

***Case No COMP/M.2300 -
YLE / TDF / DIGITA / JV***

Only the English text is available and authentic.

**REGULATION (EEC) No 4064/89
MERGER PROCEDURE**

Article 6(2) NON-OPPOSITION
Date: 26/06/2001

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 26.06.2001

SG (2001) D/289380

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EEC) No 4064/89 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(2) DECISION

To the notifying parties

Dear Sir/Madam,

**Subject: Case No COMP/M.2300 – YLE/TDF/Digita/JV
Notification of 8 May 2001 pursuant to Article 4 of Council Regulation
No 4064/89¹ (the “Merger Regulation”)**

1. On 19.03.2001, the Commission received a notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the French undertaking Télédiffusion de France S.A. (“TDF”) acquires within the meaning of Article 3(1)(b) of the Council Regulation, joint control of the Finnish undertaking Digita Oy (“Digita”) by way of purchase of shares. Digita is currently solely controlled by the Finnish company Yleisradio Oy (“YLE”).
2. On 09.04.2001, the notification was declared incomplete. On 08.05.2001, the parties supplied the additional information required and their notification became effective on 10.05.2001.

I. THE PARTIES

3. TDF provides, on a international-wide basis, over-the-air and wireless solutions for broadcasters and telecom operators. TDF is a subsidiary of France Télécom S.A. Its activities in Finland are carried out through its subsidiary Telemast Nordic Oy (“Telemast”). Telemast provides terrestrial transmission and distribution services for radio programmes.

¹ OJ L 395, 30.12.1989, p. 1; corrigendum OJ L 257 of 21.9.1990, p. 13. Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9. 7. 1997, p. 1; corrigendum OJ L 40, 13.2.1998, p. 17).

4. Digita is a company providing distribution and terrestrial transmission services for radio and TV programmes; data distribution services; leasing of space for antennas and equipment; technical, constructing, maintenance and support services in Finland.
5. YLE is Finland's national public broadcaster.

II. THE OPERATION AND CONCENTRATION

6. As a result of the proposed transaction YLE will own 51% of Digita and will have the majority of the Board of Directors' seats. In turn TDF will acquire 49% of Digita.
7. According to the Shareholders' Agreement entered between the notifying parties, the adoption of decisions on matters linked to the strategic commercial behaviour of Digita, will require the consent of the Board members nominated by TDF. In consequence TDF will be granted a number of veto rights which will allow it to acquire joint control of Digita.
8. The Shareholders' Agreement includes put and call options which may be exercised by YLE or TDF respectively, during a certain period of time from the completion of the operation. Both of them can be exercised an unlimited number of times during their respective exercise periods until the entire put option block and the call option block have been sold to TDF.
9. The notifying parties submit that for as long as YLE holds between [...] and [...] % of Digita's shares, it is granted a number of veto rights but that those veto rights do not go beyond those normally granted to minority shareholders as a means of investment protection. The Commission, however, finds that the veto rights granted to YLE include rights that typically confer joint control, within the meaning of paragraphs 21 to 24 of the Commission's Notice on the concept of concentration,² since they include *inter alia*, [...].³

III. COMMUNITY DIMENSION

10. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion⁴. Each of YLE and TDF have a Community-wide turnover in excess of EUR 250 million, but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension.

² O.J. [1998] C 66/02.

³ Confidential information referring to a number of strategic business decisions deleted.

⁴ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25). To the extent that figures include turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

IV. RELEVANT MARKETS

11. The notifying parties identified the following distinct relevant product markets:

A. Horizontally affected markets

- a) Distribution⁵ of radio programmes.
- b) Terrestrial transmission⁶ of radio programmes by low power frequencies⁷.

B. Vertically affected markets

- c) Transmission equipment for low power frequency radio customers.
- d) Distribution equipment for radio customers.

C. Conglomerate markets⁸

- e) Terrestrial transmission of radio programmes by high power frequencies⁹.
- f) Distribution of TV programmes.
- g) Terrestrial transmission of TV programmes.

12. In addition, both Digita and TDF/Telemast are active in the leasing of space for antennae and equipment and TDF/Telemast is active in the re-sale of radio studio production equipment.

13. As to the relevant geographic market, the notifying parties submit that it is Finland for the horizontally affected markets and conglomerate markets, since all the necessary infrastructure is located there.

14. As for the vertically affected markets, the notifying parties submit that the geographic market for the supply and purchase of such equipment is at least EEA/Community-wide (product standard harmonisation), and most probably world-wide (uniform international standards and no barriers to entry). Consequently, the share of TDF/Telemast or Digita in the supply or procurement of such equipment is insignificant.

⁵ This refers to the delivery of radio or TV programmes and any related signals from the broadcaster's studio to a transmission station or interface.

⁶ This refers to the delivery of radio or TV programmes and any related signals from the transmission station or interface to the final consumer over the air.

⁷ These are FM radio frequencies where the power of transmission varies between 30 Watts and 1 kilo Watt. They are granted to small radio stations, applying for a local concession only.

⁸ These are markets where Digita is active and has market shares of over 25%, but neither TDF nor Telemast are present.

⁹ These are FM radio frequencies where the power of transmission varies between 1 and 60 kilo Watts. They are granted to larger radio companies providing nation-wide coverage.

15. The notifying parties' above-mentioned product market definitions were largely supported by the results of the Commission's market investigation.
16. More specifically, the results of the Commission's market investigation suggest that terrestrial transmission of high/low power frequency radio programmes and TV programmes, in Finland constitute distinct product markets which are separate from cable and satellite transmission.¹⁰ This appears to be due to the specific topography of Finland, which is a relatively large yet sparsely populated country with very cold climatic conditions. In these circumstances, the incumbent national terrestrial transmission network owned by Digita, is the only network providing national coverage. It is both technically and economically difficult to substitute, especially for free-TV broadcasters who under their broadcasting concessions are required to provide universal coverage.
17. For example, cable penetration in Finland is fragmented with a penetration of 60% yet with only of 45% of households subscribing cable services.¹¹ The further deployment of a nation-wide cable network would require high infrastructure layout and is not economically suitable for the provision of transmission services to sparsely populated areas. Satellite penetration in Finland is even lower at approximately 12%.¹² Even if in theory switching to satellite transmission could provide a large territorial coverage, to achieve such coverage, in Finland is considerably more expensive than using Digita's existing nation-wide terrestrial transmission network, both from the broadcaster's and viewer's perspective. Consequently, satellite transmission may not be considered as an economically viable alternative, in Finland either. This is all the more so, if one were to take into account the limited size of the Finnish market for both radio and TV broadcasting.
18. The results of the Commission's market investigation differed from the product market definitions advanced by the notifying parties in the following material respects.

Horizontally Affected Markets and Conglomerate Markets

19. The conditions of supply and demand in the Finnish market for the terrestrial transmission of radio programmes by low power frequencies, may change in the wake of the forthcoming introduction of Digital Audio Broadcasting ("DAB") in Finland. When new DAB concessions will be awarded new demand for the provision of digital transmission services will thereby be created.
20. Digital transmission differs from analogue transmission in that it requires the concession holders:

¹⁰ According to the notifying parties, the Finnish Competition Authority and Competition Council have also concluded that national terrestrial transmission of both radio and TV programmes in Finland did not have an economically feasible substitute. See Competition Council Decision of 6 July 2000 (d:o 53/690/2000).

¹¹ Finnish Mass Media 1999, statistics Finland, SV, see also http://www.365broadcast.com/r/country_files/finland.htm.

¹² Ibid.

- a) to incur additional investment to implement DAB along-side analogue transmission, in circumstances where there is currently limited consumer appeal due to the high cost of DAB receivers; and
 - b) co-operate in the allocation and management of frequencies over two multiplexers (one destined for national and the other for local radio broadcasting). Such co-operation is not a pre-requisite to the carrying out of analogue transmission by concession holders of low power radio frequencies.
21. The results of the Commission's investigation therefore suggest that there may be a distinct market for digital transmission of radio programmes. However, since the market definition chosen does not affect the assessment of the operation, it is not necessary for the purposes of the current transaction to decide on this point.

Vertically Affected Markets

22. Even if the notifying parties' geographic market definition were correct for the larger local radio stations with an international presence, local presence would be still deemed necessary for the smaller local radio stations, for reasons of language and to ensure prompt after-sales services.
23. Moreover, the results of the Commission's market investigation, suggested that there may be a distinct market for digital radio broadcasting equipment that is separate from the market for analogue radio equipment, due to differences in their technical characteristics and price. However, in view of the commitment offered by the TDF as outlined under Section VI below, it is not necessary for the purposes of the current transaction to decide on this point.

V. COMPETITIVE ASSESSMENT

A. Horizontally affected markets

24. Both TDF/Telemast and Digita are active on the markets for the provision of distribution services for all radio programmes and terrestrial transmission services for low power frequency radio programmes. Based on 2000 figures, the parties' combined market shares markets for the provision of these services in Finland are as follows:
- a) distribution of radio programmes: around [75-85]% (of the overall market for distribution of radio programmes);
 - b) terrestrial transmission of radio programmes by low power frequencies: around [60-70]%.
25. In view of these high combined market shares, the Commission's investigation sought to determine the likely effect on competition and consumer choice of the proposed transaction, given that it creates a permanent structural link between Digita and Telemast, its largest rival in Finland for the provision of such services.
26. According to the notifying parties, the impact of their proposed transaction on competition in the affected markets is limited due to the existence of low barriers to entry, as evidenced by:

- a) the number of competitors to Digita and Telemast from whom distribution services may be procured (e.g. any number of telecom operators);
- b) the fact that a considerable number of radio companies carry out transmission services themselves by leasing space on an abundant number of potential sites;
- c) the possibility of new entry following the example of the recent entry by TDF/Telemast.
27. The results of the Commission's market investigation do not support the parties' characterisation of barriers to entry, but point towards the existence of high barriers to entry, particularly with respect to terrestrial transmission services, due to the following factors:
- a) the specific features of the affected markets, namely their limited size, which reduces opportunities for new entry. Thus in the last three to five years the only successful newcomer was TDF/Telemast, whose entry, it must be noted, was done through the acquisition of a pre-existing business;
- b) the greater concentration that the operation in itself will create by linking TDF/Telemast (the strongest competitor to Digita on the affected markets) to Digita (the incumbent on the conglomerate markets discussed further below);
- c) the fact that local radio stations prefer to outsource distribution/transmission activities rather than to carry them in-house so as to focus their resources on their core activity (i.e. broadcasting), provided that such outsourcing is cost-effective,¹³ and
- d) the absence of legislation imposing co-location or site sharing obligations on either TDF/Telemast or Digita (the incumbent broadcast network provider¹⁴), as well as the limited availability of suitable masts.¹⁵
28. Moreover, based on information supplied by the parties, and confirmed by the results of the Commission's market investigation, local radio stations prefer to outsource their distribution and transmission requirements, to the same service provider, wherever possible. Indeed, TDF/Telemast's successful entry and growth has been based on exploiting the local radio stations' need for a "one-stop-shop" provider of both distribution and terrestrial transmission services.
29. In the light of these considerations, it must be concluded that the proposed transaction raises serious doubts with regard to the creation of a dominant position on the above-

¹³ The existence of a relatively large in-house distribution and transmission capacity in Finland (approximately 25 to 50% of the market) appears to be due to the absence of cost-effective outsourcing alternatives in the past.

¹⁴ According to information from the notifying parties, existing site sharing obligations appear to be directed at telecom operators rather than at transmission service providers for broadcasting, such as Digita or TDF/Telemast.

¹⁵ It would seem that the vast majority of existing masts used by telecom operators, are not high enough for radio transmission even in low frequency.

mentioned horizontally affected markets, as a result of the elimination of TDF/Telemast as an actual competitor to Digita.¹⁶

B. Vertically affected markets

30. In the course of its market investigation, the Commission received submission that by creating a vertical link between TDF/Telemast (allegedly one of the more important independent suppliers of radio distribution and transmission equipment in Finland), and Digita (the largest single buyer of both TV and radio distribution and transmission equipment in Finland), the proposed operation, could lead to the creation of dominant position for TDF/Telemast in the market for the supply of such equipment in Finland.
31. More specifically, the creation of such a vertical link, would reduce the already limited number of independent sources for the supply of such equipment in Finland to the detriment of local radio stations. Moreover, the proposed operation, might lead to the creation of a dominant position for TDF/Telemast on the markets concerned, particularly in case Digita were to divert its procurement of such equipment through TDF/Telemast.
32. According to the notifying parties, based on 2000 figures, TDF/Telemast's market shares in Finland for the re-sale of stand alone¹⁷ radio broadcasting equipment were as follows:
 - a) transmission equipment for low power frequency radio customers: around [15-25]%; and
 - b) distribution equipment for radio customers: around [5-15]%.
33. However, when adding turn key¹⁸ sales to stand-alone sales, TDF/Telemast's market shares in the two above-mentioned vertically affected markets, based on 2000 figures, rise to around: a) [45-55]%; and b) [25-35]%.¹⁹ If one takes account of Digita's own stand alone purchases of distribution equipment for radio in 2000, the combined market share of TDF/Telemast and Digita for radio distribution equipment in Finland, rises to [40-50]%. Moreover, the notifying parties' estimates suggest that [over 90]% of turn key sales of low power frequency transmission equipment and distribution equipment in Finland in 2000 were accounted for solely by TDF/Telemast.
34. Given TDF/Telemast's and Digita's important market shares for the supply and procurement of such equipment in Finland, and the results of the Commission's market investigation, which point towards the need for smaller local radio stations to have independent local sources of supply, it must be concluded that the proposed transaction raises serious doubts with regard to the creation of a dominant position in relation

¹⁶ According to the notifying parties, the only other independent supplier of such terrestrial services, Studiotec has a more limited market share of around [5-15]%.

¹⁷ This refer to the supply of equipment without providing transmission and distribution services.

¹⁸ This refer to the supply of equipment together with the provision of transmission and distribution services.

¹⁹ Turn key figures for c) were unavailable according to the notifying parties.

both to transmission equipment for low power frequency radio customers and distribution equipment for radio customers.

C. Conglomerate markets

35. According to the notifying parties, Digita's market shares, based on 2000 figures, on the following conglomerate markets in Finland were:
- a) terrestrial transmission of radio programmes in high power frequencies: around [over 90]%;
 - b) distribution of television programmes: around [45-55]%; and
 - c) terrestrial transmission of television programmes: around [over 90]%.
36. In the course of its market investigation, the Commission received submissions claiming that the acquisition of a controlling stake by TDF in Digita, will eliminate TDF/Telemast as a potential competitor who has the financial resources and technical know how to compete against Digita in the above-mentioned conglomerate markets. These allegations were not supported by the results of the Commission's market investigation. The investigation revealed a general consensus on the existence of significant high barriers to entry at least on the conglomerate markets for TV and high power radio transmission services in Finland. Therefore, TDF/Telemast is not at present a potential competitor to Digita.
37. It can therefore be concluded that under existing market conditions and for as long as there exists no legislation obliging Digita to provide third party access to its network, Digita is a *de facto* monopolist whose position on the conglomerate markets for TV and high power radio transmission services in Finland is unlikely to be affected by the proposed transaction.
38. As for the market for the distribution of TV programmes, according to TDF/Telemast it is unlikely to enter this market, because it has no competitive advantage in only re-selling distribution capacity to TV broadcasters when compared to other existing competitors on this market such as the telecom operators. In any event, in view of the commitment offered by TDF/Telemast as outlined under Section VI below, it is unnecessary to investigate this point any further.

D. The broadcasting market

39. In the course of its market investigation, the Commission received submissions claiming that the acquisition of a controlling stake by TDF in Digita, will strengthen YLE's dominant position on the market for the acquisition of broadcasting programmes, viewers and/or listeners, to the detriment of its commercial competitors, because: a) it would result in increased prices being charged by Digita due to the fact that whilst YLE is a "not for profit" organisation, TDF is a "profit making" enterprise with an added incentive to recoup its investment by leveraging Digita's "natural monopoly" on the conglomerate markets; and b) the incidence of such price increases will be discriminatory since whereas YLE could partially re-coup any increases through its investment in Digita there is no such possibility for the commercial broadcasters.

40. After a thorough investigation, the Commission considers these allegations to be unfounded since it has not been possible to establish that the proposed transaction will itself necessarily lead to or facilitate the allegations of price increases and price discrimination made in the complaint. This is due to the following reasons: a) as a *de facto* monopolist Digita today has the ability to increase prices – the proposed transaction does not alter this, nor will the severing of the vertical link between YLE and Digita improve the situation in this regard; b) by contrast, by reducing the vertical link between YLE and Digita from 100% to 51%, the proposed transaction does in fact reduce the incidence of price discrimination in favour of YLE. Therefore, the Commission does not consider the broadcasting market to be a relevant market for the purposes of assessing the proposed transaction under the Merger Regulation.

VI. COMMITMENTS OFFERED BY THE NOTIFYING PARTIES

41. To resolve the serious doubts identified with regard to the horizontally and vertically affected markets, TDF have offered to divest Telemast in accordance with the commitments in Annex. This appears to be a clear cut structural remedy, which the Commission's market investigation has identified as the most appropriate solution.

VII. CONCLUSION

42. For the above reasons and subject to full compliance with the undertakings in the Annex, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6(2) of Council Regulation (EEC) No 4064/89.

For the Commission

Signed by
Mario MONTI
Member of the Commission

ANNEX

Subject: Case COMP/M.2300-YLE/TDF/DIGITA/ JV

Notification of 8 May 2001 pursuant to Article 4 of Council Regulation No 4064/89

UNDERTAKING

with respect to the Finnish radio distribution and transmission markets

Whereas, on 8 May 2001 Télédiffusion de France S.A. ("TDF") and Yleisradio Oy ("YLE") notified the proposed transaction between TDF and YLE concerning the acquisition of a 49% stake in Digita Oy ("Digita") ("the Transaction") to the European Commission (the "Commission") pursuant to Council Regulation 4064/89 (the "Merger Regulation");

Whereas, TDF wishes to submit commitments pursuant to Article 6(2) of the Merger Regulation to form the basis for a decision pursuant to Article 6(2);

Therefore, TDF offers the following commitments to allow the Commission to approve the Transaction pursuant to Article 6(2) of the Merger Regulation (the "Undertaking").

This Undertaking shall take effect upon the date of the Commission Decision declaring the notified concentration compatible with the Common Market under Article 6(2) of Council Regulation No. 4064/89 as amended (the "Effective Date").

A. DIVESTITURE OF TDF'S INTEREST IN TELEMAST NORDIC OY

1. TDF undertakes to appoint a Trustee in accordance with paragraphs 9 to 17 below and undertakes to give this Trustee an irrevocable mandate to complete the sale of all of the interest (the "Interest") held by it or by any directly or indirectly affiliated member of its group in Telemast Nordic Oy ("Telemast") within [...] months from the Effective Date, unless extended by the Commission in accordance with paragraph 28 of this Undertaking, to the effect that, following the completion of the sale, neither TDF nor any directly or indirectly affiliated member of its group will hold any equity interest, either directly or indirectly, in Telemast. TDF will cause all steps to be taken to ensure that all tangible and intangible assets of Telemast, including without limitation, goodwill, all assets and facilities used by Telemast, all management departments of Telemast together with the relevant personnel, customer lists, and technical assistance (the "Divested Business") will be divested to the purchaser as a going concern, including the transfer of personnel currently employed by the Divested Business. TDF will also cause the benefit and burden of all agreements relating to the Divested Business will be transferred to and assumed by the purchaser. Equally, the

benefit and burden of all agreements relating to the Interest will also be assigned to and assumed by the purchaser.

2. TDF undertakes to refrain from any action or omission that would not preserve the full economic viability, marketability and competitiveness of the Divested Business, pending divestiture, in accordance with good commercial practice, as will be monitored by the Trustee in accordance with paragraphs 18 and 19 below. In particular, TDF and undertakes not to carry out any act upon its own authority which may have a significant negative impact on the economic value, the management or the competitiveness either of the Interest or the Divested Business until the date of completion of the divestiture. TDF also undertakes not to carry out upon its own authority any act which may be of such a nature as to alter the nature or scope of activity of the Divested Business, the industrial or commercial strategy or the investment policy of the same. Sufficient resources shall be made available for the Divested Business to develop until the divestiture, based on the approved strategic objectives, budget and business plans of Telemast.
3. TDF commits to keep the Divested Business separate from its other businesses and to ensure that employees of the Divested Business have no involvement in TDF's other businesses and vice versa. TDF will also ensure that the employees of Telemast will not report to any individual outside of that company save for the Trustee.
4. Prior to the completion of the sale of the Interest, TDF shall assist the Trustee in ensuring that Telemast is managed as a distinct and saleable entity separate from the business of TDF. The Trustee shall in particular ensure that Telemast shall have its own management which shall be under instructions to manage Telemast on an independent basis and to ensure its continued viability, marketability and independence from the business of TDF.
5. To ensure that Telemast is managed as a separate entity, its participation in central purchasing arrangements, international marketing efforts, the central internet system and other central operational functions will be terminated as quickly as possible, to the extent possible without undermining the full economic viability, marketability and competitiveness of the Divested Business.
6. TDF shall implement all necessary measures to ensure that, as from the Effective Date, it shall not obtain from the management of Telemast any business secrets, know-how, commercial information, or any other information of a confidential, proprietary or sensitive nature relating to the Divested Business, with the exception of financial data normally made available to shareholders in a publicly listed company, such as the annual accounts. For the avoidance of doubt TDF members of the Board of Directors of Telemast shall resign their seats with effect from the date of the closing of the Transaction.
7. TDF shall take all reasonable steps, including appropriate incentive schemes, to cause all staff listed in Schedule 1 as currently employed by Telemast to remain with Telemast. The incentives shall be agreed with the Commission upon recommendation of the Trustee and shall be determined on the basis of industry practice, seniority and the qualifications of the staff members. TDF also undertakes not to hire or solicit, and to procure that Digita will not hire or solicit, the staff retained by Telemast from the

Effective Date and for a period of [...] after the divestment of the Interest. TDF shall ensure that any of its staff who have been employed by or seconded to Telemast within the last [...] prior to the Effective Date, as listed in Schedule 2, and any of the staff who might not remain with Telemast, shall not be seconded to Digita, and shall not be assigned to any TDF business unit that directly or indirectly competes with Telemast from the Effective Date and for a period of [...] after the divestment of the Interest.

8. TDF undertakes to provide the Trustee with all reasonable assistance and information necessary for the execution of the sale of the Interest and shall be kept informed by the Trustee of all negotiations regarding finding a purchaser for the Interest. TDF shall provide the Trustee with all such assistance and information, including copies of all relevant documents, as the Trustee may reasonably require to monitor compliance with the conditions and obligations under this Undertaking. TDF shall make available to the Trustee one or several offices on the premises of Telemast. TDF shall be available for regular meetings with the Trustee, according to a timetable agreed between them, in order to provide the Trustee, either orally or in document form, with all information necessary for the completion of his task. At the request of the Trustee, TDF shall provide the Trustee with access to sites of Telemast. TDF shall provide all managerial and administrative support which may reasonably be requested by the Trustee on behalf of the management of Telemast. This shall include all administrative support functions relating to Telemast which are currently carried out at headquarters level.

B. APPOINTMENT AND MANDATE OF THE TRUSTEE

9. TDF shall appoint a trustee (the “Trustee”), such as an investment bank, management consultant or auditor, subject to the prior approval of the Commission. The Trustee shall be independent of the notifying parties or any directly or indirectly affiliated member of their groups, possess the necessary qualifications to carry out the task and shall not be, or become, exposed to a conflict of interest. The Trustee will be remunerated in such a way as not to impede its independence and effectiveness in fulfilling its mandate. The mandate must include all provisions necessary to enable the Trustee to fulfil its duties under this Undertaking accepted by the Commission.
10. The Trustee shall assume its specified duties in order to ensure compliance in good faith with the Undertaking on behalf of the Commission, taking into account the legitimate financial interests of TDF in protecting the value of the Interest.
11. The Trustee will be appointed according to the provisions set out below.
12. TDF shall propose to the Commission, within [...] after the Effective Date, the names of at least two individuals or institutions, independent of the notifying parties or any directly or indirectly affiliated member of their groups, with the necessary experience and competence, either of whom TDF considers appropriate to be appointed as a trustee. TDF’s proposal shall be accompanied by the full terms of the proposed mandate as agreed with the proposed trustees as well as all information necessary for

the Commission to verify that the proposed trustees fulfil the requirements in paragraph 9 above.

13. The Commission shall have the discretion to approve or reject one or both of the names submitted, and to approve the proposed mandate subject to modifications, that the Commission deems reasonably necessary for the Trustee to fulfil its obligations. If only one name is approved, TDF shall appoint or cause the individual or institution concerned to be appointed as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, TDF shall be free to choose the Trustee to be appointed from among the names approved.
14. If all the names submitted are rejected, TDF will submit the names of at least two further such individuals or institutions within one week of being informed of the rejection, together with the full terms of the proposed mandate as agreed with the proposed trustees as well as all information necessary for the Commission to verify that the proposed trustees fulfil the requirements in paragraph 9 above. If more than one further name is approved, TDF shall be free to choose the Trustee to be appointed from among the names approved. If only one name is approved, TDF shall appoint or cause the individual or institution concerned to be appointed as Trustee, in accordance with the mandate approved by the Commission.
15. If all further names are rejected by the Commission, the Commission shall nominate a suitable Trustee which TDF will appoint or cause to be appointed. In such case, the Trustee shall be a reputable investment bank, management consultant or accountancy firm.
16. As soon as the Commission has given approval to one or more names submitted, or nominated a Trustee to be appointed, TDF shall appoint or cause the Trustee concerned to be appointed within [...] thereafter, in accordance with the mandate approved by the Commission.
17. The Trustee may be removed by TDF with the prior approval of the Commission in the event that the Trustee has not acted in accordance with the provisions of this Undertaking or for any other good cause. 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. Regarding the appointment of a new Trustee the same procedure applies as described above.
18. Following the Commission's approval of a proposed Trustee, TDF shall immediately enter into a mandate with the Trustee whose terms shall have previously been agreed with the Commission and which shall include the functions set out hereunder:
 - (a) To find and conduct negotiations with potential purchasers in order to meet the obligation of paragraph 1 above. In carrying out this function, the Trustee shall:
 - (1) notify the Commission and TDF as soon as practically possible concerning the identity of purchasers with whom it has initiated negotiations and advise the Commission why it believes such purchasers are suitable, in view of the criteria specified above;

- (2) end negotiations with any prospective purchaser, if the Commission determines that the negotiations are being conducted with an unsuitable purchaser; and
 - (3) carry out the negotiations with the view to completing the sale of the Interest in accordance with a final binding sale and purchase agreement that takes into account the financial interest of TDF [...] subject to the provisions of paragraph 23 below.
- (b) To represent TDF in the Board of Directors of Telemast and in general take care of the financial interests of TDF in Telemast. In particular, the Trustee will:
- (1) vote the Interest in the financial interest of TDF until legal title to the Interest has been passed to the purchaser; and
 - (2) appoint and instruct a sub-representative, if necessary,²⁰
 - (1) and (2) always being subject to the duties and obligations of TDF or members of its group imposed by law (in case of conflict between any of the foregoing duties and obligations of TDF or members of its group and any of the provisions of this Undertaking, the provisions of this Undertaking shall prevail) and pursuant to all agreements in connection with the holding of the Interest and in particular the rights and obligations resulting from shareholders' agreement and the Articles of Association of Telemast.
 - (3) not forward to TDF any market related and/or commercially sensitive data (including but not limited to business projects and strategies of Telemast), except such financial data as would normally be made available to shareholders in a publicly listed company, such as the annual accounts.
 - (4) monitor the maintenance of the viability and saleability of the Interest in accordance with this Undertaking, and to ensure that the rights TDF has as a shareholder in Telemast are executed on an independent arm's length basis consistent with their status, until the divestment of the Interest to the purchaser; and
 - (5) monitor the satisfactory discharge by TDF of the obligations entered into in this Undertaking.
- (c) To oversee the on-going management of Telemast with a view to ensuring its continued viability and marketability and monitor the compliance by TDF with the conditions and obligations under this Undertaking. Therefore the Trustee shall:
- (1) in consultation with TDF, determine the best management structure to ensure that the obligation of non-disclosure of competitively sensitive information is observed by both TDF and Telemast;

²⁰ In principle, the Trustee himself should take care of all the duties laid out in this Undertaking. Should, in an exceptional case, the Trustee have to appoint a sub-representative to take care of certain tasks, that sub-representative should normally be a member of the same organization as the Trustee. In any event, the Commission shall be informed of, and have an opportunity to object to, any appointment by the Trustee of a sub-representative. For the avoidance of doubt, nothing in the foregoing shall prevent the Trustee from seeking outside legal, investment banking or accounting advice from an independent third party, subject to the Commission's prior approval, if this was deemed necessary to fulfil its mandate.

(2) monitor, where applicable, that TDF maintains the viability and marketability of the Divested Business in accordance with this Undertaking, and the management and operation of the Divested Business in the normal course of business, in accordance with past practice, until divestiture of the Interest; and

(3) propose to TDF such measures as the Trustee considers necessary to ensure compliance with the conditions and obligations under this Undertaking, in particular the maintenance of the viability or marketability of the Divested Business and the non-disclosure of competitively sensitive information to TDF, and the Trustee shall be entitled to impose such measures (with the approval of the Commission) in the event that TDF does not comply with the Trustee's proposals within the timeframe set by the Trustee.

(d) To provide written reports to the Commission about its mandate, identifying any respects in which it has been unable to discharge its mandate. Such reports shall be provided within ten (10) days after the end of every month commencing one month after the date of its appointment, or at such other time(s) or time periods as the Commission may specify, with a simultaneous non-confidential copy to TDF. The report must inform the Commission on progress in the divestiture process as well as the monitoring of the operation and management of Telemast in order to assess whether the Divested Business is held in a manner consistent with this Undertaking. In addition to these reports, the Trustee shall promptly report in writing to the Commission if the Trustee concludes on reasonable grounds that TDF is failing to comply with any of the conditions or obligations under this Undertaking. TDF shall receive a simultaneous non-confidential copy of any such additional reports.

(e) To assess the suitability of the proposed purchaser and the viability of Telemast after the sale to the purchaser and give its opinion to the Commission on whether the proposed divestment complies with the conditions and obligations under this Undertaking. To assist the Commission in determining whether any proposed purchaser of the Interest is suitable, the Trustee shall submit a fully documented and reasoned proposal enabling the Commission to verify *inter alia* that: (i) the criteria set out in paragraph 24 with regard to the identity of the purchaser are fulfilled; (ii) the Interest is sold in a manner consistent with the Undertaking including the conclusion of a final binding sale and purchase agreement provided that the completion of the sale takes place within [...] therefrom; (iii) neither TDF, nor any directly or indirectly affiliated member of its group own a direct or indirect interest in the proposed purchaser; (iv) the sale allows Telemast to continue to operate as an active competitive force; and (v) at the time of completion of the purchase, the proposed purchaser has, or can reasonably be expected to obtain, all necessary approvals for the purchase from the relevant competition authorities.

(f) To cease to act as Trustee only after the Commission has discharged it from its duties, following a request from the Trustee made after all the commitments with which it has been entrusted have all been implemented. However, the Commission may at any time require the reappointment of the Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

19. The Trustee will provide TDF with all reasonable assistance required to ensure compliance with the Undertaking. TDF will always provide or cause to be provided to the Trustee all such assistance and information, including copies of all relevant

documents accessible to TDF, as he may require in carrying out his mandate and to pay reasonable remuneration for his services as agreed in the mandate.

20. At the Commission's reasonable request, TDF shall modify the proposed mandate, if necessary, to ensure that it is in accordance with the provisions of this Undertaking. Once the mandate has been executed, TDF shall not make any changes to such mandate without the Commission's approval. Any instruction or request to the Trustee from TDF which conflicts with the Trustee's mandate will be considered null and void.
21. As soon as the specific remedy with which the Trustee has been entrusted has been implemented, the Trustee shall request the Commission to be discharged. However, the Commission may at any time require the reappointment of the Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

C. COMMISSION APPROVALS

22. The Commission has (15) working days² following receipt of a fully documented and reasoned request either to reject or accept in writing any proposal submitted to it for approval pursuant to this Undertaking. The Commission's failure to decide within fifteen (15) working days from receipt of TDF's, or the Trustee's as the case may be, fully documented and reasoned request shall constitute good cause or an exceptional circumstance for the purposes of paragraph 28.

D. DIVESTMENT PROCEDURE

23. Provided that the procedure for approval of potential purchasers has been complied with, the Trustee shall be free to accept any offer or to select the offer it considers best in the event of a plurality of offers for the Interest. The Trustee is to have due regard to the financial interest of TDF [...]. If the Trustee is not able to complete the sale of the Interest within the [...] months provided for in paragraph 1 above, the said period shall be extended of another [...] months from the date of its expiration. Henceforth, the Trustee shall have an irrevocable mandate to complete the sale of Interest in accordance with paragraph 1 [...].

E. THE PURCHASER

24. The purchaser shall be a viable existing or potential competitor, independent of and unconnected to TDF or any directly or indirectly affiliated member of its group, possessing the financial resources, proven expertise and having the incentive to maintain and develop the Divested Business as an active competitive force in competition with Digita and other competitors. In addition, the purchaser must reasonably be expected to obtain all necessary approvals from the relevant competition and other regulatory authorities for the acquisition of the Interest. The Trustee must be able to demonstrate to the Commission that the purchaser meets the requirements of the Undertaking and that the Divested Business is sold in a manner consistent with this

Undertaking. In order to maintain the structural effect of this Undertaking, neither the notifying parties nor any directly or indirectly affiliated member of their groups will subsequently acquire influence over the whole or part of the Divested Business, unless the Commission has previously found that the structure of the market has changed to such an extent that the absence of influence over the Divested Business is no longer necessary to render the concentration compatible with the common market.

F. GENERAL PROVISIONS

25. This Undertaking is governed by EU Law.
26. The Undertaking is subject in all respects to the general duty of trust and good faith and to the terms of all agreements relating to the Interest, in particular shareholders' agreement and the Articles of Association of Telemast.
27. The Commission may on its own initiative or at the request of the Trustee issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Undertaking.
28. The Commission may, upon request from TDF or the Trustee showing good cause (and after hearing either TDF or the Trustee, where relevant):
 - (a) extend any period in this Undertaking allowed for the completion of the sale of the Interest in accordance with paragraph 1 above; or
 - (b) authorise the sale of the Interest to a purchaser proposed to the Commission without one or more assets, facilities, contracts or other rights or obligations that are part of the Divested Business being included; or
 - (c) waive one or more of the conditions and obligations in this Undertaking.

TDF and/or the Trustee shall address any request for an extension of time periods no later than [...] prior to the expiring of such time period, showing good cause. Only in exceptional circumstances will TDF and/or the Trustee be entitled to request an extension within the last month of any period. Such request shall specify the exceptional circumstances that in TDF's or the Trustee's opinion justify an extension. Any such delay shall not prevent TDF and/or the Trustee from taking the necessary preparatory steps with a view to completing the sale of the Interest. Such exceptional circumstances shall also include any delay in the Commission's response to any request or proposal pursuant to this Undertaking beyond the time periods accorded to the Commission in this Undertaking.
29. TDF shall provide the Commission with such information as the Commission may require in connection with this Undertaking within ten (10) working days from receipt of the Commission's reasoned request.
30. Any requests or proposals requiring Commission approval shall be addressed to the Director of Directorate B of the Commission's Directorate General for Competition,

70 Rue Joseph II, 1000 Brussels. Any communications to TDF shall be addressed to persons to be determined and communicated to the Commission before the Effective Date.

31. Nothing in this Undertaking shall require TDF to take, or refrain from taking, any action, if such action or inaction would violate any applicable laws and regulations, nor shall it be interpreted so as to prevent TDF from gaining access to information which it needs to comply with its obligations under financial reporting, tax and securities laws.

IN WITNESS WHEREOF, the undersigned have caused this Undertaking to be executed as of 25 June 2001:

For Télédiffusion de France S.A.:

Bruno CHETAÏLLE

Chairman and CEO

Schedule 1

**TELEMAST NORDIC OY
LIST OF EMPLOYEES AT
25/06/2001**

Name	Title	Comments
[Confidential information deleted]	[Confidential information deleted]	[Confidential information deleted]
[Confidential information deleted]	[Confidential information deleted]	[Confidential information deleted]
[Confidential information deleted]	[Confidential information deleted]	[Confidential information deleted]
[Confidential information deleted]	[Confidential information deleted]	[Confidential information deleted]
[Confidential information deleted]	[Confidential information deleted]	[Confidential information deleted]

Schedule 2

**TELEMAST NORDIC OY
LIST OF SECONDEES AT
25/06/2001**

Name	Title	Comments
[Confidential information deleted]	[Confidential information deleted]	[Confidential information deleted]
[Confidential information deleted]	[Confidential information deleted]	[Confidential information deleted]
[Confidential information deleted]	[Confidential information deleted]	[Confidential information deleted]
[Confidential information deleted]	[Confidential information deleted]	[Confidential information deleted]