EUROPEAN COMMISSION
DG Competition

CASE M.7637 Liberty Global / BASE Belgium

(Only the English text is authentic)

MERGER PROCEDURE
REGULATION (EC) 139/2004

Article 8(2) Regulation (EC) 139/2004
Date: 04/02/2016

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EUROPEAN
COMMISSION

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COMMISSION DECISION

of 4.2.2016

declaring a concentration to be compatible with the internal market and the EEA agreement (Case M.7637 – Liberty Global / BASE Belgium)

(Only the English text is authentic)

TABLE OF CONTENTS

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to the Agreement on the European Economic Area, and in particular Article 57 thereof,

Having regard to Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings[1], and in particular Article 8(2) thereof,

Having regard to the Commission's decision of 5 October 2015 to initiate proceedings in this case,

Having regard to the opinion of the Advisory Committee on Concentrations[2],

Having regard to the final report of the Hearing Officer in this case [3],

Whereas:

1. INTRODUCTION

(1) On 17 August 2015, the Commission received a notification of a proposed concentration pursuant to Article 4 of Regulation (EC) No 139/2004 (the "Merger Regulation"), by which the undertaking Telenet NV ("Telenet"), based in Belgium and controlled by Liberty Global Broadband I Limited (the "Notifying Party") intends to acquire control of the whole of the undertaking BASE Company NV ("BASE"), also based in Belgium, within the meaning of Article 3(1)(b) of the Merger Regulation by way of a purchase of shares (the "proposed transaction"). Telenet and BASE are collectively referred to as "the Parties".

(2) After a preliminary examination of the notification and based on the first phase market investigation, the Commission concluded that the proposed transaction raised serious doubts as to its compatibility with the internal market and with the functioning of the EEA Agreement as regards the potential markets for retail and wholesale mobile telecommunications services in Belgium and adopted a decision to initiate proceedings pursuant to Article 6(1)(c) of the Merger Regulation on 5 October 2015 (the "Article 6(1)(c) Decision"). On the same day the Commission shared key documents with the Parties.

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

2 OJ C ...,...200. , p....

3 OJ C ...,...200. , p....

(3) On 6 October 2015, the second phase proceedings were extended by 10 working days at the request of the Notifying Party, pursuant to the second subparagraph of Article 10(3) of the Merger Regulation.

(4) On 30 October 2015, with the agreement of the Notifying Party, the Commission adopted a decision on the basis of the third sentence of the second subparagraph of Article 10(3) of the Merger Regulation, extending the second phase proceedings by another 10 working days.

(5) State of Play meetings between the Commission and the Parties took place on 9 October 2015 and on 10 November 2015.

(6) The Advisory Committee discussed the draft of this Decision on 21 January 2016 and issued a favourable opinion.

2. THE PARTIES AND THE TRANSACTION

(7) Telenet is a cable network operator in Belgium, specialising in the supply of fixed internet, fixed telephony services and cable television to customers throughout the Flemish Region and parts of the Brussels-Capital Region. Telenet also offers retail mobile telecommunications services as a mobile virtual network operator ("MVNO") in Belgium. Most of its mobile customers live in the footprint of Telenet's cable network, namely the Flemish Region and parts of the Brussels-Capital Region. Telenet also supplies professional communication services to businesses in Belgium and Luxembourg. Finally, it operates a number of pay TV channels and video-on-demand services.

(8) BASE is a mobile network operator ("MNO") that offers mobile telecommunications services in Belgium. BASE also offers wholesale access to its network to MVNOs in Belgium. BASE owns 50% of VikingCo NV ("Mobile Vikings"), which sells mobile services under the Mobile Vikings brand. The other 50% of Mobile Vikings is owned by VikingCo International NV.

(9) All shares in BASE are owned by KPN Mobile International B.V. and KPN Mobile N.V. On 18 April 2015, a Sale and Purchase Agreement was concluded between KPN Mobile International B.V. and KPN Mobile N.V., as the sellers, and Telenet, as the purchaser, pursuant to which Telenet would acquire all issued and outstanding shares in the capital of BASE. Under the SPA, Telenet will acquire sole control over BASE.

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

3. UNION DIMENSION

(11) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million (the Notifying Party (including Telenet): EUR […]; BASE: EUR […]). Each of them has a Union-wide turnover in excess of EUR 250 million (the Notifying Party (including Telenet): EUR […]; BASE: EUR […]) and only BASE achieves more than two-thirds of its aggregate Union-wide turnover within one Member State (Belgium). The proposed transaction therefore has a Union dimension.

4. RELEVANT MARKETS

(12) The proposed transaction concerns services provided at the wholesale and retail level of the Belgian telecommunications sector. At the retail level, the Parties' activities only overlap with respect to mobile telecommunications services offered to retail customers, where BASE operates as a Mobile Network Operator ("MNO"), which owns its mobile network. Telenet also offers retail mobile telecommunications services, but does not have a mobile network. It operates as a Mobile Virtual Network Operator ("MVNO"), by relying on wholesale access to the mobile network of Mobistar, another MNO active in Belgium, in order to provide its retail services.

(13) MVNOs can be distinguished depending on their features. A full MVNO relies on the mobile network of a MNO to provide its services, but owns its core infrastructure, issues its SIM cards, has its network code, database of customers and back-office functions to manage customer relations. A light MVNO also relies on the mobile network of a host MNO to provide its retail services, but in addition to not having its own mobile network, it does not own a core infrastructure, and relies entirely on the infrastructure of the host MNO to provide its services[4]. Both full and light MVNOs provide their retail mobile telecommunications services to customers. Conversely, branded resellers are operators that do not autonomously provide retail mobile telecommunications services but resell the SIM cards and services of a MNO under their own brand on behalf of the host MNO[5].

(14) Telenet started offering its retail mobile telecommunications services in 2006 as a light MVNO and became a full MVNO in 2012. It offers post-paid retail mobile telecommunications services.

(15) At **retail level**, Telenet also provides the following fixed retail telecommunications services[6]:

(1) TV services for retail customers;

(2) fixed internet access services for retail customers;

(3) fixed telephony services for retail customers.

(16) BASE offered fixed telecommunications services until 2013 on the basis of a wholesale agreement signed in March 2010 with Mobistar Enterprises Services NV ("MES"), according to which MES provided fixed telephony and internet services to BASE on an outsourcing basis (the "MES agreement"). In February 2013, BASE stopped marketing such services under the MES agreement and it only continues to serve legacy customers under the MES agreement. According to the Notifying Party, those legacy customers represent […] fixed internet customers and […] CPS customers[7] ([0-5]% of the Belgian market).

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4 See Commission decision of 28 May 2014 in Case M.6992 - *Hutchison 3G UK/Telefónica Ireland*, recital 121.

5 For this reason, in the competitive assessment of this Decision the market shares of branded resellers are not accounted for separately, but attributed to their respective MNO, as branded sellers do not operate autonomously on the retail market for mobile telecommunications services.

6 In this Decision, "fixed telecommunications services" and "fixed services" refer to services provided over a fixed telecommunications network, including telephony services, internet access services and TV services.

7 CPS stands for Carrier Pre-Select. "CPS customers" refer to customers whose fixed telephone access lines are provided by one operator (usually the incumbent operator), while the outgoing calls are automatically routed through another operator's network (of the customers' choice, in this case BASE).

(17) In addition, BASE offered fixed telecommunications services marketed under the "SNOW" brand from February 2013 until December 2014[8] on the basis of a wholesale access agreement with Proximus. BASE offered retail TV services, fixed internet access services and fixed telephony services on a standalone basis and as packaged offers. Following the discontinuation of the SNOW offering in December 2014, SNOW customers were given the possibility to switch for free to Scarlet, a sub-brand of Proximus. According to the Notifying Party, there are no SNOW customers left with BASE.

(18) Since BASE no longer provides fixed telecommunications services to retail customers, for the purposes of this Decision, BASE will not be considered as an active provider of fixed telecommunications services to retail customers in Belgium. Nonetheless, as further explained in recital (187) and Section 5.1.3, the Commission will evaluate whether BASE could be a potential new entrant for retail fixed telecommunications services (TV, internet and telephony) in Belgium for the purpose of its competitive assessment.

(19) Telenet offers its fixed services (TV services, fixed internet access services, fixed telephony services) to end consumers on a stand-alone basis. Telenet also offers its fixed services as bundles[9]. Customers who purchase more than one fixed telecommunications service from Telenet as part of a bundle benefit from a discount. Telenet's triple play bundles, which include TV services, fixed internet access services and fixed telephony services, are marketed as "Whop" and "Whoppa", with Whoppa being the package that gives customers the fastest internet download speeds.

(20) In contrast to its fixed services, Telenet sells its retail mobile telecommunications services as a separate product and there is no discount if they are purchased together with Telenet's retail fixed telecommunications services. Customers who purchase both fixed services and mobile services from Telenet are invoiced through one single invoice, but the fixed and mobile services are listed as separate items and could also be purchased separately for the same price[10].

(21) In light of Telenet's activities mentioned in recitals (19) and (20), for the purposes of this Decision, the Commission will assess under Section 4.5 whether a distinct relevant retail market for so-called multiple play services should be defined, in particular for so-called quadruple play services (comprising TV, fixed internet access, fixed telephony and mobile telecommunications services).

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8 In December 2014, BASE announced that it had decided to discontinue its SNOW product (BASE press release, BASE Company To Quit Digital TV Market, 17 December 2014) and stopped actively providing fixed services under its SNOW product, i.e. no new customer orders have been accepted since end of December 2014 under SNOW (Form CO, Section 6.3.11.3.2, paragraph 468). However, SNOW was only actually withdrawn from the market at the end of June 2015.

9 In this Decision the term "bundle" is used in the sense of the Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings, OJ C 265, 18.10.2008, p. 7 (the "Non-Horizontal Merger Guidelines"), paragraph 96. Bundles in this sense include "pure bundles" (various services are sold jointly via a single contract for a single price and are not available on a stand-alone basis) as well as "mixed bundles" (various services are sold together at a price below the sum of the individual prices of the various services). Bundles in this sense do not include undiscounted joint purchasing (purchasing of several components that are also available on a stand-alone basis without a discount) from one provider.

10 More recently, Telenet has started offering a discount to customers purchasing retail mobile services for not just one but two or more SIM-cards. This type of bundle, which is marketed as Telenet's "family deal", is further explained in recital (82) of this Decision.

(22) Finally, at a retail level, both BASE and Telenet use physical outlets as one of the distribution channels for the telecommunications products and services listed in recitals (12) and (15)[11]. In line with previous Commission decisions[12], and for the reasons set out in recital (23), for the purposes of this Decision, the distribution of telecommunications products and services from physical retail outlets is not considered a separate relevant market distinct from the retail markets for the supply of services to end-customers. Rather, it is included and assessed as a component of the retail market for mobile telecommunications services.

(23) First, as indicated by the Notifying Party, retail outlets are simply one distribution channel among others (for example non-specialised stores such as supermarkets, small shops such as bookstores, big retailers such as electronic stores, or online). The importance of that distribution channel depends on factors specific to each operator, such as its branding strategy, the products it sells, the subsidised handsets offered and its scale. Second, BASE and Telenet do not compete against each other or against other operators at distribution level through their own physical outlets, since BASE's retail outlets exclusively sell services from BASE and from BASE's branded resellers and Telenet's retail outlets exclusively sell Telenet services[13]. In this context, and in line with the previous decisions mentioned in recital (22), the distribution of products and services by the Parties (regardless of the channel) will not be considered separately from the retail markets for the provision of services to end-customers.

(24) At the wholesale level, as an MNO, BASE owns a mobile network to which it grants third parties access. At the wholesale level, BASE supplies the following services:

(1) wholesale access and call origination on mobile networks;

(2) wholesale call termination on mobile networks;

(3) wholesale international roaming services.

(25) Telenet, as a full MVNO, owns its core network. Therefore, at the wholesale level, Telenet supplies wholesale call termination services on mobile networks.

(26) Telenet also provides wholesale mobile services to a single light MVNO, Nethys. Notably, Telenet provides the following wholesale mobile services based on its infrastructure and on the wholesale services it purchases from Mobistar under its full MVNO agreement: access to Telenet's core network, the provision of SIM cards for Nethys' mobile customers, international roaming services for Nethys' customers travelling outside of Belgium, the maintenance of mobile call detail records of Nethys' subscribers, legal intercept services in compliance with Belgian law enforcement activities, and number porting services. The Notifying Party refers to these services as Mobile Virtual Network Enabler ("MVNE") services[14].

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[11] Telenet owns […] retail outlets and BASE owns […] retail outlets.

[12] Commission decision of 1 March 2010 in Case M.5650 - *T-Mobile/Orange*, recital 52; Commission decision of 26 April 2006 in Case M.3916 - *T-Mobile Austria/tele.ring*, recital 31.

[13] The Notifying Party submits that, due to the mono-operator activities of BASE's and Telenet's outlets, the facts are different from those related to acquisition of The Phone House (a multi-operator reseller) by Belgacom, for which the Belgian Competition Authority defined a separate market for the distribution of telecommunications products and services from physical retail outlets (see Decision of the Belgian Competition Authority of 23 December 2011 in Case MEDE-C/C-11/0010 *Belgacom NV/Wireless Technologies BVBA*).

[14] Form CO, paragraphs 41-43.

(27) For the purposes of this Decision and in line with its previous decisions[15], the Commission does not consider that wholesale services supplied by Telenet to Nethys form a market separate from the wholesale mobile telecommunications services listed in recital (24).

(28) Therefore, for the remainder of this Decision, Telenet's MVNE activities will be assessed within the wholesale mobile markets indicated in recital (24).

(29) Consequently, the Commission will treat the wholesale mobile services provided by Telenet to Nethys as an input for the provision by Nethys of its downstream retail mobile telecommunications services. In particular, the Commission will assess the specific effects of the proposed transaction related to those services provided to Nethys as part of its vertical assessment under Section 5.2.1.

(30) In addition, Telenet owns a fixed cable network, through which it provides the fixed retail telecommunications services mentioned in recital (15). At the **wholesale level**, Telenet provides the following services:

(1) wholesale call termination on fixed networks[16];

(2) wholesale domestic call transit on fixed networks;

(3) wholesale termination and the hosting of calls to non-geographic numbers;

(4) wholesale access to leased lines.

(31) Finally, Telenet is subject to a regulatory obligation to grant access to its cable network. At the **wholesale level**, the Commission also considers the following markets as relevant with respect to Telenet:

(1) wholesale market for access to TV services;

(2) wholesale market for access to internet services.

(32) Those wholesale services are inputs for the provision of downstream retail fixed telecommunications services. The specific effects of the proposed transaction on the wholesale markets for access to TV and internet services as part of the Commission's vertical assessment are set out in Section 5.2.2 of this Decision.

(33) In light of recitals (12) to (32), the Commission shall define the relevant markets for the following services: (a) retail level mobile telecommunications services (Section 4.1); (b) retail level TV services (Section 4.2); (c) retail level fixed internet services (Section 4.3); (d) retail level fixed telephony services (Section 4.4); (e) retail level multiple play services (Section 4.5); (f) wholesale access and call origination services on mobile networks (Section 4.6); (g) wholesale call termination services on mobile networks (Section 4.7); (h) wholesale international roaming services (Section 4.8); (i) wholesale call termination services on fixed networks (Section 4.9); (j) wholesale domestic call transit services on fixed networks (Section 4.10); (k) wholesale services for termination and hosting of calls to non-geographic numbers (Section 4.11); (l) wholesale access to leased lines (Section 4.12); (m) wholesale access to TV services (Section 4.13); and (n) wholesale access to internet services

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15 Commission decision of 28 May 2014 in Case M.6992 - *Hutchison 3G UK/Telefónica Ireland*, paragraph 702 and following, where MVNE activities on the parties' mobile networks were included in the wholesale market for network access and call origination.

16 According to the Notifying Party, BASE's wholesale fixed access provider offers fixed call termination services to legacy SNOW fixed customers […] Therefore, for the purposes of this Decision, BASE will not be considered as active on the wholesale market for fixed call termination services.

(Section 4.14). On the basis of that analysis, the Commission will then identify the affected markets for its competitive assessment under the Merger Regulation (Section 4.15).

4.1. Retail level mobile telecommunications services

(34) Mobile telecommunications services to end customers include services for national and international voice calls[17], SMS (including MMS and other messages), mobile internet data services and retail international roaming services.

4.1.1. Product market definition

(35) The Notifying Party submits that there is a single retail market for mobile telecommunications services or, in short, a retail mobile market. However, the Notifying Party argues that, for the competitive assessment of the proposed transaction, account must be taken of key differences between the pre-paid and post-paid segments. In particular, the fact that the retail market in Belgium is shifting towards post-paid services, that there is no short-term price substitution between pre-paid and post-paid services, and that the Parties do not focus on the same segments (BASE offers both pre-paid and post-paid services whereas Telenet only offers post-paid services) must be taken into account.

(36) In previous decisions, the Commission found that there is an overall retail market for mobile telecommunications services, and did not divide that market further into possible sub-segments such as type of customer (business or private), type of tariff (pre-paid or post-paid), network technology (2G/3G, 3G/UMTS and 4G/LTE), or type of service (national or international calls, internet data services, voice and text services)[18].

(37) Although respondents to the Commission's market investigation did identify potential differences between some of the possible sub-segments listed in recital (36), overall most respondents to the Commission's market investigation in the present case agreed with the Commission's previous product market definition and considered that the retail market for mobile telecommunications services should be defined as an overall market, without further segmentation[19].

(38) As regards a possible distinction between pre-paid and post-paid services, some replies from competitors highlighted certain differences between pre-paid and post-paid services from a demand-side perspective[20]. However, most of the respondents

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

18 Commission decision of 2 July 2014 in Case M.7018 - *Telefónica Deutschland/E-Plus*, recitals 30-55; Commission decision of 28 May 2014 in Case M.6992 - *Hutchison 3G UK/Telefónica Ireland*, recitals 141-150; Commission decision of 12 December 2012 in Case M.6497 - *Hutchison 3G Austria/Orange Austria*, recitals 35, 41, 46, 52 and 58; Commission decision of 1 March 2010 in Case M.5650 - *T-Mobile/Orange*, recitals 20-24; Commission decision of 26 April 2006 in Case M.3916 - *T-Mobile Austria/tele.ring*, recitals 10-13 and 18.

19 See replies to Commission questionnaire to competitors Q1 of 17 August 2015, question 9. For instance: "From a demand perspective, in general, customers subscribe to all types of mobile telecommunications services, which they indifferently use all […] From an offer perspective, all MNOs and MVNOs are able to provide all types of mobile telecommunications services and they actually do (in most cases). This is true for both residential customers and business (professional) customers"; "the definition above is valid when mobile services are provided in a stand-alone way".

20 See replies to Commission questionnaire to competitors Q1 of 17 August 2015, question 11.1: "postpaid and prepaid offers on the mobile market aim to target two customer groups with specific

generally did not distinguish between the two and found that a considerable degree of supply-side substitutability existed between pre-paid and post-paid services[21].

(39) In relation to a possible segmentation of the market by the type of customer, the results of the market investigation indicated that certain distinctions may be drawn between private and business customers[22]. Some replies from competitors emphasised that business and private customers have different demands, characteristics and behaviour in terms of requested services and pricing. Conversely, some competitors explained that their offers are similar for all types of customers or that the focus of certain operators on certain types of customers stems from commercial decisions, not from a lack of supply-side substitutability. The responses of some business customers also highlighted the different needs and focus of business customers (which rely mostly on post-paid services), as opposed to private customers[23]. The results of the market investigation also indicated to some extent a further possible sub-segmentation between large business customers and small and medium-sized business customers, given the different scale and size of the former[24].

(40) Most respondents to the market investigation did not support a possible segmentation of the retail market for mobile telecommunications services based on technology[25]. Only one respondent regarded 4G as a "game changer" in the mobile industry that warranted it being differentiated from other technologies from a supply point of view.

(41) Finally, although some respondents noted the emergence of data-only demand or supply[26], the market investigation generally indicated that overall, all types of mobile telecommunications services fall within the same market[27].

(42) For the purposes of this Decision, the Commission considers that the relevant product market in this case is the retail market for mobile telecommunications services. Nonetheless, for the purposes of the competitive assessment, the

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marketing features"; another respondent lists the differences in terms of requirements, budget and distribution channels.

21 See replies to Commission questionnaire to competitors Q1 of 17 August 2015, question 11.1 and 11.2: "This doesn't mean that there is no substitutability between postpaid and prepaid offers for a large part of the mobile market prospects"; "There is no reason to define a separate market according to whether a service is Postpaid or Prepaid, all operators being able to offer both services, within a reasonable time and with reasonably low costs and they actually do"; "From a technical and commercial point of view it is reasonably easy for an operator focusing on Postpaid services to also offer Prepaid services."

22 See replies to Commission questionnaire to competitors Q1 of 17 August 2015, question 12. If most respondents do not distinguish between residential and business customers, major operators operate such distinction.

23 See replies to Commission questionnaire to business customers Q2 of 17 August 2015, question 5, 5.1, 7 and 7.1.

24 See replies to Commission questionnaire to business customers Q2 of 17 August 2015, question 6 and 6.1.

25 See replies to Commission questionnaire to competitors Q1 of 17 August 2015, question 9.

26 See replies to Commission questionnaire to competitors Q1 of 17 August 2015, question 9.1: "The usage of mobile services has significantly changed in the last years. Main relevance for consumers is now internet access (both fixed and mobile)"; "Except for the data only products, which are used in dongles and tablets, all current product offerings if the different operators contain a bundle of voice, SMS, MMS and data units".

27 See replies to Commission questionnaire to competitors Q1 of 17 August 2015, question 9. For instance: "From a demand perspective, in general, customers subscribe to all types of mobile telecommunications services, which they indifferently use all. (…) From an offer perspective, all MNOs and MVNOs are able to provide all types of mobile telecommunications services and they actually do (in most cases). This is true for both residential customers and business (professional) customers.

Commission will also analyse competition in the different segments of the retail market, as it is important to assess whether the proposed transaction would have a specific negative effect in a particular market segment which would be capable of affecting competition in the overall market.

4.1.2. Geographic market definition

(43) The Commission notes that BASE offers services in the entire territory of Belgium, whereas Telenet focuses on offering mobile services in the footprint of its cable network, which covers the Flemish Region and parts of the Brussels-Capital Region. Telenet's marketing efforts are targeted at the Flemish Region and the Brussels-Capital Region and its shops are also almost exclusively located in its footprint. Hence, Telenet can be said to offer mobile services at a regional level.

(44) In line with previous Commission decisions, the Notifying Party submits that the retail market for mobile telecommunications services is national in scope and corresponds to the territory of Belgium.

(45) In previous decisions, the Commission has found that the retail market for mobile telecommunications services is national in scope[28]. Most respondents to the market investigation in the present case considered that the relevant geographic market is national. Some of those respondents suggested that the upcoming abolition of roaming costs could have an impact on future mobile users' behaviour and change the geographic scope of the retail mobile telecommunications market. The respondents added that under the current legal framework[29], roaming costs remain a barrier, keeping the geographic scope within national boundaries[30].

(46) In light of recitals (43) to (45), the Commission considers that the retail market for mobile telecommunications services is national in scope. However, in assessing the competitive impact of the proposed transaction, the Commission will take into account the fact that [a very large part] of Telenet's mobile subscribers are located within its footprint[31] and, hence, Telenet competes almost exclusively in the geographic area that corresponds to its cable network footprint.

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28 Commission decision of 19 May 2015 in Case M.7421 - *Orange/Jazztel*, recital 43; Commission decision of 1 March 2010 in Case M.5650 - *T-Mobile/Orange*, recitals 25-26; Commission decision of 26 April 2006 in Case M.3916 - *T-Mobile Austria/tele.ring*, recital 19; Commission decision of 2 July 2014 in Case M.7231 - *Vodafone/ONO*, paragraph 42.

29 The Council and the European Parliament have recently adopted new rules for the abolishment of roaming mobile surcharges as of 15 June 2017 (Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services and Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union, OJ L 310, 26.11.2015, pp. 1-18). However, the relevant provisions are not applicable yet.

30 See replies to Commission questionnaire to competitors Q1 of 17 August 2015, question 13.1. For instance: "Today, the 'call and roam like home' principle has not been rolled out, mainly driven by the legislation and hence there is no financial benefit for a customer to obtain a product from a non-local operator. If the right legislation is implemented, we do believe that there is a potential that Belgian customers would buy Austrian SIM cards if this is financially more beneficial. Distribution will not be blocking element (online sales)"; "Current international wholesale roaming charges would, today, make it unlikely for a provider of another country to be able to offer a competing retail offer in another country, as the wholesale roaming charges are typically higher than the national wholesale MVNO charges".

31 Reply to Commission request for information ("RFI") 5 of 9 September 2015 to Liberty Global ([…] of Telenet's […] mobile customers also purchases fixed services from Telenet which means they must live in the footprint of Telenet's cable network).

4.2. Retail level TV services

(47) The retail market for TV services corresponds to the provision of TV services to end users or viewers. TV services can consist of packages of linear TV channels, namely free-to-air channels and pay TV channels and non-linear services, such as video-on-demand.

4.2.1. Product market definition

(48) The Notifying Party submits that there is a separate retail market for TV services, which does not need to be segmented between the different distribution modes to end users or between basic and premium pay TV services. In addition, it considers that the distinction between linear and non-linear services can be left open.

(49) In its previous decisions, the Commission has considered whether different distribution technologies for the provision of retail TV services, such as cable, IPTV and satellite, belong to the same product market. In *Liberty Global/Corelio/W&W/De Vijver Media*, the Commission concluded that, in Belgium, retail TV services offered over cable and IPTV form part of the same relevant product market [32]. In that Decision, the Commission left open whether satellite should be included in the relevant product market. In addition, the Commission has considered whether there are separate markets for the retail provision of free-to-air TV services and pay TV services. It has either concluded that those services should be distinguished[33] or left the question open[34], depending on the features of the national markets at stake and the need to conclude on that point for the competitive assessment of the proposed transaction in question. The Commission has also previously considered whether a further distinction could be drawn within pay TV services between basic pay TV services and premium pay TV services. The Commission found that premium pay TV services could be distinguished from basic pay TV services, although the question as to whether those types of pay TV services constituted separate product markets was ultimately left open, as it did not change the competitive assessment[35]. Finally, the Commission has considered whether linear and non-linear TV services belong to the same product market. It concluded that either they are separate markets[36] or, where the distinction did not change the outcome of the competitive assessment, left the exact product market definition open[37].

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32 Commission decision of 24 February 2015 in Case M.7194 - *Liberty Global/Corelio/W&W/De Vijver Media*, paragraphs 125-127.

33 Commission decision of 18 July 2007 in Case M.4504 - *SFR/Télé2*, paragraph 45; Commission decision of 25 June 2008 in Case M.5121 - *News Corp/Premiere*; Commission decision of 20 September 2013 in Case M.6990 - *Vodafone/Kabel Deutschland*, paragraphs 49-51.

34 Commission decision of 10 October 2014 in Case M.7000 - *Liberty Global/Ziggo*, paragraph 108; Commission decision of 24 February 2015 in Case M.7194 - *Liberty Global/Corelio/W&W/De Vijver Media*, paragraph 120.

35 For Belgium, Commission decision of 24 February 2015 in Case M.7194 - *Liberty Global/Corelio/W&W/De Vijver Media*, paragraph 119. In that case, the Commission also found that basic pay TV and FTA services were almost always provided together, and thus could be considered as belonging to the same product market, whereas premium pay TV had some distinctive features. However, the Commission ultimately left the question whether FTA/basic pay TV services and premium pay TV services constitute separate market open, as that did not change the competitive assessment (paragraph 129 of the decision).

36 Commission decision of 21 December 2010 in Case M.5932 - *NewsCorp/BSkyB*, paragraphs 106 and 107.

37 Commission decision of 25 June 2008 in Case M.5121 - *News Corp/Premiere*, paragraph 21; Commission decision of 24 February 2015 in Case M.7194 - *Liberty Global/Corelio/W&W/De Vijver Media*, paragraphs 121-124.

(50) With regard to the Belgian market for retail TV services, in line with the previous findings of the Commission in *Liberty Global/Corelio/W&W/De Vijver Media*, the results of the market investigation indicate that a relevant distinction for Belgium would be between free-to-air and basic pay TV services (also called subscription TV channels) on the one hand and premium pay TV services (also called additional/bouquet TV channels) on the other hand[38]. Respondents explained that free of charge access to television broadcasts in Flanders has almost disappeared, and consumers usually obtain free-to-air services as part of the basic pay TV services which they purchase. Respondents to the market investigation generally took the view that two separate product markets exist in Belgium for retail TV services: (i) free-to-air/basic pay TV; and (ii) premium pay TV services[39]. Indeed, there are indications that the two types of services are not substitutable from a supply- or demand-side perspective, in particular in Flanders.[40]

(51) As regards the possible segmentation of retail TV services between linear and non-linear services, the results of the market investigation were not conclusive. As regards the distinction per distribution technology, the Commission notes that cable and IPTV are by far the most popular transmission technologies in Belgium and that, from a demand-side perspective, those two transmission technologies offer a similar viewer experience. In line with its findings in *Liberty Global/Corelio/W&W/De Vijver Media*, the Commission therefore concluded that, in Belgium, at least retail TV services offered over cable and IPTV form part of the same relevant product market.

(52) For the purposes of this Decision, the Commission considers that the relevant product market is the overall retail market for TV services, without it being necessary to determine whether the relevant market can be further distinguished either by type of retail TV service (free-to-air/basic pay TV services on the one hand and premium TV services on the other hand); linear and non-linear TV services; or services on the basis of the relevant distribution technology, given that those distinctions do not alter the outcome of the competitive assessment in this case with respect to the overall market for retail TV services.

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38 See replies to Commission questionnaire to competitors Q1 of 17 August 2015, questions 18.1 and 19.1.

39 See replies to Commission questionnaire to competitors Q1 of 17 August 2015, question 18.

40 See replies to Commission questionnaire to competitors Q1 of 17 August 2015, question 18.1. For instance: "- Supply-side substitutability: Most broadcasters (MEDIALAAN, VRT, SBS Belgium) are only active on the FTA/basic pay TV market. (…) premium pay TV is a completely different market with substantial barriers to entry. (…) - Demand-side substitutability: for customers, FTA/basic pay TV and premium pay TV are two completely different products. They differ substantially in terms of content and price, such that they are complements, rather than substitutes. (…)"; "These two segments should be considered as distinct markets. First, they are different in terms of price. Second, the content and nature of the premium pay-TV channels is clearly different from the content and nature of the general channels that are included in the basic pay-TV offers. Third, the TV-distribution of sport events (a typical driver of demand and historically used by Proximus to enter the TV-market) is reserved to only a few pre-dominant TV-distributors, such as notably Telenet in the Flemish Region. This constitutes an important competitive tool in these operators' bundling strategy and offering of multiple play services. Fourth, they are also different given the strong difference in the take-up/number of customers. Fifth, over the past years Telenet (and to a significant lesser degree Proximus) have been building a partially exclusive premium content portfolio, allowing to increase differentiation capabilities and customer loyalty while increasing the hurdles for competitors to replicate the offer (…)".

4.2.2. Geographic market definition

(53) The Notifying Party submits that the geographic scope of the retail market for TV services is not broader than national, since offers tend to differ significantly from country to country. It further considers that the question of whether the scope is national or limited to the footprint of each cable operator's network can be left open.

(54) In previous decisions, the Commission has considered that the geographic scope of the market for the retail provision of TV services could be either national, since providers of retail TV services compete on a nationwide basis[41], or limited to the coverage area of each cable operator[42]. The Belgian Competition Authority has concluded that the geographic scope of TV broadcasting is limited to the area of each cable operator's footprint, as have the Belgian sector regulators[43].

(55) In *Liberty Global/Corelio/W&W/De Vijver Media*, the Commission concluded that the relevant geographic market for retail TV services in Belgium corresponded to the footprint of the TV service provider's network, namely the footprint of Telenet's cable network[44]. Respondents to the market investigation in the present case expressed diverging opinions as to the geographic scope of the market for retail TV services[45]. Some respondents indicated that the market should be limited to the footprint of each operator. Conversely, two competitors considered that it should be national, since the competitive pressure exercised by the different operators is nationwide and the applicable regulation is defined at national level, whereas others took the view that the scope corresponds to regional level (Brussels-Capital Region, Flemish Region, and Walloon Region)[46].

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41 Commission decision of 25 June 2008 in Case M.5121 - *News Corp/Premiere*, recital 24; Commission decision of 25 January 2010 in Case M.5734 - *Liberty Global Europe/Unitymedia*, recitals 40 and 43; Commission decision of 21 December 2010 in Case M.5932 - *NewsCorp/BSkyB*, recital 109; Commission decision of 21 December 2011 in Case M.6369 - *HBO/Ziggo/HBO Nederland*, recital 42; Commission decision of 15 April 2013 in Case M.6880 - *Liberty Global/Virgin Media*, recital 54.

42 Commission decision of 26 February 2007 in Case M.4521 - *LGI/Telenet*, recital 25.

43 Decision of the Belgian Competition Authority of 31 January 2008 in Case 2008-C/C-05 Tecteo/BruTele-CB, paragraph 107; CRC's broadcast decisions of 1 July 2011: Beslissing van de Conferentie van Regulatoren voor de elektronische Communicatiesector (CRC) van 1 juli 2011 betreffende de analyse van de markt voor televisieomroep in het Nederlandse taalgebied [*Decision of the Conference of Regulators for the electronic Communications sector (CRC) of 1 July 2011 concerning the analysis of the market for television broadcast in the Dutch-speaking region*]; Décision de la Conférence des Régulateurs du secteur des Communications électroniques (CRC) du 1 juillet 2011 concernent l'analyse du marché de la radiodiffusion télévisuelle sur le territoire de la région de langue française [*Decision of the Conference of Regulators for the electronic Communications sector (CRC) of 1 July 2011 concerning the analysis of the market for television broadcast in the French-speaking region*]; Beslissing van de Conferentie van Regulatoren voor de elektronische Communicatiesector (CRC) van 1 juli 2011 betreffende de analyse van de markt voor televisieomroep in het tweetalig gebied Brussel-Hoofdstad / Décision de la Conférence des Régulateurs du secteur des Communications électroniques (CRC) du 1 juillet 2011 concernent l'analyse du marché de la radiodiffusion télévisuelle sur le territoire de la région bilingue de Bruxelles-Capitale [*Decision of the Conference of Regulators for the electronic Communications sector (CRC) of 1 July 2011 concerning the analysis of the market for television broadcast in the bilingual region Brussels-Capital*]; Entscheidung der Konferenz der Regulierungsbehörden für den bereich der elektronischen Kommunikation (KRK) vom 1. Juli 2011 betreffend die analyse des Fernsehmarktes im deutschen Sprachgebiet [*Decision of the Conference of Regulators for the electronic Communications sector (CRC) of 1 July 2011 concerning the analysis of the market for television broadcast in the German-speaking region*].

44 Commission decision of 24 February 2015 in Case M.7194 - *Liberty Global/Corelio/W&W/De Vijver Media*, recital 139.

45 See replies to Commission questionnaire to competitors Q1 of 17 August 2015, questions 22 and 22.1.

46 See replies to Commission questionnaire to competitors Q1 of 17 August 2015, question 22.1.

(56) For the purposes of this Decision, the Commission considers that the question of whether the geographic scope of the market for retail TV services is national, regional or corresponds to the footprint of Telenet's cable network can be left open, as this would not alter the outcome of the competitive assessment.

4.3. Retail level fixed internet services

(57) Fixed internet access services at the retail level consist of the provision of a fixed telecommunications link enabling customers to access the internet.

4.3.1. Product market definition

(58) The Notifying Party submits that retail fixed internet services constitute a single market in Belgium, irrespective of the technology used, for example digital subscriber line ("DSL") or cable network, or download speeds (above or below 30 Mbps). For that purpose, it takes the view that there is full demand-side and supply-side substitutability between the different distribution technologies and speeds. The Notifying Party also argues that a distinction based on speed would be obsolete, since most Belgian fixed internet subscribers already have a download speed of at least 30 Mbps.

(59) In previous decisions, the Commission defined a product market for fixed internet services separate from mobile data services[47]. It considered, but ultimately left open, a sub-division of that market by product type, distinguishing between narrowband, broadband and dedicated access. It also considered a distinction between broadband distribution technologies, namely DSL and cable, but ultimately found that the relevant product market included services offered both via DSL technology and via cable[48]. Finally, in some cases, the Commission distinguished between residential and small business customers on the one hand and large business customers on the other, based on their different needs for internet services[49].

(60) Respondents to the market investigation generally agreed that the market for retail fixed internet services should not be further segmented by technology or the speed of the service[50]. However, one respondent pointed out that a distinction between various technologies would be relevant, notably due to the difference in the level of regulation applying to each network. Two other respondents considered that speed is still a critical part of the definition of that market[51].

(61) For the purposes of this Decision, the Commission considers that the relevant product market is the overall retail market for fixed internet services, without it being necessary to determine whether the relevant market can be further distinguished either by technology or speed, given that those distinctions do not alter the outcome of the competitive assessment in this case with respect to the overall market for fixed internet services.

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47 Commission decision of 12 December 2012 in Case M.6497 - *Hutchison 3G Austria/Orange Austria*, recital 57.

48 Commission decision 29 June 2009 in Case M.5532 - *Carphone Warehouse/Tiscali UK*, recitals 17-21.

49 Commission decision of 29 January 2010 in Case M.5730 - *Telefónica/Hansenet Telekommunikation*, recital 6 and subsequent; Commission decision of 29 June 2009 in Case M.5532 - *Carphone Warehouse/Tiscali UK*, recitals 24-27.

50 See replies to Commission questionnaire to competitors Q1 of 17 August 2015, question 17.

51 See replies to Commission questionnaire to competitors Q1 of 17 August 2015, question 17.1.

4.3.2. Geographic market definition

(62) In line with the Commission's previous decisions[52], the Notifying Party submits that the geographic market in the present case is not limited to the footprint of Telenet's cable network but is national in scope, because Telenet competes within its footprint with a number of national providers (including Proximus) that offer fixed internet services throughout Belgium.

(63) The market investigation does not fully support the Notifying Party's views[53]. Some respondents underlined the heterogeneous competitive conditions in the different regions of Belgium (the Flemish Region, the Walloon Region, the Brussels-Capital Region), notably the differences in the prices of services, in the distribution of market shares between operators active in the Flemish Region and in other regions, in the demand patterns of customers and the portfolio of activities developed by operators. One respondent argued that, based on the similarities in the networks used and the parameters of competition between the retail internet and wholesale TV transmission markets in Belgium, the relevant geographic market for retail fixed internet services is the footprint of the relevant operator's network.

(64) For the purposes of this Decision, the Commission considers that the question of whether the geographic scope of the retail market for fixed internet services is national (that is to say Belgian), regional or limited to the footprint of Telenet's cable network can be left open, as this would not alter the outcome of the competitive assessment.

4.4. Retail level fixed telephony services

(65) Fixed telephony services include the provision of connection services or access at a fixed location or access to the public telephone network for the purpose of making and receiving calls and related services.

4.4.1. Product market definition

(66) The Notifying Party refers to the different sub-divisions made by the Commission in its 2003 recommendation[54] and by the Belgian Institute for Postal services and Telecommunications ("BIPT"). It nevertheless considers that the question of whether the different breakdowns are suitable can be left open.

(67) In previous decisions[55], the Commission considered drawing a distinction between residential and non-residential customers as well as between local/national and international calls, according to its 2003 recommendation. The Commission, however, ultimately left the product market definition open. More recently, in its

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52 Commission decision of 19 May 2015 in Case M.7421 - *Orange/Jazztel*, recital 34; Commission decision of 20 September 2013 in Case M.6990 - *Vodafone/Kabel Deutschland*, recital 197.

53 See replies to Commission questionnaire to competitors Q1 of 17 August 2015, questions 21 and 21.1.

54 Commission Recommendation 2003/311/EC of 11 February 2003 on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communication networks and services. It identifies six different relevant markets related to retail fixed telephony services: (i) access to the public telephone network; (ii) local/national services; (iii) international services, and further divides the three services markets into services for (i) residential, and (ii) non-residential customers.

55 Commission decision of 20 September 2013 in Case M.6990 - *Vodafone/Kabel Deutschland*, recitals 126-131; Commission decision of 29 January 2010 in Case M.5730 - *Telefónica/Hansenet Telekommunikation*, recitals 16-17; Commission decision of 29 June 2009 in Case M.5532 - *Carphone Warehouse/Tiscali UK*, recitals 35 and 39.

decision in *Vodafone/ONO*[56], the Commission also considered that managed Voice over Internet Protocol ("VoIP") services and fixed voice services provided through fixed lines are interchangeable and therefore belong to the same market. In that case, however, the Commission ultimately left the market definition open, without further segmenting the retail market for fixed telephony services either on that basis or between residential and business customers.

(68) The results of the market investigation in the present case generally supported the product market definition derived from the Commission's past decisional practice, indicating that there is an overall retail market for fixed telephony services, which also includes VoIP services .

(69) For the purposes of this Decision, the Commission therefore considers that the relevant product market is the overall retail market for fixed telephony services.

4.4.2. Geographic market definition

(70) The Notifying Party considers that the retail market for fixed telephony services is national in scope. It also recalls that the BIPT considers the retail market for fixed telephony services to be national in scope, despite the existence of regional offers, since operators do not offer differentiated tariffs per region[57].

(71) The Commission has in the past considered that the geographic scope of retail market for fixed telephony services is national, given the continuing importance of national regulation in the telecommunications sector, the supply of upstream wholesale services on a national basis, and the fact that the pricing policies of telecommunications providers are predominantly national[58].

(72) Replies to the market investigation indicated that respondents hold differing opinions with respect to the geographic scope of the retail market for fixed telephony services[59]. As for the other fixed services discussed in the preceding Sections 4.2 and 4.3 (TV and internet services), some respondents found that the competition conditions are only homogeneous within each region (the Flemish Region, the Walloon Region or the Brussels-Capital Region) or within the footprint of the operator's network. Others argued that the relevant market is national in scope.

(73) For the purposes of this Decision, in light of recitals (70) to (72), the Commission considers that the question of whether the geographic scope of the retail market for fixed telephony services is national (that is to say Belgian), regional or limited to the footprint of Telenet's cable network can be left open, as this would not alter the outcome of the competitive assessment.

4.5. Retail level multiple play services

(74) In light of the many different ways in which products can be sold jointly, it is important to establish the circumstances in which products that are sold jointly will

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56 Commission decision of 2 July 2014 in Case M.7231 - *Vodafone/ONO*, recitals 26-28.

57 BIPT Decision of 31 January 2013 on the definition of markets, the analysis of terms of competition, the identification of SMP operators and the definition of appropriate obligations for market 1, paragraphs 3:119-3:133 ; BIPT Decision of 24 September 2014 concerning the public national telephony services provided at a fixed location for residential and non-residential users, paragraphs 46-258.

58 Commission decision of 19 May 2015 in Case M.7421 - *Orange/Jazztel*, recital 24; Commission decision of 20 September 2013 in Case M.6990 - *Vodafone/Kabel Deutschland*, recital 137; Commission decision of 29 June 2009 in Case M.5532 - *Carphone Warehouse/Tiscali UK*, recital 56.

59 See replies to Commission questionnaire to competitors Q1 of 17 August 2015, question 20 and 20.1.

be considered as a "bundle" for the purposes of this Decision. The distinctions outlined in recital (75) follow the delineation identified in the Non-Horizontal Merger Guidelines, in particular recital (96) thereof. In this respect, a distinction is drawn between "pure bundles" – which comprise various services that are sold jointly via a single contract for a single price and are not available on a stand-alone basis – and "mixed bundles" – comprising various services that are also sold on a stand-alone basis but the sum of the stand-alone prices is higher than the bundled price[60].

(75) If services are sold jointly to a single customer, but without a discount, and those products are also available as stand-alone products there is no bundling in the sense of the Non-Horizontal Merger Guidelines. However, those services may nonetheless be integrated in some form. In particular, the operator may invoice those services in a single bill. Such combinations of services are sometimes referred to as undiscounted joint purchasing (purchasing several components that are also available on a stand-alone basis from the same operator without a discount). In this Decision, the term bundle is used in the sense of the Non-Horizontal Merger Guidelines. A bundle therefore implies either that the components of the bundle are not sold as stand-alone products (pure bundle) or are sold in a bundle that is cheaper than the sum of the stand-alone prices of the components (mixed bundle).

(76) In the following sections, the Commission assesses whether a market for fixed-mobile multiple play services exists and whether it only comprises bundles or if it also comprises undiscounted joint purchasing.

(77) Consumers can purchase different telecommunications services such as TV, fixed internet, fixed telephony and mobile telephony as stand-alone products or in a (mixed) bundle in the sense of the Non-Horizontal Merger Guidelines. Of those four services, the first three (TV, fixed internet and fixed voice telephony) are fixed services, because they are provided over a fixed network such as a cable, copper or fibre network. Bundles comprising any combination of those fixed services are "fixed bundles". Bundles comprising one or more fixed services with mobile telecommunications services (including either voice or data, or both together) are "fixed-mobile bundles". Depending on the number of services included in the bundle, multiple play services can be dual play, triple play or quadruple play services. Fixed-mobile bundles are particularly relevant for this case, since the proposed transaction combines an operator owning a fixed telecommunications infrastructure (Telenet) and an operator owning a mobile telecommunications infrastructure (BASE).

(78) As mentioned in recitals (19) and (20), Telenet offers fixed bundles (in particular, its triple play services Whop and Whoppa), but, except for one limited exception, it does not offer fixed-mobile bundles[61]. Telenet does, however, sell both fixed and mobile services to the same customer and invoices through one single bill. BASE no longer sells fixed or fixed-mobile bundles, since it stopped offering TV, fixed internet and fixed telephony bundles in December 2014.

(79) The Commission will first consider the state of multiple play services in Belgium and the extent to which customers purchase telecommunications services jointly, including fixed-mobile bundles. Second, it will consider the results of its market investigation. Finally, it will provide its own assessment.

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60 Non-Horizontal Merger Guidelines, paragraph 96.

61 As further explained in recital (82) of this Decision, in May 2015, Telenet started offering a mixed fixed-mobile bundle, its so-called "family deal".

4.5.1. Fixed-mobile multiple play services in Belgium

4.5.1.1. Fixed-mobile bundles versus mobile services as a stand-alone service

(80) In Belgium, fixed bundles (bundles that only combine fixed services) are widespread. Out of all subscribers purchasing fixed broadband, 79% purchase it in a bundle that includes one or more other fixed service[62]. Likewise, out of all subscribers purchasing fixed voice telephony, 76.2% purchase it in a bundle with other fixed services[63]. Finally, out of all subscribers purchasing digital TV, 67 % purchase it in a bundle with other fixed services[64]. Among the various fixed bundles, so-called triple play packages, which combine TV, fixed internet and fixed voice telephony, are particularly popular[65]. Since the proposed transaction does not have an impact on fixed bundles, those fixed bundles are not discussed in the remainder of this Decision.

(81) Fixed-mobile bundles (bundles combining one or more fixed services with mobile services) are much less widespread than fixed bundles. Virtually all fixed-mobile bundles are sold by Proximus. Telenet offers, with one limited exception, no fixed-mobile bundles, although it does sell both fixed and mobile services to the same customer.

(82) The only fixed-mobile bundle offered by Telenet is its so-called “family deal”, which was launched in May 2015. Under that deal, a discount of EUR 1 per month is granted for the second mobile subscription, that is to say the second SIM-card, purchased by Telenet customers who also have a subscription to Telenet's fixed package Whop. For Telenet customers who subscribe to the more expensive fixed package Whoppa, the discount is EUR 2, again for the second mobile subscription. Under that offer, there is no discount for purchasing a fixed-mobile combination as such, since the first mobile SIM-card does not lead to a discount. However, there is a discount when a second SIM-card or any additional SIM-cards are purchased. According to the Notifying Party, the “family deal” is not a mixed bundle because no discount is offered for purchasing fixed and mobile services together. The Commission nonetheless considers that package to constitute a form of mixed bundling since the discount for the second SIM-card is only granted to customers who also purchase fixed services. However, given the limited discount and the limited circumstances in which the discount applies, the Commission acknowledges that this is a limited exception to the finding that Telenet has not engaged in bundling so far. Telenet's family deal launched recently and the number of subscribers to that

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62 BIPT, Situatie van de elektronische communicatiesector 2014 / Situation du secteur des communications électroniques 2014 [Situation of the electronic communications sector 2014], July 2015, p. 41, table 3, third column (the percentage is obtained by adding the different percentages corresponding to the various multi-play packages that include at least one other fixed service apart from fixed broadband: 4% + 11% + 40% + 3% + 12% + 2% + 7%).

63 BIPT, Situatie van de elektronische communicatiesector 2014 / Situation du secteur des communications électroniques 2014 [Situation of the electronic communications sector 2014], July 2015, p. 41,table 3, second column (the percentage is obtained by adding the different percentages corresponding to the various multi-play packages that include at least one other fixed service apart from fixed voice telephony: 4.2% + 6.8% + 44% + 13.1% + 8.1%).

64 BIPT, Situatie van de elektronische communicatiesector 2014 / Situation du secteur des communications électroniques 2014 [Situation of the electronic communications sector 2014], July 2015, p. 41,table 3, fourth column (the percentage is obtained by adding the different percentages corresponding to the various multi-play packages that include at least one other fixed service apart from fixed voice telephony: 9% + 5% + 32% + 3% + 10% + 2% + 6%).

65 BIPT, Situatie van de elektronische communicatiesector 2014 / Situation du secteur des communications électroniques 2014 [*Situation of the electronic communications sector 2014*], July 2015, p. 41

bundle is not reflected in the bundle figures discussed in Section 4.5.1, which relate to the end of 2014.

(83) Data from the BIPT for 2014 sheds light on the number of fixed-mobile bundles and the proportion of mobile services that are sold as part of a fixed-mobile bundle. The BIPT treats mobile voice and mobile data as two separate products and, hence, as far as the BIPT data is concerned, persons buying both mobile voice and mobile data purchase a bundle (a mobile bundle, not a fixed-mobile bundle).

(84) According to data from the BIPT, of all residential households that purchase mobile voice services, only 5.4% do so in a bundle with fixed services while. 94.6% purchase their mobile voice services as a standalone product, so not in a bundle with fixed products. Those stand-alone buyers often purchase both mobile voice and mobile data services (76% of all residential mobile voice users). That group includes smartphone users who typically purchase both mobile voice and data. A smaller proportion of stand-alone buyers (19% of all residential mobile users) purchase mobile voice services without any mobile data. The percentages calculated by the BIPT correspond to the ratio of bundles that include mobile voice to the total number of residential households that purchase mobile voice services, excluding residential households who purchase mobile services from MVNOs such as Telenet. In reality, households also purchase mobile services from MVNOs such as Telenet. If those households were included in the calculations, the percentage of fixed-mobile bundles would be even lower, since the total number of residential households that purchase mobile voice services would be higher, as the households that purchase from MVNOs would be included.

(85) Out of the 5.4% of residential mobile voice users who purchase their mobile services in a bundle with fixed services, most (4% of all residential mobile users) purchase a bundle comprising mobile voice, mobile data, fixed internet, fixed voice and TV. Those bundles are often referred to as quadruple play bundles, since mobile voice and mobile data services are considered as one component, and together with the three remaining components (TV, fixed internet and fixed voice), the bundle comprises four types of services. In the approach of the BIPT, however, that bundle is qualified as a 5-play bundle, because mobile voice and mobile data are counted as separate components.

Table 1: BIPT figures on multiple play bundles including mobile telephony (mobile voice) in the Belgian market

	MobileTEL (%)[66]	
Single play	**18.7%**	→ **94.6%** stand-alone
2-play:fixedBB+fixedTEL		
2-play:fixedBB+TV		
2-play:fixedTEL+TV		
2-play:mobileTEL+mobileBB	**75.9%**	
3-play:fixedBB+TV+fixedTEL		
3-play:fixedBB+mobileBB+TV		
4-play:fixedTEL+fixedBB+mobileBB+TV		
4-play:fixedBB+mobileTEL+mobileBB+TV	**1.1%**	→ **5.4%** fixed-mobile bundles
5-play	**3.7%**	
Other multiple play	**0.6%**	
Total	100%	

Sources: E-mail from the BIPT to the case team, 8 May 2015 (multiplay 2014.xlsx); BIPT, Situatie van de elektronische communicatiesector 2014 / Situation du secteur des communications électroniques 2014 [Situation of the electronic communications sector 2014], July 2015, p. 41.

(86) Table 1 shows the degree to which mobile *voice* users purchase their voice services in a bundle. Apart from mobile voice users, there are also mobile subscribers who purchase only mobile data services, without mobile voice services. Users of a tablet, for instance, may purchase a SIM-card for their tablet and only purchase data services. Those mobile data services can also be purchased in a bundle with fixed services.

(87) Adding the number of mobile voice users who purchase their voice services in a bundle with fixed services and the number of mobile data users who purchase their mobile data services in a bundle with fixed services gives the total number of fixed-mobile bundles. That amounts to 909 394 fixed-mobile bundles[67]. A majority of those fixed-mobile bundles are bundles with mobile broadband only (and no mobile voice), while a minority of those fixed-mobile bundles are bundles including mobile voice services. To determine the share of fixed-mobile bundles in the entire retail

66 BIPT, Situatie van de elektronische communicatiesector 2014 / Situation du secteur des communications électroniques 2014 [Situation of the electronic communications sector 2014], July 2015, p. 41. The market shares in Table 1 are similar but slightly different from those listed in the BIPT report, because we did not exclude the "other multiple play" subscribers from the total of residential bundle subscribers and our calculations are based on the numbers submitted by the BIPT in their e-mail to the case team of 8 May 2015 (multiplay 2014.xlsx).

67 BIPT, Situatie van de elektronische communicatiesector 2014 / Situation du secteur des communications électroniques 2014 [Situation of the electronic communications sector 2014], p. 40.

mobile market, various denominators can be used. As mentioned, at the end of 2014, only 5.4% of all households purchased their mobile voice services in a bundle with fixed services. If users that use only mobile broadband (and not mobile voice) are included, the ratio is higher; the ratio of fixed-mobile bundles to all residential mobile subscribers (9.9 million) is 9.2%. However, some fixed-mobile bundles include several SIM-cards and, therefore, the percentage of SIM-cards that are part of a fixed-mobile bundle may be somewhat higher than 9.2%. In any event, the ratios indicate that only a relatively small minority of people living in Belgium purchase their mobile services as part of a fixed-mobile bundle. A large majority still purchases mobile services as a stand-alone product.

4.5.1.2. Fixed and mobile services sold by the same operator to the same customer but not as a bundle (undiscounted joint purchasing)

(88) At present, with one limited exception described in recital (82), Telenet offers no fixed-mobile bundles in the sense of the Non-Horizontal Merger Guidelines. Telenet's mobile offers (King and Kong) are sold as separate products and there is no discount if either of the mobile products is purchased as part of a bundle with fixed services. Customers who purchase both fixed services and mobile services from Telenet are invoiced through one single invoice, but the fixed and mobile services are listed as separate items and could also be purchased separately at the same price.

(89) When purchasing undiscounted services together, the customer does not benefit from a discount and can freely unsubscribe from the individual services. In the event of the joint purchasing of undiscounted services, the services are therefore less closely tied together. The Commission nonetheless takes the fact that Telenet is selling both fixed and mobile services to the same customers into account in assessing the role of multiple play packages in the Belgian retail market.

4.5.1.3. Number of fixed-mobile multiple play customers per mobile operator

(90) Table 2 provides information on the number of customers that purchase both fixed and mobile services from the same operator. Table 2 includes both the customers purchasing mixed fixed-mobile bundles (packages where fixed and mobile services are sold together at a discount), such as those offered by Proximus, and the customers that simply buy both mobile and fixed services from the same operator (for example Telenet). Using that definition, Telenet has a total of […] multiple play customers, while Proximus has a total of […] multiple play customers. VOO has […] multiple play customers.

Table 2: Multiple play residential subscriber numbers in Belgium (only multiple play with mobile component)

Multiple play Q4 2014 (in thousands)	2-Play	Share	3-Play	Share	4-Play	Share	Total	Share
Proximus	**[…]**	[80-90]%	**[…]**	[70-80]%	**[…]**	[40-50]%	**[…]**	[60-70]%
Telenet	**[…]**	[10-20]%	**[…]**	[20-30]%	**[…]**	[40-50]%	**[…]**	[30-40]%
Mobistar	**[…]**	[0-5]%	**[…]**	[0-5]%	**[…]**	[0-5]%	**[…]**	[0-5]%
SNOW	**[…]**	[0-5]%	**[…]**	[0-5]%	**[…]**	[0-5]%	**[…]**	[0-5]%
Scarlet	**[…]**	[0-5]%	**[…]**	[0-5]%	**[…]**	[0-5]%	**[…]**	[0-5]%
Numéricable	**[…]**	[0-5]%	**[…]**	[0-5]%	**[…]**	[0-5]%	**[…]**	[0-5]%
VOO	**[…]**	[0-5]%	**[…]**	[0-5]%	**[…]**	[5-10]%	**[…]**	[0-5]%
Total market	**[…]**	**100%**	**[…]**	**100%**	**[…]**	**100%**	**[…]**	

Source: Reply to Commission request for information ("RFI") 5 of 9 September 2015 to Liberty Global, Annex Q.3

(91) As indicated in Table 2, a total of […] residential subscribers purchase fixed-mobile multiple play services. The total number of residential mobile subscribers is around 10 million and the total number of households that purchase mobile services is between six and seven million[68]. Such figures indicate that a large majority of people living in Belgium do not purchase its mobile and fixed services in a multiple play package but separately from different operators.

4.5.2. Views of the Notifying Party and market participants on multiple play services in Belgium

(92) The Notifying Party considers that there are not enough elements to substantiate the existence of a retail market for multiple play services as distinct from the retail markets for its individual components, regardless of how multiple play services are defined. It argues in particular that there is no indication of any lack of demand-side or supply-side substitutability between multiple play offerings and the individual services of which they consist. It also submits that the commercial development of fixed-mobile bundles is still at a nascent stage in Belgium and that there is no significant demand for bundles comprising a mobile component. It also submits that in the decisions adopted by the Belgian Conference of Regulators for the electronic

[68] BIPT, e-mail to the case team of 8 May 2015 (multiplay 2014.xlsx) (the number is approximate because the BIPT's figure does not include households that purchase mobile services from MVNOs such as Telenet).

Communications sector ("CRC") on 1 July 2011 relating to TV broadcasting[69], multiple play packages did not constitute a separate market. Moreover, the Notifying Party notes that it is not active on the hypothetical fixed-mobile multiple play market since it does not grant any discount to its fixed customers that also subscribe to its King/Kong mobile offers[70]. BASE is also not active on that hypothetical market, as it no longer actively markets fixed services[71].

(93) The results of the market investigation are inconclusive as to the existence of a separate market for retail multiple play services and as to which type of services would be included in such market, it were to exist. From a demand-side perspective, respondents to the market investigation pointed out that demand for bundled services is growing[72]. Although several respondents pointed out that triple play bundles (which combine only fixed services) are the most popular[73], most respondents also expected that the number of subscribers of multiple play offerings, including a mobile component, will increase materially within the next two or three years[74].

(94) According to respondents, customers choose multiple play services for reasons of price (discounts), simplicity (one-stop shop) and unified communication[75]. From a supply-side perspective, the results of the market investigation indicated that the ability to offer telecommunications services in bundles was perceived as a key success factor for operators, who use multiple play packages as a tool for customer acquisition and retention[76].

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69 CRC's decisions of 1 July 2011: Beslissing van de Conferentie van Regulatoren voor de elektronische Communicatiesector (CRC) van 1 juli 2011 betreffende de analyse van de markt voor televisieomroep in het Nederlandse taalgebied [*Decision of the Conference of Regulators for the electronic Communications sector (CRC) of 1 July 2011 concerning the analysis of the market for television broadcast in the Dutch-speaking region*]; Décision de la Conférence des Régulateurs du secteur des Communications électroniques (CRC) du 1 juillet 2011 concernent l'analyse du marché de la radiodiffusion télévisuelle sur le territoire de la région de langue française [*Decision of the Conference of Regulators for the electronic Communications sector (CRC) of 1 July 2011 concerning the analysis of the market for television broadcast in the French-speaking region*]; Beslissing van de Conferentie van Regulatoren voor de elektronische Communicatiesector (CRC) van 1 juli 2011 betreffende de analyse van de markt voor televisieomroep in het tweetalig gebied Brussel-Hoofdstad / Décision de la Conférence des Régulateurs du secteur des Communications électroniques (CRC) du 1 juillet 2011 concernent l'analyse du marché de la radiodiffusion télévisuelle sur le territoire de la région bilingue de Bruxelles-Capitale [*Decision of the Conference of Regulators for the electronic Communications sector (CRC) of 1 July 2011 concerning the analysis of the market for television broadcast in the bilingual region Brussels-Capital*]; Entscheidung der Konferenz der Regulierungsbehörden für den bereich der elektronischen Kommunikation (KRK) vom 1. Juli 2011 betreffend die analyse des Fernsehmarktes im deutschen Sprachgebiet [*Decision of the Conference of Regulators for the electronic Communications sector (CRC) of 1 July 2011 concerning the analysis of the market for television broadcast in the German-speaking region*].

70 Form CO, Section 6.3.11.3.3, paragraph 473. According to the Notifying Party, its recently launched "Family Pack" is not a mixed fixed-mobile bundle because the discount is not conditional on purchasing fixed and mobile services together but on purchasing a *second* mobile component.

71 Form CO, Section 6.3.11.3.2, paragraph 469.

72 See replies to Commission questionnaire to competitors Q1 of 17 August 2015, question 23.1.

73 See replies to Commission questionnaire to competitors Q1 of 17 August 2015, question 52.

74 See replies to Commission questionnaire to competitors Q1 of 17 August 2015, question 54.

75 See replies to Commission questionnaire to competitors Q1 of 17 August 2015, question 24.

76 See replies to Commission questionnaire to competitors Q1 of 17 August 2015, questions 23.2, 53 and 53.1. For instance, on fixed-mobile bundles: "[*It is therefore crucial for any operator wishing to remain competitive to be able to offer fixed and mobile services and to propose attractive multiple play offerings to its customers*]" [Commission's own translation]; "Given the increasing customer demand and fixed and cable network operators push for bundled services it is critical for mobile-centric operators to be able to offer bundled services in order to become or remain competitive on the market."

4.5.3. Commission's assessment of the existence of a fixed-mobile multiple play market in Belgium

(95) In previous decisions, the Commission left open the question as to whether there is a market for multiple play services that is separate from the markets for each of the components of the bundles[77].

(96) In this case, the Commission considers that the results of the market investigation are not sufficiently clear-cut to enable it to establish with the required degree of certainty that there is a separate retail market for fixed-mobile multiple play services. The Commission also notes that the number of fixed-mobile multiple play services is still relatively limited and a large majority of mobile services is still purchased separately from fixed services. The Commission also considers that, if a market for fixed-mobile multiple play services were to exist, it would probably not include undiscounted joint purchasing, that is to say combinations of fixed and mobile services that are also available as standalone products and are sold without a discount to a single customer who is invoiced for those services in a single bill. The reason for this is that because the consumer does not benefit from any discount when purchasing such packages, a small but permanent increase in the price of the bundle would likely result in many consumers picking apart the bundle and purchasing the components of the bundle separately. They would lose the benefit of a single bill as a result but, on the basis of information before it, the Commission considers that the main reason why Belgian consumers choose bundles is the price advantage resulting from it[78]. Hence, if there was a market for fixed-mobile multiple play services, it would probably include only fixed-mobile bundles.

(97) In the recent *Orange/Jazztel* case concerning the Spanish telecommunication markets, the Commission ultimately left open the question whether a market for fixed-mobile multiple-play services existed., notwithstanding the fact that the fixed-mobile triple

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[77] See e.g. Commission decision of 19 May 2015 in Case M.7421 - *Orange/Jazztel*, recitals 86 and 91. Commission decision of 20 September 2013 in Case M.6990 - *Vodafone/Kabel Deutschland*, recital 261; Commission decision of 3 July 2012 in Case M.6584 - *Vodafone/Cable & Wireless*, recitals 102-104; Commission decision of 16 June 2011 in Case M.5900 - *LGI/KBW*, recitals 183-186; Commission decision of 25 January 2010 in Case M.5734 - *Liberty Global Europe/Unitymedia*, recitals 43-48.

[78] See the CRC's decisions of 1 July 2011: Beslissing van de Conferentie van Regulatoren voor de elektronische Communicatiesector (CRC) van 1 juli 2011 betreffende de analyse van de markt voor televisieomroep in het Nederlandse taalgebied [*Decision of the Conference of Regulators for the electronic Communications sector (CRC) of 1 July 2011 concerning the analysis of the market for television broadcast in the Dutch-speaking region*], paragraph 109 (figure 2.10); Décision de la Conférence des Régulateurs du secteur des Communications électroniques (CRC) du 1 juillet 2011 concernent l'analyse du marché de la radiodiffusion télévisuelle sur le territoire de la région de langue française [*Decision of the Conference of Regulators for the electronic Communications sector (CRC) of 1 July 2011 concerning the analysis of the market for television broadcast in the French-speaking region*], paragraph 105 (figure 2.10); Beslissing van de Conferentie van Regulatoren voor de elektronische Communicatiesector (CRC) van 1 juli 2011 betreffende de analyse van de markt voor televisieomroep in het tweetalig gebied Brussel-Hoofdstad / Décision de la Conférence des Régulateurs du secteur des Communications électroniques (CRC) du 1 juillet 2011 concernent l'analyse du marché de la radiodiffusion télévisuelle sur le territoire de la région bilingue de Bruxelles-Capitale [*Decision of the Conference of Regulators for the electronic Communications sector (CRC) of 1 July 2011 concerning the analysis of the market for television broadcast in the bilingual region Brussels-Capital*], paragraph 109; Entscheidung der Konferenz der Regulierungsbehörden für den bereich der elektronischen Kommunikation (KRK) vom 1. Juli 2011 betreffend die analyse des Fernsehmarktes im deutschen Sprachgebiet [*Decision of the Conference of Regulators for the electronic Communications sector (CRC) of 1 July 2011 concerning the analysis of the market for television broadcast in the German-speaking region*], paragraph 107 (figure 2.10). […]

play bundle (fixed telephony, fixed internet and mobile) was the most popular bundle in Spain and already represented 45.4% of the total number of fixed Internet access lines in Spain[79]. That level of penetration of fixed-mobile bundles is much higher than the current level of penetration in the Belgian telecommunication market. In Belgium, the most popular bundle is also a triple play bundle, but it consists solely of fixed services (fixed telephony, fixed internet and TV). Quadruple play bundles, which combine triple play services with mobile voice and mobile data services, only represent 7% of the total number of fixed Internet users in Belgium and a different type of quadruple play bundle, which combines triple play services with mobile broadband-only, represents 12% of the total number of fixed internet users in Belgium[80]. Moreover, in its decision in the *Orange/Jazztel* case, the Commission pointed out that the success of the Spanish triple play package was mainly due to the financial attractiveness of contracting both mobile and fixed telecommunications services with a single operator, with discounts ranging between 3% and 19% of the total price, according to the Spanish telecommunication regulator and competition authority CNMC[81].

(98) The Commission notes the growing trend in Belgium towards multiple play services, in particular multiple play packages combining fixed and mobile services (so-called fixed-mobile convergence). As such, the Commission will assess the specific effects that the proposed transaction could have on multiple play services, more particularly on combined fixed-mobile services, as part of its assessment of conglomerate effects (Section 5.3), which assesses the merged entity's ability to combine products in related markets thereby giving it the ability and incentive to leverage a market position from one market to another. Therefore, even though, on the basis of the evidence before it, the Commission does not consider that a distinct retail market for fixed-mobile multiple play services, separate from the retail markets of each stand-alone service, currently exists in Belgium, if such a retail market for multiple play services were to exist, any effects of the proposed transaction on such a market will have been taken into account by the Commission in its competitive assessment of possible conglomerate effects.

4.6. Wholesale access and call origination on mobile networks

(99) MNOs provide wholesale access and call origination services which enable operators without their own network, namely MVNOs, to provide their own retail mobile telecommunications services to end customers. As explained in recital (13), there are different types of MVNOs, ranging from so-called full MVNOs that typically own some of the core infrastructure but do not own radio network access or spectrum, to light MVNOs, which do not own core infrastructure. Light MVNOs are also known as service providers.

4.6.1. Product market definition

(100) The Notifying Party considers that there is a wholesale market for access and call origination on mobile networks. It also notes that the Belgian retail mobile telecommunications market is characterised by the presence of different types of

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79 See Commission decision of 19 May 2015 in Case M.7421 - *Orange/Jazztel*, recitals 152 and 153.

80 BIPT, Situatie van de elektronische communicatiesector 2014 / Situation du secteur des communications électroniques 2014 [*Situation of the electronic communications sector 2014*], July 2015, p. 41 (the percentage is obtained by combining 12% (fixed telephony, fixed internet, TV and mobile broadband).

81 See Commission decision of 19 May 2015 in Case M.7421 - *Orange/Jazztel*, recitals 152 and 153.

MVNOs (full and light MVNOs) and of branded resellers, which, in contrast to MVNOs, market mobile telephony services contracts on behalf of MNOs.

(101) In the past, the Commission considered that wholesale network access and call origination services belong to the same relevant product market[82]. The responses to the market investigation have not provided any indication that it would be warranted for the Commission to depart from its previous practice for defining the relevant market in the present case.[83].

(102) For the purposes of this Decision, in line with its previous decisions and on the basis of the evidence before it, the Commission considers that the relevant product market is the wholesale market for access and call origination on mobile networks.

4.6.2. Geographic market definition

(103) In line with previous Commission decisions[84], the Notifying Party states that the relevant geographic scope of the market for wholesale access and call origination on mobile networks is national, that is Belgian.

(104) When asked about the impact of the proposed transaction on the market for wholesale access and call origination on mobile networks in Belgium, respondents to the market investigation did not provide any indication that it would be warranted for the Commission to depart from its previous practice of defining the relevant market for wholesale access and call origination on mobile networks as national in scope.

(105) In light of recitals (103) and (104), for the purposes of this Decision, the Commission considers that the relevant geographic market is national.

4.7. Wholesale call termination services on mobile networks

(106) Call termination services are provided when calls originate from one network and terminate on another network. For such calls, the operator on whose network the call terminates, routes the call and connects it to the called party. That service is provided at wholesale level between two network operators.

4.7.1. Product market definition

(107) The Notifying Party relies on the product market definition established by the Commission, according to which each individual network constitutes a separate wholesale market for call termination[85]. It also recalls that MVNOs are generally not active on the market as they do not normally own any radio access infrastructure[86].

(108) The Notifying Party indicates that the BIPT, in its 2010 decision, also concluded that there were three relevant markets for call termination on mobile networks in Belgium,

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82 Commission decision of 1 March 2010 in Case M.5650 - *T-Mobile/Orange*, recital 27; Commission decision of 2 July 2014 in Case M.7231 - *Vodafone/ONO*, recital 56.

83 See replies to Commission questionnaire to competitors Q1 of 17 August 2015, questions 43 and 44 related to wholesale access and call origination to mobile networks for MVNOs.

84 Commission decision of 1 March 2010 in Case M.5650 - *T-Mobile/Orange*, recital 31; Commission decision of 2 July 2014 in Case M.7231 - *Vodafone/ONO*, recital 59.

85 Commission decision of 2 July 2014 in Case M.7018 - *Telefónica Deutschland/E-Plus*, recital 89; Commission decision of 20 September 2013 in Case M.6990 - *Vodafone/Kabel Deutschland*, paragraphs 236-238; Commission decision of 3 July 2012 in Case M.6584 - *Vodafone/Cable & Wireless*, paragraph 47; Commission decision of 1 March 2010 in Case M.5650 - *T-Mobile/Orange*, paragraph 37.

86 For the purpose of that statement, the Notifying Party refers to Commission decision of 20 September 2013 in Case M.6990 - *Vodafone/Kabel Deutschland*, recital 233. However, Kabel Deutschland was not a full MVNO.

namely the markets for call termination on the mobile networks of Proximus, Mobistar and BASE[87]. It nevertheless recalls that the BIPT later suggested, in a draft decision from 2011 that has never been adopted, extending the 2010 decision to Telenet since the latter, as a full MVNO, owns certain parts of the core network and provides call termination services[88].

(109) The Notifying Party concludes that the question of whether a separate wholesale market for call termination on Telenet's mobile network exists can be left open.

(110) In its previous decisions, as indicated by the Notifying Party, the Commission has found that there are no substitutes for call termination on each individual mobile network, since the operator transmitting the outgoing call can reach the intended recipient only through the operator of the network to which that recipient is subscribed. Therefore, each individual network therefore constitutes a separate wholesale market for call termination.

(111) The responses to the market investigation have not provided any indication that it would be warranted for the Commission to depart from its previous practice for defining the relevant market in the present case. Conversely, they contain indications that full MVNOs also provide wholesale call termination services. In particular, […] referred to the interconnection agreement […] for the termination of calls on connections […][89].

(112) For the purposes of this Decision, in light of recitals (107) to (111), and on the basis of the information before it, the Commission considers that the relevant product markets are the wholesale market for call termination on the mobile network of BASE and the wholesale market for call termination on the core network of Telenet.

4.7.2. Geographic market definition

(113) In line with the Commission's previous decisions[90] and the definition adopted by the BIPT, the Notifying Party submits that each wholesale market for call termination should correspond to the dimensions of the operator’s network and therefore be considered as national in scope.

(114) The responses to the market investigation have not provided any indication that it would be warranted for the Commission to depart from its previous practice for defining the geographic market in the present case. For the purposes of this Decision, in light of recital (113), and on the basis of the information before it, the Commission concludes that the wholesale markets for call termination on mobile networks are national.

4.8. Wholesale international roaming services

(115) In order for a provider of retail mobile services to be able to provide its end customers with telecommunication services outside their home countries, it must

[87] BIPT Decision of 29 June 2010 on the definition of markets, the analysis of terms of competition, the identification of SMP operators and the definition of appropriate obligations for market 7, paragraphs 129-156, 160-163.

[88] BIPT Draft Decision of 4 March 2011 supplementing for Telenet the BIPT Decision of 29 June 2010 on market 7 for call termination on individual mobile networks.

[89] See replies to Commission questionnaire to competitors Q1 of 17 August 2015, question 2.1.

[90] Commission decision of 2 July 2014 in Case M.7018 - *Telefónica Deutschland/E-Plus*, recital 91; Commission decision of 3 July 2012 in Case M.6584 - *Vodafone/Cable & Wireless*, recital 48; Commission decision of 1 March 2010 in Case M.5650 - *T-Mobile/Orange*, recital 38.

enter into agreements with providers of wholesale international roaming services which are primarily active in other national markets.

(116) Roaming agreements can be concluded with a preferred foreign operator which offers tailor-made service conditions, as can be seen in particular in the creation of international roaming alliances.

4.8.1. Product market definition

(117) The Notifying Party recalls that the Commission has defined a separate wholesale market for international roaming services comprising both terminating calls and originating calls[91].

(118) The responses to the market investigation have not provided any indication that it would be warranted for the Commission to depart from its previous practice for defining the relevant market in the present case.[92].

(119) For the purposes of this Decision, in light of recitals (117) and (118), and on the basis of the information before it, the Commission considers that the relevant product market is the wholesale market for international roaming services comprising both terminating calls and originating calls.

4.8.2. Geographic market definition

(120) The Notifying Party agrees with the Commission's previous decisions that the wholesale market for international roaming services is national (Belgian) in scope, given that wholesale international agreements can be concluded only with companies which have an operating licence in the relevant country and licences to provide mobile services are restricted to a national territory[93].

(121) The responses to the market investigation have not provided any indication that it would be warranted for the Commission to depart from its previous practice for defining the relevant market in the present case.

(122) For the purposes of this Decision, in light of recitals (120) and (121), and on the basis of the information before it, the Commission retains its previous geographic market definition and considers that the wholesale market for international roaming services is national in scope.

4.9. Wholesale call termination services on fixed networks

(123) As set out in recital (106), call termination is the wholesale service provided by network operators that allows users of different networks to communicate with each other.

4.9.1. Product market definition

(124) The Notifying Party relies on the product market definition established by the Commission, according to which each individual network constitutes a separate

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91 Commission decision of 2 July 2014 in Case M.7018 - *Telefónica Deutschland/E-Plus*, recital 97.

92 See replies to Commission questionnaire to competitors Q1 of 17 August 2015, e.g. questions 5.1, 5.2, 13.1 and 41.2.1.

93 Commission decision of 2 July 2014 in Case M.7018 - *Telefónica Deutschland/E-Plus*, recital 100; Commission decision of 12 December 2012 in Case M.6497 - *Hutchison 3G Austria/Orange Austria*, recital 78; Commission decision of 1 March 2010 in Case M.5650 - *T-Mobile/Orange*, recital 35.

wholesale market for call termination[94]. It also considers that the question of whether the market should be sub-divided between local call termination services, intra-access-zone termination call services, and extra-access-zone termination call services[95] can be left open.

(125) The responses to the market investigation have not provided any indication that it would be warranted for the Commission to depart from its previous practice for defining the relevant market in the present case, nor that it is necessary to further sub-divide the market.

(126) For the purposes of this Decision, in light of recitals (124) and (125), the Commission retains its previous product market definition and considers that the relevant product market is the overall wholesale market for call termination on the fixed network of Telenet, without it being necessary to consider further possible segmentations of the market, given that in any event the proposed transaction does not raise concerns on that market irrespective of the product market definition.

4.9.2. Geographic market definition

(127) In line with previous Commission decisions and with the definition adopted by the BIPT, the Notifying Party submits that the relevant geographic scope of the wholesale markets for call termination on fixed networks is national, that is Belgian. The Notifying Party recalls that the Commission has considered that the geographic scope of each wholesale market for call termination should correspond to the dimensions of the operator's network, which is limited to national borders due to regulatory barriers[96].

(128) The responses to the market investigation have not provided any indication that it would be warranted for the Commission to depart from its previous practice for defining the geographic market in the present case. For the purposes of this Decision, in light of recital (127), the Commission concludes that the geographic scope of the wholesale market for call termination on a fixed network is national.

4.10. Wholesale domestic call transit services on fixed networks

(129) Domestic call transit on a fixed network is a wholesale service provided by a third party where there is no direct connection between originating communication providers and terminating communication providers.

4.10.1. Product market definition

(130) The Notifying Party considers that the market for call transit services on fixed networks is a shrinking market, and likely to disappear in the mid-term due to the advent of new technologies. It submits that it is not necessary to conclude on the exact product definition of the market for call transit services, which the Commission[97], contrary to the BIPT[98], ultimately left open.

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94 Commission decision of 20 September 2013 in Case M.6990 - *Vodafone/Kabel Deutschland*, recital 117; Commission decision of 3 July 2012 in Case M.6584 - *Vodafone/Cable & Wireless*, recital 23; Commission decision of 1 March 2010 in Case M.5650 T-Mobile/Orange, recital 37.

95 BIPT Decision of 2 March 2012 regarding the analysis of the market for call termination on individual public telephone networks provided at a fixed location (second round), recitals 118-158.

96 Commission decision of 20 September 2013 in Case M.6990 - *Vodafone/Kabel Deutschland*, recital 121; Commission decision of 1 March 2010 in Case M.5650 - *T-Mobile/Orange*, recital 38.

97 Commission decision of 14 April 2014 in Case M.7109 - *Deutsche Telekom/GTS*, recital 77.

(131) In previous decisions, the Commission has found that there is a separate market for the wholesale provision of domestic call transit services on fixed networks, distinct from the international wholesale market for voice carrier services[99].

(132) The responses to the market investigation have not provided any indication that it would not be appropriate for the Commission to define a separate market for the wholesale provision of domestic call transit services on fixed networks, in line with it precious practice.

(133) For the purposes of this Decision, in light of recitals (130) to (132), the Commission retains its previous product market definition and considers that the relevant product market is the overall wholesale market for the provision of domestic call transit services on fixed networks, without it being necessary to consider further possible segmentations of the market, given that in any event the proposed transaction does not raise concerns on that market, irrespective of the exact product market definition.

4.10.2. Geographic market definition

(134) The Notifying Party submits that both the Commission[100] and the BIPT[101] considered that the wholesale market for domestic call transit on fixed networks is national. However, it considers that it is not necessary to conclude on the precise scope of the market.

(135) The responses to the market investigation have not provided any indication that it would be warranted for the Commission to depart from its previous practice for defining the geographic market in the present case. For the purposes of this Decision, the Commission considers that the geographic scope of the wholesale market for domestic call transit on fixed networks is national.

4.11. Wholesale services for termination and hosting of calls to non-geographic numbers

(136) Voice calls are not only made to geographic numbers but also to non-geographic numbers. In Belgium, those numbers commonly start with 0800 or 0900, and are used to provide certain value-added services, such as free and paid information, public contests, helpdesks or ticket ordering. A non-geographic number is a number associated with a country, but not to any single geographic location within that country. When a caller initiates a call to a non-geographic number, the call is automatically transferred from the originating operator to the terminating operator hosting the service provider that operates the service related to the non-geographic number, irrespective of the location.

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98 BIPT Decision of 15 March 2011 on the definition of markets, the analysis of terms of competition, the identification of SMP operators and the definition of appropriate obligations for market 10: transit services in the fixed public telephone network, paragraph 159.

99 Commission decision of 3 July 2012 in Case M.6584 - *Vodafone/Cable & Wireless*, recital 26. In its subsequent decision of 14 April 2014 in Case M.7109 - *Deutsche Telekom/GTS*, the Commission considered that, in the specific circumstances of the case, the exact definition of the relevant market for the provision of wholesale domestic call transit services of fixed networks could be left open, as the transaction did not give rise to competition concerns on the basis of any alternative plausible market definitions (see in particular recital 77).

100 Commission decision of 14 April 2014 in Case M.7109 - *Deutsche Telekom/GTS*, recital 80. Commission decision of 3 July 2012 in Case M.6584 - *Vodafone/Cable & Wireless*, recitals 25-27.

101 BIPT Decision of 15 March 2011 on the definition of markets, the analysis of terms of competition, the identification of SMP operators and the definition of appropriate obligations for market 10: transit services in the fixed public telephone network, paragraphs 111-115.

4.11.1. Product market definition

(137) The Notifying Party indicates that, in a previous decision, the Commission has considered a wholesale market for termination of calls to non-geographic numbers to be distinct from a regular wholesale termination market, though it ultimately left the precise product market definition open[102]. It also submits that the Body of European Regulators of Electronic Communications (BEREC) has considered that market in detail in its Report on Special Rate Services (that is to say non-geographic numbers).

(138) The responses to the market investigation have not provided any indication that it would not be appropriate for the Commission to define a separate market for wholesale services for termination and hosting of calls to non-geographic numbers, in line with its previous practice.

(139) For the purposes of this Decision, in light of recitals (137) and (138), the Commission retains its previous product market definition and considers that the relevant product market is the overall wholesale market for termination and hosting of calls to non-geographic numbers, without it being necessary to consider further possible segmentations[103], given that in any event the proposed transaction does not raise concerns on that market, irrespective of the product market definition.

4.11.2. Geographic market definition

(140) The Notifying Party recalls that in its previous decisions the Commission has suggested that the geographic scope of the market was national but ultimately left open the precise market definition[104].

(141) The responses to the market investigation have not provided any indication that it would be warranted for the Commission to depart from its previous practice for defining the geographic market in the present case.

(142) For the purposes of this Decision, in light of recitals (140) and (141), the Commission considers that the geographic scope of the wholesale market for termination and hosting of calls to non-geographic numbers is national.

4.12. Wholesale access to leased lines

(143) Wholesale leased lines are part-circuits supplied by fixed providers that allow communication providers to connect their own networks to end user sites for the supply of business connectivity services.

4.12.1. Product market definition

(144) The Notifying Party submits that the Commission has previously defined a market for wholesale access to leased lines and left open the question whether to segment

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102 Commission decision of 3 July 2012 in Case M.6584 - *Vodafone/Cable & Wireless*, recitals 14- 18.

103 See Commission decision of 3 July 2012 in Case M.6584 - *Vodafone/Cable & Wireless*, recitals 58-60, where the Commission considered that market shares could be defined differently depending on whether one considered one overall market across networks, or distinguishing each terminating network as a separate market.

104 Commission decision of 3 July 2012 in Case M.6584 - *Vodafone/Cable & Wireless*, recital 18.

such market further[105]. The Notifying Party adds that the Commission no longer considers segmentation to be appropriate[106].

(145) The responses to the market investigation have not provided any indication that it would not be appropriate for the Commission to define a separate market for wholesale access to leased lines, in line with its previous practice.

(146) For the purposes of this Decision, in light of recitals (144) and (145), the Commission retains its previous product market definition and considers that the relevant product market is the wholesale market for access to leased lines, without it being necessary to consider further possible segmentations, given that in any event the proposed transaction does not raise concerns on that market irrespective of the product market definition.

4.12.2. Geographic market definition

(147) The Notifying Party considers that the wholesale market for access to leased lines is national, that is to say Belgian.

(148) In previous decisions, the Commission has found that the wholesale market for access to leased lines is national in scope[107].

(149) The responses to the market investigation have not provided any indication that it would be warranted for the Commission to depart from its previous practice for defining the geographic market in the present case.

(150) In light of recitals (147) to (149), for the purposes of this Decision, the Commission considers that the geographic scope of the wholesale market for access to leased lines is national.

4.13. Wholesale access to TV services

(151) TV services can be delivered to end users through a number of technical means, including cable, satellite and IPTV[108]. Operators that own the necessary infrastructure grant wholesale access to other companies, enabling them to offer their own retail TV services.

4.13.1. Product market definition

(152) The Notifying Party indicates that, to its knowledge, the Commission has not previously defined a wholesale market for access to TV services.

(153) With respect to Belgium, the Notifying Party explains that in 2011, the Belgian Conference of Regulators for the electronic Communications sector ("CRC") observed that fixed operators were all vertically integrated and did not provide access

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105 Commission decision of 3 July 2012 in Case M.6584 - *Vodafone/Cable & Wireless*, recital 30, where the Commission considered a possible distinction between trunk and termination segments. See also Commission decision of 20 April 2014 in Case M.7499 - *Altice/PT Portugal*, recital 74.

106 Draft revised Commission Recommendation on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services, published on 24 January 2014.

107 Commission decision of 3 July 2012 in Case M.6584 - *Vodafone/Cable & Wireless*, recital 31; Commission decision of 29 January 2010 in Case M.5730 - *Telefónica/Hansenet Telekommunikation*, recital 28.

108 IPTV is the abbreviation for Internet Protocol TV; it is a system through which television services are delivered using the Internet protocol over a packet-switched network such as the internet, instead of being delivered through traditional terrestrial, satellite signal and cable television formats.

to their networks to third parties wishing to provide retail TV services. The CRC adopted decisions ("the 2011 broadcast decisions") imposing a regulatory obligation to the cable network operators, including Telenet, to grant wholesale access to their networks for the provision of TV services. Telenet is thus under a regulatory obligation to offer wholesale access to its TV offerings through, notably, the provision of an analogue TV resale offer and of access to its digital TV platform[109].

(154) The Notifying Party argues that the exact product market definition of such a hypothetical wholesale market for access to TV services can be left open.

(155) In previous cases, the Commission analysed in detail the TV value chain[110], but did not define a specific market for wholesale access to TV services.

(156) As noted by the Notifying Party, the CRC has imposed wholesale access obligations for TV services on cable operators in Belgium. On the basis of that regulation, third parties have requested access to the networks of the fixed operators. For instance, Mobistar has requested access to Telenet's cable network, and has announced that it intends to use that wholesale cable access to offer TV and fixed internet services at the retail level and has made significant investments to prepare for launching its fixed services. In the course of 2015, it conducted user tests on the cable networks of Telenet and VOO in the Brussels-Capital Region and on the network of VOO in Charleroi and Liège, based on regulated cable access.

(157) Respondents to the market investigation also consider the establishment of the wholesale access conditions to TV services to be the key factor for their ability to enter the retail market for TV and other fixed services[111].

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109 CRC's decisions of 1 July 2011: Beslissing van de Conferentie van Regulatoren voor de elektronische Communicatiesector ("CRC") van 1 juli 2011 betreffende de analyse van de markt voor televisieomroep in het Nederlandse taalgebied [*Decision of the Conference of Regulators for the electronic Communications sector (CRC) of 1 July 2011 concerning the analysis of the market for television broadcast in the Dutch-speaking region*]; Décision de la Conférence des Régulateurs du secteur des Communications électroniques (CRC) du 1 juillet 2011 concernent l'analyse du marché de la radiodiffusion télévisuelle sur le territoire de la région de langue française [*Decision of the Conference of Regulators for the electronic Communications sector (CRC) of 1 July 2011 concerning the analysis of the market for television broadcast in the French-speaking region*]; Beslissing van de Conferentie van Regulatoren voor de elektronische Communicatiesector (CRC) van 1 juli 2011 betreffende de analyse van de markt voor televisieomroep in het tweetalig gebied Brussel-Hoofdstad / Décision de la Conférence des Régulateurs du secteur des Communications électroniques (CRC) du 1 juillet 2011 concernent l'analyse du marché de la radiodiffusion télévisuelle sur le territoire de la région bilingue de Bruxelles-Capitale [*Decision of the Conference of Regulators for the electronic Communications sector (CRC) of 1 July 2011 concerning the analysis of the market for television broadcast in the bilingual region Brussels-Capital*]; Entscheidung der Konferenz der Regulierungsbehörden für den bereich der elektronischen Kommunikation (KRK) vom 1. Juli 2011 betreffend die analyse des Fernsehmarktes im deutschen Sprachgebiet [*Decision of the Conference of Regulators for the electronic Communications sector (CRC) of 1 July 2011 concerning the analysis of the market for television broadcast in the German-speaking region*].

110 For Belgium: Commission decision of 24 February 2015 in Case M.7194 - *Liberty Global/Corelio/W&W/De Vijver Media*.

111 See replies to Commission questionnaire to competitors Q1 of 17 August 2015. For instance: "The cable network is opened, but with the focus on TV" (reply to question 60.1); "[respondents] investigates the possibility to provide fixed services in the future (through wholesale access)" (replies to questions 4.1, 4.2 and 4.3); "Towards the residential market, insofar that the future financial and operational conditions of the regulated cable wholesale access allow this in an economically sustainable way, [respondent] plans to offer most of the multiplay offers mentioned above, and the required developments (network, IT, customer service set-up, product offer, installation agreements, content acquisition, ...) are ongoing. At the moment friendly user trials are being performed. If effective

(158) The Commission therefore considers that the 2011 broadcast decisions have led to the opening of the fixed networks and enabled wholesale access for the creation of downstream retail TV services. In light of recitals (152) to (157), for the purposes of this Decision, the Commission considers that there is a separate wholesale market for access to TV services in Belgium, subject to the regulation by the CRC.

4.13.2. Geographic market definition

(159) The Notifying Party considers that the hypothetical wholesale market for TV services would be national in scope and not limited to the footprint of each operator. It explains that the country-wide presence of Proximus as well as the existence of a single set of regulations across Belgium result in harmonised TV strategies between the different cable operators, regardless of the territory covered by their network.

(160) The Notifying Party nevertheless considers that the exact geographic market definition can be left open.

(161) The Commission has not previously defined the possible geographic market for wholesale access to TV services in its past decisions.

(162) The market investigation, which focussed on retail TV services, is inconclusive. One respondent, which offers retail TV services, supports the arguments presented by the Notifying Party[112] and argues that the market should be defined as national in scope. Most other respondents consider that the most appropriate definition is that of the CRC's broadcast decisions of 1 July 2011, which indicate that the relevant geographic market is the area covered by the network of each cable operator.

(163) In light of recitals (159) to (162), for the purposes of this Decision, the Commission considers that the question of whether the geographic scope of the wholesale market for access to TV services is national (that is to say Belgian) or limited to the footprint of Telenet's cable network can be left open, as this would not change the outcome of the competitive assessment.

4.14. Wholesale access to internet services

(164) Wholesale access to internet services includes different types of access that allow internet service providers to provide services to end consumers. It comprises physical access at a fixed location, such as LLU[113]; non-physical or virtual network access, such as bitstream access, at a fixed location; and resale of the fixed incumbent's internet offering.

4.14.1. Product market definition

(165) The Notifying Party does not take a view on the exact definition of the market for wholesale access to internet services. It nevertheless describes the regulatory regime applicable to the wholesale market for access to fixed internet services in Belgium, as set out in (i) the CRC decision of 1 July 2011 on broadband markets, which

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wholesale conditions emerge, for the TV and fixed internet component, these future offers will make use of the regulated cable networks. As this regulation imposes that access to internet wholesale services can only be obtained in case the end-user makes use of the TV-service on the same network, it implies that offers such as 'fixed voice + fixed internet' cannot be offered based upon the regulation." (reply to question 8.1).

112 See reply to Commission questionnaire to competitors Q1 of 17 August 2015, question 22 on retail TV services.

113 LLU (local loop unbundling): unbundled (shared) access to metallic loops of the local access network in a number of local telecommunications exchanges (in particular in urban areas), as this is the most cost-efficient way for alternative operators to provide differentiated retail broadband services.

imposes a standalone wholesale fixed internet access obligation on Proximus for its DSL network [114], and (ii) the 2011 CRC broadcast decisions, which impose a wholesale fixed internet access obligation on cable network operators ancillary to wholesale access to TV services[115]. The effect of the latter regulation is that Telenet and other cable operators are under an obligation to provide a wholesale fixed internet offering to operators having requested access to their wholesale digital TV offering, together with the TV wholesale access. Operators can thus request wholesale access to Telenet's cable network for the purpose of providing standalone TV services, or for the provision of TV and fixed internet services. The access obligation does not, however, extend to access for the purpose of providing standalone fixed internet services (that is, without the TV component). On that basis, the Notifying Party argues that the issues raised with respect to the wholesale markets for access to the different fixed network services should be discussed together.

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114 Beslissing van de Conferentie van Regulatoren voor de elektronische Communicatiesector (CRC) van 1 juli 2011 met betrekking tot de analyse van de breedbandmarkten / Décision de la Conférence des Régulateurs du secteur des Communications électroniques (CRC) du 1 juillet 2011 concernent l'analyse des marchés large bande [*Decision of the Conference of Regulators for the electronic Communications sector (CRC) of 1 July 2011 concerning the analysis of the broadband markets*]. In its decision of 1 July 2011 relating to the analysis wholesale broadband markets, the Belgian sector regulators concluded that the wholesale internet access market did not include wholesale access to cable networks, such as that of Telenet. After this decision was partly annulled by the Brussels Court of Appeals, it was replaced by a new decision imposing the same obligation: Beslissing van de Conferentie van Regulatoren voor de elektronische-Communicatiesector (CRC) van 18 december 2014 houdende vernieuwing en correctie van de beslissing van de CRC van 1 juli 2011 betreffende de analyse van de breedbandmarkten / Décision de la Conférence des Régulateurs du secteur des Communications électroniques (CRC) du 18 decembre 2014 portant réfection et correction de la décision de la CRC du 1er juillet 2011 sur l'analyse des marchés à large bande [*Decision of the Conference of Regulators for the electronic Communications sector (CRC) of 18 December 2014 concerning the renewal and correction of the Decision of the CRC of 1 July 2011 concerning the analysis of the broadband markets*].

115 This means that Telenet and other cable operators are under an obligation to provide a wholesale fixed internet offering to operators having requested access to their wholesale digital TV offering. See CRC's decisions of 1 July 2011: Beslissing van de Conferentie van Regulatoren voor de elektronische Communicatiesector (CRC) van 1 juli 2011 betreffende de analyse van de markt voor televisieomroep in het Nederlandse taalgebied [*Decision of the Conference of Regulators for the electronic Communications sector (CRC) of 1 July 2011 concerning the analysis of the market for television broadcast in the Dutch-speaking region*]; Décision de la Conférence des Régulateurs du secteur des Communications électroniques (CRC) du 1 juillet 2011 concernent l'analyse du marché de la radiodiffusion télévisuelle sur le territoire de la région de langue française [*Decision of the Conference of Regulators for the electronic Communications sector (CRC) of 1 July 2011 concerning the analysis of the market for television broadcast in the French-speaking region*]; Beslissing van de Conferentie van Regulatoren voor de elektronische Communicatiesector (CRC) van 1 juli 2011 betreffende de analyse van de markt voor televisieomroep in het tweetalig gebied Brussel-Hoofdstad / Décision de la Conférence des Régulateurs du secteur des Communications électroniques (CRC) du 1 juillet 2011 concernent l'analyse du marché de la radiodiffusion télévisuelle sur le territoire de la région bilingue de Bruxelles-Capitale [*Decision of the Conference of Regulators for the electronic Communications sector (CRC) of 1 July 2011 concerning the analysis of the market for television broadcast in the bilingual region Brussels-Capital*]; Entscheidung der Konferenz der Regulierungsbehörden für den bereich der elektronischen Kommunikation (KRK) vom 1. Juli 2011 betreffend die analyse des Fernsehmarktes im deutschen Sprachgebiet [*Decision of the Conference of Regulators for the electronic Communications sector (CRC) of 1 July 2011 concerning the analysis of the market for television broadcast in the German-speaking region*].

(166) In previous decisions[116], the Commission defined a separate market for wholesale access to internet services and left open the question of whether it should be sub-divided per type of access (LLU, bitstream or resale of the incumbent's offering).

(167) In this Decision, the Commission notes that the CRC decision of 2011 relating to broadband has imposed a regulatory obligation on Proximus to grant standalone wholesale access to its DSL network for fixed internet services. Conversely, there is no regulatory obligation for Telenet to grant wholesale access to its cable network to operators seeking to provide standalone fixed internet services. Under the 2011 CRC broadcast decisions, Telenet's obligation to provide wholesale fixed internet access is exclusively ancillary to the obligation to provide wholesale access to its network for TV services. There is no obligation for Telenet to grant wholesale access to its network for fixed internet services on a standalone basis.

(168) In light of recitals (165) to (167), for the purposes of this Decision, the Commission considers that the question of the exact scope of the wholesale market for access to internet services with respect to its possible segmentations (standalone access to DSL, standalone access to cable, access to cable for TV and internet together) can be left open, as this would not alter the outcome of the competitive assessment. In the competitive assessment, the Commission will assess whether the proposed transaction would change Telenet's ability and incentives to grant wholesale access to its cable access to operators seeking to provide retail TV and internet services.

4.14.2. Geographic market definition

(169) The Notifying Party does not take a view on the exact geographic definition of the wholesale market for access to internet services.

(170) In *Carphone Warehouse/Tiscali UK*, while there were indications supporting a national scope of the market, the Commission ultimately left open the exact geographic market definition[117].

(171) Similarly to TV services, the market investigation focused on retail fixed internet services and yielded mixed results, with respondents arguing that the market should be defined as national in scope, or limited to the area covered by the network of each operator.

(172) For the purposes of this Decision, the Commission considers that the question of whether the geographic scope of the wholesale access to internet services is national (that is to say Belgian) or limited to the footprint of Telenet's cable network can be left open, as this would not change the outcome of the competitive assessment.

4.15. Identification of affected markets

(173) On the basis of the definitions in Sections 4.1 to 4.14, the proposed transaction gives rise to several horizontally and vertically affected markets[118].

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116 Commission decision of 20 September 2013 in Case M.6990 - *Vodafone/Kabel Deutschland*, paragraph 161; Commission decision of 29 June 2009 in Case M.5532 - *Carphone Warehouse/Tiscali UK*, paragraphs 28- 34.

117 Commission decision of 29 June 2009 in Case M.5532 - *Carphone Warehouse/Tiscali UK*, paragraphs 48-53.

118 A market is horizontally affected when "two or more of the parties to the concentration are engaged in business activities in the same relevant market and where the concentration will lead to a combined market share of 20 % or more". A market is vertically affected when "one or more of the parties to the concentration are engaged in business activities in a relevant market, which is upstream or downstream of a relevant market in which any other party to the concentration is engaged, and any of their

(174) The Parties are both active in the retail market for mobile telecommunications services in Belgium, where Telenet is active as an MVNO, and BASE is active as an MNO. BASE offers both pre-paid and post-paid services, whereas Telenet offers only post-paid services. The overall retail market for mobile telecommunications services (without further segmentation) is horizontally affected by the proposed transaction, given that the Parties' combined market share is [20-30]% by revenue and [30-40]% by subscribers.

(175) As mentioned in recital (24), as an MNO BASE is also active in the wholesale market for access and call origination on mobile networks, where it provides access to its network to MVNOs, which operate on the downstream retail market for mobile telecommunications services. On that market, Telenet is not active on the wholesale market for access and call origination on mobile networks, as it does not have its own mobile network and cannot offer access to MVNOs. However, Telenet is a customer on that market, as it purchases access to the mobile network of Mobistar in order to provide its retail mobile telecommunications services. The wholesale market for access and call origination on mobile networks is vertically linked to the retail market for mobile telecommunications services, as MVNOs require access to the former upstream market in order to operate on the latter downstream market. Those markets are vertically affected by the proposed transaction, as BASE has a market share of [30-40]% in terms of revenue on the upstream wholesale market for access and call origination on mobile networks.

(176) As explained in recitals (26) to (29), in this context the Commission will also assess the impact of the proposed transaction on the wholesale services provided by Telenet as an MVNE towards Nethys, in particular with respect to wholesale access and call origination, which, in principle, would overlap with the wholesale activities of BASE. The market would thus be horizontally affected, given that BASE has a market share of [30-40]% in terms of revenue. However, in the remainder of this Decision, the Commission will not further assess the Parties' overlap on the wholesale market for access and call origination to mobile networks, for the following reasons. First, Telenet only provides wholesale mobile services to Nethys[…][119]. Therefore, with the exception of Nethys, Telenet cannot currently be considered as an active provider of wholesale access and call origination, competing with BASE and other MNOs. Second, Nethys is a light MVNO providing retail mobile telecommunications services to […] customers (less than [0-5]% of the retail mobile market). Therefore, the amount of the overlap and the incremental increase to the share of the merged entity in the wholesale market for access and call origination is minimal and does not raise horizontal competition concerns. The Commission will therefore only discuss the wholesale market for access and call origination as vertically affected market with respect to the retail market for mobile telecommunications services.

(177) Additionally, as explained in recitals (24) to (31), the Parties are also active on several other mobile and fixed telecommunications markets, which are vertically linked.

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individual or combined market shares at either level is 30 % or more, regardless of whether there is or is not any existing supplier/customer relationship between the parties to the concentration" See Point 6.3 of Annex 1 to Commission Regulation No 802/2004 of 21 April 2004 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, OJ L 133, 30.4.2004, p.1 consolidated version.

119 […].

(178) As an MNO, BASE is active on the wholesale market for call termination on its own mobile network. Telenet is also active on the wholesale market for call termination on its own mobile network, since as a full MVNO it has its own interconnection agreements. BASE and Telenet are both active on the retail market for mobile telecommunications services, and Telenet is active on the retail market for fixed telephony services. The wholesale markets for call termination on BASE and Telenet's mobile networks are each upstream of the retail market for mobile telecommunications and the retail market for fixed telephony services, as mobile and fixed operators request access to mobile networks for call termination. Given that BASE and Telenet have a 100% share of termination on their own mobile networks, those wholesale markets for call termination and each of the retail market for mobile telecommunications services and the retail market for fixed telephony services are vertically affected by the proposed transaction.

(179) However, the Commission notes that the wholesale market for call termination on mobile networks is regulated pursuant to the BIPT decision of 29 June 2010 on the definition of markets, the analysis of terms of competition, the identification of SMP operators and the definition of appropriate obligations for market 7[120]. All Belgian MNOs, including BASE, are subject to that Decision. The key obligations concern access and interconnection obligations, non-discrimination as to quality, transparency including the publication of a reference offer, and price control and cost accounting. Therefore, the Commission considers that the proposed transaction would not significantly impede effective competition on the affected wholesale market for mobile call termination services. Following the proposed transaction, call termination on the merged entity's mobile network will continue to be subject to the ex ante regulation by the BIPT. Moreover, the respondents to the Commission's market investigation questionnaires have not raised any specific concerns regarding that market. For those reasons, the wholesale market for call terminations services on mobile networks is not further discussed in this Decision.

(180) BASE is also active on the wholesale market for international roaming services in Belgium, whereas Telenet is not, since it does not own a mobile network[121]. That market is thus not horizontally affected by the proposed transaction. However, there is a possible vertical link between the activities of BASE as a provider of wholesale international roaming services in Belgium and the retail mobile telecommunications services markets of other Member States where the Notifying Party is active: non-Belgian mobile operators owned by the Notifying Party could purchase wholesale international roaming services from BASE in order to allow those of its subscribers travelling in Belgium to originate or terminate calls on BASE's network.

(181) However, based on the information provided by the Notifying Party, BASE does not have a market share above 30% on the wholesale market for international roaming services in Belgium, and none of the MVNOs owned by the Notifying Party operating in the retail markets for mobile telecommunications services in other Member States have market shares exceeding 30%. Therefore, the wholesale market

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120 BIPT Decision of 29 June 2010 on the definition of markets, the analysis of terms of competition, the identification of SMP operators and the definition of appropriate obligations for market 7, available at http://www.bipt.be/fr/operateurs/telecom/marches/telephonie-mobile/analyse-de-marche-terminaison-mobile-2010/decisiondu-29-juin-2010-relative-a-la-definition-des-marches-lanalyse-des-conditions-de-concurrence-lidentification-des-operateurspuissants-et-la-determination-des-obligations-appropriees-pour-le-marche-7 (in Dutch or in French).

121 […]

for international roaming services in Belgium does not appear to be vertically affected in relation to the retail markets for mobile telecommunications services of the other Member States where the Notifying Party is active. Furthermore, the Commission notes that international roaming services are subject to Union sector-specific regulation, which prevents mobile operators from refusing access to their network and from charging excessive termination fees[122]. Key obligations under the regulation include an obligation to meet all reasonable requests, an obligation to publish a reference offer, caps on wholesale and retail charges (for calls, SMS messages and data services), and transparency and information requirements[123]. Therefore, in any event the proposed transaction would not raise any competition concerns with respect to the wholesale market for international roaming services in Belgium, given that such market is fully regulated. For those reasons, the wholesale market for international roaming services in Belgium is not further discussed in this Decision.

(182) With respect to the wholesale market for leased lines, only Telenet is active. Therefore, that market is not horizontally affected by the proposed transaction. Telenet offers leased lines to mobile operators, including to BASE and Mobistar. Given that there is a vertical link between the wholesale supply of leased lines and the retail market for mobile telecommunications services, on which the merged entity would have a market share of [30-40]% in terms of subscribers, the wholesale market for leased lines and the retail market for mobile telecommunications services are vertically affected by the proposed transaction.

(183) Telenet is also active in the wholesale market for call termination services on fixed networks, the wholesale market for domestic call transit services, and the wholesale market for termination and hosting of calls to non-geographic numbers. BASE is not active on any of those markets, which are thus not horizontally affected. However, each of those markets is upstream to the retail market for mobile telecommunications services, where BASE and Telenet are active.

(184) Given that Telenet has a 100% market share on fixed call termination services on its own network, that market is vertically affected with respect to the retail market for mobile telecommunications services, on which Telenet and BASE are active. However, the proposed transaction does not raise competition concerns with respect to the wholesale market for call termination services on fixed networks, as that market is subject to ex-ante regulation[124]. Under that ex ante regulation, all fixed

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122 Regulation (EU) No 531/2012 of the European Parliament and of the Council of 13 June 2012 on roaming on public mobile communications networks within the Union (OJ L 172, 30.6.2012, pp. 10–35.

123 The Regulation will expire on 30 June 2022. The Commission has to review the functioning of the Regulation and, after a public consultation, report to the European Parliament and the Council by 30 June 2016. In addition, negotiations are currently ongoing at the European Parliament and the Council concerning, among other things, the end of roaming surcharges for customers traveling within the EU by 2017 (or 2018). The provisional agreement reached on 30 June 2015 between the Council and the European Parliament on new rules to end mobile phones roaming fees and safeguard open internet access provides for the abolishment of roaming surcharges as of 15 June 2017. The Member States approved the agreement on 8 July 2015.

124 The wholesale market for call termination on fixed networks is a fully regulated market pursuant to the BIPT decision of 2 March 2012 regarding the analysis of the market for call termination on individual public telephone networks provided at a fixed location (second round). BIPT Decision of 2 March 2012 regarding the analysis of the market for call termination on individual public telephone networks provided at a fixed location (second round), available at http://www.bipt.be/nl/operatoren/telecom/markten/vastetelefonie/marktanalyse-vaste-gespreksafgifte-2012/besluit-van-de-raad-van-h-3144 (in Dutch or French).

operators' terminating calls are subject to remedies including an interconnection obligation, non-discrimination (quality and price), a transparency obligation (including the publication of a reference offer and KPIs for Proximus and, for other operators, the publication of their termination rates, and the communication of information such as interconnect agreements or quality of service indicators at the request of the BIPT), and price controls (consisting of charging a fixed termination rate based on the costs of an efficient network operator on their network). The Commission therefore considers that the proposed transaction would not significantly impede effective competition on the affected wholesale market for call termination services on fixed networks, as post-merger call termination on the merged entity's fixed network would continue to be subject to the ex ante regulation by the BIPT. Moreover, the respondents to the Commission's market investigation questionnaires have not raised any specific concerns regarding that market. For those reasons, the wholesale market for fixed call termination services in Belgium is not further discussed in this Decision.

(185) With respect to the wholesale market for domestic call transit services, and the wholesale market for termination and hosting of calls to non-geographic numbers, given that the merged entity would have a [30-40]% market share in terms of subscribers on the retail market for mobile telecommunications services, both of those markets are vertically affected by the proposed transaction.

(186) Finally, as explained in recital (15), Telenet is also active in the retail markets for TV services, fixed internet services and fixed telephony services, which may be marketed separately, or as part of multiple play services. BASE is not active on those markets, as it only offers retail mobile telecommunications services. BASE was active on those markets, through the brand 'SNOW', until December 2014, when it decided to discontinue its business activities. Therefore, the Parties do not overlap in the retail markets for fixed telephony services, fixed internet services, and TV services, and those markets are not horizontally affected by the proposed transaction.

(187) However, those retail fixed telecommunications markets are nonetheless considered for: (i) the assessment of whether BASE would be a potential entrant with respect to retail fixed telecommunications services; and (ii) the assessment of potential conglomerate effects of the proposed transaction, as Telenet has a strong market position on the fixed retail markets for TV services and internet access services[125]. Additionally, while the wholesale markets for access to TV and internet services are not technically affected by the proposed transaction (as only Telenet is active on those markets and on the downstream retail markets for TV services and internet services), in its vertical assessment the Commission will nonetheless also analyse whether the proposed transaction, with respect to those markets, would change Telenet's ability and incentives to grant wholesale access to its cable network to third party operators seeking to provide retail TV and fixed internet services.

(188) In Section 5 of this Decision, the Commission carries out its competitive assessment with respect to the horizontally or vertically affected markets identified in this Section.

[125] The Commission notes that, while Telenet's position is less prominent with respect to the retail market for fixed telephony services, the Commission's assessment of conglomerate effects nonetheless also applies to retail fixed telephony services, given that the Commission will evaluate the effects of the proposed transaction with respect to the combination of mobile and fixed telecommunications services, the latter including telephony, TV and internet services.

5. COMPETITIVE ASSESSMENT

(189) The competitive assessment for the horizontally affected retail market for mobile telecommunications services in Belgium is carried out in Section 5.1.2 of this Decision.

(190) In Section 5.1.3 of this Decision, the Commission will assess whether the proposed transaction would have the effect of removing BASE as a potential competitor to Telenet with respect to the retail fixed telecommunications markets where Telenet is active, that is, the retail markets for fixed telephony services, fixed internet services and TV services.

(191) In Section 5.2.1 of this Decision, the Commission will carry out the competitive assessment for the vertically affected markets for wholesale access and call origination on mobile networks on the one hand and retail mobile telecommunications services on the other hand.

(192) In Section 5.2.2 of this Decision, the Commission will assess, with respect to the wholesale markets for access to TV and internet services and the downstream retail markets for TV and internet services, whether the proposed transaction would change Telenet's ability and incentive to grant wholesale access to its cable network to other third party operators that want to provide retail fixed telecommunications services, such as fixed TV and internet services.

(193) As noted in recitals (182) and (185) of this Decision, the proposed transaction also gives rise to vertically affected markets between, on the one hand, the retail market for mobile telecommunications services and, on the other hand, each of the wholesale market for leased lines, the wholesale market for domestic call transit services on fixed networks, and the wholesale market for termination and hosting of calls to non-geographic numbers. The competitive assessment of those vertically affected markets is carried out in Section 5.2.3 (and its subsections) of this Decision.

(194) Finally, in Section 5.3 of this Decision, the Commission will consider as part of its conglomerate assessment whether the merged entity could use its position in the fixed retail markets for internet and TV services in combination with its position in the retail market for mobile telecommunications services to foreclose competitors.

5.1. Horizontal assessment

5.1.1. Legal framework

(195) The Horizontal Merger Guidelines describe horizontal non-coordinated effects as follows:

> "A merger may significantly impede effective competition in a market by removing important competitive constraints on one or more sellers, who consequently have increased market power. The most direct effect of the merger will be the loss of competition between the merging firms. For example, if prior to the merger one of the merging firms had raised its price, it would have lost some sales to the other merging firm. The merger removes this particular constraint. Non-merging firms in the same market can also benefit from the reduction of competitive pressure that results from the merger, since the merging firms' price increase may switch some demand to the rival firms, which, in turn, may find it profitable to increase their

prices. The reduction in these competitive constraints could lead to significant price increases in the relevant market."[126]

(196) The Horizontal Merger Guidelines explain that a merger giving rise to such non-coordinated effects would significantly impede effective competition by creating or strengthening the dominant position of a single firm, one which, typically, would have an appreciably larger market share than the next competitor post-merger. Furthermore, the Horizontal Merger Guidelines indicate that also mergers in oligopolistic markets, which do not create or strengthen the dominant position of a firm, may result in a significant impediment to competition, when they involve the elimination of important competitive constraints that the parties previously exerted upon each other, with a reduction of competitive pressure on the remaining competitors, even where there is little likelihood of coordination between the members of the oligopoly[127].

(197) The Horizontal Merger Guidelines list a number of factors which may influence whether or not significant non-coordinated effects are likely to result from a merger, such as the large market shares of the merging firms, the fact that the merging firms are close competitors, the limited possibilities for customers to switch suppliers, or the fact that the merger would eliminate an important competitive force. That list of factors applies equally if a merger would create or strengthen a dominant position, or would otherwise significantly impede effective competition due to non-coordinated effects. Furthermore, those factors need not all be present to make significant non-coordinated effects likely, and the list is not exhaustive[128].

5.1.2. Retail market for mobile telecommunications services

(198) In light of the legal framework described in Section 5.1.1, and on the basis of its investigation, the Commission concludes that the proposed transaction would lead to a significant impediment of effective competition on the retail market for mobile telecommunications services in Belgium, because it would likely lead to non-coordinated anti-competitive effects on such market.

(199) The different factors that led the Commission to reach this conclusion as to the proposed transaction's compatibility with the internal market as regards the retail market for mobile telecommunications services are explained in the following subsections. First, the Commission assesses the market shares of the Parties and the market concentration on the retail market for mobile telecommunications services post-merger. Second, the Commission assesses to what extent BASE and Telenet are close competitors on the retail market for mobile telecommunications services pre-transaction. Third, the Commission considers whether the proposed transaction would remove an important competitive force on the retail market for mobile telecommunications services. Fourth, the Commission considers the state of competition on the retail market for mobile telecommunications services post-transaction with respect to the merged entity and the other mobile operators on the market. Finally, the Commission analyses the barriers to entry on the retail market for mobile telecommunications, and whether market entry would be capable of removing the anti-competitive effects of the proposed transaction.

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126 Horizontal Merger Guidelines, paragraph 24.
127 Horizontal Merger Guidelines, paragraph 25.
128 Horizontal Merger Guidelines, paragraph 26.

5.1.2.1. Market shares and market concentration

(200) Market shares and concentration levels provide useful first indications of the market structure and of the competitive importance of the merging parties and their competitors. The larger the market share, the more likely a firm is to possess market power. The larger the addition of market shares, the more likely it is that a merger would lead to a significant increase in market power. Post-merger market shares are calculated on the assumption that the post-merger combined market share of the parties is the sum of their pre-merger market shares.

(201) The overall concentration level in a market may also provide useful information about the competitive situation. In order to measure concentration levels, the Commission often uses the Herfindahl-Hirschman Index ("HHI"). The HHI is calculated by summing the squares of the individual market shares of all the firms in the market. The HHI gives proportionately greater weight to the market shares of larger firms. Although it is best to include all firms in the calculation, lack of information about very small firms may not be important because such firms do not affect the HHI significantly. While the absolute level of HHI can give an initial indication of the competitive pressure in the market post-merger, the change in the HHI (also known as the delta) is a useful proxy for the change in concentration directly brought about by the merger[129]. According to the Horizontal Merger Guidelines, in a market where the post-merger HHI is no more than 1000, the Commission is unlikely to identify horizontal competition concerns[130]. Likewise, if the post-merger HHI is between 1000 and 2000 and the delta is below 250, the Commission is unlikely to identify horizontal competition concerns, except where special circumstances are present[131].

(202) Table 3 shows the pre-merger market shares for 2014, 2013 and 2012 of the three MNOs in Belgium, of Telenet, the most relevant MVNO player in the Belgian mobile market, and of the remaining MVNOs. The market shares of branded resellers are not listed separately in the table, because they do not operate independently on the market. Instead, they sell services on behalf of an MNO. Their market share is therefore attributed to the MNO for whom they sell services.

129 Horizontal Merger Guidelines, paragraph 16.
130 Horizontal Merger Guidelines, paragraph 19.
131 Horizontal Merger Guidelines, paragraph 20.

Table 3 - Market shares of the three MNOs, Telenet (MVNO) and other MVNOs in Belgium pre-merger (2014, 2013 and 2012)

	Market share 2014		Market share 2013		Market share 2012	
Operator	**by revenue**	**by subscribers**	**by revenue**	**by subscribers**	**by revenue**	**by subscribers**
Proximus	[40-50]%	[30-40]%	[40-50]%	[30-40]%	[40-50]%	[40-50]%
Mobistar	[20-30]%	[20-30]%	[30-40]%	[20-30]%	[30-40]%	[20-30]%
BASE[132]	**[10-20]%**	**[20-30]%**	**[10-20]%**	**[20-30]%**	**[10-20]%**	**[20-30]%**
Telenet (MVNO)	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[0-5]%	[0-5]%
Other MVNOs	[0-5]%	[5-10]%	[0-5]%	[5-10]%	[0-5]%	[0-5]%

Source: Form CO, Annex 6.2.1a, and Reply to Commission request for information ("RFI") 5 of 9 September 2015 to Liberty Global, Annex Q.3

(203) Table 3 shows that the Belgian retail mobile market is an oligopolistic market. In 2014, the three MNOs together accounted for [80-90]% of the market's revenue and [80-90]% of all subscribers. Telenet is by far the most important MVNO in the market and the three MNOs together with Telenet accounted for [90-100]% of all revenue in 2014. The remaining MVNOs accounted for [0-5]% of the market by revenue in 2014. The pre-merger HHI, based on market shares by revenue, is [2500-3000], which indicates that the market is already highly concentrated[133].

(204) Table 4 shows the post-merger market shares in Belgium of the merged entity, the other two MNOs, Proximus and Mobistar, and the other MVNOs, by reference to the market shares in Belgium in 2014.

Table 4 - Market shares of MNOs, the merged entity and other MVNOs in Belgium post-merger (2014)

Operator	Market share by revenue	Market share by subscribers
Proximus	[40-50]%	[30-40]%
Mobistar	[20-30]%	[20-30]%
Merged entity (Telenet + BASE)[134]	**[20-30]%**	**[30-40]%**
Other MVNOs	[0-5]%	[5-10]%

Source: Form CO, Annex 6.2.1a

132 BASE's market share includes the market share of Mobile Vikings. The proposed transaction includes BASE's 50% stake in Mobile Vikings. It follows that, after the transaction, Mobile Vikings will be under the joint control of Liberty Global and VikingCo International NV. Since it cannot be regarded as an independent operator, its market share is attributed to the market share of BASE. BASE's market share also includes the market share of branded resellers such as Jim Mobile. The percentages in the table are rounded. In 2014, BASE's market share by revenue is [10-20]% ([10-20]% BASE + [0-5]% Mobile Vikings + [0-5]% JIM Mobile + [0-5]% other BASE branded resellers) and Telenet's market share by revenue is [5-10]%, resulting in a combined market share of [20-30] % ([10-20]% + [5-10]%), rounded to [20-30]% in Table 4.

133 The Commission has calculated the HHI with reference to the year 2014, which represents the levels of concentration on the market during the most recent period prior to the proposed transaction.

134 Percentages are rounded. BASE's market share by revenue is [10-20]% and Telenet's market share by revenue is [5-10]%, resulting in a combined market share of [20-30] %, rounded to [20-30]% in Table 4.

(205) The proposed transaction would combine the third MNO by revenue and the largest MVNO by revenue, which are respectively the second and fourth largest mobile operators by subscribers. The merged entity would become the second largest mobile operator by subscribers, behind Proximus, and, with a market share of [20-30]%, the third largest mobile operator by revenue, closely behind Mobistar. Remaining market players, namely other MVNOs, would have a minimal presence on the market.

(206) As set out in recital (42), although the Commission considers that the relevant market is the overall retail market for mobile telecommunications services in Belgium, an overview and assessment of its different customer segments/sub-segments may nevertheless be informative. This is because the market shares and other indicators on the overall retail market may not convey the full picture of the market positions and market power of the operators. For a full assessment it is necessary to take into account the relative importance of each segment/sub-segment, and the operators' presence in those segments.

(207) This is relevant not only for the distinction between private and business customers but also for other customer groups (such as pre-/post-paid; subscribers located in the footprint of Telenet's cable network). Given that the competitive dynamics in each of those segments/sub-segments may differ, where relevant, the Commission looks at them separately, in line with the approach adopted in previous decisions[135].

(208) With respect to private subscribers (which account for approximately two thirds of the overall retail market for mobile telecommunications in terms of revenue), the merged entity's market share would be even higher. As shown in Table 5 and Table 6, the merged entity would be the market leader in terms of subscribers and the second largest operator in terms of revenue, closely behind Proximus.

Table 5 - Market shares of the three MNOS, Telenet (MVNO) and other MVNOs in the private segment in in Belgium pre-merger (2014 and 2013)

	Market share 2014		Market share 2013	
Operator	**by revenue**	**by subscribers**	**by revenue**	**by subscribers**
Proximus	[30-40]%	[30-40]%	[30-40]%	[30-40]%
Mobistar	[20-30]%	[20-30]%	[30-40]%	[20-30]%
BASE	**[20-30]%**	**[20-30]%**	**[20-30]%**	**[30-40]%**
Telenet (MVNO)	**[10-20]%**	**[5-10]%**	**[10-20]%**	**[5-10]%**
Other MVNOs	[0-5]%	[5-10]%	[0-5]%	[5-10]%

Source: Form CO, Annex 6.2.1a and Reply to Commission request for information ("RFI") 5 of 9 September 2015 to Liberty Global, Annex Q.3

135 See, for example, Commission decision of 2 July 2014 in Case M.7018 - *Telefónica Deutschland/E-Plus*; Commission decision of 28 May 2014 in Case M.6992 - *Hutchison 3G UK/Telefónica Ireland*; Commission decision of 12 December 2012 in Case M.6497 - *Hutchison 3G Austria/Orange Austria*.

Table 6 - Market shares of MNOS, the merged entity and other MVNOs in the private segment in Belgium post-merger (2014)

Operator	Market share by revenue	Market share by subscribers
Proximus	[30-40]%	[30-40]%
Mobistar	[20-30]%	[20-30]%
Merged entity (Telenet + BASE)	**[30-40]%**	**[30-40]%**
Other MVNOs	[0-5]%	[0-5]%

Source: Form CO, Annex 6.2.1a

(209) With respect to the business segment of the market (which accounts for approximately one third of the overall retail market for mobile telecommunications in terms of revenue), the Commission notes that BASE and Telenet have a more limited presence, and that the merged entity would have a combined market share of [10-20]% in revenue and [10-20]% in subscribers. Therefore, on the separate business segment of the retail market for mobile communications, the proposed transaction would likely not raise the same anticompetitive effects as in the private segment.

(210) In the post-paid segment of retail mobile telecommunications services, which accounts for approximately [70-80]% of the overall retail market for mobile telecommunications in terms of revenue, the Parties would have a combined market share of [20-30]% both by revenue and subscribers, as is shown in Table 7 and Table 8.

Table 7 - Market shares of the three MNOS, Telenet (MVNO) and other MVNOs in post-paid in Belgium pre-merger (2014 and 2013)

	Market share 2014		**Market share 2013**	
Operator	**by revenue**	**by subscribers**	**by revenue**	**by subscribers**
Proximus	[40-50]%	[40-50]%	[40-50]%	[40-50]%
Mobistar	[30-40]%	[30-40]%	[30-40]%	[30-40]%
BASE	**[10-20]%**	**[10-20]%**	**[10-20]%**	**[10-20]%**
Telenet (MVNO)	**[10-20]%**	**[10-20]%**	**[10-20]%**	**[10-20]%**
Other MVNOs	[0-5]%	[0-5]	[0-5]	[0-5]

Source: Form CO, Annex 6.2.1a and Reply to Commission request for information ("RFI") 5 of 9 September 2015 to Liberty Global, Annex Q.3

Table 8 - Market shares of MNOS, the merged entity and other MVNOs in post-paid in Belgium post-merger (2014)

Operator	Market share by revenue	Market share by subscribers
Proximus	[40-50]%	[40-50]%
Mobistar	[30-40]%	[30-40]%
Merged entity (Telenet + BASE)	**[20-30]%**	**[20-30]%**
Other MVNOs	[0-5]%	[0-5]%

Source: Form CO, Annex 6.2.1a

(211) The Parties' shares in the post-paid segment are lower than in the overall market, as BASE mainly focuses its business on pre-paid customers, and has a more limited presence in the post-paid segment. Telenet is not active in the pre-paid segment of the market, as it only offers post-paid services.

(212) The proposed transaction would significantly increase the already high level of concentration in the Belgian retail market for mobile telecommunications services. Based on market shares by revenue, the proposed transaction would increase the HHI by [0-500] and lead to a post-merger HHI of [3000-3500]. This is well above the levels at which a merger is unlikely to raise competition concerns according to the Horizontal Merger Guidelines[136].

(213) Moreover, [a very large part] of Telenet's mobile subscribers are located within the footprint of Telenet's cable network[137]. […] of BASE's customers are also located in the same area[138]. Within the footprint of Telenet's cable network, the Parties would have a combined market share of [30-40]% in terms of revenue, and [30-40]% in terms of subscribers, when considering all customers. Proximus would have a market share of [40-50]% in terms of revenue and of [30-40]% in terms of subscribers, and Mobistar's share would be [20-30]% in terms of revenue and [20-30]% in terms of subscribers. When taking into account only private customers in the Telenet footprint, the Parties would have a combined market share of [20-30]% by revenue, and [40-50]% by subscribers. Proximus' market share would be of [20-30]% in terms of revenue and [30-40]% in terms of private subscribers, and Mobistar would have market shares of [10-20]% in terms of revenue and of [20-30]% in terms of private subscribers[139]. Therefore, within the footprint of Telenet's cable network, the merged entity would have a stronger market position, and the proposed transaction would lead to a higher level of concentration than on a national basis[140].

(214) In light of the market shares and market concentration indicators set out in this Section, the Commission considers that the proposed transaction would combine two significant providers of mobile services in the overall retail market. The merged entity would have a significant market share, especially in the private segment of the overall retail market. Moreover, the proposed transaction would further increase concentration in the already highly concentrated Belgian retail mobile market.

5.1.2.2. Closeness of competition

(215) The higher the degree of substitutability between the merging firms' products, the more likely it is that the merging firms would raise prices significantly[141]. In this regard, the Commission needs to verify whether the rivalry between the parties has been an important source of competition on the market[142].

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136 Horizontal Merger Guidelines, paragraph 20.

137 Reply to Commission RFI 5 of 9 September 2015 to Liberty Global ([…] of Telenet's […] mobile customers also purchase fixed services from Telenet which means they must live in the footprint of Telenet's cable network).

138 Out of […] BASE customers, […] are on the Telenet footprint. Reply to Commission RFI 6 to BASE of 9 September 2015.

139 Reply to Commission RFI 14 of 7 October 2015 to Liberty Global, questions 3 and 4.

140 See also recital (46) on the need to take into account the fact that Telenet competes almost exclusively in its footprint.

141 Horizontal Merger Guidelines, paragraph 28.

142 Horizontal Merger Guidelines, paragraph 28.

(216) The parties to a concentration are not required to be each other's closest competitors for competition concerns to arise[143]. The Horizontal Merger Guidelines provide for a relative approach to the closeness of competition between merging parties: the higher the degree of substitutability of the products of the merging parties, the higher the likelihood to find competition concerns caused by a proposed merger.

(217) The Horizontal Merger Guidelines indicate that diversion ratios are one of the methods that can be used to assess the closeness of competition between the merging parties[144]. The Commission has applied that type of analysis in previous merger cases in the telecommunications sector[145].

(218) Diversion ratios measure the closeness of competition between the parties and the remaining market participants. They indicate the extent to which sales lost by one of the parties are taken up by the other party or the remaining market participants.

(219) The Commission's analysis of the closeness of competition between Telenet and BASE, based on the results of the market investigation and on an examination of the Parties' internal documents is presented in recitals (220) to (222). The Commission's assessment of diversion ratios between Telenet and BASE is presented in recitals (223) to (229).

Results of the market investigation and Telenet's internal documents

(220) Respondents to the market investigation highlighted that both BASE and Telenet compete in particular in the geographic area corresponding to the footprint of Telenet's fixed network, and have targeted customers in Flanders and Brussels. One respondent, for instance, cited BASE's strong market position, "especially in Flanders", as a particular strength of BASE, while considering Telenet's strength to lie in the fact that it is the incumbent for fixed services in Flanders and its weakness that it does not have a strong position in Wallonia.[146] Other respondents made similar statements[147].

(221) Telenet focuses its mobile business on the geographic area corresponding to the footprint of its cable network, that is, the Flemish Region and some parts of the Brussels-Capital Region. The vast majority ([…]) of Telenet's mobile subscribers are located in its footprint[148]. Likewise, a large part of BASE's customers are located in the Flemish Region and the Brussels-Capital Region, which encompasses the footprint of Telenet's cable network. More specifically, out of all of BASE's customers, […] live in Telenet's cable footprint[149].

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143 Commission decision of 2 July 2014 in Case M.7018 - *Telefónica Deutschland/E-Plus*, recitals 278-280.

144 Horizontal Merger Guidelines, paragraph 29.

145 Commission decision of 2 July 2014 in Case M.7018 - *Telefónica Deutschland/E-Plus*; Commission decision of 28 May 2014 in Case M.6992 - *Hutchison 3G UK/Telefónica Ireland*; Commission decision of 12 December 2012 in Case M.6497 - *Hutchison 3G Austria/Orange Austria*.

146 See replies to Commission questionnaire to competitors Q1 of 17 August 2015, question 31.

147 See replies to Commission questionnaire to competitors Q1 of 17 August 2015, question 15.1.

148 Reply to RFI 5 of 9 September 2015 to Liberty Global ([…] of Telenet's […] mobile customers also purchase fixed services from Telenet which means they must live in the footprint of Telenet's cable network).

149 BASE, reply to RFI 6 of 9 September 2015 (corrected version sent on 28 September 2015). BASE, including branded resellers, has […] mobile subscribers, of which […] live in the footprint of Telenet's cable network and […] live outside of the footprint of Telenet's cable network. […] subscribers are labelled as "anonymous", meaning no postal code information is available. The number of mobile subscribers for which postal code information is available is therefore […]. The reply to RFI 6 notes that the address information of pre-paid customers may be unreliable.

(222) Telenet's own internal analyses also confirm BASE's particular strength in the area in which Telenet focuses its activities.[…][150]. BASE's internal analyses also provide evidence of the competitive constraint exerted by Telenet on BASE and, hence, the fact that they compete closely […][151].

Diversion ratios

(223) The Commission calculated diversion ratios for both merging parties on the basis of mobile number portability data ("MNP data") provided by the Notifying Party[152]. MNP data is based on data from customers who change operators and port their number from one mobile network to another mobile network[153]. The Commission considers the MNP data to be a representative proxy for the switching patterns in the retail market for mobile telecommunications services given that a sizeable proportion of customers port their mobile numbers when they switch networks.

(224) On the basis of the MNP data, the Commission calculated the diversion ratios based on observed switching between operators ("MNP diversion ratios"). The MNP diversion ratios presented in Tables 9 and 10 are calculated on a network basis for the overall Belgian retail market for 2014.

(225) Table 9 illustrates the diversion ratios on the overall retail market from Telenet to its competitors, while Table 10 shows the diversion ratios on the overall retail market from BASE to its competitors.

Table 9 - Diversion ratios from Telenet to MNO competitors – network level – overall retail market, MNP data, Commission's calculations (2014)

From\To	BASE	Proximus	Mobistar	TOTAL
Telenet	[20-30]%	[50-60]%	[20-30]%	100%

Source: Form CO, p. 176-177

Table 10 - Diversion ratios from BASE to MNO competitors – network level – overall retail market, MNP data, Commission's calculations (2014)

From\To	Telenet	Proximus	Mobistar	TOTAL
BASE	[20-30]%	[40-50]%	[30-40]%	100%

Source: Form CO, p. 176-177.

(226) Table 9 shows that in 2014 [20-30]% of Telenet's customers switched to BASE, while the majority, [50-60]% of Telenet's customers, switched to Proximus, followed by Mobistar with [20-30]%. Looking at the switching from BASE to Telenet in 2014, roughly [20-30]% switched to Telenet. Most of BASE's customers switched to Proximus ([40-50]%), followed by Mobistar with [30-40]%.

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150 […].

151 […].

152 This is based on information provided on pp. 176-177 in the Form CO.

153 In past Commission decisions, diversion ratios based on MNP data were also considered indicative of switching patterns and of the relative attractiveness of different providers. See, for instance, Commission decision of 2 July 2014 in Case M.7018 - *Telefónica Deutschland/E-Plus.*

(227) The Commission has also compared the diversion ratios based on MNP data with an additional benchmark based on market shares[154]. Specifically, it has calculated diversion ratios on the basis of subscriber market shares. On that basis, it is possible to compare the MNP diversion ratios with the diversion ratios based on market shares ("benchmark diversion ratios"). That comparison provides an indication of whether the actual number of subscribers which switch between the Parties is higher than the number of subscribers which one would expect to switch based on their market share. The more the MNP diversion ratios between two firms exceed such benchmark: (a) the higher the degree of substitutability between those firms' products compared to the rest of the market; (b) the closer the competition between those firms; and (c) the more those firms' shares of the market underestimate the actual competitive constraints imposed on each other.

(228) For the overall retail market in 2014, MNP diversion ratios from BASE to Telenet ([20-30]%) are considerably higher than their benchmark diversion ratios (which are at [10-20]%). Those benchmark diversion ratios are calculated by dividing the Telenet subscriber market shares by one minus BASE subscriber market shares. The MNP diversion rations from Telenet to BASE ([20-30]%) are somewhat lower than the benchmark diversion ratios in the overall retail market in 2014 ([20-30]%). The latter are calculated by dividing BASE subscriber market shares by one minus the Telenet subscriber market shares.

(229) To conclude, there is a considerable amount of switching both from Telenet to BASE and from BASE to Telenet in the overall private market with roughly [20-30]% of customers switching between those two operators, indicating that there is significant amount of competitive interaction between the Parties. Moreover, while switching from Telenet to BASE ([20-30]%) is somewhat lower than the expected respective benchmark ([20-30%), switching from BASE to Telenet ([20-30]%) is substantially higher compared to the market share benchmark ([10-20]%).

(230) In light of the evidence from the market investigation, internal documents and the diversion ratios, the Commission considers that BASE and Telenet compete closely with each other in the Belgian retail mobile market.

5.1.2.3. Competitive constraints exerted by BASE and Telenet

(231) The Horizontal Merger Guidelines explain that certain firms have more of an influence on the competitive process than their market shares or similar measures would suggest, and that a merger involving such a firm may change the competitive dynamics in a significant, anti-competitive way, in particular when the market is already concentrated. For instance, a firm may be a recent entrant that is expected to exert significant competitive pressure in the future on the other firms in the market[155].

(232) On the basis of the results of the market investigation and of the review of the Parties' internal documents, the Commission considers, for the following reasons, that BASE has been an important competitive force in the retail market for mobile telecommunications services in Belgium, and that Telenet has played an important role in the same market. The proposed transaction would remove competition

[154] The diversion ratio based on market shares are calculated as follows. If there are two firms A and B and firm A has a market share of 40% while firm B has a market share of 30%, then the implied diversion ratio based on these market shares from firm A to firm B would be: 30%/(100%-40%)=30%/60%=50%.

[155] Horizontal Merger Guidelines, paragraph 37.

between those two players, which would lead to a loss of competition on the retail market for mobile telecommunications in Belgium.

(233) The Commission notes that this finding holds in particular with respect to the private residential segment of the market, where Telenet and BASE have been particularly active and aggressive players. With respect to the business segment of the market, business customers responding to the market investigation did not express significant concerns with respect to the proposed transaction[156], as they explained that Telenet and BASE are not meaningful providers of telecommunications services to businesses. Business customers noted in fact that post-transaction the merged entity would be able to offer the integrated telecommunication solutions that businesses need, and thus to compete more effectively with Proximus and Mobistar in the business segment of the market.

(234) The Commission will first assess the degree to which BASE acts as an important competitive force on the Belgian retail market for mobile telecommunications. It will then conduct an equivalent assessment with respect to Telenet. Finally, the Commission will assess whether absent the proposed transaction, Telenet would still exercise competitive pressure on the market.

BASE as an important competitive force on the retail market for mobile telecommunications services

(235) The Commission considers that BASE has been an important competitive force in the Belgian retail market for mobile telecommunications services, and that it has exerted an important competitive constraint on Telenet and other mobile operators.

(236) As set out in recitals (237) to (242), BASE is the MNO in Belgium that competes most aggressively on price as well as offering good network quality and therefore, overall, good "value for money". It was the last MNO to enter the Belgian retail market for mobile telecommunications services, in 1999 and, since its entry, it has consistently gained market share through attractive prices. […][157].

(237) Most respondents to the market investigation considered BASE as a competitor that engages in particularly aggressive price competition. Almost all respondents to the market investigation cited BASE's low prices as a particular strength of BASE, sometimes together with other strengths (e.g. network quality, its strong wholesale policy or its strong position in the Flemish Region)[158]. BASE was described by respondents as "the challenger MNO in the market" and as the MNO that "met demand from the mass market for value for money as regards mobile telecommunications services"[159].

(238) […][160].

(239) BASE's low prices […] are also reflected in the fact that BASE's market share by revenue ([10-20]%) is much lower than its market share by subscriber ([20-30]%). For the other principal mobile operators, their market share by revenue is higher than their market share by subscribers. Proximus, for instance, accounts for [30-40]% of all subscribers but those subscribers give Proximus a [40-50]% share of the market

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156 See replies to Commission questionnaire to business customers Q2 of 17 August 2015, questions 14, 20 and 21.

157 […].

158 See replies to Commission questionnaire to competitors Q1 of 17 August 2015, question 31.

159 See replies to Commission questionnaire to competitors Q1 of 17 August 2015, question 32.2.

160 […].

by revenue. Mobistar also has a higher market share by revenue ([20-30]%) than by subscribers ([20-30]%), as does Telenet, although the divergence is smaller ([5-10]% market share by revenue and [5-10]% by subscribers).

(240) BASE's role as an important competitive force is also evidenced by BASE's internal documents[…]"[161]. […][162]. […][163]. […][164]. […][165]. […][166] […][167].

(241) BASE's role as an important competitive force is also evidenced by Telenet's internal analyses. […][168] […][169][…][170] […].

(242) […][171]. […][172], […][173].

Telenet's competitive position on the retail market for mobile telecommunications services

(243) The Commission considers that Telenet has been a competitive player on the Belgian retail market, and that it has exerted a significant competitive constraint on BASE and the other MNOs active on the market, notwithstanding the fact that it is an MVNO, and not an MNO with its own mobile network.

(244) The Commission finds that Telenet has been able to operate competitively on the retail market for mobile telecommunications services, positioning itself as the most successful MVNO in Belgium, just behind the three MNOs operating on the market and distinguishing itself from other MVNOs operating in Belgium.

(245) Telenet entered the mobile market in 2006 as a light MVNO. It became a full MVNO, meaning an MVNO with its own core network, in 2012. In that year, Telenet launched its King and Kong offers. Both offers were priced at very competitive rates (King at EUR 15 and Kong at EUR 45) and allowed Telenet to gain market share rapidly. The disruptive effect and competitive constraint exercised by Telenet's mobile offers is illustrated by […][174].

(246) As a result of Telenet's competitive offers, its market share by revenue grew from [0-5]% in 2012 to [5-10]% in 2014, making it the fastest growing mobile operator, among MNOs and MVNOs on the Belgian market in that period[175].

(247) The responses to the market investigation also provided evidence of Telenet's impact on competition in the retail market for mobile telecommunications services. Several market participants indicated that Telenet's launch of King and Kong in 2012 brought prices down and increased the level of competition in the retail market for mobile telecommunications services. Respondents, when commenting on the main changes and innovations in the Belgian market for mobile telecommunications services,

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175 Form CO, Annex 6.2.1a

mentioned Telenet's launch of the King and Kong offers, with "very aggressive mobile telephony services tariffs", which led to price decreases[176]. One market participant explained that "King & Kong's tariffs drove market pricing towards such [flat rate] offers, and to lowering those rates."[177] According to another respondent, Telenet's "aggressive actions" have allowed it to obtain "a customer base and the influence of an MNO". The same respondent states that, with almost one million customers, "Telenet can drive the market and, hence, is seen by the industry and the market as an MNO just like Proximus, Mobistar & BASE Company". In this respect, the Commission notes that, because of the exceptional factors described in recitals (252) to (253), Telenet has been a particularly successful MVNO and has been much more successful than other MVNOs in Belgium, which do not exercise the same level of competitive constraint on MNOs.

(248) Market participants also mentioned other factors that contributed to increased competition in the Belgian market, such as a legislative change that allowed customers to switch operators after six months. However, almost all operators emphasised the important role played by Telenet in increasing competition and, when commenting on the main changes and innovations in the Belgian market for mobile telecommunications services, indicated Telenet's launch of the King and Kong offers, with "very aggressive mobile telephony services tariffs", which led to price decreases[178].

(249) BASE's internal documents also demonstrate the competitive constraint exerted by Telenet. […][179].[…][180].[…][181].[…][182].

(250) An analysis of the Belgian mobile market by BASE's parent company, KPN, […][183].[…][184].[…]

(251) The competitive constraint exerted by Telenet on BASE and other operators is also evidenced by the Notifying Party's own internal analyses. […][185].[…][186]

(252) The Commission considers that Telenet's success as an MVNO can be attributed to several exceptional factors, which distinguish it from most other MVNOs. Upon entering the retail market for mobile telecommunications, in 2006 as a light MVNO and in 2012 as a full MVNO, Telenet was already an established market player, particularly in the Flemish Region, where it provided retail fixed telecommunications services to customers, including TV and internet services. That facilitated Telenet's establishment as a mobile operator, as it already had a well-known brand, distribution channels and presence in the footprint of its cable network, and a significant and stable customer base, to which it could cross-sell mobile services.

176 See replies to Commission questionnaire to competitors Q1 of 17 August 2015, question 29.
177 See replies to Commission questionnaire to competitors Q1 of 17 August 2015, question 29.
178 See replies to Commission questionnaire to competitors Q1 of 17 August 2015, question 29.
179 […].
180 […].
181 […].
182 […].
183 […].
184 […].
185 […].
186 […].

That is evidenced by the fact that around […] of Telenet's mobile subscribers are located within its footprint[187].

(253) Telenet also benefited from favourable access conditions to the Mobistar network, which enabled it to operate successfully as an MVNO. In particular, in the course of the negotiations for the commercial terms of the 2012 MVNO agreement, Telenet purchased mobile spectrum. According to the Notifying Party, […][188]. The peculiar circumstances […] were also highlighted by respondents to the market investigation[189].

The competitive pressure exerted by Telenet in the future absent the proposed transaction

(254) Telenet currently has a wholesale access agreement with Mobistar, […][190].[…][191]. The Commission has carried out its competitive assessment of the impact of the proposed transaction on the retail market for mobile telecommunications services under the consideration that, absent the proposed transaction, Telenet would benefit at least until […] from the […] wholesale conditions of the agreement with Mobistar, […][192]. As a result […], Telenet would likely continue to be able to compete aggressively on the retail market for mobile telecommunications.

(255) […].

(256) The Notifying Party explains that, […].

(257) […][193].[…][194].[…].

(258) […][195].[…].

(259) […][196]. Moreover, the factors set out in recital (252), which contributed to Telenet's success as a MVNO, would still apply. Telenet would continue to benefit from its strong position in fixed services, its well-known brand, distribution channels and stable customer base. The continuous ability and incentive of Telenet to be a competitive force in the Belgian retail mobile market is also reflected by […][197],[…].

(260) Therefore, the Commission considers that, without the proposed transaction, Telenet would likely continue to be a relevant and aggressive player in the Belgian market for retail telecommunications services and exert competitive pressure on BASE and other MNOs in the market, […].

5.1.2.4. Competition post-transaction

(261) The proposed transaction would be unlikely to decrease the merged entity's ability to compete. The merged entity would have its own mobile network. Based on the current existing capacity and the planned and publicly announced network

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187 Reply to Commission request for information ("RFI") 5 of 9 September 2015 to Liberty Global ([…] of Telenet's […] mobile customers also purchase fixed services from Telenet which means they must live in the footprint of Telenet's cable network).

188 […].

189 Reply to Commission questionnaire to competitors Q1, reply to question 35: "[…]"

190 […].

191 […].

192 […].

193 […].

194 […].

195 […].

196 […].

197 […].

investments, that network would be likely to have sufficient capacity after the proposed transaction. Moreover, the proposed transaction would combine the […] BASE retail outlets and the […] Telenet retail outlets, which may also increase the merged entity's ability to compete[198].

(262) By contrast, and for the reasons set out in recitals (263) and (264), the proposed transaction would be likely to decrease the merged entity's incentive to compete. It would combine two mobile operators that have competed strongly on the mobile market in Belgium. Those two players exert a competitive constraint on each other, as demonstrated in Sections 5.1.2.2 and 5.1.2.3. The examples in Sections 5.1.2.2 and 5.1.2.3 show that BASE has adapted its prices to respond to Telenet and vice versa (see recitals (245), (250) and (251)). The proposed transaction would eliminate the competitive constraints exerted by BASE and Telenet on each other. As a result, the merged entity's incentives to compete would be likely to be lower than Telenet and BASE's pre-merger incentives to compete.

(263) Prior to the proposed transaction, Telenet and BASE were constrained by each other, as some subscribers of Telenet would switch to BASE in case of a price increase and vice versa. Sales that would have been lost to the other company following a price increase, pre-transaction, would no longer be lost following a price increase post-transaction. That would make a price increase by the merged entity profitable post-transaction, where it may not have been profitable pre-transaction. Hence, the merged entity would have an incentive to raise prices.

(264) The proposed transaction would also give other competitors an incentive to raise prices. If the merged entity were to raise prices, some customers would switch to rival mobile operators, which would not have been the case absent the proposed transaction. The customers that switch to other operators would then increase the demand faced by the other mobile operators. As a result, they would have an incentive to raise prices themselves[199]. The proposed transaction would result in Mobistar having more spare capacity – because it will lose Telenet as an MVNO – and, as a result, Mobistar may need to compete actively on the retail market so as to compensate for the resulting loss of revenue. However, if the merged entity and Proximus were to increase prices following the proposed transaction, the Commission considers it likely that Mobistar would also adapt its prices to the higher price level by increasing its prices, while remaining slightly below the price level of the other two MNOs. As a result, Mobistar would still be able to compete actively with the aim of increasing its customer base, although its customers would be worse off compared to a situation without the proposed transaction.

(265) The likely result of the proposed transaction between the Parties would therefore be that prices in the Belgian retail market for mobile telecommunications services would be higher with the proposed transaction than they would be without the proposed transaction. […][200].[…].

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198 The combination of BASE's retail outlets and Telenet's retail outlets does not raise competition concerns because, in the […] municipalities where both Telenet and BASE have a retail outlet, a Mobistar outlet and a Proximus outlet are located […] away. Hence, after the transaction, in the municipalities where both Telenet and BASE have their own retail outlets, customers will still have the choice between outlets of at least three telecoms operators. Moreover, they can also purchase services from many other electronics stores such as Vanden Borre, Media Markt, Euro Center, or Krefel.

199 Horizontal Merger Guidelines, paragraph 24.

200 […].

(266) […][201].[…][202].

(267) […][203][…][204].[…][205].[…].

(268) The Commission considers that MVNOs are unlikely to be able to prevent price increases from occurring in the Belgian retail market for mobile telecommunications services after the proposed transaction. The largest MVNO in Belgium is Telenet. Other MVNOs do not have the same favourable wholesale access conditions that Telenet had through its agreement with Mobistar, which stemmed from the particular circumstances specific to Telenet recalled in recital (253). In line with previous decisions[206], the Commission considers that MVNOs do not exert the same degree of competitive pressure on the mobile retail market as MNOs, mainly because they are dependent on the wholesale conditions of their host. MVNOs are therefore unlikely to be able to constrain the pricing of the merged entity on the retail market. Although there are many MVNOs on the Belgian retail market, they have acquired only a limited market share. All MVNOs together account for [0-5]% of the market by revenue and [5-10]% by subscribers. This indicates that those MVNOs have not been able to compete aggressively and attract a large number of new customers. The largest MVNO after Telenet is Lycamobile and it is focused on a specific niche of customers, with special rates for international calls. As this is a niche customer base, it is unlikely that Lycamobile would constrain the merged entity from raising prices.

(269) In light of the elements set out in this Section, the Commission concludes that the merged entity would have a reduced incentive to compete, given the loss of competition between BASE and Telenet. The remaining competitors would have insufficient incentive (Proximus and Mobistar) and ability (MVNOs) to compensate for the lost competition. Rather, those competitors would also raise prices in response to the decrease in competition resulting from the proposed transaction.

5.1.2.5. Buyer power

(270) According to the Horizontal Merger Guidelines, the competitive pressure on a supplier is not only exercised by competitors but can also come from its customers. Even firms with very high market shares may not be in a position, post-merger, to significantly impede effective competition, in particular by acting to an appreciable extent independently of their customers, if the latter possess countervailing buyer power. Countervailing buyer power in that context should be understood as the bargaining strength that the buyer has vis-à-vis the seller in commercial negotiations due to its size, its commercial significance to the seller and its ability[207].

(271) As explained in recitals (232) and (233), the proposed transaction would lead to a loss of competition in particular in the private segment of the retail market for mobile telecommunications services, while it would likely not raise the same anticompetitive effects in the business segment.

(272) Private customers cannot be expected to have any countervailing buyer power vis-à-vis the merged entity to offset the anti-competitive effects of the proposed

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201 […].

202 […].

203 […].

204 […].

205 […].

206 Commission decision of 2 July 2014 in Case M.7018 – *Telefónica Deutschland/E-Plus*, recitals 567 and following.

207 Horizontal Merger Guidelines, paragraph 64.

transaction. Their demand is too fragmented. They do not negotiate their mobile contracts on an individual basis and their individual subscription value is of no material commercial significance to the merged entity.

(273) The Commission therefore concludes that buyer power does not constitute a countervailing factor that would offset the likely anti-competitive effects of the proposed transaction in relation to the provision of retail mobile telecommunications services.

5.1.2.6. Barriers to entry

(274) There appear to be significant barriers to entering the Belgian retail market for mobile telecommunications services. Those barriers are such that entry by new mobile players does not appear to be likely, timely or sufficient to deter or defeat the anti-competitive effects raised by the proposed transaction[208].

(275) The Notifying Party notes that no MNO has entered the Belgian market since 1999 when BASE became the third MNO in Belgium and is not aware of any potential MNO entry in Belgium. However, the Notifying argues that the virtual operator arena is dynamic with a frequent number of entries and exits of MVNOs each year[209]. According to the Notifying Party, that is because MVNO entrants are subject to significantly fewer costs and regulatory requirements than MNO entrants. Namely, MNO entrants would be required to comply with the Belgian regulatory framework for setting up a network, construct a network (which will necessitate building sites and setting up a core network backbone), enter into roaming agreements and obtain a spectrum licence, while for MVNOs, a key consideration is the ability to locate a willing MNO to host MVNOs with sufficient capacity on its network[210].

(276) In previous decisions, the Commission concluded that entering the retail market for mobile telecommunications services as an MNO presents significant difficulties, due to the need to build a radio network and the related requirements[211].

(277) The results of the market investigation in the present case indicate that the Commission's previous conclusions with regard to the difficulties for entering the retail market for mobile telecommunications also apply with respect to entry on the Belgian market as an MNO. Respondents believe that entry is very difficult due to the significant investments and costs required for building a mobile network. Entry into the market requires spectrum availability, licences for spectrum, acquisition of costly spectrum, roll out of a network with the necessary building permits, infrastructure deployment, a distribution network, marketing and investments in sales channels. This takes a very long time and is extremely costly. Moreover, a new entrant would have to compete with established companies that have had years to build up their position and are, therefore, in a very different position to a new entrant[212].

(278) Entering the market as an MVNO is easier than entering the market as an MNO, since MVNOs do not need to build their own radio network. However, several

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208 Horizontal Merger Guidelines, paragraph 68.

209 Form CO, Sections 8.4 – 8.5, paragraphs 832 and 834.

210 Form CO, Section 8.6, paragraphs 837-839.

211 See Commission decision of 28 May 2014 in Case M.6992 - *Hutchison 3G UK/Telefónica Ireland*, recitals 262-269; Commission decision of 2 July 2014 in Case M.7018 - *Telefónica Deutschland/E-Plus*, recitals 845-848; Commission decision of 12 December 2012 in Case M.6497 - *Hutchison 3G Austria/Orange Austria*, recitals 287-292.

212 See replies to Commission questionnaire to competitors Q1 of 17 August 2015, question 41.1.

significant barriers remain that render entry difficult even as an MVNO. First, several respondents among MVNOs explained that the greatest difficulty in entering the market is the negotiation and finalisation of an MVNO agreement with a 'host' MNO, with favourable access conditions, that enables the MVNO to compete with the MNOs in the market[213]. In previous decisions, the Commission also found that obtaining a favourable wholesale agreement with an MNO is a key obstacle to entering the retail market for mobile telecommunications services as an MVNO[214]. It is unlikely that other potential entrant MVNOs could manage to obtain and replicate the favourable wholesale access conditions that Telenet achieved with Mobistar, for, among others the reasons mentioned in recital (253), which enable it to compete aggressively. Additionally, as further explained in recital (252), as an MVNO, Telenet also benefited from its activities, presence and customer base in the fixed retail telecommunications markets in Belgium, which is something other MVNOs would not have. Second, many respondents to the market investigation mentioned that barriers to entry include the required "regulatory approval, obtaining number ranges, communicating number ranges and the implementation of those ranges by existing national and international players". Other difficulties include the "implementation of solutions of legal intercept and justice obligations, adherence and connection to the MNP platform, an own core network and billing planning platforms." Fulfilling those conditions require significant financial resources, time and effort.

(279) In light of the findings in recitals (275) to (278), the Commission finds that there are significant barriers to enter the retail market for mobile telecommunications. Therefore, while it appears from the information gathered from the market investigation that in the future some mobile operators, notably MVNOs, may enter the retail market in Belgium, it is unlikely that such entry would be timely and, in any event, of sufficient scope and magnitude to remove the anticompetitive effects of the proposed transaction.

5.1.2.7. Conclusion regarding the retail market for mobile telecommunications services

(280) In light of the elements described in Section 5.1.2, the Commission concludes that the proposed transaction would lead to a significant impediment of effective competition stemming from non-coordinated anti-competitive effects on the retail market for mobile telecommunications services in Belgium.

5.1.3. Retail markets for fixed telecommunications services

(281) Telenet is active in the retail markets for TV services, fixed internet services and fixed telephony services. BASE is not active on those markets but as explained in recital (187) those retail fixed telecommunications markets are nonetheless considered in the assessment of whether BASE would be a potential entrant in those markets.

(282) The Horizontal Merger Guidelines describe a horizontal merger with a potential competitor as follows:

"Concentrations where an undertaking already active on a relevant market merges with a potential competitor in this market can have similar anti-competitive effects to

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213 See replies to Commission questionnaire to competitors Q1 of 17 August 2015, question 41.2.

214 See Commission decision of 28 May 2014 in Case M.6992 - *Hutchison 3G UK/Telefónica Ireland*, recital 272; Commission decision of 2 July 2014 in Case M.7018 - *Telefónica Deutschland/E-Plus*, recital 849.

mergers between two undertakings already active on the same relevant market and, thus, significantly impede effective competition, in particular through the creation or the strengthening of a dominant position."[215]

(283) According to the Horizontal Merger Guidelines, two conditions must be met for a merger with a potential competitor to have significant anticompetitive effects[216]. First, the potential competitor must already exert a significant constraining influence or there must be a significant likelihood that it would grow into an effective competitive force. Evidence that a potential competitor has plans to enter a market in a significant way could help the Commission to reach such a conclusion. Second, there must not be a sufficient number of other potential competitors, which could maintain sufficient competitive pressure after the merger.

(284) With regard to the first condition, the Commission finds that, at present, BASE does not exert a significant constraining influence on the retail markets for fixed telecommunications services, since it is no longer present in those markets. The Commission also finds that there is no significant likelihood that BASE would enter the retail markets for fixed telecommunications services and grow into an effective competitive force. BASE only recently decided to exit those markets in December 2014[217] and the Commission did not find evidence that BASE has plans to enter those markets in a significant way. The Commission also investigated whether BASE's decision to cease its fixed offer, marketed under the brand 'SNOW', was made based on genuine business reasons or merely to facilitate a potential sale of BASE to another operator such as Telenet. The Commission did not find evidence that the sale was made to facilitate a potential sale. […][218].

5.1.3.1. Conclusion regarding the retail market for fixed telecommunications services

(285) Since the first condition of the two cumulative conditions for a merger with a potential competitor to have significant anti-competitive effects (as set out in recital (283)) is not met, the Commission concludes that the proposed transaction is unlikely to significantly impede effective competition on the retail market for fixed telecommunications services in Belgium.

5.2. Vertical assessment

(286) In this Section, the Commission will assess whether the proposed transaction would lead to input foreclosure in any of the markets that are vertically affected by the proposed transaction[219].

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215 Horizontal Merger Guidelines, paragraph 58.

216 Horizontal Merger Guidelines, paragraph 59.

217 From February 2013 until December 2014, BASE offered TV, internet and fixed telephony services via Proximus' copper and fibre network under the brand 'SNOW'.

218 […].

219 The Non-Horizontal Merger Guidelines also identify another form of foreclosure, customer foreclosure, which occurs where the merger is likely to foreclose upstream rivals by restricting their access to a sufficient customer base (Non-Horizontal Merger Guidelines, paragraph 30). After the transaction the largest wholesale customer Telenet will integrate with BASE and as a result the other MNOs, Proximus and Mobistar, will lose an actual or potential wholesale customer. However, all MNOs in Belgium are vertically integrated and have their own downstream operations that sell mobile telecommunications services to end customers. These downstream operations are the MNOs' main outlets to sell network capacity, while Telenet represents [5-10]% of the total retail market (see Table 3). In addition to their own downstream arms, a number of MVNOs will remain after the transaction to which MNOs can sell network capacity. The respondents to the Commission's market investigation questionnaires have not raised any specific concerns regarding customer foreclosure. In light of this, and on the basis of the

(287) According to the Non-Horizontal Merger Guidelines, input foreclosure occurs when actual or potential rivals' access to supplies or markets is hampered, thereby reducing those companies' ability and/or incentive to compete. Such foreclosure may discourage entry or expansion of rivals or encourage their exit[220].

(288) In order for input foreclosure to be a concern, three conditions need to be met post-merger: (i) the merged entity needs to have the ability to foreclose its rivals; (ii) the merged entity needs to have the incentive to foreclose its rivals; and (iii) the foreclosure strategy needs to have a significant detrimental effect on competition on the downstream market (input foreclosure) or on consumers (customer foreclosure). In practice, these factors are often examined together since they are closely intertwined.

(289) First, as explained in recital (175), there is a vertical relationship between the Parties with respect to the wholesale market for access and call origination on mobile networks. That market, where BASE is active, is upstream of the retail market for mobile telecommunications services in Belgium, where both BASE and Telenet are active. Those markets are vertically affected by the proposed transaction. Section 5.2.1 assesses the risk that the proposed transaction leads to input foreclosure, with BASE's mobile network being the upstream input for MVNOs operating on the downstream retail market for mobile telecommunications services[221].

(290) Second, as explained in recital (187) the Commission will assess the risk of input foreclosure of wholesale access to Telenet's cable network, which is an input for the retail provision of fixed telecommunications services (fixed telephony, fixed internet, and TV services) and for the retail provision of bundles of fixed and mobile services. Section 5.2.2 assesses whether the proposed transaction would change Telenet's ability and incentive to grant access to its cable network.

(291) Finally, in Section 5.2.3 (and its subsections) of this Decision, the Commission will carry out the competitive assessment for the other vertically affected markets identified in recitals (182) and (185) of this Decision, that is, each of the upstream wholesale markets for leased lines, fixed transit services, and termination and hosting of calls to non-geographic numbers, with respect to the downstream retail market for mobile telecommunications services.

5.2.1. Input foreclosure of wholesale access and call origination on mobile networks

(292) MNOs sell access to their mobile networks to MVNOs which provide retail mobile telecommunications services to end customers. Such wholesale access is necessary for MVNOs to be able to compete in the retail market.

(293) In Section 5.2.1, the Commission assesses whether the proposed transaction would have any effects on the merged entity's ability to foreclose MVNOs, on its incentive to do so, and the likely impact on effective competition of a possible input foreclosure strategy.

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evidence before it, the Commission considers that the proposed transaction is unlikely to result in a significant impediment to competition on the basis of customer foreclosure with respect to any of the vertical relationships examined in this Section 5.2. As such, the potential risk for the proposed transaction to result in customer foreclosure is not discussed further in this Decision.

220 See Non-Horizontal Merger Guidelines, paragraphs 29-30.

221 As described in recital (99) there are different types of MVNOs. In the following, unless specified otherwise, "MVNOs" refers to both light MVNOs and full MVNOs.

(294) As described in recitals (26) and (176), Telenet has a marginal presence on the wholesale market for access and call origination. Based on its wholesale agreement with Mobistar, Telenet provides wholesale services to one customer, Nethys. Nethys is a cable operator whose footprint covers most of the Walloon Region and which, together with Brutélé, markets its services under the brand VOO. […]. The wholesale activities by the merged entity would be carried out on the BASE network. Telenet's wholesale agreement with Nethys is also due to expire on […][222]. That means that Nethys will not be able to buy mobile wholesale access on the Mobistar network via Telenet. If Nethys wishes to continue operating as an MVNO after […][223], it will have to buy mobile wholesale access from the merged entity or from one of the other MNOs. The Commission's analysis of the proposed transaction's effects on the merged entity's ability and incentives to foreclose, as well as likely impact on effective competition of a possible input foreclosure strategy, will also take into account Telenet's exit as a provider of wholesale mobile services on Mobistar's network.

5.2.1.1. Ability to engage in input foreclosure

(295) The Commission first notes that MNOs in Belgium do not have a regulatory duty to provide wholesale access to their mobile networks. Therefore, the merged entity would have the ability to refuse to offer wholesale access to the BASE network, or to offer such wholesale access on worse terms (subject to the terms and conditions in BASE's current wholesale agreements).

(296) For input foreclosure to be a concern, the merged entity must have a significant degree of market power, and a significant influence on the conditions of competition in the upstream market[224]. In the following the Commission assesses whether the merged entity would have such market power.

(297) Market shares in the wholesale market for access and call origination on public mobile networks can be subject to large variations, should a large wholesale customer switch its host MNO or, as in the present case, merge with an MNO. Nevertheless, market shares provide an indication of the operators' strength.

(298) All three MNOs in Belgium provide wholesale access to their mobile networks. BASE currently hosts […] MVNOs on its network, Mobistar hosts eight MVNOs, including Telenet, and Proximus hosts five MVNOs[225].

(299) The MNOs' market shares in the wholesale market, by revenue and by subscribers, before the proposed transaction are shown in Table 11.

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222 Form CO, paragraph 44.

223 […].

224 Cf. the Non-Horizontal Merger Guidelines, paragraph 35.

225 Excluding Branded resellers, Form CO, paragraph 699. The number of MVNOs excludes Branded Resellers as they are not independent from the MNOs (see recital (202) of this Decision). Mobistar's wholesale customers include Nethys, see Form CO, Exhibit 99.

Table 11: Market shares of mobile network operators on the wholesale market in Belgium pre-merger (2014)

Operator	Market share by revenue	Market share by subscribers
Proximus	[0-5]%	[0-5]%
Mobistar	[60-70]%	[70-80]%
BASE	[30-40]%	[20-30]%

Source: Form CO, paragraph 256, Exhibits 43-44.

(300) Although all three MNOs provide wholesale access, Table 11 shows that the market is characterised principally by the presence of Mobistar and BASE, which actively compete on the wholesale market for access and call origination. Proximus' market share is marginal. MVNOs responding to the market investigation explained that "Proximus has never really shown interest in hosting MVNOs (its wholesale offering is not an integral part of Proximus' strategy)" and that it is "not really open for MVNOs"[226].

(301) At present, Mobistar is the largest player on the wholesale market, both by revenue and by subscribers. To a large extent that market position results from the fact that Mobistar hosts the two largest MVNOs in Belgium, Telenet and Lycamobile.

(302) The proposed transaction would combine BASE and Telenet and after the proposed transaction Telenet's subscribers would migrate from the Mobistar network to the BASE network. As a result, Telenet will disappear as a purchaser of wholesale access, which will reduce the size of the total wholesale market. The market shares on the wholesale market are recalculated accordingly in Table 12.

Table 12: Market shares of mobile network operators on the wholesale market in Belgium post-merger (2014)

Operator	Market share by revenue	Market share by subscribers
Proximus	[0-5]%	[0-5]%
Mobistar	[30-40]%	[60-70]%
Merged entity	**[60-70]%**	**[30-40]%**

Source: Form CO, paragraph 257, Exhibits 45-46

(303) After the proposed transaction, the merged entity would be the largest host MNO by revenue on the wholesale access market, and the second-largest host MNO by subscribers. Mobistar would remain the largest host by subscribers, mainly due to Lycamobile which post-transaction would become the largest MVNO in Belgium in terms of subscribers[227].

(304) The high market shares of the merged entity, and the limited number of alternative providers of wholesale access, suggest that the merged entity would have market power and the ability to foreclose MVNOs. The Commission considers, however, that the ability of the merged entity to engage in input foreclosure would not increase as a result of the proposed transaction. Importantly, the proposed transaction would not change the number of MNOs that can provide wholesale access. Also, the increased market share of the merged entity would be a result of the departure of

226 See replies to Commission questionnaire to competitors Q1 of 17 August 2015, question 44.1.

227 Lycamobile has approximately […] customers, see Form CO, Exhibit 99. However, Lycamobile generates relatively low revenues per subscriber both at retail and wholesale levels, which explains why Mobistar's market share in terms of revenues will be lower than its market shares in terms of volume.

Telenet from the wholesale market as a buyer, not the result of an increase in wholesale revenues or wholesale subscribers of the merged entity.

5.2.1.2. Incentive to engage in input foreclosure

(305) The results of the market investigation suggest that BASE is the MNO in Belgium that has been most inclined to offer wholesale access to its network. MVNOs responding to the market investigation highlighted BASE's openness towards MVNOs, as well as its policy of allowing access to its network for MVNOs, which is confirmed by the difference in the number of MVNOs hosted by the three MNOs (see recital (298))[228]. One MVNO explained that "since 2003, wholesale has been an integral part of BASE's strategy" and that BASE "actively developed a thriving wholesale business"[229]. Another MVNO explained that "almost all MVNOs are provided by BASE", and yet another one emphasised the fact that BASE is "the only really player on the market for light MVNOs and in addition open to full MVNOs", with "extensive experience in the field and willingness to support MVNOs"[230].

(306) However, the Commission also notes that while BASE hosts the largest number of MVNOs, the most successful MVNOs in Belgium in terms of number of subscribers, Telenet and Lycamobile, are wholesale customers of Mobistar. As described in recital (268) and (323), other MVNOs (including those hosted by BASE) have a limited presence in the retail market, meaning that even if BASE is the MNO most inclined to host MVNOs, it appears that BASE has a more limited incentive to offer favourable wholesale access conditions.

(307) A majority of the MVNOs responding to the market investigation expected BASE's incentives to provide wholesale access to deteriorate after the proposed transaction[231]. Respondents said that Telenet has been unwilling to provide wholesale access to its cable network, and would have a negative influence on the merged entity's attitude to mobile wholesale access. Respondents also said that there would be less spare capacity available for MVNOs on BASE's network after the migration of Telenet's mobile customers from Mobistar's network to BASE's network[232].

(308) The Commission considers that there are three elements that could affect the incentive of the merged entity to provide mobile wholesale access: i) capacity utilisation, ii) size of the customer base, and iii) fixed-mobile bundles. Those elements are discussed in turn in recitals (309) to (315).

(309) First, following the proposed transaction, Telenet would move its subscribers to the BASE network. As a result of this move, the utilisation of the capacity of BASE's network would increase, especially in the Flemish Region and the Brussels-Capital Region, unless the merged entity carries out investments in BASE's network to accommodate the transfer of Telenet's subscribers. With less spare capacity, the merged entity may want to allocate its capacity to its own retail business and its incentive to offer wholesale access to MVNOs could be lower than BASE's current incentive to provide wholesale access.

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228 The high number of subscribers hosted by Mobistar pre-merger essentially stems from two MVNOs, Telenet and Lycamobile, and not from a large number of MVNOs that would be hosted on the Mobistar network.

229 See replies to Commission questionnaire to competitors Q1 of 17 August 2015, question 44.3.

230 See replies to Commission questionnaire to competitors Q1 of 17 August 2015, question 44.3.

231 See replies to Commission questionnaire to competitors Q1 of 17 August 2015, question 45.

232 See replies to Commission questionnaire to competitors Q1 of 17 August 2015, question 45.1.

(310) However, following the proposed transaction, the Notifying Party would invest in more capacity in order for BASE to be able to host Telenet's customer base[233], which would migrate over the next few years[234]. Based on the information provided by BASE, the MVNOs on BASE's network currently account for only a small portion of the total capacity usage ([0-5]%)[235]. Hence, the merged entity would only gain a very limited amount of extra capacity (to be used for other purposes) by foreclosing those other MVNOs.

(311) The Commission therefore considers that any changes in capacity utilisation of the merged entity's network due to the migration of Telenet's customers would only have a limited effect on the merged entity's incentive to provide wholesale access.

(312) Second, the proposed transaction would increase BASE's retail customer base by almost […] Telenet customers. With a larger customer base, the merged entity faces an increased risk of "cannibalisation" by the MVNOs it hosts. When an MVNO acquires new retail customers, some of those new customers will come from the MNO hosting the MVNO (hence "cannibalisation"). Other factors may also influence an MNO's incentives to host MVNOs but, everything else being equal, a larger customer base will lead to a higher cannibalisation risk. With a larger customer base, the merged entity would have more to lose from a new MVNO and it may therefore be less inclined to offer wholesale access to it.

(313) However, BASE's existing wholesale customers are relatively small players in the retail market and compete in other niches than Telenet[236], which means that the risk of those MVNOs cannibalising Telenet's customer base would likely be limited. BASE's incentive to give wholesale access to those players would therefore not change significantly as a result of the addition of Telenet's customer base.

(314) Third, the proposed transaction could change the merged entity's incentive to offer mobile wholesale access to operators that wish to obtain mobile wholesale access in order to offer bundles of fixed and mobile services, so called multiple play operators. Prior to the proposed transaction, BASE's incentive to foreclose multiple play operators appears to be limited as it has decided to discontinue its fixed services activities and has very few multiple play customers which it could lose to such MVNOs[237]. BASE indeed provides mobile wholesale services to Numéricable, a cable operator active in parts of the Brussels-Capital Region that offers mobile telephony services which can be added to its fixed bundles[238]. Telenet, on the other hand, is a provider of both fixed and mobile services, as described in Section 4.5.1. After the proposed transaction, because Telenet has customers buying both fixed and mobile services (see Table 2), the merged entity could have an incentive to deny access to other multiple play operators seeking access to its mobile network for the mobile component of their bundles.

(315) However, as described in recital (46), the footprint of Telenet's cable network covers the Flemish Region and parts of the Brussels-Capital Region, and it is only in that geographic area where Telenet would risk cannibalisation by offering wholesale access to a multiple play operator. Outside the footprint of Telenet's cable network,

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233 See Form CO, p. 22, Section 1.1.3 (paragraph 13) and p. 200, Section 6.5.3.4.2 (paragraph 650).
234 Form CO, paragraph 711.
235 BASE, reply to RFI 12 of 29(sent)/30(received) September 2015.
236 Form CO, Exhibit 99.
237 See recitals (16), (17) and (186) of this Decision.
238 Form CO, paragraph 739

Telenet does not risk such cannibalisation by multiple play operators. That is evident from the fact that Telenet, as described in recital (26), provides mobile wholesale access to Nethys, which offers multiple play services in the Walloon Region under the brand VOO (see Table 2). That means that the incentive of the merged entity to provide mobile wholesale access to multiple play operators outside the footprint of Telenet's cable network is unlikely to be significantly different compared to the incentives of each of the Parties.

(316) In light of the findings in this Section, the Commission considers that the proposed transaction would only have a limited effect on the merged entity's incentive to provide wholesale access to its mobile network[239].

5.2.1.3. Effects of input foreclosure

(317) Even if the merged entity were to have the ability and incentive to engage in input foreclosure, the effects of such attempts would depend on the possibility of MVNOs to source mobile wholesale access from other providers.

(318) Two alternative providers of wholesale access will remain after the proposed transaction, Proximus and Mobistar.

(319) Proximus has the ability to host MVNOs, but as described in recital (300) it has a marginal presence in the wholesale market. The results of the market investigation indicated that Proximus' ability and incentive to provide mobile wholesale access would not change as a result of the proposed transaction. No respondent expected Proximus to change its wholesale strategy, while Proximus itself stated that it "will continue to examine any relevant proposal on a case-by-case basis"[240].

(320) The move of […] mobile subscribers of Telenet from the Mobistar network to the BASE network would free up capacity on Mobistar's network. […] (see Table 3), which means that Mobistar is likely to have sufficient capacity to host new MVNOs. Several respondents to the market said they believed Mobistar would become more open to MVNOs as a result[241]. Mobistar itself said that "Mobistar shall retain incentives to host and grow MVNOs, as they did pre-transaction, in order to fill its network. In the short term, Mobistar has ample available capacity to host MVNOs on its mobile network, and in particular on its 4G network, which drives mobile traffic growth. Mobistar will be able to cope with significant further mobile traffic increases over the following years in a flexible way, thanks to the further roll-out of 4G sites and to the scalability of the 4G network (extra capacity on antenna level can easily be added by opening new frequency bands)."[242]

(321) Since Mobistar would have more spare capacity, the Commission considers that it is likely that Mobistar would have the incentive to compete actively for wholesale customers post-merger, and, on the basis of the information before it, including the

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239 It is worth noting that any potential reduction in the merged entity's incentives to grant wholesale access to its mobile network due to the increased size of its customer base is mitigated by the divestment of the JIM Mobile and Mobile Vikings customer bases (see Section 0). This means that the risk of cannibalisation does not increase as much as it would have absent the Commitments, and consequently any negative effects of the proposed transaction on BASE's incentive to provide wholesale access – which, even absent the commitments would not, on the basis of the Commission's assessment, result in a significant impediment to effective competition on the market for wholesale access and call origination on mobile networks – will be even more limited as a result of the Commitments.

240 See replies to Commission questionnaire to competitors Q1 of 17 August 2015, question 47.

241 See replies to Commission questionnaire to competitors Q1 of 17 August 2015, question 47.

242 See Orange reply to Commission questionnaire to competitors Q1 of 17 August 2015, question 47.

size of the wholesale market for access and call origination on mobile networks relative to the retail market for mobile telecommunications services in Belgium, the Commission is not aware of any factors that would constrain Mobistar from competing aggressively on the wholesale market for access and call origination on mobile networks. Having lost Telenet as a wholesale customer ([…], Table 3), Mobistar would need to compete actively to replace the lost revenue stream.

(322) Moreover, the Non-horizontal Merger Guidelines state that significant harm to effective competition from input foreclosure normally requires that the foreclosed firms play a sufficiently important role in the competitive process on the downstream market[243].

(323) Telenet has been the most successful MVNO in Belgium, with a market share of [5-10]% by revenue and [5-10]% by subscribers (see Table 3). The second largest MVNO is Lycamobile with about [0-5]% of the total number of subscribers[244]. Other MVNOs in Belgium have a much more limited presence, with a combined market share of [0-5]% in terms of revenue and [5-10]% in terms of subscribers[245]. The MVNOs hosted by BASE (excluding Mobile Vikings and JIM Mobile), have a combined market share of [0-5]% in terms of subscribers[246]. In terms of revenue, the market share of those MVNOs is [0-5]%[247]. Nethys, to which Telenet provides wholesale mobile services, has a market share of about [0-5]%[248].

(324) As for a possible increase in incentive to foreclose multiple play operators in the footprint of Telenet's cable network (see recitals (314) and (315)), such foreclosure would not prevent Proximus and Mobistar from offering fixed-mobile bundles in competition with the merged entity as they have their own mobile networks and do not require mobile wholesale access.

(325) Given their small size, and considering the result of the market investigation, the MVNOs (other than Telenet) do not seem to play a sufficiently important role in the competitive process on the downstream market within the meaning of the Non-horizontal Merger Guidelines.

(326) The Commission therefore finds that even if the merged entity would have the ability and an increased incentive to foreclose those MVNOs following the proposed transaction, this would be unlikely to lead to significant harm to effective competition from input foreclosure[249].

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243 Non-horizontal Guidelines, paragraph 48.

244 Lycamobile has […] subscribers out of a total of approximately […] subscribers in Belgium, see Form CO, Exhibit 99 and BIPT, Situatie van de elektronische communicatiesector 2014 / Situation du secteur des communications électroniques 2014 [Situation of the electronic communications sector 2014], July 2015, p. 24. As explained in footnote 227 Lycamobile's market share by revenue is lower than its market share by subscribers.

245 See Table 3 of this Decision.

246 Form CO, Exhibit 21. BASE owns 50% of Mobile Vikings and is not regarded as an independent MVNO. JIM Mobile is a branded reseller. See also footnote 132 of this Decision.

247 Form CO, Exhibit 22.

248 Nethys has approximately […] out of the total market of […] subscribers, see Form CO, Exhibit 99.

249 It is worth noting that as a result of the Commitments Medialaan will enter the retail market as a full MVNO, see also Section 0. Medialaan will also acquire Mobile Vikings and the customer base of JIM Mobile, two providers which were mentioned by respondents to the market investigation as providers that compete effectively in the retail market, and which will become independent from BASE. As such, the risk of the proposed transaction resulting in input foreclosure on the market for wholesale access and call origination on mobile networks – which, even absent the commitments would not, on the basis of the Commission's assessment, be sufficient to constitute a significant impediment to effective

5.2.1.4. Conclusion regarding input foreclosure of access and call origination on mobile networks

(327) In light of the elements described in this Section, the Commission concludes that the proposed transaction would not lead to a significant impediment of effective competition as a result of input foreclosure of wholesale access and call origination on mobile networks in Belgium.

5.2.2. Input foreclosure of wholesale access to Telenet's cable network

(328) Wholesale access to Telenet's cable network can be used as an input for the retail provision of fixed telecommunications services – such as fixed telephony, fixed internet, and TV services. Those fixed retail services can also be provided in bundles with mobile services. This Section assesses whether the proposed transaction would change Telenet's ability and incentive to foreclose those retail markets by hampering access to its cable network.

5.2.2.1. Ability to engage in input foreclosure

(329) At present, Telenet does not sell wholesale access to its cable network. However, in July 2011, the Belgian sector regulators[250] required all cable operators in Belgium to grant wholesale access to their network to allow other operators to offer TV services and, in combination with TV services, fixed internet services[251]. The cable network operators sought the annulment of that Decision, but in November 2014 and May 2015, the Brussels Court of Appeal affirmed the decisions[252]. In December 2013, the Belgian sector regulators decided on the wholesale prices for access to the cable

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competition – will be even more limited as a result of the competition in the retail market from this new MVNO.

250 Vlaamse Regulator voor de Media (VRM) for the Flemish Community; Conseil Supérieur de l'Audiovisuel (CSA) for the French Community; Medienrat der Deutschsprachigen Gemeinschaft Belgiens (Medienrat.be) for the German-speaking Community in Belgium; and BIPT for the Brussels Capital Region.

251 See the CRC's decisions of 1 July 2011: Beslissing van de Conferentie van Regulatoren voor de elektronische Communicatiesector (CRC) van 1 juli 2011 betreffende de analyse van de markt voor televisieomroep in het Nederlandse taalgebied [*Decision of the Conference of Regulators for the electronic Communications sector (CRC) of 1 July 2011 concerning the analysis of the market for television broadcast in the Dutch-speaking region*]; Décision de la Conférence des Régulateurs du secteur des Communications électroniques (CRC) du 1 juillet 2011 concernent l'analyse du marché de la radiodiffusion télévisuelle sur le territoire de la région de langue française [*Decision of the Conference of Regulators for the electronic Communications sector (CRC) of 1 July 2011 concerning the analysis of the market for television broadcast in the French-speaking region*]; Beslissing van de Conferentie van Regulatoren voor de elektronische Communicatiesector (CRC) van 1 juli 2011 betreffende de analyse van de markt voor televisieomroep in het tweetalig gebied Brussel-Hoofdstad / Décision de la Conférence des Régulateurs du secteur des Communications électroniques (CRC) du 1 juillet 2011 concernent l'analyse du marché de la radiodiffusion télévisuelle sur le territoire de la région bilingue de Bruxelles-Capitale [*Decision of the Conference of Regulators for the electronic Communications sector (CRC) of 1 July 2011 concerning the analysis of the market for television broadcast in the bilingual region Brussels-Capital*]; Entscheidung der Konferenz der Regulierungsbehörden für den bereich der elektronischen Kommunikation (KRK) vom 1. Juli 2011 betreffend die analyse des Fernsehmarktes im deutschen Sprachgebiet [*Decision of the Conference of Regulators for the electronic Communications sector (CRC) of 1 July 2011 concerning the analysis of the market for television broadcast in the German-speaking region*].

252 Judgments of the Court of Appeal of Brussels of 12 November 2014 (case nos. 2011/AR/2289, 2011/AR/2290, 2011/AR/2291, 2011/AR/2415 and 2011/AR/2418) and of 13 May 2015 (case nos. 2011/AR/2261 & 2011/AR/2263 & 2011/AR/2264 & 2011/AR/2265 & 2011/AR/2266 & 2011/AR2375 & 2011/AR/2377 & 2011/AR/2423 & 2011/AR/2424).

networks in Belgium[253]. In 2015, the Belgian sector regulators decided to revise the fees for wholesale access to the Telenet, Nethys and Brutélé cable networks[254]. The revised fees would reduce the wholesale fees to be paid by operators relying on wholesale access significantly. The decision still needs to be reviewed by the Commission under the procedure laid down in Article 7 of Directive 2002/21/EC[255].

(330) Given that the Belgian regulators have imposed wholesale access obligations on the cable network operators, including regulation of prices, the Commission considers that there is very little scope for Telenet to engage in input foreclosure of access to its cable network as regards TV services (with or without fixed internet services). On the basis of the information obtained by the Commission during its investigation, the proposed transaction would not have any effect on Telenet's obligation to grant access to its cable network. This finding applies regardless of the exact geographic scope of the wholesale markets for access to TV and internet services (that is, national, regional, or limited to the cable network of the operator), given that the regulation is national.

(331) There is also another way in which wholesale access to Telenet's cable network could be provided, namely a wholesale access service that does not include the TV component. Such wholesale access would only include the fixed internet component. Telenet does currently not provide wholesale access for fixed internet only, and Telenet does not have any regulatory obligation to do so[256]. Therefore Telenet has the ability to refuse that type of wholesale access. This would not change as a result of the proposed transaction.

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253 See the CRC's decisions of 11 December 2013: Beslissing van de Conferentie van Regulatoren voor de elektronische Communicatiesector (CRC) van 11 december 2013 betreffende de wholesaletarieven voor de diensten voor toegang tot de kabelnetwerken in het Nederlandse taalgebied [*Decision of the Conference of Regulators for the electronic Communications sector (CRC) of 11 December 2013 concerning the wholesale tariffs for the services of access to cable networks in the Dutch-speaking region*]; Décision de la Conférence des Régulateurs du secteur des Communications électroniques (CRC) du 11 décembre 2013 concernant la determination des tariffs de gros pour les services d'accès aux réseaux câblés sur le territoire de la Région de langue française [*Decision of the Conference of Regulators for the electronic Communications sector (CRC) of 11 December 2013 concerning the wholesale tariffs for the services of access to cable networks in the French-speaking region*]; Besluit van de Conferentie van Regulatoren voor de elektronische Communicatiesector (CRC) van 11 december 2013 betreffende de wholesaletarieven voor de diensten voor toegang tot de kabelnetwerken in het tweetalig gebied Brussel-Hoofdstad / Décision de la Conférence des Régulateurs du secteur des Communications électroniques (CRC) du 11 décembre 2013 concernant la determination des tariffs de gros pour les services d'accès aux réseaux câblés sur le territoire de la région bilingue de Bruxelles-Capitale [*Decision of the Conference of Regulators for the electronic Communications sector (CRC) of 11 December 2013 concerning the wholesale tariffs for the services of access to cable networks in the bilingual region Brussels-Capital*]; Entscheidung der Konferenz der Regulierungsbehörden für den bereich der elektronischen Kommunikation (KRK) vom 11. Dezember 2013 über die Groβhandelpreise für die Zugangsdienste zu den Kabelnetzen auf dem deutschen Sprachgebiet [*Decision of the Conference of Regulators for the electronic Communications sector (CRC) of 11 December 2013 concerning the wholesale tariffs for the services of access to cable networks in the German-speaking region*].

254 BIPT, Press Release, The regulators of electronic communications networks approve revised tariffs for cable access, 9 December 2015.

255 Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communication networks and services (OJ L 108, 24.4.2002, p. 33)

256 According to the BIPT, such a wholesale access obligation has not been imposed on cable network operators in part due to technical limitations. See submission from BIPT of 2 October 2015, "The Belgian Telecommunications Market and the Impact of the Merger between Telenet and BASE" paragraph 51, Doc ID 707.

5.2.2.2. Incentive to engage in input foreclosure

(332) One respondent to the market investigation expressed concerns that the proposed transaction would reduce the incentives of the merged entity to offer access to its cable network at conditions that would allow alternative providers to compete with retail fixed services in Telenet's coverage area[257]. The reduced incentive would follow from the fact that when Telenet has its own mobile network, Telenet would no longer have an interest in buying mobile wholesale access from an MNO. This would in turn eliminate one potential motivation for granting wholesale access to its cable network to the MNO from which Telenet would seek mobile wholesale access[258].

(333) However, already before the proposed transaction, Telenet does not give access to its cable network, indicating that Telenet already has no incentives to do so. If Telenet has no incentive to offer wholesale access before the proposed transaction, continuation of Telenet's refusal to grant access to its cable network post-transaction would not be a specific consequence of the proposed transaction.

5.2.2.3. Conclusion

(334) The Commission considers that in view of the regulatory regime in place in Belgium Telenet does not have the ability to foreclose access to its cable network for the purpose of providing TV services or fixed internet services in combination with TV services and that situation would not change with the proposed transaction. With respect to stand-alone internet services, Telenet does have the ability and the incentive to foreclose access to its cable network. However, that situation already exists pre-transaction and would not be affected by the proposed transaction. As such, the Commission concludes that the proposed transaction would not lead to a significant impediment of effective competition as a result of input foreclosure of wholesale access to Telenet's cable network.

5.2.3. Other vertically affected markets

5.2.3.1. Wholesale market for leased lines

(335) As mentioned in recital (182), Telenet is active on the wholesale market for leased lines, whereas BASE is not. BASE, however, is a customer of leased lines in relation to its activities on the downstream retail market for mobile telecommunications services. The wholesale market for leased lines and the retail market for mobile telecommunications services are vertically affected by the proposed transaction, given that the Parties' combined share on the latter market is above 30% in terms of subscribers.

(336) The Commission has assessed whether, following the proposed transaction, Telenet would have the ability and incentive to foreclose downstream mobile operators by not providing wholesale access to its leased lines. The Commission finds that the proposed transaction would not significantly impede effective competition with respect to the wholesale market for leased lines for the following reasons.

(337) First, Telenet has a limited presence with respect to the wholesale market for leased lines, which does not confer upon it market power. The Notifying Party has indicated that Telenet's share would amount to [10-20]% of the wholesale market for leased lines[259]. That information indicates that Telenet does not have a significant degree of

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[257] Additional information submitted by a third party, paragraph 3.27, Doc ID 703.
[258] Additional information submitted by a third party, paragraph 3.28, Doc ID 703.
[259] Form CO, paragraph 424.

market power to enable it to foreclose downstream retail providers of mobile telecommunications services[260]. In this respect, in its investigation into the market for leased lines, the BIPT found that the largest player on the market was Proximus, with a share of approximately 50%, and that Proximus enjoys significant market power on that market. On that basis, the BIPT imposed regulatory obligations on Proximus with respect to the terminating segments of leased lines[261].

(338) Second, post-transaction several other wholesale suppliers of leased lines will remain active on the market, including Proximus, the market leader (which is subject to ex ante regulation), and other operators, including Mobistar, BT, Telefonica, Colt and Easynet.

(339) Finally, the market investigation did not indicate that the proposed transaction would be likely to raise concerns with respect to the wholesale provision of leased lines.

(340) In light of recitals (335) to (339), and on the basis of the evidence before it, the Commission concludes that the proposed transaction would not lead to a significant impediment of effective competition with respect to the wholesale market for leased lines.

5.2.3.2. Wholesale market for domestic call transit services

(341) As mentioned in recital (183), Telenet is active on the wholesale market for domestic call transit services, whereas BASE is not. BASE, however, is a customer of call transit services, as it purchases wholesale transit services in relation to its activities on the retail market for mobile telecommunications services. Those markets are vertically affected by the proposed transaction, in light of the Parties' market share on the retail market for mobile telecommunications services, which is [30-40]% in terms of subscribers.

(342) The Commission has assessed whether, following the proposed transaction, Telenet would have the ability and incentive to foreclose downstream mobile operators from its domestic call transit services. The Commission finds that the proposed transaction would not significantly impede effective competition with respect to the wholesale market for domestic call transit services for the following reasons.

(343) First, according to the information provided by the Notifying Party, Telenet's position on the market for domestic call transit services is minor, compared to that of other operators, such as Proximus and Mobistar. In its decision of 15 March 2011, the BIPT found that the largest provider of domestic call transit services was Proximus, with a market share of 56% in volume and 65% in revenue[262]. The second largest provider was Mobistar. Together, Proximus and Mobistar accounted for 90% of the market[263], whereas the remaining market shares were split among various operators, including Telenet.

(344) The Notifying Party considers that Proximus is still today the largest operator on the market, with a significant market share, followed by Mobistar, and that Telenet's position remains minimal. An indication in that sense is provided by the revenues

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260 Non-Horizontal Merger Guidelines, paragraph 35.

261 BIPT Decision of 8 August 2013 designating Proximus as an operator with SMP on the wholesale market for leased lines, paragraph 4.105 and conclusion C24.

262 BIPT Decision of 15 March 2011, paragraphs 141 and 145.

263 BIPT Decision of 15 March 2011, paragraph 147. In 2011, the BIPT noted that Mobistar had acquired from KPN its B2B and carrier business activities, which made it the larger alternative operator to Proximus (BIPT decision of 15 March 2011, paragraph 145).

generated by the main providers of domestic call transit services in 2014. In 2014, Proximus generated revenues for domestic call transit services from BASE and Telenet alone of EUR […]. Proximus also generated revenues from operators other than Telenet and BASE, such as VOO and Mobistar, hence its total revenues exceed EUR […]. Conversely, Telenet had total revenues for domestic call transit services of EUR […]. That suggests that Telenet has a market share […] smaller than that of Proximus. Additionally, Telenet's revenues generated from Proximus and Mobistar for domestic call transit service amounted to EUR […] and EUR […] respectively, whereas its payments to Proximus and Mobistar for the same services amounted to EUR […] and EUR […] respectively. That information indicates that Telenet is a small provider for domestic call transit services compared to Proximus and Mobistar, and in any case does not have a significant degree of market power to enable it to foreclose downstream retail providers of mobile telecommunications services[264].

(345) Second, after the proposed transaction, retail providers requesting domestic call transit services will have sufficient alternative providers to choose from, including the market leaders Proximus and Mobistar. The market was considered to be sufficiently competitive by the BIPT in its 2011 decision, and for that reason the BIPT decided that the market need not be regulated[265].

(346) Third, the market investigation did not indicate that the proposed transaction would be likely to raise concerns with respect to the provision of domestic call transit services.

(347) Finally, as also noted by the BIPT in its 2011 decision, the market for domestic call transit services is a shrinking market, which may likely even disappear in the mid-term due to the advent of new technologies, such as IP transmission and direct interconnection. Therefore, customers will have access to alternative solutions that can replace domestic call transit services.

(348) In light of recitals (341) to (347), and on the basis of the evidence before it, the Commission concludes that the proposed transaction would not lead to a significant impediment of effective competition with respect to the wholesale market for domestic call transit services.

5.2.3.3. Wholesale market for termination and hosting of calls to non-geographic numbers

(349) Telenet is active on the wholesale market for termination and hosting of calls to non-geographic numbers, whereas BASE is not. Given that the market for termination and hosting of calls to non-geographic numbers is upstream to the retail market for mobile telecommunications services, on which the Parties have a combined market share of [30-40]% by subscribers, those markets are vertically affected by the proposed transaction.

(350) The Commission has assessed whether, following the proposed transaction, Telenet would have the ability and incentive to foreclose downstream mobile operators from its services for termination and hosting of calls to non-geographic numbers. The Commission finds that the proposed transaction would not significantly impede effective competition with respect to the wholesale market for termination and hosting of calls to non-geographic numbers for the following reasons.

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[264] Non-Horizontal Merger Guidelines, paragraph 35.

[265] BIPT Decision of 15 March 2011, paragraphs 155-157 and 168-169.

(351) First, according to the information provided by the Notifying Party, Telenet's position on the wholesale market for termination and hosting of calls to non-geographic numbers is limited. In 2014, Telenet generated total revenues from the market of EUR […], which were […] less than the revenues that Proximus generated from Telenet alone (EUR […]). Therefore, the Notifying Party explains that it would have a market share on the wholesale market for termination and hosting of calls to non-geographic numbers of [5-10]%, Proximus remaining by far the market leader. Therefore, post-transaction Telenet would remain a small player and would not have a significant degree of market power on the wholesale market for termination and hosting of calls to non-geographic numbers, which could enable it to foreclose downstream retail providers of mobile telecommunications services[266].

(352) Second, there are several other providers of wholesale access for termination and hosting of calls to non-geographic numbers, including Proximus, BT, 3 Stars, Colt, Verizon and Mobistar. Therefore, even if the merged entity were to foreclose retail mobile operators from non-geographic numbers services, mobile operators could purchase those services from other providers. A foreclosure strategy would not be viable as customers will simply turn to another service provider to ensure full availability. Moreover, Proximus' strong position in the market would presumably render it impossible for the merged entity to engage in any such foreclosure strategy.

(353) Finally, respondents to the market investigation did not indicate that the proposed transaction would raise concerns with respect to the provision of domestic call transit services.

(354) In light of recitals (349) to (353), the Commission concludes that the proposed transaction would not lead to a significant impediment of effective competition with respect to the wholesale market for termination and hosting of calls to non-geographic numbers.

5.3. Conglomerate assessment

(355) The Commission assessed whether the proposed transaction would lead to conglomerate effects. In the majority of circumstances, conglomerate mergers do not lead to any competition problems but in certain specific cases there may be harm to competition[267]. The main concern in the context of conglomerate effects is that of foreclosure[268]. Conglomerate mergers may allow the merged entity to combine products in related markets and this may confer on the merged entity the ability and incentive to leverage a strong market position from one market to another by means of tying or bundling, or other exclusionary practices[269].

(356) According to the Notifying Party, the proposed transaction would not lead to conglomerate effects. It argues that Telenet is already in a position to sell both fixed and mobile services and that the proposed transaction would not create or increase its incentive or ability to offer products combining fixed and mobile products (be it via bundling or via undiscounted joint purchasing). It argues that although it currently does not offer bundle discounts, it may start doing so, even without the proposed transaction, should consumers' preferences for bundled products increase.

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266 Non-Horizontal Merger Guidelines, paragraph 35.
267 Non-horizontal Merger Guidelines, paragraph 92.
268 Non-horizontal Merger Guidelines, paragraph 93.
269 Non-horizontal Merger Guidelines, paragraph 93.

(357) The Notifying Party also argues that should the merged entity offer such bundles, the effect of those offers would be pro-competitive, leading to lower prices and a wider menu of options for consumers. In that respect, the Notifying Party argues that, precisely because the effects would be pro-competitive, single-product operators would be negatively affected as competition increases and their market share would be under pressure. However, according to the Notifying Party, this is insufficient to generate anti-competitive foreclosure effects leading to price increases in the market. If anything, such a move by the merged entity would force mobile-only operators to lower their prices, which would benefit consumers. According to the Notifying Party it is implausible that mobile-only operators would have to exit the market or lose the ability to compete effectively.

(358) The Notifying Party also contests that it has a dominant position on any of the retail fixed services markets and argues that, in any event, any significant market power concerns are removed by the wholesale cable access regime imposed by the Belgian regulators. Finally, it points out that, as a result of the proposed transaction, Telenet would no longer have to pay wholesale fees to Mobistar and some of its variable costs would be replaced by fixed costs which are, in principle and according to paragraph 80 of the Horizontal Merger Guidelines, more likely to result in lower prices for consumers.

(359) Competitors of BASE and Telenet responding to the market investigation raised various conglomerate concerns. One respondent argued that the proposed transaction would lead to leverage effects, both from the mobile services market to the fixed services market and from the fixed services market to the mobile services market, particularly through "convergent offerings", that is offers comprising both fixed and mobile services. The leverage effects from the mobile to the fixed market would result from the merged entity's ability to cross-sell fixed services to BASE's current mobile customers and its increased ability to sell convergent offerings. Telenet's strengthened position in the fixed markets would in turn raise hurdles for mobile (only) players to develop in the fixed services market and offer fixed-mobile bundles. Telenet's increased ability to sell both fixed and mobile services would also allow it to leverage its position in fixed services to the mobile services market. More specifically, the proposed transaction would allow the merged entity to convert BASE customers into fixed-mobile customers. The merged entity would do so by using the high profits Telenet obtains in the fixed market (TV fixed internet) to cross-subsidise its mobile offers. Several respondents to the market investigation considered that such a bundling strategy pursued by the merged entity as a result of the proposed transaction would "lock in" consumers, because consumers that purchase bundles switch less easily to other operators. They explained that "given the trend towards the purchase of all services together in a bundle, this minimizes the likelihood that customers might return to a stand-alone mobile service and unbundle their service"[270]. As a result, the market for mobile services which is addressable for mobile-only players would shrink significantly.

(360) A competitor responding to the market investigation also raised concerns based on the fact that Telenet's extensive community WIFI network would allow the merged entity to offload mobile traffic on Telenet's fixed network, thereby saving costs. Operators without a strong fixed presence would be unable to replicate such an

[270] Replies to the Commission questionnaire to competitors Q1 of 17 August 2015, question 63.1.

advantage, as the extent of a community WIFI network depends on the number of customers who activate the WIFI signal on their modem.

(361) Another competitor responding to the market investigation raised concerns that the proposed transaction would strengthen Telenet's dominant position, closely linked to its infrastructure, as it would have a combined fixed-mobile network that cannot be duplicated by other players in the market. The merged entity would be able to combine the strength of its fixed cable network (which has a higher penetration in its footprint than any other operator) with the newly acquired mobile network. According to that respondent to the market investigation, the proposed transaction would allow the merged entity to offer convergent fixed-mobile bundles to its fixed customers in such a way as to leverage its dominant position on the market for the provision of TV services.

(362) In assessing whether the proposed transaction could lead to conglomerate effects, the Commission must assess the changes brought about by the proposed transaction. In this respect, the Commission notes two factual elements that already exist before the proposed transaction.

(363) First, Telenet already offers all four components of quadruple play packages, namely TV, fixed internet, fixed telephony and mobile services (data and voice). The proposed transaction therefore would not lead to a situation in which the merged entity can bundle products which Telenet could not already bundle prior to the proposed transaction. Already today, Telenet can and does sell fixed and mobile services to its customers. The Commission has not found any evidence that the fact that, after the proposed transaction, the merged entity would be able to offer mobile services via its own mobile network, as opposed to via the network of another operator, would change the merged entity's ability to engage in anti-competitive foreclosure through bundling. Telenet's current MVNO agreement […][271].

(364) According to some of BASE's and Telenet's competitors, the fact that Telenet will become an MNO will make it easier for Telenet to offer fixed-mobile packages because it will be easier for Telenet to offer seamless connectivity between fixed and mobile services. As mentioned in recital (360), some competitors also allege that the proposed transaction would give Telenet a cost or quality advantage. That advantage may, in turn, increase Telenet's ability to sell bundles. The Commission does not share those concerns. First, the competitors raising those concerns did not explain why Telenet could not offer seamless connectivity and offload traffic to its WIFI network already today. Second, to the extent that the proposed transaction does allow the merged entity to offer better connectivity, a better product or save costs, for instance by offloading mobile traffic via WIFI, the Commission does not consider that this would lead to anti-competitive effects. If an MNO with a fixed network can offer better products or be more cost effective than an MVNO with a fixed network, this would mean that the proposed transaction would allow the merged entity to offer better or cheaper products and there would be no harm to consumers. In such a perspective, the proposed transaction would also increase competition since, at present, Proximus is the only MNO with a fixed network. The proposed transaction would create a second MNO with a fixed network and therefore would increase competition with Proximus as regards fixed-mobile bundles.

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[271] See, among others, […].

(365) Second, since BASE is not active in any of the fixed markets, the proposed transaction as such does not change Telenet's position in any of the fixed markets – that is the market for TV, fixed telephony or fixed internet. As shown in Table 13, Telenet has a high market share in some of those markets but the proposed transaction does not change that position. Hence, to the extent that Telenet could leverage its strong position in the fixed markets to gain market power in the retail mobile market, it could do so already today. Likewise, to the extent that Telenet could cross-subsidise its mobile offer by profits derived from the fixed market, it could do so already today.

Table 13: Telenet's market shares in the markets for fixed services in 2014

	TV services[272]	Fixed internet	Fixed telephony
Market share by subscribers in Belgium	[30-40]%	[30-40]%	[20-30]%
Market share by revenue in Belgium	[40-50]%		
Market share by subscribers in Telenet footprint	[60-70]%	[60-70]%	
Market share by revenue in Telenet footprint	[70-80]%		

Source: Form CO, Annex 6.2.1a

(366) The proposed transaction does, however, result in some changes and in Sections 5.3.1 to 5.3.2, the Commission assesses whether those changes would facilitate bundling and could lead to foreclosure of competitors. The first change is that the merged entity would have a larger mobile customer base, combining BASE mobile customers and Telenet mobile customers. Some BASE mobile customers will not have Telenet fixed services yet. It may be easier for the merged entity to offer bundled services to those customers because, as a result of the proposed transaction, the merged entity will have a commercial relationship with those customers. This will particularly be the case for post-paid customers, who regularly receive invoices from BASE and to whom the merged entity could try to sell a fixed-mobile bundle.

(367) The second change is that, after the proposed transaction, BASE mobile customers that already purchase fixed services from Telenet will now have the possibility to purchase fixed and mobile services from one and the same entity, namely the merged entity. The merged entity may contact those customers and propose that their mobile and fixed services are integrated in a single invoice. It may also offer a discount to

272 Market share data have been calculated by the Notifying Party on the basis of a product market that includes TV services provided via cable, IPTV, satellite and DTT (digital terrestrial television). If satellite and DTT were excluded, the market shares would be higher but not significantly so since the market share of these technologies is low. In Telenet's footprint DTT has a market share of [0-5]%, free satellite has a market share of [5-10]% and paid satellite has a market share of [5-10]%.

these customers, which would result in those customers purchasing a fixed-mobile bundle from the merged entity.

5.3.1. *Foreclosure by selling fixed-mobile bundles to BASE's mobile subscribers who do not yet purchase fixed services from Telenet*

5.3.1.1. Ability to foreclose

(368) As set out in recital (363), Telenet already offers all four components of quadruple play bundles, namely TV, fixed internet, fixed telephony and mobile services (data and voice). It currently offers its mobile services as an MVNO. After the proposed transaction, the merged entity would have the ability to offer those services as an MNO.

(369) However, while the proposed transaction may make it easier for the merged entity to sell fixed-mobile bundles because it would give the merged entity better access to the BASE subscribers, as set out in recitals (370) to (374), that increase in ability to sell fixed-mobile bundles is limited in several ways.

(370) *First limitation.* A significant number of all BASE subscribers ([…]) live outside of the footprint of Telenet's cable network. More specifically, of […] BASE subscribers, […] live outside of the Telenet footprint[273]. It is unlikely that the merged entity would offer fixed-mobile bundles to those subscribers. […] [274].

(371) *Second limitation.* A significant number of all BASE subscribers in the footprint of Telenet's cable network already purchase fixed services from Telenet. Telenet's market share in the retail TV services market by subscribers is [60-70]% and in the fixed internet access market it is [60-70]% by subscribers. A similar proportion of BASE mobile subscribers purchase fixed services from Telenet, as evidenced by […][275], […] [276]. Since those subscribers already purchase fixed services from Telenet, the proposed transaction would not alter the merged entity's ability to cross-sell fixed services to those subscribers.

(372) *Third limitation.* Of the BASE subscribers that live in the footprint of Telenet's cable network, most ([…]) are pre-paid subscribers. More specifically, of the […] BASE subscribers living in the Telenet footprint, […] are pre-paid subscribers and only […] are post-paid subscribers[277]. Although the proposed transaction may give the merged entity better access to some of those pre-paid subscribers, the possibilities of selling fixed-mobile bundles to pre-paid subscribers are more limited than to post-paid subscribers. This is because pre-paid subscribers do not receive regular invoices but purchase credit in shops or on the internet when they need it. By contrast, fixed services are post-paid services, that is to say that they are billed on a monthly basis.

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273 BASE, reply to RFI 6 of 9 September 2015 (corrected version sent on 28 September 2015). BASE, including branded resellers, has […] mobile subscribers, of which […] live in the footprint of Telenet's cable network and […] live outside of the footprint of Telenet's cable network. […] subscribers are labelled as “anonymous”, meaning no postal code information is available. The number of mobile subscribers for which postal code information is available is therefore […]. The reply to RFI 6 notes that the address information of pre-paid customers may be unreliable.

274 […].

275 Except some of the territory of the municipalities of Voeren, Wemmel and Drogenbos.

276 BASE, Reply to RFI 6 of 9 September 2015, Annex VI.2, Response to Question 1(g). Telenet's cable network covers the entire Flemish Region except for some of the territory of the municipalities of Voeren, Wemmel and Drogenbos.

277 BASE, reply to RFI 6 of 9 September 2015 (corrected version sent on 28 September 2015). The total number of BASE subscribers in the Telenet cable footprint is […] and of those, […] subscribers are post-paid subscribers, meaning […] subscribers are pre-paid subscribers.

Fixed services can therefore more easily be bundled with post-paid mobile services, as those are also invoiced on a regular basis. To offer fixed-mobile bundles to pre-paid subscribers, the merged entity would first have to convert those subscribers to post-paid subscribers, which is an additional hurdle.

(373) One respondent pointed out that there is a general trend of subscribers migrating from pre-paid to post-paid services and alleges that that trend would assist the merged entity in converting pre-paid customers into post-paid customers, which in turn would make it easier for the merged entity to convert those customers to subscribers of fixed-mobile bundles. The Commission notes that the gradual shift from pre-paid services to post-paid subscriptions, which is occurring irrespective of the proposed transaction, will present an opportunity for all MNOs in Belgium to obtain new post-paid subscribers, not just the merged entity. Moreover, competitors of the merged entity such as Proximus and Mobistar also have a pre-paid customer base. Hence, based on the above, if it is true that it is becoming easier for the merged entity to convert some of the […] BASE pre-paid subscribers in its footprint into post-paid customers and, in turn, sell fixed-mobile bundles to them, then it would equally be true that Proximus could more easily convert its […] pre-paid subscribers and Mobistar its […] pre-paid subscribers into post-paid subscribers. As explained in recitals (393) and (394), Proximus and Mobistar could then also offer fixed-mobile bundles to these subscribers.[278]

(374) *Fourth limitation.* Although the proposed transaction may make it easier for the merged entity to sell fixed services to some BASE mobile subscribers, other challenges will remain for the merged entity to cross-sell fixed-mobile bundles to these subscribers. Since those subscribers do not purchase fixed services from Telenet, they either purchase fixed services from another provider or currently do not purchase fixed services at all. Although changing mobile provider is relatively easy in Belgium, changing fixed provider is more difficult, as it often entails installation costs and the intervention of a technician[279].

(375) Moreover, the finding that the merged entity would have a better ability to offer bundles to a certain group of customers, namely BASE customers, and particularly post-paid BASE customers, in the Telenet footprint, is not equivalent to a finding that the merged entity would have an increased ability to foreclose competitors. The Commission considers that, after the proposed transaction, the ability of the merged entity to foreclose competitors through bundling is not greater than Telenet's current ability to foreclose competitors through bundling because of two reasons.

(376) First, the key element giving an undertaking the ability to foreclose competitors is a significant degree of market power. The proposed transaction does not change Telenet's market power in the fixed markets, as BASE is not active in those markets. The proposed transaction does increase Telenet's market power in the retail market for mobile telecommunications services in Belgium, as it will combine the customers bases of Telenet and BASE, but Telenet will not hold a dominant position in that market, even after the proposed transaction. With a market share of [20-30]% by

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278 A respondent to the market investigation also pointed out that new legislation in Belgium will require identification of pre-paid subscribers from May 2016 onwards and alleges that this will also make it easier for operators to contact pre-paid subscribers and convert them to post-paid subscribers. The Commission considers that, to the extent that this legislative change will make it easier for the merged entity to contact its pre-paid customers, this will also make it easier for Proximus and Mobistar to convert their pre-paid customers into post-paid customers.

279 See, e.g., reply to Commission questionnaire to competitors Q1 of 17 August 2015, question 23.2.

revenue and [30-40]% by subscribers, it is doubtful that the merged entity would have sufficient market power in the mobile services market to foreclose competitors through bundling.

(377) Second, as explained in the Non-Horizontal Merger Guidelines, it is important to take account of whether there are effective and timely counter-strategies that competitors can deploy in response to bundling. In that case, rivals may counter a bundling strategy by offering bundles themselves or by pricing more aggressively. As explained more in detail in recitals (393) and (394) in Section 5.3.1.3, the Commission considers that the merged entity's main competitors, Proximus and Mobistar, would likely respond to a potential bundling strategy by the merged entity by offering bundles themselves or by pricing more aggressively to maintain market share. This would mitigate the effect of any foreclosure attempt by the merged entity.

(378) For the reasons set out in recitals (368) to (377), the Commission considers that it is unlikely that the proposed transaction would give the merged entity the ability to engage in foreclosure through bundling.

5.3.1.2. Incentive to foreclose

(379) The merged entity is likely to have an incentive to engage in bundling of fixed and mobile services. Telenet already cross-sells mobile services to its fixed customers. Telenet acquired most of its mobile customers by selling mobile services to customers who already purchased fixed services from Telenet. Although, at present, Telenet does not, with one limited exception, offer bundles in the sense of the non-Horizontal Merger Guidelines, the merged entity may well offer such bundles after the proposed transaction. One of the reasons for doing so would be to increase customer retention, since customers that purchase several services from the same operator appear to churn less. Telenet itself acknowledges that effect. In a presentation to investors in 2014, Telenet stated that: "a triple-play customer is churning 7.5 times less than a single-play customer and for quad play, customer churn is even below 1% on an annualised level"[280].

(380) The finding that the merged entity would have an incentive to engage in bundling of fixed and mobile services is not, however, equivalent to a finding that the merged entity would have the incentive to foreclose competitors. In order to foreclose competitors, it would not be sufficient for the merged entity to offer bundles but it would have to offer bundles aggressively enough that this would significantly weaken the competitive constraint exerted by rivals or even lead rivals to exit the market. Whether the merged entity would have such an incentive depends on the degree to which such a strategy would be profitable. The merged entity faces a trade-off between the possible costs associated with bundling its products and the possible gains from expanding market shares in the markets concerned or, as the case may be, being able to raise prices in those markets due to its market power.

(381) To foreclose competitors in the retail mobile market or any of the fixed retail markets in which Telenet is present by selling fixed-mobile bundles, it is likely that the merged entity would have to sell the mobile component in its bundles at a discount. If it offers no discount, customers may switch to another operator for their mobile services if that operator offers a significantly cheaper mobile service. Although customers value the convenience of purchasing fixed and mobile services from the same operator and being invoiced through a single bill, the main reason why Belgian

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[280] Telenet, Edited transcript TNET.BR – Q1 2014 Telenet Group Holding NV Earnings Conference Call

consumers choose bundles is the price advantage resulting from it[281]. Without offering a price advantage, a foreclosure strategy would therefore be unlikely to succeed. Granting a price advantage would come at a cost for the merged entity, at least in the short to medium term. If the bundling strategy ultimately would significantly weaken the competitive constraint exerted by rivals or even lead rivals to exit the market, this could make the strategy profitable, as the merged entity could then raise prices in the long term. The cost in the short and medium term would then be a sacrifice for higher profits in the long term. However, as explained in recital (388) in Section 5.3.1.3, the Commission does not consider it likely that a bundling strategy by the merged entity would lead to the exit of rivals from the market or the weakening of their competitive constraints. The long-term gains of a bundling strategy therefore appear speculative. Given the uncertainty of those long-term gains, it is likewise uncertain whether the merged entity would have an incentive to engage in foreclosure.

(382) For the reasons set out in recitals (379) to (381), the Commission considers that it is uncertain that the merged entity would have the incentive to engage in a foreclosure strategy.

5.3.1.3. Likely impact on prices and choice

(383) The Commission considers that a possible bundling strategy by the merged entity would be unlikely to have a negative impact on prices and choice.

(384) First, the proposed transaction is unlikely to give the merged entity the ability to foreclose competitors from the retail market for mobile telecommunications services or any of the fixed retail markets in which Telenet is present. As explained in Section 5.3.1.1, the number of mobile subscribers to which the merged entity would have better access as a result of the proposed transaction is limited to BASE subscribers that live in the Telenet footprint. The footprint of Telenet is limited to the Flemish Region and around one third of the Brussels-Capital Region. This means that the merged entity could not engage in bundling in the Walloon Region (which represents 32% of the Belgian population). In the Brussels-Capital Region (which represents

[281] See the CRC's decisions of 1 July 2011: Beslissing van de Conferentie van Regulatoren voor de elektronische Communicatiesector (CRC) van 1 juli 2011 betreffende de analyse van de markt voor televisieomroep in het Nederlandse taalgebied [*Decision of the Conference of Regulators for the electronic Communications sector (CRC) of 1 July 2011 concerning the analysis of the market for television broadcast in the Dutch-speaking region*], paragraph 109 (figure 2.10); Décision de la Conférence des Régulateurs du secteur des Communications électroniques (CRC) du 1 juillet 2011 concernent l'analyse du marché de la radiodiffusion télévisuelle sur le territoire de la région de langue française [*Decision of the Conference of Regulators for the electronic Communications sector (CRC) of 1 July 2011 concerning the analysis of the market for television broadcast in the French-speaking region*], paragraph 105 (figure 2.10); Beslissing van de Conferentie van Regulatoren voor de elektronische Communicatiesector (CRC) van 1 juli 2011 betreffende de analyse van de markt voor televisieomroep in het tweetalig gebied Brussel-Hoofdstad / Décision de la Conférence des Régulateurs du secteur des Communications électroniques (CRC) du 1 juillet 2011 concernent l'analyse du marché de la radiodiffusion télévisuelle sur le territoire de la région bilingue de Bruxelles-Capitale [*Decision of the Conference of Regulators for the electronic Communications sector (CRC) of 1 July 2011 concerning the analysis of the market for television broadcast in the bilingual region Brussels-Capital*], paragraph 109; Entscheidung der Konferenz der Regulierungsbehörden für den bereich der elektronischen Kommunikation (KRK) vom 1. Juli 2011 betreffend die analyse des Fernsehmarktes im deutschen Sprachgebiet [*Decision of the Conference of Regulators for the electronic Communications sector (CRC) of 1 July 2011 concerning the analysis of the market for television broadcast in the German-speaking region*], paragraph 107 (figure 2.10). […].

10.5% of the Belgian population), it could only engage in bundling with respect to approximately one third of the population[282].

(385) Moreover, as explained in Section 5.3.1.1, the cross-selling opportunity created by the proposed transaction would be limited because many BASE subscribers already purchase fixed services from Telenet and, among those who do not yet purchase fixed services from Telenet, many are pre-paid subscribers, to which cross-selling is more difficult.

(386) The Commission estimates that the total number of BASE subscribers to which the merged entity could try to cross-sell fixed services is […] subscribers[283]. A majority ([…]) of those subscribers are pre-paid subscribers[284]. Finally, mobile services are typically purchased per individual while fixed services are purchased per household. The ratio of mobile services to fixed services in Belgium is 1:3.8[285]. This means that, out of 38 BASE mobile subscribers, the merged entity could at most expect to obtain 10 fixed service subscriptions.

(387) The fact that the proposed transaction will make it somewhat easier to target a group of customers of […] subscribers[286], corresponding to […] of a total retail mobile market of […] subscribers, is unlikely to lead to foreclosure of the merged entity's rivals. As the Non-Horizontal Merger Guidelines make clear, bundling or tying may result in a significant reduction of sales prospects faced by single component rivals in the market. However, the reduction in sales by competitors does not in and of itself constitute a problem, unless the reduction is so significant that it may lead to a reduction in competitors' ability or incentive to compete[287]. It is only when a sufficiently large fraction of the market output is affected by foreclosure resulting from the concentration that the concentration may significantly impede effective competition[288].

(388) The Commission considers that it is unlikely that an increased opportunity for the merged entity to sell fixed-mobile bundles to a limited number of mobile subscribers

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282 Statistics Belgium, Structuur van de bevolking volgens woonplaats, Totale residerende bevolking voor België en gewesten, 2005-2015 [*Structure of the population according to place of residency, Total residential population in Belgium and regions, 2005-2015*], available at: http://statbel fgov.be/nl/statistieken/cijfers/bevolking/structuur/woonplaats/ : On 1 January 2015, 11 209 044 people lived in Belgium, of which 6 444 127 in the Flemish Region, 3 589 744 in the Walloon Region and 1 175 173 in the Brussels-Capital Region.

283 Based on the following calculation (See BASE, Reply to RFI 6 of 9 September 2015 (corrected version sent on 28 September 2015)): BASE mobile subscribers in the footprint of Telenet's cable network ([…]) minus the number of BASE subscribers in the footprint of Telenet's cable network who already have fixed services from Telenet ([…]).

284 This is based on the following calculation (See BASE, Reply to RFI 6 of 9 September 2015 (corrected version sent on 28 September 2015)): BASE subscribers in Telenet footprint ([…]) minus BASE post-paid subscribers in Telenet footprint ([…]) = […] pre-paid BASE subscribers in Telenet footprint = […].

285 Calculated as follows (based on Form CO, Annex 6.2.1a). Number of retail mobile subscribers: […]. Number of households purchasing TV services: […].

286 The Commission notes that the number of subscribers to which the merged entity could cross-sell is further reduced by the commitments, since the merged entity would divest Mobile Vikings and its […] subscribers (of which […] active subscribers) and […] JIM Mobile subscribers (of which […] active subscribers). Mobile Vikings customers and JIM Mobile customers are predominantly based in the footprint of Telenet's cable network. For the number of JIM Mobile and Mobile Vikings customers: see BASE, Reply to RFI 12 of 29 September 2015, Question 1, Annex II.1. For the geographic spread of these subscribers: see Liberty Global, Reply to RFI 8 of 18 September 2015.

287 Non-Horizontal Merger Guidelines, paragraph 111.

288 Non-Horizontal Merger Guidelines, paragraph 113.

would foreclose the merged entity's competitors and result in them exiting the market or losing the ability to compete effectively. Mobistar is, even after the proposed transaction, the second largest mobile operator by revenue, after Proximus. It is controlled by a large telecommunications group and has significant financial resources. It is unlikely that the merged entity's increased opportunity to sell bundles to a limited number of subscribers would make Mobistar lose so much market share that it would have to exit the market or lose its ability or incentive to compete. Proximus is also unlikely to exit the market or lose its ability or incentive to compete. It is by far the largest telecoms operator in the Belgian retail market and already engages actively in fixed-mobile bundling.

(389) The Commission also notes that a large majority of all mobile services in Belgium is still purchased as a stand-alone service. As explained in recital (84), at the end of 2014, only 5.4% of all mobile voice users purchased their mobile voice services in a bundle with fixed services. Even if fixed-mobile bundles in which the mobile component is mobile broadband only are included, the total number of fixed-mobile bundles was still less than one million[289], while the total number of residential mobile subscribers was 9.9 million and the total number of households that purchase mobile services is between 6 and 7 million[290].

(390) If undiscounted joint purchasing of fixed and mobile services is included, there are around 1 541 000 subscribers who purchase multiple play packages that include fixed and mobile services. However, the potential foreclosure effects of undiscounted joint sales are limited, since customers can easily switch for the mobile component of the bundle without losing any discount.

(391) The number of fixed-mobile services is likely to grow in the coming years and, as a result, growth perspectives for mobile-only players may be more limited than for players that offer both fixed and mobile services. However, that evolution would also occur in the absence of the proposed transaction and, in any event, it is unlikely that the number of customers purchasing mobile as stand-alone service will decrease to such an extent in the short term that mobile-only players would be foreclosed. In internal analyses, Telenet estimates that the number of customers purchasing both fixed and mobile services from the same operator (that is, both bundles and undiscounted joint purchasing) is likely to evolve from […] to […].[291] This would leave […] residential subscribers who purchase mobile services as a stand-alone

289 In a report drafted by GSMA Intelligence (Convergence: repositioning in an expanded mobile ecosystem, November 2015), a quad-play penetration rate of 27% is indicated for 2015 for Belgium (p. 7). Quad-play is defined as subscribing to mobile, home broadband, landline (line rental) and pay TV from one provider, i.e. 27% purchase the four services from one provider. Hence, the percentage also includes subscribers who purchase all four services separately from the same provider (without any discount). The BIPT numbers, on the other hand, do not include undiscounted joint purchasing. They indicate that at the end of 2014, the total amount of fixed-mobile bundles was estimated to be 909 394 and that out of all residential users who purchase mobile voice services, only 5.4% do so in a bundle with fixed services. Most of the 5.4% that purchases mobile voice services in a bundle with fixed services (3.7% of all residential users who purchase mobile voice services) purchase what the BIPT considers as quintuple play bundles, which corresponds to quadruple play bundles (the BIPT data consider mobile data and mobile voice as two separate services and, hence, a quadruple play bundle is considered a quintuple play bundle by the BIPT). See BIPT, Situatie van de elektronische communicatiesector 2014 / Situation du secteur des communications électroniques 2014 [Situation of the electronic communications sector 2014], July 2015, p. 40-41).

290 BIPT data mentions the total number of residential households that purchase mobile voice services excluding residential households who purchase mobile services from MVNOs such as Telenet

291 […].

product and […] subscribers in the business segment, where the merged entity and BASE currently have only a small presence.[292] A significant number of mobile stand-alone subscribers therefore remains, which makes it unlikely that mobile-only players would be foreclosed. The significant number of mobile stand-alone subscribers also makes it unlikely that players wishing to enter the fixed retail markets in order to offer fixed-mobile bundles would be deterred from doing so because they are unable to attract new mobile customers.

(392) Another reason why the Commission considers that it is unlikely that the proposed transaction would give the merged entity the ability to foreclose competitors from the retail mobile market or deter players from entering the fixed retail markets in order to offer fixed-mobile bundles relates to the alleged effect of fixed-mobile bundles on churn rates. A respondent to the market investigation argued that fixed-mobile customers are "locked in" and are no longer contestable for mobile-only players or for other fixed-mobile players. However, the low churn rate for quadruple play customers mentioned in recital (379) is at least partly the result of market dynamics, including the pricing strategy of other operators. If mobile-only operators or fixed-mobile operators offer attractive prices, either for mobile-only services or for fixed-mobile bundles, this would result in higher churn rates. Competitors of the merged entity could therefore profitably acquire fixed-mobile customers by offering attractive prices.

(393) Second, the Commission must take into account as part of its analysis the counter-strategies that rivals may deploy. The merged entity's main competitors, Proximus and Mobistar, could offer bundles themselves and, just as the merged entity may try to cross-sell fixed services to its mobile customers, they could try to cross-sell fixed services to their mobile customers. Proximus, which owns both a mobile and a fixed network, already offers bundles today. Mobistar does not own a fixed network but it could offer fixed services based on wholesale access to Telenet's cable network. As explained in recital (329), Telenet is under a regulatory obligation to provide access to its cable network in order for alternative operators to offer TV services and, in combination with TV services, fixed internet services. Mobistar has announced that it intends to use that wholesale cable access to offer TV and fixed internet services at the retail level and has made significant investments to prepare for launching its fixed services. In the course of 2015, it conducted user tests on the cable networks of Telenet and VOO in Brussels and on the network of VOO in Charleroi and Liège, based on regulated cable access. Although respondents to the market investigation considered that, in its current form, the wholesale access obligation on Telenet is ineffective[293], the Belgian sector regulators are in the process of revising wholesale rates downwards. This is likely to make wholesale access to Telenet's cable network

[292] According to the Notifying Party's estimates (See Form CO, Annex 6.2.1a), in 2014, Telenet had a [0-5]% market share by subscribers and a [0-5]% market share by revenue in the Business Mobile segment in Belgium, while BASE had a [5-10]% market share by subscribers and a [10-20]% market share by revenue in the Business Mobile segment in Belgium. Proximus had [50-60]% by revenue and [50-60]% by subscribers, while Mobistar had [20-30]% by revenue and [30-40]% by subscribers.

[293] The Commission notes that the respondents who considered the wholesale access obligation on cable operators in Belgium to be ineffective have an interest in the Belgian regulators revising wholesale rates downwards and therefore also had an interest in responding that the existing regulation was ineffective. Likewise, one of the two respondents which considered that the wholesale access obligation is effective had an interest in the Belgian regulators not revising wholesale rates downwards. The Commission takes this into account when weighing the views expressed by respondents.

more economical. It is therefore likely that Mobistar will be able to offer fixed-mobile bundles based on wholesale access. This is also reflected in […][294].

(394) Moreover, operators can also obtain wholesale access to Proximus' fixed network. Proximus is under a regulatory obligation to provide such wholesale access and has effectively granted access to its network in the past, for instance to BASE. The merged entity's rivals could also price their mobile services more cheaply to prevent customers from purchasing the merged entity's bundles.

(395) Third, […].[295] Hence, a bundling strategy could lead to increased competition with Proximus as regards fixed-mobile bundles compared to the situation absent the proposed transaction.

(396) Fourth, selling bundles would require the merged entity to offer customers a discount.[296] Competitors responding to the market investigation argue that the merged entity may be in a position to do so through cross-subsidisation, that is to say by using profits from the fixed markets in which it has a strong position. However, such discounts would, at least in the short to medium term, lead to lower prices for consumers and, hence, there would be no negative impact on prices and choice. In the longer term, it could, theoretically, lead to higher prices if the bundling strategy results in the weakening of rivals' competitive constraints or even the exit of rivals. However, as explained in recitals (388) to (394), the Commission considers that it is unlikely that the merged entity's principal competitors would exit the market as a result of an aggressive bundling strategy by the merged entity.

(397) Fifth, a bundling strategy is unlikely to lead to less choice for consumers. Consumers will be able to choose between stand-alone services and bundles. Even if they purchase bundles from the merged entity, they could still unpick the bundle and switch services. As a result of a change in Belgium's telecommunication law which was adopted in July 2012 and came into force in October 2012, consumers and customers that have five phone numbers or less can end their telecommunications contract after a period of six months free of charge. That protective provision facilitates switching and applies not only to contracts by which consumers purchase mobile telecommunications services as a stand-alone service but also to contracts by which consumers purchase bundles of telecommunications services. A bundling strategy would therefore not lead to less choice for consumers. Business customers value integrated fixed and mobile services and are therefore likely to benefit from a choice between bundles and stand-alone services.

(398) Based on those reasons, the Commission considers that a possible bundling strategy by the merged entity would not have a negative impact on prices and choice.

5.3.2. Foreclosure by selling fixed-mobile bundles to BASE's mobile subscribers who also purchase fixed services from Telenet

(399) After the proposed transaction, BASE subscribers who currently purchase fixed services from Telenet would have the possibility to purchase fixed and mobile services from the same entity, namely the merged entity. The merged entity may

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294 […].

295 […].

296 In theory, the merged entity could also engage in pure bundling, meaning the fixed and mobile services would no longer be available as a stand-alone product. In that scenario, no discount would be given. However, given the significant demand for stand-alone fixed services (that is fixed services without mobile services) and stand-alone mobile services (that is mobile services without fixed services), the Commission considers it unlikely that the merged entity would engage in pure bundling.

contact those customers and propose that their mobile and fixed services are integrated in a single invoice. It may also offer a discount to those customers, which would result in those customers purchasing a fixed-mobile bundle from the merged entity.

(400) For the following reasons, the Commission does not consider that the proposed transaction would result in a significant impediment to effective competition based on the possibility that the merged entity would integrate mobile and fixed services in a single bill or offer fixed-mobile bundles to the BASE subscribers that already purchase fixed services from Telenet.

5.3.2.1. Ability to foreclose

(401) The Commission considers that it is unlikely that the merged entity would have the ability to successfully foreclose its rivals by offering a single bill or a bundle to BASE subscribers that already purchase Telenet services. The proposed transaction may make it easier for the merged entity to offer a single bill or sell fixed-mobile bundles to those BASE customers but that increased ability is limited in several ways. As explained in recital (370), a significant part of BASE subscribers live outside of the footprint of Telenet's cable network and, as explained in recitals (372) to (373), most of those BASE subscribers living in the Telenet footprint are pre-paid subscribers, to whom it is more difficult to sell fixed-mobile bundles.

(402) Moreover, as explained in recital (375), the finding that the merged entity would be able to offer a single bill or bundles to a certain group of customers is not equivalent to a finding that the merged entity would have an increased ability to foreclose competitors. The Commission considers that, after the proposed transaction, the ability of the merged entity to foreclose competitors through bundling would not be greater than Telenet's current ability to foreclose competitors through bundling. In that respect, the Commission notes, as explained in recital (376), that the proposed transaction does not change Telenet's market power in the fixed markets and that, in the mobile market, it does not hold a dominant position, and would not do so, even after the proposed transaction. With a market share of [20-30]% by revenue and [30-40]% by subscribers, it is doubtful that the merged entity would have sufficient market power in the mobile services market to foreclose competitors through bundling.

(403) The merged entity is also unlikely to have the ability to foreclose competitors in view of the possible counter-strategies which its rivals may deploy. As explained in recitals (393) and (394), Mobistar and Proximus may counter a bundling strategy by offering bundles themselves or by pricing more aggressively.

5.3.2.2. Incentive to foreclose

(404) For the reasons set out in recitals (380) to (381), it is uncertain whether the merged entity would have the incentive to engage in a foreclosure strategy, because it is unlikely that an aggressive bundling strategy would lead to the exit of rivals or weaken their competitive constraints. As such, the long-term gains of a foreclosure strategy appear speculative and, hence, it is uncertain that the merged entity would have the incentive to engage in an aggressive bundling strategy that would have the effect of reducing its revenues in the short- to medium-term.

(405) It is unlikely that integrating the mobile and fixed services in a single bill would result in significant costs for the merged entity but the potential foreclosure effects of such conduct would also be very limited, since customers could still switch to other operators for any component of the bundle without losing any discount. Customers would lose the benefit of a single invoice but, on the basis of the information before

it, the Commission considers that the main reason why Belgian consumers choose bundles is the price advantage resulting from it[297]. Hence, a competitor offering mobile or fixed services at a lower price than the merged entity is likely able to compete for BASE customers that also purchase fixed services from Telenet and would not be foreclosed.

5.3.2.3. Likely impact on prices and choice

(406) The Commission considers that if the merged entity offers a single bill or a fixed-mobile bundle to BASE subscribers that already purchase fixed services from Telenet, this would be unlikely to have a negative impact on prices and consumer choice.

(407) First, the proposed transaction is unlikely to give the merged entity the ability to foreclose competitors in the retail mobile market or any of the fixed retail markets in which Telenet is present. As explained in Section 5.3.1.1, the merged entity is unlikely to engage in bundling in the Walloon Region and most of the Brussels-Capital Region. Moreover, most BASE subscribers are pre-paid subscribers, to whom it is more difficult to sell fixed-mobile bundles.

(408) In addition, it is unclear whether the mere fact that, after the proposed transaction, BASE customers who also purchase fixed services from Telenet will be purchasing their services from one and the same operator, will "lock in" these customers or make them less contestable. As explained in recital (392), the low churn rate of Telenet's quadruple play customers is at least partly the result of market dynamics, including the pricing strategy of other operators. Moreover, although churn is generally lower for customers purchasing multiple services from the same operator, the extent to which individual factors influence that reduction in churn is unclear. For example, it is possible that one reason why customers purchasing fixed and mobile services from the same operator churn less is because they purchase multiple services. However, it is also possible that the customers that decided to purchase multiple services from the same operator are customers who are particularly loyal to the brand of their operator and, hence, were less likely to churn regardless of the number of

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297 See the CRC's decisions of 1 July 2011: Beslissing van de Conferentie van Regulatoren voor de elektronische Communicatiesector (CRC) van 1 juli 2011 betreffende de analyse van de markt voor televisieomroep in het Nederlandse taalgebied [*Decision of the Conference of Regulators for the electronic Communications sector (CRC) of 1 July 2011 concerning the analysis of the market for television broadcast in the Dutch-speaking region*], paragraph 109 (figure 2.10); Décision de la Conférence des Régulateurs du secteur des Communications électroniques (CRC) du 1 juillet 2011 concernent l'analyse du marché de la radiodiffusion télévisuelle sur le territoire de la région de langue française [*Decision of the Conference of Regulators for the electronic Communications sector (CRC) of 1 July 2011 concerning the analysis of the market for television broadcast in the French-speaking region*], paragraph 105 (figure 2.10); Beslissing van de Conferentie van Regulatoren voor de elektronische Communicatiesector (CRC) van 1 juli 2011 betreffende de analyse van de markt voor televisieomroep in het tweetalig gebied Brussel-Hoofdstad / Décision de la Conférence des Régulateurs du secteur des Communications électroniques (CRC) du 1 juillet 2011 concernent l'analyse du marché de la radiodiffusion télévisuelle sur le territoire de la région bilingue de Bruxelles-Capitale [*Decision of the Conference of Regulators for the electronic Communications sector (CRC) of 1 July 2011 concerning the analysis of the market for television broadcast in the bilingual region Brussels-Capital*], paragraph 109; Entscheidung der Konferenz der Regulierungsbehörden für den bereich der elektronischen Kommunikation (KRK) vom 1. Juli 2011 betreffend die analyse des Fernsehmarktes im deutschen Sprachgebiet [*Decision of the Conference of Regulators for the electronic Communications sector (CRC) of 1 July 2011 concerning the analysis of the market for television broadcast in the German-speaking region*], paragraph 107 (figure 2.10).

services they purchase from their operator. […][298]. BASE customers who purchase fixed services from Telenet would be purchasing fixed and mobile services from the same operator but this would be the result of the proposed transaction, not the result of a decision to purchase both fixed and mobile services from the same operator. Hence, it is unclear whether those subscribers – for whom brand loyalty may play a less significant role in their purchasing decisions – would have low churn rates and no longer be "contestable" for rivals.

(409) Moreover, if the merged entity offers fixed-mobile bundles to the BASE subscribers that purchase mobile services from BASE and fixed services from Telenet, this would not result in a decrease in the market share or revenue of rivals of the merged entity in the retail market for mobile telecommunications services.

(410) For the reasons set out in recitals (388) to (392), it is unlikely that Mobistar or Proximus would have to exit the market or would lose the ability to compete effectively as a result of such a strategy, even if a bundling strategy towards BASE subscribers who do not yet purchase fixed services from Telenet is combined with a bundling strategy towards BASE subscribers who already purchase fixed services from Telenet.

(411) On that basis, the Commission considers that it is unlikely that the opportunity to sell bundles to the BASE subscribers who already purchase Telenet services would foreclose rivals of the merged entity.

(412) Second, as explained in recitals (393) to (394), the merged entity's main rivals, Mobistar and Proximus, could offer bundles themselves or price their mobile services more cheaply to prevent customers from purchasing the merged entity's bundles.

(413) Third, as explained in recital (395), […]. Hence, a bundling strategy could lead to increased competition with Proximus as regards fixed-mobile bundles.

(414) Fourth, as explained in recital (396), offering bundles to the BASE subscribers who purchase fixed services from Telenet would require the merged entity to offer those customers a discount. Such price reductions are likely to be beneficial for consumers in the short to medium term. In the longer term, such a strategy could only lead to higher prices if it resulted in the exit of rivals or a weakening of their competitive constraints. However, as explained in recitals (388) to (394), the Commission considers such an outcome to be unlikely.

(415) Fifth, as explained in recital (397), a bundling strategy is unlikely to lead to less choice for consumers and businesses. Likewise, offering fixed and mobile services in a single bill is unlikely to result in consumer harm.

5.3.3. Conclusion regarding conglomerate effects

(416) In light of Section 5.3, the Commission concludes that the proposed transaction would not lead to a significant impediment to effective competition in the retail mobile telecommunications services market, the retail market for TV services, the retail market for fixed internet services and the retail market for fixed telephony services as a result of possible bundling of fixed and mobile services by the merged entity.

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298 […].

5.4. Conclusion on compatibility with the internal market

(417) In light of Sections 5.1, 5.2 and 5.3, the Commission concludes that the proposed transaction would significantly impede effective competition in the internal market or in a substantial part of it, namely in the retail market for mobile telecommunications services in Belgium.

6. COMMITMENTS

6.1. Analytical framework

(418) Where the Commission finds that a concentration raises competition concerns in that it could significantly impede effective competition, the notifying parties may seek to modify the concentration in order to resolve the competition concerns and thereby gain clearance of the concentration[299].

(419) Under the Merger Regulation, it is the responsibility of the Commission to show that a concentration would significantly impede effective competition. The Commission then communicates its competition concerns to the parties to allow them to formulate appropriate and corresponding remedies proposals[300]. It is then for the parties to the concentration to propose commitments that would be suitable to address entirely such competition concerns[301]. The Commission only has power to accept commitments that are deemed capable of rendering the concentration compatible with the internal market so that they will prevent a significant impediment of effective competition in all relevant markets where competition concerns were identified[302]. To this aim, the commitments have to eliminate the competition concerns entirely[303] and have to be comprehensive and effective from all points of view[304]. The commitments must also be proportionate to the competition concerns identified[305].

(420) In assessing whether the proposed commitments will likely eliminate the competition concerns identified, the Commission considers all relevant factors including *inter alia* the type, scale and scope of the proposed commitments, judged by reference to the structure and particular characteristics of the market in which the competition concerns arise, including the position of the parties and other participants on the market[306].

(421) In order for the commitments to comply with those principles, commitments must be capable of being implemented effectively within a short period of time[307]. Where,

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299 Commission notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (the "Remedies Notice"), OJ 2008/C 267/01, paragraph 5.

300 See Case T-209/01 *Honeywell International, Inc. v. Commission* [2005] II-5527, paragraph 99.

301 Remedies Notice, paragraph 6.

302 Remedies Notice, paragraph 9.

303 See also Case C-202/06 P *Cementbouw Handel & Industrie v Commission* [2007] ECR 2007 I-12129, paragraph 54.

304 Remedies Notice, paragraphs 9 and 61.

305 Recital 30 of the Merger Regulation. The General Court set out the requirements of proportionality as follows: "The principle of proportionality requires measures adopted by Community institutions not to exceed the limits of what is appropriate and necessary in order to attain the objectives pursued; when there is a choice between several appropriate measures recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued" (T-177/04 easyJet v Commission [2006] ECR II-1931, Paragraph 133).

306 Remedies Notice, paragraph 12.

307 Remedies Notice, paragraph 9.

however, the parties submit remedies proposals that are so extensive and complex that it is not possible for the Commission to determine with the requisite degree of certainty, at the time of its decision, that they will be fully implemented and that they are likely to maintain effective competition in the market, an authorisation decision cannot be granted[308].

(422) As concerns the form of acceptable commitments, the Merger Regulation leaves discretion to the Commission as long as the commitments meet the requisite standard[309]. Structural commitments will meet the conditions set out in recital (419) only in so far as the Commission is able to conclude with the requisite degree of certainty that it will be possible to implement them and that it will be likely that the new commercial structures resulting from them will be sufficiently workable and lasting to ensure that the significant impediment to effective competition will not materialise[310].

(423) Divestiture commitments are generally the best way to eliminate competition concerns resulting from horizontal overlaps, although other structural commitments, such as access remedies, may be suitable to resolve concerns if those remedies are equivalent to divestitures in their effects[311].

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

6.2. Procedure

(425) To address the serious doubts raised by the proposed transaction, which the Commission had communicated to the Notifying Party on 4 September 2015, during the first phase investigation the Notifying Party submitted commitments on 14 September 2015 pursuant to Article 6(2) of the Merger Regulation (the "First Commitments").

(426) In view of the substantial shortcomings of the First Commitments, which would not remove the serious doubts concerning the proposed transaction's compatibility with the internal market, the Commission decided not to carry out a market test of the First Commitments.

(427) On 18 September 2015, the Notifying Party submitted modified commitments (the "Second Commitments").

(428) The Commission launched a market test of the Second Commitments on 21 September 2015 (the "first market test"). Questionnaires were sent to current and potential future providers of retail mobile telecommunications services in Belgium and to the Belgian consumer association Test-Aankoop/Test-Achats.

(429) Based on the results of the first market test, the Commission considered that the Second Commitments did not address in full and in a clear-cut fashion the serious doubts identified by the Commission during the first phase investigation and therefore did not meet the standard for an acceptable remedy in the first phase. As a result, the Commission initiated proceedings pursuant to Article 6(1)(c) of the Merger Regulation on 5 October 2015.

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308 Remedies Notice, paragraphs 13, 14 and 61 *et seq.*
309 Case T-177/04 *easyJet v Commission* [2006] ECR II-1913, paragraph 197.
310 Remedies Notice, paragraph 10.
311 Remedies Notice, paragraph 19.

(430) At the beginning of the second phase investigation, the Notifying Party submitted a new set of commitments on 27 October 2015 (the "Third Commitments"). At the same time, the Notifying Party informed the Commission that Telenet had entered into a Memorandum of Understanding with Medialaan NV ("Medialaan") on 14 October 2015 as a potential remedy taker and that Medialaan had entered into a Sales and Purchase Agreement with the shareholders of VikingCo International ("VCI") on 14 October 2015 for the acquisition of 100% of VCI. VCI owns 50% of the shares in Mobile Vikings, while the remaining 50% owned by BASE forms part of the business to be divested under the Third Commitments.

(431) The Commission launched a market test of the Third Commitments on 28 October 2015 (the "second market test"). Questionnaires were sent to current and potential future providers of mobile telecommunications services in Belgium and to the Belgian consumer association Test-Aankoop/Test-Achats.

(432) Following the second market test, the Notifying Party submitted a revised set of commitments on 26 November 2015, which offered improved wholesale conditions to the remedy taker. On 2 December 2015, the Notifying Party submitted a slightly revised version of these commitments and a final version was submitted on 18 December 2015 (the "Final Commitments")[312].

(433) The Notifying Party informed the Commission on 27 November 2015 that it had sent a letter to Medialaan (the "MOU Modification Letter") the same day by which the Notifying Party sought to render certain terms of the Memorandum of Understanding signed on 14 October 2015 more favourable for Medialaan and thus to align the content of the Memorandum of Understanding with the commitments of 26 November 2015.

(434) On 30 November 2015 the Notifying Party submitted: (a) a report on the appropriateness of Medialaan as an upfront remedy taker, including a statement on the compliance of Medialaan with the standard purchaser requirements laid down by the Third Commitments[313]; and (b) a MVNO agreement that Telenet and Medialaan had entered into on the same day.

(435) On 9 December 2015 the Notifying Party submitted a statement on the consistency between the MVNO agreement as signed with Medialaan on 30 November 2015 and the commitments of 2 December 2015, together with a draft letter to Medialaan by which the Notifying Party proposed to correct the divergences between the text of the MVNO agreement and the commitments of 2 December 2015 (the "Correction Letter"). The Commission was informed on 18 December 2015 that the Notifying Party had sent the Correction Letter to Medialaan on 18 December 2015 and that Medialaan had countersigned it on the same date.

6.3. The First Commitments

6.3.1. Description of the proposed commitments

(436) The First Commitments submitted by the Notifying Party consisted of the following three elements: (i) the divestment of a part of BASE's customer base; (ii) the entry

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312 The commitments of 26 November 2015 were replaced by the commitments of 2 December 2015 to incorporate standard provisions from the Commission Model Text for Divestiture Commitments (e.g. no re-acquisition clause), which were missing in the version of the commitments submitted on 26 November 2015. The commitments of 2 December 2015 were in turn replaced by the commitments of 18 December 2015 to correct clerical errors.

313 See Remedies Notice, paragraph 48.

into a wholesale access agreement with the purchaser of the divested customer base; and (iii) support measures to BASE's existing MVNO wholesale customers.

6.3.1.1. Commitment to divest a part of BASE’s customer base

(437) First, the Notifying Party committed to divest a customer base through the divestment of BASE's stake in either of the following two entities:

(1) Ortel Mobile NV (“Ortel”), a Belgian company fully owned by BASE. Ortel is a light MVNO operating on BASE's network, focussed on offering low-cost international calls. According to estimates by the Notifying Party, Ortel has [300 000-400 000] pre-paid subscribers. Ortel does not offer post-paid subscriptions. Ortel's services are mainly distributed through supermarkets, telecom shops and off-licences; or

(2) VikingCo NV (“Mobile Vikings”), a Belgian company jointly controlled by BASE (50% of the shares) and VCI. Mobile Vikings operates as a light MVNO on BASE's network. It targets data-intensive users, in particular the 18-24 year old age group. According to estimates by the Notifying Party, at the end of August 2015, Mobile Vikings had [200 000-300 000] active[314] pre-paid subscribers ([…]). Formally, Mobile Vikings does not offer post-paid subscriptions. However, its pre-paid subscriptions have certain post-paid features, such as those illustrated in recital (555). The billing situation of Mobile Vikings customers is also comparable to that of post-paid customers, as they pay on a monthly basis from the start of their subscription, through direct debit or credit card automatic monthly payments.

(438) Under the First Commitments, the purchaser of either Ortel or BASE's 50% stake in Mobile Vikings must be approved by the Commission and comply with the following cumulative criteria:

(1) be independent and unconnected to the Notifying Party or any MNO active in Belgium;

(2) possess the financial resources, proven expertise and incentive to be a viable and active competitive force in mobile competition with the Notifying Party and other competitors on the Belgian market (and in particular in the Flemish Region); and

(3) be expected to obtain or already possess all necessary approvals from the relevant regulatory authorities to operate as an MVNO in Belgium.

6.3.1.2. Commitment to enter into an MVNO agreement with the approved purchaser

(439) Second, the Notifying Party committed to enter into an MVNO agreement with the purchaser of either Ortel or Mobile Vikings.

(440) The MVNO agreement would have a duration of five years. Its terms would be commercially negotiated, based on the terms of the offer set out as part of the First Commitments. The key features of the offer were the following:

(1) the MVNO agreement would be a usage-based, or pay-as-you-go, model. The unit fees for voice, SMS, data and SIM were defined in a so-called “rate card”,

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314 An active subscriber was defined as a subscriber that, at the end of the relevant reporting period, had outgoing traffic in the last three months. Unless otherwise specified, this definition of active customer was maintained in the following versions of the Commitments submitted by the Notifying Party.

attached to the First Commitments, and were tiered according to the total monthly volume used by the MVNO for each service;

(2) those fees were subject to a price adjustment mechanism to be negotiated;

(3) the MVNO would pay a cost-based set-up fee to get access to the BASE network, not exceeding EUR […];

(4) the number of customers of the MVNO that could be served on BASE's network would not be limited;

(5) the purchaser would have to negotiate with BASE for access to future evolutions in mobile technologies or new products;

(6) the MVNO could opt to transition to a full MVNO[315];

(7) the MVNO would be obliged to operate exclusively on BASE's network for the duration of the agreement.

6.3.1.3. Commitment to support existing wholesale customers

(441) Finally, the Notifying Party committed to support current MVNOs operating on BASE’s network by taking the four following measures:

(1) to offer MVNOs using BASE as host MNO the possibility to extend their existing agreements on the same terms until 31 October 2020;

(2) to waive BASE’s rights to terminate the agreements without cause;

(3) to waive BASE’s rights to impose penalties for the switching of the MVNOs to a different MNO upon termination of the MVNO agreements;

(4) to support the transition of a light MVNO to a full MVNO, if so wished.

6.3.2. Commission's assessment of the First Commitments

(442) In the present case, the commitments must aim at compensating for the post-transaction loss of competitive pressure on the retail market for mobile telecommunications services (see Section 5.1.2.7). The Commission considered that, for the reasons set out in recitals (443) to (453), the First Commitments failed to eliminate entirely the serious doubts held by the Commission as to the proposed transaction's compatibility with the internal market and were not comprehensive and effective from all points of view.

(443) In relation to the divestment of a customer base, the Commission notes the following.

(444) First, the alternative divestment of either Ortel or Mobile Vikings alone would not be sufficient to counteract the loss of competitive pressure in the retail mobile telecommunications services market in Belgium following the proposed transaction. The sale of only one of the two proposed customer bases amounted to a divested market share in terms of subscribers of [0-5]%, which did not guarantee that the purchaser would have the scale and incentive to grow as a credible competitor.

(445) Second, the Commission noted that Ortel's customer base consists of pre-paid customers and is declining[316]. Therefore, the remedy taker could not use the customer base it would have purchased, consisting of a limited number of pre-paid

[315] Most MVNOs currently active on the Belgian retail market for mobile telecommunications services are light MVNOs (except, on the Mobistar network, Telenet and Lycamobile, and, on the BASE network, Join Experience and Vectone/Mundio).

[316] BASE, Review WHS – BASE Company Wholesale, 12 August 2014, slide 2[…].

customers in the case of the Ortel divestment option, to build a growing business and to develop new and competitive mobile offerings.

(446) Third, the Commission also noted that Ortel acts as a niche operator, with a limited geographic presence and a relatively weak brand. Contrary to Mobile Vikings, it does not pursue a strategy of customer retention or customer data collection. Therefore, the divestment of the niche Ortel brand would be insufficient to recreate the competitive presence and role of a mainstream and established player such as Telenet.

(447) Fourth, the divestment would not be upfront (that is to say prior to implementation of the proposed transaction), thus increasing the risk that the horizontal concern would not be solved before the concentration was implemented.

(448) With respect to the MVNO agreement, which the Notifying Party would enter into with the purchaser, the Commission identified the following fundamental shortcomings.

(449) First, after a preliminary comparison of the fee structure described in the rate card of the First Commitments with Telenet's current agreement with Mobistar, the Commission found that the proposed rates were […] than those enjoyed by Telenet under its current agreement with Mobistar. […]. Without […] rates, the Commission considers that the MVNO operating under the MVNO agreement would not be in a position to engage in an aggressive price policy and act as a sufficient competitive constraint on the retail market for mobile telecommunications services in Belgium and overcome the Commission's serious doubts as to the proposed transaction's compatibility with the internal market.

(450) Second, in addition to the complexity of the rate card, the terms of the offer contained provisions likely to lead to actual costs per subscriber that would be higher than the unit fees displayed in the rate card. For instance, some core services were not included in the services supplied by the Notifying Party (such as international roaming) and additional fees would have to be paid separately by the MVNO, such as interconnection fees for the termination and origination of circuit switched services and SMS.

(451) Third, the First Commitments only contained the option for the purchaser to become full MVNO, in which case the Notifying Party would provide assistance in the transition. This created the risk that the purchaser of the customer base would be a light MVNO and would continue operating as such. This led to uncertainty as to the purchaser’s ability to compete effectively, since a light MVNO exercises less competitive pressure than a full MVNO, such as Telenet itself.

(452) Fourth, the MVNO would be bound by an exclusivity clause for the duration of the MVNO agreement, which would limit its mobility and prevent it from multi-sourcing wholesale access to mobile networks.

(453) Fifth, the MVNO agreement was a pure pay-as-you-go model. The MVNO would not be given the possibility to acquire capacity from the MNO host (“capacity-based model”), should the capacity-based model fit the MVNO's business model or the evolution of its customer base.

(454) In light of the considerations in recitals (443) to (453), the Commission concluded that the First Commitments did not eliminate the Commission's serious doubts as to the proposed transaction's compatibility with the internal market and were not comprehensive and effective from all points of view.

6.4. The Second Commitments

(455) On 18 September 2015, the Notifying Party submitted the Second Commitments.

6.4.1. Description of the proposed commitments

(456) The Second Commitments contained modifications with respect to the divestment of a customer base and to the MVNO agreement to be entered into with the purchaser. The third element of the First Commitments (support measures to existing wholesale customers) was left unchanged. In Sections 6.4.1.1 and 6.4.1.2, the Commission identifies the differences between the Second and First Commitments with respect to the divestment of the customer base and the MVNO agreement.

6.4.1.1. Commitment to divest a part of BASE's customer base

(457) Under the Second Commitments, the Notifying Party committed to divest the two following customer bases.

(1) First, a part of BASE's customer base similar to the "JIM Mobile" customer base in size, geographic spread and balance between pre- and post-paid customers. JIM Mobile is a brand owned by Medialaan, which operates as a branded reseller on the BASE network. As such, BASE owns the customers of the JIM Mobile brand, whereas Medialaan holds the brand and is in charge of the marketing, and receives a percentage of BASE's sales under the JIM Mobile brand. According to the estimates by the Notifying Party, at the end of August 2015, the JIM Mobile customer base corresponded to [200 000-300 000] active subscribers ([…]), the majority of which purchase pre-paid subscriptions.

(2) Second, divestiture of one of the following two options:

<u>Option 1</u>: A part of BASE's customer base similar to the Mobile Vikings customer base in size, geographic spread and composition (pre-paid customers only). According to the estimates by the Notifying Party, at end August 2015, the Mobile Vikings customer base corresponded to [200 000-300 000] active pre-paid subscribers ([…]); or

<u>Option 2</u>: BASE's stake in Mobile Vikings, as offered as part of the First Commitments (see recital (437), point (b)).

(458) The choice between option 1 and option 2 in recital (457)(2) was left to the sole discretion of the Notifying Party.

(459) Under the Second Commitments, the Notifying Party would thus divest in total two customer bases amounting to […] active subscribers. The Notifying Party was entitled to sell the two customer bases to one and the same purchaser or to two different purchasers.

(460) Second, the Notifying Party amended the purchaser requirements. To be approved by the Commission, the purchaser(s) must comply with the criteria laid down as part of the First Commitments (see recital (438)). The Notifying Party provided, as part of the Second Commitments, however, for an additional criterion for the approval of the purchaser (or one of the two purchasers): such purchaser must have a recognised telecommunications or media brand, or a recognised retail consumer brand.

(461) Finally, one of the two elements of the customer base to be divested would have to be divested upfront (that is to say prior to implementation of the proposed transaction), whereas the second element of the customer base could be sold after completion of the concentration.

6.4.1.2. Commitment to enter into an MVNO agreement with the approved purchaser

(462) The key features of the MVNO agreement included in the First Commitments were maintained in the Second Commitments and would apply to the one or two approved purchasers of the customer bases to be divested. The Notifying Party would thus enter into one or two MVNO agreements, depending on whether the customer bases were sold to one or two purchasers.

(463) In particular, the MVNO agreement remained based on the pay-as-you-go pricing model. However, the Notifying Party included the possibility for the purchaser to opt for a capacity-based model for data only (not for voice or SMS). The key features of the capacity option were the following:

(1) The MVNO would pay a fixed annual fee for approximately 20% of the capacity on BASE's network, based on a glide path provided as part of the Second Commitments for the years 2016 to 2020;

(2) If the MVNO needed an uplink/downlink speed ratio in excess of 30%, the Notifying Party could charge a surcharge of […] of the fixed annual fee;

(3) If the MVNO needed monthly data throughput capacity in excess of the approximately 20% capacity covered by the fixed annual fee, the Notifying Party could, at its sole discretion, limit the monthly data throughput capacity available to the MVNO and, in addition, charge a surcharge of […] of the fixed annual fee;

(4) If the MVNO used more than 40% of the monthly data throughput capacity in certain network access sites or cells, […].

(464) The approved purchaser was entitled to opt for the capacity-based model either at the time of initial entry into the MVNO agreement (in case it was a full MVNO) or at the time it became a full MVNO (in case it initially was a light MVNO).

(465) However, in case of separate sales of BASE's divested customer bases, the capacity option would be made available only to the first of the two purchasers to request it.

6.4.2. Commission's assessment of the Second Commitments

(466) Considering the improvements to the First Commitments, in particular with regard to the divestment of an increased customer base and the inclusion of a capacity option, the Commission launched a market test of the Second Commitments on 21 September 2015. Questionnaires were sent to current and potential future providers of mobile telecommunications services in Belgium and to the Belgian consumer association Test-Aankoop/Test-Achats.

6.4.2.1. Results of the first market test

(467) Overall, the results of the first market test were negative. All respondents considered that the Second Commitments would not be sufficient to remedy the competition concerns that might be raised by the proposed transaction.[317] In particular, some respondents indicated that the Second Commitments did not address the main competition problem, raised in their view by the proposed transaction, which lay in the conglomerate effects resulting from the strong market position held by Telenet in the retail markets for TV and fixed internet services. Considering that this issue was addressed in Section 5.3 of this Decision and that the Commission finds that the

[317] See replies to Commission questionnaire Q4 “Remedies market test” of 21 September 2015, questions 64, 64.1, 64.2 and 64.3.

proposed transaction will not lead to a significant impediment of effective competition based on conglomerate effects, the Commission will not further assess those concerns as part of its assessment of the commitments.

(468) Furthermore, respondents had mixed opinions about the clarity of the scope and content of the Second Commitments. In particular, certain respondents considered that a number of the key terms of the MVNO agreement to be entered into with the approved purchaser(s) of the divested customer base were complicated and vague[318]. Concerning the substance of the Second Commitments, all respondents identified flaws in the Second Commitments that would likely impede the MVNOs' development. Those flaws are described in recitals (469) to (482).

Commitment to divest a part of BASE's customer base

(469) Although the acquisition of one or both parts of the BASE customer base raised some interest, most respondents indicated that the conditions for the sale of the customer bases would not enable the purchaser to compete effectively on the retail market for mobile telecommunications services in Belgium[319].

(470) First, some respondents indicated that the pre-paid segment of mobile telecommunications services is declining, due to customers' migration towards post-paid subscriptions, and less viable, due to a lower margin per user, as well as being more volatile and having a higher churn rate than the post-paid segment. Some respondents however indicated that the ability to capitalise on the divested customer base would depend on the purchaser's profile as well as on the wholesale conditions obtained from the host MNO[320].

(471) Second, when asked about previous transfers of customer bases, two respondents recalled that such an operation may lead to significant incremental churn, estimated to be in excess of 20% on top of regular churn[321], which may be aggravated if the transfer of customers requires technical migration to another platform (together with a SIM-SWAP) or is not accompanied by the divestment of the related brand[322].

Commitment to enter into an MVNO agreement with the approved purchaser

(472) Some respondents to the first market test considered that the five-year duration for the MVNO agreement was too short. Moreover, one respondent pointed to the asymmetry in the duration of the agreement depending on whether, at the time of signature, the MVNO is a light MVNO, in which case the initial five-year term of the MVNO agreement would be extended by five years from the launch as a full MVNO, or a full MVNO, in which case the MVNO agreement could not be extended beyond its initial five-year term[323].

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318 See replies to Commission questionnaire Q4 "Remedies market test" of 21 September 2015, questions 2 and 2.1.

319 See replies to Commission questionnaire Q4 "Remedies market test" of 21 September 2015, questions 65.1, 65.2, 65.3 and 65.4.

320 See replies to Commission questionnaire Q4 "Remedies market test" of 21 September 2015, questions 3.4 and 4.1 as well as questions 17, 17.1, 17.2, 17.3 and 17.4 and 53.1.1.

321 See replies to Commission questionnaire Q4 "Remedies market test" of 21 September 2015, question 6.

322 The JIM Mobile brand being owned by Medialaan, BASE could not divest the customer base serviced under the JIM Mobile brand to any other purchaser than Medialaan. The Second Commitments hence referred to the divestment of a customer base similar to the JIM Mobile customer base.

323 See replies to Commission questionnaire Q4 "Remedies market test" of 21 September 2015, questions 27, 27.1 and 27.2.

(473) In addition, some respondents voiced concerns regarding the exclusivity clause contained in the Second Commitments, which applied throughout the duration of the agreement. The exclusivity clause would completely prevent the MVNO from multi-sourcing wholesale services from other MNOs than BASE. This was considered to deprive the MVNO of its ability to exert pressure on BASE over the competitiveness of its wholesale fees and, as a consequence, the ability of the MVNO to compete effectively on the downstream retail market[324].

(474) Concerning the fees set out in the proposed rate card, respondents highlighted a number of concerns. Overall, the fees were considered as too high[325] and not transparent. As an example, termination costs had to be added for outgoing calls and the interworking costs for outgoing SMS, leading to actual costs that are higher than those set out in the proposed rate card[326].

(475) The fees for data and per SIM card triggered major concerns among respondents and were listed as factors that are likely to restrain the potential growth of the purchaser(s). For data, several respondents stressed the need for a steeper glide path ([…]) and a streamlined fee structure[327]. As to the fee per SIM card, a number of respondents deemed the fee either to be too high or unjustified for full MVNOs[328].

(476) Concerning the capacity option offered to the purchaser if it was a full MVNO, although that element of the Second Commitments raised interest among respondents, most found themselves unable to assess it, as the terms laid down in the Second Commitments lacked clarity on the pricing conditions and the actual volume of data purchased[329]. In addition, the provision giving the right to the Notifying Party to limit the monthly data throughput capacity available to the MVNO at its sole discretion or charge a surcharge of […] of the relevant annual fee was deemed to amount to a penalty to be applied to the MVNO if it were to use more capacity than it had purchased. That was perceived as likely to hamper the MVNO's ability to offer packages with unlimited data at competitive prices to consumers or to ensure proper

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324 See replies to Commission questionnaire Q4 “Remedies market test” of 21 September 2015, question 27.2.1.

325 See replies to Commission questionnaire Q4 “Remedies market test” of 21 September 2015, questions 34 and 34.1.

326 See replies to Commission questionnaire Q4 “Remedies market test” of 21 September 2015, questions 28.1.1 and 28.2.1.

327 See replies to Commission questionnaire Q4 “Remedies market test” of 21 September 2015, question 28.3.1. For instance: “The glide path of […] per year seems low.”; “There is a need for a stronger glidepath in view of the expected uptake in data usage and the need to enable MVNO to compete with the convergent operators' (such as Telenet and Belgacom) fixed/WIFI internet offer.”; “Proposed pricing for data should be much lower with a glide path of […] p.a.”.

328 See replies to Commission questionnaire Q4 “Remedies market test” of 21 September 2015, question 28.4. For instance: “Sim fee is too high especially for prepaid business. With these sim fee no realistic business case can be made.”; “Full MVNO: we do not see on what basis a SIM-fee is charged in case of a full MVNO set-up”; “Simcard fees are, to our knowledge, a charging item which is 'old fashioned' and not applied anymore in the MVNO market.”; “A Full MVNO should not pay any simfee to the MNO."

329 See replies to Commission questionnaire Q4 “Remedies market test” of 21 September 2015, questions 37.1 and 43. For instance: “To be able to see how many users can run on the network, Telenet should give an idea how many capacity in Gbit the purchaser could use with the 20% formula.”; “Besides the pricing there are not enough details available to assess this (mainly what this 20% of capacity means in volume of data). ”

quality of services to heavy data users on the downstream retail market for mobile telecommunications services in Belgium[330].

(477) Finally, the results of the first market test indicated that the general terms of the MVNO agreement submitted as part of the Second Commitments contained provisions that could significantly hamper the MVNO's ability to compete effectively on the downstream retail market.

(478) As a first example, some respondents deemed that the conditions under which the Notifying Party would grant access to future evolutions in mobile technologies or new products based on existing technologies were unfavourable due to the period between the commercial launch by the MNO and by its wholesale customers or to the obligation to reach agreement between the parties before access. Those two obligations were seen as delaying the commercial launch of the new technologies by the MVNO, thus constraining its development[331].

(479) As a second example, some respondents to the first market test raised substantial issues as to the obligation to pay a cost-based set-up fee capped at EUR […] [332]. That obligation was seen as an undue additional charge, especially for a full MVNO set-up, having a deterrent effect against becoming a light or full MVNO.

Commitment to support existing wholesale customers

(480) The overall opinion on the commitment to support existing MVNOs on BASE's network was negative[333].

(481) In order to maintain dynamic competition on the wholesale market for mobile services, some respondents indicated that MVNOs should be given the right to terminate their MVNO agreement early or to multi-source wholesale access from different MNOs[334].

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330 See replies to Commission questionnaire Q4 "Remedies market test" of 21 September 2015, questions 44, 44.1, 44.2 and 44.3 (including cross-references to replies to question 43). For instance: "There should not be any capacity restrictions for MVNOs on the mobile network infrastructure of the new entity Telenet-BASE. If the commitments are meant to remedy a competition concern in relation to mobile telecommunications services and, in particular, in relation to the MVNO activity (…) any limitation is likely to compromise the objectives the European Commission wants to achieve. Basically, the new entity Telenet-BASE would be in a position to control - and hence hamper - the development of the MVNOs on its mobile network infrastructure"; "Both sanctions (limit throughput) and surcharge of […] seem exaggerated. Logically only a small throughput limitations seems to be acceptable in such a context."

331 See replies to Commission questionnaire Q4 "Remedies market test" of 21 September 2015, questions 51 and 51.1. For instance: "The clause is meant to (i) limit the development of the MVNOs and to (ii) have full control over them. It will allow the new entity Telenet-BASE to launch new services (based on new technologies) earlier than the MVNOs. A similar effect is obtained in case of speed or other caps."; "Under clause 3, an agreement is required before moving to a new technology. This allows BASE/Telenet to effectively block the access of MVNO to new technologies."

332 See replies to Commission questionnaire Q4 "Remedies market test" of 21 September 2015, questions 52 and 52.1. For instance: "Traffic forecast procedures are by far too cumbersome. The clause on user equipment is simply (our apologies for the wording) ridiculous and unrealistic. The cost-based set-up cap is by far too high and should be reduced to a minimum (zero). Any set-up fee is an artificial additional charge. In the event it is 'imposed' there should be a mechanism included by which this set-up fee could be waived upon the MVNO's commercial performance."

333 See replies to Commission questionnaire Q4 "Remedies market test" of 21 September 2015, questions 63 and 63.1.

334 See replies to Commission questionnaire Q4 "Remedies market test" of 21 September 2015, questions 54.1. For instance: "What is missing is an appropriate (immediate) exit-clause. As was already expressed in previous replies, every single clause seems to be meant to (i) limit the development of the

(482) Some respondents also expressed reservations on the list of MVNOs which would be covered by the commitment. In particular, the non-disclosure of all the names maintained ambiguity as to the exact scope of the offer put forward by the Notifying Party. One current wholesale customer could not find its name. One respondent argued that it should be included in the list.

6.4.2.2. Commission's assessment of the Second Commitments

(483) With regard to the customer bases to be divested, the Commission is of the opinion that the two components of the customer base included in the Second Commitments, if purchased together, could be of a sufficient size to encourage the purchaser to invest in the transition to a full MVNO and to exert sufficient competitive pressure on the retail mobile telecommunications market to overcome the Commission's serious doubts as to the compatibility of the proposed transaction with the internal market.

(484) However, the Commission found that, in the event of a separate sale of the two customer bases, the two purchasers would not have the sufficient scale to compete effectively. Therefore, given the uncertainty as to whether the businesses would be sold jointly or separately, the Commission considered that the Second Commitments did not ensure that the divestment of the customer bases would create a sufficiently strong competitor that could act as an effective competitive constraint on the retail market for mobile telecommunications services in Belgium.

(485) With respect to the introduction of an upfront buyer clause, the Commission noted that, under the text of the Second Commitments, the Notifying Party would be deemed to have complied with the clause if it had ensured the sale of one of the two customer bases. Therefore, in the event of a sale of the customer bases to two separate purchasers, the sale of one of the two would have satisfied the upfront buyer condition. The Commission concluded that such formulation did not ensure that the serious doubts it had expressed with regard to the retail market for mobile telecommunications services in Belgium would be overcome before completion of the concentration.

(486) With regard to the MVNO agreement, the Commission noted that the purchaser would have the possibility to opt for a capacity-based pricing model for data, which is the mobile telecommunications service with the highest growth and the highest risk of a margin squeeze for the MVNO, due to the discrepancy in price developments between the wholesale level (where total wholesale fees per user increase following the increase in data usage per user) and the retail level (where prices are constrained following competition by different operators). As such, even though, given the optional nature of that element of the Second Commitments, the Commission does not have any guarantee that the capacity option will be exercised, its inclusion in the Second Commitments represented, nevertheless, a significant improvement in the Second Commitments, as compared to the First Commitments, because the capacity option offered the MVNO operating under the MVNO Agreement a means by which to switch to an alternative, and likely more favourable,

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MVNOs and to (ii) control them. This clause is not different in so far it does not allow MVNOs to switch MNOs, which in itself is anti-competitive."; "This commitment will have a limited impact. In order to increase the competition on the wholesale market, this commitment should be completed with a commitment of Telenet to immediately (upon Completion) release the existing MVNO's from their exclusivity obligation and to provide them with a possibility to terminate their agreement."

pricing structure if it found that, under the pay-as-you-go model its margins for mobile data services on the retail level were being squeezed.

(487) However, the Commission considered that the Second Commitments still suffered from the substantial shortcomings identified under the First Commitments regarding the wholesale fees.

(488) The Commission noted that the market test gave strong indications that, overall, the basic wholesale fees were still not attractive and that the MVNO agreement contained features which would unduly increase the costs of services provided by the MVNO to end-users or restrict its aptitude to benefit or adjust to the evolution of mobile market conditions. Examples included the compulsory payment of a SIM fee or the insufficient glide path for data, which would not follow retail price erosion.

(489) In addition, the Commission maintained its reservations about the exclusivity obligation, which would prevent the MVNO from benefitting from the most favourable wholesale fees on the wholesale market and would thus curtail the purchaser's ability to develop a competitive pricing model and its growth potential.

(490) As to the capacity-based pricing model proposed as an option under the Second Commitments, the Commission found that while this was, in principle, a positive addition to the terms of the MVNO agreement, the capacity option contained major loopholes, including the uncertainty regarding the guaranteed volume actually purchased, the low capacity ceiling, in particular for an MVNO targeting data-intensive customers, and the deterrent effect of the surcharges imposed by the Notifying Party to increase the capacity made available to the MVNO. In addition, under the capacity option, the Notifying Party would have the right to deviate from the non-discrimination principle in the event of heavy data usage by the MVNO, thus to supply a lower quality of service to the customers of the MVNO compared to that supplied to its own customers or to those of other MVNOs on its network. As such, the Commission considered that the capacity option under the Second Commitments would not constitute a viable means for the MVNO operating under the MVNO agreement to maintain its ability to compete in the event that the pay-as-you-go tariff structure resulted in a margin squeeze for retail mobile data services.

(491) Finally, the capacity option would be available only to one full MVNO, with no guarantee that the remedy taker would be a full MVNO or eventually become a full MVNO.

(492) In light of the considerations in recitals (483) to (491), the Commission concluded that, despite some improvements, the Second Commitments did not eliminate the Commission's serious doubts as to the proposed transaction's compatibility with the internal market and were not comprehensive and effective from all points of view[335].

6.5. The Third Commitments

(493) On 27 October 2015, the Notifying Party submitted the Third Commitments.

(494) Additionally, as mentioned in recital (430), the Notifying Party informed the Commission that, on 14 October 2015, Telenet and Medialaan had signed a Memorandum of Understanding on the sale of the JIM Mobile Customers to Medialaan. Under the Memorandum of Understanding, Telenet would also enter into an MVNO agreement with Medialaan, the key commercial terms of which would substantially reflect the terms set out in the Third Commitments. That transaction

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[335] See Remedies Notice, paragraph 9.

paved the way for a possible fix-it-first remedy[336], with Medialaan acquiring the BASE customer bases of the Third Commitments and entering into an MVNO agreement with the Notifying Party.

(495) The Notifying Party also informed the Commission that, on the same date, Telenet and Medialaan had also signed a binding term sheet on the sale of BASE's 50% shareholding in Mobile Vikings to Medialaan.

(496) In the following, the Commission will first describe the Third Commitments, highlighting the main differences with the Second Commitments. Subsequently, it will carry out its assessment of the Third Commitments, including of Medialaan as a proposed purchaser.

6.5.1. Description of the proposed commitments

(497) As with the First and Second Commitments, the Third Commitments were composed of three elements: (i) divestment of a part of BASE's customer base, (ii) entry into an MVNO agreement with the approved purchaser, and (iii) support to existing wholesale customers.

(498) The Third Commitments contained a set of relevant improvements compared to the Second Commitments, with respect to the first and second elements. The third element of the Third Commitments (support to existing wholesale customers) was, as under the Second Commitments, left unchanged as compared to the First Commitments. In the following, the Commission identifies the differences between the Third and Second Commitments with respect to the divestment of the customer base and the MVNO agreement.

6.5.1.1. Commitment to divest a part of BASE’s customer base

(499) With regard to the divestment of a part of BASE's customer base, the main change compared to the Second Commitments consisted in the fact that the Notifying Party committed to sell the two customer bases together, to one and the same purchaser. The two customer bases would be the JIM Mobile customers[337] and BASE’s stake in Mobile Vikings (with no reference to a similar customer base as an alternative option).

(500) Additionally, the upfront buyer clause was changed to provide that the Notifying Party could not close the proposed transaction prior to having entered into an agreement to sell the two customer bases to the single purchaser. As a consequence, an agreement to divest the two components of BASE's customer base became a pre-condition for the implementation of the proposed transaction (upfront divestment).

6.5.1.2. Commitment to enter into an MVNO agreement with the approved purchaser

(501) Since the two components of BASE's customer base were to be sold to one purchaser, the second element of the Third Commitments became a commitment to enter into

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336 Pursuant to paragraph 56 of the Remedies Notice, fix-it-first remedies involve “cases where the parties identify and enter into a legally binding agreement with a buyer outlining the essentials of the purchase during the Commission procedure.”

337 As explained in recital (494), the Notifying Party proposed Medialaan as a purchaser of the divested customer bases. Since Medialaan owns the JIM Mobile brand and BASE provides mobile telecommunications services to its customers under the JIM Mobile brand of Medialaan, it was possible for the Notifying Party to make explicit in the Third Commitments that BASE would divest (to Medialaan) the JIM Mobile customer base, and not an alternative similar customer base, as was provided in the Second Commitments, as explained in recital (457)(1).

one MVNO agreement with the single approved purchaser of the JIM Mobile customer base and BASE's stake in Mobile Vikings.

(502) The key terms of the MVNO agreement under the Third Commitments contained several improvements.

(503) First, the MVNO agreement into which the Notifying Party would enter with the purchaser would provide that the purchaser is required to transition to a full MVNO within two years from the closing of the purchase of the divested customer base. The set-up fee, aimed at covering costs incurred by BASE for the technical implementation work required to provide wholesale access to BASE's network, would therefore apply to the full MVNO set-up only. By contrast, under the Second Commitments, the set-up fee was due by the MVNO regardless of whether it was a light or a full MVNO. Moreover, under the Third Commitments, the maximum fee will reach EUR […], instead of EUR […], as was the case under the First and Second Commitments.

(504) In addition, until the purchaser launches as a full MVNO, BASE will provide all necessary transitional services to the purchaser. Those transitional services will be services offered under a branded partner agreement for the JIM Mobile customer base (i.e. equivalent to the services provided by BASE to Medialaan under the branded partner agreements […] for the supply of pre-paid and post-paid mobile phone services) and light MVNO wholesale services for the Mobile Vikings customer base (i.e. continuation of services provided by BASE to Mobile Vikings under the agreement […] for the supply of light MVNO wholesale services).

(505) Second, the duration of the MVNO agreement was adjusted with respect to the fact that the purchaser would launch as a full MVNO, and was thus amended to be five years from the full MVNO launch. Additionally, if the MVNO decided to exercise the capacity option, the MVNO agreement would be extended by five years from the first year of implementation of the capacity option.

(506) Third, the exclusivity period was shortened to three years from the full MVNO launch. However, the Third Commitments provided that the key terms of the MVNO agreement include a certain number of circumstances in which the exclusivity obligation would be waived. That would notably be the case if the purchaser's margin falls below a certain level ("margin squeeze protection mechanism")[338].

(507) Fourth, while the pricing model applicable under the MVNO agreement, as defined under the Third Commitments, remained the same as under the Second Commitments (pay-as-you-go model by default, with capacity-based pricing option upon request), the pricing conditions under the usage-base and the capacity-based pricing models were substantially modified.

(508) Under the usage-based pricing model, the fee structure was streamlined compared to the Second Commitments, with two volume tiers (below[339] and above 50 million minutes per month) for voice, instead of three volume tiers, and a single rate for SMS. For data, under the First and Second Commitments, the fees depended on two volume tiers, one depending on the number of million MB per month and one

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338 See presentation by Telenet/Base for the State-of-Play meeting of 10 November. The Notifying Party nevertheless argues that the margin squeeze protection mechanism is likely not to be resorted to, considering the margins triggered by the wholesale fees it offers (see recital (512)).

339 The rate applicable to the volume tier below 50 million minutes/month also applies to the transitional period during which the purchaser would operate as a light MVNO for Mobile Vikings customers.

depending on the monthly volume of megabytes per SIM card. Under the Third Commitments, for data, no volume tier depending on the number of million MB per month applies anymore. Only the five distinct volume tiers depending on the monthly volume of megabytes per SIM card are maintained.

(509) In addition, the fees were significantly lowered as compared to those under the Second Commitments.

(510) With respect to the pay-as-you-go model, for voice, the fees laid down in the Third Commitments were […] below the fees laid down in the Second Commitments and a […] discount for […] was introduced. For SMS, the fee was reduced by […]. For data, the fees were reduced by […]. In addition, the annual fee discount (the glide path) was increased […]. The SIM fee, which was set at EUR […] per SIM per month for the light MVNO and EUR […] per SIM per month for the full MVNO under the Second Commitments, was dropped to EUR […] per SIM per month for the light MVNO (except for inactive SIM cards[340]) and was removed once the purchaser operates as a full MVNO.

(511) Conversely, the purchaser is subject to an additional obligation to pay annual minimum wholesale charges to BASE based on the business forecast of the purchaser (the "minimum revenue commitments").

(512) The Notifying Party submits that the purchaser benefits from low fees for voice, SMS and data, […][341]. It adds that the fees under the usage-based pricing model allows for high gross margins (e.g. an average of […] for a JIM Mobile pre-paid customer, and of […] for a JIM Mobile post-paid customer, […]). In this context, the Notifying Party considers that the wholesale fees offered under the Third Commitments leave room for an aggressive commercial policy by the purchaser.

(513) Furthermore, according to the Notifying Party, the margin squeeze protection mechanism guarantees that the wholesale fees charged by BASE to the MVNO under the usage-based pricing model will be reduced if BASE's retail prices drop significantly more than BASE's wholesale fees. The Notifying Party therefore considers that the margin squeeze protection mechanism ensures that the wholesale fees under the usage-based pricing model will remain attractive in the future.

(514) With respect to the capacity option, under the capacity-based pricing model, the annual fee payable by the purchaser to acquire 20% of the yearly data throughput capacity on BASE's network is significantly lower ([…]) in the Third Commitments than the annual fee determined in the Second Commitments. In addition, the purchaser is offered alternative solutions if it needs more than the 20% purchased capacity. Under the Second Commitments, the purchaser had the possibility to allow BASE to limit the used capacity to the 20% limit. Under the Third Commitments, the purchaser may in addition: (i) acquire an additional 5% of capacity of BASE's network at […] of the annual fee; (ii) use pay-as-you-go rates for the excess capacity (above 20%); or (iii) after two years of implementation of the capacity option, source the excess capacity from another MNO. Finally, the right for BASE to derogate from the non-discrimination principle under the capacity option if the purchaser uses more than 40% of the capacity of BASE's network was removed.

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340 Inactive SIM cards are SIM cards with no incoming or outgoing traffic for the past three months.

341 See presentation by Telenet/Base for the State-of-Play meeting of 10 November.

(515) The Notifying Party submits that the purchaser has strong incentives to opt for the capacity-based pricing model[342]. First, the capacity tipping point[343] would be approximately […] subscribers, implying that the purchaser has an interest in exercising the capacity option immediately after completion of the divestment of the customer bases and after transition to a full MVNO. Second, the effective rates under the capacity-based pricing model are more attractive than under the usage-based pricing model. […].

(516) Furthermore, the Notifying Party considers that the available capacity under the capacity option (20% of BASE's network, with the possibility to reach 25%) is sufficient to support growth of the purchaser, since it is sufficient to cover […] customers in peak hour across the entire term of the MVNO agreement. It submits that the 20% available capacity also offers the opportunity to leverage off-peak data usage (i.e. data capacity outside the lunch peak hours) at no incremental cost. The Notifying Party indicates that the purchaser can even grow beyond 20% of BASE's network capacity and can use one of the alternative solutions for that purpose (i.e. it can purchase additional 5% capacity, use the usage-based pricing model or offload excess traffic to other MNOs through multi-sourcing).

6.5.1.3. Medialaan as a fix-it-first purchaser under the Third Commitments

(517) As explained in recitals (494) and (495), the Notifying Party informed the Commission that on 14 October 2015 it had entered into a Memorandum of Understanding and term sheet with Medialaan, providing for Medialaan’s acquisition of the JIM Mobile customer base and BASE’s 50% stake in Mobile Vikings respectively. Under the Memorandum of Understanding, Medialaan also agreed that it would enter into the MVNO agreement with the Notifying Party.

(518) The Notifying Party also indicated that Medialaan and the shareholders of VCI (which holds the other 50% shares in Mobile Vikings) had entered into a separate agreement for the sale of 100% of the shares in VCI to Medialaan.

(519) As a consequence of those agreements with the Notifying Party and VCI, Medialaan would ultimately own 100% of the shares in Mobile Vikings (50% directly and 50% indirectly through VCI).

(520) In a formal submission dated 30 November 2015, the Notifying Party explained that Medialaan complies with the purchaser requirements laid down in Section B3 of the Third Commitments and therefore qualifies as a suitable purchaser.

(521) First, the Notifying Party has assessed the independence of Medialaan (and its parents, De Persgroep and Roularta) vis-à-vis Telenet and has concluded that no material cross-shareholdings exist, that the two companies have no joint investments or joint ventures and that they have not been involved in the same mergers or acquisitions since 2001. The Notifying Party notes that Medialaan and Telenet have business relations in distribution (Telenet distributes Medialaan's TV channels) and advertising (Telenet spends for advertising on Medialaan's TV and radio channels) but considers that they have no impact on the independence of the companies and their parent groups.

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342 See presentation by Telenet/Base for the State-of-Play meeting of 10 November.

343 Defined as the number of subscribers in 2016 as from which the average annual fee over 5 years under the capacity-based pricing model becomes lower than under the usage-based pricing model.

(522) Second, the Notifying Party has assessed whether Medialaan has the financial resources, proven expertise and incentive to maintain and develop the divested customer base. In light of the financial strength of Medialaan's parents, of the initial investments made to acquire the divested customer base and of the MVNO agreement corresponding to the terms of the Third Commitments, which, according to the Notifying Party, is attractive, the Notifying Party concludes that Medialaan has the financial means to maintain and develop the divested customer base. Concerning expertise in the mobile telecommunications sector, the Notifying Party submits that Medialaan already has the in-house expertise thanks to its experience as a branded partner on BASE's mobile network under the JIM Mobile brand and the experience of its current director of innovation and exploitation in the telecommunications sector. It adds that the purchase of Mobile Vikings will enable Medialaan to acquire relevant technical expertise. To demonstrate Medialaan's incentive to be a viable competitive force in the Belgian retail market for mobile telecommunications, the Notifying Party relies on recent statements issued by Medialaan after announcing the acquisition of Mobile Vikings. According to those statements, developing mobile activities fits the future perspective of Medialaan in which building a direct relation with the end user is becoming more and more important[344].

(523) Third, the Notifying Party has assessed whether the divestment of the JIM Mobile customer base and of Mobile Vikings to Medialaan would raise *prima facie* competition concerns or risks of delays in the process of implementation of the remedy. The Notifying Party considers that this would not be the case, considering that the divestment would neither give rise to a horizontal overlap nor to risks of input or customer foreclosure from access to TV and radio advertising. Therefore, the Notifying Party concludes that Medialaan can reasonably be expected to obtain merger control approval from the Belgian Competition Authority.

6.5.2. Commission's assessment of the Third Commitments

(524) The Commission launched a market test of the Third Commitments on 28 October 2015. Questionnaires were sent to current and potential future providers of mobile telecommunications services in Belgium and to the Belgian consumer association Test-Aankoop/Test-Achats.

(525) Market participants were informed of the signature of the Memorandum of Understanding between Telenet and Medialaan and of the Sales and Purchase Agreement between Medialaan and VCI. Therefore, the questionnaires also covered the question of the suitability of Medialaan as the purchaser of the divested customer base[345].

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344 See e.g. statement by Peter Bossaert, CEO of Medialaan, of 19 November 2015 available at http://www.persgroep.be/en/news/medialaan-acquires-mobile-vikings: “JIM Mobile may have appeared as somewhat of an outsider at MEDIALAAN up to now. In fact, it has been a strong pillar for many years already. We have been following Mobile Vikings for quite a while from our mobile activities. The acquisition of Mobile Vikings brings a great deal of knowledge in house on how to maintain a strong relationship with the end user. It is increasingly becoming a hobbyhorse of MEDIALAAN. Our brands vtm.be, Qmusic, VTMKZOOM and Stievie are working harder and harder to cultivate a direct relationship with their viewers and listeners. So becoming active in the mobile market is actually a logical step for an audiovisual company like ours.”

345 Conversely, the questionnaires did not cover the wholesale fees under the usage-based or capacity-based pricing models which had become confidential. Since the amounts of those fees are part of the MVNO agreement to be signed pursuant to the Memorandum of Understanding between Telenet and Medialaan, their disclosure might have caused harm to these companies and they were not disclosed in the second market test.

6.5.2.1. Results of the second market test

(526) Overall, the second market test yielded mixed results. Most respondents maintained the views expressed during the first market test that the commitments should not only target the retail mobile and wholesale mobile markets but also the wholesale fixed markets. They reiterated that, in their opinion, the mobile market addressable by mobile-only operators is rapidly shrinking in Belgium and that convergent operators able to offer fixed-mobile services may be successful in that environment[346]. For the reason explained in recital (467), those concerns are not further discussed in the assessment of the Third Commitments.

(527) In addition, a respondent raised the concern, already expressed during the first market test, that the Third Commitments would address the competition concerns (including the risk of input foreclosure) on the retail and wholesale mobile markets in the Flemish Region, but not in the Walloon Region[347]. Considering that this issue is discussed in Section 5.2.1 of this Decision and that the Commission finds that the proposed transaction will not lead to a significant impediment of effective competition with respect to wholesale mobile services provided to Nethys, the Commission will not further assess the concern raised by Nethys as part of its assessment of the Third Commitments.

(528) The Commission will thus focus on the replies of the respondents regarding (i) the suitability of Medialaan as the purchaser[348], and (ii) the viability and competitiveness of the divested business (the JIM Mobile customer base and Mobile Vikings) under the conditions offered by BASE to Medialaan[349].

Suitability of Medialaan as the purchaser

(529) Respondents expressed diverging opinions about Medialaan's ability and incentive to become an effective competitor on the Belgian retail market for telecommunications services[350].

(530) The following were listed by respondents as elements supporting Medialaan's ability to become an active competitive force on the Belgian retail mobile market: (i) Medialaan's experience in marketing, notably in building brands, and in customer relationship management; (ii) Medialaan's access to the necessary media to promote its products and to distribution channels to sell them, notably newspaper stores; and (iii) Medialaan's experience in developing innovative services.

(531) However, some respondents identified Medialaan's lack of significant experience in the telecommunications market as a weakness. As a branded reseller, Medialaan is deemed to lack the necessary IT provisioning and billing systems, tools, processes or skills required to be a large-scale actor on the retail mobile market. Two respondents nevertheless submitted that the acquisition of Mobile Vikings will grant Medialaan access to the required know-how.

(532) In addition, the results of the second market test are not clear-cut as to the impact of Medialaan's existing assets on its ability to compete on the retail mobile market.

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346 See replies to Commission questionnaire Q5 “Market test” of 28 October 2015, in particular question 18.4.

347 Where Nethys is mainly active.

348 See Remedies Notice, paragraphs 47 *et seq.*

349 See Remedies Notice, paragraphs 23 *et seq.*

350 See replies to Commission questionnaire Q5 “Market test” of 28 October 2015, questions 1, 2.1, 5.1, 6.1 and 9.1.

While respondents acknowledged the strength of Medialaan's media brands and press outlets, some argued that Medialaan did not own any well-known or valued telecommunications brands, nor physical distribution channels dedicated to telecommunications services in Flanders[351].

(533) Respondents did not express a homogenous view with respect to Medialaan’s incentive to compete on the Belgian retail mobile telecommunications. One respondent stated that the revenues of Medialaan and of its parent companies were under pressure, which explained that Medialaan had a strong incentive (i) to develop new revenue-generating activities, (ii) to take advantage of the evolutions in the media landscape, in particular the increased recourse to non-linear viewing, especially online (increased use of smartphones and tablets), and (iii) to lessen its dependence on Telenet (e.g. through the creation of Stievie, Medialaan's own distribution platform, which could become a provider of telecommunications services). Conversely, one respondent indicated that Medialaan's dependence on Telenet for the distribution of its TV channels, hence for its revenues, would in fact reduce Medialaan's incentive to compete with Telenet and to capture part of its mobile customer base.

(534) Finally, most respondents to the second market test did not identify any specific competition problem arising from the acquisition by Medialaan of the JIM Mobile customer base and of Mobile Vikings, which would result in Medialaan not obtaining the necessary approvals from the relevant regulatory authorities[352].

Viability and competitiveness of the JIM Mobile customer base and Mobile Vikings

(535) As a preliminary remark (see recital (526)), some respondents expressed the general view that MVNO activities did not and would not constitute a sustainable business in Belgium, mainly due to the fixed-mobile convergence in Belgium. They took the example of Mobile Vikings to support their view[353]. One respondent indicated that a mobile-only business could be viable in Belgium, provided that the concerned entrant is given the possibility to operate its own network in the medium term[354].

(536) Concerning more specifically the MVNO conditions set out under the Third Commitments, the second market test addressed the capacity option via two

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351 In their opinion, such dedicated outlets would be necessary for a mobile operator to compete due to the increasing importance of handset subsidisation to attract new customers.

352 See replies to Commission questionnaire Q5 “Market test” of 28 October 2015, question 8.1.

353 See replies to Commission questionnaire Q5 “Market test” of 28 October 2015, questions 1.1 and 4.1.: “It [Medialaan] is likely to face major financial issues to turn the mobile virtual network operator activity into a sustainable business. Mobile Vikings has never made a profit and is accumulating financial losses, leading to a situation in which the annual financial reporting had to address explicitly the longer term prospects of Vikingco NV.”; “In general [the respondent] does not believe that it is possible today and especially towards the future to build a sustainable MVNO business model, and even a mobile network operator business model, without disposing of a sustainable access to fixed services. Not disposing of such access obliges the mobile-only operators to focus on a very “bespoke” (niche) target market, unless its activity can significantly be cross-subsidized via other activities. The fact that, despite its low operational cost business model, Vikingco never made a profit and that its customer base never reached the level of Telenet, demonstrates this further.”

354 See reply to Commission questionnaire Q5 “Market test” of 28 October 2015, questions 1.1, 8.1 and 11.1. For instance: “(…) on the medium to long run only MNOs are effective competitors as shown by the MVNOs story in the EU and by the fact that Telenet is now willing to move from a MVNO to an MNO position, despite having a relatively great success as MVNO. The example of Free Mobile is very interesting in this regards. Free Mobile managed to gain 16% market shares and 11M subscribers after 3 years only. This would never have been possible if Free Mobile was launched as a MVNO only with no possibility to rely on its own network (at least partly) at some point.”

questions: (i) the likelihood that Medialaan would opt for the capacity-based pricing model for data instead of the usage-based pricing model; and (ii) the level of capacity needed for Medialaan to grow and compete effectively. Reasoned, substantiated replies were difficult to obtain due to the absence of non-confidential data with regard to the annual fee and the actual capacity to be purchased (in Gbps) as well as due to the lack of visibility on Medialaan's business model for its mobile activities[355].

(537) Nevertheless, some respondents were able to submit substantiated reservations about the obligation to pay the annual fees during five years under the capacity option[356]. That obligation was considered as a deterrent against the use of the capacity-based pricing model and as a means to lock Medialaan in by binding Medialaan to pay for 20% of BASE's network capacity during five years and to prevent other MNOs from competing with the merged entity on the wholesale mobile market.

(538) More generally, the issue of the exclusivity to be granted by Medialaan to BASE raised concerns by most of respondents having expressed an opinion. They considered that the exclusivity obligations under the MVNO agreement would limit the ability of Medialaan to benefit from lower wholesale fees that may be offered by other MNOs, thus restricting its ability to compete effectively. The exclusivity obligations would also hamper competition on the upstream wholesale market for mobile services[357]. The introduction of minimum revenue commitments triggered mixed views among respondents as well. Respondents either saw the minimum revenue commitments as incentivising Medialaan to grow or, on the contrary, as hampering its ability to compete effectively, notably by encouraging cautious forecasts to minimise exposure and, in turn, by limiting investment[358].

(539) Concerning the other contractual terms governing Medialaan's wholesale access to BASE's mobile network, most respondents considered that the revised conditions for access to new technologies under the Third Commitments (i.e. access at reasonable price in order for Medialaan to launch commercially within four weeks of the commercial launch by BASE) would allow Medialaan to readily have access to such new technologies and compete effectively[359].

6.5.2.2. Commission's assessment of the Third Commitments

(540) In light of the results of the second market test, the Commission considers that the Third Commitments solve most – but not all – of the shortcomings identified in the

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355 See replies to Commission questionnaire Q5 “Market test” of 28 October 2015, questions 10, 11 and 12.

356 This five-year commitment to pay was also addressed in the question on the exclusivity clause. Therefore, see also replies to Commission questionnaire Q5 “Market test” of 28 October 2015, questions 13.1 and 16.1.

357 See replies to Commission questionnaire Q5 “Market test” of 28 October 2015, questions 13 and 13.1. For instance: “This means that Mobistar will have spare capacity from July 2018 onwards. In our view the exclusivity for Medialaan towards Base should end at the middle of 2018 for both the capacity option and the ratecard model. From July 2018 onwards Multi-sourcing should be possible for Medialaan or a complete switch to Mobistar or Proximus.”; “Because of exclusivity and minimum purchase commitment, Medialaan will not be able to use competition on the wholesale market in its commercial relationship with BASE which will give BASE a strong bargaining power.”; and “There is no justifiable reason whatsoever to have an exclusivity clause or equivalent (= pay for the capacity option until the end of the MVNO agreement), since - this limits the possibility for MEDIALAAN to switch to other (competing) MNOs (= “lock-in”); - this limits the possibility for (competing) MNOs to engage in attracting potential MVNO clients (= restriction of competition). In addition, as a consequence hereof, during (at least) 3 years, important revenues are guaranteed to TELENET.”

358 See replies to Commission questionnaire Q5 “Market test” of 28 October 2015, question 14.

359 See replies to Commission questionnaire Q5 “Market test” of 28 October 2015, question 15.

First Commitments and Second Commitments. The Commission also concludes that Medialaan is a suitable purchaser.

Customer base to be divested and MVNO agreement

(541) First, the risk of an insufficient size of the divested customer base is removed, since the two customer bases are sold jointly to one purchaser. In addition, an agreement on the divestment of the entire customer base is a pre-condition for closing the proposed transaction, which ensures that the competition concerns are removed before the proposed transaction is completed.

(542) Second, the obligation for Medialaan under the MVNO agreement to transition to a full MVNO in less than two years removes the uncertainty as to the actual implementation of a competitive business model within a reasonable period. The compulsory transition to a full MVNO also gives more visibility on the wholesale services to be provided by BASE under the MVNO agreement.

(543) Third, the rate card is simplified and, subject to the reservations in recital (559), is more attractive.

(544) Finally, the exercise of the capacity option no longer triggers the right for BASE to unilaterally decide to limit the capacity available for the purchaser, to charge a surcharge or to derogate from the non-discrimination principle.

(545) However, the Commission considers that the terms of the MVNO agreement under the Third Commitments still suffer from three flaws regarding voice wholesale fees, capacity and exclusivity, as described in recitals (559), (562) and (563) respectively.

Suitability of Medialaan as the purchaser

(546) The Commission considers that Medialaan complies with the standard purchaser requirements recalled in the Third Commitments[360] in terms of independence, financial resources and the absence of *prima facie* competition concerns[361].

(547) First, based on information on shareholdings and joint ventures submitted by the Notifying Party, the Commission finds that there is no control relationship between Medialaan (or its parents) and Telenet. It also considers that the business relations between the two companies do not qualify as control and do not put into question the independence of Medialaan vis-à-vis Telenet. Under the MVNO agreement, Medialaan will have control over its own mobile products and prices.

(548) Second, Medialaan is backed by two strong companies (its parents De Persgroep and Roularta) and has demonstrated, through the purchase of the JIM Mobile customer base and the acquisition of sole control over Mobile Vikings, that it has the financial capacity to invest heavily in the mobile telecommunications sector.

(549) Third, the Commission has not identified any *prima facie* competition concerns arising from the purchase of the JIM Mobile customer base and of Mobile Vikings. The divestment does not give rise to a horizontal overlap and there is no risk that Medialaan forecloses its rivals on the retail mobile market by restricting their access

[360] The Third Commitments contain an additional purchaser requirement related to the ownership "of a recognised telecommunications or media brand in or outside if Belgium" or "a recognised retail consumer brand in or outside Belgium." Examples of such brands include Medialaan and JIM Mobile. Consequently, this requirement is complied with by Medialaan.

[361] The opinion of the Commission that the acquisition of the JIM Mobile customer base and of Mobile Vikings does not raise *prima facie* competition concerns is without prejudice to the opinion of the Belgian Competition Authority, which has jurisdiction.

to TV and radio advertising. Medialaan could not engage in such foreclosure, among others because Medialaan is bound by agreements with the existing mobile players on the retail mobile market which guarantee their access to advertising on Medialaan's TV and radio advertising.

(550) One respondent to the market investigation argued that the divestment may raise competition concerns, in particular concerns of coordination or collusion, because it will create an additional relationship between Telenet and Medialaan and in light of the fact that Medialaan and Telenet already have business relations since Medialaan supplies its TV channels to Telenet, which in turn distributes them to consumers via its cable network. The Commission does not consider that the divestment would lead to coordinated effects or collusion. There would be significant asymmetry between Medialaan and the merged entity, with Medialaan being a new MVNO that just entered the market and the merged entity being one of Belgium's three MNOs, with a much larger subscriber and revenue base. The mere existence of links between Medialaan and the merged entity is not sufficient to give rise to coordinated effects or collusion.

(551) With regard to Medialaan's lack of expertise in the telecommunications sector pointed out by some respondents during the second market test, the Commission notes that members of Medialaan's management have experience in the sector for mobile telecommunications services and that Medialaan intends to rely on the services of third parties to transition to a full MVNO[362]. Following completion of the divestment, Medialaan will also benefit from the transfer of experience and know-how of Mobile Vikings on the retail mobile telecommunications market.

(552) As to Medialaan's ability and incentive to become an active competitive force on the retail mobile telecommunications market, the Commission has reviewed Medialaan's business plan for retail mobile telecommunications services. Medialaan's projections in terms of number of customers are both realistic (notably on the declining or stabilising segments) and ambitious. In addition, Medialaan has confirmed that the diversification in the mobile telecommunication market is part of its strategic plan[363].

(553) While Medialaan does not own the fixed network assets that may have contributed to Telenet's success in the mobile sector (see recital (252)), the Commission believes that Medialaan's media assets may usefully support its development in the retail mobile telecommunications market. Such assets could facilitate the distribution and marketing of Medialaan's mobile services (Medialaan could notably offer new mobile services under some of its media brands) and could give Medialaan's customers access to enhanced mobile content, thus enabling Medialaan to differentiate itself from other operators and to expand its customer base.

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362 See reply to Commission questionnaire Q5 "Market test" of 28 October 2015, questions 1.1 and 5.1. For instance: "MEDIALAAN will, as Telenet has done before, rely on services of third parties, including MVNEs, BSS [Business Support Services] suppliers, logistic partners, to assist it to become a full MVNO."

363 See reply to Commission questionnaire Q5 "Market test" of 28 October 2015, question 1.1: "MEDIALAAN's strategy to become an effective competitor was developed following a strategic review carried out by the Boston Consulting Group following the takeover by Liberty Global of De Vijver Media. That review advised MEDIALAAN to invest and diversify in telecommunication services."

Viability and competitiveness of the JIM Mobile customer base and Mobile Vikings

(554) The second market test raised the issue of the viability and competitiveness of the divested business (JIM Mobile and Mobile Vikings customer base) in a retail mobile market seen by some respondents as declining, especially on the pre-paid segment. The Commission considers that the divested business will in fact serve as the basis for Medialaan to develop viable, competitive activities on the retail mobile telecommunications market.

(555) First, Mobile Vikings has shown growth since its inception in 2009 and benefits from a low churn rate[364]. In addition, under the Third Commitments, the Notifying Party is required to preserve the economic viability, marketability and competitiveness of Mobile Vikings until it is transferred to Medialaan. The Memorandum of Understanding between Telenet and Medialaan also incentivises Telenet to maintain the JIM Mobile customer base until it is transferred to Medialaan. […][365]. […].

(556) Second, as indicated by the results of the first market test, the divested customer base ([…] active subscribers) reaches the critical mass necessary to constitute a viable business if properly managed and to recoup the investment costs borne by Medialaan to operate as a full MVNO. At the same time, it is not large enough to dis-incentivise Medialaan from disrupting the market or at least competing aggressively.

(557) Third, the transition of Medialaan from a branded reseller (for the JIM Mobile customer base) and from a light MVNO (for the Mobile Vikings customer base) to a full MVNO (for the combined customer base) will enable Medialaan (i) to reach economies of scale, (ii) to be fully responsible for all commercial aspects of its offerings, including in terms of pricing, and (iii) to benefit from reduced wholesale fees. Medialaan, as a full MVNO, will benefit from lower costs for producing its services thanks to lower wholesale fees and will be free to decide on its pricing policy. Medialaan will thus be able to compete more effectively while preserving its margins. In this regard, the Commission is satisfied that the Third Commitments contain sufficient incentives for Medialaan to transition to a full MVNO and to start competing effectively as soon as possible, and in any case within the two-year period set out in the MVNO agreement. Those incentives include the following advantages offered only to a full MVNO: (i) reduced fees under the usage-based pricing model; (ii) the right to opt for the capacity-based pricing model, under which the wholesale fees chargeable for data are reduced; (iii) the waiving of SIM fees; and (iv) the port-in bonus in the form of airtime allowance.

(558) Fourth, the viability and competitiveness of the divested business depend on the wholesale conditions granted by BASE. To determine whether the wholesale conditions granted by BASE would allow Medialaan to grow and compete effectively, the Commission has assessed the wholesale fees applicable under the usage-based pricing model, using as a benchmark the estimated fees applicable to Telenet in 2016 and 2017 under its current agreement with Mobistar[366]. It has also consulted the BIPT.

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[364] See Reply to Commission questionnaire Q4 "Remedies market test" of 21 September 2015, question 3.4.; Presentation of 2 June 2015 by a member of staff of the cabinet of the Minister for Digital Agenda, Base-Telenet, slide 8;

[365] […].

[366] Since the use of the capacity-based pricing model for data is optional, the Commission had to ensure that the pricing model by default would create the conditions for Medialaan to offer mobile services to end customers at attractive prices. In addition, voice, the costs of which are charged on a usage basis

(559) On voice, the Commission finds that the wholesale fees applicable to Medialaan under the Third Commitments in 2016 and 2017 […] those applicable to Telenet. However, the Commission has identified two major flaws: (i) […]; and (ii) […][367]. Therefore, Medialaan incurs a systematic loss for each incoming call.

(560) On SMS, the Commission has established that the wholesale fee applicable to Medialaan […] that applicable to Telenet and is sufficiently low not to require a decrease during the term of the MVNO agreement between BASE and Medialaan.

(561) On data, the Commission has calculated that the effective fees applicable under the Third Commitments are EUR […] per MB for the year 2016 and EUR […] per MB for the year 2017. The Commission considers those fees […] the fees applicable to Telenet […][368]. However, in view of Mobile Vikings' ability to acquire data-intensive customers despite higher wholesale fees[369], the high margin level obtained by Medialaan on the basis of those wholesale fees, as estimated by the Notifying Party, and the margin squeeze protection mechanism, the Commission concludes that […] would not prevent Medialaan from exercising an effective competitive pressure on prices.

(562) In addition, should, notwithstanding the margin squeeze protection mechanism, the wholesale fees under the pay-as-you-go model create a margin squeeze for Medialaan, the latter would have the possibility to exercise the capacity option and obtain more favourable wholesale fees. The Commission finds that the implied fees under the capacity option as defined in the Third Commitments (floor cost per MB of EUR […] cent in 2016 and […]) […] the fees applicable to Telenet under its current MVNO agreement with Mobistar […]. The Commission finds that the main issue with regard to the capacity option is the 20% limit in the capacity made available by BASE, which will likely be exceeded by Medialaan. The Commission estimates that Medialaan would use between 25% and 29% of the data throughput capacity on BASE's network during the 2016-2020 period.

(563) The Commission has also assessed the other key terms of the MVNO agreement under the Third Commitments to determine whether they would enable Medialaan to grow and compete effectively on the retail mobile market. In light of the results of the second market test, the Commission concludes that the only remaining issue relates to the exclusivity obligations. The Commission considers that the duration of the exclusivity period (three years from the launch of Medialaan as a full MVNO) would likely hamper Medialaan's ability to compete effectively. In addition, by binding Medialaan, one of the future main MVNOs in Belgium, to BASE, the exclusivity obligations would negatively impact the current levels of competition on the wholesale mobile market.

(564) In light of recitals (540) to (563), the Commission concludes that the Third Commitments are significantly improved compared to the Second Commitments and that Medialaan is a suitable purchaser for the divested customer base. However, three issues (wholesale fees for voice, capacity, and exclusivity) need to be further

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only, remains a significant component of the mobile telecommunications services used by the JIM Mobile and Mobile Vikings customers.

367 […].

368 […].

369 To the extent that the wholesale fees charged to Mobile Vikings under a retail minus pricing model (consisting in establishing the price of a wholesale service by reducing the retail service price by a percentage) are comparable to the fees to be charged to Medialaan.

improved for Medialaan to be able to compete effectively, and thus for the Third Commitments to eliminate the Commission's serious doubts as to the proposed transaction's compatibility with the internal market and be comprehensive and effective from all points of view.

6.6. The Final Commitments

6.6.1. Description of the proposed commitments

(565) The main modifications brought by the Notifying Party to the Third Commitments, which are also reflected in the provisions of the MOU Modification Letter, are the following:

(1) Lower wholesale fees under the usage-based pricing model for voice, through: (i) […] during five years of operation of Medialaan as a full MVNO. Under the Third Commitments, […]; and (ii) […];

(2) Higher capacity under the capacity-based pricing model. The corresponding improvement is twofold. First, the price of the 5% additional capacity that may be purchased by Medialaan […]. Under the Third Commitments, Medialaan had the possibility to purchase 5% capacity in addition to the 20% capacity obtained against the annual fee. The price of the 5% additional capacity was […] of the annual fee. Under the Final Commitments, the price is […] of the annual fee. Second, Medialaan has the possibility, after two years of operation as a full MVNO, to purchase a second additional tranche of 5% capacity at a price of […] of the annual fee. In other terms, after two years, Medialaan can buy 30% capacity at a price of […] of the annual fee;

(3) Shorter exclusivity period. Under the Final Commitments, the three-year period during which Medialaan may not purchase wholesale services from another MNO than BASE starts from the date of closing of the sale of the divestment of the customer base. Under the Third Commitments, it started from the date of launch as a full MVNO. Therefore, if Medialaan were to take the full two years to launch as an MVNO, the exclusivity period would be reduced by approximately two years. Moreover, the two-year specific exclusivity period for purchasing additional capacity under the capacity-based pricing model has been removed.

(566) In addition, in compliance with paragraph 94 of the Remedies Notice, the Commission informed the Notifying Party that it had found that the proposed transaction did not lead to a significant impediment of effective competition with respect to the wholesale market for access and call origination on mobile networks. Following such communication, the Notifying Party decided to withdraw the third component of the First, Second and Third Commitments (support to existing wholesale customers). Therefore, the Final Commitments do not foresee any measure to extend BASE's existing MVNO agreement or to waive penalties applicable under those agreements.

(567) Finally, in the Final Commitments the Notifying Party explicitly refers to Medialaan as the purchaser of the business to be divested (JIM Mobile customer base and Mobile Vikings). The Notifying Party also added a number of provisions in the Final Commitments to bring the text of the Final Commitments into line with the text of

the Commission's Model Text for Divestiture Commitments[370]. In particular, the Notifying Party reinserted the standard clauses prohibiting re-acquisition of the divested business and completion of the proposed transaction before appointment of a Monitoring Trustee, who would remain in function until submission of the first report following the launch of Medialaan as a full MVNO.

6.6.2. Commission's assessment

(568) The Commission considers that the reduction of the wholesale fees for voice, the optional additional capacity and the shortening of the exclusivity period solve the remaining concerns raised by the Third Commitments.

(569) First, with regard to wholesale fees for voice services, the introduction of a […] rebate […] enables Medialaan to benefit from the expected decrease in the underlying costs and to maintain attractive offerings for those customers whose purchase of mobile services are driven by voice. In addition, […] for incoming calls removes the systematic loss that Medialaan would have faced under the Third Commitments.

(570) Second, with regard to the capacity option for data, the second additional tranche of 5% capacity guarantees that the capacity made available to Medialaan is sufficient to cover data usage by one million customers, according to the Commission's estimates. The Commission acknowledges that this additional tranche does not ensure that Medialaan will exercise the capacity option. However, it ensures that Medialaan has the possibility to purchase enough capacity to accommodate the […] of its customer base until 2020, while benefitting from more favourable fees than under the pay-as-you-go model.

(571) Third, the exclusivity period is reduced in such a way that Medialaan would be given the right to multi-source or switch host MNOs much sooner than under the Third Commitments. If it were to take Medialaan two years to launch as a full MVNO, it would have the right to multi-source or switch host MNOs already after one year after transitioning to a full MVNO. This means that, as soon as Medialaan launches as a full MVNO, it could enter into negotiations with the other MNOs than BASE to obtain the lowest wholesale rates on the market. In addition, if Medialaan exercised the capacity option, it could achieve the same results by being allowed to immediately multi-source capacity exceeding 20% of BASE's network capacity from different MNOs[371].

(572) In addition, the Commission does not object to the withdrawal of the commitment concerning the support measures to BASE's existing customers (MVNOs hosted by BASE), which aimed at remedying the potential input foreclosure concerns that, at an earlier stage of its investigation, the Commission considered could arise from the proposed transaction with respect to the market for wholesale access and call origination on mobile networks. Following further investigation and for the reasons set out in Section 5.2.1 of this Decision, the Commission has concluded that the proposed transaction does not lead to a significant impediment of effective competition as a result of input foreclosure of wholesale access and call origination on mobile networks in Belgium.

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[370] Best Practice Guidelines on the Commission’s model texts for divestiture commitments and the trustee mandate under the EC Merger Regulation, 5 December 2013.

[371] Such additional capacity would be needed according to the Commission's estimations, see recital (562) of this Decision.

(573) In light of all the preceding considerations, the Commission concludes that the Final Commitments address in full the significant impediment to effective competition identified by the Commission as resulting from the proposed transaction in respect of the retail market for mobile telecommunications services.

(574) The Commission therefore concludes that, subject to full compliance with the Final Commitments given by the Notifying Party, the proposed transaction would not significantly impede effective competition in the internal market or a substantial part thereof. The proposed transaction should therefore be declared to be compatible with the internal market and the EEA agreement pursuant to Article 2(2) and Article 8(2) of the Merger Regulation and Article 57 of the EEA Agreement, subject to full compliance with the commitments in Annex 1 to this Decision.

6.7. The MVNO agreement between Telenet and Medialaan

(575) On 30 November 2015, Telenet and Medialaan signed an MVNO agreement. The MVNO agreement was followed by a letter signed by Telenet and Medialaan on 18 December 2015, amending the MVNO agreement.

(576) The Commission considers that the terms of the MVNO agreement as amended by letter are consistent with the Final Commitments.

7. CONDITIONS AND OBLIGATIONS

(577) Pursuant to the second subparagraph of Article 8(2) of Regulation (EC) No 139/2004 (the Merger Regulation), the Commission may attach to its decision conditions and obligations intended to ensure that the undertakings concerned comply with the commitments they have entered into vis-à-vis the Commission with a view to rendering the concentration compatible with the internal market.

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

(579) In accordance with the basic distinction described in recital (577) as regards conditions and obligations, this Decision should be made conditional on full compliance by the Notifying Party with paragraphs 2 to 5 of Section B of the commitments submitted by the Notifying Party on 18 December 2015. All other Sections should be obligations within the meaning of Article 8(2) of the Merger Regulation. The full text of the commitments is set out in Annex 1.

HAS ADOPTED THIS DECISION:

Article 1

The notified operation whereby Liberty Global Broadband I Limited acquires sole control of BASE Company NV within the meaning of Article 3(1)(b) of Regulation (EC) No 139/2004 is hereby declared compatible with the internal market and the EEA Agreement.

Article 2

Article 1 is subject to compliance by Liberty Global Broadband I Limited with the conditions set out in paragraphs 2 to 5 of Section B of Annex 1.

Article 3

Liberty Global Broadband I Limited shall comply with the obligations set out in Sections B (paragraphs 6 to 8), C, D and E of Annex 1.

Article 4

The Commission approves Medialaan NV as a suitable purchaser of the Divestment Businesses, as defined in Annex 1.

Article 5

The Commission approves the terms of the mobile virtual network operator agreement entered into by Medialaan NV and Telenet NV on 30 November 2015, as amended on 18 December 2015, as being consistent with the commitments set out in Annex 1.

Article 6

This Decision is addressed to:

Liberty Global Broadband I Limited

38 Hans Crescent

SW1X 0LZ London

United Kingdom

Done at Brussels, 4.2.2016

For the Commission

(Signed)

Margrethe VESTAGER
Member of the Commission

CASE COMP M.7637

LIBERTY GLOBAL /
BASE

Commitments to the European Commission

17 DECEMBER 2015

Pursuant to Article 8(2) of Council Regulation (EC) No 139/2004 (the ***Merger Regulation***), Liberty Global hereby provides the following commitments (the ***Commitments***) in order to enable the European Commission (the ***Commission***) to declare the acquisition of BASE by Telenet (the ***Concentration)*** (Liberty Global and BASE are together the ***Parties***) compatible with the common market by a decision pursuant to Article 8(2) of the Merger Regulation (the ***Decision***).

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

This text shall be interpreted in the light of the Decision, to the extent that the Commitments are attached as conditions and obligations, in the general framework of Union law, in particular in the light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (the ***Remedies Notice***).

A. DEFINITIONS

1. For the purposes of the Commitments, the following terms shall have the following meanings:

BASE: BASE Company NV.

BASE Customers: all mobile end-customers with whom a member of the BASE Group has a contractual relationship (including, for the avoidance of doubt, pre-paid customers to which BASE's general terms and conditions apply) for the provision of mobile telecommunication services.

BASE Group: BASE and all of its subsidiaries and any joint ventures in which it participates in Belgium.

BASE Network: the mobile telecommunications network operated by BASE based on spectrum currently licensed to BASE in Belgium.

Closing: as specified in Section B.

Completion: the completion of the acquisition of BASE by Liberty Global (inter alia) through the transfer of the entire issued and outstanding share capital of BASE to Telenet.

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

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

Core Network: means the components of a mobile communications network required for subscriber authentication, switching, billing and network interfacing including in particular a mobile switching centre, gateways, databases as well as home and visitor location register and excluding the radio access network.

Divestment Businesses: both of Divestment Business A and Divestment Business B.

Divestment Business A: as specified in Section B.

Divestment Business B: as specified in Section B.

Effective Date: the date of the adoption of the Decision.

Full MVNO: an MVNO that either controls or has contractual access to a Core Network other than the Core Network of BASE.

Full MVNO Launch Date: the date on which the Purchaser commercially launches as a Full MVNO on the BASE Network, which shall occur at the very latest […].

Hold Separate Manager: the person appointed by Liberty Global, where relevant, to manage the day-to-day business of the whole of the issued and outstanding shares held by BASE in Mobile Vikings under the supervision of the Monitoring Trustee.

Indemnified Party: as specified in Section D.

JIM Mobile Customers: BASE Customers who purchase mobile telecommunications services under the 'JIM Mobile' brand of Medialaan as at the Full MVNO Launch Date.

Key Personnel: all personnel necessary to maintain the viability and competitiveness of Mobile Vikings, including the Hold Separate Manager.

Liberty Global: Liberty Global Plc and all of its subsidiaries, including, for the avoidance of doubt, Liberty Global Broadband I Limited and Telenet.

MNO: a mobile network operator owning spectrum in Belgium.

Mobile Vikings: VikingCo NV.

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

MVNO: a provider of mobile telecommunications services which provides (or intends to provide pursuant to these Commitments) mobile services to end customers under its own brand name on the basis of a direct contractual relationship between those customers and the provider, whether or not such provider is a Full MVNO.

MVNO Agreement: as specified in Section B.

Personnel: all staff currently employed by Mobile Vikings, including staff seconded to Mobile Vikings, and shared personnel.

Purchaser: Medialaan NV.

Telenet: Telenet Group Holding NV and all of its affiliates and subsidiaries (including, after Completion, BASE).

B. COMMITMENT TO DIVEST AND ENTER INTO MVNO AGREEMENT

Divestment

2. Liberty Global commits to divest to the Purchaser:

   (a) the JIM Mobile Customers (***Divestment Business A***); <u>and</u>

   (b) the whole of the issued and outstanding shares held by BASE in Mobile Vikings (***Divestment Business B***).

3. In order to maintain the structural effect of the Commitments, Liberty Global shall, for a period of 10 years after Closing, not acquire, whether directly or indirectly, the possibility of exercising influence (as defined in paragraph 43 of the Remedies Notice, footnote 3) over the whole or part of the Divestment Businesses, unless, following the submission of a reasoned request from the Notifying Party showing good cause and accompanied by a report from the Monitoring Trustee (as provided in paragraph 37 of these Commitments), the Commission finds that the structure of the market has changed to such an extent that the absence of influence over the Divestment Businesses is no longer necessary to render the proposed concentration compatible with the internal market.

MVNO Agreement

4. Liberty Global commits to enter into a full-form MVNO agreement with the Purchaser that reflects the key terms contained in Annex 1 to these Commitments (the ***MVNO Agreement***).

5. When Liberty Global has reached or is about to reach agreement on the terms of the MVNO Agreement, Liberty Global shall provide the Commission with a copy of the MVNO Agreement and a fully documented and reasoned statement in writing, enabling the Commission to verify that the MVNO Agreement is being entered into in a manner consistent with these Commitments.

Process

6. Liberty Global commits that it will not implement Completion before Liberty Global enters into one or more agreements for the sale of the

Divestment Businesses and the MVNO Agreement, and the Commission has approved the terms of the MVNO Agreement in accordance with paragraph 5.

7. Closing of the sale of both Divestment Businesses will occur simultaneously on the date on which the last of the conditions to closing under the agreement(s) for the sale of the Divestment Businesses is satisfied (***Closing***), which conditions shall include:

(a) the Commission having issued the Decision;

(b) Completion having occurred;

(c) Liberty Global and the Purchaser having entered into the MVNO Agreement; and

(d) the Purchaser having obtained clearance, if required, by relevant merger control authorities for the acquisition of the Divestment Businesses;

provided that the actual transfer of legal ownership of the JIM Mobile Customers shall take place by assignment of the customer contracts by BASE, transfer of the customer data by BASE (insofar as permitted under applicable laws), and, if applicable, swap of SIM cards or equivalent technical solution by the Purchaser, which may occur after Closing in accordance with Section B of Annex 1.

8. Liberty Global will be deemed to have complied with the commitments in this Section B, if:

(a) by Completion, Liberty Global has entered into one or more agreements for the sale of the Divestment Businesses with the Purchaser;

(b) pursuant to the agreement(s) for the sale of the Divestment Businesses, Liberty Global sells, at Closing, the Divestment Businesses to the Purchaser; and

(c) by Completion, Liberty Global has entered into the MVNO Agreement, and the Commission approves of the terms of the MVNO Agreement as being consistent with the Commitments in accordance with the procedure described in paragraph 5 (such approval will be deemed to constitute an approval of the views of Liberty Global/Telenet and the Purchaser that the terms of the MVNO Agreement are commercially reasonable, non-discriminatory and fair in order to allow the Purchaser to compete effectively as an active competitive force on the market).

C. COMMITMENTS RELATED TO DIVESTMENT BUSINESS B

9. The following commitments shall only apply:

   (a) in respect of Divestment Business B;

   (b) in the event that Closing does not coincide with Completion; and

   (c) to the extent that it is within the power of Liberty Global, acting reasonably, to implement them as 50% shareholder in Mobile Vikings.

Preservation of viability, marketability and competitiveness

10. From Completion until Closing, Liberty Global shall preserve the economic viability, marketability and competitiveness of Divestment Business B, in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential of Divestment Business B. In particular Liberty Global undertakes:

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

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

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

Hold-separate obligations

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

12. Until Closing, Liberty Global shall assist the Monitoring Trustee in ensuring that Divestment Business B is managed as a distinct and saleable entity separate from the businesses which Liberty Global is retaining. Immediately after the adoption of the Decision, Liberty Global shall appoint a Hold Separate Manager. The Hold Separate Manager, who shall be part of the Key Personnel, shall manage Divestment Business B independently and in the best interest of the business with a view to ensuring its continued economic viability, marketability and competitiveness and its independence from the businesses retained by Liberty Global. The Hold Separate Manager shall closely cooperate with and report to the Monitoring Trustee. Any replacement of the Hold Separate Manager shall be subject to the procedure laid down in paragraph 10(c) of these Commitments. The Commission may, after having heard Liberty Global, require Liberty Global to replace the Hold Separate Manager.

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

Ring-fencing

14. Liberty Global shall implement all necessary measures to ensure that, except to the extent contemplated under the MVNO Agreement, it does not, after Completion, obtain any Confidential Information relating to Divestment Business B and that any such Confidential Information obtained by Liberty Global before Completion will be eliminated and not be used by Liberty Global. This includes measures vis-à-vis Liberty Global's appointees on the supervisory board and/or board of directors of Divestment Business B. In particular, the participation of

Divestment Business B in any central information technology network shall be severed to the extent possible, without compromising the viability of Divestment Business B. Liberty Global may obtain or keep information relating to Divestment Business B which is reasonably necessary for the divestiture of Divestment Business B or the disclosure of which to Liberty Global is required by law.

Non-solicitation clause

15. Liberty Global undertakes, subject to customary limitations, not to solicit the Key Personnel transferred with Divestment Business B for a period of 2 years after Closing.

D. MONITORING TRUSTEE

Appointment of the Monitoring Trustee

16. Liberty Global shall appoint a Monitoring Trustee to carry out the functions specified in paragraph 23 below. The Monitoring Trustee shall be independent of the Parties, possess the necessary qualifications to carry out its mandate, and shall neither have nor become exposed to a Conflict of Interest. Liberty Global commits not to complete the Concentration before the appointment of a Monitoring Trustee.

17. The Monitoring Trustee shall be remunerated by Liberty Global in a way that does not impede the independent and effective fulfilment of the Monitoring Trustee's mandate.

Proposal by Liberty Global

18. No later than 1 week after the Effective Date, Liberty Global shall submit a list of three persons whom Liberty Global proposes to appoint as the Monitoring Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the proposed Monitoring Trustee fulfils the requirements set out in paragraph 16 and shall include:

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

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

Approval or rejection by the Commission

19. The Commission shall have the discretion to approve or reject the proposed Monitoring Trustee and to approve the proposed mandate subject to any modifications it deems necessary for the Monitoring Trustee to fulfil its obligations. If only one name is approved, Liberty

Global shall appoint or cause to be appointed, the individual or institution concerned as Monitoring Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, Liberty Global shall be free to choose the Monitoring Trustee to be appointed from among the names approved. The Monitoring Trustee shall be appointed within 1 week of the Commission's approval, in accordance with the mandate approved by the Commission.

New proposal by Liberty Global

20. If all the proposed Monitoring Trustees are rejected, Liberty Global shall submit the names of at least 2 more individuals or institutions within 1 week of being informed of the rejection, in accordance with the requirements and procedure set out in paragraphs 16 and 19.

Monitoring Trustee nominated by the Commission

21. If all further proposed Monitoring Trustees are rejected by the Commission, the Commission shall nominate a Monitoring Trustee, whom Liberty Global shall appoint, or cause to be appointed, in accordance with a Monitoring Trustee mandate approved by the Commission. This Monitoring Trustee shall also fulfil the requirements set out in paragraph 16.

Functions of the Monitoring Trustee

22. The Monitoring Trustee shall assume its specified duties in order to ensure compliance with the Commitments and monitor the implementation of the Commitments including the transition of the Purchaser to Full MVNO in accordance with Section B of Annex 1. The Commission may, on its own initiative or at the request of the Monitoring Trustee or Liberty Global, give any orders or instructions to the Monitoring Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

23. The Monitoring Trustee shall:

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

(b) in the event that Closing does not coincide with Completion, oversee, in close co-operation with the Hold Separate Manager, the ongoing management of Divestment Business B with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by Liberty Global with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:

(i) monitor the preservation of the economic viability, marketability and competitiveness of Divestment Business B, and the keeping separate of Divestment Business B from the business retained by the Parties, in accordance with paragraphs 10 and 11 of these Commitments;

(ii) supervise the management of Divestment Business B as a distinct and saleable entity, in accordance with paragraph 12 of these Commitments; and

(iii) with respect to Confidential Information:

- determine all necessary measures to ensure that Liberty Global does not after the Effective Date obtain any Confidential Information relating to Divestment Business B, other than as contemplated under the MVNO Agreement,

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

- make sure that any Confidential Information relating to Divestment Business B obtained by Liberty Global before the Effective Date is eliminated and will not be used by Liberty Global, other than as contemplated under the MVNO Agreement; and

- decide whether such information may be disclosed to or kept by Liberty Global as the disclosure is reasonably necessary to allow Liberty Global to carry out the divestiture or as the disclosure is required by law.

(c) monitor compliance by Liberty Global with the obligations and conditions provided in Sections B and C of the Commitments;

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

(e) propose to Liberty Global such measures as the Monitoring Trustee considers necessary to ensure Liberty Global's compliance with the conditions and obligations attached to the Decision;

(f) provide to the Commission, sending Liberty Global a non-confidential copy at the same time, a written report within 15 calendar days after the end of every calendar month for the first 3 months and from then on within 15 calendar days after the end of each 6 month period for the duration of its mandate. The report shall cover developments in relation to the implementation of the MVNO Agreement, so that the Commission can assess whether Liberty Global is complying with the conditions and obligations attached to the Decision; and

(g) in addition to these periodic reports, promptly report in writing to the Commission, sending Liberty Global a non-confidential copy at the same time, if it concludes on reasonable grounds that Liberty Global is failing to comply with any of the Commitments.

24. The documents provided by the Monitoring Trustee for the above shall be prepared in English.

25. The functions of the Monitoring Trustee shall cease upon submission to the Commission of the first written report under paragraph 23(f) above that follows the Full MVNO Launch Date.

Duties and obligations of Liberty Global

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

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

28. At the expense of Liberty Global, the Monitoring Trustee may appoint advisors which are independent of the Parties (in particular for legal advice), subject to Liberty Global's prior approval (this approval not to

be unreasonably withheld or delayed) if the Monitoring Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under its mandate, provided that any fees and other expenses incurred by the Monitoring Trustee are reasonable. Should Liberty Global refuse to approve the appointment of advisors proposed by the Monitoring Trustee, the Commission may approve the appointment of such advisors, after having heard representations from Liberty Global. Only the Monitoring Trustee shall be entitled to issue instructions to any appointed advisors.

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

30. Liberty Global agrees that the contact details of the Monitoring Trustee are published on the website of the Commission's Directorate-General for Competition.

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

Replacement, discharge and re-appointment of the Monitoring Trustee

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

    (a) the Commission may, after hearing the Monitoring Trustee, require Liberty Global to replace the Monitoring Trustee; or

    (b) Liberty Global, with the prior approval of the Commission, may replace the Monitoring Trustee.

33. If the Monitoring Trustee is removed according to paragraph 32, the Monitoring Trustee may be required to continue in its function until a new Monitoring Trustee is in place to whom the outgoing Monitoring Trustee has effected a full hand-over of all relevant information. The new Monitoring Trustee shall be appointed in accordance with the procedure referred to in paragraphs 16 to 21.

34. Besides the removal according to paragraph 32, the Monitoring Trustee shall cease to act as Monitoring Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Monitoring Trustee has been entrusted to monitor compliance have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears

that the Commitments might not have been fully and properly implemented.

E. FINAL PROVISIONS

I. DURATION

35. The Commitments in Section B shall expire upon fulfilment in accordance with paragraph 8.

II. THE REVIEW CLAUSE

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

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

III. ENTRY INTO FORCE

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

1. ANNEX 1 : TERMS OF MVNO AGREEMENT WITH PURCHASER

The provisions below set out the key commercial principles and charges for the provision of MVNO wholesale access to the BASE Network for the Purchaser for the purpose of providing electronic communications services to end users in Belgium under the MVNO Agreement between Liberty Global[1] and the Purchaser.

I. FULL MVNO

A. WHOLESALE ACCESS OFFER

1. BASE will make available wholesale access to the BASE Network. (the ***Full MVNO Wholesale Services***).

2. BASE will grant the Purchaser timely access, against reasonable and market conform pricing, to future evolutions in mobile technologies on the level of its radio access network in order for the Purchaser to be able to commercially launch such mobile technologies within a reasonable period of the commercial launch (excluding small scale field trials) by BASE, and in any case not later than four weeks after such commercial launch by BASE. For the avoidance of doubt, the provision of timely access shall mean that such mobile technologies will be made available to the Purchaser within a reasonable period before commercial launch by BASE that will be sufficient to allow the Purchaser to commercially launch such mobile technologies within the relevant period following commercial launch by BASE.

3. BASE shall upon reasonable request of the Purchaser provide to the Purchaser additional services in addition to the Full MVNO Wholesale Services described in the MVNO Agreement. The provision of any such additional services by BASE shall be subject to separate negotiation and agreement between BASE and the Purchaser of the terms and conditions (and cost-oriented charges, taking into account the relevant investment and operational expenditures made by BASE and allowing for (i) a […]% return on investment for capital expenditures, and (ii) a […]% margin for any other expenditures) which shall be laid down in an annex to the MVNO Agreement. BASE will be entitled to refuse to provide additional services on the condition that it can demonstrate that providing such services would be exclusive for the Purchaser and unreasonable from a technical or operational perspective.

B. TRANSITION OF THE PURCHASER TO FULL MVNO

4. As soon as possible, and at the very latest […] (the Full MVNO Launch Date), the Purchaser will be required to commercially launch as a Full MVNO on the BASE Network, and BASE will provide the

[1] References to "BASE" in this Annex 1 are in respect of the position following Completion.

Purchaser with Full MVNO Wholesale Services, which will allow the Purchaser to provide mobile telecommunication services to its customers as a Full MVNO.

5. At the latest two months after Closing, BASE and the Purchaser shall agree on a project plan indicating the responsibilities of each Party involved in the Full MVNO setup, with clearly specified deliverables, penalties and milestones (the ***Full MVNO Project Plan***). The Full MVNO Project Plan will, amongst other matters:

   (a) limit the total fee to be paid by the Purchaser for services under BASE's responsibility in respect of the Full MVNO setup and the implementation of the Full MVNO Project Plan (including any and all additional processes, such as MVNO IT set-up cost, integration testing and/or development, staff) to a single fixed fee of EUR [...] (excluding VAT) to be paid at the start of the implementation of the Full MVNO Project Plan (the ***Full MVNO Setup Fee***);

   (b) provide that, apart from this fixed fee for the Full MVNO setup, no other fee will be due by the Purchaser with respect to the Full MVNO setup and implementation, it being understood that each Party will bear its own infrastructure and transaction costs;

   (c) provide that BASE shall fully cooperate with the Purchaser and provide assistance with a Full MVNO team dedicated to the Full MVNO setup; and

   (d) provide that strict compliance with the Full MVNO Project Plan is of essence and that, if BASE breaches its obligations under the Full MVNO Project Plan, significant penalties shall apply for BASE in each case as provided in the Full MVNO Project Plan, up to a total aggregate amount of EUR [...]. the Purchaser shall not be entitled to claim any damages in excess of such amount, except in the event of fraud, intentional misconduct and gross negligence. With regard to an event of gross negligence, BASE and the Purchaser agree that the Purchaser will only be entitled to claim any damages in excess of the above mentioned amount, if this event of gross negligence is related to the implementation of the Full MVNO Project Plan resulting in the Purchaser not being able to operate as an effective Full MVNO.

6. BASE and the Purchaser shall agree on a migration plan (the ***Migration Plan***) that will apply to the migration of the JIM Mobile Customers, among other matters:

   (a) define the period within which the gradual swap of SIM cards (or equivalent technical solution) will be accomplished, which period shall not exceed 12 months after the Full MVNO Launch Date;

(b) provide that BASE shall fully cooperate with the Purchaser and provide assistance with a Full MVNO team dedicated to the Full MVNO setup and to the migration of the JIM Mobile Customers (e.g. in terms of know-how, best practice, etc.) to allow the Purchaser to smoothly and gradually swap SIM cards with the aim of both BASE and the Purchaser to minimise the risk of customer attrition in this context;

(c) provide that, subject to paragraph (d) below, no separate fee shall be payable by the Purchaser in respect of the Migration Plan and implementation, it being understood that each Party will bear its own infrastructure and transaction costs;

(d) provide that BASE shall facilitate technical solutions proposed by the Purchaser to avoid or reduce the need for a physical SIM card swap (such as, if applicable, implementation of silent multi IMSI SIM cards and/or to facilitate an 'over the air' SIM update) to the extent that this does not jeopardise the integrity of the BASE network, and the Purchaser will have the sole responsibility and expense with respect to such solutions (for the avoidance of doubt, the implementation and execution of such solutions shall not be included in the Full MVNO Setup Fee insofar as such solutions entail additional costs, which shall be invoiced to the Purchaser on a cost basis (and any such cost shall be submitted to the Purchaser for approval)); and

(e) determine the process and responsibilities for all communications to the JIM Mobile Customers that are required by law and by the general terms and conditions to notify the customers of the assignment of their contract with BASE to the Purchaser. Any and all communication (including timing, content and communication means) need to be approved in advance by the Purchaser.

7. As from the Full MVNO Launch Date, BASE will provide Full MVNO Wholesale Services to the Purchaser under the MVNO Agreement as set out in Appendix 1C.

C. CHARGES

8. The Purchaser will have the option to choose between a volumetric or a capacity option. In case of the volumetric option, the Purchaser will be charged for the Full MVNO Wholesale Services for voice, SMS and data in accordance with the volume rate card attached at Appendix 1A (the ***Volume Rate Card***). In case of the capacity option, the Purchaser will purchase non-transferrable data throughput capacity representing approximately […]% of the yearly total data throughput capacity on

the BASE Network for a fixed period of […] as of the first use of such capacity option. The corresponding data throughput capacity (in Gbps) and annual fee for this capacity is set forth at Appendix 1B (the ***Capacity Option***). In the event of the exercise of the Capacity Option, the prices set out in the Volume Rate Card will continue to apply to Full MVNO Wholesale Services for voice and SMS service, as well as to (where applicable) SIM fees.

9. Subject to the margin squeeze protection (provided in Section D below), the fees for the Full MVNO Wholesale Services described in the Volume Rate Card and the Capacity Option are fixed prices and will apply during the term of the MVNO Agreement. Apart from these fees, no other fees or payments are due by the Purchaser for the Full MVNO Wholesale Services, unless for services specifically requested by the Purchaser as described in Section A 3.

10. With respect to the volumetric option (as described in Section C 8), the Purchaser commits to minimum revenue commitments (the ***MRC***), defined as the annual minimum wholesale charges to be paid to BASE under the MVNO Agreement. The MRCs are based on the business forecast of the Purchaser and are a reflection of the business potential that the Purchaser will develop.

11. In case of non-compliance with an MRC in a particular period, the Purchaser will compensate BASE at the end of that period in an amount equal to the difference between the MRC amount in that period and the actual wholesale charges paid to BASE under the MVNO Agreement for that period.

D. PRICE ADJUSTMENT

12. Liberty Global and the Purchaser will in good faith agree on a margin squeeze protection mechanism. Disputes relating to the application of the mechanism that cannot be resolved between BASE and the Purchaser within a reasonable time period will be brought to arbitration via an independent third party. In any event the decrease of the wholesale prices resulting from the application of the price squeeze mechanism will not result in wholesale prices that are lower than BASE's costs to provide the Full MVNO Wholesale Services plus a margin of […]% (the ***Floor***). In the event that the margin squeeze would continue to exist after reduction of the wholesale prices up to the Floor, then the exclusivity obligation of the Purchaser (described below under Section I) will be waived. In case Medialaan chooses the volumetric option under Section C 8 above, the Full MVNO Wholesale Services to which this Section D 12 shall apply are voice, SMS and data services. In case Medialaan chooses the Capacity Option under Section C 8 above, the Full MVNO Wholesale Services to which this Section D 12 shall apply are voice and SMS services.

E. QUALITY OF SERVICE

13. The quality of the Full MVNO Wholesale Services provided by BASE will comply with the service levels on defined KPIs determined in a service level agreement (the ***SLA***) to be attached to the MVNO Agreement. The service levels, reporting obligations and related bonus malus will be determined in good faith, taking into account among others the current performance of the BASE network, the expected improvements as a result of the planned network investments and industry standards. If a material SLA breach is not cured within the contractual remedy and escalation process, BASE accepts to waive the exclusivity in the MVNO Agreement.

14. The Purchaser has the right to request (at any reasonable time) an assessment by an agreed independent third party with respect to the accuracy of data relevant to the compliance with the SLA, subject to customary confidentiality restrictions. The charges of such audit will be borne by the Purchaser, except if the audit reveals a significant discrepancy of more than 5% between the data reported by BASE and the data reported by the independent third party, in which case the charges of such audit will be borne by BASE as well as any applicable contractual remedies.

15. The quality and coverage of the Full MVNO Wholesale Services (as defined in the SLA) provided by BASE to the Purchaser at the level of its radio access network will be of the same quality and coverage of such services provided to its own end users and to those of other MVNOs on the BASE network, provided that unintended differences may exist exceptionally between BASE end users and MVNO end users due to the fact that BASE may in part use separate infrastructure for services to MVNOs and for services to its end users (and BASE shall use its reasonable efforts to limit such differences as much as possible) and that the quality may depend on elements under the Purchaser's responsibilities.

16. For technical reasons, BASE has the right to temporarily manage the traffic flow of all customers on the BASE Network (including the traffic of the Purchaser's customers) in order to maintain network integrity and/or to improve the service for a larger range of end users in a cell. For the avoidance of doubt, any actions taken by BASE under this Section E 16 shall be without prejudice to Sections E 13 and E 15.

17. BASE may propose the Purchaser, who is not obliged to do so, in good faith and on a non-discriminatory basis, to adapt its offer of mobile services to its customers taking into account the limited network capacity, for example by defining different bandwidth customer profiles.

18. If the Purchaser chooses not to offer, or has not succeeded in offering successfully to its customers on grounds not attributable to BASE, an evolution in mobile technology which BASE has offered to the Purchaser in accordance with Section A 2, then this shall not be considered a breach of the obligation in Section E 15.

F. FORECASTS

19. For BASE's capacity management purposes, it is of the essence that forecast requirements are included in the MVNO Agreement. Liberty Global and the Purchaser shall discuss such forecast requirements on the basis of the principles set out in the clauses hereunder, as proposed by Liberty Global. Such forecast requirements shall include: (i) binding forecasts above a threshold to be specified, that will apply after a grace period of one year after Full MVNO Launch Date; and (ii) a sanction mechanism that will apply if actual usage is materially (to be defined) in excess of, or below, the binding forecasts.

(a) As from Closing, the Purchaser shall on an annual basis provide BASE, in writing and no later than one month before the anniversary of Closing (the ***Forecasting Date***), a forecast of voice, data and SMS and MMS traffic for each month of the ensuing 12 month period (the ***12-Month Forecast***) and an annual forecast for a further four (4) years (the ***Long-Term Forecast***) (the 12 Month Forecast and the Long-Term Forecast are together referred to as the Forecast). In the absence of any 12-Month Forecast, the actual traffic volumes of the immediately preceding 12 month period shall be deemed to be submitted as the 12 Month Forecast. For the 12 month period as from Closing, the Forecast will be attached as an annex to the MVNO Agreement.

(b) Each Forecast shall show the volume of voice (minutes), data (megabytes), SMS traffic (SMS messages) and MMS traffic expected to be generated by customers of the Purchaser per calendar month within the 12 Month Forecast and, on an annual basis, for the Long-Term Forecast.

(c) If the Capacity Option (as described in Section C 8) is used, the Purchaser shall use its best efforts to accurately forecast the expected traffic volumes, but the Forecast shall be non-binding on the Purchaser (and sub (f) and (g) will not apply).

(d) If the volumetric option (as described in Section C 8) is used, each 12 Month Forecast for each type of traffic (voice, data and SMS and MMS) shall be non-binding on the Purchaser as long as the individual monthly forecasts (for each type of traffic) in any Forecast do not exceed the respective non-binding thresholds for voice, data and SMS to be negotiated by Liberty

Global and the Purchaser (the Maximum Non-Binding Forecast). The components of the Maximum Non-Binding Forecast shall at the beginning of each forecasting period be indexed according to the annual total volumes of voice, SMS, and data consumption in Belgium, as published in the latest available Belgian Report on the Electronic Communication Sector (BIPT – Situatie van de elektronische communicatie sector) for the whole mobile communications market whereby the base value for indexation shall be the latest volumes published therein as per 1 July 2016, reflecting market development on voice, data and SMS traffic. The reference date for the indexation of the Maximum Non-Binding Forecast shall be the most recent Belgian Report on the Electronic Communication Sector preceding the Forecasting Date. Any forecast for a particular traffic type (voice, data or SMS) in excess of the relevant Maximum Non-Binding Forecast shall be binding (the ***Binding Forecast***). For the avoidance of doubt, the Binding Forecast shall only refer to the 12 Month Forecast (and not the Long-Term Forecast).

(e) In addition to the Forecast, the Purchaser shall provide BASE in writing with non-binding quarterly update forecasts of traffic, which shall be taken into account for interim capacity planning purposes, and this for the first time at the end of the first quarter after Closing.

(f) If, on the basis of the Binding Forecast, BASE envisages the need for investment in capacity upgrades to the BASE network, BASE shall within 20 business days from receipt of the Forecast notify the Purchaser in writing: (a) with its best estimate of the cost of such investment attributable to the Purchaser on the basis of the proportion of traffic increase forecast by the Purchaser relative to the total forecast increase in capacity required by BASE (for the total of all retail and wholesale customers); and (b) the maximum possible traffic volumes that can be handled on the BASE network without the need for such investment. the Purchaser will be able to adjust its Binding Forecast within 10 business days from such notification. The updated Forecast shall be deemed to be the Forecast for the applicable Forecasting Date.

(g) BASE shall provide for the required capacity to handle the traffic in the 12 Month Forecast (including Binding Forecasts) on the condition that:

(i) the Purchaser acknowledges and accepts that BASE is permitted to manage the traffic in relation to, and selectively for, customers of the Purchaser if and to the extent that the actual usage is in excess of 125% of the 12 Month Forecast and if such excess usage would cause degradation of the quality of the BASE network; and

(ii) if actual usage of the Purchaser falls short of 75% of the Binding Forecast and BASE has invested in the capacity upgrade of the BASE network earlier than necessary for its own forecasted traffic (i.e. forecasted traffic of BASE customers and customers of other MVNO's on the BASE network) in order to meet volumes in the Binding Forecast, and BASE has duly notified the Purchaser of the need for investments in capacity upgrades under sub (f) here above, BASE is entitled to charge the Purchaser reasonable financing costs for such investment. However the financing costs shall only be payable by the Purchaser if: (i) the period between the start date of the actual investment made by BASE and the date on which the Purchaser actual usage meets 75% of the highest monthly volume in the Binding Forecast exceeds six months; or (ii) the period between the actual investment made by BASE to the date when such investment becomes necessary for BASE's own traffic requirements plus the actual usage of the Purchaser exceeds six months. If neither event occurs, and will not foreseeably occur within five (5) years from the last Forecasting Date, the Purchaser shall be responsible for both the financing costs and the investment costs of such investments. The amount of the investment costs for this purpose shall be capped at the MVNO fees which would have become due and payable for the shortfall between the actual usage and 75% of the Binding Forecast. Amounts due by the Purchaser under this clause shall be due and payable as soon as they are incurred by BASE.

G. ACCESS TO AND USE OF MVNO CUSTOMER INFORMATION

20. At its own cost, BASE will, in accordance with competition law standards, implement complete and effective Chinese walls that fully separate its wholesale and its retail department to operate as a barrier to the passing (or 'spilling over') of any information or customer data with respect to the Purchaser and/or the Purchaser's customers that are customarily and in accordance with competition laws, kept separated by Chinese walls in an MVNO-MNO relationship.

H. USE OF THE BASE NETWORK

21. Subject to the following section, it shall not be permitted for the Purchaser (or any of their affiliates) to provide mobile wholesale services, on the basis of the Full MVNO Wholesale Services provided by BASE, to third parties (including MVNOs) to allow such parties to provide in their own name and for their own account mobile services in Belgium.

22. The foregoing will not prohibit the Purchaser (or any of its affiliates), inter alia, from (i) providing mobile wholesale services, on the basis of the Full MVNO Wholesale Services provided by BASE, to an affiliated entity ("*verbonden vennootschap*", within the meaning of article 11 of the Belgian Companies Code) to allow such parties to provide in their own name and for their own account mobile services in Belgium, and/or (ii) entering into commercial agreements with third parties for the purposes of marketing mobile services of the Purchaser to end users that are customers of the Purchaser (including but not limited to branded partner agreements).

I. EXCLUSIVITY

23. As from Closing until the […] anniversary of Closing:

(a) the Purchaser and its subsidiaries shall exclusively offer mobile telecommunications services to subscribers in Belgium on the basis of Full MVNO Wholesale Services on the BASE Network; and

(b) with respect to any other affiliate (in the meaning of article 11 of the Belgian Companies Code), the Purchaser shall, or shall cause these affiliates, to use their governance, control and veto rights, to vote against any proposal that such affiliate would offer mobile telecommunications services to subscribers in Belgium on the basis of Full MVNO wholesale services provided by another MNO than BASE without, during a period of three months, having negotiated such agreement with BASE as a first candidate exclusively and in good faith on the basis of a right of first offer (***ROFO***) to be included in the MVNO Agreement. The MVNO Agreement shall also include a right of first refusal (***ROFR***) in this respect.

24. At the end of the exclusivity period set out above, and starting as from that date, the Purchaser can:

(a) fully switch to another MNO host, i.e. no longer use any of the services provided by BASE as set forth in the MVNO Agreement nor any of the additional services provided by BASE (as referenced in Section A 3), in which case all obligations of the Purchaser under the MVNO Agreement shall be suspended until the earlier of the expiry of the term of the MVNO Agreement or the situation in Sections I 24 (b) and (c) below (in which case they will no longer be suspended); or

(b) multisource (but only to the extent that such multisourcing does not jeopardise the integrity of the BASE Network and subject to compensation by the Purchaser for any specific, proven and market conform additional costs incurred by BASE (if any) to facilitate such multisourcing option); or

(c) further continue the MVNO Agreement.

25. After the end of this […] exclusivity period the yearly minimum volume commitments, if applicable, will no longer apply. The MVNO Agreement will provide for appropriate penalties in case of non-compliance with the exclusivity obligation. For avoidance of doubt, in the event that the Purchaser exercises the Capacity Option (referred to in Section C 8 above), then the Purchaser's payment obligations under the Capacity Option will continue to apply during the remaining term of the MVNO Agreement.

J. TERM AND TERMINATION

26. The duration of the MVNO Agreement will be from the Full MVNO Launch Date until five years after the Full MVNO Launch Date, subject to Section I on exclusivity.

27. In the event that the Purchaser exercises the Capacity Option (referred to in Section C 8 above) during the term of the MVNO Agreement, then the term of the MVNO Agreement will be extended from the date of the first use of the Capacity Option until five years thereafter.

28. On termination of the MVNO Agreement, BASE will at the request of the Purchaser use reasonable endeavours to assist the Purchaser to port or migrate the Purchaser customers to the network of another MNO, provided that any specific, proven and market conform costs related to such migration shall be borne by the Purchaser.

29. As from the date of termination of the MVNO Agreement, BASE will continue to provide the Purchaser with the Full MVNO Wholesale Services that it is providing as at the date of actual termination until such time as the Purchaser's customers are ported or migrated to the network of another mobile network operator or its own network, up to a maximum period of twelve (12) months from the date of actual termination. This period shall be reduced to six (6) months in case of termination by BASE for material breach by the Purchaser or bankruptcy, insolvency, liquidation or similar, of the Purchaser.

30. The terms and conditions of the MVNO Agreement will continue to apply to the provision of such services during this post-termination

period. For the avoidance of doubt, BASE's obligations regarding future evolutions in mobile technologies (as set out in Section A 2 above) would not apply during such post-termination period.

II. TRANSITIONAL SERVICES

A. TRANSITIONAL SERVICES FOR PURCHASER

1. For the period from Closing until the Full MVNO Launch Date, BASE will provide all necessary transitional services to the Purchaser at market rates, including, if relevant, a branded partner agreement in respect of Divestment Business A.

B. TRANSITIONAL SERVICES FOR MOBILE VIKINGS

2. Upon Closing, BASE will offer to Mobile Vikings to provide light MVNO wholesale services as set out in Appendix 1C to this Annex 1, on substantially similar terms to the Full MVNO Agreement, except that the MRCs in the volumetric option (as provided in Section C 10 of I above) shall be adapted. For the avoidance of doubt, the Volume Rate Card at Appendix 1A shall apply to these services.

2. APPENDIX 1A: VOLUME RATE CARD

Voice

(All amounts below in respect of voice services to be invoiced in per second billing increments.)

- Base rate:
  - […] euro cent / min in 2016
  - […] euro cent / min as of 2017
  - Rate applies for incoming and outgoing calls in Light MVNO
  - On-net calls are priced at a […]% discount. An on-net call is defined as a Medialaan-to-Medialaan voice call

- Intermediate rate

  Rate applies for Full MVNO with volume <50M min / month, as from the Full MVNO Launch Date, as per following table:

Rates per call type (euro cent / min)	**2016**	**2017**	**2018**	**2019**	**2020**
Outgoing calls (euro cents)	[…]				
Incoming calls	[…]				
On-net calls (in/out)	[…]% of rate for outgoing calls in the relevant year				

(*) "**MTR**" is defined as the applicable mobile termination rate for the relevant year, as determined by the BIPT from time to time. "**On-net**" is defined as a Medialaan-to-Medialaan voice call

- Reduced rate:

  Rate applies for Full MVNO with volume >50M min / month, as from the Full MVNO Launch Date, as per following table:

Rates per call type (euro cent / min)	**2016**	**2017**	**2018**	**2019**	**2020**
Outgoing calls (euro cents)	[…]				
Incoming calls	[…]				
On-net calls (in/out)	[…]% of rate for outgoing calls in the relevant year				

(*) "**MTR**" is defined as the applicable mobile termination rate for the relevant year, as determined by the BIPT from time to time. "**On-net**" is defined as a Medialaan-to-Medialaan voice call

- Interconnect: For Light MVNO, BASE Company will take responsibility of national interconnect without passing related revenues or costs to the Light MVNO. Full MVNO will take responsibility of interconnect costs and revenues

SMS

- [...] euro cents / SMS, applying for incoming and outgoing SMS in light MVNO and in Full MVNO

- On-net: priced at […]% discount. On-net is defined as Medialaan-to-Medialaan SMS

- Interworking: For light MVNO, BASE will take responsibility of national interworking without passing related revenues or costs to the light MVNO. Full MVNO will take responsibility of interconnect costs and revenues

Data

(All amounts below in respect of data services to be invoiced in per kilobyte billing increments.)

- Data charged based on monthly volume per SIM

- Data tiering in 2016:

Data volume per SIM - above	Data volume per SIM - below	Data rate € / MB
0	200	[…]
200	1000	[…]
1000	2000	[…]
2000	5000	[…]
5000		[…]

- -[...]% annual glide path applies to all data tiers during the initial five-year term of the Full MVNO Agreement, in each case effective as of the first day of each calendar year

- Data speed up to [...] Mbps (download) – based on current technologies, it being understood that the actual average throughput speed may from time to time be higher or lower than [...] Mbps (download); for new technology evolutions, parties to agree on new thresholds (in accordance with the terms of the Full MVNO Agreement)

Network SIM fee

- [...] euro cents / SIM / month for light MVNO, except for Inactive SIM Cards (as defined below)

- No SIM fee for full MVNO

"**Inactive SIM Cards**" means SIM cards with no incoming or outgoing traffic for the past three months.

Additional services

Separate prices apply for additional services (international traffic, international roaming, premium numbers) at reasonable commercial margin for BASE. A margin shall be considered reasonable if it is in line with current practices applied to BASE MVNO agreements, without prejudice to specific margins set out in the Full MVNO Agreement.

Port-in bonus for Full MVNO

[...]

3. APPENDIX 1B: CAPACITY OPTION

Capacity Option

The Capacity Option is available from BASE at the request of the Purchaser. If the Purchaser wishes to make use of the Capacity Option, it must give six months' advance notice. Such notice may not be given earlier than six months before the Full MVNO Launch Date.

Capacity Option is priced as follows:

	2016	2017	2018	2019	2020
Available capacity (Gbps)	[Approx. 20%]				
Annual fee (€M)	[...]				

Table refers to peak downlink throughput capacity at the year end. Monthly available capacity will be linearly interpolated between two points, with year 1 starting from [...] Gbps.

Data throughput capacity is defined as the maximum value of daily peak hour data throughputs in a given month resulting from the consumption by customers of the MVNO. The daily peak hour data throughput value is determined as the maximum of the average data throughput values of all 1 hour intervals of that day. Data throughput is measured in Gbps at the Gi-Interface of the mobile packet core network.

Uplink may be maximum 30% of downlink. It being understood that if the downlink-uplink ratio in the BASE network evolves significantly from the ratio as at the date of the Full MVNO Agreement, then the 30% maximum shall be adjusted accordingly.

If the Capacity Option is exercised during the term of the Full MVNO Agreement, such that the term of the agreement is extended until five years from the date of the first use of the Capacity Option, then the annual fee that shall apply as from 2021 shall be agreed between BASE and the Purchaser in good faith, it being understood that the annual fee will not result in wholesale prices that are lower than BASE's costs to provide MVNO Wholesale Services plus a margin of [...]%.

Capacity Option will be paid upfront in the beginning of the year.

If at any time the Purchaser requires additional monthly Data Throughput Capacity in excess of that provided for under the Capacity Option, the following options will be provided to the Purchaser:

(a) Allow Liberty Global to limit the monthly Data Throughput Capacity to the maximum amount available in the relevant month; or

(b) Buy extra Data Throughput Capacity representing maximum 5% of the total available peak throughput capacity (the ***Initial Additional Capacity***, bringing the total available to the Purchaser to maximum 25%) at a surcharge of [...]% of the relevant annual fee under the Capacity Option (the ***Initial Surcharge***), as specified below;

	2016	2017	2018	2019	2020
Initial Additional Capacity (Gbps)	[...]				
Initial Surcharge (€M) (*)	[...]				

(*)[...]% of the annual fee for the relevant calendar year

or

(c) Enter into a hybrid capacity/volumetric model in which part of the MVNO customer base (identified as one or more IMSI subranges) will continue to use the Capacity Option and the other part of the MVNO customer base will use the volumetric rate card for all their data traffic and will be charged as such; or

(d) Offload the additional capacity to another MNO host network.

If at any time after the second anniversary of the Full MVNO Launch Date the Purchaser, having already bought Initial Additional Capacity in accordance with (b) above, requires additional monthly Data Throughput Capacity in excess of the aggregate of that provided for under the Capacity Option and the Initial Additional Capacity, the Purchaser may buy further extra Data Throughput Capacity representing maximum 5% of the total available peak throughput capacity (the ***Second Additional Capacity***, bringing the total available to the Purchaser to maximum 30%) at a surcharge of [...]% of the relevant annual fee under the Capacity Option (the ***Additional Surcharge***), as specified below.

	2016	2017	2018	2019	2020
Second Additional Capacity (Gbps)	[...]				
Additional Surcharge (€M) (**)	[...]				

(**)[...]% of the annual fee for the relevant calendar year

APPENDIX 1C: LIGHT AND FULL MVNO WHOLESALE SERVICES

1. Light MVNO Overview of Responsibilities

This table lists the separate responsibilities of BASE and Mobile Vikings (in the event that Mobile Vikings elects to receive light MVNO wholesale services from BASE in accordance with Section A 2 of II in Annex 1 above) for mobile telecom services to Mobile Vikings:

Full Responsibility BASE	Full Responsibility MVNO
Services	
Mobile originating calls (MOC) to: - emergency services - national and international mobile numbers - national geographical numbers Mobile Terminating Calls (MTC) Second call (call hold – call wait) Call barring Call forwarding CLIP/CLIR SMS Data services: - GPRS - EDGE (2,5 G) - UMTS (3G) - HSDPA/HSUPA (3G) - 4G Additional services (separate prices apply): - value added services/premium numbers of BASE and to most of the value added services/premium numbers of other operators (e.g. 070, 077, 078, 0900,0902, 0903, 0905, 0800,….) - International roaming - Premium SMS	

Infrastructure		
CS and PS CORE network infrastructure Radio network infrastructure (applicable to current technologies 2G, 3G, 4G; new technologies e.g. 5G or VoLTE are subject to new commercial conditions) VAS infrastructure: - Voice mail system - SMSC - MMSC - WAPGW - Premium SMS - Short codes e.g. for voicemail, IVR, customer care access Location Server OTA platform OLO Interworking and Interconnection Real-time charging system MVNO GW API (Application Programming Interfaces)		Billing system CRM application Data Warehouse
Addressing		
IMSI range (International Mobile Customer Identity) MSISDN range (OPTION – TBC) Global Titles and point codes IP addresses APN configuration		Own MSISDN range (**OPTION – TBC**) Own APN (Option TBC)

Processes		
Subscriber provisioning End-Customer Service: third line support (BASE to MVNO only – no direct customer interaction) Wholesale billing Fraud handling SIM profile (electrical & graphical) development International Roaming and International Voice Traffic MNP Lawful intercept Data retention End-user notifications Mobile Carrier settings with handset vendors		Customer Service (through MVNO API) Wholesale billing reconciliation End-user billing and collection Complaint handling SIM design creation and SIM ordering, incl. cost of physical SIM card Upload of customer data to for security and lawful intercept purposes

2. Full MVNO Overview of Responsibilities

This table lists the separate responsibilities of BASE and the Purchaser (or Mobile Vikings, as the case may be) for mobile telecom services to the Purchaser (or Mobile Vikings, as the case may be):

Full Responsibility BASE	**Full Responsibility MVNO**
Services	
Mobile originating calls (MOC) to: - emergency services - national and international mobile numbers - national geographical numbers Mobile Terminating Calls (MTC) to MVNO Second call (call hold – call wait) Call barring Call forwarding CLIP/CLIR SMS Data services: - GPRS - EDGE (2,5 G) - UMTS (3G) - HSDPA/HSUPA (3G) - 4G Additional services (separate prices apply): - value added services/premium numbers of BASE and to most of the value added services/premium numbers of other operators (e.g. 070, 077, 078, 0900,0902, 0903, 0905, 0800,….) - International roaming - Premium SMS	Mobile Terminating Calls (MTC) to other operators than MVNO

Full Responsibility BASE	**Full Responsibility MVNO**
Infrastructure	
CS and PS CORE network infrastructure: - VLR/VMSC - GMSC/STP - SGSN/MME Radio network infrastructure (applicable to current technologies 2G, 3G, 4G; new technologies e.g. 5G or VoLTE are subject to new commercial conditions) Location Server MVNO GW API	CS and PS CORE network infrastructure: - GMSC/STP - MGW - HLR/HSS - GGSN/PGW VAS infrastructure: - Voice mail system - SMSC - MMSC - WAPGW - Premium SMS - Short codes e.g. for voicemail, IVR, customer care access OTA platform OLO Interworking and Interconnection Real-time charging system Billing system CRM application Data Warehouse
Addressing	

Full Responsibility BASE	Full Responsibility MVNO
Routing of calls to the GMSC based on IMSI ranges	MSISDN range Mobile Network Code (MNC) IMSIs (International Mobile Customer Identity) IP addresses APN configuration Global Titles and point codes MNP (CRDC connectivity)

Processes		
End Customer Service: third line support (BASE to MVNO only – no direct customer interaction) Wholesale billing Lawful intercept (according to agreed scope MoU)		Subscriber provisioning Customer Service Wholesale billing reconciliation End-user billing and collection International Roaming and International voice traffic (possibly outsourced to BASE) Complaint and Fraud handling End-user notifications Mobile Carrier settings with handset vendors Fraud handling SIM profile (electrical & graphical) development Lawful intercept (according to agreed scope MoU) End-user notifications MNP process Data retention