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EUROPEAN COMMISSION
DG Competition

Case M.7678 - EQUINIX / TELECITY

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) in conjunction with Art 6(2)
Date: 13/11/2015

In electronic form on the EUR-Lex website under document number 32015M7678

EUROPEAN COMMISSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Brussels, 13.11.2015
C(2015) 8091 final

PUBLIC VERSION

MERGER PROCEDURE

To the notifying party:

Dear Sir/Madam,

Subject: **Case M.7678 – Equinix/ Telecity**
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 24 September 2015, the European Commission (the "Commission") received a notification of a proposed concentration pursuant to Article 4 of the Merger Regulation, and following a referral pursuant to Article 4(5) of the Merger Regulation, by which Equinix Inc. ("Equinix", USA) will acquire sole control within the meaning of Article 3(1)(b) of the Merger Regulation over Telecity Group plc. ("Telecity", UK) by way of purchase of shares (the "Proposed Transaction"). Equinix is also referred to as the “Notifying Party”. Equinix and Telecity are collectively referred to as the "Parties".

1. THE PARTIES

(2) **Equinix** is a global operator of data centres offering data centre and related services to a wide range of corporate customers and organisations. It operates over 100 data centres across 15 countries in 33 different metropolitan areas worldwide. In Europe, Equinix has data centres in nine metro areas across five countries: Amsterdam, Düsseldorf, East Netherlands, Frankfurt, Geneva, London, Munich,

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

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

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Paris and Zurich. The bulk of Equinix's revenue comes from colocation services (79%),[3] with the remaining revenue being generated from related interconnection services (17%)[4] and from managed IT infrastructure services (4%).[5]

(3) **Telecity** is also active in the provision of data centre services and operates 39 data centres across 12 metro areas in Europe and Turkey: Amsterdam, Dublin, Frankfurt, Helsinki, Istanbul, London, Manchester, Milan, Paris, Sofia, Stockholm and Warsaw. In addition to colocation services, Telecity also offers interconnection services and other ancillary services, such as managed IT services.

2. THE CONCENTRATION

(4) Equinix will acquire 100% of the shares in Telecity via a court-sanctioned scheme of arrangement under the UK Companies Act 2006.[6] Under the terms of the court-sanctioned scheme, following an approval by the Telecity shareholders and by the English courts, the shares of Telecity will be transferred to Equinix in return for consideration in the form of cash and shares in Equinix.[7] The Proposed Transaction therefore constitutes a concentration within the meaning of Article 3 (1)(b) of the Merger Regulation.

3. EU DIMENSION

(5) The Proposed Transaction does not have a Union dimension within the meaning of Article 1 of the Merger Regulation.[8] However, it fulfils the conditions set out in Article 4(5) of the Merger Regulation for the Parties to request referral of the case to the Commission as the Proposed Transaction was notifiable in three Member States (Germany, the Netherlands and the United Kingdom). Following the notification of a reasoned submission by the Notifying Party on 29 June 2015, the case acquired a Union dimension on 22 July 2015, since none of these three Member States expressed its disagreement to a referral of the case to the Commission.

4. RELEVANT MARKETS

4.1. The Parties' business activities

(6) The Parties' activities mainly overlap in the provision of co-location services. These services account for, respectively, 79% and […]% of the revenues of each of

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3 See paragraph 4.1.

4 See paragraph (7).

5 Under managed IT services Equinix reports revenues derived from the provision of the so-called "smart hands" service consisting of on-site maintenance and other business continuity services.

6 A court-sanctioned scheme of arrangements is a statutory process under Part 26 of the UK Companies Act 2006 whereby a company can make an arrangement with its shareholders to sell their shares to another company.

7 Equinix also has the option, instead of implementing the court-sanctioned scheme, to acquire Telecity's shares by way of a takeover offer under Part 28 of the UK Companies Act 2006.

8 The aggregate worldwide turnover of all the undertakings concerned is below EUR 5 000 million (Equinix: EUR 1 836 million; Telecity: EUR 432 million).

Equinix and Telecity.[9] Data centres are dedicated facilities (sometimes purpose-built) in which companies house and operate IT equipment that supports their business (such as servers and data storage). Data centres usually have uninterrupted power supply and offer an environment with highly controlled temperature and humidity in order to ensure optimal performance of the stored IT equipment. Data centres also often have robust on-site security. Customers of data centres pay a recurring fee for renting floor space in the data centre to install their IT equipment and also pay for the use of power in the building. This type of services is also typically referred to as "colocation services", because several customers use the same data centre. This is the Parties' main activity and the Commission's competitive assessment of the Proposed Transaction will therefore focus on these services.

(7) The Parties' activities also overlap in the provision of interconnection services. Interconnection services primarily refer to connections via a physical cable (called also "cross-connects") between the IT equipment (servers and routers) of a data centre customer and the equipment of another customer of the data centre. Such cross-connects allow fast and reliable connection for Internet access or data and traffic transmission. For example, when a person sends an e-mail to someone who uses a different provider for his or her connectivity, the e-mail must pass from one network to the other through a physical point of interconnection to reach its destination.

(8) The Commission, however, notes that interconnection services are part of the services that are typically provided by data centres operators to their customers on top of and in addition to co-location services.[10] In other words, data centre operators typically charge their customers a fee to allow this type of cross-connects within a data centre or between data centres.[11] The Commission considers that the provision of interconnection services is a relevant element to take into account to assess the competitive impact of the Proposed Transaction, in particular in relation to possible network effects (see Section 5.7). However, since these services are provided by the data centre operator to customers who are already present in its data centre, the Commission also considers that, for the purposes of the Proposed Transaction, it is not necessary to assess the existence of a possible separate market for the provision of these services. This reflects the fact that the assessment of any possible anti-competitive effects in the provision of co-location services, including possible network effects, would be sufficient to appreciate the possible impact of the Proposed Transaction also in relation to the provision of interconnection services.

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9 See, for Equinix, Form CO, page, 21, Figure 6.2. For Telecity, […]% is the average for the four metros concerned: see Form CO, pages 82, 135, 180 and 218, Figures 6.12, 6.40, 6.69 and 6.95.

10 Equinix's interconnection revenue, according to the Notifying Party represented […]% of the total revenue in 2014 in the four metros ([…]% in Amsterdam, […]% in London and […]% in Frankfurt and Paris), […]. Telecity's interconnection revenue, according to the Notifying Party, accounted for […]% of total revenue ([…]% in Amsterdam, […]% in Frankfurt, […]% in London and […]% in Paris). […]

11 Data centre providers establish fibre connections ("tethers") between their own data centres in order to provide the option to the customers in the new data centres to connect to existing customers located in the older data centres with no spare capacity. However, there are also examples of competing data centres being tethered together.

(9) The Parties' activities further overlap in the provision of managed IT services, such as onsite "smart hands" services, i.e. simple operations or maintenance tasks on behalf of data centre customers. Since these services are provided by data centre operators to their customers for co-location services, for the same reasons set out above in relation to interconnection services, the Commission does not consider it necessary for the purposes of the Proposed Transaction to assess the existence of a possible separate market for the provision of these services.

(10) Finally, the Commission notes that Equinix, but not Telecity, is also active in the provision of wholesale Internet connectivity, in particular through the provision of an Internet Exchange solution in Paris (as far as the EEA is concerned) and outside the EEA. Data centre customers require connectivity to the Internet and to other networks (cloud providers, content providers, etc.) and therefore typically purchase connectivity from network providers (present in the data centre) to which they connect using cross-connects. Network, content and cloud providers may use different forms of connectivity agreements, the most important of which are peering and transit. According to BEREC, "transit" involves the provision of full connectivity to the Internet through a payment.[12] In turn, peering involves the exchange of traffic between two or more operators/providers, to carry traffic for each other for their respective customers. Internet Exchange Points are facilities where multiple network or content providers interconnect and peer (exchange traffic). In the EU, Internet exchanges are primarily operated by collective organisations, some of which are non-profit. The leading Internet exchanges in the EU in terms of size (number of members and traffic throughput) are AMS-IX (Amsterdam), LINX (London) and DE-CIX (Frankfurt).[13] The Commission will analyse the possible impact of the Proposed Transaction in relation to the provision of wholesale Internet connectivity in paragraphs (135) to (142).

4.2. Relevant product market

4.2.1. Notifying Party's view

(11) <u>In-house and third party data centres.</u> The Notifying Party claims that in-house data centres are not part of the relevant product market. Customers seeking data centre facilities can either build and operate their own in-house data centre, or (wholly or partially) outsource their data centre requirements. In particular, large technology companies still build and maintain their own in-house data centre facilities. However, due to the cost and complexity of owning and operating a data centre and the availability of outsourcing options, many companies choose to outsource or complement their in-house data centre needs by purchasing data centre services from third party providers ("third party data centres").[14]

(12) <u>Carrier-neutral and carrier-owned data centres.</u> The Notifying Party submits that the market for colocation services includes both carrier-neutral and carrier-owned providers. Third party data centres have been historically categorised, according to

12 BoR (12) 130, page 25.

13 https://www.euro-ix net/tools/ixp-service-matrix/

14 According to the Parties, citing the Broadgroup report, 21% of the total data centre space in Western Europe is currently outsourced, and this share is expected to increase to 31% in 2018.

their ownership, into "carrier-neutral" data centres operated independently of any network provider/carrier and "carrier-owned" data centres, owned and operated by a network provider of the likes of Orange or British Telecom. More recently, the distinction between carrier-neutral and carrier-owned data centres would seem to become increasingly blurred as carrier-owned data centres no longer impose any limitations on their customers in terms of access to networks other than the carrier's own network. The Notifying Party submits examples of carrier-neutral data centre providers which are in fact owned by network providers and of network providers offering customers in their data centres access to multiple network providers. Finally, the Notifying Party submits that market intelligence company IHS has recently accepted in its market share analysis that carrier-owned data centres compete with carrier-neutral centres.

(13) Wholesale and retail data centres. The Notifying Party claims that a distinction between wholesale and retail would not be meaningful in the market for the provision of data centre services. Historically, data centre providers have been referred to as "wholesale" data centres and "retail" data centres, according to primarily the size of the customer's space and power requirements. Wholesale data centres traditionally offer large amounts of space on long term contracts while retail data centres provide smaller amounts of space on medium- to short-term contracts. According to the Notifying Party, the distinction between wholesale and retail data centres would no longer be relevant as operators who traditionally were categorised as either retail or wholesale providers have also started offering colocation services that meet all size requirements. Data centre providers could quickly repurpose capacity from wholesale to retail or *vice versa*.

(14) Segmentation per type of customer. The Notifying Party submits that it is not appropriate to further segment the relevant market per type of customer. The Notifying Party segments its customers for marketing purposes into five types: (i) cloud and IT services providers; (ii) content and digital media providers; (iii) network providers; (iv) financial services providers; and (v) enterprise customers.[15] However, other data centre providers would not do this. According to the Notifying Party, the arguments for not further segmenting the market are threefold. First, data centres would provide essentially the same colocation services (*i.e.* space, power and ancillary services) to the different types of customers, adapted to the customer's specific requirements. Some customers have different colocation requirements in terms of e.g. latency,[16] number of network providers or quality requirements: financial services providers, for example, are sensitive to latency and favour a very close access to trading platforms, while for other customers data centres that host a higher number of network providers may be more attractive. Second, […].[17] Third, […].

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15 The exact segmentation of customers varies across data centre providers.

16 Latency is the wait time introduced by the communication signal travelling the geographical distance between two points as well as over the various pieces of communications equipment. Network latency is an expression of how much time it takes for a packet of data to get from one designated point to another.

17 […].

4.2.2. Results of the market investigation and Commission's assessment

(15) The Commission has not previously considered in detail the market for colocation services. Colocation services have been only investigated in the context of global connectivity services,[18] web hosting/internet hosting services[19] or infrastructure outsourcing services[20] leaving open the exact product market definition.

(16) As regards in-house and third party data centres, the majority of customers who replied to the market investigation[21] consider that third party data centre services are not substitutable in terms of product characteristics and price with storing data in-house. Moreover the majority of customers stated that they use only third party data centre services.[22] Some customers explained for instance that they do not have the expertise (related to put in place and manage the necessary power supply and air cooling, along with supervision and assistance activities) to build a data centre and could not realise the economies of scale associated with third party data centres. Therefore, building an own data centre would be too expensive compared to outsourcing data centre requirements. While most competitors who replied to the market investigation stated that third party data centre services are substitutable with storing data in-house, in fact, some of these competitors confirmed the view expressed by customers concerning the level of connectivity in third party data centres and the high investments associated with building a data centre.[23]

(17) In light of the above, and in particular considering the lack of substitutability between third party colocation services and storing data in-house due to the differences in price (related to the economies of scale that can be achieved by third party providers) and product characteristics such as level of connectivity, the Commission considers, for the case at hand, that third party colocation services and in-house data centres do not belong to the same product market.

(18) Concerning carrier-owned and carrier-neutral data centres, most customers and competitors who replied to the market investigation in this case considered services offered by carrier-neutral data centres and by carrier-owned data centres not to be substitutable. In particular, many customers and competitors explained that carrier-neutral data centres offer more options in terms of connectivity as the customer can choose the network provider and can opt to use more than one network provider. As a customer noted "*carrier-owned data centres tend to lock customers into the carrier's network*". Moreover, a customer considers that in some cases carriers

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18 Commission decision in Case M.6166 - DEUTSCHE BÖRSE/NYSE EURONEXT of 1 February 2012; Commission decision in Case M.6873 Intercontinental Exchange/NYSE EURONEXT of 24 June 2013, paragraph 138.

19 Commission decision in Case M.2648 KPNQWEST / EBONE / GTS of 16 January 2002, paragraph 19; Commission decision in Case M.6967 BNP Paribas Fortis/Belgacom/Belgian Mobile Wallet of 11 October 2013, paragraphs 118-121.

20 Commission decision in Case M.6921 IBM Italia/Ubis of 19 June 2013, paragraph 17 and Commission decision in Case M.7458 IBM/INF Business of Deutsche Lufthansa, paragraph 20.

21 See replies to Q2 – questionnaire to customers, question 4.

22 In-house data centre facilities they use cover less than 10% of the company's needs for data centre services.

23 See replies to Q1 – questionnaire to competitors, question 3.

(network providers) seem to be more reluctant to place their equipment in a data centre controlled by a competing carrier, which limits the number of carriers present in carrier-owned data centres and therefore potentially leads to higher prices and worse quality of service. A customer, for example, mentioned that pricing of network links landing at carrier-owned data centres is different than at carrier-neutral centres due to the lack of true local competition.[24] Moreover, according to a competitor, carrier neutral colocation is not the core business of carriers and carriers do not have the incentive "*to create an ecosystem which has the ability to connect with multiple carriers and exchange providers*".[25]

(19) The market investigation, however, also confirmed that there are a number of carrier-owned data centres that offer comparable levels of connectivity as carrier-neutral ones. Several customers emphasized that such carrier-owned data centres may deliver the same level of service, price and connectivity as carrier-neutral data centres. A competitor noted: "[s]*ervices offered by carrier-neutral data centers and carrier-owned data centers are generally substitutable in terms of technical characteristics and efficiency. The choice between these two types of suppliers will often depend on the location of the data centers in question, as well as on the strategy followed by the network provider, which sometimes makes it difficult for companies hosted in the same site to interconnect with each other*."

(20) Carrier-owned and carrier-neutral data centres appear to have some different characteristics: carrier-neutral seem to offer overall better connectivity, service and lower prices. In light of the results from the market investigation, which indicate that for some customers carrier-owned and carrier-neutral data centres provide a level of service considered equivalent for their needs and a number of carrier-owned datacentres offer comparable levels of connectivity to carrier-neutral datacentres (which, in turn, translates in better prices and better services for customers), the Commission considers, for the case at hand, that carrier-owned and carrier-neutral data centres belong to the same product market. However, as part of the competitive assessment, the Commission will take into account the differences between the services offered by carrier-owned and carrier-neutral operators when analysing the closeness of competition between the Parties and their competitors.

(21) As regards retail and wholesale data centres, the market investigation did not provide a clear picture on such possible segmentation. On the one hand, several respondents consider services offered by retail data centres and wholesale data centres not to be substitutable. These respondents mention that wholesale data centres offer larger capacity and more competitive prices, but also fewer services, fewer tenants, less diversity of network operators and limited connectivity options. Retail data centres, on the other hand, offer smaller contracts and more services.[26] On the other hand, several respondents consider that no distinction should be made between retail and wholesale providers. They state that the retail and wholesale colocation markets seem to be converging (or at least, the borders seem to be blurring). Providers nowadays offer a combination of both retail and wholesale

[24] See replies to Q2 – questionnaire to customers, question 5.

[25] See replies to Q1 – questionnaire to competitors, question 4.

[26] See replies to Q2 – questionnaire to customers, question 6.

services. For example, Global Switch, a traditional wholesaler, states on its website that it can offer retail services.[27]

(22) In light of the results from the market investigation, although retail and wholesale data centres seem to have somewhat different characteristics such as offering larger capacity, having fewer tenants and more limited connectivity options, the Commission considers, for the case at hand, that wholesale and retail data centres belong to the same product market because of the ongoing convergence between the two and also the fact that wholesale providers seem to be a viable alternative for at least some of the customers that retail data centres serve and that wholesale providers do compete for retail deals. However, as part of the competitive assessment, the Commission will take into account the differences between the services offered by wholesale and retail datacentre operators when analysing the closeness of competition between the Parties and their competitors.

(23) On the possible segmentation per the different types of customers mentioned in paragraph (14), the majority of customers who participated to the market investigation indicated that different types of customers have different types of needs, which may affect the specific characteristics of the data centre they would choose.[28] However, there is no clear dividing line in terms of the needs of the different types of customers. Customers across segments state that they need for instance connectivity (presence of network operators, connectivity to local internet exchanges, access to peering services), good location (proximity to users, business partners or other datacentres) and redundancy of power and cooling.[29] The majority of competitors consider that different categories of customers have different types of needs in terms of specific product characteristics.[30] However, the majority of competitors believe that data centres offering services to one category of customers can easily modify their services so as to also offer services to another category of customers.[31] A competitor has stated that it may be easy for data centre providers offering retail services. However, some competitors have emphasized some of the difficulties or costs involved in making modifications to data centres.[32]

(24) In relation to the ability of data centres to serve different types of customers who have different needs, the Commission notes that data centres usually serve multiple customer segments even if the proportion of the different groups can vary by data centre.

(25) In light of the results from the market investigation, and in particular the fact that data centre operators are capable of serving customers across different categories,

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27 In particular, it provides racks, cages and suites, traditionally offered by retailers only: http://www.globalswitch.com/services-data-centre-space/

28 See replies to Q2 – questionnaire to customers, question 10.

29 See replies to Q2 – questionnaire to customers, question 10.1.

30 See replies to Q1 – questionnaire to competitors, question 9.

31 See replies to Q1 – questionnaire to competitors, question 10.

32 See replies to Q1 – questionnaire to competitors, question 10.1. A competitor states that it may not always be possible to build a fence around a data centre to increase security. Another competitor considers that it would be expensive to modify power density or resilience and that it would be difficult to achieve network or community factor density.

the Commission considers, for the case at hand, that no segmentation of the markets for colocation services by type of customers is appropriate.

4.2.3. Conclusion

(26) In light of the above, the Commission considers that the relevant product market for the case at hand comprises colocation services provided by third party data centres without segmenting the relevant product market into services provided by carrier-neutral and carrier-owned data centres, wholesale and retail operators or by type of customers.

4.3. Relevant geographic market

4.3.1. Notifying Party's view

(27) The Notifying Party submits that the relevant geographic markets to be considered are the markets for colocation in Amsterdam, Frankfurt, London and Paris.

(28) According to the Notifying Party, a large majority of customers seek data centre services within a particular metropolitan area ("metro") and a given metro is in general not substitutable with another metro in the same or in another country. The Notifying Party submits that price levels of colocation services differ across the main metros and such discrepancies appear to be mostly due to differences in real estate, power and construction costs in each particular metro. According to the Notifying Party, industry analysts consider the markets on a metro by metro basis.

(29) According to the Notifying Party, within a particular metro data centres located in a radius of up to 50 km from the city centre are likely to be considered by most customers as credible alternatives to data centres located in the city centre. The 50 km radius would affect the provision of colocation services in at least four ways: i) the minimum acceptable latency for the services located in the data centre;[33] ii) the ability of data centre customers to travel to the data centre premises within a reasonable time (for example, one-hour commute) for installing or replacing the equipment hosted in the data centre; iii) proximity to end-users in major population centres; and, iv) cost-effective transmission of data to connect to counterparties in other data centres. According to the Notifying Party, several data centre providers have built new data centres located up to 50 km away from existing ones with little spare capacity and tethered them to each other.

4.3.2. Results of the market investigation and Commission's assessment

(30) In *Deutsche Börse/ NYSE Euronext* the results of the market investigation suggested that colocation services are likely to be location-specific (the trading platforms operated by Deutsche Börse and NYSE Euronext respectively being

33 Which corresponds to the minimum latency for a round-trip time for electronic signals (from the user's location within the "metro" area to the data centre and back to the user, as signals cannot travel faster than the speed of light), in addition to other delays caused by electronics, processing, etc. A few milliseconds seem to be a reasonable round-trip time for most applications, but some specific services, such as financial trading platforms, require a lower latency.

hosted in different metros[34]) and therefore not substitutable.[35] The Commission however left the exact market definition open in this respect.

(31) The majority of customers who replied to the market investigation stated that they target a specific metro area when seeking to source data centre services.[36] Some customers explained that metro areas present the best opportunities to connect to third parties with low latency, for example because there is a sufficient concentration of network operators. A customer mentions that it deploys into data centres within metropolitan areas to serve traffic locally to end-users and that it requires connectivity to certain carriers in order to serve that traffic.[37]

(32) The results of the market investigation confirmed that most customers only occasionally seek to source data services in more than one specific metro at the same time.[38] While several customers state that they may choose the same data centre supplier for more than one metro (provided the supplier is active in the metro areas), sometimes in order to obtain better prices, they also state they often source from several suppliers, sometimes even within the same metro.

(33) Customers, who source data centre services within the metropolitan area, do so generally within a radius of usually no more than 50 kilometres from the city centre.[39] There are several reasons for this. Some customers mention that the data centre should not be located too far in order to allow IT teams to access the centre (e.g. to install hardware and equipment). Other customers also mention latency, i.e. a short distance to the end-user allows for lower latency. One customer states that in order to connect to a carrier collocated in a data centre through another data centre using Dense Wavelength Division Multiplexing (DWDM), the dark fibre between the data centre meets the latency requirements of the DWDM equipment only if the maximum distance between the data centres is 50 km.[40]

(34) The majority of customers who replied to the market investigation consider data centre providers located within a 50 km radius from the city centre of a given metro area to be substitutable with data centres located within the city centre of the same metro.[41]

(35) While competitors have divergent views on the geographic level that they compete with other data centre providers[42] (some operators consider that competition takes

34 As financial services companies require very low latency access to trading platforms and stock exchanges they aim at installing their servers as closely as possible to the respective location of each trading platform/stock exchange in order to ensure minimum latency.

35 Commission decision in Case M.6166 - DEUTSCHE BÖRSE/NYSE EURONEXT of 1 February 2012, page 36, recital 187.

36 See replies to Q2 – questionnaire to customers, question 17.

37 See replies to Q2 – questionnaire to customers, question 17.1.

38 See replies to Q2 – questionnaire to customers, question 18.

39 See replies to Q2 – questionnaire to customers, question 15.1.

40 See replies to Q2 – questionnaire to customers, question 15.2.

41 See replies to Q2 – questionnaire to customers, question 16.

42 See replies to Q1 – questionnaire to competitors, question 12.

place at the worldwide level, others claim to compete at metro level, or at the national level) when stating the geographic level at which contracts with customers are signed the national level is the most commonly provided answer.[43] The majority of competitors also consider that data centre providers located within a 50 km radius from the city centre of a given metro area to be substitutable with data centres located within the city centre of the same metro.[44]

(36) Finally, the Commission also notes that consultancies like the market intelligence company IHS calculate market shares of colocation services providers per metro.[45]

(37) In the light of the above, and in particular the fact that most customers seem to target very specific metros when seeking to source data centres services and that the different metros do not appear to be substitutable from the demand side, the Commission considers that, for the case at hand, the relevant geographic market consists of each relevant metropolitan area (corresponding to a radius of around 50 km from the city centre).

5. COMPETITIVE ASSESSMENT

5.1. Affected markets

(38) The Parties' activities overlap horizontally in the market for colocation services and, as illustrated in

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43 See replies to Q1 – questionnaire to competitors, question 13.

44 See replies to Q1 – questionnaire to competitors, question 14.

45 See IHS Multi-Tenant Data Centre Market Tracker reports.

(39) Table **1** below, give rise to affected markets in four metros, namely Amsterdam, London, Frankfurt and Paris.

(40) On the market for colocation services,[46] the combined market shares by revenue would be: Amsterdam: [30-40]% (with an increment of [10-20]%), London: [30-40]% (with an increment of [10-20]%), Frankfurt: [30-40]% (with an increment of [5-10]%) and Paris: [20-30]% (with an increment of [10-20]%).

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46 The Commission notes that the competitive assessment of the proposed transaction would not materially differ even if the Commission were to identify a relevant market including carrier-neutral datacentres and carrier-owned datacentres that offer a comparable level of connectivity, which, based on the market investigation, is the key differentiator between these types of datacentres, in each of the relevant metros, namely KPN, Verizon Terremark, Colt, AT&T and Level 3 in Amsterdam, Colt, Verizon, AT&T and Level 3 in London and Level 3, BT, Colt, Verizon and AT&T in Frankfurt. Indeed, the market share of the Parties for 2014 by revenue would only be marginally higher in this scenario ([5-10] percentage points in Amsterdam, [0-5] percentage points in London and [0-5] percentage points in Frankfurt) and the competitive dynamics in each of the relevant markets would be very similar to those identified in Section 5 in relation to the market comprising carrier-neutral datacentres and all carrier-owned datacentres.

Table 1: Markets for colocation services at metro level (market shares by revenue)

	2014			2015 H1		
	Equinix	**Telecity**	**Combined**	**Equinix**	**Telecity**	**Combined**
Amsterdam	[10-20]%	[20-30]%	**[30-40]%**	[10-20]%	[20-30]%	**[40-50]%**
London	[20-30]%	[10-20]%	**]30-40]%**	[20-30]%	[10-20]%	**[30-40]%**
Frankfurt	[20-30]%	[5-10]%	**[30-40]%**	[30-40]%	[5-10]%	**[40-50]%**
Paris	[10-20]%	[10-20]%	**[20-30]%**	[10-20]%	[10-20]%	**[30-40]%**

Source: the IHS Multi-Tenant Data Centre Market Tracker

(41) No vertical relationships between the activities of the Parties have been identified.

5.2. Relevant metrics for market shares

(42) The Notifying Party claims that market shares calculated by revenue reflect only the historic competition, as once a data centre is full or almost full it ceases to compete actively in the market for new customers. Customer churn[47] is traditionally very low in the colocation industry.[48] Customers usually lease space in data centres under long term contracts and due to the technical complexity and prohibitive costs associated with moving large quantity of IT equipment, the large majority of customers of data centres tend to stay in the data centre locations they have already contracted.

(43) The Notifying Party submits that the actual competition that takes place on the colocation markets is best illustrated by shares in terms of available capacity (a function of both spare space and spare power in data centres) that providers are able to offer and sell to potential customers seeking to source colocation services.

(44) The Parties' shares in term of available spare space and spare power are presented in

47 Customer churn, also known as customer turnover or customer defection, is the amount of customers or subscribers who move out from a service or ceases a relationship with a provider during a given time period.

48 Form CO, paragraph 6.63. "The result is an industry characterised by low churn rates – Equinix's average quarterly churn rates from Q1 2014 to Q1 2015 were […]% in Amsterdam, […]% in Frankfurt, […]% in London and […]% in Paris. Telecity's total average quarterly churn rate in 2014 is estimated to be […]% for the UK, […]% for the Netherlands, […]% for Germany, and […]% for France. The average quarterly churn rate for business lost to competitors is […] (estimated to be […] per quarter across all four countries)."

(45) Table **2** below.

Table 2: Market shares in terms of spare capacity (spare space in sq m and spare power in kW) on the colocation services markets at metro level by the end of 2015

		Equinix	Telecity	Combined
Amsterdam	Spare space	[5-10]%	[5-10]%	[10-20]**%**
	Spare power	[5-10]%	[5-10]%	[10-20]**%**
London	Spare space	[5-10]%	[5-10]%	[10-20]**%**
	Spare power	[5-10]%	[5-10]%	[10-20]**%**
Frankfurt	Spare space	[5-10]%	[5-10]%	[10-20]**%**
	Spare power	[5-10]%	[5-10]%	[10-20]**%**
Paris	Spare space	[10-20]%	[5-10]%	[10-20]**%**
	Spare power	[10-20]%	[0-5]%	[20-30]**%**

Source: EU Commission based on Notifying Party's estimates

(46) Moreover, the Notifying Party claims that, for the overall colocation services market, the IHS market shares by revenue in some cases do not correctly reflect the actual revenues of the Parties and of some of its competitors. The Notifying Party submits restated IHS market shares adjusted based on the actual 2014 revenue of Equinix and Telecity.

Table 3: Restated Market shares for colocation services at metro level for 2014 and 2015

		Equinix	Telecity	Combined
Amsterdam	IHS for **2014**	[10-20]%	[20-30]%	[30-40]**%**
	Restated IHS 2014 with Parties estimates	[10-20]%	[20-30]%	[30-40]%
	IHS for **2015**	[10-20]%	[20-30]%	[30-40]**%**
	Restated IHS 2015 with Parties estimates	[10-20]%	[10-20]%	[20-30]%
London	IHS for 2014	[20-30]%	[10-20]%	[30-40]**%**
	Restated IHS 2014 with Parties estimates	[10-20]%	[10-20]%	[30-40]%
	IHS for **2015**	[20-30]%	[10-20]%	[30-40]**%**
	Restated IHS 2015 with Parties estimates	[10-20]%	[10-20]%	[20-30]%
Frankfurt	IHS for 2014	[20-30]%	[5-10]%	[30-40]**%**
	Restated IHS 2014 with Parties estimates	[20-30]%	[5-10]%	[30-40]%
	IHS for **2015**	[30-40]%	[5-10]%	[40-50]**%**
	Restated IHS 2015 with Parties estimates	[10-20]%	[0-5]%	[20-30]%
Paris	IHS for 2014	[10-20]%	[10-20]%	[20-30]**%**
	Restated IHS 2014 with Parties estimates	[10-20]%	[5-10]%	[20-30]%
	IHS for **2015**	[10-20]%	[10-20]%	[30-40]**%**
	Restated IHS 2015 with	[10-20]%	[5-10]%	[20-30]%

	Parties estimates			

Source: IHS data and Notifying Party's estimates

(47) The market investigation by and large confirmed the reliability of the market share figures calculated by IHS which the Commission therefore chose to use on a conservative basis for the purposes of its Phase I assessment since the IHS market shares are slightly higher that the Parties' shares restated on the basis of the original IHS data.

(48) The Commission also notes that, while spare space and spare power are very important indicators that should be taken into account when assessing the market power of market players and their ability to compete, in particular, going forward, revenue market shares appear the most appropriate starting point. The results of the market investigation confirm that market players take into account the revenue when assessing their own position, as well as their competitors' positions, on the market.[49] Moreover, third party independent consultancy firms, such as IHS and BroadGroup, also use market shares based on revenues as a main parameter in order to determine the market position of the various data centre operator.

(49) That said, the amount of spare capacity (and spare power) is also very important. This reflects the fact that customers have limited ability to switch data centre, due to the technical complexity and associated high costs of moving the equipment (renting two colocation premises, ensuring continuity of mission critical services) and even more so customers who rely on the connectivity services in the data centre.

(50) According to the Notifying Party, the industry is characterized by low churn rates. In particular, the Notifying Party estimates its average quarterly churn rate from Q1 2014 to Q1 2015 to be […]% for Amsterdam and London, […]% for Frankfurt and […]% for Paris. The Notifying Party estimates Telecity's total average quarterly churn rate in 2014 to be […]% for the Netherlands, […]% for the United Kingdom, […]% for Germany and […]% for France. Churn rates for business lost to competitors are estimated by the Notifying Party to be […] per quarter across the four countries.[50]

(51) A large majority of customers who participated in the market investigation consider that the cost of switching to another supplier in the same metro is important. In addition, a majority of customers consider switching to be technically complex (and some consider it even to be "very complex") and time-consuming. Several customers have stated that switching is not even considered as a real option.[51] That said, some customers have in the past moved to another data centre provider in the same metro (though rarely more than once): the reasons include, technical issues (e.g. power instability, cooling), insufficient capacity to grow, security concerns, and sometimes pricing. These constraints on customers to switch data centre provider could prevent them from move away from the facilities of the merged

49 See replies to Q1 – questionnaire to competitors, question 15.

50 Form CO, paragraph 6.63.

51 See replies to Q2 – questionnaire to customers, question 13.

entity should it decide post-transaction to start charging more for its colocation services.

(52) The Commission considers that the ability of the various players to compete for future business depends to a large extent on the available spare capacity and spare power. When a datacentre is full and has no capacity to further expand it may not have future ability to compete, though it may generate a lot of revenue to the data centre provider due the presence of established customers.

5.3. Market for provision of colocation services in the Amsterdam metro area

5.3.1. Notifying Party's View

(53) The Notifying Party submits that the Proposed Transaction will not give rise to competition concerns in the overall colocation market in the Amsterdam metro area for the following reasons: (i) the merged entity's combined market share for 2015 by revenue (based entirely on Parties' estimates) will be of only [20-30]%; (ii) the colocation market in Amsterdam is fragmented and post-transaction there will remain a sufficient number of competitors with market shares of between [10-20]% and [10-20]% (such as Global Switch, Interxion and KPN); (iii) the merged entity will account for only [10-20]% to [10-20]% of the available spare capacity; (iv) Equinix and Telecity are not each other's closest competitors; and, (v) the Parties do not both operate highly connected data centres with a high number of potential peering counterparties.

(54) According to the Notifying Party, Equinix competes more frequently with […], and competes frequently with [numerous] other competitors […].

(55) Moreover, the Notifying Party submits that the Parties' levels of investments for expansion are largely in line with some of the Parties' main competitors, whilst a number of other players are investing much more heavily than the Parties.

(56) Furthermore, the Notifying Party claims that the Proposed Transaction will not impair the options available to those customers who value and seek highly connected data centres as the best connected data centres (i.e. the data centres with the highest number of potential private peers) are owned by Telecity and other competitors, but not Equinix.

(57) Finally, the Notifying Party emphasizes the presence of an important number of competitors in Amsterdam and the high level of supply with large amounts of spare space.

5.3.2. Commission's assessment

(58) Equinix has three data centres in Amsterdam (AM1, AM2 and AM3). AM1 and AM2 are located in the Southeast of Amsterdam and generated revenues of respectively EUR […] million and EUR […] million (2014). Both data centres are […] (with spare space of […] and […] m²), […] they have […] spare power ([…] and […] KW respectively). AM1 hosts […] network providers and is tethered to […]. AM2 in turn hosts […] network providers and the public internet exchanges AMS-IX and NL-IX. AM3 is located in Science Park and generated revenues of EUR […] million (2014). AM3 has […] m² spare space and […] KW spare power.

AM3 hosts […] network providers as well as the public internet exchanges AMS-IX and NL-IX.

(59) Telecity has 6 data centres in Amsterdam (AMS01, AMS02, AMS03, AMS04, AMS05 and AMS06). AMS01 is located in Science Park, AMS02 and AMS05 are located in Southeast of Amsterdam, AMS03 is located in West Harbour and AMS04 and AMS06 are located in Amstel Business Park. AMS01 generated revenues of EUR […] million (2014), has […] spare capacity ([…] m²) and power ([…] KW), hosts […] network providers and NL-IX, and is tethered to Nikhef[52] and Sara.[53] AMS02 generated revenues of EUR […] million (2014), it has […] m² spare capacity […] spare power, hosts […] network providers and AMS-IX and NL-IX. AMS03 had revenues of EUR […] million (2014), has […] m² spare space, […] KW spare power, and hosts […] network providers and NL-IX. AMS04 generated EUR […] million revenues (2014), has […]m² spare space and […] KW spare power and hosts […] network providers and AMS-IX. AMS05 generated EUR […] million (2014), has […] m² spare capacity […] spare power, and hosts […] network providers and AMS-IX. Finally, AMS06, the opening of which was announced on 2 November 2015,[54] has […] m² spare capacity, […] KW spare power and tethers to […].

(60) The Parties are strong competitors in Amsterdam. Both control a portfolio of data centres which includes full data centres generating steady revenues, data centres with spare capacity, well-connected data centres and well-located data centres. Equinix controls two full data centres in Southeast and one data centre in Science Park which has spare capacity and spare power, generating a total of EUR […] million in revenues (2014). Telecity is present in four locations, including Science Park and Southeast, generating total revenues of EUR […] million. Telecity data centres have spare capacity and spare power in West Harbor and Amstel Park.

(61) In light of the above, the Commission considers that the Parties are today important competitive forces in Amsterdam.

(62) The Parties' and their main competitors' shares by revenue and by available capacity in relation to the market for colocation services in Amsterdam are illustrated in the below

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52 Nationaal Instituut voor Kernfysica en Hoge-Energiefysica ("Nikhef") is the National Institute for Nuclear Physics and High Energy Physics in Amsterdam.

53 […]

54 http://www.telecitygroup.com/our-company/news/2015/telecitygroup-opens-new-96-mw-data-centre-in-amsterdam htm

(63) Table **4**.

Table 4: Market shares for market for colocation services by revenue and by available capacity

	2014 by revenue	2015 H1 by revenue	End 2015 spare space	End 2015 spare power
Telecity	[20-30]%	[20-30]%	[5-10]%	[5-10]%
Equinix	[10-20]%	[10-20]%	[5-10]%	[5-10]%
Combined	[30-40]**%**	[40-50]**%**	[10-20]**%**	[10-20]**%**
Global Switch	[10-20]%	[10-20]%	[5-10]%	[10-20]%
Interxion	[10-20]%	[10-20]%	[10-20]%	[20-30]%
KPN	[5-10]%	[5-10]%	[30-40]%	[20-30]%
EvoSwitch	[0-5]%	[0-5]%	[5-10]%	[5-10]%
Digital Realty	[0-5]%	[0-5]%	[5-10]%	[5-10]%
Switch Datacenters	[0-5]%	[0-5]%	[5-10]%	[5-10]%
AT&T	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Level3	[0-5]%	[0-5]%	[0-5]%	[0-5]%
NTT / E-Shelter	[0-5]%	[0-5]%	[…]	[…]
Verizon Terremark	[0-5]%	[0-5]%	[5-10]%	[0-5]%
Colt	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Others	[0-5]%	[0-5]%	[0-5]%	[0-5]%

Source: IHS data and Parties' estimates

(64) First, the Proposed Transaction would bring together two large carrier-neutral retail data centre service providers in Amsterdam. As shown by the above table, the Parties' combined market shares would be around [30-40]% by revenue, with a significant increment. The combined entity will be [considerably larger than] its nearest competitor, Global Switch ([10-20]%), which, in turn, is a strong wholesale provider, with a more limited retail presence. The only other large retail competitor on the market would be Interxion ([10-20]%), alongside a number of smaller competitors with around [5-10]% market share or less each.

(65) Second, the Parties appear to be close competitors with each other […]. Both Parties promote themselves as being carrier-neutral retail data centre providers and compete essentially in this sub-segment of the overall colocation market. Hence, they do not compete closely with carrier-owned operators such as KPN, Verizon, Colt, AT&T and Level3. In addition, the analysis of the available bidding data[55] for the period […] by value (the estimated value of business opportunities for which both Equinix and Telecity competed) demonstrates that the most often encountered competitors by Equinix were […] and […]. In the bids in which Telecity competed the most often encountered competitor was […] and the second most encountered competitor was […]. Bidding data expressed by volume (number of competitive encounters) show that in […] bids (representing […]% of the total encounters for which data is available) Equinix was facing […], among other competitors, and in […] bids it was facing […]. Telecity, on the other hand, was competing against […] in […] bids ([…]% of the bids) and with […] in […] bids ([…]%).

55 […]

(66) Moreover, the results of the market investigation show that market players (competitors and customers alike) consistently identify Equinix and Telecity as close competitors in Amsterdam.[56]

(67) Third, the Proposed Transaction would eliminate an important competitive force in Amsterdam. In Science Park, the merger would combine Equinix AM3 with Telecity AMS01, which is tethered to the Nikhef and Sara/Vancis. The latter two data centres are very well connected but have very limited spare space. No extensions are planned by either Nikhef or Sara/Vancis.[57] Telecity is expanding AMS01 with […] sq m in […] and Equinix will add […] sq m in […] in its Science Park data centre. Hence, the merger will bring together the two remaining providers with spare capacity in Science Park. In South East, the merger would combine Telecity's best connected data centres (AMS02 and AMS05) with Equinix's AM1 and AM2.

(68) In this regard the market investigation provided indications that an important number of customers (though not a clear majority) expect the Parties to increase prices for their colocation services post-transaction in the Amsterdam metro.[58]

(69) Lastly, barriers to entry on the markets for provision of colocation services are relatively high and it cannot be reasonably expected that any horizontal non-coordinated effects could be mitigated by timely, likely and sufficient entry.

(70) In light of the above, the Commission considers that the Proposed Transaction raises serious doubts as to its compatibility with the internal market as regards the market for colocation services in the Amsterdam metro area.

5.4. Market for the provision of colocation services in the London metro area

5.4.1. Notifying Party's View

(71) The Notifying Party submits that the Proposed Transaction will not give rise to competition concerns in the overall colocation market in the London metro area for the following reasons: (i) the merged entity's combined market share for 2015 by revenue (based entirely on Parties' estimates) will be of [20-30]%; (ii) the colocation market in London is highly fragmented and post-transaction there will remain a sufficient number of competitors with sizeable market shares of between [10-20]% and [10-20]% (such as Global Switch, Digital Realty and KDDI Telehouse); (iii) the merged entity will account for [10-20]% to [10-20]% of the available spare capacity; (iv) Equinix and Telecity are not each other's closest competitors and their respective London data centres are largely complementary; and (v) the Parties do not both operate highly connected data centres with a high number of potential peering counterparties.

(72) In particular, the Notifying Party submits that the data centres operated in London by Equinix and Telecity do not compete head-to-head due to the complementarity

[56] See replies to Q2 – questionnaire to customers, questions 23 and 24. See also See replies to Q1 – questionnaire to competitors, questions 19 and 20.

[57] Form CO, Table 6.47.

[58] See replies to Q2 – questionnaire to customers, question 42.

of their respective data centres. While the majority of Telecity's revenues are generated by highly-connected data centres in the Docklands (east of London), Equinix's data centres are largely located in Slough (west of London and Heathrow airport). Data centres in the Docklands, where the transatlantic fibre connecting Europe to the United States lands and which historically developed as a connectivity hub, mainly attract customers like Internet providers, telecom carriers and content providers. Slough on the other hand traditionally draws more financial services providers.

(73) The Notifying Party further submits that, Telecity apart, Equinix competes frequently with at least [numerous] other data centre operators, and in Slough in particular mainly with […], but also with […].

(74) Moreover, the Notifying Party claims that post-transaction the combined entity's shares in terms of spare capacity and levels of investments for expansion will be largely in line with some of the Parties main competitors with a number of players investing much more heavily than the Parties.

(75) In addition, the Notifying Party submits that the Proposed Transaction will not impair the options available to those customers who value and seek highly connected data centres as the data centres with the highest number of potential private peers (i.e. the best connected data centres) are located in the Docklands and are owned by either KDDI-Telehouse or Telecity while the Equinix data centres in Slough have a much lower level of connectivity compared to these Docklands data centres.

(76) Finally, the Notifying Party emphasises the presence of an important number of competitors in London and the high level of supply with large amounts of vacant space.

5.4.2. Commission's assessment

(77) Equinix has six data centres in London (LD1, LD2, LD3, LD4, LD5 and LD6). LD4, LD5 and LD6 are all located in Slough, which is an important data centre hub within the London metro, and generated revenues in 2014 of EUR […] million for LD4 and EUR […] million for LD5 respectively. LD6 which opened in 2015 has no revenue reported for 2014. LD4 is […] (with spare space of […] m² and […] KW spare power) while LD5 (with […] m² spare space and […] KW spare power) and LD6 (with […] m² and […] KW) have […]. LD4 hosts […] network providers, the public internet exchange LINX and is tethered to […] and […]. LD5 hosts […] network providers and LINX (which is also present in LD6).

(78) The other three Equinix data centres in London are located as follows: LD1 in the City (Moorgate), LD2 in Greater London (West Drayton) and LD3 near Park Royal. Each of these data centres generated in 2014 EUR […] million, EUR […] million and EUR […] million revenues respectively. LD1 has […] spare capacity ([…] m² spare space and […] KW spare power) and hosts […] network providers. LD2 on the other hand has […] m² spare space and […] KW spare power hosting […] network providers. Finally LD3 disposes of […] m² spare space and […] KW of spare power, and hosts […] network providers.

(79) Telecity has seven data centres in London (Lon1, Lon2, Lon3, Lon4, Lon5, Lon7 and Lon10). Five out of these seven data centres are located in the Docklands area

(which similarly to Slough is an important cluster of well-connected data centres): Lon1 (Bonnington House), Lon2 (8/9 Harbour Exchange), Lon3 (Sovereign House), Lon4 (Meridian Gate) and Lon5 (6/7 Harbour Exchange). Lon7 (Oliver's Yard) is located in the City while Lon10 (Powergate) in Acton, West London. The Dockland data centres of Telecity generated in 2014 revenues of EUR […] million (Lon1), EUR […] million (Lon2), EUR […] million (Lon3), EUR […] million (Lon4) and EUR […] million (Lon5). Lon7 and Lon10 reported for 2014 revenues of EUR […] million and EUR […] million respectively.

(80) In terms of spare capacity and connectivity, Lon1 has […] m^2 of spare space and […] KW of spare power and hosts […] network providers and LINX. Lon2 has […] m^2 of spare space, […] KW of spare power and hosts […] network providers plus LINX. Lon3 disposes of […] m^2 spare space […] spare power; it hosts […] network providers and LINX. Lon4 has […] m^2 spare space, […] KW of spare power, […] network providers and […] (in addition to a fibre tether to […] and […]). Lon5 has […] m^2 spare space, […] KW of spare power and […] network providers plus LINX. Lon7 has […] spare space standing at […] m^2 and […] KW of spare power hosting […] network providers and a fibre tether to […] and […]. Finally Lon10 has […] m^2 of spare space, […] KW of spare power, […] network providers, LINX and a fibre tether to […] and […]. […].

(81) The Parties are strong competitors in London. Each of them controls a portfolio of data centres which includes full data centres with steady revenue streams, data centres with spare capacity, well-connected data centres and attractively located data centres. Equinix controls three data centres in Slough which have strong revenues and considerable spare space and spare power along with its three other data centres across the metro. Telecity is more focused on the Docklands where it has five data centres with spare capacity generating total revenues of EUR […] million in 2014. Telecity's data centre in Powergate has substantial spare capacity.

(82) In light of the above, the Commission considers that the Parties are today important competitive forces in London.

(83) The Parties' and their main competitors' shares by revenue and by available capacity in relation to the market for carrier-neutral colocation services in London are illustrated in the below Table 5.

Table 5: Market shares for market for colocation services by revenue and by available capacity

	2014 by revenue	2015 H1 by revenue	End 2015 spare space	End 2015 spare power
Equinix	[20-30]%	[20-30]%	[5-10]%	[5-10]%
Telecity	[10-20]%	[10-20]%	[5-10]%	[5-10]%
Combined	[30-40]**%**	[30-40]**%**	[10-20]**%**	[10-20]**%**
Global Switch	[10-20]%	[10-20]%	[5-10]%	[0-5]%
Digital Realty	[10-20]%	[10-20]%	[0-5]%	[0-5]%
Infinity	[5-10]%	[5-10]%	[10-20]%	[10-20]%
Century Link	[5-10]%	[5-10]%	[5-10]%	[5-10]%
KDDI-Telehouse	[5-10]%	[0-5]%	[0-5]%	[0-5]%
Interxion	[0-5]%	[0-5]%	[0-5]%	[0-5]%
NTT/Gyron	[0-5]%	[0-5]%	[20-30]%	[20-30]%
Virtus	[0-5]%	[0-5]%	[10-20]%	[10-20]%
Colt	[0-5]%	[0-5]%	[5-10]%	[5-10]%
Verizon Terremark	[0-5]%	[0-5]%	[0-5]%	[0-5]%

AT&T	[0-5]%	[0-5]%	[…]	[…]
Level 3	[0-5]%	[0-5]%	[…]	[…]

Source: IHS data and Parties' estimates

(84) First, the Proposed Transaction would bring together two large carrier-neutral data centre providers in London. As shown by the above table, the Parties' combined market share would be of around [30-40]% by revenue, with a significant increment of around [10-20]%. The combined entity will be [considerably larger than] its nearest competitor, Global Switch ([10-20]%), which is a strong wholesale provider, with a more limited retail presence. The only other relatively large competitor in the London metro would be Digital Realty ([10-20]%) whose market share by revenue would be approximately [considerably smaller] than the share of the merged entity. Furthermore Digital Realty, similarly to Global Switch, is a wholesale provider. A number of other, considerably smaller competitors such as Infinity ([10-20]%), Century Link ([5-10]%) and KDDI-Telehouse ([5-10]%) are also active on the market.

(85) The increment brought by the Proposed Transaction in terms of spare capacity is not insignificant and will place the merged entity as the second largest player in London in terms of spare capacity ([10-20]%) behind NTT/Gyron ([20-30]%).

(86) Second, the Parties appear to be close competitors with each other […]. Both Parties promote themselves as being carrier-neutral retail data centre providers and compete essentially on this sub-segment of the overall colocation market. Hence they do not compete closely with carrier-owned operators such as Colt, Verizon, Level 3 and AT&T. In addition, the analysis of the available bidding data by value (the estimated value of business opportunities for which both Equinix and Telecity competed) indicates that the most often encountered competitors by Equinix were […] and […]. In opportunities for which Telecity competed, the most often encountered competitor by far was […], followed by […] as the second most encountered competitor.[59] If we analyse the bidding data only by volume (number of competitive encounters), Equinix was facing each […] and […] in an equal number of bids: […] encounters. Telecity on the other hand was competing against […] in […] encounters ([…]% of the bids) and against […] in […] encounters ([…]%) and […] in […] encounters ([…]%).

(87) Furthermore, the results of the market investigation show that market players (competitors and customers alike) identify Equinix and Telecity as close competitors in London.[60]

(88) Third, the Proposed Transaction would eliminate an important competitive force in London. Telecity has concentrated its activities in the Docklands, where it has five data centres (with a total of […] sq m of spare space and […] KW of spare power) while Equinix is focused on Slough, where it has three data centres (with nearly […] sq m of spare space and […] KW of spare power). Both Parties are planning expansions in the Docklands and Slough respectively: Telecity will increase its spare capacity in the Docklands with […] sq m in […] and Equinix will add further

59 See footnote 55.

60 See replies to Q2 – questionnaire to customers, questions 23 and 24. See also See replies to Q1 – questionnaire to competitors, questions 19 and 20.

[…] sq m to its Slough data centres in […]. Hence, the merger will bring together two operators with well-connected data centres with significant spare capacity in the main hubs of the Docklands and Slough thus providing the merged entity with strong presence in both important locations.

(89) In this regard the market investigation provided indications that an important number of customers (though not a clear majority) expect the Parties to increase prices for their colocation services post-transaction in London.[61] As a customer noted, a price increase "*is the likely outcome as the biggest competitor will have been absorbed.*"[62]

(90) Lastly, barriers to entry on the markets for provision of colocation services are relatively high and it cannot be reasonably expected that any horizontal non-coordinated effects could be mitigated by timely, likely and sufficient entry.

(91) In light of the above, the Commission considers that the Proposed Transaction raises serious doubts as to its compatibility with the internal market as regards the market for carrier-neutral colocation services in the London metro area.

5.5. Market for provision of colocation services in the Frankfurt metro area

5.5.1. Notifying Party's View

(92) The Notifying Party submits that the Proposed Transaction will not give rise to competition concerns in the overall colocation market in the Frankfurt metro area for the following reasons: (i) the merged entity's combined market share for 2015 by revenue (based entirely on Parties' estimates) will be of [20-30]%; (ii) post-transaction there will remain another leading player (NTT/E-shelter) with a market share of between [20-30]% and [30-40]%, alongside smaller competitors (Telehouse and Interxion); (iii) the merged entity will account for [10-20]% to [10-20]% of the available spare capacity; (iv) Equinix and Telecity are not each other's closest competitors; and, (v) the Parties do not both operate highly connected data centres with a high number of potential peering counterparties.

(93) In particular, the Notifying Party submits that Equinix competes mainly with […] and less frequently with Telecity, which is only a small competitor in Frankfurt.

(94) Furthermore, the Notifying Party claims that one of Equinix's five data centres in Frankfurt has […]. NTT/E-shelter has the largest amount of spare capacity ([30-40]%) and three other competitors have significant spare capacity ([…]).

(95) Moreover the Notifying Party claims that the Parties' levels of investments are largely in line with some of the Parties' main competitors, whilst other players are investing much more heavily than the Parties.

(96) In addition, the Notifying Party submits that the Proposed Transaction will not impair the options available to those customers who value and seek highly connected data centres as the data centres with the highest number of potential

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61 See replies to Q2 – questionnaire to customers, question 41.

62 See replies to Q2 – questionnaire to customers, question 41.1.

private peers (i.e. the best connected data centres) are owned by Equinix and Interxion.

(97) Finally, the Notifying Party emphasises the presence of an important number of competitors in Frankfurt and the high level of supply with large amounts of spare space.

5.5.2. Commission's assessment

(98) Equinix has four data centres in different locations in Frankfurt (FR1, FR2, FR4 and FR5).[63] FR1 (Taubenstrasse) generated EUR […] million revenues (2014), has […] m² spare space, […] KW spare power and hosts […] network providers and DE-CIX. FR2 (Kruppstrasse) is Equinix's largest data centre in Frankfurt ([…] m² total space): it generated EUR […] million revenues (2014), has […] m² spare capacity […] spare power, and hosts […] network providers and DE-CIX. FR4 (Larchenstrasse) generated EUR […] million revenue (2014), has […] m² spare space, […] KW spare power and hosts […] network providers, DE-CIX and NL-IX. FR5 (Kleyerstrasse) generated EUR […] million revenue, has […] m² spare space, […] KW spare power, hosts […] network providers and DE-CIX and tethers to […].

(99) Telecity has 2 data centres in Frankfurt. FRA01 (Gutleutstrasse) generated EUR […] million (2014), has […] m² spare space, […] KW spare power, hosts […] network providers and DE-CIX. FRA01 is tethered to FRA02 (Lyoner Strasse) which generated EUR […] million (2014), has […] m² spare space, […] KW spare power.

(100) The Parties are strong competitors in Frankfurt. Both Parties have a mix of data centres in the Frankfurt metro, including full data centres generating steady revenues (e.g. Equinix's FR2 and Telecity's FRA01), data centres with spare capacity and spare power (e.g. Equinix's FR4 and Telecity's FRA02) and well-connected data centres (e.g. Equinix's FR5 and Telecity's FRA01).

(101) In light of the above, the Commission considers that the Parties are today important competitive forces in Frankfurt.

(102) The Parties' and their main competitors' shares by revenue and by available capacity in relation to the market for colocation services in Frankfurt are illustrated in the below

63 […].

(103) Table **6**.

Table 6: Market shares for market for colocation services by revenue and by available capacity

	2014 by revenue	**2015 H1 by revenue**	**End 2015 spare space**	**End 2015 spare power**
Equinix	[20-30]%	[30-40]%	[5-10]%	[5-10]%
Telecity	[5-10]%	[5-10]%	[5-10]%	[5-10]%
Combined	[30-40]**%**	[40-50]**%**	[10-20]**%**	[10-20]**%**
NTT (e-shelter)	[20-30]%	[20-30]%	[30-40]%	[20-30]%
Interxion	[10-20]%	[10-20]%	[10-20]%	[10-20]%
KDDI-Telehouse	[5-10]%	[5-10]%	[10-20]%	[10-20]%
Global Switch	[0-5]%	[0-5]%	[5-10]%	[5-10]%
AT&T	[0-5]%	[0-5]%	[…]	[…]
Level 3	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Colt	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Itenos (Deutsche Telekom)	[…]	[…]	[5-10]%	[5-10]%
Zenium	[…]	[…]	[0-5]%	[10-20]%
BT Group	[…]	[…]	[5-10]%	[5-10]%
Wusys Data centre	[…]	[…]	[0-5]%	[0-5]%
Verizon Terremark	[…]	[…]	[0-5]%	[0-5]%
Others	[0-5]%	[0-5]%	[…]	[…]

Source: IHS data and parties estimates

(104) First, the Proposed Transaction would bring together two important carrier-neutral retail data centre providers in Frankfurt. As shown by the above table, the Parties' combined market shares would be around [30-40]% to [40-50]% by revenue, [considerably larger than] the market share of the nearest carrier-neutral retail data centre provider (Interxion), which has very well connected data centres and spare capacity. The second largest data centre provider in terms of revenue in the Frankfurt metro would be NTT/e-shelter, which traditionally focused on wholesale data centre services and recently added retail data centre services to its offerings.[64] While NTT/e-shelter has according to the Notifying Party […] m² spare space in Frankfurt 1, it is among the least connected data centres in the Frankfurt metro.[65]

(105) Second, the Parties appear to be close competitors with each other […]. Both Parties promote themselves as being carrier-neutral retail data centre providers and compete essentially in this sub-segment of the overall colocation market. Hence they do not compete closely with carrier-owned operators such as BT Group, Verizon, Colt, AT&T and Level3. In addition, the analysis of the available bidding data[66] for the period […] by value (the estimated value of business opportunities for which both Equinix and Telecity competed) demonstrates that the most often encountered competitors by Equinix in Frankfurt were […]. Opportunities for which Telecity competed the most often encountered […] ([…]%), followed by […] ([…]%).

64 Form CO, page 197, paragraph 6.422.

65 Form CO, page 186, Table 6.74.

66 See footnote 55.

(106) Moreover, the results of the market investigation show that market players (competitors and customers alike) identify Telecity, NTT/e-shelter and Interxion as close competitors in Frankfurt to Equinix and Equinix as the closest competitor to Telecity.[67]

(107) Third, barriers to entry on the markets for provision of colocation services are relatively high and it cannot be reasonably expected that any horizontal non-coordinated effects could be mitigated by timely, likely and sufficient entry.

(108) In light of the above, the Commission considers that the Proposed Transaction raises serious doubts as to its compatibility with the internal market as regards the market for carrier-neutral colocation services in the Frankfurt metro area.

5.6. Market for provision of colocation services in the Paris metro area

5.6.1. Notifying Party's View

(109) The Notifying Party submits that the Proposed Transaction will not give rise to competition concerns in the overall colocation market in the Paris metro area for the following reasons: (i) the merged entity's combined market share for 2015 by revenue (based entirely on Parties' estimates) will be of [20-30]%; (ii) the colocation market in Paris is fragmented and post-transaction there will remain a number of competitors with market shares of between [10-20]% and [10-20]% (Global Switch, Digital Realty, Interxion and KDDI-Telehouse); (iii) the merged entity will account for [10-20]% to [10-20]% of the available spare capacity; (iv) Equinix and Telecity are not each other's closest competitors; and, (v) the Parties do not both operate highly connected data centres with a high number of potential peering counterparties.

(110) In particular, the Notifying Party submits that Equinix competes more frequently with […] than with Telecity, which is only a small player in Paris, and that Equinix competes frequently with at least [numerous] other competitors ([…]).

(111) The Notifying Party also claims that at least four other competitors have significant spare capacity (Iliad, KDDI-Telehouse, Global Switch and Interxion. In addition, another competitor (Data4) would be planning to add significant capacity by building 13 new data centres.

(112) Moreover the Notifying Party claims that the Parties' levels of investments are largely in line with some of the Parties' main competitors, whilst other players are investing much more heavily than the Parties.

(113) Finally, the Notifying Party emphasizes the presence of an important number of competitors in Paris and the high level of supply with large amounts of spare space.

5.6.2. Commission's assessment

(114) Equinix has four data centres in Paris (PA1, PA2, PA3 and PA4). PA2 and PA3 are located in Saint-Denis generating in 2014 revenues of EUR […] million and EUR

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67 See replies to Q2 – questionnaire to customers, questions 23 and 24. See also See replies to Q1 – questionnaire to competitors, questions 19 and 20.

[…] million respectively. PA1 (with 2014 revenue of EUR […] million) is located in Roissy and PA4 (EUR […] million in 2014) is located in Pantin. PA1 has […] m^2 of spare space, […] KW of spare power and hosts […] network providers. PA2 has […] m^2 of spare space, […] KW of spare power and hosts […] network providers (in addition to being tethered to […] and […]). PA3 has […] m^2 of spare space, […] KW of spare power and hosts […] network providers and NL-IX. Finally PA4 has […] m^2 of spare space, […] KW of spare power and […] network providers.

(115) Telecity has three data centres in Paris (PAR01, PAR02 and PAR03). PAR01 which reported EUR […] million revenues in 2014 and PAR03 (EUR […] million revenue in 2014) are both located in Aubervilliers while PAR02 (EUR […] million revenue for 2014) is located in Courbevoie. PAR01 has […] m^2 of spare space, […] KW of spare power and hosts […] network providers along with FRANCE-IX (in addition to being tethered to […] and […]). PAR02 has […] m^2 of spare space, […] KW of spare power and hosts […] network providers plus FRANCE-IX. PAR03 has […] m^2 of spare space, […] KW of spare power and hosts […] network providers, FRANCE-IX and NL-IX.

(116) The Parties' and their main competitors' shares by revenue and by available capacity in relation to the market for colocation services in Paris are illustrated in the below Table 7.[68]

Table 7: Market shares for market for colocation services by revenue and by available capacity

	2014 by revenue	**2015 H1 by revenue**	**End 2015 spare space**	**End 2015 spare power**
Equinix	[10-20]%	[10-20]%	[10-20]%	[10-20]%
Telecity	[10-20]%	[10-20]%	[5-10]%	[0-5]%
Combined	[20-30]**%**	[30-40]**%**	[10-20]**%**	[20-30]**%**
Interxion	[10-20]%	[20-30]%	[10-20]%	[10-20]%
Global Switch	[10-20]%	[10-20]%	[10-20]%	[5-10]%
KDDI-Telehouse	[10-20]%	[10-20]%	[20-30]%	[10-20]%
Digital Realty	[5-10]%	[5-10]%	[0-5]%	[0-5]%
NTT	[0-5]%	[0-5]%	[…]	[…]
Others	[0-5]%	[0-5]%	[…]	[…]

Source: IHS data and Parties estimates

(117) As shown by the above table, the Parties' combined market shares would be around [30-40]% by revenue, the […] among the four metropolitan areas considered.

(118) First, the Proposed Transaction would bring together the current […] and […] providers in terms of market shares in Paris. Post-transaction, there will still be very strong suppliers active in the market, with spare capacity including Interxion ([20-30]%) and KDDI-Telehouse ([10-20]%).

(119) Interxion has seven data centres in Paris, all of which are tethered to each other.[69] Interxion is building a new data centre in the south of Paris, which will add an additional 2 000 m^2 to its current […] m^2 of spare space.[70]

68 Carrier-neutral market in Paris includes KDDI-Telehouse but excludes carrier-owned Verizon, Colt, Completel, Interoute, AT&T and Level3.

(120) KDDI-Telehouse is a very strong competitor in Paris, having very good connectivity and the largest amount of spare capacity. KDDI-Telehouse has three data centres in Paris: KDDI-Telehouse 2 is a very well connected data centre with 192 PPPs, more than twice as many as Equinix 2.[71] KDDI-Telehouse has a total of […] m² of spare capacity and […] KW of spare power in Paris.

(121) Global Switch, which also has a sizeable market share ([10-20]%) is wholesaler and it is competing to lesser extent with the Parties than other retailers.

(122) As regards closeness between the Parties, the data on business opportunities for which the Parties competed indicate that the most often encountered competitor by Equinix in Paris is […] ([…]%) while […] comes second ([…]%). Opportunities for which Telecity competed the most often encountered […] ([…]%), the other most encountered competitor was […] ([…]%).

(123) Second, the expected addition of significant capacity by competitors may make price increases by the merged entity less likely. Data4 is projected to build 13 new data centres (connected with over 40 network providers), adding 35 200 m² of capacity ([…]) in Marcoussis 2015 onwards.[72]

(124) In light of the above, the Commission considers that the Proposed Transaction does not raise serious doubts as to its compatibility with the internal market as regards the market for colocation services in the Paris metro area.

5.7. Network effects

(125) The Horizontal Merger Guidelines include network effects among the factors that may make entry unprofitable.[73] Network effects arise when the value of a product/service to its users increases with the number of other users of the product/service.[74] As regards the Proposed Transaction, network effects could be experienced in three different ways: i) in relation to data centre customers in general, ii) with respect to data centre customers who are network providers and, iii) as regards the global or pan-European footprint of the merged entity.

5.7.1. Network effects in relation to established customers

(126) Certain data centre customers that are perceived by other potential customers as important may attract new customers to these data centres. For example, the presence of cloud customers in a data centre may be an important factor in attracting enterprise customers that seek connectivity to such cloud customers (cloud service providers).

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69 Form CO, page 238, paragraph 6.528.

70 Form CO, page 220, Table 6.97.

71 Form CO, page 222, Table 6.98.

72 Form CO, page 224, Table 6.101.

73 See Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings ('Horizontal Merger Guidelines'), OJ C 31, 5.2.2004, p. 9, paragraph 72.

74 Case No COMP/M.7217 – Facebook / Whatsapp, paragraph 127.

(127) The Notifying Party argues that the proposed merger will not significantly impede effective competition in relation to cloud services providers ("CSP"), identified as […],[75] […].[76] Moreover, a significant share of the Parties' new contracts for colocation services comes from existing customers.[77]

(128) The Commission notes that several respondents to the market investigation considered important the fact that a data centre hosts certain type of customers, such as big cloud service providers, for attracting more customers. A number of customers responding to the market investigation also found important or critical that a given data centre provider already hosts a number of large content/cloud providers in influencing the customer's choice of a data centre provider. Some of the reasons given by the respondents were that the community available in the data centre is an important parameter, as is the available connectivity to leading cloud service providers.

(129) In view of these findings, the Commission considers that network effects arising from established customer relationships may play a role in deterring or making entry in colocation markets more difficult. These network effects could compound the horizontal non-coordinated effects identified in the markets for colocation services in the Amsterdam, London and Frankfurt metros. However, as the commitments proposed by the Notifying Party address the serious doubts that the proposed transaction raises as regards these three markets, the Commission considers that this would be sufficient to also alleviate any possible impact of network effects arising from the merged entity's established customer base.

5.7.2. Network effects in relation to network providers

(130) Network effects may also arise in relation to highly-connected data centres, as attracting a high number of network providers requires time and effort.[78] Network providers tend to seek colocation in facilities with a strong customer base (hence with more potential clients) and these customers (for example content, cloud or enterprise providers) seek colocation in facilities with a high, or at least sufficient, number of network providers. […].[79]

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75 Form CO, Annex 4, paragraph 1.4. Because: i) the competitors identified have spare capacity and provide a sufficient range of quality network providers, ii) the merger does not change competition dynamics for highly-connected data centres, iii) […], and iv) the recent introduction of Cloud Exchange solutions does not involve a major competitive advantage.

76 Form CO, Annex 4, page 9, footnote 22: "[…]"

77 Form CO, paragraph 8.11. With respect to network effects arising from having an established customer base, the Notifying Party argues that the percentage of Equinix's new contracts which is generated from existing customers is in the range of […], being Telecity's share about […]% of new wins.

78 Form CO, paragraph 6.35. As regards highly connected data centres, the Notifying Party states that there is no strict definition of a "high connectivity" data centre, but these are usually data centres that host a very large number of network providers and other potential private peering counterparties able to offer direct connections for data carriage, often including hosting access to infrastructure of a public Internet exchange.

79 Form CO, paragraph 6.99. The Notifying Party provides a number of examples for the distribution of its customers on the number of network provider cross-connect counterparties ([…]). […].

(131) The market investigation revealed that most data centre customers consider a data centre's connectivity offering to be important. Respondents to the market investigation reported that being able to offer a minimum number of interconnections (to network providers and public Internet exchanges) is an essential part in order to compete effectively in the market for the provision of data centre services. While most respondents answered that the presence of one public Internet exchange and between four and ten network providers would be sufficient to compete effectively in the market, some respondents pointed at a higher number of network providers (more than ten) as the minimum number needed to compete effectively.[80]

(132) In view of the results of the market investigation, the Commission considers that, even though data centre customers may have different connectivity needs and some may place more value in having a highly-connected data centre, connectivity remains one of characteristics that customers value when choosing a data centre providers.

(133) In view of these findings, the Commission considers that existing network effects may represent a barrier to entry in colocation markets. These network effects could compound the horizontal non-coordinated effects identified in the markets for colocation services in the Amsterdam, London and Frankfurt metros. However, as the commitments proposed by the Notifying Party address the serious doubts that the proposed transaction raises as regards these three markets the Commission considers that this would be sufficient to also alleviate any possible impact of network effects related to highly-connected data centres.

5.7.3. Network effects in relation to the global footprint of the merged entity

(134) A third type of network effects may arise from the merged entity's international footprint, which may be attractive for certain types of customers, in particular large content or cloud service providers. Some of these customers seeking colocation in several metro areas, countries or regions, may already have a customer relationship with Equinix in the United States, which adds to the fact that Equinix would be in a position to fulfil their request for colocation services in several metro areas in Europe. The Proposed Transaction will further expand Equinix's international presence, by adding a number of metro areas in Europe. The Notifying Party submits that, despite Equinix offering certain advantages to customers such as dealing with a single, global point of contact, concluding master agreements or offering pre-agreed rates or quantity discounts, global customers would nevertheless typically hold a competitive selection process at the local level in each of the metros in which they seek deployments.[81]

(135) A majority of the respondents (including both competitors and customers) to the market investigation considered "critical" or "important" that a data centre provider can offer its services in more than one metro area within the EEA in influencing the customer's choice of provider. However, several respondents also mentioned that they make their purchasing decisions on a metro-by-metro basis and that the fact

80 Interxion's reply to Q1 to competitors, question 32.1.

81 Form CO, paragraphs 8.9 and 8.10.

that a provider has an EEA-wide or even global scale is not a particularly relevant criterion for their selection of colocation service provider.

(136) Moreover, Equinix is already present today in the key metros in the EEA and the Proposed Transaction would only expand its geographic footprint in non-key metros, such as Stockholm, Warsaw and Helsinki.

(137) In addition, a number of other providers of colocation services have a European or global footprint, namely Digital Realty, NTT, century Link, KDDI-Telehouse, all of which have presence in Europe, North America and Asia-Pacific.

(138) In light of these findings, the Commission notes that it is unlikely that possible network effects arising from the merged entity's global footprint confer any merger-specific significant competitive advantage to the merged entity vis-à-vis its competitors.

5.8. Conglomerate effects

(139) Public Internet exchanges play an important role in the provision of wholesale Internet connectivity (in conjunction with transit and private peering). An Internet Exchange ("IXP") offers connectivity to its customers through its points of presence, most of which it seeks to deploy in data centres as this is where the potential customers of IXPs are located. Being present in carrier-neutral data centres, where the potential IXP customers are located, is inherent to the IXPs' business model.[82]

(140) According to the Non-horizontal Merger Guidelines, conglomerate mergers are mergers between firms that are in a relationship that is neither purely horizontal nor vertical.[83] While the relationship between the Parties with respect to colocation markets can be considered horizontal, the relationship between the Parties' colocation operations and Equinix's role as a provider of Internet Exchange services,[84] as it currently does in France, may be considered a conglomerate merger under the meaning of the Non-Horizontal Merger Guidelines.[85]

(141) The Notifying Party submits that first Equinix […],[86] second that […], and third that Equinix […].[87]

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82 See NL-IX reply to Q2 - questionnaire to customers, question 2.1 and LINX reply to Q2 - questionnaire to customers, questions 4.1 and 11.3.1.

83 Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings (2008/C 265/07), paragraph 91.

84 Form CO, page 34, footnote 41.

85 "*The main concern in the context of conglomerate mergers is that of foreclosure. The combination of products in related markets may confer on the merged entity the ability and incentive to leverage a strong market position from one market to another by means of tying or bundling or other exclusionary practices*", Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings (2008/C 265/07), paragraph 93.

86 […].

87 See Notifying Party's Paper on public internet exchanges submitted to the Commission on 1 October 2015.

(142) The Commission considers that, post-merger, Equinix may have an increased ability, as a supplier of colocation services in its data centres, to accept or reject potential customers in each data centre, including Internet Exchange Points.[88] The merged entity may also have the ability to offer its own Internet Exchange solution to its customers (located in the same data centre or in other data centres of the merged entity, connected through a fibre tether). The merged entity could also try to force its own Internet Exchange solution by tying Internet exchange and colocation services or by bundling them at advantageous terms to the customer, for example, by offering Internet Exchange services for free for a certain period of time.

(143) It is, however, unclear whether the merged entity would have the incentive to engage in any such conduct as it would entail foregoing significant current and future revenues from IXPs in exchange for uncertain future revenues from the provision of its own Internet Exchange solutions. Moreover, short of a total foreclosure of competing IXPs, the merged entity, if it wanted to compete with them, would have to do so by offering very low prices as currently existing IXPs provide peering services at cost or with very low profit margins. It is therefore unclear whether any such foreclosure strategy would be profitable. In addition, the Commission also considers that the merged entity would also suffer significant reputational damage if it were to engage in foreclosure of existing IXPs, as these IXPs often are owned by, or have strong links, with some of the merged entity's largest customers, such as […].

(144) The Commission considers that the merged entity's increased market share in colocation services post-merger (in Amsterdam, London, Frankfurt) could increase its ability to engage in foreclosure practices and thus a potential refusal of supply would have a much larger impact on Internet Exchange points than it would be the case absent the merger.[89]

(145) The Commission considers that the merged entity's potential strategy of bundling colocation and Internet Exchange services could result in weakening of established IXPs, which would find difficulties in reaching customers if access to the merged entity's data centres is refused or offered at disadvantageous terms. It is although unclear what will be the likely impact of such potential strategy on the colocation customers of the merged entity in terms of quality and pricing. On the other hand, if, post transaction, Equinix were to launch its own private Internet exchange in one or more of Amsterdam, London or Frankfurt, as it has already done in the United States and in Paris, the Proposed Transaction may have a procompetitive effects as it would bring competition to the existing exchanges, which, today, essentially face no competition in any of these metros.

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88 A public exchange will typically locate its "core" nodes and "edge" nodes in data centres, as do the London Internet Exchange (LINX), the Amsterdam Internet Exchange (AMS-IX) or the German Internet Exchange (DE-CIX).

89 "*In order to be able to foreclose competitors, the new entity must have a significant degree of market power, which does not necessarily amount to dominance, in one of the markets concerned*", Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings (2008/C 265/07), paragraph 99.

(146) In any event, the Commission considers that the remedies offered by the Parties significantly reduce any possible merger-specific increased ability on the part of the merged entity to partially or fully foreclose IXPs.

5.9. PROPOSED REMEDIES

(147) In order to render the Proposed Transaction compatible with the internal market, the Notifying Party submitted commitments under Article 6(2) of the Merger regulation on 22 October 2015 (the "Proposed Commitments" or "Initial Commitments"). These commitments were market tested by the Commission. Following certain modifications, a final set of commitments was submitted on 12 November 2015 (the "Final Commitments"). These Final Commitments are annexed to this decision and form an integral part thereof.

5.9.1. Proposed Commitments

(148) The Proposed Commitments consist of the divestiture of a number of data centres in each of the metro areas where competition concerns were identified: Amsterdam (3 data centres to be divested), London (also 3 data centres) and Frankfurt (1 data centre).

(149) In Amsterdam, the Notifying Party proposes to divest three out of the seven Telecity's data centres, namely AMS03 (located in the West Harbour area) and AMS04 and AMS06 (both located in the Amstel Business Park). The combined revenue generated by these 3 data centres in 2014 amounts to EUR […] million.

(150) In London, out of Telecity's seven data centres three are to be divested as part of the Proposed Commitments: Lon1 Bonnington House, Lon3 Sovereign House (both located in the Docklands area) and Lon7 Oliver's Yard (located in the City of London). The combined revenue generated by these 3 data centres in 2014 amounts to nearly EUR […] million.

(151) In Frankfurt under the Proposed Commitments one of the two Telecity's data centres will be divested: FRA2 (located at Lyoner Strasse) with EUR […] million of revenues generated in 2014.

Table 8: 2014 Revenues and spare capacity (including possible expansions) per proposed for divestment data centres

	2014 Revenues (mln EUR)	Spare Space (sq m)	Spare Power (KW)	Expansion Potential
AMSTERDAM				
AMS03 West Harbour	[…]	[…]	[…]	[…]
AMS04 Amstel Park	[…]	[…]	[…]	[…]
AMS06 Amstel Park	[…]	[…]	[…]	[…]
LONDON				
Lon1 Bonnington	[…]	[…]	[…]	[…]
Lon3 Sovereign House	[…]	[…]	[…]	[…]

Lon7 Oliver's Yard	[…]	[…]	[…]	[…]
FRANKFURT				
FRA2 Lyoner Str.	[…]	[…]	[…]	[…]

(152) Each of the Divestment packages offered in the respective metro area includes readily available spare capacity and, […], important expansion potential of adding further capacity. In terms of connectivity, almost all data centres proposed for divestment benefit from the presence of IXPs and of a number of network providers (thus offering various opportunities to the relevant customers for public and private peering). In addition, in order to improve their level of connectivity most of the data centres that constitute the Divestment packages are connected via fibre cables with one another or with the other Telecity data centres that will be retained by the merged entity post-transaction.

Table 9: Connectivity of the proposed for divestment data centres

	IXP presence	**Network providers**	**PPPs**	**Fibre tether to**
AMSTERDAM				
AMS03 West Harbour	NL-IX	[…]	26	[…]
AMS04 Amstel Park	AMS-IX	[…]	24	[…]
AMS06 Amstel Park	-	[…]	-	[…]
LONDON				
Lon1 Bonnington	LINX	[…]	18	Lon3 Sovereign House and Lon4 Meridian Gate
Lon3 Sovereign House	LINX	[…]	100	Lon1, Lon7, Telecity's data centres Meridian Gate, […]
Lon7 Oliver's Yard	-	[…]	-	Lon3 […]
FRANKFURT				
FRA2 Lyoner Str.	no	[…]	13	[…]

(153) The Proposed Commitments include tangible (such as power and cooling installations and other types of equipment) and intangible assets (leases, customers and suppliers contracts, permits and authorisations, including for the potential/planned capacity expansions) as well as the personnel in each of the divested data centres.

5.9.2. *Results from the market test of the Proposed Commitments*

(154) As regards the viability of each of the Divestment Businesses in the three metro areas the results of the market test indicate that all data centres that constitute a package within a given metro should be sold to one purchaser.[90] Respondents have explained that one single purchaser should acquire all the assets in the given metro especially in view of preserving the existing fibre connections between the divested data centres. These fibre connections are essential for ensuring a good level of connectivity for each of the divested data centres. In addition a respondent points to the significant economy-of-scale that a datacentre operator would benefit from by operating multiple datacentre locations on one campus site.

(155) The majority of respondents to the market test consider that the proposed commitments will ensure that post-transaction there would remain sufficient competition in the provision of colocation services in Amsterdam, London and Frankfurt[91]. However a number of weaknesses relating to certain aspects of the divestment packages in Amsterdam and London were flagged by some respondents.

Amsterdam Divestment Business

(156) The majority of respondents consider that the data centres proposed in Amsterdam as a package appear to be sufficient in terms of revenues and spare capacity (including the expansion potential in some of the sites) to enable the purchaser to compete effectively in Amsterdam.[92] However some respondents expressed concerns regarding the level of connectivity[93] and the location of the proposed data centres. None of the proposed data centres in Amsterdam is highly-connected (according to one respondent the other Telecity data centres AMS1, AMS2 and AMS5 are much better connected than the ones proposed in the package) or located in South East or Science Park which are perceived as the main connectivity hubs in Amsterdam (AMS3 in West Harbour in particular is rather isolated and far from these two hubs). According to some respondents, AMS3 is a rather old facility and may struggle to win new business in such an advanced market as the Amsterdam one.[94]

London Divestment Business

(157) As regards the geographic location of the London Divestment Business the large majority of respondents to the market test consider that the location of the data centres in the package is good enough to allow the purchaser to compete effectively on the London colocation market.[95] Respondents explain that all the proposed data centres have central location, and two of them in particular are in the Docklands,

90 See replies to questionnaire "Proposed Commitments" of 27 October 2015, question 2.

91 See replies to questionnaire "Proposed Commitments" of 27 October 2015, question 1.

92 See replies to questionnaire "Proposed Commitments" of 27 October 2015, question 4.1.

93 See replies to questionnaire "Proposed Commitments" of 27 October 2015, question 5.1.

94 See replies to questionnaire "Proposed Commitments" of 27 October 2015, question 3.1.

95 See replies to questionnaire "Proposed Commitments" of 27 October 2015, question 3.2.

which alongside Slough is one of the main London connectivity hubs. Most respondents consider that the level of connectivity of the sites is sufficient to ensure the viability and competitiveness of the London Divestments.[96]

(158) Some respondents however share the view that the size of the London Divestment package is suboptimal and it should be increased both in terms of existing established customer base and in terms of spare capacity and expansion potential. As one respondent explains the sites, even collectively, are not sufficient to compete in the London market.[97]

Frankfurt Divestment Business

(159) Most respondents consider the location of the FRA2 data centre to be good enough to enable the purchaser to compete effectively[98] but according to some market participants it is a relatively small data centre that is not so well connected, lacks IXP presence and has a relatively low number of carriers.

(160) As regards the level of connectivity for the proposed divestments in each of the three metros, most respondents consider that in order to guarantee the viability and competitiveness of each of the packages by ensuring sufficient connectivity the existing fibre optic connections on one hand between the divested data centres themselves and on the other hand between the divested data centres and the ones retained by the merged entity post-transaction should be preserved.[99] Respondents explain that connectivity between data centres is critical for current and potential customers who may need to access services or peering parties located in other data centre locations via the fibre tether in a cost effective way.

(161) The results of the market test also confirmed that it is mandatory to roll-over to the purchaser the existing agreements with suppliers such as providers of power, of security and maintenance as well as all existing lease agreements with landlords or owners of the data centre premises (where relevant) in order to ensure stable and smooth continuity of the colocation services provided in the divested data centres.[100]

(162) As regards the transfer of existing agreements with customers (including the relevant proportion of the customer contracts that will be shared between the purchaser and the merged entity post-transaction) most respondents consider it essential that these contracts are rolled-over to the purchaser as they are the core of the business and the basis of the revenue stream for each of the divested data centres.[101]

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96 See replies to questionnaire "Proposed Commitments" of 27 October 2015, question 5.2.

97 See replies to questionnaire "Proposed Commitments" of 27 October 2015, question 4.3.

98 See replies to questionnaire "Proposed Commitments" of 27 October 2015, question 3.3.

99 See replies to questionnaire "Proposed Commitments" of 27 October 2015, questions 6 and 9.

100 See replies to questionnaire "Proposed Commitments" of 27 October 2015, questions 16 and 19.

101 See replies to questionnaire "Proposed Commitments" of 27 October 2015, questions 22 and 24.

(163) The majority of the respondents to the market test found that under the Proposed Commitments all necessary categories of personnel that is needed to ensure the viability and competitiveness of the divestments going forward (such as data centre managers, facilities managers, customer service engineers and data support administrators) will be transferred with the divested data centres.[102]

(164) The overwhelming majority of respondents to the market test support the view that in order to run effectively the divested data centres in each of the three metro areas as a viable and competitive force […].[103]

5.9.3. Final Commitments

(165) Following the communication to the Notifying Party of the results of the market test and especially the shortcomings flagged by some respondents, the Notifying Party submitted an improved and final set of commitments, which contain the following assets: 2 data centres in Amsterdam, 5 data centres in London and 1 data centre in Frankfurt.

(166) In Amsterdam, the Notifying Party commits to divest two Telecity's data centres, namely AMS1 located in Science Park and AMS4 located in the Amstel Business Park. The combined revenue generated by these 2 data centres in 2014 amounts to EUR […] million.

(167) In London, The Notifying Party commits to divest a total of five data centres: four out of the Telecity's seven data centres: Lon1 Bonnington House, Lon3 Sovereign House, Lon4 Meridian Gate (all of them located in the Docklands area), Lon7 Oliver's Yard (located in the City of London) and Equinix's LD2 West Drayton. The combined revenue generated by these 5 data centres in 2014 amounts to EUR […] million.

(168) In Frankfurt under the Final Commitments one of the two Telecity's data centres will be divested: FRA2 (located at Lyoner Strasse) with EUR […] million of revenues generated in 2014.

102 See replies to questionnaire "Proposed Commitments" of 27 October 2015, question 29.

103 See replies to questionnaire "Proposed Commitments" of 27 October 2015, question 36.

Table 10: 2014 Revenues and spare capacity (including expansion potential) per data centre

	2014 Revenues (mln EUR)	Spare Space (sq m)	Spare Power (KW)	Expansion Potential
AMSTERDAM				
AMS01 Science Park	[…]	[…]	[…]	[…]
AMS04 Amstel Park	[…]	[…]	[…]	[…]
TOTAL:	[…]	[…]	[…]	[…]
LONDON				
Lon1 Bonnington	[…]	[…]	[…]	[…]
Lon3 Sovereign House	[…]	[…]	[…]	[…]
Lon4 Meridian Gate	[…]	[…]	[…]	[…]
Lon7 Oliver's Yard	[…]	[…]	[…]	[…]
LD2 West Drayton	[…]	[…]	[…]	[…]
TOTAL:	[…]	[…]	[…]	[…]
FRANKFURT				
FRA2 Lyoner Str.	[…]	[…]	[…]	[…]

(169) The Notifying Party commits to divest each metro package to a purchaser in full. Each metro package can be sold to different purchasers or more than one metro package can be sold to the same purchaser.

(170) Under the Final Commitments […].

(171) The divested businesses include the assets and personnel that contribute to the current operation and are necessary to ensure the viability and the competitiveness of the divested businesses, in particular:

a. all tangible assets;

b. all licences, permits and authorisations issued by any governmental organisation for the benefit of the divestment businesses;

c. all contracts, leases commitments and customer orders of the Divestment Businesses;

d. any contracts relating to the construction and development of the expansions to the relevant sites of the Divestment Businesses;

e. the network equipment required to provide inter-site connectivity between the divested data centres as well as between the divested centres and the ones retained by the merged entity post-transaction;

f. all site-specific customers and suppliers contracts; and

g. the benefit of the relevant portions of any customer or supply contracts that are shared between the divested data centres and the retained ones.

(172) The benefit of the relevant portions of fibre optic leases to connect the relevant network equipment will also be transferred to the purchaser.

Table 11: Connectivity of the divested under the Final Commitments data centres

	IXP presence	**Network providers**	**PPPs**	**Fibre tether to**
AMSTERDAM				
AMS01 Science Park	NL-IX	[…]	72	SARA/Vancis and NIKHEF's data centres, […]
AMS04 Amstel Park	AMS-IX	[…]	24	[…]
LONDON				
Lon1 Bonnington	LINX	[…]	18	Lon3 Sovereign House and Lon4 Meridian Gate
Lon3 Sovereign House	LINX	[…]	100	Lon1, Lon7, Telecity's data centres Meridian Gate, […]
Lon4 Meridian Gate	[…]	[…]	49	Telecity's Lon3 Sovereign House, Lon1 Bonnington, […]
Lon7 Oliver's Yard	-	[…]	-	Lon3 […]
LD2 West Drayton	-	[…]	9	[…]
FRANKFURT				
FRA2 Lyoner Str.	no	[…]	13	[…]

(173) In order to maintain the structural effect of the Final Commitments, the Notifying Party shall, for a period of 10 years after Closing, not acquire, whether directly or indirectly, the possibility the possibility of exercising influence (as defined in paragraph 43 of the Remedies Notice, footnote 3) over the whole or part of the Divestment Businesses, unless, following the submission of a reasoned request from the Parties showing good cause and accompanied by a report from the Monitoring Trustee (as provided in paragraph 44 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 Businesses is no longer necessary to render the proposed concentration compatible with the internal market.

5.9.4. The Commission's Assessment

5.9.4.1. Analytical framework

(174) 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.[104]

(175) It is for the parties to the concentration to put forward commitments.[105] The Commission only has power to accept commitments that are deemed capable of rendering the concentration compatible with the internal market.[106] 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.[107]

(176) As concerns the form of acceptable commitments, the Merger Regulation leaves discretion to the Commission as long as the commitments meet the requisite standard.[108] 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.[109]

(177) Divestiture commitments are generally the best way to eliminate competition concerns resulting from horizontal overlaps.[110]

(178) 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

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

105 Remedies Notice, Paragraph 6.

106 Remedies Notice, Paragraph 9.

107 Remedies Notice, Paragraph 81.

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

109 Remedies Notice, Paragraph 10.

110 Remedies Notice, Paragraph 19.

viability and competitiveness and all personnel which are currently employed or which are necessary to ensure the business' viability and competitiveness.[111]

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

5.9.4.2. Assessment of the Final Commitments

(180) In this case, the Commission considers that the Final Commitments offered by the Notifying Party on 12 November 2015 are sufficient to remove the serious doubts regarding the compatibility of the proposed transaction with the internal market as regards the markets for provision of colocation services in Amsterdam, London and Frankfurt.

(181) The Commission notes that the ability of data centre services providers to compete effectively on the market and to attract new customers depends on several factors: availability of spare capacity to sell to potential customers or to accommodate expansion needs of pre-existing customers, attractive location and good connectivity of the data centre with available space.

(182) In Amsterdam, the Divestment Business includes the AMS1 site, which is a highly connected data centre, hosting NL-IX, […] network providers, offering 72 PPPs and enjoying a fibre connection to the nearby highly connected SARA/Vancis (AMS-IX, 99 PPPs) and NIKHEF's (AMS-IX, NL-IX, 138 PPPs) data centres. […] of spare capacity ([…] sq m of spare space and […] KW of spare power) will become available in AMS1 data centre in 2016 under the ongoing expansion of the data centre. This will enable the purchaser to compete via a very well-connected, modern and attractively located (Science Park is one of Amsterdam's connectivity hubs) data centre. In addition the AMS4 site, located in Amstel Park[112], also has important expansion potential of adding additional […] sq m of spare space within a relatively short period of time.[113] AMS4 also has a good level of connectivity thanks to the presence of AMS-IX, […] network providers, 24 PPPs and fibre tether to […].

(183) The Amsterdam Divestment Business therefore represents a package with very good balance of location, spare capacity with scope for strategic expansion, revenue and strong connectivity. […].

(184) In London, the Divestment Business consists of a total of five data centre facilities, three of which are located in the Docklands, one of London’s main connectivity hubs where entry and expansion has traditionally been very challenging. These three data centres (Lon1Bonnington, Lon3 Sovereign House and Lon4 Meridian Gate) are very well connected: Lon1 and Lon3 benefit from the presence of LINX and of […] and […] network operators and 100 and 49 PPPs respectively. The connectivity of Lon4 is ensured by the existing fibre links with […]. The Lon1 Bonnington data centre has very important and highly valued capacity for

111 Remedies Notice, paragraph 23-25.

112 In close proximity to both Science Park (approx. 4 km) and the Southeast approx. 5 km)

113 The expansion, […] could take an estimated by the Notifying Party […] to complete. […].

expansion with additional […] sq m of space and […] KW of power. The Bonnington expansion will be one of the only two new purpose-built data centres in the Docklands and will create a highly attractive data centre campus.

(185) Lon7 Oliver's Yard, located in the City of London, currently having some readily available spare capacity, can also be expanded with additional […] sq m of space and […] KW of power. Its connectivity is ensured by a fibre connection to […].

(186) The London Divestment Business therefore constitutes a package with substantial spare capacity and expansion potential, strong revenue stream, excellent connectivity and in particular the possibility of introducing a new competitor to the Docklands area, where the main competitors are Telecity and KDDI-Telehouse. […].

(187) In Frankfurt, Telecity's FRA2 data centre, located in the centre of the Frankfurt metro in close proximity to the carrier-dense Kleyerstrasse hub, will be divested. FRA2's connectivity is ensured by the presence of […] network providers and 13 PPPs. In addition FRA2 is connected via a fibre tether to […]. The Frankfurt Divestment Business has substantial spare capacity of […] sq m of spare space and […] KW of spare power.

(188) The Frankfurt Divestment Business is an asset with important revenue, good connectivity and substantial spare space that […].

(189) Furthermore, the Notifying Party committed to provide the purchaser with all the relevant site-specific contracts including the current supply and customer contracts in order to ensure the viability and competitiveness of the Divestment Businesses. The Notifying Party committed to implement the Amsterdam and Frankfurt Divestment Businesses by way of statutory demerger unless the purchaser requests otherwise. The statutory demerged will eliminate the need of obtaining any necessary third party consents in relation to the transfer of Amsterdam and Frankfurt site-specific contracts, including customer contracts and lease agreements, to the purchaser. For the London Divestment Business, the Notifying Party has committed to implement the divestment by way of share sale which would enable the automatic transfer of the majority[114] of the site-specific contracts to the purchaser in London as well.

(190) In this regard, the Notifying Party also commits to transfer any contracts relating to the construction and development of the ongoing expansions of the relevant data centres in the Amsterdam and London Divestment Businesses.

(191) As regards ensuring good level of connectivity of the Divestment Businesses in the three metros, the existing fibre connections, in particular between the divested and the retained by the merged entity data centres, will be maintained in order to ensure that each of the Divestment Businesses will continue to benefit from a high level of connectivity. The benefit of the relevant portion of the fibre optic leases that connect the data centres will be transferred to the purchaser on substantially the same key terms which currently prevail in respect of the Amsterdam, London and Frankfurt Divestment Businesses respectively.

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114 […].

(192) Furthermore, as regards network effects in relation to established customers and to network providers the Commission notes that each of the Amsterdam, London and Frankfurt Divestment Businesses will be transferred to the purchaser with the established customer base in the respective data centres included in the metro packages. Although the customer mix varies across the different data centres facilities the customer base in each of the divested data centres features network customers, content and digital media and cloud and IT customers which are among those types of customers that are important for attracting other customers.

(193) In Amsterdam AMS1 has […] and AMS4 benefits from the presence of […].

(194) The data centres constituting the London Divestment Business also have a mix of customers that include network, cloud and digital media customers. For Lon1: […]; Lon3: […]; Lon4: […]; Lon7 […] and LD2 […].

(195) The data centre which will be part of the Frankfurt Divestment Business benefits from an established customer base of […], […] and […].

(196) Carving out the Divestment Businesses from the increment brought by the proposed transaction will significantly limit the possible network effects related to the addition of the Telecity's data centres in the three metros to the merged entity's portfolio. The Commission therefore considers that the Final Commitments also alleviate the possible impact of network effects related to established customers and connectivity.

(197) As regards conglomerate effects, the Commission notes that the elimination of a significant part of the market share increment will on the one hand, significantly contain the market power of the Parties post-transaction and, on the other hand, will prevent the merged entity from foreclosing the IXPs' access to the customer base in the divested data centres. AMS-IX has a point of presence in AMS4, NL-IX is present in AMS1 and LINX is established in Lon1 and Lon3. Via the existing fibre connections between data centres, which will be preserved following the Amsterdam, London and Frankfurt Divestments, the IXPs will have access, via the fibre tether, also to customers in the other divested data centres, where they are not currently present, as well as to the customers in some of the retained by the merged entity data centres.

(198) The Commission therefore considers that the proposed transaction, as amended by the Final Commitments, is unlikely to result in customer foreclosure against the IXPs.

5.9.4.3. Conclusion

(199) For the reasons outlined above, the Final Commitments entered into by the Notifying Party are sufficient to eliminate the serious doubts as to the compatibility of the Proposed Transaction with the internal market.

6. CONDITIONS AND OBLIGATIONS

(200) 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.

(201) The fulfilment 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.

(202) 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.

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

7. CONCLUSION

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

For the Commission
(Signed)
Margrethe VESTAGER
Member of the Commission

12/11/2015

Case M. 7678

COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2) of Council Regulation (EC) No 139/2004 (the "**Merger Regulation**"), Equinix, Inc (the "**Notifying Party**") and Telecity Group plc ("**Telecity**") hereby enter into the following Commitments (the "**Commitments**") vis-à-vis the European Commission (the "**Commission**") with a view to rendering the acquisition of Telecity 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.

Amsterdam Divestments: Amstel Business Park I and Science Park.

Assets: the assets that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Businesses as indicated in Section B, paragraph i, i and ii and described more in detail in the Schedule.

Closing: the transfer of the legal title to the Divestment Businesses to the Purchaser(s).

Closing Period: the period of […] from the approval of the Purchaser(s) 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 Businesses: the businesses as defined in Section B and in the Schedule which the Parties commit to divest.

Divestment Metros: each of the London Divestments, the Amsterdam Divestments and the Frankfurt Divestment.

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

Effective Date: the date of adoption of the Decision.

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

Frankfurt Divestment: Lyonerstrasse.

Hold Separate Manager(s): the person or people appointed by the Parties for the Divestment Businesses 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 Businesses, as listed in the Schedule, including the Hold Separate Manager(s).

London Divestments: Bonnington House, Sovereign House, Meridian Gate, Oliver's Yard and West Drayton.

Monitoring Trustee: one or more natural or legal person(s) who is/are approved by the Commission and appointed by the Parties (or if they cannot agree, the Notifying Party), and who has/have the duty to monitor the Parties' compliance with the conditions and obligations attached to the Decision.

Parties: the Notifying Party and Telecity (the undertaking that is the target of the Concentration).

Personnel: all staff currently employed by the Divestment Businesses, including staff seconded to the Divestment Businesses, shared personnel as well as the additional personnel listed in the Schedule.

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

Purchaser(s) Criteria: the criteria laid down in paragraph 17 of these Commitments that the Purchaser(s) must fulfil in order to be approved by the Commission.

Retained Business: the Retained London Business, the Retained Amsterdam Business and the Retained Frankfurt Business.

Retained Amsterdam Business: the business of the Parties in Amsterdam other than the Amsterdam Divestments.

Retained London Business: the business of the Parties in London other than the London Divestments.

Retained Frankfurt Business: the business of the Parties in Frankfurt other than the Frankfurt Divestment.

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

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.

SECTION B. THE COMMITMENT TO DIVEST AND THE DIVESTMENT BUSINESSES

Commitment to divest

2. In order to maintain effective competition, the Notifying Party commits to divest, or procure the divestiture of the Divestment Businesses by the end of the Trustee Divestiture Period as a going concern to a purchaser or purchasers and on terms of sale approved by the Commission in accordance with the procedure described in paragraph 18 of these Commitments. To carry out the divestiture, the Notifying Party commits to find a purchaser or purchasers and to enter into (or procure that one of its Affiliated Undertakings or Telecity or one its Affiliated Undertakings enters into) a final binding sale and purchase agreement(s) for the sale of the Divestment Businesses within the First Divestiture Period.

   Each Divestment Metro will be sold to a purchaser in full. Each Divestment Metro may be sold to different purchasers or more than one Divestment Metro may be sold to the same purchaser.

   The Amsterdam Divestments and Frankfurt Divestment shall be implemented by way of a statutory demerger (which may be combined with a subsequent share sale), unless a Purchaser requests otherwise and the Notifying Party agrees. The Notifying Party shall implement the London Divestments by way of a share sale, unless a Purchaser requests otherwise and the Notifying Party agrees.

   If the Notifying Party has not entered into (or procured that one of its Affiliated Undertakings or Telecity or one its Affiliated Undertakings has entered into) such agreement(s) at the end of the First Divestiture Period, the Notifying Party shall grant the Divestiture Trustee an exclusive mandate to sell the Divestment Businesses in accordance with the procedure described in paragraph 30 in the Trustee Divestiture Period.

   Telecity commits to fully cooperate with the Notifying Party in relation to the commitments in this paragraph 2, including by assisting the Notifying Party with the sale process as required and entering into (or procuring that its Affiliated Undertakings enter into) sale and purchase agreements (which are conditional on closing of the Concentration) in relation to the Divestment Businesses if requested by the Notifying Party.

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

   i. *by the end of the Trustee Divestiture Period, the Notifying Party or one of its Affiliated Undertakings (or, at the Notifying Party's request, Telecity or one of its Affiliated Undertakings) or the Divestiture Trustee has entered into a final binding sale and purchase agreement(s) 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 18; and*

   ii. *the Closing of the sale of the Divestment Businesses to the Purchaser(s) takes place within the Closing Period.*

4. In order to maintain the structural effect of the Commitments, the Parties shall, for a period of 10 years after Closing, not acquire, whether directly or indirectly, the possibility of exercising influence (as defined in paragraph 43 of the Remedies Notice, footnote 3) over the whole or part of the Divestment Businesses, unless, following the submission of a reasoned request from the Parties showing good cause and accompanied by a report from the Monitoring Trustee (as provided in paragraph 44 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 Businesses is no longer necessary to render the proposed concentration compatible with the internal market.

Structure and definition of the Divestment Businesses

5. The Divestment Businesses consist of:

i. *Telecity's LON1 data centre, located in the centre of the Docklands area in London at Bonnington House, 47 Millharbour, London, E14 9TR ("***Bonnington House***"), including its ongoing expansion project;*

ii. *Telecity's LON3 data centre, located in the centre of the Docklands area in London at 227 Marsh Wall, London, E14 9SD ("***Sovereign House***");*

iii. *Telecity's LON4 data centre, located in the centre of the Docklands area in London at Memaco House (Block L/M), Pennine House, Meridian Gate, Marsh Wall Road, London, E14 9FJ ("***Meridian Gate***");*

iv. *Telecity's LON7 data centre, located in the City of London at Oliver's Yard, Globix House, Old Street, EC1Y 1HQ ("***Oliver's Yard***"), including its ongoing expansion project;*

v. *the Notifying Party's LD2 data centre, located in West Drayton at Unit 1, Airport Gate, Bath Road, West Drayton, Middlesex, UB7 ONA ("***West Drayton***");*

vi. *Telecity's AMS01 and AMS01(E) data centres, located in the Science Park in Amsterdam at Science Park 120, 1098 XG Amsterdam ("***Science Park***"), including its ongoing expansion project;*

vii. *Telecity's AMS04 data centre, located in the Amstel Business Park in Amsterdam at H.J.E. Wenckebachweg 127, 1096 AM Amsterdam ("***Amstel Business Park I***"); and*

viii. *Telecity's FRA02 data centre located in south west Frankfurt at Lyonerstrasse 28, 60598, Frankfurt am Main ("***Lyonerstrasse***").*

6. The Divestment Businesses, described in more detail in the Schedule, include all assets and staff that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Businesses, in particular:

i. *all assets;*

ii. *all licences, permits and authorisations issued by any governmental organisation for the benefit of the Divestment Businesses;*

iii. *all contracts, leases, commitments and customer orders of the Divestment Businesses; all customer, credit and other records of the Divestment Businesses; and*

iv. *the Personnel.*

7. In addition the Divestment Businesses include, at the option of the Purchaser, the benefit of all supply and transitional services agreements that are necessary to ensure the viability of the Divestment Business (including those detailed further in paragraphs iv, xi, iv, xi, iii and x of the Schedule). Strict firewall procedures will be adopted so as to ensure that any competitively sensitive information related to, or arising from such supply arrangements (for example, product roadmaps) will not be shared with, or passed on to, anyone outside the relevant business unit/division providing the product/service.

SECTION C. RELATED COMMITMENTS

Preservation of viability, marketability and competitiveness

8. From the Effective Date until Closing, the Parties shall preserve or procure the preservation of the economic viability, marketability and competitiveness of the Divestment Businesses, in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential of the Divestment Businesses. In particular the Parties undertake:

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

ii. *to make available, or procure to make available, sufficient resources for the development of the Divestment Businesses, on the basis and continuation of the existing business plans;*

iii. *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 Businesses, and not to solicit or move any Personnel to the Parties' remaining business. Where, nevertheless, individual members of the Key Personnel exceptionally leave the Divestment Businesses, the Parties shall provide a reasoned proposal to replace the person or persons concerned to the Commission and the Monitoring Trustee. The Parties 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

9. The Parties commit, from the Effective Date until Closing, to keep the Divestment Businesses separate from the Retained Business and, to the extent relevant, after closing of the Concentration, to ensure that unless explicitly permitted under these Commitments: (i) management and staff of the Retained Business have no involvement in the Divestment Businesses; (ii) the Key Personnel and Personnel of the Divestment Businesses have no involvement in the Retained Business and do not report to any individual outside the Divestment Businesses.

10. Until Closing, the Parties shall assist the Monitoring Trustee in ensuring that the Divestment Businesses is managed as a distinct and saleable entity separate from the business(es) which the Parties are retaining. Immediately after the adoption of the Decision, the Parties shall appoint one or more Hold Separate Managers. The Hold Separate Manager(s), who shall be part of the Key Personnel, shall manage the Divestment Businesses 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 Retained Business. The Hold Separate Manager(s) shall closely cooperate with and report to the Monitoring Trustee and, if applicable, the Divestiture Trustee. Any replacement of a Hold Separate Manager shall be subject to the procedure laid down in paragraph ii of these Commitments. The Commission may, after having heard the Parties, require the Parties to replace a Hold Separate Manager.

11. If the Notifying Party structures the divestment of any of the Divestment Businesses (or any part thereof) as a sale of shares in a company, to ensure that the Divestment Business is held and managed as a separate entity the Monitoring Trustee shall exercise any rights of the Notifying Party or Telecity (or any of their Affiliated Undertakings) as shareholder in any legal entity or entities that constitute any of the Divestment Business or any part thereof (except for its rights in respect of dividends that are due before Closing), with the aim of acting in the best interest of the business, which shall be determined on a stand-alone basis, as an independent financial investor, and with a view to fulfilling the Parties' obligations under the Commitments. Furthermore, the Monitoring Trustee shall have the power to replace members of the supervisory board or non-executive directors of the board of directors, who have been appointed on behalf of the Parties. Upon request of the Monitoring Trustee, the Parties shall resign as a member of the boards or shall cause such members of the boards to resign.

Ring-fencing

12. The Parties shall implement, or procure to implement, all necessary measures to ensure that they do not, after the Effective Date, obtain any Confidential Information relating to the Divestment Businesses and that any such Confidential Information obtained by the Parties before the Effective Date will be eliminated and not be used by the Parties. This includes measures vis-à-vis appointees on any supervisory boards and/or boards of directors of the Divestment Businesses. In particular, the participation of the Divestment

Businesses in any central information technology network shall be severed to the extent possible, without compromising the viability of the Divestment Businesses. The Parties may obtain or keep information relating to the Divestment Businesses which is reasonably necessary for the divestiture of the Divestment Businesses or the disclosure of which to the Parties are required by law or which is reasonably required by the Parties to comply with their financial reporting or other legal obligations (including in relation to tax filings).

Non-solicitation clause

13. 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 Businesses for a period of […] after Closing.

Due diligence

14. In order to enable potential purchasers to carry out a reasonable due diligence of the Divestment Businesses, the Notifying Party shall, subject to customary confidentiality assurances and dependent on the stage of the divestiture process:

   i. *provide to potential purchasers sufficient information as regards the Divestment Businesses;*

   ii. *provide to potential purchasers sufficient information relating to the Personnel and allow them reasonable access to the Personnel.*

Telecity commits to fully cooperate with the Notifying Party in relation to the commitments in this paragraph 14, including by providing information relating to the Divestment Businesses and access to Personnel as requested by the Notifying Party.

Reporting

15. The Notifying Party shall submit written reports in English on potential purchasers of the Divestment Businesses 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). The Notifying Party shall submit a list of all potential purchasers having expressed interest in acquiring the Divestment Businesses 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.

16. The Notifying Party 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

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

i. *The Purchaser(s) shall be independent of and unconnected to the Parties and their Affiliated Undertakings (this being assessed having regard to the situation following the divestiture).*

ii. *The Purchaser(s) shall have the financial resources, proven expertise and incentive to maintain and develop the Divestment Business(es) as a viable and active competitive force in competition with the Parties and other competitors.*

iii. *[…]*

iv. *[…]*

v. *[…]*

vi. *The acquisition of the Divestment Business(es) 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(es).*

18. The final binding sale and purchase agreement(s) (as well as ancillary agreements) relating to the divestment of the Divestment Businesses shall be conditional on the Commission's approval. When the Notifying Party has reached an agreement with a purchaser, they 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. The Notifying Party must be able to demonstrate to the Commission that the purchaser fulfils the Purchaser(s) Criteria and that the Divestment Business(es) 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(s) Criteria and that the Divestment Business(es) 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(es) 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(es) after the sale, taking account of the proposed purchaser.

SECTION E. TRUSTEE

I. Appointment procedure

19. The Parties (or if the Parties cannot agree, the Notifying Party) shall appoint a Monitoring Trustee to carry out the functions specified in these Commitments for a Monitoring Trustee. The Parties commit not to close the Concentration before the appointment of a Monitoring Trustee.

20. If the Notifying Party has not entered into a binding sale and purchase agreement (or procured that one of its Affiliated Undertakings or Telecity or one of its Affiliated Undertakings has done so) regarding each of the Divestment Businesses […] before the end of the First Divestiture Period or if the Commission has rejected a purchaser proposed by the Notifying Party at that time or thereafter, the Notifying Party shall appoint a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Trustee Divestiture Period.

21. The Trustee shall:

i. *at the time of appointment, be independent of the Parties and their Affiliated Undertakings;*

ii. *possess the necessary qualifications to carry out its mandate, for example have sufficient relevant experience as an investment banker or consultant or auditor; and*

iii. *neither have nor become exposed to a Conflict of Interest.*

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

Proposal by the Parties

23. No later than two weeks after the Effective Date, the Parties (or if the Parties cannot agree, the Notifying Party) shall submit the name or names of one or more natural or legal persons whom the Parties (or if the Parties cannot agree, the Notifying Party) 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, the Notifying Party shall submit a list of one or more persons whom the Notifying Party 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 21 and shall include:

i. *the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these Commitments;*

ii. *the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks;*

iii. *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

24. 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, the Parties (or if the Parties cannot agree, the Notifying Party) 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, the Parties (or if the Parties cannot agree, the Notifying Party) 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 the Parties

25. If all the proposed Trustees are rejected, the Parties (or if the Parties cannot agree, the Notifying Party) shall submit the names of at least two more natural or legal persons within one week of being informed of the rejection, in accordance with paragraphs 19 and 24 of these Commitments.

Trustee nominated by the Commission

26. If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom the Parties (or if the Parties cannot agree, the Notifying Party) shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

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

27. 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 the Parties (or if the Parties cannot agree, the Notifying Party), 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

28. 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 Businesses with a view to ensuring their continued economic viability, marketability and competitiveness and monitor compliance by the Parties 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 Businesses, and the keeping separate of the Divestment Businesses from the Retained Business, in accordance with paragraphs 8 and 9 of these Commitments;

b) supervise the management of the Divestment Businesses as a distinct and saleable entity, in accordance with paragraph 10 of these Commitments;

c) with respect to Confidential Information:

- determine all necessary measures to ensure that the Parties do not after the Effective Date obtain any Confidential Information relating to the Divestment Businesses,

- in particular strive for the severing of the Divestment Businesses' participation in a central information technology network to the extent possible, without compromising the viability of the Divestment Businesses,

- make sure that any Confidential Information relating to the Divestment Businesses obtained by the Parties before the Effective Date is eliminated and will not be used by the Parties; and

- decide whether such information may be disclosed to or kept by the Parties as the disclosure is reasonably necessary to allow the Parties 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 Businesses and the Parties or their Affiliated Undertakings;

iii. *review the contract that the Parties will enter into with a developer as set in paragraph 7 of the Schedule for the purposes of ensuring consistency with these Commitments;*

iv. *propose to the Parties such measures as the Monitoring Trustee considers necessary to ensure the Parties' compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic* *viability, marketability or competitiveness of the Divestment Businesses, the holding separate of the Divestment Businesses and the non-disclosure of competitively sensitive information;*

v. *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 Businesses 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;

vi. *act as a contact point for any requests by third parties, in particular potential purchasers, in relation to the Commitments;*

vii. *provide to the Commission, sending the Parties 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 Businesses 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;*

viii. *promptly report in writing to the Commission, sending the Parties a non-confidential copy at the same time, if it concludes on reasonable grounds that the Parties are failing to comply with these Commitments;*

ix. *within one week after receipt of the documented proposal referred to in paragraph 18 of these Commitments, submit to the Commission, sending the Parties 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 Businesses after the Sale and as to whether the Divestment Businesses are sold in a manner consistent with the conditions and obligations attached to the Decision, in particular, if relevant, whether the Sale of the Divestment Businesses without one or more Assets or not all of the Personnel affects the viability of the Divestment Businesses after the sale, taking account of the proposed purchaser;*

x. *assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision.*

29. 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

30. Within the Trustee Divestiture Period, the Divestiture Trustee shall sell at no minimum price the Divestment Businesses to a purchaser or purchasers, provided that the Commission has approved both the purchaser and the final binding sale and purchase agreement (and ancillary agreements) as in line with the Commission's Decision and the Commitments in accordance with paragraphs 17 and 18 of these Commitments. The Divestiture Trustee shall include in the sale and purchase agreement (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 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 the Parties, subject to the Parties' unconditional obligation to divest at no minimum price in the Trustee Divestiture Period.

31. 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 Parties.

III. <u>Duties and obligations of the Parties</u>

32. The Parties shall provide and shall cause their advisors to provide the Trustee with all such co-operation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to any of the Parties or the Divestment Businesses' books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments and the Parties and the Divestment Businesses shall provide the Trustee upon request with copies of any document. The Parties and the Divestment Businesses 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.

33. The Parties shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the Divestment Businesses. This shall include all administrative support functions relating to the Divestment Businesses which are currently carried out at headquarters level. The Parties 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. The Parties 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.

34. The Parties 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, the Parties shall cause the documents required for effecting the sale and the Closing to be duly executed.

35. The Parties 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 the Parties 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.

36. At the expense of the Parties, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to the Notifying Party's approval (this approval not to be unreasonably withheld or delayed) if the 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 the Notifying Party refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard the Notifying Party. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 35 of these Commitments shall apply *mutatis mutandis*. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served the Parties during the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.

37. The Parties agree that the Commission may share Confidential Information proprietary to the Parties 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*.

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

39. 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>

40. 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:

i. *the Commission may, after hearing the Trustee and the Notifying Party, require the Notifying Party to replace the Trustee; or*

ii. *the Notifying Party may, with the prior approval of the Commission, replace the Trustee.*

41. If the Trustee is removed according to paragraph 40 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 19 to 26 of these Commitments.

42. Unless removed according to paragraph 40 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

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

44. 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 Parties. The request shall not have the effect of suspending the application of the undertaking and, in particular, of suspending the expiry of any time period in which the undertaking has to be complied with.

SECTION G. ENTRY INTO FORCE

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

(Signed)

……………………………………………………………………..
duly authorised for and on behalf of
Equinix, Inc.

……………………………………………………………………..
duly authorised for and on behalf of
Telecity Group plc

SCHEDULE

1. The Divestment Businesses comprise the London Divestments, the Amsterdam Divestments and the Frankfurt Divestment.

London Divestments

2. In accordance with paragraph 5 of these Commitments, the London Divestments includes but is not limited to:

i. the assets owned by Telecity and the Notifying Party which contribute to the current operation or which are necessary to ensure the viability and competitiveness of the London Divestments;

ii. all the licences, permits and authorisations needed to operate the London Divestments, including any licences, permits and authorisations received for on-going expansion projects and future developments in respect of the London Divestments;

iii. the leases of the London Divestments sites;

iv. any contracts relating to the construction and development of the expansion to the London Divestments;

v. the network equipment and benefit of the relevant portion of the fibre optic leases required to provide the existing inter-site connectivity between the sites within the London Divestments on the one hand and between the London Divestments sites and the Retained London Business on the other hand.

The benefit of the relevant portion of fibre optic leases to connect the relevant network equipment will be transferred to the Purchaser on terms and conditions equivalent to those at present afforded to the London Divestments.

The Parties shall not unreasonably withhold or delay upgrades to the existing equipment or installation of new equipment that are necessary on the side of the Retained London Business in order to perform capacity upgrades of the existing fibre optic cables providing inter-site connectivity between the London Divestments sites and the Retained London Business.

A long-term colocation agreement, with duration of at least […], will be put in place with the Retained London Business in relation to the necessary network equipment at the end of the fibre optic connections in each relevant retained Notifying Party or Telecity data centre. The price will be […], with all other terms and conditions equivalent to those applied by the Notifying Party (in relation to West Drayton) or Telecity (in relation to the other London Divestments sites) prior to the Effective Date.

Equivalent arrangements will also be put in place to allow the Retained London Business to retain the benefit of the existing inter-site connectivity with the London Divestments. In this respect, the Retained London Business will need to conclude a colocation agreement with the Purchaser in each of the London

Divestments, on terms that are substantially the same as those provided to the Purchaser in the retained data centres;

vi. the contracts and commitments with the customers who contract only with the London Divestments at the time of the divestment;

vii. in respect of any customer or supply contracts that are shared with members of the Retained London Business, the benefit of the portion of those contracts which relates to the London Divestments on terms and conditions equivalent to those at present afforded to the London Divestments, including:

a) any customer contracts shared between the London Divestments and the Retained London Business at the time of the divestment. The current list of these contracts is set out in Annex 1;

b) the supply contract for power to Bonnington House, Oliver's Yard, Sovereign House and Meridian Gate with […];

c) the supply contract for security for Bonnington House, Oliver's Yard, Sovereign House and Meridian Gate with […]; and

d) the supply contract for infrastructure maintenance for Bonnington House, Oliver's Yard, Sovereign House and Meridian Gate with […];

e) the supply contract for power to West Drayton with […];

f) the supply contract for security for West Drayton with […]; and

g) the equipment maintenance contract for West Drayton with […].

viii. customer contract records, client relationship management records and historic invoicing records in relation to the London Divestments;

ix. the rights to use manuals and other guidance which sets out the processes and procedures for each of the London Divestments to the extent necessary for their ongoing operation and servicing of customers;

x. the ownership of, or right to use, any IP rights currently used by the London Divestments, which are necessary for either the operation or the viability of the London Divestments;

xi. in line with applicable employment laws and other relevant legislation where necessary, the personnel shown in Annex 2 by transfer, secondment or transitional services arrangements according to the needs of any Purchaser;

xii. unless otherwise agreed with the Purchaser, arrangements for the supply of finance (including accounting, billing and pay-roll) and I.T. systems (including network services and e-mail accounts) […].

3. The London Divestments shall not include:

i. any assets owned by customers on the sites on the London Divestments

ii. the servers, platforms and other hardware located at the London Divestments sites that support managed services provided by the Retained London Business or the group functions of the Retained London Business, including I.T. and finance systems. Provisions will be made to allow the Retained London Business to locate these assets on the London Divestments sites […];

iii. the personnel currently based at the London Divestments sites who perform shared group functions and are not included in the Personnel and all the hardware and equipment used by those personnel (including office and I.T. equipment);

iv. any network equipment necessary to allow the Retained London Business the benefit of the existing inter-site connectivity with the London Divestments sites and the fibre optic leases to retain that inter-site connectivity;

v. the ownership of, or right to use, any IP rights currently used by the London Divestments, not necessary for either the operation or the viability of the London Divestments;

vi. any brands or logos currently held, as owner or licencee, by Telecity or the Notifying Party;

vii. any rights to the telecitygroup.com or equinix.com websites or domain names;

viii. books and records required to be retained pursuant to any statute, rule, regulation or ordinance, provided that the Purchaser(s) shall obtain a copy of the same and shall be permitted access to the original of such books and records upon reasonable request during normal business hours; or

ix. general books of account and books of original entry that comprise the Notifying Party's or Telecity's or any of their Affiliated Undertaking's permanent accounting or tax records.

4. The London Divestments shall include provision for the Notifying Party or Telecity (as applicable) to access certain platforms located in the London Divestments sites that are required for the provision of managed services to customers by the Retained London Business. In this respect, the London Divestments shall include the provision for the Notifying Party or Telecity (as applicable) to enter into a long-term colocation agreement with the Purchaser, with duration of at least […].

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

Amsterdam Divestments

6. In accordance with paragraph 5 of these Commitments, the Amsterdam Divestments includes, but is not limited to:

i. *t*he assets owned by Telecity which contribute to the current operation or which are necessary to ensure the viability and competitiveness of the Amsterdam Divestments;

ii. all the licences, permits and authorisations needed to operate the Amsterdam Divestments, including any licences, permits and authorisations received for on-going expansion projects and future developments in respect of the Amsterdam Divestments;

iii. the leases of the Amsterdam Divestments sites;

iv. any contracts relating to the construction and development of the expansion of the Amsterdam Divestments sites;

v. the network equipment and benefit of the relevant portion of the fibre optic leases required to provide the existing inter-site connectivity between the sites within the Amsterdam Divestments on the one hand and between the Amsterdam Divestments sites and the Retained Amsterdam Business on the other hand.

Where the current fibre optic connections are leased, the benefit of the relevant portion of fibre optic leases to connect the relevant network equipment will be transferred to the Purchaser on terms and conditions equivalent to those at present afforded to the Amsterdam Divestments.

In the case of the fibre optic connection between Amstel Business Park I and Amstel Business Park II, which is currently owned by Telecity, a lease will be granted to the purchaser for the relevant portion of fibre optic connections to connect the relevant network equipment. This lease will be on terms and conditions substantially equivalent to similar arrangements to which Telecity is party.

The Parties shall not unreasonably withhold or delay upgrades to the existing equipment or installation of new equipment that are necessary on the side of the Retained Amsterdam Business in order to perform capacity upgrades of the existing fibre optic cables providing inter-site connectivity between the Amsterdam Divestments sites and the Retained Amsterdam Business.

A long-term colocation agreement, with duration of at least […], will be put in place with the Retained Amsterdam Business in relation to the necessary network equipment at the end of the fibre optic connections in each relevant retained data centre, with all terms and conditions equivalent to those applied by Telecity prior to the Effective Date. […].

Equivalent arrangements will also be put in place to allow the Retained Amsterdam Business the benefit of the existing inter-site connectivity with the

Amsterdam Divestments. In this respect, the Retained Amsterdam Business will need to conclude a colocation agreement with the Purchaser in each of the Amsterdam Divestments, on terms that are substantially the same as those provided to the Purchaser in the retained data centres;

vi. the contracts and commitments with the customers who contract only with the Amsterdam Divestments at the time of the divestment.

vii. in respect of any customer or supply contracts that are shared with members of the Retained Amsterdam Business, the benefit of the portion of those contracts which relates to the Amsterdam Divestments on terms and conditions equivalent to those at present afforded to the Amsterdam Divestments, including:

a) any customer contracts shared between the Amsterdam Divestments and the Retained Amsterdam Business at the time of the divestment. The current list of these contracts is set out in Annex 3;

b) the supply contract for power for Amstel Business Park I with […];

c) the supply contract for power for Science Park with […]; and

d) the supply contract for security with […]; and

viii. customer contract records, client relationship management records and historic invoicing records in relation to the Amsterdam Divestments;

ix. the rights to use manuals and other guidance which sets out the processes and procedures for each of the Amsterdam Divestments to the extent necessary for their ongoing operation and servicing of customers;

x. the ownership of, or right to use, any IP rights currently used by the Amsterdam Divestments, which are necessary for either the operation or the viability of the Amsterdam Divestments;

xi. in line with applicable employment laws and other relevant legislation where necessary, the personnel shown in Annex 4 by transfer, secondment or transitional services arrangements according to the needs of any Purchaser; and

xii. unless otherwise agreed with the Purchaser, arrangements for the supply of finance (including accounting, billing and pay-roll) and I.T. systems (including network services and e-mail accounts) […].

7. The Parties commit to enter into a contract with a developer (capable of being assigned to the Purchaser) under which the developer will agree to expand Science Park to a net capacity of [between 5 and 8 MW and between 4,000 and 6,000 m2] by the end of 2016 (the “Expansion Programme”) for a specified cost (the “Expansion Cost”). The contract shall contain provisions that shall have the substantive effect that the full Expansion Programme will be carried out to substantially the same standard and quality to which the current expansion of data centre capacity at Science Park is being carried out.

The sale agreement for the Amsterdam Divestments shall provide that the purchase price payable by the Purchaser shall be reduced by the amount of the Expansion Cost not previously paid to the developer under the contract upon Closing and that the Purchaser must set aside such reduction and use it to pay the remaining portion of the Expansion Cost to the developer.

8. The Amsterdam Divestments shall not include:

i. any assets owned by customers on the sites on the Amsterdam Divestments;

ii. the servers, platforms and other hardware located at the Amsterdam Divestments sites that support the group functions of the Retained Amsterdam Business, including I.T. and finance systems. Provisions will be made to allow the Retained Amsterdam Business to locate these assets on the Amsterdam Divestments sites […];

iii. the personnel currently based at the Amsterdam Divestments sites who perform shared group functions and are not included in the Personnel and all the hardware and equipment used by those personnel (including office and I.T. equipment);

iv. any network equipment necessary to allow the Retained Amsterdam Business the benefit of the existing inter-site connectivity with the Amsterdam Divestments sites and the fibre optic leases to retain that inter-site connectivity;

v. ownership of the fibre optic connection between Amstel Business Park I and Amstel Business Park II, and, […];

vi. the ownership of, or right to use, any IP rights currently used by Amsterdam Divestments, not necessary for either the operation or the viability of the Amsterdam Divestments;

vii. any brands or logos currently held, as owner or licencee, by Telecity;

viii. any rights to the telecitygroup.com websites or domain names;

ix. books and records required to be retained pursuant to any statute, rule, regulation or ordinance, provided that the Purchaser(s) shall obtain a copy of the same and shall be permitted access to the original of such books and records upon reasonable request during normal business hours; or

x. general books of account and books of original entry that comprise Telecity's or an Affiliated Undertaking's permanent accounting or tax records.

9. If there is any asset or personnel which is not covered by paragraph 6 of this Schedule but which is both used (exclusively or not) in the Amsterdam Divestments and necessary for the continued viability and competitiveness of the Amsterdam Divestments, that asset or personnel or an adequate substitute will be offered to potential purchasers.

Frankfurt Divestment

10. In accordance with paragraph 5 of these Commitments, the Frankfurt Divestment includes, but is not limited to:

i. the assets owned by Telecity which contribute to the current operation or which are necessary to ensure the viability and competitiveness of the Frankfurt Divestment;

ii. all the licences, permits and authorisations needed to operate the Frankfurt Divestment, including any licences, permits and authorisations received for future developments in respect of the Frankfurt Divestment;

iii. the lease of the site at Lyonerstrasse;

iv. the network equipment and benefit of the relevant portion of the fibre optic lease required to provide the existing inter-site connectivity between Lyonerstrasse and Telecity's Gutleutstrasse data centre.

The benefit of the relevant portion of fibre optic leases to connect the relevant network equipment will be transferred to the Purchaser on terms and conditions equivalent to those at present afforded to the Frankfurt Divestment.

The Parties shall not unreasonably withhold or delay upgrades to the existing equipment or installation of new equipment that are necessary on the side of the Retained Frankfurt Business in order to perform capacity upgrades of the existing fibre optic cables providing inter-site connectivity between the Frankfurt Divestment site and the Retained Frankfurt Business.

A long-term colocation agreement, with duration of at least […] will be put in place with the Retained Frankfurt Business in relation to the necessary network equipment at the end of the fibre optic connections in the retained Telecity data centre. […], with all other terms and conditions equivalent to those applied by Telecity prior to the Effective Date.

Equivalent arrangements will also be put in place to allow the Retained Frankfurt Business the benefit of inter-site connectivity with Lyonerstrasse. In this respect, the Retained Frankfurt Business will need to conclude a colocation agreement with the Purchaser in the Frankfurt Divestment, on terms that are substantially the same as those provided to the Purchaser in the retained data centres;

v. the contracts and commitments with the customers and suppliers who contract only with the Frankfurt Divestment at the time of the divestment, including:

a) a supply contract for power with […]; and

b) the contracts and commitments with the customers who contract only with the Frankfurt Divestment at the time of the divestment.;

vi. in respect of any customer contracts that are shared with members of the Retained Frankfurt Business at the time of the divestment, the benefit of the portion of those contracts which relates to the Frankfurt Divestment on terms and conditions equivalent to those at present afforded to the Frankfurt Divestment. The current list of those contracts is set out in Annex 5;

vii. customer contract records, client relationship management records and historic invoicing records in relation to the Frankfurt Divestment;

viii. the rights to use manuals and other guidance which sets out the processes and procedures for each of the Frankfurt Divestment to the extent necessary for its ongoing operation and servicing of customers;

ix. the ownership of, or right to use, any IP rights currently used by the Frankfurt Divestment, which are necessary for either the operation or the viability of the Frankfurt Divestment;

x. in line with applicable employment laws and other relevant legislation where necessary, the personnel shown in Annex 6 by transfer, secondment or transitional services arrangements according to the needs of any Purchaser; and

xi. unless otherwise agreed with the Purchaser, arrangements for the supply of finance (including accounting, billing and pay-roll) and I.T. systems (including network services and e-mail accounts) […].

11. The Frankfurt Divestment shall not include:

i. any assets owned by customers on the sites on the Frankfurt Divestment;

ii. any servers, platforms and other hardware located at the Frankfurt Divestment site that support the group functions of the Retained Frankfurt Business, including I.T. and finance systems. Provisions will be made to allow the Retained Frankfurt Business to locate these assets on the Frankfurt Divestment site […];

iii. any personnel currently based at the Frankfurt Divestment site who perform shared group functions and are not included in the Personnel and all the hardware and equipment used by those personnel (including office and I.T. equipment);

iv. any network equipment necessary to allow the Retained Frankfurt Business the benefit of inter-site connectivity with Lyonerstrasse and the fibre optic leases to retain that inter-site connectivity;

v. the ownership of, or right to use, any IP rights currently used by the Frankfurt Divestment, not necessary for either the operation or the viability of the Frankfurt Divestment;

vi. any brands or logos currently held, as owner or licencee, by Telecity;

vii. any rights to the telecitygroup.com websites or domain names;

viii. books and records required to be retained pursuant to any statute, rule, regulation or ordinance, provided that the Purchaser(s) shall obtain a copy of the same and shall be permitted access to the original of such books and records upon reasonable request during normal business hours; or

ix. general books of account and books of original entry that comprise Telecity's or an Affiliated Undertaking's permanent accounting or tax records.

12. If there is any asset or personnel which is not covered by paragraph 10 of this Schedule but which is both used (exclusively or not) in the Frankfurt Divestment and necessary for the continued viability and competitiveness of the Frankfurt Divestment, that asset or personnel or an adequate substitute will be offered to potential purchasers.

ANNEXES

Annex 1	London Divestments – Shared Customer Contracts
Annex 2	London Divestments – Personnel
Annex 3	Amsterdam Divestments – Shared Customer Contracts
Annex 4	Amsterdam Divestments – Personnel
Annex 5	Frankfurt Divestment – Shared Customer Contracts
Annex 6	Frankfurt Divestment – Personnel

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COMMITMENTS TO THE EUROPEAN COMMISSION

ANNEXES

<u>Annex 1</u>

<u>London Divestments – Shared Customer Contracts</u>

Attached separately

Annex 2

London Divestments - Personnel

Details of personnel employed at Bonnington House

Department	Personnel
Data Centre Manager	[…]
Facilities Manager	[…]
Customer Service Assistant	[…]
Senior Customer Service Engineer	[…]
Customer Service Engineer	[…]
TOTAL	[…]

Details of personnel employed at Sovereign House

Department	Personnel
Data Centre Manager	[…]
Facilities Manager	[…]
Customer Service Assistant	[…]
Data Centre Support Assistant	[…]
Data Centre Support Administrator	[…]
Senior Customer Service Engineer	[…]
Customer Service Engineer	[…]
General Assistant	[…]
TOTAL	[…]

Details of personnel employed at Meridian Gate

Department	Personnel
Data Centre Manager	[…]
Facilities Manager	[…]
Customer Service Assistant	[…]
Customer Service Engineer	[…]
TOTAL	[…]

Details of personnel employed at Oliver's Yard

Department	Personnel
Data Centre Manager	[…]
Facilities Manager	[…]
Data Centre Support Administrator	[…][1]
Senior Customer Service Engineer	[…]
Customer Service Engineer	[…]
TOTAL	[…]

[1] […]

Details of personnel employed at West Drayton

Department	Personnel
Data Centre Manager	[…]
Customer Operations Employees	[…]
Technical Facilities Employees	[…]
TOTAL	[…]

Details of central personnel for the London Divestments

Role / Department	Personnel
Managing Director	**[…]**
Operations Management	**[…]**
Sales and marketing	**[…]**
Finance and Admin	**[…]**
TOTAL	**[…]**

Key personnel

Role	Name
Managing Director	[…]
Sales Director	[…]
Finance Director	[…]
Operations Director	[…]
Data Centre Manager (Bonnington House)	[…]
Data Centre Manager (Sovereign House)	[…]
Data Centre Manager (Meridian Gate)	[…]
Data Centre Manager (Oliver's Yard)	[…]
Data Centre Manager (West Drayton)	[…]

Annex 3

Amsterdam Divestments – Shared Customer Contracts

Attached separately

Annex 4

Amsterdam Divestments – Personnel

Details of personnel employed at AMS01

Department	Personnel
Data Centre Manager / Site Supervisor	[…]
Network Engineers	[…]
TOTAL	[…]

Details of personnel employed at AMS04

Department	Personnel
Data Centre Manager / Senior Engineer	[…]
Network Engineer	[…]
TOTAL	[…]

Details of central roles for the Amsterdam Divestments

Role / Department	Personnel
Operational Management	**[…]**
Sales and Marketing	**[…]**
Finance and Admin	**[…]**
Managing Director	**[…]**
TOTAL	**[…]**

Key employees

Role	Personnel
Managing Director	**[…]**
Sales Director	**[…]**
Finance Director	**[…]**
Data Centre Manager / Site Supervisor (Science Park)	**[…]**
Data Centre Manager / Senior Engineer (Amstel Business Park I)	**[…]**

Annex 5

Frankfurt Divestment – Shared Customer Contracts

Attached separately

Annex 6

Frankfurt Divestment – Personnel

Details of personnel employed at FRA02 (Lyonerstrasse)

Department	Personnel
Operations Manager / Site Manager	[…]
Data Centre Support Technician	[…]
Part-time Data Centre Support Technician	[…]
Facility Manager- Electrical	[…]
Facility Manager- Mechanical	[…]
Janitor	[…]
Part-time Temporary Worker	[…]
TOTAL	[…]

Details of central personnel for the Frankfurt Divestment

Role / Department	Personnel
Managing Director	**[…]**
Sales Director	**[…]**
Finance Manager	**[…]**
Part-time HR Manager	**[…]**
TOTAL	**[…]**

Key employees

Role	Personnel
Managing Director	**[…]**
Sales Director	**[…]**
Finance Manager	**[…]**
Operations Manager / Site Manager	**[…]**

M.7678 COMMITMENTS – ANNEX 1

Customer overlap in 2014 between Bonnington House and retained Telecity London data centres

	Retained Telecity data centres		
Customers of Telecity data centre Lon1	**Overlap with Lon2**	**Overlap with Lon5**	**Overlap with Lon10**
[…]	[…]	[…]	[…]

M.7678 COMMITMENTS – ANNEX 1

Customer overlap in 2014 between Sovereign House and retained Telecity London data centres

	Retained Telecity data centres		
Customers of Telecity data centre Lon3	**Overlap with Lon2**	**Overlap with Lon5**	**Overlap with Lon10**
[…]	[…]	[…]	[…]

M.7678 COMMITMENTS – ANNEX 1

Customer overlap in 2014 between Meridian Gate and retained Telecity London data centres

	Retained Telecity data centres		
Customers of Telecity data centre Lon4	**Overlap with Lon2**	**Overlap with Lon5**	**Overlap with Lon10**
[…]	[…]	[…]	[…]

M.7678 COMMITMENTS – ANNEX 1

Customer overlap in 2014 between Oliver's Yard and retained Telecity London data centres

	Retained Telecity data centres		
Customers of Telecity data centre Lon7	**Overlap with Lon2**	**Overlap with Lon5**	**Overlap with Lon10**
[…]	[…]	[…]	[…]

M.7678 COMMITMENTS - ANNEX 1
Customer overlap in 2014 between West Drayton and retained Equinix London data centres

	Retained Equinix data centres			
Customers of Equinix data centre LD2	**Overlap with LD1**	**Overlap with LD3**	**Overlap with LD4**	**Overlap with LD5**
[…]	[…]	[…]	[…]	[…]

M.7678 COMMITMENTS – ANNEX 3

Customer overlap in 2014 between Ams01 and retained Telecity Amsterdam data centres

	Retained Telecity data centres		
Customers of Telecity data centre Ams01	**Overlap with Ams02**	**Overlap with Ams03**	**Overlap with Ams05**
[…]	[…]	[…]	[…]

M.7678 COMMITMENTS – ANNEX 3

Customer overlap in 2014 between Ams04 and retained Telecity Amsterdam data centres

	Retained Telecity data centres		
Customers of Telecity data centre Ams04	**Overlap with Ams02**	**Overlap with Ams03**	**Overlap with Ams05**
[...]	[...]	[...]	[...]

M.7678 COMMITMENTS - ANNEX 5

Customer overlap in 2014 between Lyonerstrasse and Gutleutstrasse

Customers of Telecity data centre Fra2	**Retained telecity data centres Overlap with Fra1**
[…]	[…]