EUROPEAN COMMISSION
DG Competition

Case M.8465 - VIVENDI / TELECOM ITALIA

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) in conjunction with Art 6(2)
Date: 30/05/2017

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EUROPEAN COMMISSION

Brussels, 30.5.2017
C(2017) 3834 final

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus […]. Where possible the information omitted has been replaced by ranges of figures or a general description.

To the notifying parties

PUBLIC VERSION

Subject: **Case M.8465 – Vivendi / Telecom Italia**
Commission decision pursuant to Article 6(1)(b) and 6(2) of Council Regulation No 139/2004[1] and Article 57 of the Agreement on the European Economic Area[2]

Dear Sir or Madam,

1. INTRODUCTION

(1) On 31 March 2017, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Vivendi S.A. ("Vivendi" or the "Notifying Party") acquires within the meaning of Article 3(1)(b) of the Merger Regulation de facto control of the whole of Telecom Italia S.p.A. ("TIM") (the "Transaction"). Vivendi and TIM are collectively referred to as the "Parties".

2. THE PARTIES

(2) **Vivendi** is a French holding company which controls a group of undertakings active in the music, TV, cinema, video sharing and games businesses and focusses in particular on digital entertainment.

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

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

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(3) Vivendi currently holds a significant minority stake in Mediaset S.p.A. ("**Mediaset**"). Vivendi holds 28.80% of the share capital and 29.94% of the voting rights in Mediaset. Mediaset is the largest commercial broadcaster in Italy. Mediaset is mainly focused in the provision of free-to-air ("FTA"), Pay-TV and TV advertising services. Moreover, Mediaset is a digital broadcasting operator through Elettronica Industriale and, through EI Towers, is also active in the tower business, consisting in the management and operation of network infrastructure assets.[3]

(4) **TIM** is the Italian formerly state-owned telecommunications incumbent, also active outside the Italian territory, mainly in Brazil. In Italy, TIM provides mobile and fixed telecommunications services, both at retail and wholesale level. Moreover, TIM provides digital content under the brands "TIM Vision", "TIM Music", "TIM Games" and "TIM Reading" and it is also active as digital broadcasting operator through Persidera S.p.A. (a joint venture with Gruppo Editoriale L'Espresso, "Persidera"), over which TIM exercises sole control.[4] Finally, TIM controls Infrastrutture Wireless Italiane S.p.A. ("INWIT"), which operates transmission towers mainly for mobile services.

3. THE CONCENTRATION

(5) Vivendi has progressively acquired a participation of 23.93% in TIM[5] and, at the shareholders' meeting of 15 December 2015, it has appointed four members of the board of directors of TIM (including the Vice-Chairman). In addition: (i) TIM's shareholding is widely dispersed (no other shareholder holding more than 5%); and (ii) apart from Vivendi, there is no other industrial shareholder having a significant stake in TIM and the next largest shareholders are financial investors that are unlikely to have in-depth knowledge of the markets where TIM is active.

(6) At the shareholders' meeting of 4 May 2017 the board of directors of TIM[6] was up for renewal for a period of three years (until the approval of the financial statements for 2019). According to TIM's by-laws, the board of directors is elected as follows:

(i) Two-thirds of the directors to be elected are chosen from the slate which obtains the (relative) majority of the votes (the so-called majority slate), in

3 See decisions of the Italian Antitrust Authority ("ICA") No. 25359 of 10 March 2015 e No. 25452 of 30 April 2015 in case C11987 – EI Towers/Rai Way.

4 TIM Media Broadcasting and Gruppo Editoriale L'Espresso hold respectively 70% and 30% of Persidera's share capital. According to Persidera's Shareholders Agreement, TIM Media Broadcasting is entitled to appoint a majority of the board members (6 out of 9), including the CEO, and Gruppo Editoriale L'Espresso's rights do not go beyond the veto rights normally accorded to minority shareholders in order to protect their financial interests.

5 Vivendi has increased its participation in TIM from an initial purchase of 6.6% of the share capital (in June 2015) through a series of successive acquisitions (the details are published on TIM's website: http://www.telecomitalia.com/tit/it/investors/shareholders/significant_shareholdings/flaggings.html.

6 The board of directors had been appointed at the shareholders' meeting of 16 April 2014 for a duration of three years (until the approval of the financial statements for 2016).

the order in which they are listed on the slate, rounding any fractions down to the nearest whole number;[7] and

(ii) The remaining directors are chosen from the other slates. For such purpose, the votes cast by the various slates shall be divided by whole numbers from one up to the number of directors to be chosen. The quotients obtained shall be assigned to the candidates on each slate in the order specified thereon. On the basis of the quotients assigned, the candidates on the various slates shall be arranged in a single decreasing ranking. Those who have obtained the highest quotients shall be elected, provided that at least one-half of the candidates chosen from each slate (with fractions rounded up to the nearest whole number) has the independence requirements under Article 148 of Consolidated Financial Act and/or the Code of Conduct.

(7) Vivendi has presented a list of 10 candidates on 9 April 2017, while a second list with only 5 candidates was presented by an association representing minority shareholders, Assogestioni, on 6 April 2017.[8] At the shareholders' meeting of 4 May 2017, Vivendi's slate obtained the highest number of votes and, thus, the majority of the board members was selected from Vivendi's slate (i.e., 10 members out of a total of 15)[9].

(8) In accordance with para. 54 of the Consolidated Jurisdictional Notice ("CJN"), sole control arises if one undertaking can exercise decisive influence on an undertaking within the meaning of Article 3(2) of the Merger Regulation. Pursuant to para. 59 of the CJN a minority shareholder may be deemed to have sole control on a *de facto* basis.

(9) In the present case, according to applicable rules, the majority of the board members is to be selected from the slate that has obtained the highest number of votes (i.e., not necessarily more than 50% of the votes present at the shareholders' meeting). Thus, even though it did not achieve a majority of votes at the shareholders' meeting of 4 May 2017, Vivendi was still in a position to appoint the majority of the board of directors, which is in charge of taking TIM's strategic decisions. Therefore, in light of the specific rules for the appointment of the board and taking into account all abovementioned elements, the Commission considers that, at the very latest at the shareholders' meeting of

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7 At least one-half of the Directors chosen from the majority slate (with fractions rounded up to the nearest whole number) must possess the independence requirements under Article 148 of Consolidated Financial Act and/or the Code of Conduct.

8 http://www.telecomitalia.com/tit/it/archivio/media/comunicati-stampa/telecom-italia/corporate/istituzionale/2017/PR-1-LIST-CdA html.

9 The shareholders' meeting also approved a reduction of the number of the board members to 15. See press release: http://www.telecomitalia.com/content/dam/telecomitalia/it/archivio/documenti/media/comunicati_stampa/telecom_italia/corporate/economico_finanziario/2017/CS-%20Assemblea-TIM-04-05-17-ITA.PDF. In any event, the Commission understands that Vivendi would have in practice obtained two thirds of the board members even if the only alternative list, i.e. that of Assogestioni, would have obtained more votes. In fact, Assogestioni presented a list with only 5 candidates, corresponding to only one third of the board members, and therefore the remaining two thirds would have been selected from Vivendi's list in any event. This seems to indicate that the smaller shareholders represented by Assogestioni did not really challenge Vivendi for the control of the board.

4 May 2017, Vivendi acquired *de facto* sole control of TIM (the "Transaction").[10]

4. EU DIMENSION

(10) In the year preceding the notification (2016), the undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million[11] (Vivendi: EUR 10 819 million; TIM: EUR 19 024 million). Each of them has an EU-wide turnover in excess of EUR 250 million (Vivendi: EUR 6 650 million; TIM: EUR 14 130 million), but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The concentration therefore has an EU dimension.

5. MARKET DEFINITION

5.1. Production and supply of TV content

(11) With regard to the market for the supply of TV content, in its previous decisions the Commission has concluded that there are separate markets for the: (i) production and supply of commissioned TV content; and (ii) licensing of broadcasting rights for pre-produced TV content.[12]

(12) With regard to the market for licensing of broadcasting rights for TV content, the Commission has considered that it could be subdivided by content type, in particular: (i) films; (ii) sports; and (iii) other TV content (i.e., all non-sport, non-film content); and potential sub-segments within these content types. Ultimately, the Commission left the exact scope of the product market open.[13]

(13) The Commission has also considered further sub-dividing the market for the licensing of broadcasting rights for TV content by exhibition window:

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10 The Notifying Party has informed the Commission in reply to a request of information of its intention to put into place measures that would *de facto* freeze the activities of the Board of Directors until the adoption of a clearance decision in the present case. In this respect, the Commission takes the view that an infringement of the stand-still obligation in Article 7(1) and of the notification requirement in Article 4(1) of the Merger Regulation cannot at this stage be excluded in the present case and the Commission may examine in a separate procedure whether a sanction under Article 14(2) the Merger Regulation is appropriate.

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

12 Commission decision of 24 February 2015 in Case M.7194 *Liberty Global / Corelio / W&W / De Vijver Media,* recital 69. See also Commission decision of 16 September 2014 in Case M.7282 *Liberty Global/Discovery/All3Media*, recital 41 and Commission decision of 9 October 2014 in Case M.7360 *21st Century Fox/Apollo/JV*, recital 40.

13 Commission decision of 21 December 2011 in Case M.6369 *HBO/Ziggo/HBO Nederland* and the Commission decision of 24 February 2015 in Case M.7194 *Liberty Global / Corelio / W&W / De Vijver Media*, recital 69; Commission decision of 21 December 2011 in Case M.6369 *HBO/Ziggo/HBO Nederland*, recitals 18–20; Commission decision of 15 April 2013 in Case M.6880 *Liberty Global/Virgin Media*, recital 19. Moreover, as regards sports, the Commission has also previously considered a distinction between football and other sports and further distinctions within football, for example between regular football events and football events that are played more intermittently (Commission decision of 18 January 2007 in Case M.4519 *Lagardère/Sportfive*, recital 10). As regards films, the Commission has considered distinguishing between US-produced films and other films (Commission decision of 2 April 2003 in Case M.2876 *News Corp/Telepiù*, recitals 58 and 61).

(i) subscription video on demand ("SVOD"); (ii) transactional video on demand ("TVOD"); (iii) pay-per-view ("PPV"); (iv) first pay-TV window; (v) second pay-TV window; and (vi) FTA; but it ultimately left the market definition open.[14]

(14) In previous decisions, the Commission has defined the market for the production and supply of TV content, including production of TV content and the licensing of broadcasting rights for TV content to be either national or regional, based on linguistically homogeneous areas.[15]

(15) The Notifying Party submits that it is not necessary for the Commission to make a determination on the specific product and geographic market definition for the production and supply of TV content given the competitive assessment would not change based on the different segmentations of the market.

(16) For the purpose of this decision, the exact product and geographic market definitions for the supply of commissioned TV content and the supply of pre-produced TV content can be left open, as the Transaction does not raise serious doubts as to its compatibility with the internal market regardless of the product and geographic market definitions.

5.2. Retail supply of TV services

(17) In its previous decisions, the Commission has considered that the retail supply of television services could be segmented in two separate markets: (i) FTA and pay-TV[16]. The Commission also considered whether pay-TV can be segmented further according to: (ii) linear and non-linear pay-TV services[17]; and (iii) premium and basic pay-TV services[18]. In recent cases, the Commission has left open the market definition with regard to each of these potential sub-segments.

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14 Commission decision of 24 February 2015 in Case M.7194 *Liberty Global / Corelio / W&W / De Vijver Media*, recital 69; Commission decision of 21 December 2011 in Case M.6369 *HBO/Ziggo/HBO Nederland*, recital 18; Commission decision of 16 September 2014 in Case M.7282 *Liberty Global/Discovery/All3Media*, recitals 46–48; Commission decision of 9 October 2014 in Case M.7360 *21st Century Fox/Apollo/JV*, recitals 45–47, Commission decision of 10 October 2014 in Case M.7000 *Liberty Global/Ziggo*, recitals 38–44.

15 Commission decision of 21 December 2010 in Case M.5932 *News Corp/BSkyB*, recitals. 73–75; Commission decision of 15 April 2013 in Case M.6880 *Liberty Global/Virgin Media*, recital 24. Commission decision of 24 February 2015 in Case M.7194 *Liberty Global / Corelio / W&W / De Vijver Media*, recitals 73-76.

16 See for instance the Commission decisions of 18 July 2007 in Case M.4504 *SFR/Télé 2 France*, recital 40, and of 25 June 2008 in Case M.5121 *News Corp / Premiere*, recital 20. In other cases this question has instead been left open (see for instance the Commission decisions of 24 February 2015 in Case M.7194 *Liberty Global / Corelio / W&W / De Vijver Medi*a, recital 119-120, of 25 June 2008 in Case M.5121 *News Corp/Premiere,* recitals 15 and 21, and of 10 October 2014 in Case M.7000 *Liberty Global/Ziggo*, recital 108).

17 Commission decision of 24 February 2015 in Case M.7194 *Liberty Global / Corelio / W&W / De Vijver Media*, reictal 124. Commission decision of 25 June 2008 in Case M.5121 *News Corp/Premiere*, recital 21. Commission decision of 10 October 2014 in Case M.7000 *Liberty Global/Ziggo,* recitals 109–110.

18 Commission decision of 24 February 2015 in Case M.7194 *Liberty Global / Corelio / W&W / De Vijver Media*, recital 119.

(18) Finally, the Commission has not further distinguished between the different infrastructures used for the delivery of TV services to viewers (cable, satellite, terrestrial TV[19] and IPTV).[20] In *Liberty Global/Ziggo*, the Commission found that at least cable, IPTV and possibly satellite belong to the same product market. [21] In *Liberty Global / Corelio / W&W / De Vijver Media* left open the question whether the market for the retail provision of TV services should be further distinguished on the basis of the relevant distribution technology. [22]

(19) The Commission has previously considered that the market for the retail provision of TV services is either national, or limited to the geographic coverage of a supplier's cable network.[23]

(20) The Notifying Party does not question the view taken by the Commission in its previous decisions.

(21) For the purpose of this decision, the exact product and geographic market definitions for the retail supply of TV services can be left open, as the Transaction does not raise serious doubts as to its compatibility with the internal market regardless of the product and geographic market definitions.

5.3. Media buying services ("MBS")

(22) MBS include purchasing of advertising time and/or space in various types of media, such as broadcast and cable TV, newspapers and magazines, radio, billboards and the Internet, for clients running advertising campaigns. Media buying agencies will also usually provide media planning and strategic advice, including research into target audiences, which media to use, and the monitoring/tracking of the success of a campaign.

(23) In its past decisions such as *WPP/Grey*[24] and *Publicis/Omnicom*[25], the Commission considered a further segmentation of the market for MBS between: (i) the sales market, in which media buying agencies act as suppliers of MBS to final customers (advertisers); and (ii) the procurement market, in which media buying agencies buy (usually on behalf of their clients) advertising time or space in the media from media owners (for example TV broadcasters, publishing

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19 Terrestrial TV broadcasts land-based (terrestrial) signals from radio masts and towers, and is often referred to as DTT (Digital Terrestrial Television) or DVB-T (Digital Video Broadcasting – Terrestrial, which is the technical standard used for terrestrial TV in Europe).

20 Commission decision of 18 July 2007 in Case M.4504 *SFR/Télé 2 France*, recital 44; Commission decision of 26 August 2008 in Case M.5121 *News Corp/Premiere*, recital 22.

21 Commission decision of 10 October 2014 in Case M.7000 *Liberty Global/Ziggo*, recital 91.

22 Commission decision of 24 February 2015 in Case M.7194 *Liberty Global / Corelio / W&W / De Vijver Media*, recital 127.

23 Commission decision of 24 February 2015 in Case M.7194 *Liberty Global / Corelio / W&W / De Vijver Media*. 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; Commission decision of 10 October 2014 in Case M.7000 *Liberty Global/Ziggo*, recital 118.

24 Commission decision of 25 January 2005 in Case M.3579 - *WPP/GREY*.

25 Commission decision of 9 January 2014 in Case M.7023 – *Publicis/Omnicom*.

houses, radio stations, etc.). With regard to the sale of MBS, the Commission has previously considered segmentations: (i) by size of account; and (ii) depending on the inclusion/exclusion of direct sale.[26] With regard to the procurement of MBS, the Commission previously considered segmentations: (i) by type of media; (ii) by size of account; and (iii) depending on the inclusion/exclusion of direct sale.[27]

(24) The Commission has previously considered that the market for the sale and procurement of MBS was national in scope.[28]

(25) The Notifying Party submits that it is not necessary to question the Commission's past decisional practice in the present case.

(26) For the purpose of this decision, the exact product and geographic market definition for the sale and procurement of MBS can be left open, as the Transaction does not raise serious doubts as to its compatibility with the internal market regardless of the product and geographic market definition.

5.4. Marketing and communications services ("MCS")

(27) In *WPP/Grey* and *Publicis/Omnicom*, the Commission considered that the relevant product market for the provision of MCS encompasses an array of disciplines including advertising, insight and consultancy, public relations, consumer relationship management/direct marketing/event management, brand identity and design and other areas of specialist communications

(28) With regard to the market for MCS, in its previous decisions the Commission has considered the following segmentations: (i) by type of media; (ii) by size of account; (iii) by type of service; and (iv) by type of sector.[29] The Notifying Party submits that all MCS belong to the same relevant market irrespective of the above segmentations.

(29) The Commission has previously considered that the market for the sale of MCS was national in scope.[30] The Notifying party submits that the market for the MCS is national and that there is no reason to question the Commission’s past decisional practice in the present case.

(30) For the purpose of this decision, the exact product and geographic market definitions for the sale and procurement of MCS can be left open, as the Transaction does not raise serious doubts as to its compatibility with the internal market regardless of the product and geographic market definitions.

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26 Commission decision of 25 January 2005 in Case M.3579 - *WPP/GREY*; Commission decision of 9 January 2014 in Case M.7023 – *Publicis/Omnicom*.

27 Commission decision of 25 January 2005 in Case M.3579 - *WPP/GREY*; Commission decision of 9 January 2014 in Case M.7023 – *Publicis/Omnicom*.

28 Commission decision of 25 January 2005 in Case M.3579 - *WPP/GREY*; Commission decision of 9 January 2014 in Case M.7023 – *Publicis/Omnicom*.

29 Commission decision of 25 January 2005 in Case M.3579 - *WPP/GREY*; Commission decision of 9 January 2014 in Case M.7023 – *Publicis/Omnicom*.

30 Commission decision of 25 January 2005 in Case M.3579 - *WPP/GREY*; Commission decision of 9 January 2014 in Case M.7023 – *Publicis/Omnicom*.

5.5. Retail supply of mobile telecommunications services

(31) In its previous decisions, with regard to the product market definition, the Commission has considered that there is an overall retail market for mobile telecommunications services constituting a separate market from retail fixed telecommunication services. The Commission did not further segment 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. The Commission considered possible segments of the overall retail market for mobile telecommunication services between pre-paid or post-paid services and private customers or business customers, concluding that these did not constitute separate product markets but represent rather market segments within an overall retail market.[31] In its previous decisions, the Commission had left open the question as to whether a separate market for multiple-play offers, i.e., fixed internet access, fixed telephony and TV (triple play) or fixed internet access, fixed telephony, TV and mobile services (quadruple play), should be defined.[32] However, with specific reference to the Italian market, in the recent decision *Hutchison 3G Italy / Wind / JV*, the Commission considered the demand for multiple play bundles as rather limited.[33] With regard to the geographic market definition, the Commission concluded that the retail market for the provision of fixed internet services was national in scope.[34]

(32) The Notifying Party submits that it is not necessary for the Commission to make a determination on the product and geographic market definition given the competitive assessment would not change based on the different segmentations of the market.

(33) For the purpose of this decision, the exact product and geographic market definitions for the retail supply of mobile telecommunications services can be left open, as the Transaction does not raise serious doubts as to its compatibility with the internal market regardless of the product and geographic market definitions.

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31 Commission decision of 1 September 2016 in Case M.7758 - *Hutchison 3G Italy / Wind / JV;* Commission decision of 3 August 2016 in Case M. 7978 - *Vodafone / Liberty Global / Dutch JV*; Commission decision of 11 May 2016 in Case M.7612 – *Hutchison 3G UK/Telefónica UK*; Commission decision of 2 July 2014 in Case M.7018 – *Telefónica Deutschland/E-Plus*; Commission decision of 10 October 2014 in Case M.7000 – *Liberty Global/Ziggo*; 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*.

32 Commission decision of 1 September 2016 in Case M.7758 - *Hutchison 3G Italy / Wind / JV;* Commission decision of 3 August 2016 in Case M. 7978 - *Vodafone / Liberty Global / Dutch JV*; Commission decision of 4 February 2016, Case M.7637 in Liberty Global/BASE Belgium,; Commission decision of 19 May 2015 in Case M.7421, Orange/Jazztel; Commission decision of 2 July 2014 in Case M.7018, Telefónica Deutschland/E-Plus.

33 Commission decision of 1 September 2016 in Case M.7758 - *Hutchison 3G Italy / Wind / JV,* recital 129.

34 Commission decision of 1 September 2016 in Case M.7758 - *Hutchison 3G Italy / Wind / JV;* Commission decision of 3 August 2016 in Case M. 7978 - *Vodafone / Liberty Global / Dutch JV*; Commission decision of 11 May 2016 in Case M.7612 – *Hutchison 3G UK/Telefónica UK*; Commission decision of 2 July 2014 in Case M.7018 – *Telefónica Deutschland/E-Plus*; Commission decision of 10 October 2014 in Case M.7000 – *Liberty Global/Ziggo*; 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*.

5.6. Retail supply of fixed internet access services

(34) In its previous decisions, with regard to the product market definition, the Commission considered but ultimately left open possible segmentations of the market for retail supply of fixed internet access services according to (i) product type (distinguishing between narrowband, broadband, and dedicated access), and (ii) distribution mode (distinguishing between xDSL, fibre, cable, and mobile broadband), and has acknowledged that the retail market for fixed internet access services should not be divided according to download speed or technology. With regard to the geographic market definition, the Commission concluded that the retail market for the provision of fixed internet services was national in scope.[35] The Notifying Party submits that it is not necessary for the Commission to make a determination on the product and geographic market definition given the competitive assessment would not change based on the different segmentations of the market.

(35) For the purpose of this decision, the exact product and geographic market definitions for the retail supply of fixed internet access services can be left open, as the Transaction does not raise serious doubts as to its compatibility with the internal market regardless of the product and geographic market definitions.

5.7. Wholesale access to digital terrestrial networks for the broadcast of TV channels ("DTT Wholesale Access")

(36) Television broadcasting services via digital terrestrial network (so-called digital broadcasting) concern the provision of capacity (installations/equipment and frequencies) for the transmission of the television terrestrial signal. In particular, digital terrestrial television ("DTT") is the digital broadcast of TV channels based on (i) infrastructures that are earthbound (including towers for the transmission of the signal, which can held by so-called tower companies); and (ii) frequencies which are allocated to network operators and are used more efficiently than in a traditional analogue broadcast, since DTT allows to bundle together a number of audio, video and data signals into the same frequency (so-called multiplex or MUX). Once they have been allocated one or more MUXes,[36] network operators (i) negotiate with tower companies for access to transmission towers; and (ii) offer transmission services for the DTT broadcasting of TV channels to broadcasters/editors of TV channels.

(37) The Notifying Party submits that, in light of the switch off of analogue broadcasting in Italy in 2012,[37] the product market is limited to digital television networks and that the geographic scope of the market is national, in light of the specific regulatory regime at national level and of the geographic reach of the signal.

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35 Commission decision of 3 August 2016 in Case M. 7978, *Vodafone / Liberty Global / Dutch JV*; Commission decision of 29 June 2010 in Case M.5532, *Carphone Warehouse/Tiscali UK*; Case M.6990, *Vodafone/Kabel Deutschland.*

36 The frequencies available for the terrestrial television transmission derive from regulatory choices concerning the use of the radio spectrum as established by the National Frequencies Allocation Plan.

37 The deadline for the switch-off was initially set for 2006 (Law No. 66/2001) and has been subsequently postponed to 2012 (Law No. 222/2007).

(38) The Commission agrees with the Notifying Party's view, which is consistent with the well-established case law of the ICA,[38] that the relevant market is the provision of television broadcasting services via digital terrestrial networks to TV channels in Italy.

5.8. Wholesale supply of digital recorded music

(39) In its previous decisions, the Commission identified separate product markets for the wholesale supply of physical music and of digital music. The Commission did not consider it appropriate to further segment the wholesale market for digital recorded music (on the basis of genre, compilations versus albums, singles versus albums and audio music versus video music) and that the market for the wholesale of digital recorded music should not be segmented between download and streaming services. With regard to the geographic scope of the market, the Commission concluded that the relevant geographic market for the wholesale of digital recorded music is national in scope.[39]

(40) The Notifying Party submits that it is not necessary for the Commission to make a determination on the product and geographic market definition for the wholesale of digital recorded music given the competitive assessment would not change based on the different segmentations of the market.

(41) The evidence in the Commission's file has not revealed any reason for departing from the previous Commission's case practice.

(42) However, for the purpose of this decision, the exact product and geographic market definitions for the wholesale of digital recorded music can be left open, as the Transaction does not raise serious doubts as to its compatibility with the internal market regardless of the product and geographic market definitions.

5.9. Retail sale of recorded music

(43) In *Universal Music Group/EMI Music,* the Commission did not consider necessary to take a view on the exact definition of the relevant product market for the retail sale of recorded music. With regard to the geographic scope of the market, the Commission considered that the market for the retail of recorded music was national in scope, although it has ultimately left open the question.[40]

(44) The Notifying Party submits that there are two main business models for the distribution of digital recorded music: on the one hand, à-la-carte download services and, on the other hand, music streaming services, which can be divided into ad funded and subscription funded services.

(45) For the purpose of this decision, the exact product and geographic market definitions for the retail sale of recorded music can be left open, as the Transaction does not raise serious doubts as to its compatibility with the internal market regardless of the product and geographic market definitions.

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38 See ICA decision of 10 March 2015 in Case C11987, *EI Tower/Rai Way*.

39 Commission decision of 21 September 2012 in Case M.6458, *Universal Music Group/EMI Music*; Commission decision of 3 October 2007 in Case M.3333, *Sony/BMG*.

40 Commission decision of 21 September 2012 in Case M.6458, *Universal Music Group/EMI Music*.

5.10. Publishing and distribution of mobile games

(46) In *Activision Blizzard/King*, the Commission distinguished, within the overall market for publishing of game software, a separate market for mobile games on the one hand, and for PC and console games on the other hand. The Commission further considered a potential segmentation by genre, by operating system and a distinction between social network and mobile games, but it ultimately left open the question on whether the product market should be further segmented. With regard to the geographic scope of the market, the Commission concluded that the market for publishing of mobile game software is likely to be at least EEA, if not worldwide in scope, but ultimately left open the precise scope.[41]

(47) For the purpose of this decision, the exact product and geographic market definitions for the publishing and the distribution of mobile games can be left open, as the Transaction does not raise serious doubts as to its compatibility with the internal market regardless of the product and geographic market definitions.

6. COMPETITIVE ASSESSMENT

(48) In order to assess the competitive impact of the notified operation, it would be important to preliminarily consider whether Vivendi, who holds 28.80% of the share capital and 29.94% of the voting rights in Mediaset, has some form of control over that company, which in some markets is competing with TIM.

(49) The Commission considers that, at the moment, this is not the case. Vivendi does not jointly or solely control Mediaset in light of the following factors: (i) another industrial shareholder (Fininvest) historically holds the largest share of Mediaset's share capital (currently amounting to 39.53% of the ordinary share capital and of 41.09% of the voting share capital), has obtained the majority of the voting rights at least in the last 6 shareholders' meetings and has appointed the majority of the board at least in the last two terms (in 2012 and 2015); (ii) Vivendi has not appointed any members of the board of directors, which will remain in office until the approval of the financial statements for year 2017; and (iii) Vivendi does not enjoy any specific information or other rights, which materially differ from those of any other minority shareholder; and (v) at the present, Vivendi and Mediaset are engaged in an on-going litigation, following the breaking down of the negotiations for the acquisition of Mediaset Premium in 2016 which seems, thus, to exclude commonality of interests between Vivendi and Mediaset.

(50) Based on the above, the Commission has carried out its competitive assessment based on the express assumption that Vivendi does not have any form of control over Mediaset and that there is no (nor is likely to materialise with any degree of certainty or likelihood in the near future) other material link (whether structural or contractual) that may affect the competitive behaviour of Mediaset on the markets where it operates. Any new development giving Vivendi the possibility to exercise a (*de jure* or *de facto*, positive or negative, sole or joint) decisive influence over Mediaset, if it were to materialise, would have to form the

41 Commission decision of 12 February 2016 in Case M7866 *Activision Blizzard/King*.

subject-matter of a separate and distinct assessment, where appropriate, under the relevant EU or national competition rules.

(51) On the other hand, the Commission will assess whether Vivendi's minority participation in Mediaset might affect TIM's incentives in the markets where it competes or has vertical relations with Mediaset.

(52) In particular, the Transaction gives rise to horizontal effects as a result of TIM's activities in the market for DTT wholesale access and of Vivendi's minority stake in Mediaset, which is active in the same market (Section 6.1).[42]

(53) Moreover, the Transaction results in a number of vertical relationships that give rise to affected markets:

(i) The vertical link between Vivendi's upstream activity in the market for production and licensing of broadcasting rights for TV content in Italy with TIM's downstream activity in market for the retail supply of TV channels in Italy, as TIM has over 30% market share in the hypothetical market segment for the provision of retail pay-TV services through fixed broadband (Section 6.2.2); [43] and

(ii) The vertical link between Vivendi's upstream activity in the market for provision of wholesale digital recorded music in Italy, as Vivendi has over 30% market share in that market, with TIM's downstream as customer in the market (Section 6.2.3);

(54) In addition, the Transaction gives rise to a conglomerate relationship between Vivendi's distribution of mobile games in Italy and TIM's provision of retail mobile telecommunication services in Italy, where TIM has over 30% market share (Section 6.2.4).

(55) Finally, the Transaction results in a number of horizontal and vertical relationships which do not give rise to affected markets.

(56) With regard to these horizontal relationships, both Vivendi and TIM are active in the market for the provision of online advertising services in Italy and in the market for the distribution of mobile games in Italy; however such overlaps do not give rise to affected markets as the Parties' combined market share is below [0-5]% in all the potential markets considered above.

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[42] In light of Vivendi's minority shareholding in Mediaset, the Transaction might potentially give rise to horizontal effects also in the market for retail supply of pay-TV services where both TIM (with TIM Vision) and Mediaset (with Mediaset Premium) are active. Vivendi might in principle raise prices of (or worsen the conditions for access to) TIM's retail TV services and recoup its losses through its minority shareholding in Mediaset, since customers would switch to Mediaset's services. In this respect, the Commission notes that TIM's share in the retail supply of pay-TV services is minimal (less than [0-5]%) and that, in case TIM were to raise prices, it is likely that most of its customers would switch to SKY's (which has a market share of approximately [70-80]% in 2015 in retail supply of pay-TV services) rather than Mediaset's services, making such strategy unprofitable.

[43] In this framework, the Commission will also assess whether Vivendi's minority participation in Mediaset might affect its ability and incentive to foreclose Mediaset's competitors.

(57) With regard to the vertical relationships, Vivendi, through its affiliate Havas,[44] is active in the upstream markets for the provision of MBS and MCS in Italy and TIM acts as a customer in those markets. While the Transaction does not give rise to vertically affected markets, the vertical relationships will be discussed in Section 6.2.5.

6.1. Horizontal effects: DTT wholesale access

(58) The Transaction gives rise to horizontal effects in the market for DTT wholesale access, since post-Transaction Vivendi would control Persidera (through TIM) and have a significant non-controlling shareholding in Mediaset, active in the same market.

(59) In the context of a merger review, the Commission can take into consideration a pre-existing minority shareholding held by one of the merging parties when control is acquired.

(60) Minority shareholdings, including non-controlling ones, can potentially weaken competition between operators active in the same market by leading to non-coordinated anticompetitive effects. The minority interest held in a competitor can increase the minority shareholder's incentive and ability to unilaterally raise its own prices or restrict output. If a firm has a financial interest in its competitor's profits, it may decide to "internalize" the increase in those profits, resulting from a reduction in its own output or an increase in its own prices. This anti-competitive effect may materialize whether the minority shareholding is passive (giving it no influence in the company's decisions) or active (giving some influence over the company's decisions).[45]

6.1.1. Current MUXes allocation in Italy

(61) The Italian Communication Authority ("AGCOM") is in charge of allocating frequencies (MUXes) for DTT both at national and local level. As to the national level, AGCOM had initially planned to allocate 25 frequencies (MUXes) for national broadcast, but has subsequently allocated only 20 MUXes as follows.

Network operator	Number of MUXes	Vertically integrated
TIM (Persidera)	5	No
Mediaset (Elettronica Industriale)	5	Yes
RAI	5	Yes
Wind 3 (3lettronica Industriale)	1	No
Premiata Ditta Borghini e Stocchetti Torino (PDBS, Rete Capri)	1	Yes
Prima TV	1	No
Cairo Network	1	Yes
Europa Way	1	Yes
Total	**20**	

44 See Commission decision of 24 April 2017 in case M.8392, *Bolloré/Vivendi*.

45 See also Commission decision of 13 July 2005 in Case M.3653, *Siemens/VA Tech*, where the Commission carried out its competitive assessment in light of Siemens's minority holding in the competitor SMS.

(62) As highlighted by the Italian Antitrust Authority ("ICA") in its sector enquiry IC41[46], there is a high level of vertical integration between the operators active in the upstream market for DTT wholesale access and the downstream markets of pay-TV, FTA TV and TV advertising.

(63) Indeed, only seven of the 20 MUXes are held by non-vertically integrated operators. In particular, Persidera is not a vertically integrated operator and is the only non-vertically integrated operator offering transmission capacity exclusively to third party DTT channels.

(64) The other MUXes are either held or technically managed by vertically integrated operators. In this respect, through Elettronica Industriale, Mediaset holds five national MUXes and is vertically integrated, since it also broadcasts both FTA and pay-TV channels for DTT.[47] In addition, through Elettronica Industriale and EI Towers, Mediaset technically manages 3 MUXes (belonging to 3lettronica, Cairo Network[48] and Prima TV) through so-called "full service agreements".

6.1.2. Notifying Party's views

(65) According to the Notifying Party,[49] the Transaction will not have any anticompetitive effects in the market for DTT wholesale access for a number of reasons.

(66) First, Mediaset closed its 2016 financial year with net losses for about EUR 294 million, while Persidera had profits in 2015 for EUR […]. Therefore, Vivendi would not have an incentive to give up a profitable business via Persidera for the benefit of a business which is losing money.

(67) Second, Vivendi’s incentive is also diminished by AGCOM decision of 18 April 2017[50] ("AGCOM Decision"), which found that Vivendi had violated Italian media plurality provisions by holding shareholdings exceeding 10% in both TIM and Mediaset and ordered Vivendi to remove the violation within 12 months. According to Vivendi, in order to comply with the AGCOM Decision, its shareholding in Mediaset shall have to be entirely or prevalently divested within 12 months, which would remove the incentive to increase Persidera's prices.

(68) Third, channels might benefit from available capacity or increased capacity in the future thanks to the evolution towards the DVB-T2[51] standard, which would make more capacity transmission available between 2020 and 2022.

46 ICA decision No. 26258 of 30 November 2016, IC41, *Indagine Conoscitiva sul settore audiovisivo*.

47 ICA decision No. 25957 of 13 April 2016, C12017, *Reti Televisive Italiane/Gruppo Finelco*, para. 103.

48 Cairo Network's MUX is managed by EI Towers S.p.A., which is controlled by Mediaset through Elettronica Industriale.

49 See "Additional Note" dated 28 April 2017.

50 See AGCOM decision No. 178/17/CONS, *Accertamento della violazione dell’art. 43, comma 11, del decreto legislativo 31 luglio 2005, n. 177*.

51 DVB-T2 is an abbreviation for "Digital Video Broadcasting – Second Generation Terrestrial"; it is the extension of the television standard DVB-T, issued by the consortium DVB, devised for the broadcast transmission of digital terrestrial television. DVB has been standardized by ETSI.

(69) Moreover, ReteCapri could invest to improve the quality of its multiplex and make it a viable alternative for channels wishing to broadcast on DTT.

(70) Finally, a significant part of Persidera's current contracts with the TV channels has a sufficiently long duration so as to limit the risk of foreclosure.

6.1.3. Market investigation and Commission's assessment

(71) The ICA (as well as market participants[52]) has raised the concern that the Transaction would give rise to anticompetitive horizontal (unilateral and coordinated) and vertical effects, in light of Vivendi's participation in Mediaset. The Transaction creates structural links not only of horizontal nature between two operators holding 50% of the available transmission capacity in DTT, but also of vertical nature between an independent non-vertically integrator operator and its competitor active in the downstream markets.

(72) According to the ICA, post-Transaction, Vivendi might have an incentive to raise prices charged to TV channels for DTT capacity, thus benefiting either directly (through Persidera) or indirectly (recouping the lost profits through its shareholding in Mediaset). Furthermore, the Transaction might also have coordinated effects since the structural link might incentivize information exchange and price coordination.

(73) Finally, as to vertical effects of the Transaction, according to the ICA, Vivendi might have an incentive to raise prices to third-party TV channels in order to make it more difficult for them to compete against Mediaset's channels in the downstream TV market.

(74) The Commission considers that the Transaction raises serious doubts as to its compatibility with the internal market with regard to the DTT wholesale access.

(75) First, TIM's incentives to compete against Mediaset in DTT wholesale access will change as a result of the Transaction, since TIM's lost profits from raising prices or offering inferior conditions to TV channels wishing to broadcast over Persidera's MUXes would be recovered through Vivendi's minority shareholding in Mediaset. By worsening the conditions for access to Persidera's MUXes, Vivendi would financially benefit either directly (from higher prices charged for access to Persidera's MUXes) or indirectly from Mediaset's revenues (resulting from hosting additional third-party channels on its MUXes).

(76) Second, there are no sufficient competitive constraints against such strategy[53] in light of the characteristics of the market:

i. The market is already concentrated and few players hold a considerable part of transmission capacity. In this respect, besides the five MUXes it directly holds, Mediaset's has entered into full service agreements for

52 See reply to question 7 of Questionnaire – Market test of commitments. According to one operator, the transaction "*given both Vivendi's and Mediaset's upstream relationship to multiplexers, would lead to a material reduction in the competition on the market for wholesale access to digital terrestrial networks for the broadcast of TV channels*".

53 See also reply to request for information of 21 April 2017, dated 27 April 2017.

three additional MUXes (Prima TV, 3lettronica Industriale, and Cairo Network), which grant it significant control over them;

ii. Persidera and Mediaset are the only MUX operators offering full managed services to TV channels, including playout, encoding, and monitoring and control as well as the provision of bandwidth and multiplex transportation;

iii. With one exception,[54] the capacity of RAI's MUXes[55] is all occupied and captive, as RAI only hosts its own TV channels;

iv. Rete Capri's MUX does not have equivalent characteristics in terms of quality/coverage and, in addition, its capacity is fully occupied and captive, as it does not currently offer it to third party TV channels;

v. Europa Way's MUX has inferior quality and limited territorial coverage (mainly limited to the city of Rome) and the company holding it is undergoing bankrupting proceedings, which significantly limited its operations. In addition, this multiplex uses DVB-T2 technology, which cannot be received by the majority of current set-top-boxes present in viewers' homes.[56] Moreover, its capacity is limited as, together with Rete Capri's MUX, they only have [5-10]% of the total transmission capacity.

(77) Moreover, switching to a different MUX could be complex from a technical perspective because (i) it requires end-users to re-tune their equipment; (ii) MUXes might have different geographic coverage, due to differences in the transmission sites used; and (iii) reception equipment of end-users are not necessarily fully compatible with all MUXes (in particular in certain areas, e.g. Liguria region).[57]

(78) In addition, the overall available capacity will be further limited by the planned reallocation of spectrum resources (the 694-700MHz frequency band) in 2020, which would be transferred to mobile telecommunications.[58] In particular, the ICA anticipates that 6 MUXes would be reallocated to mobile transmission, thus reducing the available frequencies for DTT by 33%.[59] The reduction of the overall capacity will further reduce alternatives for TV channels and facilitate Vivendi's strategy to increase prices (or worsen the conditions) for wholesale DTT access.

(79) As to the Notifying Party's arguments, the Commission notes that:

(i) Mediaset's reported losses in 2016 do not affect Vivendi's incentive to increase prices for wholesale DTT access post-Transaction since, in case

54 RAI only host one third-party channel, TV2000.

55 One of RAI's MUXes (MUX 5) is only used for testing activities.

56 See reply to request for information of 21 April 2017, dated 27 April 2017.

57 See reply to request for information of 21 April 2017, dated 27 April 2017 and reply to request for information of 20 April 2017, dated 26 April 2017.

58 See Proposal for a Decision of the European Parliament and of the Council on the use of the 470-790 MHz frequency band in the Union, 13 May 2016, Interinstitutional file: 2016/0027 (COD).

59 ICA decision No. 26258 of 30 November 2016, IC41, *Indagine Conoscitiva sul settore audiovisivo*.

TV channels were to switch to Mediaset's MUXes, Vivendi would still financially benefit from increased revenues and, consequently, fewer losses;

(ii) First, the Notifying Party has publicly announced that it reserves the right to challenge the AGCOM Decision.[60] Second, the AGCOM Decision does not specifically impose on Vivendi the obligation to divest its shareholding in Mediaset as the only way to remedy the violation. To the contrary, the AGCOM Decision leaves Vivendi discretion to select the appropriate measures and, to this end, requests it to submit a detailed plan on the implementing measures within 60 days of the date of adoption. Therefore, the AGCOM Decision cannot be considered, due to the uncertainties as to the modalities of the solutions to be adopted by Vivendi, to remove the concerns identified by the Commission in light of Vivendi's stake in Mediaset;

(iii) The increase in DTT capacity stemming from the implementation of the DVB-T2 standard is unclear in terms of timing and scope (the Notifying Party itself fails to identify how much capacity could potentially be made available as a result of the technology). Moreover, the vast majority of DTT set-top-boxes present in Italian households are not suitable for DVB-T2 standard and would therefore need to be replaced in order to receive channels broadcast in this technology. Thus, the switch to DVB-T2 cannot be considered to eliminate the competition concerns connected to the Transaction;

(iv) Similarly, the investment required to upgrade Rete Capri's MUX is unclear as to its size and possible advantages to counteract Vivendi's strategy post-Transaction, especially considering that Rete Capri only holds one MUX;

(v) Finally, even assuming that the duration of a considerable part of Persidera's current contracts with channels might reduce its ability to raise prices to current customers, this does not exclude the application of inferior conditions or higher prices to new entrants (i.e. additional channels wishing to broadcast over DTT) or current customers for additional channels.

(80) With regard to concerns relating to coordinated and vertical effects, the Commission considers that it is not necessary to take a view as to whether or not they are substantiated, since the commitments offered by the Notifying Party also address those potential concerns.

(81) In light of the foregoing, the Commission considers that the Transaction raises serious doubts as to its compatibility with the internal market with regard to the market for DTT wholesale access.

60 https://www.vivendi.com/presse/communiques-de-presse/vivendi-se-reserve-droit-dengager-toute-action-judiciaire-appropriee-a-suite-de-decision-de-lagcom/

6.2. Non-horizontal effects

6.2.1. Legal framework

6.2.1.1. Vertical non-coordinated effects

(82) According to the Non-Horizontal Guidelines,[61] non-coordinated effects may significantly impede effective competition as a result of a vertical merger if such merger gives rise to foreclosure. Foreclosure occurs where actual or potential competitors' access to supplies or markets is hampered or eliminated as a result of the merger, thereby reducing those companies' ability and/or incentive to compete.[62] Such foreclosure may discourage entry or expansion of competitors or encourage their exit.[63]

(83) The Non-Horizontal Guidelines distinguish between two forms of foreclosure. Input foreclosure occurs where the merger is likely to raise the costs of downstream competitors by restricting their access to an important input. Customer foreclosure occurs where the merger is likely to foreclose upstream competitors by restricting their access to a sufficient customer base.[64]

(84) With regard to input foreclosure, in assessing the likelihood of an anticompetitive foreclosure scenario, the Commission examines, first, whether the merged entity would have, post-Transaction, the ability to substantially foreclose access to inputs or customers, second, whether it would have the incentive to do so, and third, whether a foreclosure strategy would have a significant detrimental effect on competition.[65]

(85) With regard to customer foreclosure, in assessing the likelihood of an anticompetitive foreclosure scenario, the Commission examines, first, whether the merged entity would have the ability to foreclose access to downstream markets by reducing its purchases from its upstream rivals, second, whether it would have the incentive to reduce its purchases upstream, and third, whether a foreclosure strategy would have a significant detrimental effect on consumers in the downstream market.[66]

6.2.1.2. Conglomerate non-coordinated effects

(86) According to the Non-Horizontal Guidelines, in the majority of circumstances, conglomerate mergers will not lead to any competition problems.[67] However, foreclosure effects may arise when the combination of products in related markets may confer on the merged entity the ability and incentive to leverage a strong market position from one market to another closely related market by means of tying or bundling or other exclusionary practices. While tying and

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61 Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings ("Non-Horizontal Guidelines"), OJ C 265, 18.10.2008, p. 6-25.

62 See Non-Horizontal Guidelines, paragraph 18.

63 See Non-Horizontal Guidelines, paragraph 29.

64 See Non-Horizontal Guidelines, paragraph 30.

65 See Non-Horizontal Guidelines, paragraph 32.

66 See Non-Horizontal Guidelines, paragraph 59.

67 See Non-Horizontal Guidelines, paragraph 92.

bundling have often no anticompetitive consequences, in certain circumstances such practices may lead to a reduction in actual or potential competitors' ability or incentive to compete. This may reduce the competitive pressure on the merged entity allowing it to increase prices.[68]

(87) In assessing the likelihood of anticompetitive foreclosure effects, the Commission examines, first, whether the merged firm would have the ability to foreclose its actual or potential competitors, second, whether it would have the economic incentive to do so and, third, whether a foreclosure strategy would have a significant detrimental effect on competition, thus causing harm to consumers.[69]

6.2.2. Vertical links between Vivendi's upstream activity in the licensing of TV content and TIM's downstream activity in the retail provision of TV services

(88) With regard to the vertical links between Vivendi's upstream activity in the licensing of TV content, and potential narrower market segments, and TIM's downstream activity in the retail provision of TV services, the Notifying Party submits that the Transaction would not give rise to any competition concern based on either input or customer foreclosure. With regard to input foreclosure, Vivendi's content could not be considered as an important input to compete in the market for the provision of pay-TV services. With regard to customer foreclosure, TIM is only one of several distribution platforms to provide pay-TV services in Italy and alternative providers of fixed internet access services would be available in the market.

6.2.2.1. Input foreclosure – access to Vivendi's content

(89) The Notifying Party submits that it would not have the ability to foreclose TIM's competitors since it is only marginally active in the market for the licensing of broadcasting rights for audio-visual content, including both films and other TV content and several alternative operators would remain active in the market.

(90) Some of TIM's competitors in the market for the retail provision of fixed internet access services expressed the concern that, post-Transaction, Vivendi would give TIM privileged access to Vivendi and Mediaset's premium content.[70] By having exclusive access to this premium content and bundling it with its mobile and fixed telecommunication offering, TIM would be able to strengthen its position in the retail market for the provision of fixed internet access services.

(91) The Commission considers that, with regard to Mediaset, Vivendi would not have the ability to foreclose TIM downstream rivals by denying access to its content or IPTV offering. As described at paragraph (49), while Vivendi holds a significant stake in Mediaset, this does not confer on Vivendi control or other type of influence over Mediaset's business decisions, such as, for example, those concerning the distribution of Mediaset's content. Therefore, Vivendi does

68 See Non-Horizontal Guidelines, paragraphs 91 and 93.

69 See Non-Horizontal Guidelines, paragraph 94.

70 See replies to Commission questionnaire Q1 to market participants, questions 3.1, 3.2 and 3.3. See also replies to the market test questionnaire, questions 3.

not have the ability to influence Mediaset's distribution of its content and retail pay-TV offering.

(92) With regard to Vivendi's content, the Commission considers that Vivendi would not have the ability to successfully engage in the foreclosure of TIM's downstream rivals. First, based on its actual content offering, Vivendi is a very small player in the upstream market for the licensing of TV broadcasting rights for audio-visual content in Italy (market share below [0-5]%, with sales of only EUR[…]).[71] Second, Vivendi does not hold significant broadcasting rights relating to TV content for Italy.[72] Third, several alternative competitors would remain active in the market including all the six major-US studios (20th Century Fox, Warner Bros, Paramount, Universal and Walt Disney), Sky Italia (the leading provider of retail pay-TV services in Italy) and Netflix, one of the main over-the-top ("OTT") players in the market.

(93) In light of the above, the Commission considers that the Transaction does not give rise to serious doubts with regard to its compatibility with the internal market as a result of input foreclosure effects to the detriment of providers of TV retail services and fixed broadband retail services in Italy.

6.2.2.2. Customer foreclosure – distribution through TIM's fixed network

(94) The Notifying Party submits that it would not have the ability to foreclose TIM's competitors in the market for the provision of retail pay-TV services since TIM is just one of several platforms to distribute pay-TV services available to Italian customers. Moreover, Vivendi would not have the incentive to deny or hindering access to other operators (e.g. Sky and Netflix) to distribute their offering through its IPTV[73] service since it would lose the revenue deriving from those agreements and its retail broadband customers would switch to another telecom operator offering those services.

(95) [CONFIDENTIAL][74] raised the concern that, post-Transaction, Vivendi would foreclose Mediaset's competitors in the retail pay-TV market by denying them access to TIM's broadband customer base, which could only or best be reached via fixed broadband (i.e. IPTV services) in light of the difficulties that retail customers may have to receive pay-TV services via DTH (for example, due to urban planning restrictions).

(96) The Commission considers that Vivendi would not have the ability to foreclose access to the market for the provision of pay-TV services in Italy.

71 In the market for licensing of broadcasting rights relating to films in Italy, Vivendi holds a market share of less than [0-5]% with sales of EUR […]. In the market for licensing of broadcasting rights relating to other TV content in Italy, Vivendi holds a market share of less than [0-5]% with sales of EUR […]. Vivendi submits that its market shares would not be materially different under any narrower product market definition.

72 See Notifying Party's reply to request for information n.1 of 4 April 2017, question 4.

73 Internet Protocol television (IPTV) is the delivery of television content using signals based on the logical Internet protocol (IP), rather than through traditional terrestrial ("DTT"), satellite signal ("DTH"), and cable television formats.

74 See replies to Questionnaire 1 to market participants, question 3.3.

(97) First, IPTV is not an essential technology to compete since Sky and Mediaset, with a combined market share of over 90% in the Italian pay-TV market, distribute almost exclusively through non-IPTV technology (Sky through DTH and Mediaset through DTT). Moreover, only a limited number of retail pay-TV customers have access to pay-TV services in Italy through IPTV network ([0-5]% of Sky's total customer base and [0-5]% of Mediaset Premium's total customer base as of April 2017).

(98) Second, TIM does not have the ability to restrict access to a significant customer base by refusing to distribute other pay-TV offering through its IPTV service since only approximately [CONFIDENTIAL] of the overall 25 million households in Italy[75] would not able to access pay-TV services through DTH technology.

(99) Third, even if TIM has a significant share of [40-50]% in the market for the supply of retail fixed internet services, alternative providers would be able to offer those services directly or indirectly in the market in the coming years. For example, with regard to fiber connections, which are the most suitable to provide IPTV services, WIND Tre and Vodafone have agreements with Enel Open Fiber, which plans to roll-out its network in both densely and not-densely populated areas, to access its infrastructure to provide retail services[76]. Fastweb, the other major player in the retail market, serves approximately 7 million households with speed connection of 100 mega bit per second ("Mbps") and it plans to extend its fiber network over the next years covering 50% of the Italian territory starting with the most densely populated area.[77] Moreover, TIM also provides regulated wholesale access services to other fixed operators in Italy.[78]

(100) Fourth, TIM would not have the ability to deny Sky access to its network at least until [CONFIDENTIAL]. Sky and TIM have indeed signed an agreement, pursuant to which TIM's customers are offered [CONFIDENTIAL] Sky TV offering ("Sky IPTV Offer") through TIM's broadband fixed-line network. Based on the agreement, [CONFIDENTIAL].

(101) Sixth, [CONFIDENTIAL]. On these points, the Commission notes that, first, the lawsuit between Sky and TIM is still pending and, second, while [CONFIDENTIAL].

(102) The Commission further considers that Vivendi would not likely have the incentive to foreclose access to the market for the provision of pay-TV services in Italy. First, [CONFIDENTIAL]. Second, [CONFIDENTIAL].[79]

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75 See reply to request for information of 21 April 2017, dated 27 April 2017.

76 See Commission decision of 15 December 2016 in Case M.8234, *Enel / CDP Equity / Cassa Depositi e Prestiti / Enel Open Fiber / Metroweb Italia*, paragraph 38.

77 See "*Fastweb, the Network*", available at: http://www fastweb.it/chi-siamo/la-nostra-rete-in-fibra-ottica

78 See AGCOM "*Servizi di accesso disaggregato (Unbundled access services)*", available at: https://www.agcom.it/servizi-di-accesso-disaggregato. See also, TIM "Wholesale – braoadband and ultra broadband", available at https://www.wholesale.telecomitalia.com/en/catalogo_en/-/catalogo_aggregator/article/58334?p_r_p_564233524_categoryId=58336&p_r_p_564233524_activePortletId=noportlet

79 See [CONFIDENTIAL].

(103) Regardless of whether Vivendi has either the ability or the incentive to foreclose rivals by denying access to downstream customers, the Commission does not consider that such a strategy would have an impact on effective competition. First, alternative providers of retail pay TV services are today active and would remain active in the market in the next years including Sky, the leading provider of pay-TV services in Italy with a market share of approximately [70-80]% in 2015, and Netflix. With regard to Sky, its ability to compete in the next years would not be affected by not having access to TIM's IPTV services. As indicated above, less than [0-5]% of Sky's overall customers in Italy have access to Sky's offering through TIM's IPTV offering. In particular, while [CONFIDENTIAL], Sky's ability to compete in the market has not been impacted in the last year as confirmed by its latest financial results which show a strong increase in revenue (7%), operating profit (237%) and customer base.[80] With regard to Netflix and other providers of OTT TV services, an agreement between those operators and TIM is not necessary for the final customer who will still be able to subscribe to their services if they wish.

(104) With regard to the area not able to access pay-TV services through DTH technology in Italy, the Commission firstly notes that this would correspond only to a limited fraction of the overall customer base in Italy in the market for the provision of pay-TV services in Italy. Second, not all the households in Italy could be served by TIM's IPTV services since TIM is able to offer those services, which require a broadband speed connection of at least 20 Mbps[81], to approximately 60% of the households in Italy and not the entire Italian territory.[82] Therefore TIM could serve through IPTV only a subset of the households who are not able to access pay-TV services through DTH technology in Italy. Moreover, the Commission notes that alternative operators would be able to provide high speed fixed internet access services over the next years directly (e.g. Fastweb) and indirectly by relying on third party infrastructure network operator (e.g. Enel Open Fiber or regulated wholesale access). Finally, Sky, the main pay-TV operator in Italy, has an agreement in place with TIM which will ensure that it would be able to offer those services over the next years and, as described above in paragraph (99), after the expiry of the contract, it could team up with other providers of fixed internet access services[83].

(105) In light of the above, the Commission considers that the Transaction does not give rise to serious doubts with regard to its compatibility with the internal

80 See Sky's "Unaudited results for the nine months to 31 March 2017", available at: https://corporate.sky.com/documents/investors/results/2017_results/q3_1617_trading_statement.pdf.

81 See TIM Smart casa e Sky TV offering, available at: https://www.tim.it/offerte/fisso/internet-voce-e-timvision/adsl/tim-smart-casa-e-sky.

82 See TIM's wholesale offering, bitstream, available at: https://www.wholesale.telecomitalia.com/en/catalogo_en/-/catalogo_aggregator/article/58347?_2_WAR_nwscatalogoportlet_redirect=%2fen%2fcatalogo_en%2f-%2fcatalogo_aggregator%2farticle%2f58334&_2_WAR_nwscatalogoportlet_resourcePrimKey2=58347&p_r_p_564233524_activePortletId=noportlet. "*Bitstream services are characterised by very widespread geographical coverage in that ADSL services operating at up to 7 Mbit/s are available on about 97% of the telephone lines while ADSL services operating at up to 20 Mbit/s are available on around 62% of the telephone lines.*"

83 [CONFIDENTIAL].

market as a result of customer foreclosure effects to the detriment of providers of TV retail services in Italy.

6.2.3. *Vertical links between Vivendi's upstream activity in the market for provision of wholesale digital recorded music with TIM's downstream activity in the retail market*

(106) Vivendi (through its subsidiary, Universal Music Group "UMG") is active in the wholesale supply of digital recorded music in Italy. Its main competitors are Sony Music and Warner Music. TIM is a customer in the market and it is active in the retail supply of digital recorded music in Italy through its "TIM Music" platform. TIM's main competitors include Apple and Spotify.

(107) The Notifying Party submits that the Transaction would not give rise to any competition concern based on either input or customer foreclosure. With regard to input foreclosure, Vivendi would not have the incentive to deny access to its content to large downstream providers such as Apple and Spotify. With regard to customer foreclosure, TIM is only one of several retail streaming services for digital recorded music available in Italy and alternative services would be accessible in the market.

6.2.3.1. Input foreclosure - access to Vivendi's content

(108) The vertical link between the Parties' activities with regard to digital recorded music gives rise to a vertically affected market, as Vivendi has a market share of [30-40]% in 2016 in the market for the wholesale of digital recorded music in Italy. Vivendi, post-Transaction, may restrict access to its music content and distribute it only through TIM's retail platform.

(109) The Commission considers that Vivendi would not have the ability to foreclose TIM's downstream rivals. First, none of the respondents to the market investigation raised such concerns. Second, while Vivendi, through UMG, has the second largest market share in Italy, several alternative providers would remain in the market, including large multinationals as Sony Music and Warner Music with market share of respectively of [30-40]% and [10-20]% in 2016.

(110) The Commission further considers that Vivendi would not have the incentive to deny its music content to TIM's competitors. First, TIM represents less than [10-20]% of Vivendi's revenue in the market; therefore, any attempt to restrict access to TIM's competitors would negatively impact the distribution of Vivendi's music in Italy and deprive the company of more than [80-90]% of the revenue in the market. Second, by refusing to supply its music content to TIM's competitors, Vivendi would risk undermining its commercial relationships with its key digital customers, many of which operate not just in Italy but on a worldwide basis, such as Apple, Spotify, Amazon, and Deezer.

(111) In light of the above, the Commission considers that the Transaction does not give rise to serious doubts with regard to its compatibility with the internal market as a result of input foreclosure effects to the detriment of downstream providers of retail digital recorded music in Italy.

6.2.3.2. Customer foreclosure – distribution through TIM's retail platform

(112) A respondent to the market investigation[84] raised the concern that Vivendi could foreclose providers of wholesale digital recorded music from reaching an important segment of their potential customer base, by denying them access to TIM's customer base.[85]

(113) The Commission considers that Vivendi would not have the ability to foreclose its upstream rivals from the market for the provision of retail digital recorded music in Italy. First, while TIM is one of the main customers in the market, it has a market share of only [10-20]% in the retail market for the provision of digital recorded music in Italy in 2016. Second, as confirmed by the market investigation, alternative suppliers of retail digital recorded music (e.g. Apple and Spotify) accounting for over [80-90]% of the market would remain available to upstream competitors.

(114) Third, Vivendi would not have the incentive to foreclose its upstream competitors active in the market for the provision of wholesale digital recorded music since, by losing access to a significant repertoire of other record companies, it would mainly impact the quality of TIM's retail service.

(115) Regardless of whether Vivendi has either the ability or the incentive to foreclose competing upstream competitors active in the market for the provision of wholesale digital recorded music, the Commission does not consider that such a strategy would have an impact on effective competition. Alternative operators such as Apple and Spotify would remain active in the market for the provision of retail digital recorded music. Therefore, Vivendi's competitors, including multinational such as Sony Music and Warner Music, will continue to be able to offer their music to alternative downstream providers as Apple and Spotify, ensuring that final customers would be able to have access to content on the same condition they would have done absent the Transaction. Moreover, Vivendi's competitors are multinational organizations and their investment choice in music content would not likely be impacted by not having access to TIM's retail customer base.

(116) In light of the above, the Commission considers that the Transaction does not give rise to serious doubts with regard to its compatibility with the internal market as a result of customer foreclosure effects to the detriment of upstream providers of wholesale digital recorded music in Italy.

6.2.4. Conglomerate relationship between Vivendi's distribution of mobile games in Italy and TIM's provision of retail mobile telecommunication services in Italy

(117) Vivendi is active in the retail supply of mobile games in Italy through its subsidiary Gameloft. TIM is active in the provision of retail mobile telecommunication services with a market share of [30-40]%.

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84 See replies to Questionnaire 1 to market participants, question 4.3.

85 TIM, with […] users through TIM Music, is the second largest music streaming service in Italy after Spotify.

(118) One respondent to the market investigation[86] indicated that, post-Transaction, Vivendi would offer its mobile games only through TIM's mobile services and it would therefore strengthen TIM's position in the market for the provision of retail mobile telecommunication services.

(119) The Notifying Party submits that the Transaction would not give rise to any competition concern with regard to its activities in the retail distribution of mobile games since its position in the market is limited and several alternative providers would remain active in the market.

(120) The Commission considers that the Transaction does not raise serious doubts based on conglomerate concerns with respect to the market for the supply of games and the market for the provision of retail mobile telecommunication services for the following reasons. First, Vivendi is a small player in the market for the supply of mobile games in Italy with a market share of [0-5]% in 2016. Second, alternative providers of mobile games would remain active in the market including Supercell and King with market shares of respectively [10-20]% and [10-20]%. Third, alternative providers of retail mobile telecommunication services would remain active in the market, including WIND Tre and Vodafone with market shares of respectively [30-40]% and [30-40]%. Finally, all mobile games will remain available on platform such as Apple's App Store and Google Play which constitute the main distribution channel in Italy. Therefore, TIM's competitors in the mobile space and Vivendi's competitors in the market for the supply of mobile games would also be able to offer similar packages of mobile telecommunication services and mobile games.

6.2.5. Vertical links between Vivendi's upstream activity (through Havas) in the markets for the provision of MBS and MCS services with Telecom Italia's downstream activity as customer in the markets;

(121) With regard to these vertical relationships, Vivendi, through its affiliate Havas,[87] is active in the upstream markets for the provision of MBS and MCS in Italy and TIM acts as a customer in those markets. The Transaction does not give rise to an affected market since Vivendi has a market share significantly below 30% in 2016[88] ([10-20]% in the MCS market and [5-10]% in the MBS market, which would not be materially different in any possible sub-market) and in the downstream markets, based on the data provided by the Notifying Party, TIM's advertising spending is limited and significantly below 30% (even considering possible sub-markets).[89]

(122) In any event, the Commission considers the Transaction does not raise serious doubts as to its compatibility to the internal market with regard to MCS and MBS markets, even under potential narrower market segments.

(123) With respect to MCS, first, most of the respondents to the market investigation consider that the Transaction would have a neutral impact on the market. Second, Vivendi would not have the ability and the incentive to foreclose TIM's

86 See replies to Questionnaire 1 to market participants, question 3.7.

87 See Commission decision of 24 April 2017 in case M.8392, *Bolloré/Vivendi*.

88 See Notifying Party's reply to RFI n.5 of 27 April 2017.

89 See Notifying Party's reply to RFI n. 5 of 27 April 2017.

competitors since its services could not be considered an important input, in light of its limited market share, under any narrower product market definition, and the presence of alternative suppliers. Third, Vivendi would not have the ability to foreclose its competitors to access a significant customer base downstream in the MCS market since TIM's spending in the MCS market is limited (approximately EUR […] for MCS in 2016) which, based on the data provided by the Notifying Party, corresponds to [0-5]% of the overall spending in the MCS market in Italy.

(124) With regard to MBS, most of the respondents to the market investigation consider that the Transaction would have either a positive or neutral impact on the MBS market. In particular, one of Havas's main competitors in Italy considers that the market would remain competitive following the Transaction. However, three respondents indicated that the Transaction may have a negative effect on the MBS market in Italy. In particular, a TV channel provider notes that, post-Transaction, TIM would no longer acquire advertising space on third party services (e.g. TV channels) and transmit advertising services only on its services/platform (e.g. TIM Vision retail TV platform). However, such concern would not be merger specific. Today, TIM has already the ability to divert its advertising expenditure to its TV platform. The other two respondents did not substantiate their claim and noted that the relationships between Havas, Vivendi and TIM should be investigated. However, the Commission considers that the Transaction does not raise serious doubts with regard to MBS in Italy for the following reasons. First, Vivendi would not have the ability and the incentive to foreclose TIM's competitors since its services could not be considered an important input (it has a market share of approximately [5-10]% in the MBS market in Italy[90] and alternative suppliers would remain active in the market) and the strategy would not be profitable (Vivendi would lose more than [70-80]% of its revenues by exclusively relying on TIM as a customer). Third, Vivendi would not have the ability to foreclose its competitors to access a significant customer base downstream in the MBS market since Telecom Italia's spending is limited (approximately EUR […] for MBS in 2016) which, based on the data provided by the Notifying Party, corresponds to [0-5]% of the overall spending in the MBS market in Italy.

7. COMMITMENTS

7.1. Introduction

(125) In order to remove the serious doubts arising from the Transaction described in Section 6.1 in relation to the Italian market for DTT wholesale access, on 4 May 2017 the Notifying Party submitted commitments pursuant to Article 6(2) of the Merger Regulation (the "Initial Commitments").

(126) The Commission launched a market test of the Initial Commitments on 5 May 2017. The Commission informed the Notifying Party of the results of the market test on 16 May 2017. Following the feedback received from the

[90] Vivendi submits that its market shares would not be materially different under any narrower product market definition.

Commission, the Notifying Party submitted a revised set of commitments on 17 May 2017 (the "Final Commitments").

(127) The Final Commitments are annexed to this decision and form an integral part thereof.

7.2. Analytical framework

(128) Where the Commission considers that a concentration will raise competition concerns the parties may seek to modify the concentration in order to resolve such competition concerns and thereby gain clearance of their merger.[91]

(129) In Phase I, commitments offered by the parties can only be accepted where the competition problem is readily identifiable and can easily be remedied. The competition problem therefore needs to be so straightforward and the remedies so clear-cut that it is not necessary to enter into an in-depth investigation and that the commitments are sufficient to clearly rule out "serious doubts" within the meaning of Article 6(1)(c) of the Merger Regulation. Where the assessment confirms that the proposed commitments remove the grounds for serious doubts on this basis, the Commission clears the merger in Phase I.[92]

(130) 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.[93]

(131) In order for the commitments to comply with these principles, commitments must be capable of being implemented effectively within a short period of time.[94] Where, 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.[95]

(132) As concerns the form of acceptable commitments, the Merger Regulation leaves discretion to the Commission as long as the commitments meet the requisite standard.[96] Structural commitments will meet the conditions set out above only in so far as the Commission is able to conclude with the requisite degree of certainty that it will be possible to implement them and that it will be likely that the new commercial structures resulting from them will be sufficiently workable and

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91 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.

92 Remedies Notice, Paragraph 81.

93 Remedies Notice, Paragraph 12.

94 Remedies Notice, Paragraph 9.

95 Remedies Notice, Paragraphs 13, 14 and 61 et seq.

96 Case T-177/04 easyJet v Commission [2006] ECR II-1913, Paragraph 197.

lasting to ensure that the significant impediment to effective competition will not materialise.[97]

(133) 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.[98]

(134) It is against this background that the Commission analysed the proposed commitments in this case.

7.3. Initial Commitments

7.3.1. Description of the Initial Commitments

(135) The Initial Commitments consisted of the divestment of TIM's 70% stake in Persidera (the "Divestment Business").

(136) The Divestment Business also included, unless otherwise agreed with the purchaser, the benefit of all current arrangements under which TIM or its subsidiaries supply products or services to the Divestment Business, for a transitional period of up to […] after the transfer of the legal title to the Divestment Business to the purchaser and on terms and conditions equivalent to those at present afforded to the Divestment Business. The Notifying Party committed to put in place strict firewall procedures so as to ensure that any competitively sensitive information related to, or arising from such supply arrangements (for example, product roadmaps) will not be shared with, or passed on to, anyone outside the relevant business unit/division providing the product/services operations.

(137) The Initial Commitments included a revised version of the review clause whereby the Commission may, "*in response to a reasoned request from the Notifying Party showing good cause waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments,* […].

7.3.2. Results of the market test

(138) The results of the market test were generally positive.

(139) The majority of the respondents to the market test considered that the Divestment Business includes all necessary tangible and intangible assets for the purchaser to operate and effectively compete on the Italian market for DTT wholesale access.[99] This is because the Divestment Business consists of a participation to the share capital of Persidera, which is the undertaking currently running the activities of TIM in the market for DTT wholesale access. In this vein, one respondent explains that, "[s]*ince the Divestment Business is a participation to Persidera's share capital and the Company (i.e. Persidera) is currently running the business,* [it believes] *that the Divestment Business includes all necessary assets for the purchaser of the shares to operate and*

97 Remedies Notice, Paragraph 10.

98 Remedies Notice, Paragraph 19.

99 See replies to Question 3 of Initial Commitment's market test.

effectively compete on the market." Only one respondent indicated that the Divestment Business should also include the right to access and exploit at least 800 fully-equipped transmission sites.

(140) The view of the respondents were mixed with respect to the issue as to whether, in order to run the Divestment Business efficiently as a viable and competitive force in the Italian market for DTT wholesale access, the purchaser should have any specific characteristics other than those mentioned in section D, paragraph 17 of the Initial Commitments.[100] In this respect, four respondents indicated that the purchaser should fulfil additional criteria. One of them stated that the Initial Commitments should be revised so to explicitly state that the purchaser should not be an entity connected to the Mediaset Group. The replies of other three respondents suggest that the purchaser should not be vertically integrated in the retail supply of TV channels to have all the incentives to grant access and top quality service to its customers not owning DTT infrastructures nor be a prominent player in other distribution platform, nor an operator already active in the DTT wholesale access market.

(141) The majority of the respondents also considered that the provisions of the Initial Commitments (including its schedule) are sufficiently clear and capable of being implemented.[101] Only one respondent indicated that it was not clear from paragraph 18 of the Initial Commitments whether the sale of single assets owned by Persidera, such as one of the MUXes, was possible on a standalone basis.

(142) Finally, the majority of the respondents stated that, according to them, the Initial Commitments will ensure that post-Transaction there would remain sufficient competition in the Italian market for DTT wholesale access.[102] In this vein, one respondent stated that "*the divestment of Persidera is critical to the effective functioning of the Italian market for wholesale access to digital terrestrial networks for the broadcast of TV channels*."

(143) Nonetheless, two respondents have raised some concerns as regards the viability of the Divestment Business. According to one of these respondents, Persidera would not be a viable business for two main reasons: first, its (increasing) dependency on Discovery due to the loss of Cairo as customer; second, the uncertainty in the regulatory framework for DTT broadcasting in Italy, "*due to the switching in 2020 of the 900 [sic] MHz spectrum band for use in mobile telecommunications*"; third, the lack of a partnership with a tower operator and in particular with EI Tower. The other respondent indicated instead that the Initial Commitments would be effective, but only for a limited period of time because "[s]*ome Persidera's MUX DVB-T (TIM B1, TIM B2, RETE A2) are allocated within 700 Mhz frequencies that will used for Digital terrestrial broadcasting transmission until 2022 end after such date, 700 Mhz frequencies will change their destination use from DTT to mobile services (for Supplemental Downlink id est "SDL").*"

100 Notably, independence from Vivendi, financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force. See replies to Question 4 of Initial Commitment's market test.

101 See replies to Question 6 of Initial Commitment's market test.

102 See replies to Question 7 of Initial Commitment's market test.

(144) In addition, the Commission notes that the ICA has expressed a positive opinion on the Initial Commitments and it considered that such commitments are "*suitable to solve the competition concerns, as they represent a structural solution*". Nonetheless, the ICA stated that an appropriate transitional period should be foreseen to enable a smooth change of supplier for all the inputs currently supplied to Persidera by TIM and that the identity of purchaser should be carefully assessed to ensure that it would not raise concerns of vertical foreclosure.

7.3.3. Commission's assessment of the Initial Commitments

(145) The Commission considers that the Initial Commitments would in principle have been capable of removing the serious doubts raised by the Transaction, and identified in Section 6.1, in a clear-cut manner. Such ability may though be affected by the limited duration of the transitional period.

(146) First, the Commission considers that the scope of the Divestment Business is sufficiently comprehensive. Persidera is a distinct legal entity, which is active on a stand-alone basis in the Italian market for DTT wholesale access. Persidera holds the know-how, the staff, the assets, resources necessary and authorizations to perform its activities; Persidera's has its own management; all current customer contracts for the supply of digital broadcasting services are held by Persidera. Moreover, the divestment of the Divestment Business would remove in full the overlap between Mediaset's and TIM's activities in the market for DTT wholesale access.

(147) Nonetheless, the Commission notes that currently there are few operational links between Persidera and TIM. These include access to transmission sites. Indeed, Persidera owns a limited number of transmission sites (25). For the remaining number of sites it needs for its activities, Persidera relies to a limited extent on transmission sites controlled by TIM (around 60 sites)[103] and satisfies its access needs predominantly through contracts with third party providers (RAI and EI Towers).[104]

(148) The Initial Commitments foresaw that the contracts between Persidera and TIM would continue for the transitional period of […]. Considering that for certain supplies, the process of selecting a new provider and switching may take longer than[…], the duration of the transitional period pursuant to the Initial Commitments does not seem to be sufficient.

(149) Second, the Commission considers that the Divestment Business is viable. Persidera is indeed the largest provider of DTT wholesale access to independent TV channels with stable revenues.[105] In this regard, the Commission considers that, contrary to what a respondent to the market investigation claimed, the increased "dependency" on Discovery, due to the loss of Cairo as customer, does not affect Persidera' business viability, but rather demonstrates that the only alternative solution to Persidera for an independent TV channel is to enter

103 See reply to request for information to TIM of 27 April 2017, dated 3 May 2017.

104 In total Persidera has access to about 1000 transmission sites.

105 Reply to request for information of 15 May 2017, dated 17 May 2017.

the DTT wholesale access market, which is complex and costly and therefore an option not generally available to Persidera's customers.

(150) The Commission also considers that the viability of the Divestment Business is not likely to be affected by the refarming of the 700 Mhz frequencies, currently used for DTT broadcasting and to be allocated to mobile telecommunications by 2020. Indeed, this would only concern one of Persidera's MUXes and is an event which will affect the whole Italian DTT wholesale access market and AGCOM has already stated that "*the refarming of the 700 MHz band will necessarily involve the redefinition of the entire Italian radio and television system through the replanification of spectral resources which could be used for the radio and television broadcasting services, be them offered on the UHF-IV / V band or on the VHF-III band*."[106] In this context, it is not likely that Persidera will be prejudiced to a greater extent than its competitors.

(151) Third, the Commission considers that, by removing the overlap between Mediaset's and TIM's activities in the market for DTT wholesale access, the Initial Commitments would be effective as it would solve in a clear-cut manner all competition concerns identified in Section 6.1.

(152) As regards those comments received in the market test in relation to possible competition concerns arising from the sale of the Divestment Business to certain purchasers, the Commission considers that any risks in this regard is normally avoided in the purchaser approval process, where one of the elements that the Commission assesses is whether the purchaser is likely to create *prima facie* competition concerns. A clause in this respect is also included in the Initial Commitments.

7.4. Final Commitments

7.4.1. Description of the Final Commitments

(153) The Final Commitments are in all material respect identical to the Initial Commitments with two exceptions:

(i) Transitional period:

a) The Divestment Business has been amended to extend the benefit of all current arrangements under which TIM or its subsidiaries supply products or services to the Divestment Business until their current expiry date;

b) With respect to access to transmission sites, Vivendi commits to procure that TIM will grant the purchaser an option to renew the contracts between INWIT and Persidera for […] after their current expiry date at the same terms and condition of the current contracts;

[106] AGCOM, Decision n. 40/17/CONS: "*il refarming della banda 700 MHz comporterà necessariamente la ridefinizione dell'intero assetto del sistema radiotelevisivo italiano attraverso la ripianificazione delle risorse frequenziali utilizzabili per il servizio di radiodiffusione, siano esse in banda UHF-IV/V che in banda VHF-III.*"

(ii) Review clause: the review clause has been amended and it states that, […], the Commission may wave or substitute one, more or all of the undertakings in the Final Commitment.[107] In other words, […]

7.4.2. Commission's assessment of the Final Commitments

(154) The Commission considers that the amendments to the Initial Commitments fully address the shortcomings of the Initial Commitments with respect to the duration of the transitional period, in particular with respect to access to transmission sites.

(155) With particular regard to the renewal of the contracts between INWIT and Persidera, the Commission considers that the extended duration of this contractual relationship will not hamper the principle of independence of the purchaser. This is because, within that timeframe, an important re-planification of DTT networks will have to be undertaken to take into account the refarming of the 700 MHz band. Therefore, a longer transition period with respect to the contracts for access to transmission sites will avoid that the purchaser will have to perform twice the same exercise, first to take into account the expiry of the contracts with INWIT and then to take into account of the refarming of the 700 MHz band. This double exercise could negatively affect the Divestment Business performance.

(156) Therefore, the Commission considers that the Final Commitment, which are in all other respect identical to the Initial Commitments, are capable of removing the serious doubts raised by the Transaction in a clear-cut manner.

7.5. Conclusion

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

(158) Under the first sentence of the second subparagraph of Article 6(2) of the Merger Regulation, the Commission may attach to its decisions 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 a notified concentration compatible with the internal market.

(159) The achievement of the measure that gives rise to the structural change of the market is a condition, whereas the implementing steps which are necessary to achieve this result are generally obligations on the Notifying Party. Where a condition is not fulfilled, the Commission's decision declaring the concentration compatible with the internal market no longer stands. Where the undertakings concerned commit a breach of an obligation, the Commission may revoke the clearance decision in accordance with Article 8(6) 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.

107 In its contacts with the Notifying Party before the presentation of the Final Commitments, the Commission Services had clarified that, based on the available information, […]. The text of the review clause in the Final Commitments should therefore be read in the light of this preliminary assessment, which was not questioned by the Notifying Party.

(160) The commitments in paragraphs 2 and 5-7 of the Final Commitments constitute conditions attached to this decision, as only through full compliance therewith can the structural changes in the relevant markets be achieved. The other commitments set out in the Final Commitments constitute obligations, as they concern the implementing steps which are necessary to achieve the modifications sought in a manner compatible with the internal market.

8. CONCLUSION

(161) For the above reasons, the Commission has decided not to oppose the Transaction as modified by the Final Commitments and to declare it compatible with the internal market and with the functioning of the EEA Agreement, subject to full compliance with the conditions in paragraphs 2 and 5-7 of the Final Commitments annexed to this decision and with the obligations contained in the other paragraphs of the Final Commitments. This decision is adopted in application of Article 6(1)(b) in conjunction with Article 6(2) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission

(signed)
Margrethe VESTAGER
Member of the Commission

17/05/2017

Case M. 8465 – VIVENDI / TELECOM ITALIA

COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2) of Council Regulation (EC) No 139/2004 (the "Merger Regulation"), Vivendi S.A. ("Vivendi" or the "Notifying Party") hereby enters into the following Commitments (the "Commitments") vis-à-vis the European Commission (the "Commission") with a view to rendering the acquisition of a *de facto* sole control by Vivendi over Telecom Italia S.p.A. (the "Concentration") compatible with the internal market and the functioning of the EEA Agreement.

This text shall be interpreted in light of the Commission's decision pursuant to Article 6(1)(b) of the Merger Regulation of the Merger Regulation to declare the Concentration compatible with the internal market and the functioning of the EEA Agreement (the "***Decision***"), in the general framework of European Union law, in particular in light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (the "***Remedies Notice***").

Section A. Definitions

1. For the purpose of the Commitments, the following terms shall have the following meaning:

Affiliated Undertakings: undertakings controlled by Vivendi and/or by the ultimate parent of Vivendi, whereby the notion of control shall be interpreted pursuant to Article 3 of the Merger Regulation and in light of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (the "***Consolidated Jurisdictional Notice***").

Assets: the assets that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business as indicated in Section B, paragraphs 5 and 6 (a), (b) and (c) and described more in detail in the Schedule.

Closing: the transfer of the legal title to the Divestment Business to the Purchaser.

Closing Period: the period of [...] from the approval of the Purchaser and the terms of sale by the Commission.

Confidential Information: any business secrets, know-how, commercial information, or any other information of a proprietary nature that is not in the public domain.

Conflict of Interest: any conflict of interest that impairs the Trustee's objectivity and independence in discharging its duties under the Commitments.

Divestment Business: the business as defined in Section B and in the Schedule which the Notifying Party commits to divest.

Divestiture Trustee: one or more natural or legal person(s) who is/are approved by the Commission and appointed by Vivendi and who has/have received from Vivendi the exclusive

Trustee Mandate to sell the Divestment Business, without prejudice to any rights of L'Espresso, to a Purchaser at no minimum price.

Effective Date: the date of adoption of the Decision.

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

Hold Separate Manager: the person appointed by Telecom Italia for the Divestment Business to manage the day-to-day business under the supervision of the Monitoring Trustee.

Key Personnel: all personnel necessary to maintain the viability and competitiveness of the Divestment Business, as listed in the Schedule, including the Hold Separate Manager.

Mediaset Group: Mediaset S.p.A. and the companies controlled by Mediaset S.p.A whereby the notion of control shall be interpreted pursuant to Article 3 of the Merger Regulation and in light of the Consolidated Jurisdictional Notice.

Monitoring Trustee: one or more natural or legal person(s) who is/are approved by the Commission and appointed by Vivendi, and who has/have the duty to monitor Vivendi's compliance with the conditions and obligations attached to the Decision.

Parties: the Notifying Party and the undertaking that is the target of the concentration.

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

Purchaser: the entity approved by the Commission as acquirer of the Divestment Business in accordance with the criteria set out in Section D.

Purchaser Criteria: the criteria laid down in paragraph 18 of these Commitments that the Purchaser must fulfil in order to be approved by the Commission.

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

TI or Telecom Italia: Telecom Italia S.p.A. and the companies controlled by Telecom Italia S.p.A whereby the notion of control shall be interpreted pursuant to Article 3 of the Merger Regulation and in light of the Consolidated Jurisdictional Notice.

Trustee(s): the Monitoring Trustee and/or the Divestiture Trustee as the case may be.

Trustee Divestiture Period: the period of [...] from the end of the First Divestiture Period.

Vivendi: Vivendi S.A., a company incorporated under the laws of France, with its registered office at 42, avenue de Friedland, 75380 Paris Cedex 08, France, incorporated under the Registrar of Companies of the Paris Commercial Court Company under number 343 134 763 and all of the undertakings controlled by Vivendi S.A. pursuant to Article 3 of the Merger Regulation (EC) No 139/2004 notably Telecom Italia.

Section B. The commitment to divest and the Divestment Business

Commitment to divest

2. In order to maintain effective competition, Vivendi commits to procure the divestiture of the Divestment Business by the end of the Trustee Divestiture Period as a going concern to a purchaser and on terms of sale approved by the Commission in accordance with the procedure described in paragraph 19 of these Commitments. To carry out the divestiture, Vivendi commits that Telecom Italia shall find a purchaser and shall enter into a final binding sale and purchase agreement for the sale of the Divestment Business within the First Divestiture Period. If Telecom Italia has not entered into such an agreement at the end of the First Divestiture Period, Telecom Italia shall grant the Divestiture Trustee an exclusive mandate to sell the Divestment Business in accordance with the procedure described in paragraph 31 in the Trustee Divestiture Period.

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

   (a) by the end of the Trustee Divestiture Period, Telecom Italia or the Divestiture Trustee has entered into a final binding sale and purchase agreement and the Commission approves the proposed purchaser and the terms of sale as being consistent with the Commitments in accordance with the procedure described in paragraph 19; and

   (b) the Closing of the sale of the Divestment Business to the Purchaser takes place within the Closing Period.

4. In order to maintain the structural effect of the Commitments, the Notifying Party 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 Business, 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 45 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 Business is no longer necessary to render the proposed concentration compatible with the internal market.

Structure and definition of the Divestment Business

5. The Divestment Business consists of TI's entire shareholding interest in Persidera, a digital broadcast operator. TI holds 70% of Persidera's share capital, whereas L'Espresso Group owns 30%. Persidera has five digital multiplexers and provides DTT broadcasting, content preparation, play-out, over-the-top (OTT) delivery, connectivity and several other multimedia services to the main television editors that operate in the Italian market.

6. The legal and functional structure of the Divestment Business as operated to date is described in the Schedule. The Divestment Business, described in more detail in the Schedule, includes all assets and staff that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business, in particular:

   (a) all tangible and intangible assets (including intellectual property rights);

(b) all licences, permits and authorisations issued by any governmental organisation for the benefit of the Divestment Business;

(c) all contracts (including all current arrangements under which TI or its Affiliated Undertakings supply products or services to the Divestment Business, as detailed in the Schedule, until their expiry date), leases, commitments and customer orders of the Divestment Business; all customer, credit and other records of the Divestment Business; and

(d) the Personnel.

7. In addition, Vivendi commits to procure that, in the final binding sale and purchase agreement TI or its Affiliated Undertakings will grant the purchaser an option for the renewal for extra [...] (after the expiry date), at the same terms and conditions currently afforded, of the agreements for hosting services for Persidera transmission equipment on INWIT transmission sites.

8. Strict firewall procedures will be adopted so as to ensure that any competitively sensitive information related to, or arising from the supply arrangements between the Divestment Business, on the one hand, and TI or its Affiliated Undertakings, on the other hand, (for example, product roadmaps) will not be shared with, or passed on to, anyone outside the relevant business unit/division providing the product/services operations.

Section C. Related commitments

Preservation of viability, marketability and competitiveness

9. From the Effective Date until Closing, the Notifying Party shall procure the preservation of the economic viability, marketability and competitiveness of the Divestment Business, in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential of the Divestment Business. In particular Vivendi undertakes:

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

(b) procure to make available sufficient resources for the development of the Divestment Business, on the basis and continuation of the existing business plans;

(c) procure that all reasonable steps are being taken, including appropriate incentive schemes (based on industry practice), to encourage all Key Personnel to remain with the Divestment Business, and not to solicit or move any Personnel to Vivendi's or Telecom Italia's remaining business. Where, nevertheless, individual members of the Key Personnel exceptionally leave the Divestment Business, Vivendi shall provide a reasoned proposal to replace the person or persons concerned to the Commission and the Monitoring Trustee. Vivendi 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

10. The Notifying Party commits, from the Effective Date until Closing, to keep the Divestment Business 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 Vivendi have no involvement in the Divestment Business; (ii) the Key Personnel and Personnel of the Divestment Business have no involvement in any business retained by Vivendi and do not report to any individual outside the Divestment Business.

11. Until Closing, Vivendi shall assist the Monitoring Trustee in ensuring that the Divestment Business is managed as a distinct and saleable entity separate from the businesses which Vivendi is retaining. Immediately after the adoption of the Decision, Vivendi shall procure that Telecom Italia appoints a Hold Separate Manager. The Hold Separate Manager, who shall be one of the representatives of the Key Personnel, shall, without prejudice to any rights of L'Espresso, manage and exercise Telecom Italia's rights relating to the Divestment Business 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 Vivendi. The Hold Separate Manager shall closely cooperate with and report to the Monitoring Trustee and, if applicable, the Divestiture Trustee. Any replacement of the Hold Separate Manager shall be subject to the procedure laid down in paragraph 9 (c) of these Commitments. The Commission may, after having heard Vivendi, require Vivendi to procure *via* Telecom Italia the replacement of the Hold Separate Manager.

12. To ensure that the Divestment Business is held and managed as a separate entity, Vivendi will procure that the Monitoring Trustee exercise TI's rights as shareholder in Persidera (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 Vivendi'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 of Persidera, who have been appointed on behalf of TI. Upon request of the Monitoring Trustee, TI shall resign as a member of the boards or shall cause such members of the boards to resign.

Ring-fencing

13. Vivendi shall implement, or procure to implement, all necessary measures to ensure that it does not, after the Effective Date, obtain any Confidential Information relating to the Divestment Business and that any such Confidential Information obtained by Vivendi before the Effective Date will be eliminated and not be used by Vivendi. This includes measures vis-à-vis TI's appointees on the supervisory board and/or board of directors of the Divestment Business. In particular, the participation of the Divestment Business in any central information technology network shall be severed to the extent possible, without compromising the viability of the Divestment Business. Vivendi may obtain or keep information relating to the Divestment Business which is reasonably necessary for the divestiture of the Divestment Business or the disclosure of which to Vivendi is required by law.

Non-solicitation clause

14. The Parties undertake, subject to customary limitations, not to solicit, and to procure that Affiliated Undertakings do not solicit, the Key Personnel transferred with the Divestment Business for a period of [...] after Closing.

Due diligence

15. In order to enable potential purchasers to carry out a reasonable due diligence of the Divestment Business, Vivendi shall procure that Telecom Italia will, subject to customary confidentiality assurances and dependent on the stage of the divestiture process:

    (a) provide to potential purchasers sufficient information as regards the Divestment Business;
    (b) provide to potential purchasers sufficient information relating to the Personnel and allow them reasonable access to the Personnel.

Reporting

16. Vivendi shall submit written reports in English on potential purchasers of the Divestment Business and developments in the negotiations with such potential purchasers to the Commission and the Monitoring Trustee no later than 10 days after the end of every month following the Effective Date (or otherwise at the Commission's request). Vivendi shall submit a list of all potential purchasers having expressed interest in acquiring the Divestment Business to the Commission at each and every stage of the divestiture process, as well as a copy of all the offers made by potential purchasers within five days of their receipt.

17. Vivendi shall inform the Commission and the Monitoring Trustee on the preparation of the data room documentation and the due diligence procedure and shall submit a copy of any information memorandum to the Commission and the Monitoring Trustee before sending the memorandum out to potential purchasers.

Section D. The Purchaser

18. In order to be approved by the Commission, the Purchaser must fulfil the following criteria:

    (a) The Purchaser shall be independent of and unconnected to the Notifying Party and its Affiliated Undertakings (this being assessed having regard to the situation following the divestiture);

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

    (c) The acquisition of the Divestment Business by the Purchaser must neither be likely to create, in light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed. In particular, the Purchaser must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business.

19. The final binding sale and purchase agreement (as well as ancillary agreements) relating to the divestment of the Divestment Business shall be conditional on the Commission's approval. When Telecom Italia has reached an agreement with a purchaser, Vivendi shall submit a fully documented and reasoned proposal, including a copy of the final agreement(s), within one week to the Commission and the Monitoring Trustee. Vivendi must be able to demonstrate to the Commission that the purchaser fulfils the Purchaser Criteria and that the Divestment Business is being sold in a manner consistent with the Commission's Decision and the Commitments. For the approval, the Commission shall verify that the purchaser fulfils the Purchaser Criteria and that the Divestment Business is being sold in a manner consistent with the Commitments including their objective to bring about a lasting structural change in the market. The Commission may approve the sale of the Divestment Business without one or more Assets or parts of the Personnel, or by substituting one or more Assets or parts of the Personnel with one or more different assets or different personnel, if this does not affect the viability and competitiveness of the Divestment Business after the sale, taking account of the proposed purchaser.

Section E. Trustee

I. Appointment procedure

20. Vivendi shall appoint a Monitoring Trustee to carry out the functions specified in these Commitments for a Monitoring Trustee. The Notifying Party commits not to exercise any voting rights or other influence over Persidera before the appointment of a Monitoring Trustee.

21. If Telecom Italia has not entered into a binding sale and purchase agreement regarding the Divestment Business one month before the end of the First Divestiture Period or if the Commission has rejected a purchaser proposed by Vivendi at that time or thereafter, Vivendi shall appoint a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Trustee Divestiture Period.

22. The Trustee shall:

    (i) at the time of appointment, be independent of the Notifying Party and its Affiliated Undertakings;

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

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

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

Proposal by Vivendi

24. No later than two weeks after the Effective Date, Vivendi shall submit the name or names of one or more natural or legal persons whom Vivendi proposes to appoint as the Monitoring Trustee to the Commission for approval. No later than one month before the end of the First Divestiture Period or on request by the Commission, Vivendi shall submit a list of one or more persons whom Vivendi proposes to appoint as Divestiture Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the person or persons proposed as Trustee fulfil the requirements set out in paragraph 22 and shall include:

(a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these Commitments;

(b) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks;

(c) an indication whether the proposed Trustee is to act as both Monitoring Trustee and Divestiture Trustee or whether different trustees are proposed for the two functions.

Approval or rejection by the Commission

25. The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfil its obligations. If only one name is approved, Vivendi shall appoint or cause to be appointed the person or persons concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, Vivendi shall be free to choose the Trustee to be appointed from among the names approved. The Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

New proposal by Vivendi

26. If all the proposed Trustees are rejected, Vivendi shall submit the names of at least two more natural or legal persons within one week of being informed of the rejection, in accordance with paragraphs 20 and 25 of these Commitments.

Trustee nominated by the Commission

27. If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom Vivendi shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

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

28. The Trustee shall assume its specified duties and obligations in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or Vivendi, give any orders or instructions to the Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

Duties and obligations of the Monitoring Trustee

29. The Monitoring Trustee shall:

(i) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision.

(ii) oversee, in close co-operation with the Hold Separate Manager, the on-going management of the Divestment Business with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by Vivendi with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:

(a) monitor the preservation of the economic viability, marketability and competitiveness of the Divestment Business, and the keeping separate of the Divestment Business from the business retained by Vivendi, in accordance with paragraphs 9 and 10 of these Commitments;

(b) supervise the management of the Divestment Business as a distinct and saleable entity, in accordance with paragraph 11 of these Commitments;

(c) with respect to Confidential Information:

- determine all necessary measures to ensure that Vivendi does not after the Effective Date obtain any Confidential Information relating to the Divestment Business,
- in particular strive for the severing of the Divestment Business' participation in a central information technology network to the extent possible, without compromising the viability of the Divestment Business,
- make sure that any Confidential Information relating to the Divestment Business obtained by Vivendi before the Effective Date is eliminated and will not be used by Vivendi and
- decide whether such information may be disclosed to or kept by Vivendi as the disclosure is reasonably necessary to allow Vivendi to carry out the divestiture or as the disclosure is required by law;

(d) monitor the splitting of assets and the allocation of Personnel between the Divestment Business and Vivendi or Affiliated Undertakings;

(iii) propose to Vivendi such measures as the Monitoring Trustee considers necessary to ensure Vivendi's compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic viability, marketability or competitiveness of the Divestment Business, the holding separate of the Divestment Business and the non-disclosure of competitively sensitive information;

(iv) review and assess potential purchasers as well as the progress of the divestiture process and verify that, dependent on the stage of the divestiture process:

(a) potential purchasers receive sufficient and correct information relating to the Divestment Business and the Personnel in particular by reviewing, if available, the data room documentation, the information memorandum and the due diligence process, and

(b) potential purchasers are granted reasonable access to the Personnel;

(v) act as a contact point for any requests by third parties, in particular potential purchasers, in relation to the Commitments;

(vi) provide to the Commission, sending Vivendi a non-confidential copy at the same time, a written report within 15 days after the end of every month that shall cover the operation and management of the Divestment Business as well as the splitting of assets and the allocation of Personnel so that the Commission can assess whether the business is held in a manner consistent with the Commitments and the progress of the divestiture process as well as potential purchasers;

(vii) promptly report in writing to the Commission, sending Vivendi a non-confidential copy at the same time, if it concludes on reasonable grounds that Vivendi is failing to comply with these Commitments;

(viii) within one week after receipt of the documented proposal referred to in paragraph 19 of these Commitments, submit to the Commission, sending Vivendi a non-confidential copy at the same time, a reasoned opinion as to the suitability and independence of the proposed purchaser and the viability of the Divestment Business after the Sale and as to whether the Divestment Business is sold in a manner consistent with the conditions and obligations attached to the Decision, in particular, if relevant, whether the Sale of the Divestment Business without one or more Assets or not all of the Personnel affects the viability of the Divestment Business after the sale, taking account of the proposed purchaser;

(ix) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision.

30. If the Monitoring and Divestiture Trustee are not the same legal or natural persons, the Monitoring Trustee and the Divestiture Trustee shall cooperate closely with each other during and for the purpose of the preparation of the Trustee Divestiture Period in order to facilitate each other's tasks.

Duties and obligations of the Divestiture Trustee

31. Within the Trustee Divestiture Period, the Divestiture Trustee shall, without prejudice to any rights of L’Espresso, sell at no minimum price the Divestment Business to a purchaser, provided that the Commission has approved both the purchaser and the final binding sale and purchase agreement (and ancillary agreements) as in line with the Commission's Decision and the Commitments in accordance with paragraphs 18 and 19 of these Commitments. The Divestiture Trustee shall include in the sale and purchase agreement (as well as in any ancillary agreements) such terms and conditions as it considers appropriate for an expedient sale in the Trustee Divestiture Period. In particular, the Divestiture Trustee may include in the sale and purchase agreement such customary representations and warranties and indemnities as are reasonably required to effect the sale. The Divestiture Trustee shall protect the legitimate financial interests of Vivendi, subject to the Notifying Party’s unconditional obligation to divest, without prejudice to any rights of L’Espresso, at no minimum price in the Trustee Divestiture Period.

32. In the Trustee Divestiture Period (or otherwise at the Commission's request), the Divestiture Trustee shall provide the Commission with a comprehensive monthly report written in English on the progress of the divestiture process. Such reports shall be submitted within 15 days after the end of every month with a simultaneous copy to the Monitoring Trustee and a non-confidential copy to the Notifying Party.

III. Duties and obligations of the Parties

33. Vivendi shall procure that Telecom Italia will provide and shall cause its advisors to provide the Trustee with all such co-operation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to the Divestment Business' books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments and the Divestment Business shall provide the Trustee upon request with copies of any document. Telecom Italia and the Divestment Business shall make available to the Trustee one or more offices on their premises and shall be available for meetings in order to provide the Trustee with all information necessary for the performance of its tasks.

34. Vivendi shall procure that Telecom Italia will provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the Divestment Business. This shall include all administrative support functions relating to the Divestment Business which are currently carried out at headquarters level. Vivendi shall procure that Telecom Italia shall provide and shall cause its advisors to provide the Monitoring Trustee, on request, with the information submitted to potential purchasers, in particular give the Monitoring Trustee access to the data room documentation and all other information granted to potential purchasers in the due diligence procedure. Vivendi shall procure that Telecom Italia will inform the Monitoring Trustee on possible purchasers, submit lists of potential purchasers at each stage of the selection process, including the offers made by potential purchasers at those stages, and keep the Monitoring Trustee informed of all developments in the divestiture process.

35. Vivendi shall grant or procure Affiliated Undertakings to grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee to effect the sale (including ancillary agreements), the Closing and all actions and declarations which the Divestiture Trustee considers necessary or appropriate to achieve the sale and the Closing, including the appointment of advisors to assist with the sale process. Upon request of the Divestiture Trustee, Vivendi shall cause the documents required for effecting the sale and the Closing to be duly executed.

36. Vivendi shall indemnify the Trustee and its employees and agents (each an "***Indemnified Party***") and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to Vivendi for, any liabilities arising out of the performance of the Trustee's duties under the Commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisors.

37. At the expense of Vivendi, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to Vivendi's approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. Should Vivendi refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead,

after having heard Vivendi. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 36 of these Commitments shall apply *mutatis mutandis*. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served Vivendi during the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.

38. Vivendi agrees that the Commission may share Confidential Information proprietary to Vivendi with the Trustee. The Trustee shall not disclose such information and the principles contained in Article 17 (1) and (2) of the Merger Regulation apply *mutatis mutandis*.

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

40. For a period of 10 years from the Effective Date the Commission may request all information from the Parties that is reasonably necessary to monitor the effective implementation of these Commitments.

IV. <u>Replacement, discharge and reappointment of the Trustee</u>

41. If the Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Trustee to a Conflict of Interest:

    (a) the Commission may, after hearing the Trustee and Vivendi, require Vivendi to replace the Trustee; or

    (b) Vivendi may, with the prior approval of the Commission, replace the Trustee.

42. If the Trustee is removed according to paragraph 41 of these Commitments, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs 20-27 of these Commitments.

43. Unless removed according to paragraph 41 of these Commitments, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

Section F. The review clause

44. The Commission may extend the time periods foreseen in the Commitments in response to a request from Vivendi or, in appropriate cases, on its own initiative. Where Vivendi 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 the Notifying Party. Only in exceptional circumstances shall Vivendi be entitled to request an extension within the last month of any period.

45. The Commission may further, in response to a reasoned request from the Notifying Party showing good cause waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments. Moreover, the Commission may, in response to a reasoned request from the Notifying Party, waive or substitute one, more or all of the undertakings in these Commitments, [...] This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to the Notifying Party. The request shall not have the effect of suspending the application of the undertaking and, in particular, of suspending the expiry of any time period in which the undertaking has to be complied with.

Section G. Entry into force

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

duly authorised for and on behalf of Vivendi

SCHEDULE

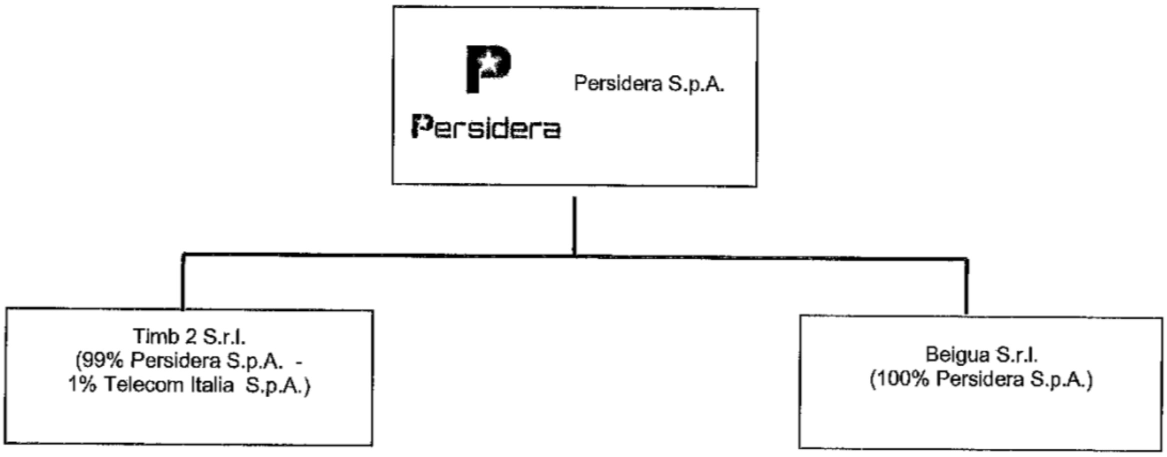
1. **The Divestment Business as operated to date has the following legal and functional structure:**

The Divestment Business consists of Telecom Italia's 70% shareholding interest in Persidera S.p.A.

On December 1, 2014 Rete A S.p.A. was merged by incorporation into Telecom Italia Media Broadcasting S.r.l., which had changed its name in Persidera S.p.A. ("Persidera"). Effective from September 30, 2015, Telecom Italia Media, the company directly holding 70% shares of Persidera, was merged by incorporation into Telecom Italia S.p.A.

Therefore, currently Telecom Italia S.p.A. owns 70% share in Persidera. The remaining 30% share capital is held by Gruppo Editoriale L'Espresso.

Organizational chart (as of 26 April 2017):



Timb2 S.r.l. has been created in 2014 but is not currently active.

Please also note that, on April 11, 2017 the merger for incorporation of Beigua S.r.l. in Persidera has been approved by the shareholders meetings of both Beigua and Persidera. Closing is currently envisaged in the third quarter of 2017.

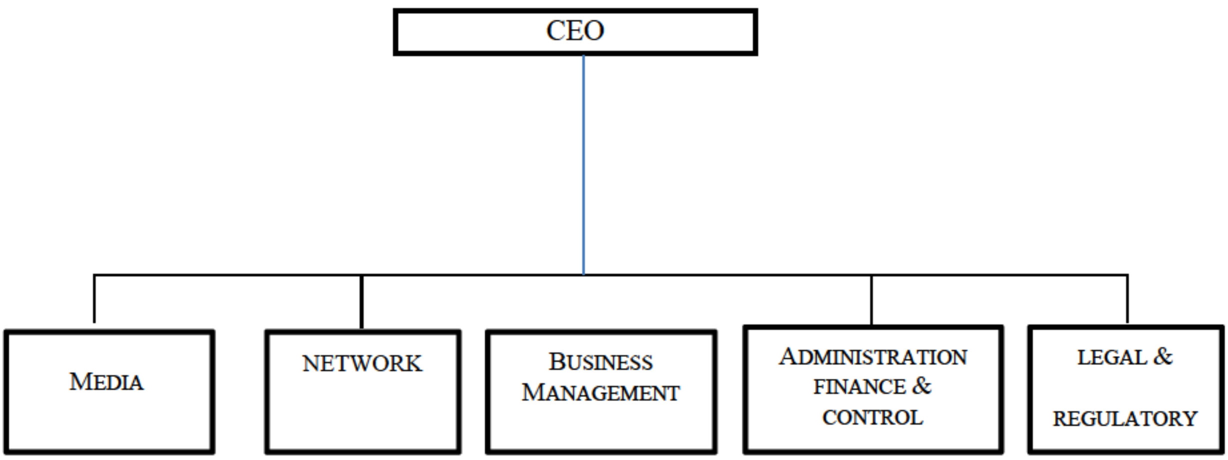
Persidera also holds some minority participations in the following consortia, dealing with the management of transmission sites:

- Consorzio emittenti Radio Televisive – C.E.R.T.
- Consorzio Antenna Monte Conero
- Consorzio Colle Maddalena
- Consorzio Puglia Basilicata e Molise S.r.l.
- Consorzio Antenna Colbuccaro
- Consorzio Antenna Tolentino

Board of Directors	Name	Function	Date of appointment	Already member of the Board in the period 2014-2016
	[...]	Chairman	11/04/2017	30/06/2014
	[...]	CEO	11/04/2017	30/06/2014
	[...]	Deputy Chairman	11/04/2017	26/10/2016
	[...]	Board member	11/04/2017	30/06/2014
	[...]	Board member	11/04/2017	30/06/2014
	[...]	Board member	11/04/2017	no
	[...]	Board member	11/04/2017	28/04/2016
	[...]	Board member	11/04/2017	no
	[...]	Board member	11/04/2017	28/04/2016
Statutory* Auditors	**Name**	**Function**	**Date of appointment**	
	[...]	Chairman	30/06/2014	
	[...]	Auditor	30/06/2014	
	[...]	Auditor	30/06/2014	
	[...]	Deputy Auditor	30/06/2014	
	[...]	Deputy Auditor	30/06/2014	

*More updated information on Statutory Auditors is not currently available.

As far as the functional structure of Persidera is concerned, in the meeting of 21 July 2016, the Board of Directors of Persidera decided to adopt a new organizational structure aimed at a more efficient management and focus on the business. The new structure is the following:



Media: assigned *ad interim* to [...]. With responsibilities for the innovation, engineering and operation of video platforms. It also ensures the programming, quality control and delivery of the managed audio/video content.

Network: assigned *ad interim* to [...]. With responsibilities for the design, implementation and operation of the broadcast network, management of the transmission infrastructures and related services.

Business Management: assigned to [...], for the development of the portfolio of services, commercial management of clients, revenue assurance and management of the supply chain, linking with the relevant divisions of Telecom Italia.

Administration, Finance & Control: assigned to [...], for ensuring the management of the administrative/accounting processes, fiscal and financial activities, management control, linking with the relevant divisions of Telecom Italia.

Legal & Regulatory: assigned to [...], for legal support, commercial contracts, regulatory issues, representation of the company.

2. **In accordance with paragraphs 5 and 6 of these Commitments, the Divestment Business includes, but is not limited to:**

   a. **the following main tangible and intangible assets:**

Persidera's network consists of three main parts:

- Network Assets;
- Head End;
- Network Operations Centre ("NOC").

i. **Network Assets**

The Network Assets consists of transmission sites, a national fibre backbone, a regional contribution network, an international gateway of interconnection and a satellite hub.

Transmission Sites**:** The network includes around 1.000 antenna sites with digital television equipment for the 5 DVB-T multiplexers. Persidera owns around 25 sites and has the contractual rights to use the remaining ones whereas the equipment is owned by Persidera. All sites are equipped with satellite receivers, radiolink and fully redundant transmission equipment; the most important sites are also equipped with business continuity and on site spare parts. More than 500 sites are equipped with telemetry devices.

National Fiber Backbone: Persidera's high capacity fibre optic backbone consists of a new generation high-capacity network which supports a variety of transmission signals, and has been designed to guarantee maintenance of service under any circumstances.

Contribution: Persidera implemented a national backbone network using IP / SDH (Synchronous Digital Hierarchy) radiolinks. Through this National radiolink network all regional centers are supplied with MUX signals. Persidera's IP/Radiolink Contributions are new generation wired/wireless network for national contributions.

Persidera can count also on a contribution fiber optic network which interconnects regional Points-of-Presence to Rome. The contribution network uses technology and service level agreement of the highest standard and in line with Telecom Italia's optical network.

International Gateway of Interconnection**:** Using optical interconnections with TI Sparkle Network, Persidera can provide high capacity connectivity to hubs in London (Arqiva) and Milano Caldera. International gateways are able to handle any kind of TV signal (IP, ASI, SDI, HD SDI even uncompressed) and deliver it to the ultimate client all over the world.

Satellite Hub: Persidera's satellite hub, based in Rome, allows a point-to-point and point-to-multipoint distribution of audio/video signals in live or on demand mode, both in DVB–S and DVB-S2 standard. The hub is used both for broadcasting (as backup) and for contribution purposes.

ii. Head End

Persidera's IP based head end handles all contribution signal formats (ASI, SDI, IP, etc.) preparing them for all distribution platforms (DTT, satellite and web) through the same infrastructure.
Persidera head end infrastructure is based in Rome, Via della Pineta Sacchetti 229 and currently manages 7 multiple transport streams:

- 4 Dvb-T MUXes SFN at 22.4 Mbps and 1 Dvb-T MUX SFN at 24.9 Mbps;

- 3 satellite transponders, respectively at 54, 17 and 12 MHz.

iii. Network Operations Centre

Based in Rome, Persidera's NOC is in charge of all configuration, management and real-time monitoring of terrestrial and satellite broadcasting network.

The NOC provides first-level support for trouble-shooting and represents the single contact point for all TIMB's external customers and for all technical problems faced by the network operator with minimal manual intervention.

b. the following main licences, permits and authorisations:

Persidera has a general authorization for TV broadcasting in DTT on a national basis, according to article 25 of legislative decree no. 259/2003 (the "Communications Code") and article 15 of the TUSMAR.
On 28 June 2012, following the analogue switch-off, Telecom Italia Media Broadcasting S.r.l. and Rete A were assigned by MISE digital frequency rights for a 20-year duration, till the end of 2032, for the operation respectively of 3 and 2 DVB-T multiplexers on a Single Frequency Network basis. In particular:

- Persidera is assignee of frequency rights as a result of some Determine Direttoriali of the Ministry of Economic Development (reference no. DGSCER/Div. III/53913 of June 28, 2012, as amended by reference no. DGSCER DIR/51843 of August 6, 2013 and reference no. DGSCER DIR/58122 of September 26, 2013 for National MUX TIMB1, TIMB2 and TIMB3;

- Effective from December 1st 2014, Persidera has merged by incorporation its fully controlled subsidiary Rete A S.p.A., a national digital terrestrial network operator assignee of frequency rights as result of some Ministry of Economic Development's Determine Direttoriali (reference no. DGSCER/Div. III/53916 of June 28, 2012, as amended by reference no. DGSCER/Div. III/25593 of April 9, 2013 for National

MUX RETEA1 and RETEA2). The frequencies authorisations have been transferred from Rete A to Persidera on 26 January 2015 (reference no. mise.AOO_COM.REGISTRO UFFICIALE(U).0004096).

Four muxes have a capacity of about 22 Mbps; the fifth mux has a capacity of about 24 Mbps, for a total of 112.4 Mbps.

Persidera has the following additional authorizations:

- Resale of capacity on satellite (n. DGPGSRIII/256R/257C/004/2004 e n. DGPGSRIII/0675R/0676C/0090/2010);

- Resale of capacity on optic fiber 14 July 2008 (*Presa d'atto* 29/10/2008 prot. 029435).

c. the following main contracts, agreements, leases, commitments and understandings

Customer name	Belong to your group (Yes or No)	FTA/Pay-TV/both	HD content (Yes or No)	Contract duration	Contract expiry date	Termination clause(s)	Exclusivity clause(s)
[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]

Customer name	Belong to your group (Yes or No)	FTA/Pay-TV/both	HD content (Yes or No)	Contract duration	Contract expiry date	Termination clause(s)	Exclusivity clause(s)
[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]

Persidera agreements with its main customers are related to the technical services ("Technical Services") for the broadcasting channels. The technical services consist of one or more of the following activities:

(i) play-out services, preparation and broadcasting of the materials (i.e. the audiovisual content that makes up the channels' schedule or are accessories thereof, including programmes, interstitials (e.g., themes, promos, on-air elements, graphics, animated graphics, signs and all short video contributions), advertising materials, etc.

(ii) constituting the channels, according to the "playlist" (i.e. the transmission plan for the channels, detailed for each event/programme specifying the materials to be played out in consecutive chronological order);

(iii) the reception and handling, including live, of external signals;

(iv) other ancillary services.

Persidera agreements with **its main suppliers** are the following:

- Agreements for hosting services for Persidera transmission equipment on providers' transmission sites: (the mail suppliers are: [...] (see below);
- Framework agreements for maintenance of Persidera transmission equipment (the main suppliers are: [...]);
- Satellite Transmission services: [...];
- Fiber optic and radio –link transmission services: [...] (see below);
- Outsourcing services for service desk/IT/playout management ([...]).

Please find below further details about the contracts with [...] and [...] (including duration, expiry date, change of control and termination clauses).

(i) <u>Contracts with [...]</u>

[...]

(ii) *Contracts with [...]*

[...]

d. the following customer, credit and other records:

A list of Persidera's customers is provided below: [...]

According to Persidera's Annual Report 2015, as of 31 December 2015 it had commercial credits for about EUR [...]; commercial debts vis-à-vis third parties amounted to about EUR [...].

e. the following Personnel:

As of 26 April 2017, Persidera has [...] employees.

f. the following Key Personnel:

For Persidera's key personnel, see above the information on the managers at the head of each division of Persidera.

3. The Divestment Business shall not include:

Not applicable.

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

Not applicable to Vivendi's knowledge.