



EUROPEAN COMMISSION
DG Competition

Case M.8131 - TELE2 SVERIGE / TDC SVERIGE

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 07/10/2016

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EUROPEAN COMMISSION

Brussels, 7.10.2016
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PUBLIC VERSION

MERGER PROCEDURE

To the Notifying Party:

Dear Sir/Madam,

**Subject: Case M.8131 – Tele2 Sverige / TDC Sverige
Commission decision pursuant to Article 6(1)(b) of Council Regulation
No 139/2004¹ and Article 57 of the Agreement on the European Economic
Area²**

(1) On 2 September 2016, the European Commission (“the Commission”) received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the undertaking Tele2 Sverige AB (“Tele 2” or the “Notifying Party”, Sweden), controlled by Kinnevik (Sweden), acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of TDC Sverige AB (“TDC Sverige”, Sweden) by way of purchase of shares (the “Transaction”).³ Tele2 and TDC Sverige are collectively designated hereafter as the “Parties”.

1. THE PARTIES

(2) Tele2 is a Swedish telecommunications provider which offers mobile (voice and data) telecommunications services, fixed telephony services, fixed Internet access services, data communications services (also referred to as “business connectivity

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

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

³ Publication in the Official Journal of the European Union No C 330, 08.09.2016, p. 5.

services”), private branch exchanges (“PBXs”) and related services to residential, business and public sector customers in Sweden. With respect to retail mobile telecommunications services, Tele2 operates a Mobile Network Operator (“MNO”), which owns its mobile network. Tele2 also operates a fixed backbone network, partly owned and partly leased, which is also used by Tele2’s mobile networks.

- (3) Tele2 is ultimately controlled by Kinnevik, a Swedish investment company with equity interests in various companies active in the sectors of telecommunications, e-commerce, entertainment and financial services.
- (4) TDC Sverige, which is currently part of TDC A/S, a Danish telecommunications group, is a telecommunications provider active in Sweden, which offers mobile (voice and data) telecommunications services, fixed telephony services, fixed Internet access services, data communication services, PBXs and related services, IT services, data centre solutions, and consultancy services to business customers in Sweden. With respect to retail mobile telecommunications services, TDC Sverige operates as Mobile Virtual Network Operator (“MVNO”), by relying on wholesale access to the mobile network of another Swedish MNO, Telia. TDC Sverige operates a fixed network infrastructure in the form of a fibre and IP-backbone, which is partly owned and partly leased. TDC Sverige focuses on business customers, and does not provide any of its services to residential customers.

2. THE CONCENTRATION

- (5) On 21 June 2016, Tele2 and TDC A/S signed a Share Sale and Purchase Agreement (the “SPA”), by which Tele2 will acquire all the shares in TDC Sverige and thus obtain sole control over TDC Sverige. The Transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

3. EU DIMENSION

- (6) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million⁴ (Tele2: EUR 11 339.7 million; TDC Sverige: EUR 363.8 million). Each of them has an EU-wide turnover in excess of EUR 250 million (Tele2: EUR 4 509 million; TDC Sverige: 357.2 million), but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The Transaction therefore has an EU dimension.

4. RELEVANT MARKETS

- (7) The Transaction gives rise to several horizontal overlaps between the Parties’ activities in the telecommunications sector in Sweden.
- (8) At the retail level, the Parties’ activities overlap in the following activities in Sweden: (i) retail mobile telecommunications services; (ii) retail fixed telephony services; (iii) retail Internet access services; (iv) retail business connectivity

⁴ Turnover calculated in accordance with Article 5 of the Merger Regulation.

services; (v) PBXs and related services; (vi) retail communication devices and accessories; and (vii) IT services. TDC Sverige also provides data centre solutions and consultancy services, which Tele2 does not provide. Therefore, these last two services are not further discussed in this decision.

- (9) At the wholesale level, the Parties overlap in Sweden with respect to the provision of: (i) wholesale access services at a fixed location; (ii) wholesale Internet access; and (iii) wholesale leased lines/data communications services. Additionally, Tele2 as an MNO also provides (iv) wholesale access and call origination on mobile networks in Sweden (where it grants wholesale access to its mobile network to other operators seeking to provide retail mobile telecommunications services), whereas TDC Sverige does not. Finally, each of Tele2 and TDC Sverige provide (v) wholesale call termination services to their respective fixed networks; and (vi) wholesale call termination services to their respective mobile networks.
- (10) These activities and the relevant markets to which they belong will be discussed in more detail in the remainder of this Section.

4.1. Retail mobile telecommunications services

- (11) Both Tele2 and TDC Sverige provide mobile telecommunications services to end-customers in Sweden.

4.1.1. Product market definition

- (12) The Notifying Party submits that there is one overall product market for retail mobile telecommunications services, without the need to distinguish between the different types of services (voice, SMS/MMS, mobile data, prepaid/postpaid), the network technology used (2G, 3G, 4G) or the type of customer (residential, or business).
- (13) In previous cases, the Commission defined the market for retail mobile telecommunications services as one overall market constituting a separate market from retail fixed telecommunication services, given that from a supply-side perspective all mobile operators are capable of providing the different types of mobile services to all types of customers.⁵ The Commission did not further subdivide the overall retail mobile market based on the type of service (voice calls, SMS, MMS, mobile Internet data services), or the type of network technology (such as 2G, 3G and 4G). The Commission reflected upon a possible segmentation of the overall retail market for mobile telecommunications services according to the type of contract (pre-paid or post-paid services) and the type of customer (residential customers or business customers) but ultimately took the view that these segmentations did not constitute separate product markets but represent rather market segments within an overall retail market.⁶

⁵ See Commission decision of 11 May 2016 in Case M.7612 – Hutchison 3G UK/Telefónica UK, recital 252; Commission decision of 10 October 2014 in Case M.7000 – Liberty Global/Ziggo, recital 141 and Commission decision of 2 July 2014 in Case M.7018 – Telefónica Deutschland/E-Plus, recital 64.

⁶ See Commission decision of 11 May 2016 in Case M.7612 – Hutchison 3G UK/Telefónica UK, recitals 255, 261, 270, 279, 287; Commission decision of 2 July 2014 in Case M.7018 – Telefónica

- (14) In the present case, the majority of the respondents to the market investigation agreed with the Commission's past finding that the retail market for mobile telecommunications services should be defined as an overall market without further segmentations.⁷
- (15) Therefore, the Commission considers that the relevant product market is the retail market for mobile telecommunications services.

4.1.2. *Geographic market definition*

- (16) The Notifying Party suggests, based on the Commission's precedents,⁸ that the market for mobile communications services to end customers is national in scope and therefore corresponds to the territory of Sweden.
- (17) The majority of respondents to the market investigation in the present case indicated that the geographic market is national, while some respondents noted that certain business customers with a presence in more than one Scandinavian country may seek a contract for the provision of retail mobile telecommunications services on a Scandinavian or pan-Nordic basis.⁹
- (18) In any event, for the purposes of the present decision the question of whether the geographic market for retail mobile telecommunications services is national or broader (i.e. Scandinavian or pan-Nordic) can be left open, as the Transaction does not raise serious doubts as to its compatibility with the internal market under any alternative geographic market definition.

4.2. **Retail fixed telephony services**

- (19) Fixed telephony services comprise the supply of connection services at a fixed location or access to the public telephone network, for the purpose of making and/or receiving calls and related services. Such calls can be local, national or international and the connection can be offered through traditional fixed PSTN-lines or through Voice over IP (“VoIP”) technology. Both Parties offer fixed telephony services at retail level in Sweden.

Deutschland/E-Plus, recitals 31 to 55; Commission decision of 10 October 2014 in Case M.7000 – Liberty Global/Ziggo, recital 141; Commission decision of 28 May 2014 in Case M.6992 – Hutchison 3G UK/Telefónica Ireland, recital 141; Commission decision of 12 December 2012 in Case M.6497 – Hutchison 3G Austria/Orange Austria, recital 58.

⁷ See replies to Commission questionnaire to competitors and customers Q1 of 4 September 2016, question 4.

⁸ See Commission decision of 11 May 2016 in Case M.7612 – Hutchison 3G UK/Telefónica UK, recitals 293; Commission decision of 10 October 2014 in Case M.7000 – Liberty Global/Ziggo, recital 143; Commission decision of 2 July 2014 in Case M.7018 – Telefónica Deutschland/E-Plus, recital 74; Commission decision of 12 December 2012 in Case M.6497 – Hutchison 3G Austria/Orange Austria, recital 73; Commission decision of 1 March 2010 in case M.5650 – T Mobile/Orange UK, paragraphs 25 and 26 and Commission decision of 28 May 2014 in Case M.6992 – Hutchison 3G UK/Telefónica Ireland, recital 164.

⁹ See Replies to Commission questionnaire to competitors and customers Q1 of 4 September 2016, question 10.1.

4.2.1. *Product market definition*

- (20) The Notifying Party submits that the market for retail fixed telephony services constitutes one overall market without the need to distinguish between type of call (local, national and international) or type of technology (traditional fixed lines or VoIP). The Notifying Party also argues that it is not necessary or useful to segment the market between residential or business customers.
- (21) In previous decisions, the Commission reflected upon the question whether local/national and international calls as well as residential and non-residential customers should be viewed as separate markets on the basis of the distinctions in the Commission Recommendation 2003/311/EC but ultimately left the precise product market definition open.¹⁰
- (22) More recently, the Commission concluded in *Vodafone/Kabel Deutschland* that VoIP services and traditional telephony are part of the same overall market since the Commission found those services to be interchangeable.¹¹ In *Liberty Global/Ziggo*,¹² the Commission did not take a definitive view with regard to possible further segmentations of the market according to the type of customer (residential and business customers) and the type of technology (VoIP and traditional fixed telephony) while in *Liberty Global/BASE*¹³ the Commission considered an overall retail market for fixed telephony services to be the relevant product market.
- (23) In the present case, some respondents to the market investigation pointed out that a distinction could be drawn according to different technologies, especially regarding VoIP, as this technology is realized over internet and is available on a global scale in contrast to fixed line telephony which requires fixed installation of fibre cables.¹⁴ Only one respondent indicated that a segmentation between residential customers and business customers should be considered, since the market for residential customers is a mass market characterized by high penetration and low connectivity cost, whereas business customers in general need higher individual capacity.¹⁵

¹⁰ Commission decision of 7 September 2005 in Case M.3914 – Tele2/Versatel, paragraph 10; Commission decision of 29 June 2010 in Case M.5532 – Carphone Warehouse/Tiscali UK, paragraphs 35 and 39; Commission decision of 9 January 2010 in Case M.5730 – Telefónica/Hansenet Telekommunikation, paragraphs 16 and 17.

¹¹ Commission decision of 20 September 2013 in Case M.6990 – Vodafone/Kabel Deutschland, paragraph 131.

¹² Commission decision of 10 October 2014 in Case M.7000 – Liberty Global/Ziggo, recital 125.

¹³ Commission decision of 4 February 2016 in Case M.7637 – Liberty Global/BASE Belgium, recital 69.

¹⁴ See Replies to Commission questionnaire to competitors and customers Q1 of 4 September 2016, question 5.

¹⁵ See Replies to Commission questionnaire to competitors and customers Q1 of 4 September 2016, question 5.

(24) However, a large majority of competitors and customers responding to the market investigation shared the Commission's previous product market definition of an overall retail market for fixed telephony services without further segmentations.¹⁶

(25) Therefore, the Commission considers, for the purposes of the present decision, that the relevant product market is the overall retail market for the provision of fixed telephony services.

4.2.2. *Geographic market definition*

(26) The Notifying Party submits that, in line with previous Commission's decisions, the relevant geographic scope of the market is national.

(27) The Commission has consistently found that the retail market for the provision of fixed telephony services is national in scope.¹⁷ As regards the geographic scope of the respective fixed telephony services, the market investigation in the present case has not provided any suggestion that the Commission should depart from its previous findings.¹⁸ Most respondents to the Commission's market investigation agreed with the Commission's previous findings, even though some respondents considered that certain business customers with a presence in more than one Scandinavian country may seek a contract for the provision of retail fixed telephony services on a Scandinavian or pan-Nordic basis.¹⁹

(28) In any event, for the purposes of the present decision the question of whether the geographic market for retail fixed telephony services is national or broader than national (i.e. Scandinavian or pan-Nordic) can be left open as the Transaction does not raise serious doubts to its compatibility with the internal market under any alternative geographic market definition.

4.3. **Retail fixed Internet access services**

(29) Internet access services at the retail level consist of the provision of a fixed telecommunications link enabling customers to access the internet. Both Tele2 and TDC Sverige offer Internet access services at the retail level in Sweden.

4.3.1. *Product market definition*

(30) The Notifying Party submits that there is one overall market for the retail provision of Internet access services. The Notifying Party acknowledges that the demands of larger business customers could potentially distinguish them as a separate customer segment for the provision of retail Internet access services. However, the Notifying Party argues that the exact product market definition can be left open.

¹⁶ See Replies to Commission questionnaire to competitors and customers Q1 of 4 September 2016, question 5.

¹⁷ See Commission decision of 10 October 2014 in Case M.7000 – Liberty Global/Ziggo, recital 127; Commission decision of 19 May 2015 in Case M.7421 – Orange/Jazztel, recital 37.

¹⁸ See Replies to Commission questionnaire to competitors and customers Q1 of 4 September 2016, question 10.2.

¹⁹ See Replies to Commission questionnaire to competitors and customers Q1 of 4 September 2016, question 10.2, 11.2, 11.6.

- (31) In previous cases, the Commission determined an overall market for the retail provision of fixed Internet access services without a further subdivision based on download speed or type of technology.²⁰ In *Orange/Jazztel*, the Commission left open the question of whether fixed Internet access services above and below 30 Mbit/s belong to the same product market.²¹ The Commission has also considered a possible segmentation of retail fixed Internet access services based on the type of customer. In *Carphone Warehouse/Tiscali UK*, the Commission distinguished between residential customers and small business customers on the one hand and large business customers on the other hand.²² In other decisions, the Commission referred to retail broadband Internet access services for large business customers as retail business connectivity.²³ In more recent decisions, the Commission left the question of whether a distinction should be made between residential and business customers open.²⁴ Moreover, the Commission considered but did not take a definitive view on a possible segmentation according to (i) product type (distinguishing narrowband, broadband, and dedicated access), and (ii) distribution mode (distinguishing xDSL, fibre, cable, and mobile broadband).²⁵
- (32) Some respondents to the market investigation expressed the view that Internet access services for residential customers and for business customers are separate from each other because business customers require better availability and higher service-level agreements (“SLAs”); in addition, contractual obligations and the use of the service differ substantially.²⁶ However, the vast majority of the respondents to the market investigation in the present case provided indications that there is an overall retail market for the provision of Internet access services, which includes different access technologies and all types of customers.²⁷
- (33) Hence, the Commission concludes that, for the purposes of this decision, the relevant product market is the overall retail market for the provision of retail fixed Internet access services.

²⁰ See Commission decision of 29 June 2010 in Case M.5532 – Carphone Warehouse/Tiscali UK, paragraphs 7-21; Commission decision of 20 September 2013 in Case M.6990 – Vodafone/Kabel Deutschland, paragraphs 192-194.

²¹ Commission decision of 19 May 2015 in Case M.7421 – Orange/Jazztel, paragraphs 43-47.

²² Commission decision of 29 June 2009 in Case M.5532 – Carphone Warehouse/Tiscali UK, paragraph 22 onwards; Commission decision of 29 January 2010 in Case M.5730 –Telefonica/Hansenet, paragraph 9 onwards.

²³ Commission decision of 2 July 2014 in Case M.7231 – Vodafone/ONO, paragraph 18; Commission decision of 19 May 2015 in Case M.7421 – Orange/Jazztel, recital 42.

²⁴ Commission decision of 20 April 2015 in Case M.7499 – Altice/PT Portugal, paragraphs 20-21.

²⁵ See Commission decision of 29 June 2009 in Case M.5532 – Carphone Warehouse/Tiscali UK, recitals 7-21; Commission decision of 20 September 2013 in Case M.6990 – Vodafone/Kabel Deutschland, paragraphs 192-194.

²⁶ See Replies to Commission questionnaire to competitors and customers Q1 of 4 September 2016, question 6.

²⁷ See Replies to Commission questionnaire to competitors and customers Q1 of 4 September 2016, question 6.

4.3.2. *Geographic market definition*

- (34) The Notifying Party considers the market to be national in scope, based on the Commission's precedents.
- (35) In its previous decisions, the Commission found that the retail market for the provision of fixed Internet services is national in scope.²⁸ The market investigation in the present case has not provided any suggestion that the Commission should depart from its previous findings.²⁹ Most respondents to the Commission's market investigation approved the Commission's view on the scope of the geographic market.³⁰ However, some respondents pointed to certain business customers with a presence in more than one Scandinavian country who may seek a contract for the provision of retail fixed Internet access services on a Scandinavian or pan-Nordic basis.³¹
- (36) In any event, for the purposes of the present decision the question of whether the geographic market for retail fixed Internet access services is national or broader than national (i.e. Scandinavian or pan-Nordic) can be left open as the Transaction does not raise serious doubts to its compatibility with the internal market under any alternative geographic market definition.

4.4. **Retail business connectivity services**

- (37) Business connectivity services are fixed telecommunications services provided to business customers and public sector companies to provide data connectivity between multiple sites. These connections facilitate communication between offices located in different geographic areas. Business connectivity services include services such as virtual private networks (“VPN”),³² capacity services (retail leased lines), dark fibre (i.e. fibre connections that are not yet activated) and wavelengths (segmentations of dark fibre that function as separate channels for communication and transfer of data between end points). Both Parties are active in the provision of business connectivity services.

4.4.1. *Product market definition*

- (38) The Notifying Party submits that the market should be defined as an overall market for business connectivity services, inclusive of all types of services, but excluding

²⁸ See Commission decision of 29 June 2010 in Case M.5532 – Carphone Warehouse/Tiscali UK, paragraph 47; Commission decision of 29 January 2010 in Case M.5730 –Telefonica/Hansenet, paragraph 28; Commission decision of 20 September 2013 in Case M.6990 – Vodafone/Kabel Deutschland, paragraph 197.

²⁹ See Replies to Commission questionnaire to competitors and customers Q1 of 4 September 2016, question 10.3.

³⁰ See Replies to Commission questionnaire to competitors and customers Q1 of 4 September 2016, question 10.3.

³¹ See replies to Commission questionnaire to competitors and customers Q1 of 4 September 2016, questions 11.3 and 11.6.

³² VPN services allow for the end customer to have an access that is shared with other companies but which nevertheless is secure, as if it were a dedicated access. VPN services can be based on the following standards: IPsec VPN, IP MPLS VPN, and IP SSL VPN.

Internet access services. The Notifying Party adds that it may be possible to distinguish from a demand-side perspective retail business connectivity services provided to small business customers from those provided to medium-large business customers, although from a supply-side perspective the services are the same and a provider of business connectivity services to medium-large customers can equally serve small customers. The Notifying Party argues that, in any event, the product market definition can be left open, as the Transaction does not raise concerns under any alternative possible product market definition.

- (39) In previous cases, the Commission considered a separate product market for retail business connectivity services, defined as the fixed telecommunications services that large business, enterprise and public sector customers purchase to provide data connectivity between multiple sites.³³ The Commission noted that large corporate customers may require dedicated access (leased lines) and virtual private networks due to their increased needs for higher performance levels in terms of security, bandwidth and functionality, although the precise product market definition was left open.³⁴
- (40) The Commission further considered that the retail market for business connectivity services can be further segmented into: (i) Internet access services; (ii) leased lines; and (iii) VPN services, but ultimately left the product market definition open.³⁵ In *Altice/PT Portugal*, the Commission considered retail business connectivity services as one of the markets related to business to business (“B2B”) telecommunications services, but left the precise product market definition open.³⁶
- (41) The results of the market investigation in the present case confirmed the Commission’s prior product market definition, as the majority of respondents to the market investigation indicated that there is an overall market for retail business connectivity services, without further segmentations.³⁷ In any event, the precise product market definition can be left open, as the Transaction does not raise serious doubts to its compatibility with the internal market under any alternative product market definition.

4.4.2. *Geographic market definition*

- (42) The Notifying Party submits that the market for retail business connectivity services is national in scope.

³³ Commission decision of 3 July 2012 in Case M.6584 – Vodafone/Cable & Wireless, paragraph 9.

³⁴ Commission decision of 29 January 2010 in Case M.5730 – Telefonica/Hansenet, paragraph 12; Commission decision of 28 November 2006 in Case M.4417 – Telecom Italia/AOL German Access Business, paragraphs 19-20.

³⁵ Commission decision of 20 April 2015 in Case M.7499 – Altice/PT Portugal, paragraphs 54 to 57; Commission decision of 14 April 2014 in Case M.7109 – Deutsche Telekom/GTS, paragraphs 26 to 29; Commission decision of 3 July 2012 in Case M.6584 – Vodafone/Cable & Wireless, paragraph 9.

³⁶ Commission decision of 20 April 2015 in Case M.7499 – Altice/PT Portugal, paragraphs 54 to 57.

³⁷ See replies to Commission questionnaire to competitors and customers Q1 of 4 September 2016, question 7.

- (43) In its previous decisions, the Commission considered the retail provision of business connectivity services to be national in scope.³⁸ In its decision in *Altice/PT Portugal*, when considering the geographic scope for B2B telecommunications services, including business connectivity services, the Commission found that the market was likely national in scope, but left the geographic market definition open, as the transaction did not raise concerns.³⁹
- (44) In the present case, most respondents to the market investigation agreed that the geographic scope of the market for retail business connectivity services is national in scope.⁴⁰ Some respondents considered that certain business customers with a presence in more than one Scandinavian country may seek a contract for the provision of retail business connectivity services on a pan-Scandinavian or Nordic basis.
- (45) In any event, for the purposes of the present decision the question of whether the geographic market for business connectivity services is national or broader than national (i.e. Scandinavian or pan-Nordic) can be left open as the Transaction does not raise serious doubts to its compatibility with the internal market under any alternative geographic market definition.

4.5. PBXs and related services

- (46) PBXs consist of telephone exchange systems, based on a combination of hardware and integrated software, which serve a particular business or office. At their most basic level, PBXs provide connections among the internal telephones of a private organization and connect them to the public switched telephone network.
- (47) A PBX can be (i) located at the premises of the customer (customer-based PBX) or (ii) located at the premises of the provider/operator (hosted PBX) or (iii) located in the cloud (cloud-based PBX).
- (48) Services related to PBXs can include set-up of the PBX at the customer's premise as well as support and operation of the PBX and contact centre. These services can be provided in connection with the supply of a PBX, or on a standalone basis. Both Parties are active in the provision of PBXs and related services.

4.5.1. Product market definition

- (49) The Notifying Party submits that the product market for PBXs and related services should be defined as one overall market, without further segmentations based on the size of the PBX, the technology, how the PBX is realized (i.e. customer-based, hosted or cloud-based), or the type or size of the business customer.
- (50) In previous cases, the Commission analysed the market for the production of PBXs. It considered, but left open, the question whether such market could be

³⁸ Commission decision of 3 July 2012 in Case M.6584 Vodafone/Cable & Wireless, paragraph 10; Commission decision of 14 April 2014 in Case M7109 – Deutsche Telekom/GTS, paragraph 33.

³⁹ Commission decision of 20 April 2015 in Case M.7499 – Altice/PT Portugal, paragraphs 58 to 62.

⁴⁰ See replies to Commission questionnaire to competitors and customers Q1 of 4 September 2016, question 10.4.

further segmented based on the technology, the size of the PBX or of the customer.⁴¹

- (51) In the present case, most respondents to the market investigation were of the view that PBX services should be considered as a separate product market. One respondent considered that PBXs should be considered within a separate broader product market for equipment, whereas another respondent found that PBX services will gradually disappear as separate product market, to be assimilated as value-added services within fixed and mobile broadband services. Respondents also found that it would not be appropriate to further segment PBX services depending on the type of technology, or the size of the PBX or the served customer. For instance, one respondent explained that IP-based (wireless) PBXs are substitutable for traditional PBXs, which makes a technology-based segmentation unnecessary.⁴²
- (52) In light of the above, the Commission therefore considers that there is an overall product market for PBXs and related services, without further segmentations.

4.5.2. *Geographic market definition*

- (53) In the Notifying Party's view, the market for PBXs and related services should be defined as national in scope.
- (54) In previous decisions, the Commission considered that the market for PBX equipment could be national in scope, but ultimately left the question open.⁴³
- (55) In the present case, the question of whether the market for PBXs and related services is national or broader (that is, Scandinavian or pan-Nordic) can be left open, as the Transaction does not raise serious doubts as to its compatibility with the internal market under any alternative geographic market definition.

4.6. **Retail communication devices and accessories**

- (56) Tele2 sells mobile phones, headsets, tablets and accessories (i.e. terminals and accessories) to residential and business customers. Tele2 generally sells its mobile phones and tablets together with mobile telecommunications services. Furthermore, CDON.com which is part of the Kinnevik-controlled Qliro Group, sells handsets, tablets and accessories to business and residential customers in Sweden over the internet.
- (57) TDC Sverige provides mobile phones, headsets, tablets and accessories to business customers within its business area Direct. TDC Sverige focuses on providing mobile phones and/or tablets to customers on a standalone basis (i.e. to customers

⁴¹ Commission decision of 18 November 2009 in Case M.M.5607 - Avaya/Nortel Enterprise Solutions, paragraphs 12 to 17.

⁴² See replies to Commission questionnaire to competitors and customers Q1 of 4 September 2016, question 8.

⁴³ Commission decision of 11 May 2000 in Case No IV/M.1745 - EADS, paragraph 40; Commission decision of 1 December 2005 in Case M.3995 – Belgacom/Telindus, paragraphs 19-20.

procuring the mobile telecommunications services from another supplier than TDC Sverige).

4.6.1. *Product market definition*

- (58) The Notifying Party submits that there is an overall product market for the sale of communication devices and accessories, without need of further segmentations. In particular, it is not appropriate to distinguish between residential and business customers, as they essentially demand the same product, and all providers can supply those products.
- (59) In previous cases, the Commission has examined the retail sale of electronic products and appliances and whether it can be further subdivided into retail sale of computers and communication devices, and further sub-segments therein, but ultimately left the precise product market definition open.⁴⁴ The Commission did not consider a possible segmentation between residential and business customers.
- (60) For the purpose of this decision, the exact product market definition can be left open, as the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the retail provision of retail communication devices and accessories under any alternative product market definition.

4.6.2. *Geographic market definition*

- (61) The Notifying Party argues that the retail market for communication devices and accessories is national in scope.
- (62) In *Carphone Warehouse/Dixons*, the Commission considered, but ultimately left open, the question whether the retail market for communication devices and accessories is national or local in scope.⁴⁵
- (63) For the purpose of this decision, the exact geographic market definition can be left open, as the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the retail provision of retail communication devices and accessories under any alternative product market definition.

4.7. IT services

- (64) IT services consist of day-to-day management and operation of computing and processes, including infrastructure and business applications. TDC Sverige provides IT services to business customers. Tele2 provides IT services on an ad-hoc basis to its business customers.

⁴⁴ Commission decision of 25 June 2014 in Case M.7259 - Carphone Warehouse/Dixons, paragraphs 16-19 and 24; Commission decision of 29 June 2006 in Case M.4226 - DGSI/Fotovista, paragraphs 9 to 14.

⁴⁵ Commission decision of 25 June 2014 in Case M.7259 - Carphone Warehouse/Dixons, paragraphs 30 to 33.

4.7.1. *Product market definition*

- (65) The Notifying Party submits that the product market can be defined as that for IT services to business customers, without further segmentations according to type of service, size of customer or type of industry.
- (66) In previous cases, the Commission has assessed whether IT services should be further segmented depending on the functionality of the services or the different industries in which customers are active, but has ultimately left the precise product market definition open.⁴⁶
- (67) For the purpose of this decision, the exact product market definition can be left open, as the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to IT services under any alternative product market definition.

4.7.2. *Geographic market definition*

- (68) The Notifying Party argues that the market for IT services should be at least national in scope.
- (69) In previous cases, the Commission considered whether the geographic market for IT services should be considered national or wider, but ultimately left the question open.⁴⁷
- (70) For the purpose of this decision, the exact geographic market definition can be left open, as the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to IT services under any alternative geographic market definition.

4.8. Wholesale access services at a fixed location

- (71) The provision of fixed call origination services consists of services for call conveyance from a fixed location to a point of interconnection where the call is transferred into the network of another undertaking for transit and/or termination.
- (72) TDC Sverige re-sells fixed voice (PSTN) subscriptions (via Telia's so called GTA/TAB service) based on Telia's access network, offering telecommunications providers the possibility to provide their end customers fixed telephony. Moreover, TDC Sverige provides a VoIP-service by which it delivers the complete service

⁴⁶ Commission decision of 20 April 2015 in Case M.7499 - Altice/PT Portugal, paragraphs 54 and 57; Commission decision of 15 December 2014 in Case M.7458 – IBM/INF Business of Deutsche Lufthansa, paragraphs 16-19, 20-29 and 33; Commission decision of 19 June 2013 in Case M.6921 – IBM Italia/UBIS, paragraphs 11-25; Commission decision of 20 June 2011 in case M.6237 – Computer Sciences Corporation/iSoft Group, paragraphs 8-15.

⁴⁷ Commission decision of 20 April 2015 in Case M.7499 - Altice/PT Portugal, paragraph 62; Commission decision of 15 December 2014 in Case M.7458 – IBM/INF Business of Deutsche Lufthansa, paragraphs 30 to 33; Commission decision of 19 June 2013 in Case M. 6921 – IBM Italia/UBIS, paragraph 30; Commission decision of 20 June 2011 in Case M.6237 – Computer Sciences Corporation/iSoft Group, paragraph 19.

with the exception of sales, customer service, invoicing and the customer's equipment, which the customer purchasing the service is responsible for.

(73) Tele2 provides a wholesale service for call transit called SIP-transit.

4.8.1. *Product market definition*

(74) The Notifying Party submits that the services mentioned in paragraphs (72) and (73) above can be described as wholesale access services at a fixed location.

(75) According to the Commission Recommendation on relevant markets of 2014, call origination services correspond, at the retail level, to the ability to make outgoing phone calls.⁴⁸ At wholesale level, call origination is an input which is purchased by alternative operators, who do not have a direct access link to the end customer, in order to provide fixed voice services to end customers. The wholesale market for call origination on the public telephone network provided at a fixed location comprises public switched telephone networks (PSTN) and managed Voice-over-IP (VoIP) over fixed broadband lines.

(76) In *Deutsche Telekom/OTE*, the Commission defined the relevant product market as the wholesale market for call origination on the public telephone network at a fixed location.⁴⁹

(77) For the purpose of this decision, the exact product market definition for wholesale access services at a fixed location can be left open, as the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to wholesale access services at a fixed location under any alternative product market definition.

4.8.2. *Geographic market definition*

(78) The Notifying Party does not take a view on the geographic market definition for wholesale access services at a fixed location.

(79) In *Deutsche Telekom/OTE*, the Commission defined the relevant geographic market as national in scope.⁵⁰

(80) For the purpose of this decision, the exact geographic market definition for wholesale access services at a fixed location can be left open, as the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to wholesale access services at a fixed location under any alternative geographic market definition.

⁴⁸ Commission Recommendation of 9 October 2014 on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services (2014/710/EU), OJ L 295, 11.10.2014, p. 79 ("Commission Recommendation on relevant markets of 2014").

⁴⁹ Commission decision of 2 October 2008 in Case M.5148 – Deutsche Telekom/OTE, paragraph 14.

⁵⁰ Commission decision of 2 October 2008 in Case M.5148 – Deutsche Telekom/OTE, paragraph 15.

4.9. Wholesale Internet access services

- (81) 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;⁵¹ non-physical or virtual network access, such as bitstream access, at a fixed location; and resale of the fixed incumbent's internet offering.
- (82) TDC Sverige operates an ADSL-platform and through that provides other operators with internet access which they can re-sell to their end customers. Services are offered with bandwidth up to 28 Mbit/s downstream.
- (83) Tele2 provides so called bitstream services to Telenor in the southern part of Sweden.

4.9.1. Product market definition

- (84) The Notifying Party submits that the services mentioned in paragraphs (82) and (83) above can be described as wholesale Internet access services.
- (85) In previous decisions, the Commission defined a separate market for wholesale access to Internet services and left open the question of whether it should be subdivided per type of access (LLU, bitstream or resale of the incumbent's offering).⁵² In *Liberty Global/BASE Belgium*, the Commission considered possible segmentations based on the type of wholesale Internet access (standalone access to DSL, standalone access to cable, access to cable for TV and internet together), but ultimately left the product market definition open.⁵³
- (86) For the purpose of this decision, the exact product market definition for wholesale Internet access services can be left open, as the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to wholesale Internet access services under any alternative product market definition.

4.9.2. Geographic market definition

- (87) The Notifying Party does not take a view on the geographic market definition for wholesale Internet access services.
- (88) 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.⁵⁴ In *Liberty Global/BASE Belgium*, the Commission

⁵¹ LLU (local loop unbundling) consists of unbundled (shared) access to metallic loops of the local access network in a number of local telecommunications exchanges (in particular in urban areas).

⁵² 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.

⁵³ Commission decision of 4 February 2016 in Case M.7637 Liberty Global/BASE Belgium, paragraph 168.

⁵⁴ Commission decision of 29 June 2009 in Case M.5532 - Carphone Warehouse/Tiscali UK, paragraphs 48-54.

considered whether the geographic scope of wholesale access to Internet services should be national or limited to the network footprint of each operator, but ultimately left the product market definition open.⁵⁵

- (89) For the purpose of this decision, the exact geographic market definition can be left open, as the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to wholesale Internet access services under any alternative geographic market definition.

4.10. Wholesale leased lines

- (90) Capacity services, also known as leased lines, are part-circuits that relate to connections between two or several network interconnection points. They are typically provided through TDM-, PDH- and SDH-based technology or over Ethernet-based connections. Leased lines allow communications providers to connect their own networks to end user sites for the supply of business connectivity services. In addition, wholesale leased lines are an input for the provision of retail mobile services.

- (91) Leased lines may be provided as a retail service to business customers, or at the wholesale level to other telecommunications operators, which use these services to provide their end customers with connectivity. In the former case, retail leased lines may be considered as a segment of retail business connectivity services (as discussed in Section 4.4 above). In the latter case, these services are usually referred to as “wholesale leased lines”.

4.10.1. Product market definition

- (92) The Notifying Party submits that there is an overall product market for wholesale leased lines, without the need to distinguish between further possible segments.
- (93) Telecom regulators sometimes segment wholesale leased lines between the element that can be considered to be customer access or backhaul (terminating segments) and that which can be considered part of the core network (trunk segments).
- (94) The Commission has considered a separate market for “wholesale terminating segments of leased lines, irrespective of the technology used to provide leased or dedicated capacity” in its 2007 Recommendation on relevant markets for electronic communications.⁵⁶ Trunk segments are used to connect two points in the core (or “backbone”) network, while terminating segments (or “backhaul” network) usually connect the core network with aggregation points or customer premises in the access network.

⁵⁵ Commission decision of 4 February 2016 in Case M.7637 Liberty Global/BASE Belgium, paragraph 172.

⁵⁶ Commission Recommendation of 17 December 2007 on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services (2007/879/EC), OJ L 344, 28.12.2007, p. 65 (“Commission Recommendation on relevant markets of 2007”).

- (95) In previous cases, the Commission considered that the market for wholesale leased lines could be further segmented into trunk and terminating segment, but ultimately left the product market definition open.⁵⁷ In *Deutsche Telecom/GTS*, the Commission also considered a possible segmentation of leased lines into passive and active infrastructure, and whether the terminating segment of leased lines could be further segmented into terminating leased lines with bandwidth above 2 Mbps and below 2 Mbps. However, the Commission ultimately left the product market definition open in that case.⁵⁸
- (96) Most respondents to the market investigation in the present case agreed that there is a separate market for the provision of wholesale leased lines. One respondent considered that wholesale leased are not a separate market, but a part of the market for wholesale broadband access. With respect to a possible segmentation between terminating segments and trunk segments, one respondent argued that the last mile access for wholesale leased lines should be a separate market, as there is a more limited choice for access compared to backbone. However, the majority of respondents to the market investigation were of the view that there is an overall market for wholesale leased lines, without further distinctions between terminating segments and trunk segments.⁵⁹
- (97) Therefore, for the purpose of the present decision, the Commission considers that the relevant product market is that for the wholesale provision of leased lines, without further segmentations.

4.10.2. *Geographic market definition*

- (98) The Notifying party submits that the wholesale market for leased lines should be defined as national in scope.
- (99) The Commission previously held that the market for wholesale leased lines is national in scope.⁶⁰ In *Altice/PT Portugal*, the Commission took the view that the market could be national or narrower in scope, but ultimately left the exact geographic market definition open.⁶¹ In *Liberty Global/BASE Belgium*, the

⁵⁷ Commission decision of 4 February 2016 in Case M.7637 - *Liberty Global/BASE Belgium*, recital 146; Commission decision of 20 April 2015 in Case M.7499 - *Altice/PT Portugal*, paragraph 74; Commission decision of 14 April 2014 in case M.7109 - *Deutsche Telecom/GTS*, paragraph 70. Commission decision of 20 September 2013 in Case M.6990 - *Vodafone/Kabel Deutschland*, paragraph 150; Commission decision of 3 July 2012 in case M.6584 - *Vodafone/Cable & Wireless*, paragraph 30.

⁵⁸ Commission decision of 14 April 2014 in case M.7109 - *Deutsche Telecom/GTS*, paragraphs 67 to 70.

⁵⁹ See replies to Commission questionnaire to competitors and customers Q1 of 4 September 2016, question 9.

⁶⁰ Commission decision of 14 April 2014 in case M.7109 - *Deutsche Telecom/GTS*, paragraph 74; Commission decision in case M.6584 – *Vodafone/Cable&Wireless*, of 3 July 2012, paragraph 31; Commission decision in case M.5730 – *Telefónica/Hansenet Telekommunikation*, of 29 January 2010, paragraph 20.

⁶¹ Commission decision of 20 April 2015 in Case M.7499 - *Altice/PT Portugal*, paragraph 77.

Commission concluded that the market for wholesale access to leased lines was national in scope.⁶²

- (100) In the present case, the majority of respondents to the market investigation expressed that the wholesale market for leased lines is national in scope.⁶³ Regarding the possible existence of a pan-Nordic or Scandinavian market for wholesale leased lines, most respondents to the market investigation indicated that they do not purchase or provide wholesale leased lines on the basis of a contract covering more than one Scandinavian or Nordic country, although some respondents indicated that they indeed provide or purchase wholesale leased lines for more than one Scandinavian or Nordic country.⁶⁴
- (101) In any event, for the purpose of the present decision, the question whether the geographic market for wholesale leased lines is national, or Scandinavian or pan-Nordic, can be left open, as the Transaction does not raise serious doubts to its compatibility with the internal market under any alternative geographic market definition.

4.11. Wholesale access and call origination services on mobile networks

- (102) MNOs provide wholesale access and call origination services, which enable operators without their own network, namely MVNOs and service providers, to have access to one or more of the MNOs networks in order to provide retail mobile telecommunications services to end customers. Such access is not regulated in Sweden.
- (103) As an MNO, Tele2 provides wholesale access to its network to MVNOs and service providers. Alongside Tele2, the other three MNOs active in the Swedish telecommunications market, Telia, Telenor and Hi3G, also provide wholesale access to their respective mobile networks to MVNOs and service providers.
- (104) As an MVNO, TDC has wholesale access to the mobile network of Telia.

4.11.1. Product market definition

- (105) The Notifying Party does not take a view on the precise product market definition for wholesale access and call origination services on mobile networks.
- (106) In previous cases, the Commission defined a wholesale market for access and call origination on public mobile networks.⁶⁵ Wholesale access services provided by

⁶² Commission decision of 4 February 2016 in Case M.7637 - *Liberty Global/BASE Belgium*, recital 150.

⁶³ See replies to Commission questionnaire to competitors and customers Q1 of 4 September 2016, question 10.5.

⁶⁴ See replies to Commission questionnaire to competitors and customers Q1 of 4 September 2016, questions 11.5 and 11.6.

⁶⁵ See Commission decision of 11 May 2016 in case M.7612 – *Hutchison 3G UK/Telefónica UK*, recitals 295 to 300; Commission decision of 2 July 2014 in case M.7018 – *Telefónica Deutschland/E-Plus*, recitals 77 to 79; Commission decision of 28 May 2014 in case M.6992 – *Hutchison 3G UK/Telefónica Ireland*, recital 156; Commission decision of 12 December 2012 in case M.6497 – *Hutchison 3G Austria/Orange Austria*, recitals 61 to 63; Commission decision of 1 March 2010 in

MNOs to MVNOs were considered as key elements required for MVNOs to be able to provide retail mobile telecommunications services. Since both access and origination services were considered to be generally supplied together, they were seen to be part of one overall market. The market investigation in the present case has not provided any reasons to depart from this approach.

- (107) Therefore, for the purpose of this decision, the Commission concludes that there is a distinct wholesale market for access and call origination on mobile networks.

4.11.2. Geographic market definition

- (108) The Notifying Party does not take a view on the precise geographic market definition for wholesale access and call origination services on mobile networks.

- (109) In previous cases, the Commission considered the wholesale market for access and call origination to be national in scope due to regulatory barriers stemming from the fact that licenses granted to MNOs are generally national in scope.⁶⁶ The market investigation in the present case has not provided any reasons to depart from this approach.

- (110) Based on the above, the Commission concludes that the wholesale market for access and call origination on mobile networks is national in scope, that is to say limited to the territory of Sweden.

4.12. Wholesale call termination services on mobile networks

- (111) Call termination services are provided when calls originate from one network and terminate on another network. Call termination allows users of different networks to communicate with each other. Call termination is a wholesale service provided by various network operators to one another on the basis of interconnection agreements, upstream of the provision of communication services to end customers.⁶⁷ Tele2 and TDC Sverige both provide wholesale mobile termination services, thus enabling users of other mobile networks to terminate calls on their respective mobile networks.

4.12.1. Product market definition

- (112) The Notifying Party does not take any view on the precise product market definition for wholesale call termination services on mobile networks.

- (113) In its previous decisions, the Commission took the view that there are no substitutes for call termination on each individual mobile network, since the

case M.5650 – T-Mobile/Orange, paragraphs 27 to 30; Commission decision of 27 November 2007 in case M.4947 – Vodafone/Tele2 Italy/Tele2 Spain, paragraph 15.

⁶⁶ See Commission decision of 11 May 2016 in case M.7612 – Hutchison 3G UK/Telefónica UK, recitals 305 and Commission decision of 12 December 2014 in case M.6497 – Hutchison 3G Austria/Orange Austria, recitals 74 to 77, with further references.

⁶⁷ See Commission Decision of 2 July 2014 in Case M.7018 – Telefónica Deutschland/E-Plus, recital 84; Commission Decision of 12 December 2012 in Case M.6497 – Hutchison 3G Austria/Orange Austria, paragraph 68; Commission Decision of 1 March 2010 in Case M.5650 – T-Mobile/Orange, paragraph 36.

operator transmitting the outgoing call can reach the intended recipient only through the operator of the network to which that recipient is subscribed.⁶⁸ Therefore, the Commission has found that each individual network constitutes a separate wholesale market for call termination services.

- (114) The results of the market investigation have not provided any indication that it would not be appropriate for the Commission to define separate wholesale markets for call termination services according to each individual network, in line with its previous practice.
- (115) For the purpose of the present decision, the Commission concludes that the relevant product markets are the wholesale market for call termination services on the mobile network of Tele2 and the wholesale market for call termination services on the core network of TDC Sverige.

4.12.2. Geographic market definition

- (116) The Notifying Party does not take any view on the precise geographic product market definition for wholesale call termination services on mobile networks.
- (117) In previous cases, the Commission considered the wholesale market for call termination services to be national in scope, since each wholesale market for call termination services corresponds to the dimensions of the operator's network.⁶⁹
- (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 geographic market in the present case.
- (119) From the purposes of this decision, the Commission therefore concludes that the wholesale markets for call termination services on mobile networks are national in scope.

4.13. Wholesale call termination services on fixed networks

- (120) As set out in paragraph (111) above, call termination is the wholesale service provided by network operators that allows users of different networks to communicate with each other.
- (121) Both Tele2 and TDC Sverige are active in the provision of wholesale call termination services on their respective fixed networks in Sweden.

⁶⁸ 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.

⁶⁹ 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.

4.13.1. *Product market definition*

- (122) The Notifying Party does not take any view on the precise product market definition for wholesale call termination services on fixed networks.
- (123) In previous decisions, the Commission considered an overall wholesale market for call termination services on each individual fixed network without it being necessary to consider further possible segmentations of the market.⁷⁰
- (124) 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.
- (125) Therefore, for the purposes of the present decision, the Commission retains its previous product market definition and considers that the relevant product market is the overall wholesale market for call termination services on the fixed network of Tele2 and on the fixed network that TDC Sverige owns or has access to.

4.13.2. *Geographic market definition*

- (126) The Notifying Party does not take any view on the precise geographic market definition for wholesale call termination services on fixed networks.
- (127) The Commission has consistently found that the wholesale market for call termination services on fixed networks is national in scope.⁷¹ The market investigation in the present case has not provided any reason to depart from this approach.
- (128) Based on the above, the Commission concludes that the wholesale market for call termination services on fixed networks is national in scope, that is to say limited to the territory of Sweden.

5. **COMPETITIVE ASSESSMENT**

- (129) As mentioned in paragraphs (8) and (9) above, the Parties' activities overlap in several retail and wholesale telecommunications markets, which are also vertically linked. However, with the exception of the retail market for mobile telecommunications services, the Transaction does not give rise to horizontally or vertically affected markets. Additionally, as will be explained in the paragraphs below, the market investigation further confirmed that the Transaction would not raise concerns in those markets that would not be horizontally or vertically affected by the Transaction.

⁷⁰ See Commission decision of 4 February 2016 in Case M.7637 – Liberty Global/BASE Belgium, recital 126; 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.

⁷¹ See Commission decision of 20 September 2013 in Case M.6990 – Vodafone/Kabel Deutschland, paragraph 121; Commission decision of 4 February 2016 in Case M.7637 – Liberty Global/BASE Belgium, recital 128; Commission decision of 3 July 2012 in Case M.6584 – Vodafone/Cable & Wireless, paragraph 24; Commission decision of 1 March 2010 in Case M.5650 – T-Mobile/Orange, paragraph 38; Commission decision of 27 November 2007 in Case M.4947 – Vodafone/Tele2 Italy/Tele2 Spain, paragraph 16.

5.1. Horizontal assessment - retail markets

- (130) In all but one of the retail markets where the Parties' activities overlap, the Parties' combined market share post-Transaction would be below 20%. In particular, the Parties' combined market share post-Transaction would remain below 20% in each of the retail markets in Sweden for: (i) fixed telephony services; (ii) Internet access services; (iii) business connectivity services, including the various possible segments thereof; (iv) PBXs and related services; (v) communication devices and accessories, including the various possible segments thereof; and (vi) IT services, including the various possible segments thereof.⁷²
- (131) The results of the market investigation also indicated that, post-Transaction, there would be a sufficient number of alternative providers for those retail services.⁷³ Most respondents also indicated that the Transaction would not have a negative impact on any of those retail markets.⁷⁴
- (132) With respect to the market for retail business connectivity services in Sweden, some respondents to the market investigation claimed that the Transaction would reduce the number of available providers of telecommunications services to public authorities.
- (133) In relation to these arguments, the Commission notes that the majority of the respondents to the market investigation (including the majority of public authorities) considered that the Transaction would not raise competition concerns. The Commission's investigation indeed confirmed that post-Transaction, a number of alternative providers of telecommunications services for public authorities would remain active on the market in addition to Tele2. These include Telia, Telenor, DGC, IP-Only and Borderlight.⁷⁵
- (134) The Transaction would give rise to only one horizontally affected market, that is, the retail market for mobile telecommunications services in Sweden. On that market, the Parties' combined market share post-Transaction would be 23.9% in terms of revenues (Tele2: 23.3%; TDC Sverige: 0.6%) and 28.8% in terms of subscribers (Tele2: 27.4%; TDC Sverige: 1.4%). In the business segment of that market, where TDC is active, the Parties' market share would be 19.7% in terms of revenues (Tele2: 17.7%; TDC Sverige: 2.0%) and 22.7% in terms of subscribers (Tele2: 16.8%; TDC Sverige: 5.9%).
- (135) Therefore, post-Transaction, the merged entity would become the second largest player on the overall retail mobile market (23.9% in terms of revenues, 28.8% in

⁷² Furthermore, the Parties' combined market share would be below 20% in those retail markets also when considering a possible geographic market that would be Scandinavian or pan-Nordic in scope (see paragraphs (17), (27), (35) and (44) above). Notifying Party's reply to the Commission's request for information ("RFI") of 22 September 2016, question 1.

⁷³ See replies to Commission questionnaire to competitors and customers Q1 of 4 September 2016, question 12 and following sub-questions.

⁷⁴ See replies to Commission questionnaire to competitors and customers Q1 of 4 September 2016, questions 16.3, 16.4, 16.5, 16.6 and 16.7 and respective sub-questions.

⁷⁵ Notifying Party's submission to the European Commission of 20 September 2016, Sections 2.1.

terms of subscribers) and on its business segment (19.7% in terms of revenues, 22.7% in terms of subscribers).

- (136) However, based on the results of the market investigation, the Transaction is unlikely to raise serious doubts with respect to the retail market for mobile telecommunications services, for the following reasons.
- (137) First, post-Transaction the market would continue to be characterised by the strong position of Telia (38% on the overall retail market and 46-47% on the business segment). The two other main competitors would also have significant markets shares, namely Telenor (16-19% on the overall retail market and 19% on the business segment) and Hi3G (14-16% on the overall retail market and 6-8% on the business segment).
- (138) Second, prior to the Transaction TDC Sverige had a limited presence in retail mobile telecommunications services. In general, the larger the addition of market share (or “increment”), the more likely it is that a merger will lead to a significant increase in market power. Although market shares and additions of market shares only provide first indications of market power and increases in market power, they are normally important factors in the assessment. The Transaction would only bring a small increment to the market share of Tele2, both as regards the overall retail mobile market (0.6% and 1.4%, respectively in terms of revenues and subscribers) and the segment for business customers (2.0% and 5.9%, respectively in terms of revenues and subscribers).
- (139) Third, as mentioned in paragraph (4), TDC Sverige operates on the retail mobile market as an MVNO. In previous cases, the Commission generally found that MVNOs do not exert the same competitive constraint as MNOs.⁷⁶ Based on the results of the market investigation in the present case, there is no indication that TDC Sverige distinguishes itself as particularly strong competitive force on the retail mobile market in Sweden. The market investigation also reported that TDC Sverige's mobile activities are focused on large business customers specifically, therefore not targeting residential or small business customers.
- (140) Fourth, as mentioned in paragraph (4) above, TDC Sverige only provides its services to business customers, whereas Tele2 focuses more on residential customers. Therefore, the Parties' activities would appear to be complementary, and only overlap to a certain extent with respect to business customers. This is also confirmed by the replies to the market investigation, as most customers and competitors considered that Tele2 and TDC Sverige are not particularly close competitors with respect to retail mobile telecommunications services.⁷⁷
- (141) Finally, respondents to the market investigation indicated that, post-Transaction there would be a sufficient number of alternative providers of retail mobile

⁷⁶ Commission decision of 2 July 2014 in Case M.7018, Telefonica Deutschland/E-Plus, recitals 567-676.

⁷⁷ See replies to Commission questionnaire to competitors and customers Q1 of 4 September 2016, question 15.1.

services.⁷⁸ Respondents also indicated that, in their view, the Transaction would not have a negative impact on the retail market for mobile telecommunications services.⁷⁹

- (142) Based on the above and the available evidence, the Commission therefore concludes that the Transaction would not raise serious doubts as to its compatibility with the internal market in relation to horizontal overlaps in each of the markets for: (i) retail mobile telecommunications services, (ii) retail fixed telephony services, (iii) retail Internet access services, (iv) retail business connectivity services, (v) PBXs and related services, (vi) retail communication devices and accessories and (vii) IT services (and the various possible segments thereof).

5.2. Horizontal assessment - wholesale markets

- (143) As mentioned in paragraph (9) above, the Parties' activities overlap in the markets for: (i) wholesale access services at a fixed location, (ii) wholesale Internet access services, and (iii) wholesale leased lines.⁸⁰ According to the information provided by the Notifying Party, these markets would not be affected markets by the Transaction as the Parties' combined share would remain below 20%.
- (144) As regards the wholesale markets for access services at a fixed location and wholesale Internet access in Sweden, based on the information submitted by the Notifying Party, Tele2's sales are negligible.⁸¹
- (145) A third party responding to the market investigation stated that the number of providers of leased lines is limited in Sweden and that the Transaction would result in a reduction of competition in this market, in particular in relation to fibre backbone and backhaul.⁸²
- (146) In this respect, the Commission notes that most respondents to the market investigation indicated that post-Transaction a sufficient number of alternative providers would remain with respect to both fibre backbone and fibre backhaul.⁸³ Most of those respondents also replied that in their view the Transaction would not

⁷⁸ See replies to Commission questionnaire to competitors and customers Q1 of 4 September 2016, question 12.1.

⁷⁹ See replies to Commission questionnaire to competitors and customers Q1 of 4 September 2016, question 16.2.

⁸⁰ In the markets for wholesale termination services on mobile networks and wholesale termination services on fixed networks, as set out in Sections 4.12 and 4.13 above, each individual mobile and fixed network constitutes a separate product market and should be considered as national in scope. Therefore, according to those definitions, the Parties' activities do not overlap as regards wholesale termination services on their respective mobile and fixed networks, and will not be further considered for the horizontal assessment of this Transaction. In relation to the market for wholesale access and call origination, the Transaction does not give rise to a horizontal overlap, as only MNOs are active in this market. As TDC Sverige is an MVNO, only Tele2 is an active provider in this market.

⁸¹ Form CO, paragraphs 245 to 251.

⁸² See replies to Commission questionnaire to competitors and customers Q1 of 4 September 2016, questions 13.1, 13.2 and 15.8.

⁸³ See replies to Commission questionnaire to competitors and customers Q1 of 4 September 2016, questions 13 and 14.

have a negative impact with respect to the provision of wholesale leased lines.⁸⁴ The Commission's investigation confirmed that the Parties' backhaul and backbone networks only overlap in very limited areas within Sweden and that, even within those very limited areas of overlap, a sufficient number of alternative providers to Tele2 would continue to exist post Transaction.

- (147) Based on the above, the Commission concludes that the Transaction would not raise serious doubts as to its compatibility with the internal market in relation to the horizontal overlaps in each of the markets for: (i) wholesale access services at a fixed location, (ii) wholesale Internet access services, and (iii) wholesale leased lines, and the possible segments thereof.

5.3. Vertical assessment

- (148) The Transaction gives rise to the following vertical relationships between the activities of the Parties:

- a. The retail market for mobile telecommunications services downstream (where the Parties are both active) is vertically linked to the wholesale markets for call termination services on the respective mobile networks of Tele2 and TDC Sverige upstream.
- b. The retail market for fixed telephony services downstream is vertically linked to the wholesale markets for call termination services on the respective fixed networks of Tele2 and TDC Sverige upstream.
- c. The wholesale market for leased lines upstream (where the Parties are both active) is vertically linked to each of the retail markets for fixed telephony services, Internet access services, mobile telecommunications services and business connectivity services downstream (where the Parties are both active).⁸⁵
- d. The wholesale market for access and call origination services upstream (where Tele2 is active) is vertically linked to the retail market for mobile telecommunications services downstream (where the Parties are both active).⁸⁶

- (149) In relation to the retail market for mobile telecommunications services and the wholesale markets for termination on mobile networks mentioned in paragraph (148)a, those markets would be vertically affected by the Transaction. Since each mobile network constitutes a separate market for the provision of wholesale call termination, each of Tele2 and TDC Sverige would hold a market share of 100% on wholesale termination services on their respective mobile networks.

⁸⁴ See replies to Commission questionnaire to competitors and customers Q1 of 4 September 2016, question 16.8.

⁸⁵ In view of the Parties' market shares, mentioned in Sections 5.1 and 5.2 above, these are not vertically affected markets and will not be further discussed in this Decision.

⁸⁶ In view of the Parties' market shares, mentioned in Sections 5.1 and 5.2 above, these are not vertically affected markets and will not be further discussed in this Decision.

- (150) In relation to the retail market for fixed telephony services and the wholesale markets for termination on fixed networks mentioned in paragraph (148)b, those markets would also be vertically affected by the Transaction. Since each fixed network constitutes a separate market for the provision of wholesale call termination, each of Tele2 and TDC Sverige would hold a market share of 100% on wholesale termination services on their respective fixed networks.
- (151) However, the provision of wholesale mobile call termination services on mobile and fixed networks in Sweden is subject to ex-ante regulation by the Swedish telecommunications regulator (“PTS”).⁸⁷ The key obligations according to PTS’ regulation concern access and interconnection obligations, non-discrimination as to quality, transparency including the publication of a reference offer, and price control and cost accounting. Following the Transaction, call termination on the combined entity’s networks will continue to be subject to the ex - ante regulation by the PTS. Therefore, the merged entity would not have any ability to restrict or limit access to call termination on its fixed and mobile network.
- (152) Based on the above, the Commission concludes that the Transaction would not raise serious doubts as to its compatibility with the internal market in relation to the vertical links in the retail and wholesale markets mentioned in paragraph (148) above.

6. CONCLUSION

- (153) For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission

(Signed)

Margrethe VESTAGER

Member of the Commission

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See PTS decision 13-5863, 10 June 2013, Skyldigheter för Tele2 på marknaden Mobil samtalsterminering (Marknad 7); PTS decision 13-5867, 10 June 2013, Skyldigheter för TDC på marknaden Mobil samtalsterminering (Marknad 7); PTS decision 13-10034, 24 October 2013, Skyldigheter för Tele2 på marknaden Fast samtalsterminering (marknad 3); PTS decision 13-10032, 24 October 2013, Skyldigheter för TDC på marknaden Fast samtalsterminering (marknad 3).