i) on the principle of cost-orientation and (ii) on a retail minus basis applied to the monthly charge of the subscriber line resale offer. In addition, PT Portugal must provide a separate accounting system.

(170) In light of the regulatory rules described above, the Commission considers that the Transaction does not raise serious doubts as regards call origination services at a fixed location in Portugal. Post-Transaction, Altice will be subject to the same regulatory obligations of PT Portugal, including those of cost orientation and retail minus basis principle.

(171) Therefore, the Commission concludes that the Transaction does not raise serious doubts with regard to the wholesale market for call origination services at a fixed location in Portugal.

V.1.8. Wholesale market for call transit services at a fixed location in Portugal

(172) On the wholesale market for call transit services at a fixed location in Portugal, both PT Portugal and ONI are active. In such market, the Notifying Party estimates

141 ANACOM decision "Wholesale market for call origination on the public telephone network provided at a fixed location" of August 2014, available at http://www.anacom.pt/streaming/DecisionMarket2_Consultation2014.pdf?contentId=1338230&field=ATTACHED_FILE..

that PT Portugal's market share is of [40-50]-[60-70]%, whereas ONI's share is of [10-20]-[30-40]%.[142]

(173) In its decision of 25 May 2005,[143] ANACOM found that the Portuguese wholesale market for call transit services at a fixed location is a residual and competitive market, and, as it did not find any operator with significant market power, removed the access obligations on PT Portugal.

(174) Post-Transaction the merged entity would have a combined share of [60-70]-[90-100]% in this market, which in itself could be taken as evidence of a dominant market position.[144] Therefore, the Commission concludes that the Transaction raises serious doubts as to its compatibility with the internal market in relation to the wholesale market for call transit services at a fixed location in Portugal.

V.1.9. Conclusion

(175) In light of the above, the Commission concludes that the Transaction raises serious doubts as to its compatibility with the internal market in the following horizontally affected markets on which the Parties' activities overlap: (i) the retail supply of fixed voice services, (ii) the retail supply of internet access services, (iii) the retail supply of pay TV services, (iv) the possible market for the retail supply of multiple play services, in particular in double and triple play, (v) the provision of B2B telecommunication services, (vi) the wholesale supply of leased lines, and (vii) the wholesale supply of call transit service at a fixed location..

V.2. Vertical assessment

(176) The Transaction gives rise to a number of vertically affected markets, which relate (i) to the wholesale supply of TV channels and the retail provision of pay TV services; (ii) to a number of wholesale markets for call services and for leased lines and their related downstream markets (the Portuguese and French retail markets for fixed voice and mobile services, the Portuguese retail market for internet access services, the Portuguese retail market for pay TV services and the Portuguese market for leased lines).[145]

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142 Parties' reply to Commission RFI of 8 April 2015.

143 ANACOM decision "Mercado de trânsito na rede telefónica pública num local fixo" of 25 May 2005, available at: http://www.anacom.pt/streaming/decisao10_130505_2.pdf?contentId=275019&field=ATTACHED_FILE.

144 Horizontal Merger Guidelines, paragraph 17. Case T-221/95, *Endemol v Commission*, T:1999:85, paragraph 134, and Case T-102/96, *Gencor v Commission*, T:1999:65, paragraph 205.

145 For completeness, the Commission notes that the Notifying Party also identified a number of other vertical links between the Parties' activities. In particular, the Notifying Party considers the following activities as upstream of the Portuguese retail markets for fixed voice services, for internet access services, for pay TV services, for mobile services and for B2B telecommunication services provided at a fixed location (retail connectivity services, including provision of broadband internet, VPN solutions and retail leased lines), where PT Portugal and Altice (via ONI and/or Cabovisão) are active: i) Portuguese wholesale market for access to ducts and extranet, ii) Portuguese wholesale market for access to poles, iii) Portuguese wholesale market for wholesale line rental, iv) Portuguese market for wholesale broadband access, v) Portuguese market for access to unbundled local loop. These upstream markets are regulated by ANACOM decisions. In addition, no change will arise from

(177) Moreover, one market participant addressed a complaint to the Commission, pointing out that there are serious competitive issues on several Portuguese retail telecommunications markets due to the lack of appropriate regulation in some of the upstream wholesale markets. However, such potential issues are not merger-specific and will not be impacted by merger-specific elements.

V.2.1. Wholesale supply of TV channels (upstream) and retail provision of pay TV services (downstream)

(178) As explained in section V.1.3, Cabovisão and PT Portugal are active in the retail supply of pay TV services in Portugal. Additionally, Altice controls SportTV Sàrl and NewsLux, which are two companies that licence TV channels to TV distributors.

(179) SportTV Sàrl owns French-language sport channels commercialised under the brand "Ma chaîne sport" ("MCS"). NewsLux owns the news channels i24, which is broadcast in French and in English (and in some countries, in Arabic). In Portugal, these channels are licensed to Cabovisão only, which includes them in its retail offer and broadcasts them.

(180) The wholesale supply of TV channels is vertically related to the retail supply of pay TV services, as TV broadcasters license their channels (and attached non-linear services) as an input to TV distributors, which then include the TV channels in their retail offer. In light of the fact that Altice, is active in the wholesale supply of TV channels and that PT Portugal and Cabovisão are active in the downstream market for the retail supply of pay TV channels in Portugal with a combined share in excess of [30-40]%, the wholesale supply of TV channels and the retail provision of pay TV services in Portugal are vertically affected by the Transaction.

(181) However, no input or customer foreclosure are likely to arise since:

- **Input foreclosure –** According to the information provided by the Notifying Party, the MCS and i24 channels have viewer shares […] in Portugal. The Notifying Party provided a study according to which these channels are not among the first […] channels in Portugal in terms of viewer shares.[146] Additionally, the Commission investigated whether market participants in Portugal considered MCS and i24 as "must have" channels for the purpose of retail TV distribution. Respondents stated that MCS and i24 are minor channels, with small shares and content similar to that of many other larger channels, and there is no competitive demand for these channels, which are only broadcast by Cabovisão. Respondents indicated that these channels should not be qualified as "must have" channels that a provider of retail TV services needs in order to have a competitive retail TV service offering in

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the Transaction, as the Final Commitments will remove any vertical link that is merger-specific as they would entirely remove all overlaps between the Parties' activities in Portugal.

The Commission notes in addition that the Transaction may also lead to a vertical link between the wholesale market of end-to-end calls where PT Portugal is active and which packages origination, transit and termination services. However, ONI does not provide end-to-end services as such [details on the activities of ONI and Cabovisão in end-to-end services]. Furthermore, the individual services constituting end-to-end services (on which both PT Portugal and ONI are active) are analysed in this decision.

146 […], submitted by Altice in response to the Commission RFI of 25 February 2015.

Portugal.[147] Therefore, the Commission considers that, even if, post-Transaction, Altice were to have the ability and the incentive to reserve these channels to PT Portugal, any such conduct would likely not lead to the foreclosure of PT Portugal's competitors on the market for the provision of pay TV retail services.

- **Customer foreclosure –** The Commission considers it is highly unlikely that, post-Transaction, Altice would restrict third party channel access to PT Portugal's pay TV platform. Post-Transaction, Altice would continue to have a strong interest in ensuring that PT Portugal's pay TV platform carries as many attractive channels as possible in order for it to be able to compete with the offerings of the other competing providers of retail pay TV services. This is all the more the case given the fact that Altice’s channels are of minor importance and have limited viewer shares in Portugal,

(182) The Commission therefore concludes that the Transaction does not raise vertical competition concerns, as it is unlikely that post-Transaction the merged entity could engage in input and/or customer foreclosure on the markets for the wholesale supply of TV channels and for the retail supply of pay TV services in Portugal.

V.2.2. Wholesale supply of call services (origination, termination, transit) and of leased lines (upstream) and several retail telecommunication markets (downstream)

(183) As can be seen from the tables below, the Transaction gives rise to a number of vertically affected markets in relation to several wholesale markets for call services (fixed origination, transit and termination, mobile termination, roaming) and for leased lines, given that these markets are inputs to several downstream markets, including fixed voice and mobile telecommunications services. However, with the exception of the wholesale market for domestic call transit services and the wholesale market for leased lines (see Table 15), all the upstream wholesale markets concerned are regulated (see Table 14).

[147] Responses to Questionnaire R1 market test of remedies of 17.03.2015, question 8.

Table 14 - Vertically affected markets in relation to upstream markets subject to regulation (2014 market shares)

Upstream markets	Downstream market
Portuguese wholesale market for call origination services at a fixed location (regulated market)[148] PT Portugal ([60-70]%); ONI ([0-5]%)	**Portuguese market for retail supply of fixed voice services** **- Residential** PT Portugal ([40-50]%); Cabovisão ([0-5]%) **- Non-residential** PT Portugal ([50-60]%); ONI ([0-5]%)
	French market for retail supply of fixed voice services Altice[149] ([20-30]%)
Portuguese wholesale market for call termination services at a fixed location ("one net market" - regulated market)[150] PT Portugal (100%); Cabovisão (100%); ONI (100%)	**Portuguese market for retail supply of fixed voice services** **- Residential** PT Portugal ([40-50]%); Cabovisão ([5-10]%) **- Non-residential** PT Portugal ([50-60]%); ONI ([0-5]%)
	Portuguese market for retail supply of mobile telecommunications services PT Portugal ([40-50]%)
	French market for retail supply of fixed voice services Altice ([20-30]%)
	French market for retail supply of mobile telecommunications services Altice[151] ([20-30]%)

148 Regulated market: see ANACOM Final decision "*Wholesale market for call origination on the public telephone network provided at a fixed location*" of August 2014, available at: http://www.anacom.pt/streaming/DecisionMarket2_Consultation2014.pdf?contentId=1338230&field=ATTACHED_FILE

149 Numericable/Completel/SFR

150 Regulated market: see ANACOM decision "*Imposição de obrigaçéoes nos mercados grossistas de originação e terminação de chamadas na rede telefónica pública num local fixo*"" of December 17, 2004, available at: http://www.anacom.pt/streaming/dec_contrprecos.pdf?contentId=258996&field=ATTACHED_FILE; ANACOM ""*Adoção de medidas provisórias e urgentes ao abrigo do artigo 9.º da Lei n.º 5/2004, de 10 de fevereiro, alterada pela Lei n.º 51/2011, de 13 de setembro – Lei das Comunicações Eletrónicas (LCE) relativas ao ""Mercado grossista de terminação de chamadas na rede telefónica pública num local fixo*", available at: http://www.anacom.pt/streaming/Decisao27Ago2013MercadoGrossistaTerminacao.pdf?contentId=1171697&field=ATTACHED_FILE

151 SFR

Portuguese wholesale market for call termination services on individual mobile networks (regulated market)[152] PT Portugal (100%)	**Portuguese market for retail supply of fixed voice services** **- Residential** PT Portugal ([40-50]%); Cabovisão ([5-10]%) **- Non-residential** PT Portugal ([50-60]%); ONI ([0-5]%) **French market for retail supply of fixed voice services** Altice ([20-30]%) **French market for retail supply of mobile telecommunications services** Altice ([20-30]%)
French wholesale market for call termination services at a fixed location (regulated market)[153] Numericable/SFR (100%) **French wholesale market for call termination services on individual mobile networks (regulated market)**[154] Numericable/SFR (100%)	**Portuguese market for retail supply of fixed voice services** **- Residential** PT Portugal ([40-50]%); Cabovisão ([5-10]%) **- Non-residential** PT Portugal ([50-60]%); ONI ([0-5]%) **Portuguese market for retail supply of mobile telecommunications services** PT Portugal ([40-50]%)
Portuguese market for international roaming services (regulated market)[155] PT Portugal: [40-50]%	**French market for retail supply of mobile telecommunications services** Altice ([20-30]%)
French wholesale market for international roaming services (regulated market)[156] Numericable / SFR ([30-40]%)	**Portuguese market for retail supply of mobile telecommunications services** PT Portugal ([40-50]%)

Source: Form CO, Parties' replies to Commission RFIs of 20 March, 26 March and 8 April 2015

152 See footnote 150.

153 Regulated market: see Décision n° 2014-1485 de l'Autorité de regulation des communications électrONIques et des postes en date du 9 décembre 2014 portant sur la détermination des marchés pertinents relatifs à la terminaison d'appel vocal sur les réseaux fixes en France et à la terminaison d'appel vocal sur les réseaux mobiles en France, la désignation d'opérateurs exerçant une influence significative sur ces marchés et les obligations imposées à ce titre pour la période 2014-2017.

154 Ibid

155 Regulated under Regulation (EU) no. 531/2012 if the European Parliament and of the Council of 13 June 2012 on roaming on public mobile communications networks within the Union.

156 Ibid

(184) Table 14 above presents the vertical links between upstream markets subject to regulation and their related downstream markets.

(185) As regards mobile and fixed call termination, each network constitutes a market, on which the respective operator has 100% market share. The significant market power that each operator exercises is therefore subject to regulation by ANACOM in Portugal and by ARCEP in France through both non-tariff and price control obligations.

(186) As regards call origination, ANACOM has imposed on PT Portugal obligations (such as network access provision, non-discrimination, transparency, separate accounting) which will continue to apply to the merged entity post-Transaction.

(187) As regards international roaming services, mobile network operators active in Portugal need to procure wholesale international roaming services in Member States where they are not active themselves, including in France. The "Roaming Regulation"[157] imposes a price cap on the wholesale prices that mobile network operators may charge their roaming customers within the EEA. At the wholesale level, Roaming Regulation caps prices for operators from Member States for voice roaming charges, text messages and connection to mobile internet. In addition, mobile network operators must meet all reasonable requests for wholesale roaming access. Mobile network operators are, therefore, prevented from refusing access to their network and from charging excessive termination fees.

(188) The Commission therefore considers that competition concerns are unlikely to arise from the Transaction in relation to these regulated markets.

Table 15 – Other vertically affected markets in relation to upstream markets not subject to regulation (2014 market shares)

Upstream markets	Downstream market
Portuguese wholesale market for domestic call transit services at a fixed location PT Portugal ([40-50]-[60-70]%); ONI ([10-20]-[30-40]%)	**Portuguese market for retail supply of fixed voice services** **- Residential** PT Portugal ([40-50]%); Cabovisão ([5-10]%) **- Non-residential** PT Portugal ([50-60]%); ONI ([0-5]%) **Portuguese market for retail supply of mobile telecommunications services** PT Portugal ([40-50]%) **French market for retail supply of fixed voice services** Altice ([20-30]%)

157 Regulation (EU) no. 531/2012 of the European Parliament and of the Council of 13 June 2012 on roaming on public mobile communications networks within the Union (OJ L 172, 30.6.2012, p. 10).

	French market for retail supply of mobile telecommunications services Altice ([20-30]%)
Portuguese wholesale market for leased lines[158] PT Portugal ([50-60]%); ONI ([5-10]-[10-20]%)	**Portuguese market for retail supply of fixed voice services** **- Residential** PT Portugal ([40-50]%); Cabovisão ([5-10]%) **- Non-residential** PT Portugal ([50-60]%); ONI ([0-5]%) **Portuguese market for retail supply of internet access** PT Portugal ([40-50]%); Cabovisão ([5-10]%); ONI ([0-5]%) **Portuguese market for retail supply of pay TV**[159] PT Portugal ([40-50]%); Cabovisão ([5-10]%) **Portuguese retail market for leased lines**[160] PT Portugal ([30-40]%); ONI [10-20]%)

Source: Form CO, Parties' replies to Commission RFIs of 20 March, 26 March and 8 April 2015

(189) Table 15 above presents the vertical links between each of the wholesale market for domestic call transit services and of the wholesale market for leased lines, and their related downstream markets.

(190) The Transaction is likely to lead to the creation or strengthening of a dominant market position upstream in the wholesale market for domestic call transit services and the wholesale market for leased lines but also in several downstream markets, as analysed in section V.1 on horizontal assessment. Such dominant position could lead to the ability for the merged entity to engage in input foreclosure by limiting the access to its call transit services and to its leased lines, and to customer

158 As indicated in paragraph (163), the wholesale market for leased lines in Portugal is not subject to regulation in relation to the competitive trunk segments of leased lines, contrary to non-competitive trunk segments of leased lines and terminating segments.

159 Since wholesale leased lines are an input for fixed voice services, fixed internet broadband services and pay TV services, they are consequently also an input for multiple-play services.

160 More generally, the potential markets for B2B telecommunication services and its sub-market for business connectivity (as both include retail leased lines) could also be considered as downstream markets.

The Notifying Party also submits that the Portuguese retail market for mobile data services is also downstream to the wholesale market for leased lines, but that wholesale leased lines are not an essential input in order to provide such services.

foreclosure by preventing competitors on the related downstream markets to have access to a significant customer.

(191) However, even if the merged entity were to have the ability as well as the incentive to carry out input or customer foreclosure due to significant market power upstream and/or downstream, the Final Commitments will remove any horizontal overlap and vertical link in Portugal that is merger-specific as they would entirely remove all overlaps between the Parties' Portuguese activities.

(192) The only change post-Transaction would be the replacement of Cabovisão/ONI by PT Portugal on the wholesale market for domestic call transit services which is upstream to the French markets for retail supply of fixed voice services and for retail supply of mobile services in which Altice will remain active. However, the market investigation did not bring any evidence on the ability and incentive of Altice to foreclose access to wholesale services for domestic call transit for players active on the French markets for retail supply of fixed voice services and for retail supply of mobile services. In addition, even if Altice had the ability to deny access to its Portuguese services for competitors active in France, it would need to find such conduct profitable: for this, significant churn from customers of its competitors in France would need to occur as a consequence of such conduct on the Portuguese market and to its benefit. The Commission therefore considers that such input foreclosure is unlikely to occur.

(193) In light of the above, the Commission concludes that the Transaction does not raise serious doubts with regard to the wholesale market for domestic call transit services and the wholesale market for leased lines, and the related downstream markets.

V.2.3. Conclusion

(194) In light of the above, the Commission concludes that the Transaction does not raise serious doubts with regard as to its compatibility with the internal market in the markets vertically affected by the Transaction, in light of the fact that most of those vertically affected markets are subject to regulation, and that, on those vertically affected markets that are not regulated, the Final Commitments submitted by the Notifying Party remove any possible vertical foreclosure concerns.

VI. COMMITMENTS

(195) In order to remove the serious doubts arising from the Transaction described in Section V, the Notifying Party submitted commitments on 25 February 2015 under Article 6(2) of the Merger Regulation (the "Initial Commitments").

(196) The Initial Commitments were market tested by the Commission on 4 March 2015. The Commission informed the Notifying Party of the results of the market test on 20 March 2015.

(197) Following the feedback received from market participants during the market test, on 31 March 2015 the Notifying Party submitted a revised set of commitments, signed on 28 March 2015 (as defined in paragraph (12), the "Final Commitments").

VI.1. Description of the proposed commitments

VI.1.1. Initial Commitments

(198) The Initial Commitments of 25 February 2015 consisted of the divestment to one or two suitable purchasers of the Cabovisão and ONI businesses ("Divestment Business") as described below and in more detail in the Schedule to the Initial Commitments.

(199) The businesses to be divested included all assets and staff that contribute to the current operation or are necessary to ensure the viability and competitiveness of Cabovisão and ONI, in particular:

(i) all tangible and intangible assets (including intellectual property rights);

(ii) all licences, permits and authorisations issued by any governmental organisation for the benefit of Cabovisão and ONI;

(iii) all contracts, leases, commitments and customer orders Cabovisão and ONI;

(iv) all customer, credit and other records of Cabovisão and ONI; and

(iv) the Key Personnel and the Personnel of Cabovisão and ONI.

(200) In addition, in the situation where the two businesses were to be sold to different purchasers, the Initial Commitments included transitional service agreements ("TSAs") between Cabovisão and ONI for a duration of […]. These agreements provided for the maintaining of all the main links under which Cabovisão and ONI supply services to each other, or have access to each other's infrastructures.

(201) The Commission launched a market test on the Initial Commitments on 3 March 2015. Questionnaires were addressed to competitors, customers and potential purchasers indicated by the Notifying Party.

(202) Respondents to the market test considered that, overall, the divestment of Cabovisão and ONI represents a suitable remedy for addressing the competition concerns raised by the Transaction and that each of the two businesses can be considered as a viable stand-alone business.[161] However, respondents questioned a number of aspects in the Initial Commitments.

(203) First, respondents commented on the scope of the Divestment Business, indicating that it was unclear whether all the necessary assets, contracts and personnel had been included in the Divestment Business for the purpose of ensuring the viability of the businesses to be divested.[162]

(204) Second, respondents questioned the scope and the duration of the TSAs. Some respondents highlighted that any services provided by Cabovisão to ONI and vice-versa, but also any services currently provided by Altice (and affiliated

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[161] Responses to Questionnaire R1, Market test of remedies, submitted on 25 February 2015, questions 3 and 4.

[162] Responses to Questionnaire R1, Market test of remedies, submitted on 25 February 2015, questions 2, 5-7, 9, 14-18.

undertakings) to Cabovisão and ONI should be included. Some respondents also indicated that the duration of […] of the TSAs was insufficient.[163]

(205) Third, in relation to the purchaser criteria included in the Initial Commitments, the majority of the respondents indicated that the purchaser(s) of the assets should have previous experience in the telecommunications services sector.[164]

(206) Furthermore, some respondents stated that the commitments should include an upfront buyer clause (whereby the proposed concentration cannot be implemented before Altice or the Divestiture Trustee has entered into a final binding sale and purchase agreement for the sale of the Cabovisão and ONI businesses, and the Commission has approved the purchaser(s) and the terms of sale) in order to ensure that these assets would actually be sold to a suitable buyer and that the sales process takes place as quickly as possible with a view to preserving the viability and competitiveness of each of Cabovisão and ONI.[165]

(207) The Commission informed the Notifying Party of the results of the market test and of the shortcomings identified in the Initial Commitments. The Notifying Party made certain improvements to the commitments and submitted the Final Commitments on 31 March 2015.

VI.1.2. The Final Commitments

(208) The Final Commitments consist of the divestment of the Cabovisão and ONI's businesses as described in paragraphs (198) - (200), that is all assets and staff that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business. For the sake of clarity, it was specified in the Schedule of the Final Commitments that all assets and staff of Cabovisão and ONI shall be part of the Divesment Business, while the Schedule only provides a non-exhaustive list of the main assets and staff. Additional precisions were also added regarding personnel and contracts (in particular customer contracts) to reflect the comments raised by respondents in the market test on the scope of the business.

(209) As regards personnel, the non-solicitation clause related to Key Personnel was extended […] to ensure that the Key Personnel remains with the Divestment Businesses. The Final Commitments provide additional flexibility for the purchaser, by specifying that all the personnel employed by Cabovisão and ONI should be part of the Divestment Business unless otherwise agreed with the purchaser.

(210) Additional clauses were added in the Final Commitments to ensure that customer contracts and contracts in general to which Cabovisão and/or ONI are parties are swiftly transferred. First of all, the Final Commitments specify in the Schedule that all customer contracts of Cabovisão and ONI should be divested, in order to avoid

163 Responses to Questionnaire R1, Market test of remedies, submitted on 25 February 2015, questions 10 and 11.

164 Responses to Questionnaire R1, Market test of remedies, submitted on 25 February 2015, questions 23 and 24.

165 Responses to Questionnaire R1, Market test of remedies, submitted on 25 February 2015, questions 10.1 and 27.

any customer erosion between the Effective Date and Closing as customers are key elements for the attractiveness and the viability of the Divestment Business. In addition, Altice should use its best endeavours to ensure that all contracts to which Cabovisão and/or ONI are parties are novated and transferred to the purchaser in a short timeframe.

(211) In addition, to further ensure that the Divestment Business' viability, marketability and competitiveness are preserved, the Notifying Party also added several elements in the Final Commitments in relation to the First Divestiture Period and the Hold Separate Manager(s) as defined in the text of Final Commitments. The Final Commitments provide that Altice should appoint the Hold Separate Manager(s) no later than […] from the Effective Date (and in any event, prior to the closing of the acquisition of PT Portugal by Altice). […].

(212) The Notifying Party also broadened the scope and duration of the TSAs. First, the Notifying Party included in the Final Commitments additional TSAs covering the links between Altice and each of the two businesses to be divested. These additional TSAs provide that for a transitional period of […] after the closing of the Transaction, Altice and its affiliated undertakings (for example Numericable) will continue to supply to each of Cabovisão and ONI, at reasonable financial conditions, access to the services and infrastructures that Cabovisão and ONI currently receive from Altice and its affiliated undertakings.

(213) Second, the duration of the TSAs between Cabovisão and ONI was aligned with the TSAs provided by Altice to Cabovisão and ONI by extending them from […]. The scope of these TSAs was also slightly broadened with the inclusion of […].

(214) Third, the Final Commitments also specify that the Monitoring Trustee should oversee the conclusion and implementation of the TSAs, as part of its monitoring role regarding the preservation of the Divestment Business.

(215) Finally, the revised commitments include reinforced purchaser criteria, stipulating that the purchaser must have experience in the telecommunications sector.

VI.2. The Commission's assessment

VI.2.1. Remedies principles

(216) According to the Commission's notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (the "Remedies Notice"), where a concentration raises serious doubts as to its compatibility with the internal market, the parties may undertake to modify the concentration so as to resolve the competition concerns identified by the Commission and thereby gain clearance of their merger.[166]

(217) The following principles from the Remedies Notice apply where parties choose to offer commitments in order to restore effective competition.

(218) It is for the parties to the concentration to put forward commitments.[167] The Commission only has power to accept commitments that are deemed capable of

166 OJ 2008/C 267/01, paragraph 5.

167 Remedies Notice, Paragraph 6.

rendering the concentration compatible with the internal market.[168] In Phase I, commitments can only be accepted where the competition problem is readily identifiable and can easily be remedied. The competition problem therefore needs to be so straightforward and the remedies so clear-cut that it is not necessary to enter into an in-depth investigation and that the commitments are sufficient to clearly rule out serious doubts within the meaning of Article 6(1)(c) of the Merger Regulation. Where the assessment indicates that the proposed commitments remove the grounds for serious doubts on this basis, the Commission clears the merger in Phase I.[169]

(219) As concerns the form of acceptable commitments, the Merger Regulation leaves discretion to the Commission as long as the commitments meet the requisite standard.[170] Structural commitments will meet the conditions set out above only in so far as the Commission is able to conclude with the requisite degree of certainty that it will be possible to implement them and that it will be likely that the new commercial structures resulting from them will be sufficiently workable and lasting to ensure that the significant impediment to effective competition will not materialise.[171]

(220) Divestiture commitments are generally the best way to eliminate competition concerns resulting from horizontal overlaps.[172]

(221) The divested activities must consist of a viable business that, if operated by a suitable purchaser, can compete effectively with the merged entity on a lasting basis and that is divested as a going concern. The business must include all the assets which contribute to its current operation or which are necessary to ensure its viability and competitiveness and all personnel which are currently employed or which are necessary to ensure the business' viability and competitiveness.[173]

(222) Personnel and assets which are currently shared between the business to be divested and other businesses of the parties, but which contribute to the operation of the business or which are necessary to ensure its viability and competitiveness, must also be included. Otherwise, the viability and competitiveness of the business to be divested would be endangered. Therefore, the divested business must contain the personnel providing essential functions for the business such as, for instance, group R&D and information technology staff even where such personnel are currently employed by another business unit of the parties — at least in a sufficient proportion to meet the on-going needs of the divested business.[174]

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168 Remedies Notice, Paragraph 9.

169 Remedies Notice, Paragraph 81.

170 Case T-177/04 *easyJet v Commission*, T:2006:187, Paragraph 197.

171 Remedies Notice, Paragraph 10.

172 Remedies Notice, Paragraph 19.

173 Remedies Notice, paragraph 23-25.

174 Remedies Notice, paragraph 26.

(223) A viable business is a business that can operate on a stand-alone-basis, which means independently of the merging parties as regards the supply of input materials or other forms of cooperation other than during a transitory period.[175]

(224) The intended effect of the divestiture will only be achieved if and once the business is transferred to a suitable purchaser in whose hands it will become an active competitive force in the market. The potential of a business to attract a suitable purchaser is an important element already of the Commission's assessment of the appropriateness of the proposed commitment. In order to ensure that the business is divested to a suitable purchaser, the commitments must include criteria to define the suitability of potential purchasers. This will allow the Commission to conclude that the divestiture of the business to such a purchaser will likely remove the competition concerns identified.[176]

(225) In the ultimate assessment of proposed commitments, the Commission considers all relevant factors including *inter alia* the type, scale and scope of the proposed commitments, judged by reference to the structure and particular characteristics of the market concerned, including the position of the parties and other participants on the market.[177] The commitments must be capable of being implemented effectively within a short period of time.[178]

(226) It is against this background that the Commission analysed the proposed Commitments in this case.

VI.2.2. Assessment of the Final Commitments

(227) In this case, the Commission considers that the Final Commitments offered by the Notifying Party on 31 March 2015 are sufficient to remove the serious doubts regarding the compatibility of the Transaction with the internal market in relation to the affected markets outlined in section IV.2.4.

(228) First, the Final Commitments consist in the divestiture of the two existing businesses of Cabovisão and ONI and therefore constitute structural remedies, which are generally the best way to eliminate competition concerns resulting from a merger.[179]

(229) Second, the Final Commitments will completely remove the overlaps between the Parties' activities in all the horizontally affected markets in Portugal, thereby dispelling the serious doubts identified by the Commission in section V of this Decision. Given that any possible vertical concerns arising from the Transaction also relate to the Parties’ activities overlapping in several upstream markets, the removal of the horizontal overlaps by means of the Final Commitments also removes any serious doubts arising from vertical links.

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175 Remedies Notice, paragraph 32.

176 Remedies Notice, paragraph 47.

177 Remedies Notice, Paragraph 12.

178 Remedies Notice, Paragraph 9.

179 Remedies Notice, Paragraph 15.

(230) Third, the businesses to be divested consist of two companies, Cabovisão and ONI, which are both viable businesses that can operate on a stand-alone-basis, independently of the Parties.[180] Though they are incorporated within Altice, it can be concluded based on the Notifying Party's submission that each of Cabovisão and ONI are currently run and operated on a standalone basis, independently from Altice and from each other, as distinct legal entities with their own services, personnel, clients and tangible and intangible assets, including network and related infrastructure, trademarks and software.

(231) While the two companies have certain links with Altice and with each other in relation to certain services and infrastructures, the TSAs included in the Final Commitments ensure that these links, required for the purpose of Cabovisão's and ONI's viability for the necessary transitory period, will be maintained.[181] Furthermore, the scope of the TSAs has been extended to cover the current services provided by Altice (and affiliated undertakings) to each of Cabovisão and ONI, thus ensuring a smooth transition following the divestiture of the two businesses. In particular, in case Cabovisão and ONI would be sold to two different purchasers, in view of the limited links and associated value associated with the services that Cabovisão and ONI provide to each other, as well as the […] transitional period during which these services will be provided, the TSAs will ensure that Cabovisão and ONI remain viable and competitive.

(232) Fourth, as regards the scope of the Divestment Business and its transfer to suitable purchaser(s), both Cabovisão's and ONI's tangible and intangible assets as well as Key Personnel and personnel offered in the Final Commitments will allow the purchaser(s) to successfully run the divestment businesses and effectively compete on the market.

(233) During the market test of the Initial Commitments, a limited number of respondents questioned whether an upfront buyer clause would be necessary in this case, given the limited number of potential buyers in this case. However, the Commission takes the view that such a clause is not necessary due to the fact that the Notifying Party has submitted evidence of interest in the two businesses from several potentially suitable purchasers.[182] […].

(234) Finally, the specific criteria for suitability of the purchaser in this case also reduce risks as to the viability of the divestment business. The majority of the respondents to the market test considered that the purchaser of the divestment business in order

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180 Remedies Notice, paragraph 32.

181 For Cabovisão, existing operational links that will be maintained via the TSAs are:

- with ONI: […]

- with Altice: […]

For ONI, existing operational links that will be maintained via the TSAs are:

- with Cabovisão: […]

- with Altice: […]

182 On 17 and 25 March 2015 the Notifying Party indicated that a number of companies had signed non-disclosure agreements and had requested information on the Divestment Business. On 14 April 2015 the Notifying Party indicated that several companies had submitted non-binding offers for the Divestment Business.

to be viable and competitive force should have experience in the telecommunications services sector. Consequently, the Notifying Party amended the purchaser criteria and included this specific criterion in the Final Commitments.

VI.2.3. Conclusion

(235) For the reasons outlined above, the commitments entered into by the undertakings concerned are sufficient to eliminate the serious doubts as to the compatibility of the Transaction with the internal market.

VI.3. Conditions and obligations

(236) Under the first sentence of the second subparagraph of Article 6(2) of the Merger Regulation, the Commission may attach to its decision conditions and obligations intended to ensure that the undertakings concerned comply with the commitments they have entered into vis-à-vis the Commission with a view to rendering the concentration compatible with the internal market.

(237) The achievement of the measure that gives rise to the change of the market is a condition, whereas the implementing steps which are necessary to achieve this result are generally obligations on the parties. Where a condition is not fulfilled, the Commission's decision declaring the concentration compatible with the internal market no longer stands. Where the undertakings concerned commit a breach of an obligation, the Commission may revoke the clearance decision in accordance with Article 8(6)(b) of the Merger Regulation. The undertakings concerned may also be subject to fines and periodic penalty payments under Articles 14(2) and 15(1) of the Merger Regulation.[183]

(238) In accordance with the basic distinction between conditions and obligations, the Decision in this case is conditional on full compliance with the requirements set out in section B (as well as the associated Schedule) of the Final Commitments, which constitute conditions attached to this Decision, as only through full compliance therewith can the structural changes in the relevant markets be achieved. The other requirements set out in the Final Commitments constitute obligations, as they concern the implementing steps which are necessary to achieve the modifications sought in a manner compatible with the internal market.

(239) The full text of the Final Commitments is annexed to this Decision as Annex and forms an integral part thereof.

[183] See case T-471/11, *Éditions Odile Jacob v Commission*, T:2014:739, paragraphs 79-83.

VII. CONCLUSION

(240) For the above reasons, the Commission has decided not to oppose the notified operation as modified by the Final Commitments and to declare it compatible with the internal market and with the functioning of the EEA Agreement, subject to full compliance with the conditions in section B of the Final Commitments annexed to the present decision and with the obligations contained in the other sections of the said commitments. This decision is adopted in application of Article 6(1)(b) in conjunction with Article 6(2) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission
(Signed)
Violeta BULC
Member of the Commission

28/03/2015

Case M. 7499 – ALTICE / PT PORTUGAL

COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2) of Council Regulation (EC) No 139/2004 (the "***Merger Regulation***"), Altice (the "***Notifying Party***") hereby enters into the following Commitments (the "***Commitments***") vis-à-vis the European Commission (the "***Commission***") with a view to rendering the acquisition of PT Portugal by the Notifying Party (the "***Concentration***") compatible with the internal market and the functioning of the EEA Agreement.

This text shall be interpreted in light of the Commission's decision pursuant to Article 6(1)(b) of the Merger Regulation, to declare the Concentration compatible with the internal market and the functioning of the EEA Agreement (the "***Decision***"), in the general framework of European Union law, in particular in light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (the "***Remedies Notice***").

Section A. Definitions

1. For the purpose of the Commitments, the following terms shall have the following meaning:

   Affiliated Undertakings: undertakings controlled by the Parties and/or by the ultimate parents of the Parties, whereby the notion of control shall be interpreted pursuant to Article 3 of the Merger Regulation and in light of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (the "***Consolidated Jurisdictional Notice***").

   Assets: the assets that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business as indicated in Section B, paragraph 6 (a), (b) and (c) and described more in detail in the Schedule.

   Closing: the transfer of the legal title to the Divestment Business (or part of the Divestment Business) to a Purchaser.

   Closing Period: the period of […] from the approval of a Purchaser and the terms of sale by the Commission.

   Confidential Information: any business secrets, know-how, commercial information, or any other information of a proprietary nature that is not in the public domain.

Conflict of Interest: any conflict of interest that impairs the Trustee's objectivity and independence in discharging its duties under the Commitments.

Divestment Business: the businesses as defined in Section B and in the Schedule which the Notifying Party commits to divest, either jointly or separately.

Divestment Package: each of the businesses composing the Divestment Business as defined in Section B and in the Schedule which the Notifying Party commits to divest.

Divestiture Trustee: one or more natural or legal person(s) who is/are approved by the Commission and appointed by Altice and who has/have received from Altice the exclusive Trustee Mandate to sell the Divestment Business to a Purchaser at no minimum price.

Effective Date: the date of adoption of the Decision.

First Divestiture Period: the period of […] from the Effective Date.

Hold Separate Manager(s): the person(s) appointed by Altice for the Divestment Business to manage the day-to-day business under the supervision of the Monitoring Trustee.

Key Personnel: all personnel necessary to maintain the viability and competitiveness of the Divestment Business, as listed in the Schedule, including the Hold Separate Manager.

Monitoring Trustee: one or more natural or legal person(s) who is/are approved by the Commission and appointed by Altice, and who has/have the duty to monitor Altice's compliance with the conditions and obligations attached to the Decision.

Parties: the Notifying Party and the undertaking that is the target of the concentration.

Personnel: all staff currently employed by the Divestment Business, including staff seconded to the Divestment Business, shared personnel as well as the additional personnel listed in the Schedule, it being understood that […].

Purchaser(s): the entity(ies) approved by the Commission as acquirer of the Divestment Business, or part of the Divestment Business, in accordance with the criteria set out in Section D.

Purchaser Criteria: the criteria laid down in paragraph 16 of these Commitments that the Purchaser must fulfil in order to be approved by the Commission.

Schedule: the schedule to these Commitments describing more in detail the Divestment Business.

Trustee(s): the Monitoring Trustee and/or the Divestiture Trustee as the case may be.

Trustee Divestiture Period: the period of […] from the end of the First Divestiture Period.

Altice: Altice SA incorporated under the laws of Luxembourg, with its registered office at 3 boulevard Royal, Luxembourg, L-2449 Luxembourg, and registered with the *Registre du Commerce et des sociétés* of Luxembourg under number B. 183. 391, and its Affiliated Undertakings, including **Altice Portugal – Telecomunicacoes S.A.,** incorporated under the laws of Portugal, with its registered office at Rua do Alecrim, número 26E, parish of Encarnação, 1200-018 Lisbon, Portugal, and registered with the Commercial Registry Office of Lisbon under number 510 160 549.

Section B. The commitment to divest and the Divestment Business

Commitment to divest

2. In order to maintain effective competition, Altice commits to divest, or procure the divestiture of the Divestment Business by the end of the Trustee Divestiture Period as a going concern to a single purchaser or two separate purchasers and on terms of sale approved by the Commission in accordance with the procedure described in paragraph 17 of these Commitments. To carry out the divestiture, Altice commits to find one or two purchaser(s) and to enter into one or two final binding sale and purchase agreement(s) for the sale of the Divestment Business within the First Divestiture Period. If Altice has not entered into such (an) agreement(s) at the end of the First Divestiture Period, Altice shall grant the Divestiture Trustee an exclusive mandate to sell the unsold part of the Divestment Business in accordance with the procedure described in paragraph 29 in the Trustee Divestiture Period.

3. Altice shall be deemed to have complied with this commitment if:

   (a) by the end of the Trustee Divestiture Period, Altice or the Divestiture Trustee has entered into a final binding sale and purchase agreement and the Commission approves the proposed purchaser(s) and the terms of sale as being consistent with the Commitments in accordance with the procedure described in paragraph 17; and

   (b) the Closing of the sale of the Divestment Business to the Purchaser(s) takes place within the Closing Period.

4. In order to maintain the structural effect of the Commitments, the Notifying Party shall, for a period of 10 years after Closing, not acquire, whether directly or indirectly, the possibility of exercising influence (as defined in paragraph 43 of the Remedies Notice, footnote 3) over the whole or part of the Divestment Business, unless, following the submission of a reasoned request from the Notifying Party showing good cause and accompanied by a report from the Monitoring Trustee (as provided in paragraph 43 of these Commitments), the Commission finds that the structure of the market has changed to such an extent that the absence of influence over the Divestment Business is no longer necessary to render the proposed concentration compatible with the internal market.

Structure and definition of the Divestment Business

5. The Divestment Business consists of two businesses, namely (i) Cabovisão – Televisão por Cabo S.A. ("Cabovisão") and all its subsidiaries, except the OniTelecom Group ("Oni"), and (ii) Oni (each of them, a "Divestment Package", and together the "Divestment Business"). The Divestment Business provide telecommunications services to B2C and B2B customers. The legal and functional structure of the Divestment Business as operated to date is described in the Schedule. The Divestment Business, described in more detail in the Schedule, includes all assets

and staff that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business, in particular:

(a) all tangible and intangible assets (including intellectual property rights);

(b) all licences, permits and authorisations issued by any governmental organisation for the benefit of the Divestment Business;

(c) all contracts, leases, commitments and customer orders of the Divestment Business; all customer, credit and other records of the Divestment Business; and

(d) unless otherwise agreed with the purchaser(s), the Key Personnel and the Personnel.

6. In addition, should the Divestment businesses be sold separately, each of Divestment Package shall include transitional service agreements providing the maintaining, for a transitional period of up to […] after Closing, on terms equivalent to those at present afforded to each of the Divestment Package and at reasonable financial conditions, of all current links under which the Divestment Packages supply services to each other, or have access to each other’s infrastructures, as detailed in the Schedule, unless otherwise agreed with the Purchaser(s). Each Divestment Package shall also include transitional service agreements providing the maintaining for a transitional period of up to […] after Closing, at reasonable financial conditions, of all current links under which Altice and Affiliated Undertakings supply services to each of Divestment Package, or have access to Altice’s and Affiliated Undertakings’ infrastructures, as detailed in the Schedule, unless otherwise agreed with the Purchaser(s). Strict firewall procedures will be adopted so as to ensure that any competitively sensitive information related to, or arising from such supply arrangements will not be shared with, or passed on to, anyone outside the technology and financial departments.

Section C. Related commitments

Preservation of viability, marketability and competitiveness

7. From the Effective Date until Closing, the Notifying Party shall preserve or procure the preservation of the economic viability, marketability and competitiveness of the Divestment Business, in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential of the Divestment Business. In particular Altice undertakes:

(a) not to carry out any action that might have a significant adverse impact on the value, management or competitiveness of the Divestment Business or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the Divestment Business;

(b) to make available, or procure to make available, sufficient resources for the development of the Divestment Business, on the basis and continuation of the existing business plans;

(c) to take all reasonable steps, or procure that all reasonable steps are being taken, including appropriate incentive schemes (based on industry practice), to encourage all Key Personnel to remain with the Divestment Business, and not to solicit or move any Personnel to Altice's remaining business. Where, nevertheless, individual members of the Key Personnel exceptionally leave the Divestment Business, Altice shall provide a reasoned proposal to replace the person or persons concerned to the Commission and the Monitoring Trustee. Altice must be able to demonstrate to the Commission that the replacement is well suited to carry out the functions exercised by those individual members of the Key Personnel. The replacement shall take place under the supervision of the Monitoring Trustee, who shall report to the Commission.

Hold-separate obligations

8. The Notifying Party commits, from the Effective Date until Closing, to keep the Divestment Business separate from the businesses it is retaining and to ensure that unless explicitly permitted under these Commitments: (i) management and staff of the businesses retained by Altice have no involvement in the Divestment Business; (ii) the Key Personnel and Personnel of the Divestment Business have no involvement in any business retained by Altice and do not report to any individual outside the Divestment Business.

9. Until Closing, Altice shall assist the Monitoring Trustee in ensuring that the Divestment Business is managed as a distinct and saleable entity separate from the businesses which Altice is retaining. Immediately after the adoption of the Decision, and no later than […] from the Effective Date (and in any event, prior to the closing of the acquisition of PT Portugal by Altice) Altice shall appoint one or two Hold Separate Manager(s). The Hold Separate Manager(s), who shall be part of the Key Personnel, shall manage the Divestment Business independently and in the best interest of the businesses, with a view to ensuring their continued economic viability, marketability and competitiveness and their independence from the businesses retained by Altice. The Hold Separate Manager(s) shall closely cooperate with and report to the Monitoring Trustee and, if applicable, the Divestiture Trustee. Any replacement of the Hold Separate Manager(s) shall be subject to the procedure laid down in paragraph 8(c) of these Commitments. The Commission may, after having heard Altice, require Altice to replace one or both Hold Separate Manager(s).

10. To ensure that the Divestment Business is held and managed as a separate entity the Monitoring Trustee shall exercise Altice's rights as shareholder in the legal entity or entities that constitute the Divestment Business (except for its rights in respect of dividends that are due before Closing), with the aim of acting in the best interest of the businesses, which shall be determined on a stand-alone basis, as an independent financial investor, and with a view to fulfilling Altice's obligations under the Commitments. Furthermore, the Monitoring Trustee shall have the power to replace members of the supervisory boards or non-executive directors of the boards of directors, who have been appointed on behalf of Altice. Upon request of the Monitoring Trustee, Altice's shall resign as a member of the boards or shall cause such members of the boards to resign.

Ring-fencing

11. Altice shall implement, or procure to implement, all necessary measures to ensure that it does not, after the Effective Date, obtain any Confidential Information relating to the Divestment Business and that any such Confidential Information obtained by Altice before the Effective Date will be eliminated and not be used by Altice. This includes measures vis-à-vis Altice's appointees on the supervisory boards and/or boards of directors of the Divestment Business. In particular, the participation of the Divestment Business in any central information technology network shall be severed to the extent possible, without compromising the viability of the Divestment Business. Altice may obtain or keep information relating to the Divestment Business which is reasonably

necessary for the divestiture of the Divestment Business or the disclosure of which to Altice is required by law.

Non-solicitation clause

12. The Parties undertake, subject to customary limitations, not to solicit, and to procure that Affiliated Undertakings do not solicit, the Key Personnel transferred with the Divestment Business for a period of […] after Closing.

Due diligence

13. In order to enable potential purchasers to carry out a reasonable due diligence of the Divestment Business, Altice shall, subject to customary confidentiality assurances and dependent on the stage of the divestiture process:
    (a) provide to potential purchasers sufficient information as regards the Divestment Business;
    (b) provide to potential purchasers sufficient information relating to the Personnel and allow them reasonable access to the Personnel.

Reporting

14. Altice shall submit written reports in English on potential purchasers of the Divestment Business and developments in the negotiations with such potential purchasers to the Commission and the Monitoring Trustee no later than 10 days after the end of every month following the Effective Date (or otherwise at the Commission's request). Altice shall submit a list of all potential purchasers having expressed interest in acquiring the Divestment Business to the Commission at each and every stage of the divestiture process, as well as a copy of all the offers made by potential purchasers within five days of their receipt.

15. Altice shall inform the Commission and the Monitoring Trustee on the preparation of the data room documentation and the due diligence procedure and shall submit a copy of any information memorandum to the Commission and the Monitoring Trustee before sending the memorandum out to potential purchasers.

Section D. The Purchaser

16. In order to be approved by the Commission, the Purchaser(s) must fulfil the following criteria:

    (a) The Purchaser(s) shall be independent of and unconnected to the Notifying Party and its Affiliated Undertakings (this being assessed having regard to the situation following the divestiture).
    (b) The Purchaser(s) shall have the financial resources, proven expertise in the telecommunications sector and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors;
    (c) The acquisition of the Divestment Business by the Purchaser(s) must neither be likely to create, in light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed. In

particular, the Purchaser(s) must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business.

17. The final binding sale and purchase agreement (as well as ancillary agreements) relating to the divestment of the Divestment Business(es) shall be conditional on the Commission’s approval. When Altice has reached an agreement with a purchaser, it shall submit a fully documented and reasoned proposal, including a copy of the final agreement(s), within one week to the Commission and the Monitoring Trustee. Altice must be able to demonstrate to the Commission that the purchaser fulfils the Purchaser Criteria and that the Divestment Business is being sold in a manner consistent with the Commission's Decision and the Commitments. For the approval, the Commission shall verify that the purchaser fulfils the Purchaser Criteria and that the Divestment Business is being sold in a manner consistent with the Commitments including their objective to bring about a lasting structural change in the market. The Commission may approve the sale of the Divestment Business without one or more Assets or parts of the Personnel, or by substituting one or more Assets or parts of the Personnel with one or more different assets or different personnel, if this does not affect the viability and competitiveness of the Divestment Business after the sale, taking account of the proposed purchaser.

Section E. Trustee

I. Appointment procedure

18. Altice shall appoint a Monitoring Trustee to carry out the functions specified in these Commitments for a Monitoring Trustee. The Notifying Party commits not to close the Concentration before the appointment of a Monitoring Trustee.

19. If Altice has not entered into (a) binding sale and purchase agreement(s) regarding the whole Divestment Business one month before the end of the First Divestiture Period or if the Commission has rejected a purchaser proposed by Altice at that time or thereafter, Altice shall appoint a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Trustee Divestiture Period.

20. The Trustee shall:
(i) at the time of appointment, be independent of the Notifying Party and its Affiliated Undertakings;
(ii) possess the necessary qualifications to carry out its mandate, for example have sufficient relevant experience as an investment banker or consultant or auditor; and
(iii) neither have nor become exposed to a Conflict of Interest.

21. The Trustee shall be remunerated by the Notifying Party in a way that does not impede the independent and effective fulfilment of its mandate. In particular, where the remuneration package of a Divestiture Trustee includes a success premium linked to the final sale value of the Divestment Business, such success premium may only be earned if the divestiture takes place within the Trustee Divestiture Period.

Proposal by Altice

22. No later than […] after the Effective Date, Altice shall submit the name or names of one or more natural or legal persons whom Altice proposes to appoint as the Monitoring Trustee to the Commission for approval. No later than […] before the end of the First Divestiture Period or on request by the Commission, Altice shall submit a list of one or more persons whom Altice proposes to appoint as Divestiture Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the person or persons proposed as Trustee fulfil the requirements set out in paragraph 20 and shall include:

(a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these Commitments;

(b) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks;

(c) an indication whether the proposed Trustee is to act as both Monitoring Trustee and Divestiture Trustee or whether different trustees are proposed for the two functions.

Approval or rejection by the Commission

23. The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfil its obligations. If only one name is approved, Altice shall appoint or cause to be appointed the person or persons concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, Altice shall be free to choose the Trustee to be appointed from among the names approved. The Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

New proposal by Altice

24. If all the proposed Trustees are rejected, Altice shall submit the names of at least two more natural or legal persons within […] of being informed of the rejection, in accordance with paragraphs 18 and 23 of these Commitments.

Trustee nominated by the Commission

25. If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom Altice shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

II. <u>Functions of the Trustee</u>

26. The Trustee shall assume its specified duties and obligations in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or Altice, give any orders or instructions to the Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

Duties and obligations of the Monitoring Trustee

27. The Monitoring Trustee shall:

(i) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision.

(ii) oversee, in close co-operation with the Hold Separate Manager(s), the on-going management of the Divestment Business with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by Altice with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:

(a) monitor the preservation of the economic viability, marketability and competitiveness of the Divestment Business, including the conclusion and the implementation of any transitional service agreements that may be required, and the keeping separate of the Divestment Business from the business retained by the Parties, in accordance with paragraphs 7 and 8 of these Commitments;

(b) supervise the management of the Divestment Business as a distinct and saleable entity, in accordance with paragraph 9 of these Commitments;

(c) with respect to Confidential Information:

- determine all necessary measures to ensure that Altice does not after the Effective Date obtain any Confidential Information relating to the Divestment Business,
- in particular strive for the severing of the Divestment Business' participation in a central information technology network to the extent possible, without compromising the viability of the Divestment Business,
- make sure that any Confidential Information relating to the Divestment Business obtained by Altice before the Effective Date is eliminated and will not be used by Altice and
- decide whether such information may be disclosed to or kept by Altice as the disclosure is reasonably necessary to allow Altice to carry out the divestiture or as the disclosure is required by law;

(d) monitor the splitting of assets and the allocation of Personnel between the Divestment Business and Altice or Affiliated Undertakings;

(iii) propose to Altice such measures as the Monitoring Trustee considers necessary to ensure Altice's compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic viability, marketability or competitiveness of the Divestment Business, the holding separate of the Divestment Business and the non-disclosure of competitively sensitive information;

(iv) review and assess potential purchasers as well as the progress of the divestiture process and verify that, dependent on the stage of the divestiture process:

(a) potential purchasers receive sufficient and correct information relating to the Divestment Business and the Personnel in particular by reviewing, if available, the data room documentation, the information memorandum and the due diligence process, and

(b) potential purchasers are granted reasonable access to the Personnel;

(v) act as a contact point for any requests by third parties, in particular potential purchasers, in relation to the Commitments;

(vi) provide to the Commission, sending Altice a non-confidential copy at the same time, a written report within 15 days after the end of every month that shall cover the operation and management of the Divestment Business as well as the splitting of assets and the allocation of Personnel so that the Commission can assess whether the business is held in a manner consistent with the Commitments and the progress of the divestiture process as well as potential purchasers;

(vii) promptly report in writing to the Commission, sending Altice a non-confidential copy at the same time, if it concludes on reasonable grounds that Altice is failing to comply with these Commitments;

(viii) within one week after receipt of the documented proposal referred to in paragraph 17 of these Commitments, submit to the Commission, sending Altice a non-confidential copy at the same time, a reasoned opinion as to the suitability and independence of the proposed purchaser and the viability of the Divestment Business after the Sale and as to whether the Divestment Business is sold in a manner consistent with the conditions and obligations attached to the Decision, in particular, if relevant, whether the Sale of the Divestment Business without one or more Assets or not all of the Personnel affects the viability of the Divestment Business after the sale, taking account of the proposed purchaser(s);

(ix) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision.

28. If the Monitoring and Divestiture Trustee are not the same legal or natural persons, the Monitoring Trustee and the Divestiture Trustee shall cooperate closely with each other during and for the purpose of the preparation of the Trustee Divestiture Period in order to facilitate each other's tasks.

Duties and obligations of the Divestiture Trustee

29. Within the Trustee Divestiture Period, the Divestiture Trustee shall sell at no minimum price the Divestment Business to one or two purchaser(s), provided that the Commission has approved both the purchaser(s) and the final binding sale and purchase agreement(s) (and ancillary agreements) as in line with the Commission's Decision and the Commitments in accordance with paragraphs 16 and 17 of these Commitments. The Divestiture Trustee shall include in the sale and purchase agreement(s) (as well as in any ancillary agreements) such terms and conditions as it considers appropriate for an expedient sale in the Trustee Divestiture Period. In particular, the Divestiture

Trustee may include in the sale and purchase agreement(s) such customary representations and warranties and indemnities as are reasonably required to effect the sale. The Divestiture Trustee shall protect the legitimate financial interests of Altice, subject to the Notifying Party's unconditional obligation to divest at no minimum price in the Trustee Divestiture Period.

30. In the Trustee Divestiture Period (or otherwise at the Commission's request), the Divestiture Trustee shall provide the Commission with a comprehensive monthly report written in English on the progress of the divestiture process. Such reports shall be submitted within 15 days after the end of every month with a simultaneous copy to the Monitoring Trustee and a non-confidential copy to the Notifying Party.

III. Duties and obligations of the Parties

31. Altice shall provide and shall cause its advisors to provide the Trustee with all such co-operation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to any of Altice's or the Divestment Business' books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments and Altice and the Divestment Business shall provide the Trustee upon request with copies of any document. Altice and the Divestment Business shall make available to the Trustee one or more offices on their premises and shall be available for meetings in order to provide the Trustee with all information necessary for the performance of its tasks.

32. Altice shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the Divestment Business. This shall include all administrative support functions relating to the Divestment Business which are currently carried out at headquarters level. Altice shall provide and shall cause its advisors to provide the Monitoring Trustee, on request, with the information submitted to potential purchasers, in particular give the Monitoring Trustee access to the data room documentation and all other information granted to potential purchasers in the due diligence procedure. Altice shall inform the Monitoring Trustee on possible purchasers, submit lists of potential purchasers at each stage of the selection process, including the offers made by potential purchasers at those stages, and keep the Monitoring Trustee informed of all developments in the divestiture process.

33. Altice shall grant or procure Affiliated Undertakings to grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee to effect the sale (including ancillary agreements), the Closing and all actions and declarations which the Divestiture Trustee considers necessary or appropriate to achieve the sale and the Closing, including the appointment of advisors to assist with the sale process. Upon request of the Divestiture Trustee, Altice shall cause the documents required for effecting the sale and the Closing to be duly executed.

34. Altice shall indemnify the Trustee and its employees and agents (each an "***Indemnified Party***") and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to Altice for, any liabilities arising out of the performance of the Trustee's duties under the Commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisors.

35. At the expense of Altice, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to Altice's approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. Should Altice refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard Altice. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 34 of these Commitments shall apply *mutatis mutandis*. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served Altice during the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.

36. Altice agrees that the Commission may share Confidential Information proprietary to Altice with the Trustee. The Trustee shall not disclose such information and the principles contained in Article 17 (1) and (2) of the Merger Regulation apply *mutatis mutandis*.

37. The Notifying Party agrees that the contact details of the Monitoring Trustee are published on the website of the Commission's Directorate-General for Competition and they shall inform interested third parties, in particular any potential purchasers, of the identity and the tasks of the Monitoring Trustee.

38. For a period of 10 years from the Effective Date the Commission may request all information from the Parties that is reasonably necessary to monitor the effective implementation of these Commitments.

IV. <u>Replacement, discharge and reappointment of the Trustee</u>

39. If the Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Trustee to a Conflict of Interest:

(a) the Commission may, after hearing the Trustee and Altice, require Altice to replace the Trustee; or

(b) Altice may, with the prior approval of the Commission, replace the Trustee.

40. If the Trustee is removed according to paragraph 39 of these Commitments, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs 18-25 of these Commitments.

41. Unless removed according to paragraph 39 of these Commitments, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

Section F. The review clause

42. The Commission may extend the time periods foreseen in the Commitments in response to a request from Altice or, in appropriate cases, on its own initiative. Where Altice requests an extension of a time period, it shall submit a reasoned request to the Commission no later than one month before the expiry of that period, showing good cause**.** This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to the Notifying Party. Only in exceptional circumstances shall Altice be entitled to request an extension within the last month of any period.

43. The Commission may further, in response to a reasoned request from the Notifying Party showing good cause waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to the Notifying Party. The request shall not have the effect of suspending the application of the undertaking and, in particular, of suspending the expiry of any time period in which the undertaking has to be complied with.

Section G. Entry into force

44. The Commitments shall take effect upon the date of adoption of the Decision.

……………………………………
Jérémie Bonnin
General Secretary

duly authorised for and on behalf of
Altice

SCHEDULE

The Divestment Business includes Cabovisão – Televisão por Cabo S.A., except its subsidiaries Winreason S.A and OniTelecom SGPS S.A. one the one side (hereinafter "Cabovisão" or the "Cabovisão Divestment Package"), and Winreason S.A and OniTelecom SGPS S.A. (hereinafter "Oni" or the "Oni Divestment Package") on the other.

It includes all assets and staff that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business, in particular:

(a) all tangible and intangible assets (including intellectual property rights);

(b) all licences, permits and authorisations issued by any governmental organisation for the benefit of the Divestment Business;

(c) all contracts, leases, commitments and customer orders of the Divestment Business; all customer, credit and other records of the Divestment Business; and

(d) unless otherwise agreed with the purchaser(s), the Key Personnel and the Personnel.

Sections 1 and 2 below provide a non-exhaustive list of the main assets and staff.

SECTION 1
CABOVISAO

1. Description of the Cabovisão Divestment Package

Cabovisão is a provider of television, high speed internet and fixed-line telephony on the B2C segment. Cabovisão started its activities in 1993, and has been the first telecom operator to offer integrated services in Portugal, including double play offers in 1999 and triple play in 2000. Cabovisão was also the first operator to offer broadband services of 2 Mb, 4 Mb, 6 Mb, and more than 100 Mb. In 2010, Cabovisão started its VOD service. In 2012, Cabovisão was bought by Altice.

Today, Cabovisão is the number 3 telecommunication operator on the B2C segment in Portugal, where it provides television, high speed internet and fixed line telephony services. Cabovisão fully owns a Docsis 3.0 network of over 3,647 km, thanks to which it can reach […] of homes passed over a total of 3.9 million homes in Portugal. As of September 30, 2014, Cabovisão had […] subscribers, and […] revenue generating units. Its 2013 revenues amounted to € […] Million (as at December 31, 2013).

2. In accordance with paragraphs [5] and [6] of these Commitments, the Cabovisão Divestment Package includes, but is not limited to:

(a) the following main tangible assets:

See Annex 1.1.

(b) the following main intangible assets:

All intangible assets of Cabovisão, *i.e.*:

- The following domain names:
  - cabovisao.pt; and

- netvisao.pt

- All trademarks listed in Annex 1.1; and

- All non-registered intellectual property rights and know-how listed in Annex 1.1.

(c) the following main licences, permits and authorisations:

- All licences and authorizations granted by the Instituto das Comunicações de Portugal ("ICP") – Autoridade Nacional de Comunicaçoes ("ANACOM") to Cabovisão, namely:
  - Licence as public telecommunications network operator (*Licença de Operador de Rede Publica de Telecomunicaçoes, no território nacional* no. ICP-024/99);
  - Licence as provider of fixed telephony services in Portugal (*Licença como Prestador do Serviço Fixo de Telefone, território nacional* no. ICP-06/2000-SFT);
  - All authorizations for the exercise of the activity of cable networks operator in the mentioned municipalities, listed in Annex 1.1.

  All these licenses and authorizations require the ICP-ANACOM approval in case of change of control of Cabovisão.

- Registration for provision of data transmission services to the internet area granted by ICP-ANACOM (*Registo de Prestaçaõ de serviços de transmissão de dados para a área de Internet no. ICP-S02053/1999*);

- All licenses on intellectual property rights and know-how owned granted by third parties listed in Annex 1.1.

(d) the following main contracts, agreements, leases, commitments and understandings:

All types of contracts to which Cabovisão is a party, namely:

- The following contracts relating to the purchase of goods and services:
  - Maintenance and support agreement entered with Oni relating to […] equipment (for a total amount of open purchase orders of […]);
  - Maintenance and support agreement entered into with […] relating to […] equipment (for a total amount of open purchase order of […]);
  - […] (for a total amount of open purchase orders of […]);
  - […] (for a total amount of open purchase orders of […]); and
  - Contracts entered into with other suppliers (for a total amount of open purchase orders of […]), the maintenance and support contract entered into with […], the maintenance and support contract entered into

with […] for the VoD platform and the contract entered into with […] relating to the […] software application used by Cabovisão.

- Services content contracts relating to the distribution of channels entered into with the following channels:
    - […] for a total amount of […] (further details on this contract are provided in Annex 1.2);
    - […] for a total amount of […] (corresponding to […]);
    - […] for an amount of […] (corresponding to […]);
    - […] for a total amount of […] (corresponding to all […]);
    - […] for a total amount of […] (further details on this contract are provided in Annex 1.2); and
    - Other suppliers listed in Annex 1.2 (representing a total amount of […]).

- Investment contract entered into with […] relating to the customers equipment (such as set-top-box) for a total amount of […], including the supply of hardware and middleware by […]; conditional access provided by […]; as regards the VoD and Time shifted TV (the "services"): provision of services' sessions by […], provision of storage and streaming for the services by […]; VoD catalogue management provided by […]; and transcoding services provided by […].

- All contracts relating to the rental of spaces listed in Annex 1.2;

- All operational lease contracts listed in Annex 1.2;

- All contracts relating to guarantees given to suppliers/customers for a total amount of […]; and

- All contracts relating to guarantees given to government agencies for a total amount of […].

- All customer contracts of Cabovisão.

Altice shall use its best endeavours to ensure that these contracts are novated or transferred to the purchaser in a short timeframe.

(e) the following customer, credit and other records:

All of Cabovisão's customers and related credits and other records.

(f) the following Personnel:

See the chart provided as Annex 1.3. […]. The names, functions, and contemplated replacement of the employees concerned are provided in the table below:

Name	Function	Proposed replacement
[…]	Chief Finance Officer	[…] (Head of Accounting and Treasury Manager)
[…]	Engineering Director	[…] (Head of Video and Voice Engineering)
[…]	IT Director	[…] (Applications Director)
[…]	Head of Client Services	[…] (Head of Video and Voice Engineering) or […] (in charge of Service Control)
[…]	Head of Purchases	[…] (part of the Procurement Team)
[…]	Head of the Operational Center	[…] (Head of Video and Voice Engineering) or […] (in charge of Service Control), as this position can be taken over by the Head of Client Service
[…]	Head of HR and Logistics	[…] for HR (part of the HR team) and […] for Logistics (Head of Purchases and Logistics)

[…].

(g) the following Key Personnel

The names and functions of the key employees which are indispensable for the operation of Cabovisão are provided in the table below:

Name	Function
[…]	Deputy Chief Executive Officer
[…]	Chief Technology Officer
[…]	Chief of Sales and Marketing
[…]	Customer Service Manager
[…]	Current Head of Video and Voice Engineering, proposed Engineering Director
[…]	Current Applications Director, proposed IT Director
[…]	Marketing Director
[…]	Residential Sales Director
[…]	Finance Control Manager
[…]	Accounting Manager
[…]	Billing and Revenue Assurance Director
[…]	Legal Manager

(h) the arrangements for the supply of the following services by Oni, or for access to the following infrastructures of Oni, to the extent that they are currently used by Cabovisão, for a transitional period of up to […] after Closing:

- Access to […] bridge infrastructure rented by Oni to […] (for the duration of Oni's contract with […]);
- Access to Oni's [infrastructure] currently used by Cabovisão;
- Sharing of the [maintenance and supply services];
- Access to Oni's [equipment required for voice telephony services] currently used by Cabovisão; and
- Access to Oni's [equipment relating to] IT system.

(i) the arrangements for the supply of the following services by Altice, to the extent that they are currently used by Cabovisão, for a transitional period of up to […] after Closing:

- Access to [set-top box] software currently provided by […];
- Portal maintenance and support relating to the [set-top box] as currently provided by […];
- Broadcasting rights for […] TV channels;
- Broadcasting rights for […] TV channels.

; and

3. The Cabovisão Divestment Package shall not include:

Not relevant.

4. If there is any asset or personnel which is not be covered by paragraph 2 of this Schedule but which is both used (exclusively or not) in the Cabovisão Divestment Package and necessary for the continued viability and competitiveness of the Cabovisão Divestment Package, that asset or adequate substitute will be offered to potential purchasers.

Not relevant.

SECTION 2
ONI

1. Description of the Oni Divestment Package

Oni only provides services to business clients, with a customer base centred on the public sector, finance and energy, and large and medium companies.

Oni was acquired by Altice in August 2013. It is the fourth largest B2B services provider in Portugal. Besides providing telecommunication services (*i.e.*, voice, data and internet services), Oni also provides its B2B clients with a number of IT services (cloud computing, data center, security services) and converged communications and IT services supported on a wide range of "managed services". These services are provided through a fiber network of over 9,000 km, including a total of […] points of presence. Oni currently serves around […] clients, located on around […] sites. Its 2013 revenues amounted to € […] Million (as at June 30, 2013).

2. In accordance with paragraphs [5] and [6] of these Commitments, the Oni Divestment Package includes, but is not limited to:

(a) the following main tangible assets:

All tangible assets of Oni, *i.e.*:

- Fiber infrastructure representing a value of […];
- Network transmission equipment representing a value of […];
- Network equipment representing a value of […];
- Clients equipment representing a value of […];
- Internet protocol equipment representing a value of […];
- Facilities renovation representing a value of […];
- Voice equipment representing a value of […];
- Access equipment representing a value of […]; and
- IT equipment located in […] representing a value of […].

(b) the following main intangible assets:

All intangible assets of Oni, *i.e.*:

- Indefeasible right of use of fiber representing a value of […];
- Client installations and human resources capitalizations representing a value of […];
- All unregistered intellectual property rights, know-how owned by Oni listed in Annex 2.1;
- All licenses on certain IP-rights and know-how listed in Annex 2.1.
- The following domain names owned by Oni:
  - Oni.pt,
  - Onibusinessmail.pt,
  - Onicommunications.pt,
  - Onitelecom.com,
  - Onitelecom.pt,
  - Oninet.pt,
  - Oninetspeed.pt,
  - Portal.pt,
  - Net4b.pt,
  - Meganet.pt,
  - Oniduo.pt, and
  - Witty.me;
- The following domain names owned by Knewon:
  - Hubgrade.com,
  - Hubgrade.pt,
  - Knewon.com, and
  - Knewon.pt;
- The logos owned by Oni listed in Annex 2.1.; and
- The trademarks owned by Oni listed in Annex 2.1.

(c) the following main licences, permits and authorisations:

- The following licenses and authorizations granted by the ICP-ANACOM:
  - License of Public Telecommunications Networks Operator and Fixed Telephony Service Provider (*Licença de Operador de Redes Publicas de Telecomunicações e de Prestador do Serviço Fixo de Telefone* no. 10/2014),
  - License of Nomadic VoIP Service Provider (*Licença de Operador de Serviços de Voz através da Internet (VoIP) de uso nómada* no. 21/2009),

- License of Service Provider for the following services: WLAN, leased lines, internet access, data transmission, VoIP and VPN, (*Licença de Operador dos seguintes serviços: Rede de Área local Sem-fio (WLAN) de Serviços de Circuitos Alugados, de Acesso à Internet (ISP), de Transmissão de Dados, Redes Privadas Virtuais (VPN) de Voz através da Internet (VoIP)* no. 09/2012),
- License of ISP and Datacentre Services Provider (*Licença de Operador de Acesso a Internet (ISP) e de serviços de base de dados* no. 05/2011),[184]
- Authorizations for use of numbering ranges, *i.e.*, geographic, nomadic and non-geographic numbers, the references of which are provided in <u>Annex 2.1,</u> and
- Frequency use licenses for fixed radio links in several frequency bands, the reference of which are provided in <u>Annex 2.1</u>.

All these licenses and authorizations require the ICP-ANACOM approval in case of change of control of Oni.

- Initial registration of E3G, with later alteration of company name to ONITELECOM granted by ANACOM (*Registro inicial de E3G e posterior alteração do nome da empresa para ONITELECOM* no. ICP 006/99);

- The following licenses on intellectual property rights and know-how granted by third parties:
    - […] interconnection software,
    - […] revenue assurance software,
    - […] performance and alarm software,
    - […] middleware and application server, […] network activation software and […] reporting software,
    - […] inventory software,
    - […] enterprise resource planning software and […] reporting software,
    - […] rating, invoicing and billing software,
    - […] reporting software,
    - […] reporting software,
    - […] workflow engine,
    - […] portability platform,
    - […] information technology service management software,
    - […] authentication and accounting software,
    - […] geographic information system software,
    - […] corporate server and desktop software, and
    - […] client cloud control panel.

184 This declaration was granted to Knewon. […].

(d) the following main contracts, agreements, leases, commitments and understandings:

All telecommunications services, quality assurance, operational service, IT and field operations contracts to which Oni is a party listed in Annex 2.1.

All customer contracts of Oni.

Altice should use its best endeavours to ensure that these contracts are novated or transferred to the purchaser in a short timeframe.

(e) the following customer, credit and other records:

All of Oni's clients, credit and records, including […]:

Client	Category	Turnover (€)	% of Oni's turnover	Credit (€)
[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]

(f) the following Personnel:

See the chart provided as Annex 2.2. […]. The names, functions, and contemplated replacement of the employees concerned are provided in the table below:

Name	Function	Proposed replacement
[…]	Head of Legal and Regulation	[…] (Manager in charge of Regulation)
[…]	Chief Technology Officer	[…] (Engineering Director)
[…]	Applications Director	[…] (IT Director)
[…]	Field Operations Director	[…] (Service Activation Manager)
[…]	Management Control Director	[…] (Finance Control Manager)
[…][185]	Head of Purchases and Logistics	[…] (HR and Treasury Director)
[…]	Acting as managers in charge of Service Control	[…] (Head of the Delivery and Resources Department)
[…]	Operational people, part of the Project Management Team within the Delivery and Resources Department	Job can be redistributed to […] other operational people of the remaining of the Project Management Team

(g) the following Key Personnel:

The names and functions of the key employees which are indispensable for the operations of Oni are provided in the table below:

185 […]

Name	Function
[…]	Chief Financial Officer
[…]	Current Engineering Director, Chief Technology Officer
[…]	Head of Client Services
[…]	IT Director
[…]	Marketing and Communications Executive
[…]	Product Development manager
[…]	Sales Executive
[…]	Corporate Sales Director
[…]	Wholesale Sales Manager
[…]	Regulation Manager
[…]	Legal Manager
[…]	Finance and Investment Control Manager
[…]	Reporting Commercial Manager
[…]	Finance Control Manager
[…]	Accounting Manager

(h) **the arrangements for the supply of the following services by Cabovisão, or for access to the following infrastructures of Cabovisão, to the extent that they are currently used by Oni, for a transitional period of up to […] after Closing:**

- Access to the elements of Cabovisão's HFC network which Oni is currently using, including […], as well as […];
- Cabovisão's [network infrastructure];
- Sharing of the [regulated offer] with PT Portugal [regulated offer], during the time-period necessary for Oni to negotiate its own [regulated offer] with PT Portugal;
- Access to [network infrastructure];
- Supply of Cabovisão's [IT function];
- Access to Cabovisão's [network infrastructure];
- Access to Cabovisão's [support function]; and
- Supply of [support functions].

(i)	the arrangements for the supply of the following services by Altice, to the extent that they are currently used by Oni, for a transitional period of up to […] after Closing:

- Access to a […] circuit currently used by Oni;
- Access to […] storage systems […]**.**

; and

3. The Oni Divestment Package shall not include:

Not relevant.

4. If there is any asset or personnel which is not be covered by paragraph 2 of this Schedule but which is both used (exclusively or not) in the Oni Divestment Package and necessary for the continued viability and competitiveness of the Oni Divestment Package, that asset or adequate substitute will be offered to potential purchasers.

Not relevant.

Annex 1.1 to the Commitments

Tangible assets owned by Cabovisão

[…]

Tangible assets owned by Cabovisão - Details

[…]

Trademarks owned by Cabovisão

[…]

Logos / Images owned by Cabovisão

[…]

Unregistered intellectual property rights and know-how owned by Cabovisão

[…]

Licenses on IP rights / know-how owned by 3rd parties (licenses-in)

[…]

ICP-ANACOM Authorizations granted to Cabovisão for the exercise of the activity of cable networks operator in the municipalities

[…]

Annex 1.2 to the Commitments

List of Cabovisão's contracts relating to distribution of TV channels, TVoD and SVoD

[…]

List of Cabovisão's rented technical rooms

[…]

List of Cabovisão's lease contracts commitments

[…]

Annex 1.3 to the Commitments

[…]

Annex 2.1 to the Commitments

Unregistered IP rights/know-how owned by ONI

[…]

Trademarks owned by ONI

[…]

Logos owned by ONI

[…]

Numbering ranges owned by ONI

[…]

Oni's main contracts, agreements, leases and commitments

[…]

Radio frequencies owned by ONI

[…]

Annex 2.2 to the Commitments

[…]