

***Case No COMP/M.5148 -
DEUTSCHE TELEKOM/
OTE***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 02/10/2008

***In electronic form on the EUR-Lex website under document
number 32008M5148***



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 02.10.2008

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

SG-Greffe(2008) D/206002
C(2008)5713

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party:

Dear Sir/Madam,

**Subject: Case No COMP/M.5148 - Deutsche Telekom/ OTE
Notification of 28 August 2008 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 28 August 2008, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertaking Deutsche Telekom AG ("DTAG", Germany) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the undertaking Hellenic Telecommunications Organisation S.A. ("OTE", Greece) by way of purchase of shares. DTAG and OTE are together referred to below as "the parties".

I. THE PARTIES

2. **DTAG** is an integrated telecommunications and information technology service provider. DTAG is headquartered in Germany, active in 50 countries worldwide and has share listings on stock exchanges in Germany, Japan and the USA. The Federal Republic of Germany currently directly and indirectly holds a stake of 32% in DTAG.
3. Within the EEA, DTAG provides fixed communications services in several Member States, including Bulgaria, Germany, Hungary, Romania and Slovakia and operates public mobile networks in Austria, the Czech Republic, Germany, Hungary, the Netherlands, Poland, Slovakia and the UK. DT participates in the "FreeMove" roaming alliance, one of the pan-European telecommunications alliances together with France Télécom/Orange, Telecom Italia and Telia Sonera.
4. **OTE** is a full-service telecommunications provider. In the EEA OTE provides fixed communications services in Greece and Romania and – through its 100% subsidiary Cosmote – mobile telecommunications services in Bulgaria, Greece and Romania. OTE does not currently participate in any alliance of mobile operators. OTE is headquartered

¹ OJ L 24, 29.1.2004, p. 1.

in Greece and has share listing on stock exchanges in Greece, the UK and the USA. The Hellenic Republic currently holds a stake of approximately 28% in OTE.

II. THE PROPOSED OPERATION AND THE CONCENTRATION

5. DTAG currently holds approximately 21.97% of the shares in OTE and intends to acquire sole control over OTE further to a Share Purchase Agreement and a Shareholders' Agreement, both entered into on 14 May 2008.
6. Further to the Share Purchase Agreement DTAG will acquire approximately 3.03% of the shares in OTE currently held by the Hellenic Republic. DTAG will furthermore acquire additional OTE shares from the financial markets. Subsequently, DTAG and the Hellenic Republic will each hold 25% plus 1 of the shares and voting rights in OTE. The relationship between DTAG and the Hellenic Republic, together holding 50% plus 2 of the voting rights in OTE post-transaction, is set out in a Shareholders' Agreement, which sets out the rules that define the decision-making powers of the OTE Board of Directors and contemplates the following three scenarios.
7. The first scenario applies if the Hellenic Republic holds at least 15% of the total voting rights in OTE and the offices of Chairman and Managing Director are held by one and the same person. In such circumstances, the OTE Board of Directors will consist of ten directors, with DTAG and the Hellenic Republic having the right to appoint five directors each. The OTE Board of Directors will be responsible for the management and decision-making of OTE and decisions will be taken by simple majority. However, DTAG will have the right to appoint the Chairman and the Managing Director of OTE and the Chairman will have a casting vote on all matters requiring a decision of the OTE Board of Directors.
8. Given the parties' respective level of shareholding post-transaction and their agreement to appoint one and the same person as Chairman and Managing Director of OTE, this first scenario will initially apply post-transaction and give DTAG sole control of OTE.
9. The second scenario applies if the Hellenic Republic holds at least 15% of the total voting rights in OTE and the offices of Chairman and Managing Director are held by different persons. As foreseen for scenario one, the OTE Board of Directors will consist of ten directors, with DTAG and the Hellenic Republic having the right to appoint five directors each. DTAG will appoint the Managing Director and the Hellenic Republic will appoint the Chairman. However, the management powers of the OTE Board of Directors will be delegated to an Executive Committee that will be solely responsible for the management of OTE. DTAG and the Hellenic Republic will each appoint two members to the Executive Committee. However, the Chairman of the Executive Committee will be appointed by DTAG and that Chairman will have a casting vote on all matters delegated to the Executive Committee.
10. The third scenario applies if the Hellenic Republic holds less than 15% of the total voting rights in OTE. In such circumstances, the OTE Board of Directors will consist of eleven directors, six of whom will be appointed by DTAG, with the remaining five being appointed by the Hellenic Republic. The OTE Board of Directors will have all the

management powers over the decisions of OTE and decisions of the OTE Board of Directors will be taken by simple majority.²

11. The Hellenic Republic will retain certain veto rights defined by the Shareholders' Agreement. However, these rights do not go beyond any rights normally accorded to minority shareholders in order to protect their interests. In particular, they will not affect DTAG's right to nominate a majority of the OTE Board of Directors or its right to a casting vote on all management decisions taken by the Executive Committee as described above.³
12. Therefore, while the first scenario will initially apply post-transaction, independently of which of the three scenarios will materialise, the transaction will confer to DTAG sole control of OTE. Consequently, the transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. COMMUNITY DIMENSION

13. The concentration has a Community dimension within the meaning of Article 1(2) of the EC Merger Regulation⁴.

IV. COMPETITIVE ASSESSMENT

A. Relevant Markets

Fixed telecommunications services

14. The parties propose to define the product markets in line with previous Commission decisions and along the Commission's Recommendation of 11 February 2003 on Relevant Product and Service Markets (the "Recommendation")⁵. The proposed transaction concerns the following relevant markets for fixed telecommunications services:

² Furthermore, the parties agreed on a put option valid until 2011 pursuant to which the Hellenic Republic can sell further 15% of the shares in OTE to DTAG. In addition, DTAG has a right of first refusal for the remaining 10% of OTE shares held by the Hellenic Republic in case the option is exercised.

³ According to the parties the Greek law on special rights does not further add to these veto rights of the Hellenic Republic post-transaction.

⁴ Combined aggregate worldwide turnover exceeded EUR 5 000 million in 2007 (DTAG EUR [...], OTE EUR [...]); each of DTAG and OTE achieved a Community-wide turnover exceeding EUR 250 million (DTAG EUR [...], OTE EUR [...]). The undertakings concerned did not achieve more than two thirds of their Community-wide turnover in one and the same Member State.

⁵ Commission Recommendation of 11 February 2003 on Relevant Product and Service Markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic and network services, OJ L 114, 8.5.2003, p. 45. Definitions also refer to the revised Commission Recommendation of 17 December 2007.

- i. retail access to the public telephone network at a fixed location for residential and non-residential customers (further split into (a) local/national (b) international services);
 - ii. wholesale fixed voice services (further split into (a) wholesale access services to fixed networks, (b) wholesale call origination services in fixed networks);
 - iii. wholesale call termination services on fixed networks;
 - iv. retail leased lines;
 - v. wholesale leased lines;
 - vi. international wholesale carrier services (possibly further segmented by type of service provided);
 - vii. global telecommunications services (GTS).
15. According to the notifying parties and in line with Commission precedents, the geographic scope of all of these markets is national, except for the markets for the provision of international wholesale carrier services, which is at least EEA-wide, and the provision of enhanced GTS, which has been considered global or possibly regional (e.g. European)⁶ in precedent decisions.
16. As regards the market for retail access to the public telephone network at a fixed location in Romania (the only country with horizontal overlaps in this market), the parties argue in favour of a market definition encompassing all retail fixed telephony services, independently of the exact access technology. This market would hence encompass fixed retail offers based on various alternatives to the public telephone network such as cable operators or fixed telephony services provided by mobile telephony services operators. The market investigation for the proposed transaction has confirmed that in Romania cable operators offering retail fixed telephony service exercise a competitive constraint on providers of retail fixed telephony services via the public telephony network. The market investigation for the proposed transaction has furthermore, without prejudice to the analysis undertaken by the National Regulatory Authority, indicated some convergence between retail fixed telephony services provided by fixed network operators and fixed telephony solutions provided by mobile network operators. However, the exact definition of the relevant market for retail fixed telephony services in Romania can be left open as the proposed transaction would not lead to any merger-specific competition concerns on the narrowest market, i.e. the Romanian market for fixed retail telephony using fixed physical network infrastructure (public telephony network and cable network) but excluding retail fixed telephony services provided by mobile network operators.
17. The parties are active in the provision of fixed telecommunications services in Bulgaria, Germany, Hungary, Romania and Slovakia (all provided by DTAG) as well as Greece (OTE) and Romania (both parties).

⁶ See Commission decision in case COMP/M.3752 – Verizon/MCI

Mobile telecommunication services

18. The parties propose to define the mobile telecommunication services product markets in line with Commission precedents and the Recommendation. The proposed transaction concerns the following relevant markets for mobile telecommunications services:
- (i) retail access and call origination services on mobile networks (hereafter referred to as the market for "retail mobile telecommunications services")⁷;
 - (ii) wholesale call termination services on mobile networks⁸; and
 - (iii) wholesale international roaming services⁹.
19. According to the notifying parties, and in line with previous Commission decisions, the geographic scope of all of these markets is national.
20. DTAG, mainly through T-Mobile, is active in Austria, Czech Republic, Germany, Hungary, the Netherlands, Poland (Polska Telefonia Cyfrowa), Slovakia and the United Kingdom. OTE offers retail mobile telecommunications services in Bulgaria, Greece and Romania.

B. Competitive Assessment

Horizontal relations

Horizontally affected markets

21. The proposed concentration gives rise to horizontally affected markets in Romania for (i) retail access to the public telephone network at a fixed location (split into (a) local/national calls and (b) to the public telephone network at a fixed location for international services) and (ii) wholesale leased lines.¹⁰ Furthermore, the proposed transaction leads to horizontal overlaps on the market for international wholesale carrier services and the market for GTS.

⁷ See cases COMP/M.4947 – Vodafone/Tele2 Italy/Tele2 Spain and COMP/M.3916 – T-Mobile Austria/Tele.ring.

⁸ Revised Commission Recommendation of 17 December 2007 referring to wholesale voice call termination on individual mobile networks. See also case COMP/M.4748 – T-Mobile/Orange Netherlands and COMP/M.4947 – Vodafone/Tele2 Italy/Tele2 Spain.

⁹ Commission Recommendation of 11 February 2003 referring to wholesale international roaming on public mobile networks. See also cases COMP/M.4748 – T-Mobile/Orange Netherlands and COMP/M.4034 – Telenor/Vodafone Sverige.

¹⁰ The market for retail leased lines does not give rise to horizontally affected markets. In Romania, where OTE is active in the provision of retail leased lines, DTAG does not supply domestic leased lines. DTAG only serves large corporate clients on the basis of global framework agreements that also cover Romania. Furthermore, DTAG's position in volume terms in the market for "virtual private networks", a service that might possibly belong to the same relevant market as retail leased lines and where DTAG serves [...] clients in Romania, does not give rise to a horizontally affected market.

(i) Retail access to the public telephone network at a fixed location in Romania

22. DTAG's subsidiary Combridge and OTE's subsidiary RomTelecom both provide domestic and international fixed retail telephony services to residential and non-residential customers in Romania. However, only RomTelecom offers fixed line telephony services through its own fixed network. Combridge does not have a physical network of its own, but only offers telephony services using the fixed network of RomTelecom on a carrier selection and pre-selection basis.
23. Taking into account all providers of retail fixed telephony services regardless of technology used, RomTelecom had a market share of approximately [70-80]% in terms of number of fixed lines in Romania and a share of approximately [60-70]% in terms of minutes billed in 2007. While RomTelecom has a very significant position on the Romanian fixed retail market, its market share of fixed lines has been declining from approximately [90-100]% in 2005¹¹. Combridge has very small activities in retail fixed telephony services in Romania and estimates its share to be [0-5]%. Its market share has not significantly increased since its market entry in mid-2006.
24. The parties argue that, due to the small market share of Combridge, it would not be meaningful to segment the retail market further based on a distinction between national and international calls or between residential and non-residential customers. They have nevertheless provided information about their position also in such segments to the extent available. In this respect, on the basis of separate markets for local/national and international calls, RomTelecom's market share would be [70-80]% and [30-40]% respectively in 2007, while Combridge's market share of [0-5]% would not differ materially between these segments.
25. While the market investigation was unable to determine with certainty the exact market share increase that would be the result of the concentration, it confirmed that it would unlikely exceed [0-5]%. Thus, although RomTelecom has a significant market share of approximately [70-80]%, the concentration would give rise to a very small incremental market share increase.
26. Furthermore, the parties' business models are very different. RomTelecom operates its own network infrastructure serving retail customers as well as other telephony service providers lacking their own networks. Being an operator designated as having Significant Market Power (SMP), RomTelecom is subject to regulatory measures by the Romanian telecommunications regulator ANRCTI (ANCTRI)¹², which include the obligation to provide carrier selection and carrier pre-selection facilities as well as the regulation of retail tariffs.

¹¹ A similar picture arises when measured in terms of minutes billed. Also with regard to competition for new lines, the parties submit that RomTelecom's share of demand for new lines has decreased from 91% in 2003 to 15% in 2006. This should be compared to the recent entrants RCS&RDS which accounted for 72% and UPC which for 9% in 2006. These figures can only be understood in light of the churn figures of RomTelecom.

¹² As of 18 September 2008 ANRCTI has been renamed National Authority for Communications (ANC).

27. Combridge by contrast does not have its own infrastructure and operates exclusively on RomTelecom's network to provide carrier selection and carrier pre-selection to its customers. The concentration would therefore not result in any consolidation of network capacity in the hands of the combined entity. Also, the essential conditions determining Combridge's access to RomTelecom's network are laid down by ANCTRI. Combridge therefore operates under the same terms and conditions as any other competitor operating on the basis of RomTelecom's network and does not enjoy any particular competitive advantage¹³.
28. Most respondents to the market investigation considered that the parties are not close competitors. While RomTelecom focuses on residential customers, Combridge currently focuses on non-residential customers. In fact, the former accounted for approximately [60-70]% of RomTelecom's 2007 sales in terms of minutes billed and [40-50]% in terms of value sales. For Combridge, residential customers accounted for approximately [60-70]% of its value sales in 2007¹⁴.
29. As regards competitors, the market investigation has confirmed that, contrary to Combridge, many of fixed telephony service providers operate on the basis of their own network and can therefore be expected to continue to exercise a competitive constraint on the combined entity to a degree similar to what was the situation before the concentration. In fact, the main competitors to the parties are large scale alternative operators, principally cable operators, including RCS&RDS, with an estimated 2007 market share of [20-30]% in terms of minutes billed and UPC with a market share of [0-5]%. In addition there are a number of large international operators with a small presence in Romania, in particular Atlas Telecom Network, Orange and Vodafone Acasa, each with a market share below [0-5]%.¹⁵
30. With regard to competition for new lines, the parties submit that demand for new lines from RomTelecom has significantly decreased from [90-100]% in 2003 to [10-20]% in 2006, while RCS&RDS accounted for [70-80]% and UPC for [5-10]% of new lines in 2006. This points towards a high degree of customer migration from RomTelecom to other service providers and is indicative of competitive constraints exercised by the latter.
31. Finally, the parties submit that with regard specifically to the Romanian market, mobile telephony services exercise a certain competitive constraint on fixed retail telephony given the low and constantly decreasing penetration rate of the latter and increasing

¹³ According to the parties, [0-50] operators currently use RomTelecom's network to provide carrier selection and carrier pre-selection.

¹⁴ Combridge's turnover split illustrates the initial focus on residential customers upon entry into the market in 2006. [...], the results of the market investigation show that Combridge is currently perceived as focussing on non-residential customers.

¹⁵ On the basis of information with regard to retail fixed telephony product offering and pricing of the parties and their main competitors, it can be concluded that after the concentration there would be at least 20 alternative fixed telephony offers available as regards residential customers and more than five alternative offers for non-residential customers.

penetration rate for mobile telephony services,¹⁶ a view shared by most respondents to the market investigation.

32. On the basis of these considerations, it can be concluded that the concentration would not eliminate a significant source of competitive constraint on RomTelecom and more generally there will be several competitors and product offerings available in Romania also after the concentration.
33. Therefore, it can be concluded that the proposed transaction does not raise serious doubts as to its compatibility with the common market with regard to the provision of fixed line telephony services in Romania.

(ii) Wholesale leased lines in Romania

34. In Romania RomTelecom and Combridge both provide leased lines on the wholesale market to other operators without own leased lines infrastructure. RomTelecom has a very significant position, currently owning and providing approximately [3 800 – 4 700] leased lines while Combridge currently owns approximately [50-100] leased lines. Combridge also purchases an additional [50-100] leased lines from other providers, including RomTelecom, RCS&RDS, UPC and Orange for on-sale at the wholesale level.
35. According to the parties' own estimates, RomTelecom's and Combridge's 2007 market share for wholesale leased lines in Romania on the basis of number of lines are approximately [70-80]% and [0-5]% respectively.
36. The parties submit that the proposed transaction will not significantly change the competitive situation on the Romanian market for wholesale leased lines. They first point towards the small market share increment that would be the result of the concentration. In this respect, while the market investigation was unable to determine with certainty the exact market share increase that would be the result of the concentration, it confirmed that it would unlikely exceed 1-2%.¹⁷ Furthermore, none of the respondents to the market investigation considered Combridge to be a significant competitor to RomTelecom.

¹⁶ For fixed telephony the penetration rate in 2007 was in the range of 20%, while for mobile telephony it was in the range of 100%.

¹⁷ However, the Romanian Competition Authority made a submission to the Commission indicating that Combridge's market share in wholesale leased lines would be significantly higher, but RomTelecom's position would be considerably lower. This may be the result of the fact that market shares were based not on the basis of the overall whole leased lines market as defined by the parties but only on a "total circuit" market (excluding "terminating segments" and "trunk segments"). The difference may also stem from the fact that the market share could have been based on sales of leased lines derived from internal (captive) sales within DTAG and packaged sales to large corporate customers, which the parties did not take into account in calculating their market share on the Romanian market for wholesale leased lines. In any event, even when taking into account the figures of the Romanian Competition Authority, RomTelecom's market share in terms of owned and leased lines would decrease to [40-50]% and Combridge's market share in terms of number of owned and leased lines would be only [0-5]%.

37. Secondly, according to the parties there are several competitors active in the market, including most notably GTS Telecom, Radiocom, RCD&RDS, Telecomunicatii CFR, Teletrans. While the parties were unable to provide exact market share data with regard to these competitors, they estimate that their respective market share based on number of leased lines does not exceed [5-10]%, with the exception of Radiocom with an estimated market share not exceeding [10-20]%. The market investigation was not conclusive as to the number of lines and market shares of the above competitors. However, it confirmed that at least Digicom, Orange, Euroweb and Radiocom are owners and providers of leased lines in Romania with a market share of up to 5-10%.
38. On the basis of the above considerations, it can be concluded that the concentration would not eliminate a significant source of competitive constraint on RomTelecom and more generally that there will be several competitors available in Romania also after the concentration.
39. Therefore, it can be concluded that the proposed transaction does not raise serious doubts as to its compatibility with the common market with regard to the provision of wholesale leased lines in Romania.

Further horizontal overlaps not giving rise to affected markets

40. In addition to the horizontally affected markets in Romania for retail access to the public telephone network at a fixed location and for wholesale leased lines, the transaction leads to horizontal overlaps on the market for international wholesale carrier services and the market for GTS.

International wholesale carrier services

41. Both DTAG and OTE are active on the market for international wholesale carrier services, which is at least EEA-wide. In a Commission precedent a further segmentation of the overall market for international wholesale carrier services based on the type of service provided (such as voice services, data services and transmission capacity) was considered.¹⁸ A key element of the provision of international wholesale carrier services, regardless of the exact market delineation, is the provision of international leased lines. In 2007 DTAG, active in international wholesale carrier services through its wholesale arm ICSS and with a geographic focus on Europe and North America, held a share of [0-5]% of the global market for international wholesale carrier services. OTE, active through OTEGlobe in South-East Europe, had a 2007 share of below [5-10]% of the global market for international wholesale carrier services. On any possible segmentation of the market for international wholesale carrier services, the parties' combined global market share would remain [5-10]%. While the parties are unable to provide market shares for the EEA, the parties' position does not give rise to any competition concerns regardless of the exact geographic scope of the relevant market, given the low combined share on the global level of both the overall market for international wholesale carrier services as well as the possible segments thereof. Furthermore, a number of alternative suppliers compete in the provision of international wholesale carrier services. Even

¹⁸ Case COMP/M.3764 - Belgacom/Swisscom/JV

when assuming a narrow geographic region of South-East Europe¹⁹, competitors that provide at least international leased lines, which represent a key element of international wholesale carrier services, include *inter alia* GTS, Interoute, Invitel, Orange and Telecom Austria.

42. Therefore, the proposed transaction does not raise serious doubts as to its compatibility with the common market with regard to international wholesale carrier services.

GTS

43. DTAG and OTE also have overlapping activities on the market for GTS. DTAG is active through T-Systems and holds an estimated 2007 market share of [0-5]% on the worldwide and [5-10]% on the EEA level. OTE only has a limited presence with a 2007 market share of [0-5]% both globally and in the EEA. In addition to the small combined market share a significant number of alternative suppliers such as AT&T (estimated 2007 market shares of [10-20]% worldwide and [0-5]% in the EEA), BT ([10-20]% and [10-20]%), Colt Telecom (below [0-5]% and [0-5]%), C&W ([0-5]% on both), HP/EDS ([5-10]% and [0-5]%), IBM ([10-20]% and [5-10]%), KPN ([0-5]% on both), NTT ([0-5]% and [0-5]%), Orange ([10-20]% and [10-20]%), Siemens ([0-5]% on both), Telecom Austria ([0-5]% on both), Telefonica ([0-5]% and [0-5]%), Vanco ([0-5]% and [0-5]%) and Verizon ([5-10]% and [0-5]%) compete in the provision of GTS.
44. While the relevant market has been considered mostly global or possibly EEA-wide in the Commission's decisional practice, a third party claimed in the context of the proposed transaction that the market for GTS would show some regional demand patterns, which would warrant a competitive assessment of a GTS market limited to South-East Europe. However, even assuming a narrow geographic market of South-East Europe, the proposed transaction would not raise any competition concerns in relation to the provision of GTS. Firstly, the parties' combined market share would remain below [10-20]%. Secondly a number of competitors such as HP ([10-20]%), IBM ([10-20]%) and Orange ([10-20]%) would hold significant market positions while AT&T, BT and Verizon would also be active in this market.
45. Therefore, the proposed transaction does not raise serious doubts as to its compatibility with the common market with regard to GTS.

Vertical relations

46. The proposed transaction gives rise to a large number of vertical relationships. Vertically affected markets occur in relation to the markets for wholesale international roaming, for wholesale call termination on individual fixed and mobile networks, for wholesale call origination in Romania and for wholesale/retail leased lines in Romania. The competitive assessment of the respective vertical relationships follows below. In addition, further to a submission by a third party, a separate section assesses the vertical link between the downstream provision of GTS and the upstream markets for wholesale

¹⁹ For the purpose of the assessment of the markets for international wholesale carrier services and GTS, the term South-East Europe includes the Member States Bulgaria, Greece, Hungary, Romania and Slovakia as well as the countries Bosnia-Herzegovina, Croatia, FYROM and Serbia.

leased lines and international wholesale leased lines as part of wholesale international carrier services.

47. Furthermore, the proposed transaction gives rise to a significant number of vertically affected markets in relation to (a) the retail markets for mobile telecommunications services in Austria, Bulgaria, the Czech Republic, Germany, Greece, Hungary, the Netherlands, Poland and Slovakia and (b) the retail market for fixed telephony services in Germany, Greece, Hungary, Romania and Slovakia. These vertical relations are the opposite perspective of the same vertical relationships as already mentioned in the preceding paragraph and assessed below.

(i) Wholesale international roaming and effects of OTE joining the FreeMove alliance

48. DTAG and OTE act both as suppliers and customers in relation to the market for wholesale international roaming. In fact, they both provide wholesale international roaming services on their own networks and purchase wholesale international roaming services from foreign network operators. Hence, the proposed transaction should be examined by looking at the vertical relationships between:

- a) all the markets where OTE is active (downstream) as a retail mobile telephony provider and all the markets where DTAG is active (upstream) in wholesale international roaming (outbound international roaming from OTE's point of view);
- b) all the markets where DTAG is active (downstream) as a retail mobile telephony provider and all the markets where OTE is active (upstream) in wholesale international roaming (inbound international roaming from OTE's point of view);

a) DTAG as a supplier on the wholesale international roaming markets (OTE outbound roaming)

49. The transaction determines a number of vertical relations due to the link between the retail mobile communication services provided by OTE in Greece, Bulgaria and Romania (the "OTE countries") and the various national markets for wholesale international roaming in the countries where DTAG operates (Austria, Czech Republic, Germany, Hungary, Slovakia, the Netherlands, Poland and the United Kingdom, jointly referred to as "the DTAG countries"). The market share of OTE by number of subscribers in 2007 in retail mobile communication is [30-40]% in Greece, [30-40]% in Bulgaria (through Globul) and [10-20]% in Romania (i.e. <25%)²⁰.
50. The notifying party provided estimates of its market shares in wholesale international roaming based on retail mobile telephony market shares as a proxy²¹. The market shares of DTAG in wholesale international roaming are: in Austria (T-Mobile: [30-40]%),

²⁰ Source: OTE and www.wireless.com.

²¹ DTAG calculated the retail market shares on the basis of subscribers by network (hence excluding the MVNOs and simple service providers) and used it as a proxy for the market shares for wholesale international roaming.

Czech Republic (T-Mobile: [30-40]%), Germany (T-Mobile: [30-40]%), Hungary (T-Mobile: [40-50]%), Slovakia (T-Mobile: [50-60]%), Netherlands (T-Mobile: [30-40]%), Poland (PTC: [30-40]%) and United Kingdom (T-Mobile: [10-20]%).

Effects on retail mobile markets in Greece, Romania and Bulgaria (input foreclosure)

51. Generally, it appears unlikely that DTAG could foreclose OTE's competitors in retail mobile telephony in Greece, Romania and Bulgaria (Vodafone and Wind in Greece, Orange, Vodafone and Telemobil/Zapp in Romania and Mobiltel and Vivatel in Bulgaria, respectively) as any increase of the prices of wholesale international roaming which DTAG provides in its countries would generally have a very limited impact on competition on the retail mobile markets in Greece, Romania and Bulgaria.
52. Firstly, OTE's market share in the Greek mobile retail telephony market is not significantly higher than that of its main competitor Vodafone (i.e. Cosmote [30-40]% and Vodafone [30-40]% by subscribers in 2007) and Wind, as the third player, also has a substantial share of around [20-30]%. The same applies to Bulgaria, where Globul is the second player in the market with a [30-40]% market share by subscribers in 2007, behind the market leader Mobiltel which holds a [50-60]% market share. The third player Vivatel has a [10-20]% market share in 2007. In Romania, Cosmote is the third player ([10-20]% market share by subscribers in 2007) after the main competitors Vodafone ([30-40]%) and Orange ([40-50]%). The fourth player Telemobil/Zapp has a minimal market share of [0-5]%.²²
53. Secondly, if DTAG were to engage in a strategy of foreclosure of OTE's competitors, the latter would still be able to purchase from at least two alternative network operators in each of DTAG countries. Especially Vodafone is to a significant extent able to rely on its own network of subsidiaries and partners and does not need to rely on T-Mobile. In any case, in each of the countries where DTAG supplies wholesale international roaming, there is at least another supplier besides Vodafone.
54. Thirdly, raising the prices for wholesale international roaming services in the DTAG countries would have a very limited effect on OTE's rival cost structure. OTE's purchases of wholesale international roaming in all of DTAG countries represented in 2007 only [...] of its overall revenues derived from mobile telephony services. Given the fact that a substantially similar proportion of purchases of outbound wholesale international roaming in the DTAG countries can be assumed also for OTE's competitors in Greece, Romania and Bulgaria, it can be concluded that a possible raise of prices by DTAG would have a very limited effect on OTE's competitors at retail level.

²² It may be worth noting that on 08 September 2008 RomTelecom won a tendering process for a licence for mobile communications in the 410-415/420-425 MHz frequency bands in Romania. Subsequently on 23 September 2008 the Romanian regulator granted a licence for 10 years, which enables RomTelecom to build, hold and operate a broadband network, as well as to offer broadband services to consumers. OTE will therefore be active on the Romanian market both through Cosmote and RomTelecom.

55. Fourthly, the "Roaming Regulation"²³, entered into force on 30th June 2007 imposes a price cap on the wholesale prices that MNOs can impose of their roaming customers.
56. Accordingly, it seems unlikely that the combined entity would be able to successfully engage in a strategy of foreclosure of OTE's competitors via wholesale international roaming.

Effects on wholesale roaming markets outside Greece, Romania and Bulgaria (customer foreclosure)

57. There are also vertically affected national markets for wholesale international roaming services in Austria, Czech Republic, Germany, Hungary, Slovakia, Netherlands and Poland. An anticompetitive customer foreclosure scenario would arise if the merged entity had the ability and the incentive to reduce its purchases (OTE's purchases of outbound roaming) from its upstream rivals (DTAG's competitors for the provision of wholesale international roaming) and whether, as a result, this strategy would have a significant detrimental effect on the downstream market.
58. As regards the ability, there is no technical or regulatory limit to the possibility for OTE to purchase wholesale international roaming only from DTAG²⁴. On the other hand, it has to be assessed whether OTE constitutes "an important customer with a significant degree of market power in the downstream market"²⁵. This depends on the volume of roaming traffic generated by OTE's subscribers on these national wholesale markets compared to the overall volume of roaming traffic in these countries.
59. Roaming traffic from Greek, Bulgarian and Romanian clients to the DTAG countries is limited in comparison to the overall volume of traffic generated from visiting customers. The notifying party provided data in relation to the volume and value of outbound roaming traffic purchased by Cosmote Greece, Cosmote Romania and Globul Bulgaria in each of the DTAG countries compared to the overall wholesale international roaming market in those countries. The total of OTE's purchases from DTAG is [...] % of the total market volume in each of the DTAG countries.
60. Even if post-merger OTE would be able to send all of its roaming traffic (currently OTE purchases part of its roaming needs also from DTAG's competitors) to DTAG in Austria, Czech Republic, Germany, Hungary, Slovakia, Netherlands and Poland, this traffic increase would constitute [...] % both by volume and by value of each country's overall wholesale international roaming market.

²³ Regulation (EC) No 717/2007 of the European Parliament and of the Council of 27 June 2007 on roaming on public mobile telephone networks within the Community and amending Directive 2002/21/EC, OJ L 171, 29.6.2007, p. 32–40 .

²⁴ With the possible exception of technical aspects of in particular data roaming services, where traffic steering techniques might not be entirely effective in practice, therefore potentially limiting the ability of the operator to choose the provider of wholesale international roaming services.

²⁵ Commission Notice – Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings, at paragraph 61.

61. It can therefore be concluded that OTE is not an important customer for suppliers of wholesale international roaming in any of the DTAG countries.
62. In view of the above, it can be concluded that the operation would not appear to have a significant impact on the markets for wholesale international roaming services in the DTAG countries.

b) OTE as a supplier on the market of wholesale international roaming markets (OTE inbound roaming)

63. In the opposite direction, the transaction gives rise to a number of vertical relations between the parties due to the link between the retail mobile communication services provided by DTAG in Austria, Czech Republic, Germany, Hungary, Slovakia, Netherlands, the UK and Poland and the three national markets (Greece, Bulgaria, Romania) for wholesale international roaming in the countries where OTE operates.
64. The market share of DTAG by number of subscribers in 2007 in retail mobile communication in these countries is: [30-40]% in Austria, [40-50]% in the Czech Republic, [20-30]% in Germany, [40-50]% in Hungary, [40-50]% in Slovakia, [20-30]% in the Netherlands, [10-20]% in the UK and [30-40]% in Poland. As for OTE, the notifying party provided estimates of its market shares in wholesale international roaming based on retail mobile telephony market shares as a proxy. The estimated market shares of OTE in wholesale international roaming in 2007 are: in Greece 30-40]%, in Bulgaria [30-40]%, in Romania [10-20]%

Effects on retail mobile markets in the DTAG countries (input foreclosure)

65. Any attempt by OTE to foreclose DTAG's competitors in the DTAG countries by increasing the costs of the wholesale international roaming services it provides in Greece, Romania and Bulgaria would unlikely be successful.
66. Firstly, in each of the OTE countries there are at least two other network operators who can provide wholesale international roaming services to DTAG's competitors.
67. Secondly, OTE is also bound by the wholesale price cap imposed by the "Roaming Regulation".
68. Furthermore, even in case OTE were to raise its wholesale international roaming prices for DTAG's competitors, this increase would have a very limited impact on the competitors' cost structure. For instance, when considering the purchases of outbound roaming by T-Mobile Germany in Greece (the vertically affected markets which involves the highest traffic volume, since Greece is a very popular destination for German tourists), it can be noted that they constitute only [...] % of the total amount of outbound roaming bought by T-Mobile Germany in the EEA in 2007 (both by volume and by cost). Also considering the purchases of outbound roaming of the whole DTAG group in Greece, the costs only constitute [...] % of the total volume of international roaming purchases in the EEA in 2007.
69. Hence, it seems unlikely that a possible increase in prices would have a significant impact on DTAG's competitors at retail level.

70. When taking into account the alliances dealing with international roaming, it can be observed that Deutsche Telekom is a member of the Freemove alliance, whereas OTE has so far been an independent MNO. The question therefore arises whether the transaction would impede competition by eliminating a significant independent MNO. In this respect, should OTE join the Freemove alliance post-transaction, there would still be at least one independent MNO in Greece (Wind), Bulgaria (Mobilkom and Mobiltel) and Romania (Telemobil/Zapp²⁶) from which any independent retail mobile competitor (i.e. not belonging to the Freemove Alliance or to the Vodafone network) could purchase outbound roaming.
71. Accordingly, it seems unlikely that the combined entity would be able to successfully engage in a strategy of foreclosure of DTAG's competitors via the increase of wholesale international roaming prices for the mobile telephony providers operated by OTE.

Effects on wholesale roaming markets in Greece and Bulgaria (customer foreclosure)

72. An anticompetitive customer foreclosure scenario would arise if the merged entity had the ability and the incentive to reduce its purchases (DTAG's purchases of outbound roaming) from its upstream rivals (OTE's competitors for wholesale international roaming) and whether, as a result, this strategy would have a significant detrimental effect on the downstream market.
73. As noted above, there is no technical or regulatory limit to a possible choice by DTAG/OTE to purchase wholesale international roaming only from OTE. Further, it has to be assessed whether DTAG constitutes an important customer with a significant degree of market power in the downstream market. This depends on the volume of roaming traffic generated by DTAG's subscribers on the Greek and Bulgarian national wholesale markets as compared to the overall volume of roaming traffic in these countries.
74. Roaming traffic from DTAG's customers to these countries is limited in comparison to the overall volume of traffic generated from visiting customers. The notifying party provided data in relation to the volume and value of outbound roaming traffic purchased by DTAG in Greece and Bulgaria in 2007 compared to the overall wholesale international roaming market. It also provided data regarding the traffic increase, in volume and value, which would occur if DTAG decided to purchase all of its outbound roaming needs exclusively from OTE in each country after the transaction. In 2007 DTAG purchased [...] % and [...] % of the wholesale international roaming market from OTE's competitors in Greece and Bulgaria, respectively²⁷.

²⁶ The Roaming Regulation does not currently affect Telemobil/Zapp in Romania. However, regardless of the application of the Roaming Regulation, Telemobil/Zapp can be considered as an independent MNO in Romania. Moreover, the Roaming Regulation has triggered a general decrease in the price level in the market for wholesale international roaming.

²⁷ In particular, DTAG purchases roaming traffic from [...] different suppliers besides OTE both in Greece and in Bulgaria.

75. Even if post-merger DTAG would be able to send all of its roaming traffic to OTE in Greece and Bulgaria, OTE's competitors would see a limited decrease of their sales of wholesale international roaming. It could therefore be concluded that DTAG is not an important customer for suppliers of wholesale international roaming in any of the OTE countries.
76. However, even if it were considered that DTAG would have the ability to foreclose OTE's competitors in the upstream market, it seems unlikely that it would have the incentive to do so. OTE is already a preferred partner of DTAG as regarding international roaming, but, nevertheless, the market investigation confirmed that DTAG has been buying traffic also from OTE's competitors. This is because operators have an interest in multi-sourcing roaming partners [...].
77. In view of the above, it can be concluded that the operation would not appear to have a significant impact on the markets for wholesale international roaming services in the OTE countries.
78. The operation is unlikely to have a significant impact on these markets for wholesale international roaming services.
- (ii) Wholesale call termination services in connection with fixed and mobile telephony networks
79. The transaction gives rise to a number of vertical relations as a result of the link between the fixed and retail mobile communication services provided by OTE in Greece, Bulgaria and Romania and the various national markets for wholesale fixed and mobile call termination services in the countries where DTAG operates. In accordance with Commission practice, in these countries DTAG has by definition a 100% market share of fixed and mobile call termination services on its respective networks.
80. In the opposite direction, the transaction also gives rise to a number of vertical relationships as a result of the link between the fixed and retail mobile communication services provided by DTAG in the "DTAG countries" and the UK and the various national markets for wholesale fixed and mobile call termination services in the countries where OTE operates. In these countries OTE has by definition 100% market share of fixed and mobile call termination services on its respective networks.
81. All the mobile and fixed telephony retail markets of, respectively, DTAG and OTE, are therefore technically affected markets.
82. The proposed transaction could theoretically raise concerns that the parties could foreclose competitors at the retail level from access to wholesale call termination on the combined entity's networks, namely by raising the termination prices for the parties' networks.
83. The notifying party submits that the combined entity would not have the ability to foreclose retail competitors. Any foreclosure or discrimination strategy against other telecommunications operators would be technically difficult (if not impossible) since international calls to mobile and fixed networks are generally made through international carriers who act as intermediaries between the different telecommunications operators. By way of example, DTAG supplied data that show that,

on average, around [>50] % of all call terminations on each of its mobile networks are received via international carriers. For OTE the corresponding number is even higher, with more than [>70] % of international calls being received through international carriers.

84. In addition, all Member States²⁸ have implemented regulation that limits the margin of price discretion for mobile and fixed network operators providing call termination services. Furthermore, the impact on competition of any attempt by DTAG or OTE to foreclose competitors with regard to call termination would be limited as it would hardly have an effect on the cost structure of their respective competitors.

85. Against this background, the proposed transaction does not raise serious doubts as to its compatibility with the common market with regard to call termination services on mobile and fixed telephony networks.

(iii) Wholesale call origination in connection with fixed retail telephony services in Romania

86. In Romania RomTelecom and Combridge both provide retail fixed telephony services. RomTelecom is furthermore active on the wholesale level for call origination on its fixed network, where it holds by definition a market share of 100%. Therefore, this vertical relationship leads to vertically affected markets. However, this vertical relationship does not raise any competition concerns specific to the proposed transaction.

87. In order to provide fixed telephony services at the retail level on a carrier selection and carrier pre-selection basis, Combridge purchases access to RomTelecom's fixed network already pre-merger and on the basis of the ANRCTI regulation, as set out above in para 27.

88. There are numerous competitors to Combridge who purchase network capacity from RomTelecom on the wholesale market. RomTelecom currently provides call origination services to other [...] licensed fixed line operators, currently representing approximately [...] % of the total calls originated on RomTelecom's network.

89. Moreover, foreclosure concerns are unlikely to arise as regulation would continue to oblige RomTelecom to provide call origination access to other operators. The remedies imposed by ANRCTI consist of cost orientation, non-discrimination, transparency and accounting separation.

90. Against this background, the proposed transaction does not raise serious doubts as to its compatibility with the common market with regard to wholesale call origination on the parties' fixed retail telephony network in Romania.

(iv) Retail leased lines in connection with wholesale leased lines in Romania

²⁸ With the exception of Bulgaria in relation to fixed call termination.

91. As described above in paragraph 34, RomTelecom and Combridge both provide leased lines on the Romanian wholesale market to other operators without own network. RomTelecom is also active in the provision of leased lines at the retail level and held a market share of [80-90]% in 2007. Given the parties' market shares, this vertical relationship leads to vertically affected markets. However, these vertically affected markets do not raise foreclosure concerns specific to the proposed transaction on the upstream or downstream market for leased lines.
92. Combridge only accounted for approximately [0-5]% of the upstream market for wholesale leased lines in terms of revenues in 2007.²⁹ Therefore the proposed transaction would not significantly change the competitive situation in relation to the vertical link. Furthermore, a number of alternative suppliers compete in the provision of leased lines at either market level. While the competitors on the wholesale level have already been mentioned above in paragraph 37, a number of alternative suppliers such as Orange, Prime Telecom, RCS&RDS and UPC compete in the provision of leased lines at the retail level in Romania.
93. Moreover, the parties' would be unlikely to have the ability to engage in a foreclosure strategy. The combined entity would continue to be subject to regulation by ANRCTI. At the wholesale level, RomTelecom is designated as having Significant Market Power for terminating segments that provide connectivity between operators' points of presence in RomTelecom's network and their retail customers. In relation to terminating segments of leased lines ANRCTI has imposed remedies on RomTelecom including cost orientation, non-discrimination, transparency and accounting separation.
94. Also any concerns about customer foreclosure on the wholesale market, where Combridge is both a supplier and a customer for wholesale leased lines, can be excluded as Combridge's share of demand is [0-5]%.
95. Against this background, the transaction does not raise serious doubts as to its compatibility with the common market due to the vertical relationship between retail leased lines and wholesale leased lines in Romania.
- (iv) Third party submission with regard to the GTS market and access to upstream inputs for the provision of GTS in South East Europe
96. A third party made a submission claiming that the proposed transaction would raise concerns with regard to the GTS market and possible foreclosure of access to inputs necessary for the provision of GTS services in South-Eastern Europe.

²⁹ The Romanian Competition Authority made a submission to the Commission indicating that Combridge's market share in wholesale leased lines would be very significantly higher, in particular in terms of number of leased lines. However, it is very likely that the difference in these market shares stems from sales of leased lines derived from internal (captive) sales within DTAG and packaged sales to large corporate customers, which the parties did not take into account in calculating their market share on the Romanian market for wholesale leased lines. However, even when taking into account the figures of the Romanian Competition Authority, Combridge's market share in terms of number of leased lines would be only [0-5]% when including also those leased lines that Combridge purchases on the wholesale market. Combridge's market share in terms of number of leased lines, taking into account only those leased lines that Combridge owns, would be only [0-5]%.

97. Hence, the vertical relationship, which the third party refers to, consists of the link between the downstream market for the provision of GTS and the upstream markets for wholesale inputs for the provision of GTS.
98. The third party argues that there are some demand patterns in the downstream market for GTS, which would warrant a definition of a regional market for GTS, i.e. a relevant market for GTS in South-East Europe.³⁰ The competitive assessment of GTS and the vertical relationship between GTS and inputs for GTS should hence be undertaken on a regional level, i.e. South-East Europe. Furthermore, the third party also refers to a separate segment of the downstream GTS market, consisting of German speaking corporate customers enlarging their geographic scope of activity towards Central and South-East Europe.
99. According to the third party infrastructure operators such as DTAG provide essential inputs to suppliers of GTS. The third party believes that as a result of the transaction DTAG will become the dominant provider of access to wholesale inputs for the provision of GTS across South-East Europe. DTAG would be able to leverage its presence in various upstream access markets in South-East Europe and engage in a strategy of input foreclosure. The GTS business of the third party would be adversely affected since access to inputs for its provision of GTS in South-East Europe would be restricted. In this context the third party claims that the markets for wholesale inputs remain largely unregulated and that sector regulation is ineffective in the relevant geographic area.

Assessment of the concerns raised by the third party

100. The vertical relationship, which the third party refers to, consists of the link between the downstream market for the provision of GTS and the upstream markets for wholesale inputs for the provision of GTS. These upstream markets mainly encompass the markets for wholesale leased lines but also some elements of the markets for wholesale international carrier services, i.e. the provision of international wholesale leased lines.
101. For the provision of GTS at the retail level, the following upstream inputs are necessary:
- a) the connection between the customer's point of presence and the local network;
 - b) the local network (or point of presence) itself (leased lines);
 - c) the connections from the local network to cross-border locations (international lease lines).

³⁰ The third party stated its concerns about the effects of the proposed transaction on the provision of GTS to businesses operating in the "Balkan region", sometimes also referring to South-East Europe. In this context the third party mainly refers to the countries Bosnia and Herzegovina, Bulgaria, Croatia, the Czech Republic, FYROM, Hungary, Montenegro, Poland, Romania, Serbia, and Slovakia.

102. As mentioned above in para 44, the geographic scope of the downstream market for GTS has been considered global or at least EEA-wide. The upstream markets for wholesale inputs are national in scope.
103. The downstream market for GTS is a bidding market. As mentioned in the context of the horizontal assessment of the GTS market above, it has been assumed global or possibly regional, i.e. European, in Commission precedents. While there may be some customers who have specific regional or linguistic demand patterns, an assessment of data on the GTS market did not support a deviation from the definition of the geographic scope. The third party submitted bidding data for a sample of recent GTS tenders, which at least partly covered the provision of GTS in South-East Europe. However, a very large majority of those 11 projects covered a range of countries in addition to countries in South East Europe. Therefore the analysis of the bidding data did not provide evidence in favour of assuming a narrower market definition for the downstream market for GTS. The Commission therefore retains the geographic market definition of a global or at least EEA-wide downstream market for GTS.
104. As regards market shares, the parties estimate their combined market share on the downstream market for GTS at less than [5-10]% globally, approximately [5-10]% in the EEA, and approximately [5-10]% in South-East Europe.³¹
105. With regard to the upstream markets, the third party refers to a number of countries in South-East Europe. Only some of those countries are Member States and only the markets in Bulgaria and Romania could be concerned specifically by the proposed transaction. However, while DTAG operates own fixed telephony network infrastructure in Bulgaria, DTAG does not control the infrastructure of the incumbent telecommunications provider BTC. Therefore, access to DTAG's infrastructure in Bulgaria does not seem essential for the provision of GTS. Any concerns about input foreclosure in upstream markets in a Member State brought about by the proposed transaction therefore only relate to Romania, where pre-transaction OTE controls the incumbent telecommunications provider RomTelecom. According to the parties their upstream share in the market for wholesale leased lines in Romania is approximately [70-80]. As regards the parties' position in international leased lines in Romania, the share for the overall market wholesale international carrier services is measured on the EEA level, where it stands at less than [10-20]. In relation to Romania the proposed transaction would only add [50-100] international leased lines of Combridge to the existing infrastructure of RomTelecom.

Ability to engage in input foreclosure

106. Various alternative providers of infrastructure such as national connections, wholesale leased lines and international leased lines, are active on the markets for inputs for the provision of GTS in South-East Europe. For instance Net4Net, belonging to DialTelecom, and Telecom Austria provide inputs throughout South-East Europe. As mentioned in paragraph 41, several alternative suppliers such as *inter alia* GTS,

³¹ For this purpose the parties assumed that the term "South East Europe" would include the Member States of Bulgaria, Greece, Hungary, Romania and Slovakia as well as the countries FYROM, Serbia, Bosnia, and Croatia.

Interoute, Invitel, Orange and Telecom Austria, also provide international leased lines. As mentioned in paragraph 37, also in Romania various competitors, such as Digicom, Euroweb, Orange and Radiocom, compete amongst others in the provision of wholesale leased lines.

107. Therefore the combined entity will be unlikely to have the ability to engage in a strategy of input foreclosure.

Incentive to engage in input foreclosure

108. Even if the combined entity had the ability to engage in input foreclosure, it would seem to have little incentive to foreclose GTS competitors' from access to wholesale inputs for the provision of GTS.

109. DTAG provides wholesale inputs for GTS through its wholesale arm ICSS, whereas DTAG's subsidiary T-Systems provides GTS on the downstream market. Pre-merger ICSS' customers include a number of competing GTS providers such as [...] and [...]. ICSS only derived approximately [0-10]% of its total 2007 sales of EUR 437 million from internal DTAG sales to T-Systems. Hence, ICSS achieves [90-100]% of its turnover from sales to competitors of T-Systems in the GTS market.

110. If the combined entity were hence to engage in a strategy of input foreclosure, ICSS would forgo substantial sales at the wholesale level. The combined entity would therefore need to derive substantial additional sales on the downstream market for GTS in order to provide an incentive to foreclose downstream competitors from access to its inputs. In combination with the parties' small combined share in the downstream market for GTS, regardless of its exact geographic scope, the combined entity would be unlikely to have an incentive to engage in a strategy of input foreclosure.

111. As a result, it is unlikely that the combined entity would have the ability and the incentive to engage in a strategy of input foreclosure.

Impact on competition of input foreclosure

112. Furthermore, the potential impact on competition of a strategy of regional input foreclosure in South-East Europe would most likely be limited, given the worldwide or at least EEA-wide scope of the downstream market for GTS and the lack of evidence that GTS projects limited to South-East Europe would account for a significant part of the relevant GTS market.

Regulation

113. As regards regulation, the third party claimed that the markets for wholesale inputs remain largely unregulated and that sector regulation is ineffective in the relevant geographic area, namely South East Europe. However, the third party did not substantiate this claim and did not show evidence for the ineffectiveness of regulation.

114. As indicated, in Bulgaria DTAG does not control the infrastructure of the incumbent fixed telecommunications provider. Hence, the effectiveness of sector regulation with regard to access to wholesale inputs controlled by DTAG is less relevant for the assessment of the proposed transaction.

115. As regards access to inputs in Romania, the same regulatory regime is in place for the telecommunications sector as in other Member States. The regulatory measures taken at the Community level have been implemented in Romania and there is currently no infringement procedure against Romania in this regard. While the third party submitted that Romania has so far not met its reporting obligations about the regulation of wholesale leased lines, this statement only applies to 2007, the first year of Romania's EU Membership. The situation has changed in 2008, even if most of the market analysis also for other input factors has so far been carried out under the previous regulatory framework. Furthermore, an independent telecommunications markets analysis for South-East Europe³² confirms that Romania has implemented the required regulatory measures. The report does not point towards any specific deficiencies of sector regulation in Romania that would support the allegations made by the third party.

Partnership between OBS and DTAG

116. Orange Business Services ("OBS", formerly "Equant", belonging to France Télécom) and DTAG have concluded a partnership agreement for the provision of wholesale inputs. The parties submit that T-Systems purchases access to infrastructure in countries where OBS has points of presence. [...], as OBS is present in 140 countries. T-Systems on the other hand is only present in 50 countries and is able to access wholesale inputs in additional geographic areas further to the partnership agreement with OBS. The partnership agreement therefore only covers the access to wholesale inputs and does not cover competition between OBS and DTAG on the downstream market for GTS.

Conclusion on the assessment of the third party submission

117. Against this background, the transaction does not raise serious doubts as to its compatibility with the common market due to the vertical relationship between the downstream market for GTS and the upstream markets for wholesale inputs necessary for the provision of GTS.

C. Result

118. In light of the above considerations, the proposed concentration will not lead to serious doubts as to its compatibility with the common market.

³² Cullen International – Report 4 – Country Comparative Report: Supply of services in monitoring of South East Europe - telecommunications services sector and related aspects, November 30, 2007

V. CONCLUSION

119. For the above reasons, 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(1)(b) of Council Regulation (EC) No 139/2004.

For the Commission
(signed)
Neelie KROES
Member of the Commission