



EUROPEAN COMMISSION
DG Competition

***Case M.9674 -
VODAFONE ITALIA /
TIM / INWIT JV***

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: 06/03/2020

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EUROPEAN COMMISSION

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PUBLIC VERSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Subject: **Case M.9674 – VODAFONE ITALIA / TIM / INWIT JV**
Commission decision pursuant to Article 6(1)(b) in conjunction with
Article 6(2) of Council Regulation No 139/2004¹ and Article 57 of the
Agreement on the European Economic Area²

Dear Sir or Madam,

- (1) On 17 January 2020, the European Commission (the “Commission”) received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Vodafone Europe B.V. and Telecom Italia S.p.A (“TIM”) will combine into a newly created joint venture their passive mobile telecommunications infrastructure businesses in Italy (the “Transaction”).³

1. THE PARTIES

- (2) Vodafone Europe B.V. is part of the Vodafone Group, which operates telecommunications networks and offers telecommunications and other services in a number of countries across the globe. Within the EU, Vodafone is active in ten Member States. In particular, Vodafone Italia S.p.A. (“Vodafone”) provides mobile and fixed telecommunications services to consumers and businesses in Italy.

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

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

³ Publication in the Official Journal of the European Union No C29, 28.01.2020, p. 13.

Vodafone Italia also owns its mobile network that consists of approximately 11 000 passive sites and related infrastructure.

- (3) TIM provides mobile and fixed telecommunications services to consumers and businesses in Italy. Outside Italy, TIM is mainly active in Brazil. TIM owns the passive infrastructure of its mobile network in Italy through Infrastrutture Wireless Italiane S.p.A. ("INWIT"), a publicly listed, 60.33% owned subsidiary. INWIT operates approximately 11 000 passive infrastructure sites hosting equipment mainly for mobile network operators ("MNOs") and other providers of electronic communication services.
- (4) Vodafone, TIM and INWIT are designated hereinafter as "Parties".

2. THE TRANSACTION

- (5) Pursuant to a Framework Agreement executed on 26 July 2019, the Parties intend to combine their passive infrastructure operations in Italy into a jointly controlled company (hereinafter, the "Joint Venture", the "JV" or "INWIT").
- (6) For this purpose, Vodafone Italia has created a separate legal entity, Vodafone Towers S.r.l. ("VOD Towers"), to which it has contributed its passive infrastructure operations. INWIT will acquire a minority participation (43.4%) in VOD Towers against the payment of a cash consideration. VOD Towers will then merge into INWIT. As a result, the Parties will each hold shares equal to approximately 37.5% of INWIT's capital,⁴ whilst the remaining shares will be free-floating.⁵ The shareholders of INWIT will then adopt Amended By-Laws and the Parties will execute a Shareholders' Agreement.
- (7) Finally, INWIT will execute with each of TIM and Vodafone Italia a Master Service Agreement ("MSA") for the provision of hospitality services, for a term of [...] years, with tacit renewal clause for an additional [...] years. Under the terms of the MSAs:
 - (a) With respect to hospitality services on existing macro-sites⁶ [...]:
 - (i) As result of the Transaction, INWIT will manage around 22 000 existing macro sites. [...].
 - (ii) [...].
 - (iii)[...].
 - (iv)[...].
 - (v) [...].⁷ [...].

⁴ [...].

⁵ This step of the Transaction is subject to the so called "whitewash procedure", which requires the approval of the minority shareholders, to avoid the need by Vodafone and TIM to make a tender offer over the totality of the shares of INWIT.

⁶ For a definition of macro-sites, see paragraph (37).

⁷ [...].

- (vi)[...].
- (b) With respect to hospitality services on new macro sites or small cells⁸, [...]:
 - (i) [...].
 - (ii) [...], the Parties grant INWIT the status of preferred supplier for the provision of services on new sites, [...].
- (c) [...], each of the Parties commit to entrust INWIT the provision of hospitality services on macro sites and small cells, as well as fiber backhaul services, [...].
- (d) [...].
- (e) [...]:
 - (i) [...].
 - (ii) [...].
- (8) Thus, the MSAs contain several provisions which afford preferential rights to the Parties to access the sites managed by the Joint Venture. The rationale of these provisions is to ensure that INWIT's ability to offer hospitality to third parties on any of the sites contributed by the Parties is restricted to the space that the Parties will leave free after the Parties have activated the passive sharing. Thus such provisions are functional to the additional agreements entered into by the Parties described in Section 3.3. And in particular to the agreement related to passive sharing.
- (9) The MSAs will be taken into account in the assessment of the effects of the Transaction. On the one hand, these are long-term supply contracts, which arguably go beyond what normally required in a transitory period for the implementation of a transaction. On the other hand, being these binding contracts that will define the rights of the Parties over the assets managed by the Joint Venture, the MSAs will have an influence over the competitive behaviour of the Joint Venture.

3. THE CONCENTRATION

3.1. Joint control

- (10) Post-Transaction INWIT will be jointly controlled by Vodafone and TIM within the meaning of Article 3(1)(b) of the Merger Regulation for the following reasons:
 - (a) First, the Parties will each hold 37.5% of INWIT's capital and thus together hold more than 50%.

⁸ In respect to small cells, see paragraph (38).

- (b) Second, the Amended By-Laws set out, in particular, the following governance principles:
- The Board of Directors will consist of 13 members appointed following a list mechanism. According to this mechanism, if two lists obtain each the votes of at least 25% of INWIT capital (but less than 50% - which would be the case for the lists presented by Vodafone and TIM), such lists appoint each 5 directors. The remaining directors are appointed from the minority lists. Thus the Parties will be able to appoint each 5 directors.
 - A number of reserved matters, including, among others, the budget and the business plan, the nomination of the CEO and the Chairman, could be decided by the Board only with a supermajority of 9 directors. Thus, in principle, the favourable vote of directors nominated both by TIM and Vodafone is required.
- (c) Third, pursuant to the Shareholders' Agreement, TIM and Vodafone have agreed to appoint each an equal number of member of the Board of Directors of INWIT. For the first term, TIM designates the CEO, while Vodafone designates the Chairman and the CFO. Subsequently, in the absence of agreement, a rotation mechanism for the designation of key managers is applied between Vodafone and TIM. Finally, a three years lock-up period is foreseen on any sale of shares of INWIT.⁹

3.2. Full-functionality

- (11) The Parties submit that the proposed Joint Venture would not be full-function, for the following reasons:
- (a) the primary purpose of the Joint Venture would not be the formation of an independent tower company active on the Italian market; rather it would be to hold and manage the Parties' combined passive infrastructure assets for the benefit of the Parties, with third-party sales representing an ancillary element;
 - (b) the Joint Venture's third party sales are expected to remain below [...] % and the Joint Venture is expected to remain economically dependent on sales to its parent companies in the long-term;
 - (c) the governance and contractual rights of the Joint Venture's parents will significantly limit the Joint Venture's operational autonomy, in that the Joint Venture will need to prioritise the critical infrastructure needs of TIM and Vodafone over any commercialisation of assets towards third parties;
 - (d) the relationship between the Joint Venture and the parent companies is not "truly commercial" in nature, as the Parties enjoy preferential super anchor tenant rights, which would not be made available on the market by an independent tower company;

⁹ In the past the Commission has considered that 3 years was a sufficient period of time for establishing the long-lasting change of control pursuant to Article 3 of the Merger Regulation (see Commission decision of 8 May 2014 in Case M.6905 – *INEOS / SOLVAY / JV*, recital 6).

- (e) finally, the fact that the Joint Venture is listed on the Italian Stock Exchange and does have third party minority shareholders does not have any impact on the above-mentioned analysis.
- (12) The Commission considers that Post-Transaction INWIT will constitute a full-function Joint Venture within the meaning of Article 3(4) of the Merger Regulation for the following reasons.

3.2.1. *Sufficient Resources*

First, the Joint Venture will have sufficient resources to operate independently on the hospitality services markets.¹⁰ INWIT is an existing company, listed in the Italian stock exchange and after the Transaction about 25% of its share capital will continue to be held by the public and INWIT will thus remain a publicly traded company. INWIT already has and will continue to have a management dedicated to its day-to-day operations with “managerial autonomy” and will continue to have access to sufficient resources (including its own finance, staff and assets) to conduct its business activities independently. In any case, the Parties do not contest this element of the analysis.

3.2.2. *Presence on the market*

- (13) INWIT will not take over one specific function within the parent companies’ business activities and will have its own presence on the market.¹¹
- (14) As it will be better explained at following Section 7.2, already today both INWIT and VOD Towers (albeit to a lesser extent) offers telecommunications hospitality services to third parties in Italy and post-Transaction the Joint Venture will continue to be active in the hospitality services markets in Italy, similarly to any other operator on the same markets. The Parties have clearly stated that INWIT will be able to supply third parties on market terms as it sees fit and that it will be better placed to monetise Vodafone’s passive infrastructure by increasing third party tenancies (see below at section 7.5.2).
- (15) Concerning the sales by the JV to the parent companies, the essential question is whether the JV will be geared to play an active role on the market and can be considered economically autonomous from an operational viewpoint.¹² In case of significant sales of the JV to the parents, a finding of operational autonomy is possible if the relationship between the JV and its parents is truly commercial in character as “*the greater the proportion of sales likely to be made to the parents, the greater will be the need for clear evidence of the commercial character of the relationship*”.¹³

¹⁰ Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, paragraph 94 (OJ C 95, 16.4.2008, p. 1).

¹¹ Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, paragraph 95.

¹² Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, paragraph 98.

¹³ Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, paragraph 98.

- (16) Therefore, it is important to consider whether INWIT deals with the Parties at arm's length. The simple fact that the Parties reserve for themselves a large proportion of the JV's infrastructure, which is reflected in the high percentage of revenues expected to be realised with the Parties, does not as such exclude that the relationship between the JV and the parents is at arm's length.
- (17) In this respect, in the present case there are strong indications that the Parties will have access to INWIT's infrastructure at market terms.
- (18) While the Parties can reserve for themselves a large part of the JV's infrastructure, as they have priority access to most of its sites, they still have to pay a market price for that access. Indeed, under the MSAs, to access INWIT's infrastructure the Parties will [...]. The [...] fees paid by the Parties appears to be the market remuneration for the preferential super anchor tenant rights that the Parties will enjoy on INWIT's infrastructure. Nothing in the Commission's investigation suggests that similar preferential rights could not be granted by independent tower companies to a third-party customer, with a similarly adequate remuneration.
- (19) In addition, the fact that the Parties' access to INWIT's infrastructure will be subject to market terms is confirmed by the reports of independent experts, who – on the basis of the Italian stock market regulations – were called to evaluate the contractual relations between INWIT and the Parties. Notably, an official report – established on the basis of the evaluation of independent experts – indicates that the economic terms of the MSAs with TIM and Vodafone are in line with market values and would have likely been applied even if the Transaction was concluded with third parties.¹⁴
- (20) Therefore, it appears that the relationship between the JV and the Parties is truly commercial in character.
- (21) For a finding of operational autonomy, it is also relevant that INWIT still has available capacity to offer to third parties and foresees, in addition, to build new sites at the request of third parties.¹⁵

¹⁴ See the evaluation in “Documento informativo relativo ad operazione di maggiore rilevanza con parti correlate redatto ai sensi dell'art. 5 del Regolamento adottato da CONSOB con delibera n. 17221 del 12 marzo 2010”

(<https://www.inwit.it/sites/default/files/INWIT%20Documento%20Informativo%20OPC%20DEF.pdf>), where it is stated that: “Ai sensi dell'art. 14 del Regolamento OPC, la convenienza economica dell'Operazione è stata oggetto di particolare attenzione per il Comitato PC in considerazione della sottoposizione di Inwit a direzione e coordinamento di TIM. Al riguardo, il Comitato OPC ha ritenuto che le condizioni dell'Operazione siano congrue e ragionevoli per Inwit e che appare fondato affermare la sussistenza della convenienza economica dell'Operazione [inclusi gli MSA] in quanto, anche secondo quanto risulta dal Parere di Equità: (a) i termini economici costituiscono condizioni in linea con i valori di mercato, che sarebbero stati verosimilmente applicati anche qualora l'Operazione fosse stata conclusa con un soggetto diverso da una parte correlata” (page 37; emphasis added).

¹⁵ Commenting the results of the first three trimesters of 2019, INWIT's CEO publicly declared that the JV will have the resources and capacity to promote the development of 5G and new wireless technologies in Italy, supporting the projects of all operators in the sector: “I dati dei nove mesi del 2019 confermano per INWIT una performance industriale che continua a garantire la crescita della società. INWIT è stata fortemente impegnata, e continua ad esserlo, nel perfezionamento dell'accordo di partnership di lungo periodo con Tim e Vodafone che porterà a breve alla nascita del primo operatore infrastrutturale in Italia. Una realtà che avrà le risorse e le capacità per sostenere lo sviluppo del 5G e delle nuove tecnologie wireless, sostenendo i progetti di tutti i soggetti che operano nel settore, e permettendo al Paese di confermare la leadership che si è conquistata questi ultimi anni nella telefonia mobile”

- (22) In this context, the Commission notes that the capacity reservation on INWIT's infrastructure appears to be intended to protect the Parties, who need access to INWIT's key infrastructure, and does not appear to be necessary to allow INWIT to operate on the market (where, as discussed below at Section 7.5.2, there is third parties' demand for hospitality services on INWIT's infrastructure). Indeed, before the Transaction INWIT is already operating autonomously on the market, offering a large (and growing) part of its infrastructure to third parties notwithstanding the capacity reservation already enjoyed by TIM.
- (23) It thus appears that, on balance, regardless of the amount of sales to the Parties, INWIT is geared to play an active role on the market and can be considered economically autonomous from an operational viewpoint.

3.2.3. *Long-lasting nature*

- (24) Finally, the Joint Venture is intended to operate on a lasting basis.¹⁶ INWIT has an indefinite duration and the combined business plans provided by the Parties cover the period up to [...], in line with the duration of the MSAs for the provision of hospitality services, which have a term of [...] years (with tacit renewal clause for an additional [...] years). The Shareholders' Agreement has a duration of [...] years but provide for its possible renewal during a [...] period before its expiration.

3.2.4. *Conclusion on full-functionality*

- (25) Therefore, the Commission concludes that the Transaction will lead to the creation of a joint venture performing on a lasting basis all the functions of an autonomous economic entity pursuant to Article 3(4) of the Merger Regulation and thus constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

3.3. **Scope of the concentration**

- (26) Under the Framework Agreement, the Transaction is instrumental to the implementation of a series of other agreements between the Parties:¹⁷
- (a) **A Passive Sharing Agreement**, concerning the sharing of sites and passive mobile network equipment between the Parties. It provides for the extension of the existing passive sharing arrangements between the Parties¹⁸ on a nationwide basis for a term of [...] years, with tacit renewal clause for an additional [...] years. Also INWIT will be party to this agreement, as successor of TIM in some of the existing arrangements.
 - (b) **An Active Sharing Agreement**, concerning the sharing of active mobile network equipment between the Parties. It provides for the implementation of an active sharing of the Parties' respective existing 2G and 4G networks, as

(<https://www.inwit.it/it/content/esaminato-CdA-resoconto-intermedio-di-gestione-30-settembre-2019>”; emphasis added).

¹⁶ Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, paragraph 103.

¹⁷ [...].

¹⁸ Since 2007, the Parties have a number of passive sharing arrangements, mainly in municipalities with a population of up to 35 000 inhabitants (and in certain cases up to 50 000 inhabitants). [...].

well as the joint roll-out of a 5G network, in municipalities with a population of up to 100 000 inhabitants. The agreement will have the duration of [...] years, with tacit renewal clause for an additional [...] years.

- (c) A **Backhauling Agreement**, setting out the terms and conditions for the supply of backhauling services by the Parties to each other via their existing fiber connections.¹⁹ The agreement will have the duration of [...] years, with tacit renewal clause for an additional [...] years.
- (27) According to the Parties, the Transaction and the various agreements mentioned above (together the “Operation”) all serve the rationale of accelerating 5G deployment by the Parties, while creating synergies in terms of CAPEX and OPEX investments.²⁰
 - (28) The Commission has received third party submissions claiming that the scope of the investigation in the present case under the Merger Regulation should not be limited to the Transaction, but it should extend to entire Operation.
 - (29) In this respect, the Commission notes that agreements entered into by the parties to a concentration that do not form an integral part of a concentration (because they do not establish control within the meaning of Article 3(2) of the Merger Regulation and do not carry out the main object of the concentration), but still restrict the parties' freedom of action in the market, can be covered by the assessment in a decision declaring the concentration compatible with the common market.²¹ This is the case if they qualify as ancillary restraints.
 - (30) For a contractual arrangement to be qualified as an ancillary restraint, it needs to satisfy the following two legal criteria:
 - (a) being directly related to the implementation of the concentration, i.e. economically related to the main transaction and intended to allow a smooth transition to the changed company structure after the concentration, and
 - (b) being necessary to the implementation of the concentration, i.e. in the absence of that agreement, the concentration could not be implemented or could only be implemented under considerably more uncertain conditions, at substantially higher cost, over an appreciably longer period or with considerably greater difficulty.
 - (31) Pursuant to paragraph 11 and following of the Commission Notice on restrictions directly related and necessary to concentrations, restrictions are not directly related and necessary to the implementation of the concentration simply because the parties regard them as such.²² As clarified by the Court, “[w]here it is not possible to

¹⁹ [...].

²⁰ See [...].

²¹ Commission Notice on restrictions directly related and necessary to concentrations, OJ C 56, 5.3.2005, p. 24–31, paragraph 10.

²² This clear indication in the Notice differentiates the analysis of the necessity criterion for the analysis of ancillary restraint from the one used for the purpose of establishing whether a series of transactions constitute a single concentration (see Commission decision of 27 June 2019 in Case M.8179 – Canon/Toshiba Medical Systems Corporation).

*dissociate such a restriction from the main operation or activity without jeopardising its existence and aims, it is necessary to examine the compatibility [with EU competition rules] in conjunction with the compatibility of the main operation". However, "the fact that that operation is simply more difficult to implement or even less profitable without the restriction concerned cannot be deemed to give that restriction the 'objective necessity' required in order for it to be classified as ancillary".*²³ As it appears from the examples set out in the Commission Notice on restrictions directly related and necessary to concentrations as well as from the Commission practice,²⁴ ancillary restraints normally consist in agreements in the favour of the joint venture or the target company (such as non-compete clause, supply agreements, etc.), which would enable it to operate in the market in a viable manner especially in a transitory period.

- (32) In this context, the Commission considers that it cannot be established that the Passive Sharing Agreement, the Active Sharing Agreement and the Backhauling Agreement constitute ancillary restraints. Indeed, they do not appear to be directly related to the implementation of the Transaction in the sense of paragraph (30)(a), as they regulate relationships between the Parties and the Transaction could be implemented even without them.
- (33) Further, it cannot be concluded that the necessity criterion set out in paragraph (30)(b) would be met with respect to the Passive Sharing Agreement, the Active Sharing Agreement and the Backhauling Agreement, as the Transaction could be implemented even in their absence without jeopardising its existence and aims. To the contrary, it appears that it is the Joint Venture that is instrumental to the implementation of the Passive Sharing Agreement and the Active Sharing Agreement: without the Joint Venture it may indeed be more costly or longer to create a common grid of the Parties through the those agreements.

3.4. Conclusion

- (34) Therefore, the Transaction constitutes a concentration within the meaning of Articles 3(1)(b) and 3(4) of the Merger Regulation. The scope of the concentration whose effects will be assessed in this Decision will be limited to the agreements bringing out the Transaction, that is to say the Amended By-Laws and the Shareholders' Agreement, together with the MSAs.²⁵

4. EU DIMENSION

- (35) The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 000 million (Vodafone 50 254 million, TIM 18 934 million).²⁶ Each of Vodafone and TIM has an EU-wide turnover in excess of EUR 250 million (Vodafone [...] million, TIM 14 271 million), but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member

²³ Judgment of 11 September 2014, MasterCard and Others v Commission, C-382/12 P, EU:C:2014:2201, paragraphs 90-91.

²⁴ E.g. Commission decision of 10 August 1992 in Case IV/M.206 – Rhône-Poulenc/SNIA, paragraph 8.3.

²⁵ For the sake of clarity, antitrust rules, in particular Article 101 TFEU, will continue to apply to the Passive Sharing Agreement, the Active Sharing Agreement and the Backhauling Agreement, regardless of the outcome of the present assessment under the Merger Regulation.

²⁶ Turnover calculated in accordance with Article 5 of the Merger Regulation.

State. The notified operation therefore has a Union dimension pursuant to Article 1(2) of the Merger Regulation.

5. INDUSTRY OVERVIEW

5.1. Passive network infrastructure

- (36) Wireless telecommunications networks are composed of a number of radio access network sites, essentially a mast with an antenna and a radio-frequency system, linked to a core network by backhaul connections.
- (37) There are essentially two types of radio access network sites: ground based towers and rooftop towers (together referred to as “macro-sites”). These sites have been originally built for captive use by network operators, but a market for hospitality services on macro-sites has been gradually opened.
- (38) Recently, to ensure reliable coverage in buildings or dense urban areas, macro-sites have been supplemented by the use small cells and distributed antenna systems (“DAS”; together, with small cells, “micro-sites”). Micro-sites are expected to be used more prominently in 5G mobile networks and a market for the supply of hospitality services on these sites has started to develop.
- (39) Each radio access network site covers a limited area and has a maximum capacity in terms of physical space on which equipment can be housed as well as in terms of electromagnetic fields (“EMF”) limits.
- (40) Due to the architectonic configuration of Italian cities, with several historical buildings, often space on sites is limited or the use for telecommunications purposes is restricted.
- (41) Further, the legislation on EMF limits in Italy is very stringent. It imposes the same EMF limits (i.e. 20 V/m or 6 V/m depending on the target measurement points stated by law) irrespective of types of uses of antennas. Accordingly, the same EMF limits apply for both broadcasters and telecom operators, as well as for both macro and micro-cells (though the low power and limited coverage of microsites allows for simplified EMF assessments). The Agenzia Regionale per la Protezione dell’Ambiente (“ARPA”) is the Italian regional body tasked with ensuring fulfilment of EMF obligations as well as giving prior authorisation for the installation of additional antennas on a site by an operator after the latter has provided ARPA with the relevant simulation and impact assessment, as prescribed by law. To obtain the prior authorisation from ARPA, current tenants on a site commonly collaborate with, and provide information on their equipment to, prospective tenants on the site, including in respect of the emissions and physical features (e.g. antenna height) of the equipment on the site, so as to enable the potential new tenants to prepare a proper simulation to be submitted to ARPA. The suppliers of hospitality services on the site are usually not involved in these discussions but have an interest in facilitating the process to increase their revenues.²⁷ The challenges for operators to build new sites have been clearly described by the Italian Competition Authority in *Segnalazione* n. AS1551.

²⁷ Agreed minutes of the conference call of 26 November 2019 with Wind Tre, paragraphs 3 to 11.

- (42) The supply of hospitality services on sites include the rental of the space on the passive infrastructure, for which the customers pay the supplier a hosting fee. Normally the provision of these services is regulated by framework contracts of long duration (between 6²⁸ and 15 years) and the possibility of automatic renewal at the first expiration. The framework agreements are then supplemented by specific hosting agreements for relevant sites so that such relationships are governed by both the terms of the relevant overarching framework agreement and the specific hosting agreements pertaining to the relevant sites in question.
- (43) A specific type of framework agreements are the “anchor tenant arrangements”. These are usually the result of the outsourcing of the management of previously captive sites to a third party. In this context, in order to keep some degree of control over the key network input constituted by the site, the customer usually reserves some preferential treatment or veto rights over the asset.

5.2. Suppliers of hospitality services on passive network infrastructure

- (44) There is a range of providers of hospitality services.
- (45) Firstly, sites are owned and managed by MNOs, which use them primarily for their own network purposes but also provide access to third parties. In Italy, there are currently four MNOs managing, operating and, to a different extent, offering access to sites: TIM, Vodafone, Wind Tre S.p.A. (“Wind Tre”) and Iliad Italia S.p.A. (“Iliad”).
- (46) As mentioned earlier, TIM operates its 11 000 macro-sites through a separate company, INWIT. The same process of spin-off of the towers operations into a separate company has been recently undertaken by Wind Tre, with the creation of CK Hutchison Networks Italia S.p.A. (“CKHNI”), which manages around 9 000 macro-sites. Vodafone also owns its mobile network that consists of approximately 11 000 macro sites and related infrastructure.
- (47) Secondly, sites are owned and managed by independent wireless infrastructure providers, known as “independent TowerCos”. In Italy there are three independent TowerCos: Cellnex Telecom, S.A. (“Cellnex”), Ei Tower S.p.A. (“Ei Tower”) and RaiWay S.p.A. (“RaiWay”).
- (48) **Cellnex** started providing hospitality services in Italy in 2015. On 26 March 2015, Cellnex closed the acquisition of 7 377 macro-sites (the “Galata business”) from the mobile operator WIND S.p.A. (“WIND”, today merged into Wind Tre²⁹). WIND retained a 10% non-controlling shareholding over the Galata business. The sale agreement included a tower services agreement for these sites with WIND for period of 15 years, renewable for an additional period of 15 more years, and foresaw the deployment of additional sites that would have allowed WIND to accelerate the offer of new mobile broadband services.³⁰
- (49) On 7 May 2019, Iliad (which operates a mobile network not only in Italy but also in France and Ireland) announced that it entered into a series of agreements with

²⁸ [...].

²⁹ Commission decision of 1 September 2016 in case M.7758 – *Hutchison 3G Italy / Wind / JV*.

³⁰ See https://www.cellnextelecom.com/content/uploads/2015/03/26032015_TorresWindclosing-EN1.pdf at

Cellnex to form a strategic partnership with respect to Iliad's passive mobile telecom infrastructure in France and Italy.³¹ In total, Iliad agreed to transfer under the control of Cellnex 7 900 macro-sites (5 700 in France, 2 200 in Italy).³² As part of the contemplated transaction, Iliad entered into long-term service contracts with Cellnex. These agreements comprise the provision of hosting services over mobile telecom infrastructure as well as the construction of new sites through a build-to-suit program encompassing 6 400 macro-sites (4 500 in France and 1 900 in Italy) of which 3 500 committed by Iliad (2 500 in France and 1 000 in Italy).

- (50) **Ei Towers'** activity consists of managing a portfolio of approximately 3 300 infrastructures, of which 2 300 broadcasting sites and approximately 1 000 mobile macro-sites.³³ **Rai Way** is a subsidiary of RAI, Italy's state-owned television and radio broadcaster, and manages over 2 300 macro-sites across Italy.³⁴ Thus, Rai Way and Ei Towers mainly provide coverage and signal for TV and radio broadcasting through broadcasting towers.

5.3. Demand-side of hospitality services on passive network infrastructure

- (51) Sites are key inputs for building two types of wireless telecommunications networks: mobile telecommunications networks and fixed-wireless access (“FWA”) networks.
- (52) As mentioned, in Italy there are currently four MNOs: TIM, Vodafone, Wind Tre and Iliad. They do not only manage and operate sites, but also use these sites for their supply of telecommunications services.
- (53) **TIM** is the formerly state-owned incumbent and was founded in August 1994 through the merger of five companies: SIP, Iritel, Telespazio, Italcable and Sirm. Based on data published by the Italian telecoms regulator, as of September 2019 TIM was the second largest provider of retail mobile telecommunications services by number of SIM cards (excluding machine to machine (“M2M”) subscriptions; it was the market leader if M2M subscriptions are included).³⁵ TIM also provides mobile virtual network operators (“MVNOs”) with wholesale access to its mobile network. TIM’s mobile network is based on the 2G, 3G and 4G technologies, but it has launched 5G pilots in Rome, Turin and Naples. TIM is also active in the provision of fixed telephony and fixed internet services, both at retail and wholesale level, based on its copper and fiber networks (including recently FWA technology)³⁶ and, based on data published by the Italian telecoms regulator, as of September 2019 it was the market leader in the supply of retail fixed internet services.
- (54) **Vodafone** was formed in 1994 with the name of Omnitel as the first alternative to the market leader TIM. In 2001, Omnitel was acquired by Vodafone Group and in 2003 it changed its name to Vodafone Italia. Based on data published by the Italian telecoms regulator, as of September 2019 Vodafone was the third largest provider of retail mobile telecommunications services by number of SIM cards

³¹ See press release at https://www.iliad.fr/presse/2019/CP_070519_Tower_Eng.pdf

³² See [...].

³³ See <https://www.eitowers.it/azienda/art/10/Profilo.shtml>.

³⁴ See http://www.raiway.it/it_IT/web/guest/tower-rental

³⁵ AGCOM, Communication Markets Monitoring System, no. 4/2019 available at <https://www.agcom.it/documents/10179/4386532/Allegato+23-1-2020/7b245499-7f9f-45af-80c0-76b41a197b7c?version=1.0>

³⁶ Parties’ reply to RFI 21, question 1.

(excluding M2M subscriptions; it was the second largest if M2M subscriptions are included).³⁷ Vodafone also provides MVNOs with wholesale access to its mobile network. Vodafone's mobile network is based on the 2G, 3G and 4G technologies, but it has launched 5G pilots in the Milan metropolitan area (including 28 surrounding localities), Rome, Turin, Bologna and Naples. Vodafone also delivers fixed telecommunications services to consumers and businesses without using FWA technology yet and, based on data published by the Italian telecoms regulator, as of September 2019 it was the second largest supplier of retail fixed internet services.

- (55) **Wind Tre** was created in 2016 through a merger between two MNOs previously active in Italy, WIND and H3G S.p.A.³⁸ Since 2018 it is controlled by CK Hutchison Holdings Limited.³⁹ Based on data published by the Italian telecoms regulator, as of September 2019 Wind Tre was the market leader in the supply of retail mobile telecommunications services by number of SIM cards (excluding M2M subscriptions; it was the third largest player if M2M subscriptions are included).⁴⁰ Wind Tre also provides MVNOs with wholesale access to its mobile network. Wind Tre's mobile network is currently based on the 2G, 3G and 4G technologies. Wind Tre also delivers fixed telecommunications services to consumers and businesses and, based on data published by the Italian telecoms regulator, as of September 2019 it was the fourth largest supplier of retail fixed internet services.

- (56) **Iliad** entered the Italian market in 2016 as beneficiary of the remedies, whose implementation was condition for the clearance of the merger between Wind and H3G. These remedies consisted of a number of elements designed to allow the entry of a fourth MNO into the Italian market, that is in particular: (1) the transfer of spectrum and the option to acquire/co-locate on macro access sites; (2) an option to enter into a RAN sharing agreement; and (3) a national roaming agreement. Iliad launched its mobile commercial offer on 28 May 2018.

- (57) Since 25 July 2019, a fifth MNO is active in Italy, Fastweb S.p.A. ("Fastweb"). **Fastweb**, an indirect wholly owned subsidiary of Swisscom AG, is active in the Italian mobile market since 2007, originally as MVNO. Following the progressive acquisition of several blocks of high frequency spectrum, in June 2019 Fastweb signed a strategic co-investment with Wind Tre for a joint roll-out of a 5G network starting from 2020. The agreement will lead to the deployment of a shared 5G radio access and backhauling network in Italy, including Wind Tre and Fastweb macro and small cells, connected through dark fiber from Fastweb, to be deployed nationwide, with a targeted coverage of 90% of the population by 2026. Wind Tre will manage the 5G network, while both operators will remain independent in the commercial and operational use of the shared infrastructure. As part of the agreement, Wind Tre will provide Fastweb roaming services on Wind Tre's existing network (4G and legacy technologies), while Fastweb will provide Wind Tre wholesale access to Fastweb's fiber network. Indeed, Fastweb is also active in the supply of fixed internet services via its fiber network, as well as via FWA technology. The latter is the result of the

³⁷ AGCOM, Communication Markets Monitoring System, no. 4/2019 available at <https://www.agcom.it/documents/10179/4386532/Allegato+23-1-2020/7b245499-7f9f-45af-80c0-76b41a197b7c?version=1.0>

³⁸ See Commission decision of 1 September 2016 in case M.7758 – *Hutchison 3G Italy / Wind / JV*.

³⁹ See Commission decision of 30 August 2018 in case M.9041 – *Hutchison 3G Italy / Wind Tre*.

⁴⁰ AGCOM, Communication Markets Monitoring System, no. 4/2019 available at <https://www.agcom.it/documents/10179/4386532/Allegato+23-1-2020/7b245499-7f9f-45af-80c0-76b41a197b7c?version=1.0>

acquisition of Fastweb of the FWA branch of Tiscali S.p.A. in July 2018. Based on data published by the Italian telecoms regulator, as of September 2019 Fastweb was the third largest supplier of retail fixed internet services, but it was the second largest, after TIM, in the segment for speeds between 10 and 30 Mbps and above 100 Mbps.

- (58) Other than Fastweb, there are two large suppliers of FWA services in Italy: Linkem S.p.A. (“Linkem”) and Eolo S.p.A. (“Eolo”).
- (59) **Linkem** is a provider of FWA services to residential and business customers that focuses mainly on metropolitan areas, but also in digital divide areas. Linkem has been awarded 3.4-3.6 GHz frequencies to provide its services until 2029 and currently uses LTE technology to provide last-mile connectivity to end-customers. This may differ from other FWA providers who use proprietary technologies.⁴¹ In December 2019 Linkem and Fastweb signed a strategic agreement for the simultaneous deployment of two separate 5G radio access networks (one leveraging Linkem’s spectrum and one leveraging Fastweb’s 26 GHz), and for the reciprocal provision of network slice services. Based on data published by the Italian telecoms regulator, as of September 2019 Linkem was the fifth largest supplier of retail fixed internet services (at distance from the fourth), but it was the second largest, after TIM, in the segment for speeds between 30 and 100 Mbps.
- (60) **Eolo** is provider of FWA services in rural areas and small urban centres (i.e. less than 10 000 inhabitants) with a specific focus on areas with low coverage of fixed access broadband. Eolo operates using both non-licensed frequencies (i.e. 5 GHz) to provide connectivity services at a 30 mbps speed (“EoloWave”) and licensed frequencies (i.e. 28 GHz) that provide connectivity services at 100 mbps (“EoloWave G”). Based on data published by the Italian telecoms regulator, as of September 2019 Eolo was the fourth largest supplier of retail fixed internet services in the segment for speeds between 30 and 100 Mbps.
- (61) Based on the results of the market investigation the Commission notes that, irrespective of the type of customers considered from the demand-side, the most important parameter of competition for the supply of hospitality services and driver of customer demand is the location of the specific site the customer is interested in. Indeed, also given the scarcity of sites, customers select the sites based on their radio network planning needs. For MNOs, price is the second driver of customer demand after site location, while for FWA suppliers price and location of the site have the same importance. In relation to MNOs, the same applies for both macro- and micro-sites.⁴²

5.4. Network sharing

- (62) MNOs can roll out their network by themselves, independently from other MNOs, or together with other MNOs through a network sharing agreement.
- (63) In a network sharing agreement, MNOs agree to share some of the network elements in order to reduce costs and improve coverage and capacity. The degree of integration within network sharing agreements varies depending on whether: (i) the

⁴¹ Agreed minutes of the conference call of 12 December 2019 with Linkem, paragraphs 2-3.

⁴² See replies to RFI Q3, question 18.

MNOs only share their site infrastructure ("passive sharing" or "site sharing"); (ii) they also share the RAN equipment at the sites ("active sharing"); (iii) they also share their spectrum ("spectrum sharing"); or (iv) they also rely on the same core network ("full network sharing").

- (64) In particular, passive sharing involves sharing the basic infrastructure, such as masts, cabins and sometimes antennas and power supplies ("passive infrastructure"), as well as the cost of the site itself (rent and rates). Active sharing involves also sharing the RAN equipment ("active equipment"), meaning the base transceiver station and the controller nodes (for 2G and 3G), or the base transceiver station (for 4G) in addition to the passive infrastructure. Transmission (backhaul to the MNOs' core networks) may also be shared under passive or active sharing agreements.
- (65) In Italy, all MNOs are engaged in some level of passive sharing or co-location of sites. In particular, since 2007, the Parties have a number of passive sharing arrangements, mainly in municipalities with a population of up to 35 000 inhabitants (and in certain cases up to 50 000 inhabitants). As explained, under the Passive Sharing Agreement the Parties plan to increase their passive sharing arrangements to up to 100% of Italy's territory. Under the Active Sharing Agreement, they plan to engage in active sharing in cities with less than 100 000 inhabitants.

5.5. Backhauling connections

- (66) Backhaul services are the connections between the antenna in an infrastructure and the switches in the core network and are used to ensure the proper functioning of a mobile network. Backhaul are generally wired connections based on either (i) fiber optic cables or (ii) copper cables. However, wireless backhaul can be used in areas where fixed backhaul is not available.
- (67) Backhaul providers are primarily fixed operators who are able to provide fiber optic or copper cables from their fixed network. Other than TIM and Fastweb, these are Open Fiber S.p.A. ("Open Fiber") and Retelit Digital Services ("Retelit").
- (68) **Open Fiber** is a wholesale-only supplier of fiber connectivity services that started its activity in 2017 after the acquisition of, and subsequent merger with, Metroweb. Open Fiber plans to reach 19 million premises with fiber by 2023. In "black and grey areas", the plan foresees to reach 9.5 million premises of which Open Fiber already reaches over 5.5 million premises. As winner of public tenders for fiber connectivity in "white areas", Open Fiber will also build a public fiber network reaching 9.6 million premises. Almost 15% of the premises in those areas will be served through FWA networks.⁴³
- (69) **Retelit** is a listed company on the Italian stock exchange market and it operates since 2000 a fiber network in Italy that today reaches approximately 12 500 km. Retelit operates under a business-to-business model addressing wholesale and business markets.⁴⁴

⁴³ Open Fiber's reply to RFI Q4, question 1.

⁴⁴ Retelit's reply to RFI Q4, question 1.

6. MARKET DEFINITION

- (70) The Joint Venture will operate the network sites previously operated by the Parties and will offer hospitality services on this infrastructure to the Parties and third parties. Moreover, both Parties are active in Italy in the provision of mobile and fixed telecommunications services to consumers and businesses, for which access to sites is an important input. Finally, TIM and the Joint Venture will be both active in the supply of backhaul connectivity for sites. Therefore, the Transaction may have an impact on a series of telecommunications markets in Italy, which will be examined below.⁴⁵

6.1. Hospitality services

6.1.1. Product market definition

- (71) The Parties submit that the relevant product market is the market for the provision of hospitality services to telecommunication operators, including both macro- and micro-sites, distinct from the market for the provision of hospitality services to TV and radio broadcasting operators. The Parties also submit that supply of hospitality services to MNOs, FWA suppliers and other categories of telecommunications operators (in particular, IoT, but also OTMOs to the extent they are not MNOs or FWA suppliers)⁴⁶ should be part of the overall market, but in any case the question could be left open, as the Transaction would not raise any competitive concern in that respect.
- (72) The Commission has previously identified a market for sites and site infrastructure for digital mobile radio-telecommunications equipment.⁴⁷ The Commission concluded that the possibility for operators of TV and radio broadcasting sites to satisfy the needs of MNOs were limited. Indeed, although there was a tendency for MNOs to utilise broadcasting structures where they are suitable for the local requirements of the service, generally broadcasting transmission equipment is located on sites affording a much higher level of geographical coverage when compared to the coverage requirements of mobile systems. Consequently, broadcasting sites tend to be tall structures in elevated locations that transmit at high powers in order to achieve optimal population coverage using a limited number of sites. In view of capacity considerations, mobile radio networks are cellular in

⁴⁵ The Transaction gives also rise to additional technically affected markets due to vertical relationships of the JV's activities with the mobile network activities of the Parties and TIM's limited FWA activities, i.e. the wholesale supply of mobile call termination services, the wholesale supply of international roaming services and the wholesale supply of fixed call termination services. Irrespective of the exact market definition, the effects of the Transaction in relation to the supply of these services are only follow-on effects of the vertical effects of the Transaction on the retail/wholesale mobile and fixed markets. Specific incentives to foreclosure competitors in these markets appear very unlikely and no complaint has been received regarding those markets in the pre-notification contacts and in the market investigation. Thus, the markets related to the supply of these services are not discussed further in this Decision.

⁴⁶ "IoT" (Internet-of-things); refers to customers providing mobile connectivity services for the internet of things; "OTMO" (Other-than-Mobile-Operators) includes customers other than mobile operators including FWA suppliers, Public Administrations and Others.

⁴⁷ Commission decision of 30 April 2003 in Case COMP/38.370 – *O2 UK Limited / T-Mobile UK Limited* ("*UK Network Sharing Agreement*"), recitals 45-51; Commission decision of 16 July 2003 in Case COMP/38.369 – *T-Mobile Deutschland/O2 Germany: Network Sharing Rahmenvertrag*, recitals 49-55.

nature, each site providing sufficient but limited coverage, reducing inter-cell interference and allowing the frequency allocations to be re-used in other areas.⁴⁸

- (73) The vast majority of the participants to the market investigation⁴⁹ confirmed that suppliers of mobile telecommunications services and suppliers of TV/Radio broadcasting services have different requirements for hospitality services.⁵⁰ Generally, towers originally designed to serve MNOs would be limited in their ability to offer hospitality services to radio and TV broadcasters. Moreover, TV and radio broadcasters need higher transmission power and need to be located outside of densely populated areas, while MNOs would require capillary distribution of antennas especially in densely populated areas.
- (74) With respect to a possible segmentation between different telecommunications operators (MNOs, FWA suppliers), the majority of the respondents to the market investigation submitted that requirements for hospitality services on macro-sites are the same for suppliers of mobile telecommunications services and providers of FWA, at least to a certain extent.⁵¹ In general, FWA equipment would be comparable to MNOs' equipment, although sometimes smaller. Energy requirements could be met within the same infrastructure as MNOs. On the other hand, FWA services would target a customer base living in the less densely populated areas in Italy, where fixed fiber telecommunication services are not as capillary as in the more densely populated areas: in this context FWA suppliers need a smaller number of sites for their operations (in the range of hundreds of sites). On the contrary, MNOs would need capillary distribution in urban and rural areas and have a much greater need for sites (in the range of thousands of sites).
- (75) Most respondents to the market investigation submitted also that there are other categories of customers that have similar requirements in terms of hospitality services as MNOs, such as in particular IoT providers (public utilities for their smart grids (controllers for meters, smart sensors), security services), but at the moment their demand would be marginal, in terms of space and value, compared to MNOs' demand.⁵²
- (76) With respect to micro-sites, the vast majority of respondents to the market investigation submitted that MNOs using hospitality services on macro-sites would consider hospitality services on micro-sites as a complement and not as an alternative for their network. Micro-cells are used in combination with macro cells to improve coverage and capacity in very densely occupied areas (stadium, shopping malls) or to reach areas where normal infrastructure is insufficient (underground,

⁴⁸ Commission decision of 16 July 2003 in Case COMP/38.369 – *T-Mobile Deutschland/O2 Germany: Network Sharing Rahmenvertrag*, recital 53.

⁴⁹ Throughout this Decision, when the Commission refers to the (number of) respondents in relation to a given question of the market investigation, this excludes all respondents that have not provided an answer to that question or replied "I do not know", unless stated otherwise. For example, "a majority of respondents" means a majority of respondents having replied to a given question and not having ticked "I do not know".

⁵⁰ Replies to RFI Q3 and RFI Q4, questions 3 and 3.1.

⁵¹ Replies to RFI Q3 and RFI Q4, questions 4 and 4.1.

⁵² Replies to RFI Q3 and RFI Q4, questions 5 and 5.1. The Parties submit that INWIT [...] and Vodafone [...] hosted on a combined total of [...]. On this basis, the Parties submit that the total market size for a hypothetical market for the supply of hospitality services on macro-sites to IoT customers can be left open. See Form CO, paragraph 168.

high buildings). In other terms, while macro-sites are deployed to achieve homogeneous coverage, small cells deployment is instead used to address specific capacity needs within a limited area, often a public venue (outdoor or indoor) or a particularly crowded area. Due to the limited coverage range of a small cell, it will be not feasible, both technically and economically, to plan an extensive coverage only leveraging small cells, since a very high number of small cell sites would be needed to achieve the minimum coverage objective. From a structural point of view, micro-sites would not be suitable to host antenna equipment usually deployed on macro-sites, as antennas hosted on macro-sites are larger and require higher locations. Furthermore, those antennas are characterized by higher output power (and thus electromagnetic emissions) and therefore they cannot be placed on typical micro-cells locations, since these latter are generally at human height.⁵³

- (77) As for the possibility for a tower company active in the provision of hospitality services on macro-sites to start offering hospitality services on micro-sites with limited investments and in a reasonable timeframe (and vice versa), the result of the market investigation was mixed.⁵⁴ In any case, the vast majority of the respondents submitted that framework agreements, which are entered into between MNOs and tower operators to regulate access to a set of locations across the territory under license, generally do not cover both macro- and micro-sites.⁵⁵
- (78) Based on the above, the Commission considers that, in line with its previous decisions, hospitality services to TV and radiobroadcasting operators are not part of the relevant market. Furthermore, the Commission considers that macro-sites and micro-sites are part of separate markets.
- (79) With respect to macro-sites, the result of the market investigation has not been conclusive as regards the possible distinction between hospitality services to MNOs and FWA suppliers. Therefore, the Commission leaves this question open and will analyse the impact of the Transaction considering both a general market for hospitality services on macro-sites to customers other than TV and radio broadcasters, and distinct markets for hospitality services on macro-sites to (i) MNOs and (ii) FWA suppliers.
- (80) As for the question whether the other categories of customers (excluding TV and radio broadcasters, i.e. in particular IoT providers) form part of a separate market, the Commission considers that this question can also be left open. Indeed, whilst the Commission does not find serious doubts as to the compatibility of the Transaction as a result of horizontal or vertical effects in relation to this customer group, this does not affect the conclusion that serious doubts arise in relation to the overall market for the supply of hospitality services to all customers other than TV and radio broadcasters. This is because the current demand by these customers is marginal compared to the demand by MNOs and FWA suppliers⁵⁶ and thus does not affect the competitive analysis for the overall market for hospitality services to all customers other than TV and radio broadcasters.

⁵³ Replies to RFI Q3 and RFI Q4, questions 6, 6.1, 7 and 7.1.

⁵⁴ Replies to RFI Q3 and RFI Q4, questions 8, 8.1, 9 and 9.1.

⁵⁵ Replies to RFI Q3 and RFI Q4, questions 10 and 10.1.

⁵⁶ See footnote 52.

- (81) With respect to the market for hospitality services on micro-sites, the Commission notes, based on the market reconstruction⁵⁷, that this type of sites would be primarily intended to satisfy MNOs' demand up to 2027, with sales to this customer group representing more than 95% on each year covered by the market reconstruction, by both volume and value. Further, there is no evidence in the file that the effects of the Transaction in relation to the supply of hospitality services on micro-sites to customers other than MNOs would be different. In this context, the Commission considers that, for the purposes of this Decision, the relevant product market would be the overall supply of hospitality services on micro sites, without any further segmentation.

6.1.2. *Geographic market definition*

- (82) The Parties submit that the market for hospitality services is national in scope, because MNOs would purchase hospitality services from a TowerCo so that they can in turn provide services according to the terms of their license, which is typically for the territory of a given Member State. Therefore, MNOs would purchase services from operators that can provide solutions across the entire territory of a Member State. MNOs would not approach TowerCos for a single access purchase at a certain location and they will either rely on TowerCos to manage their networks in its entirety or to provide access to a set of locations across the territory under the license. To address these needs, TowerCos would provide a diversified portfolio of assets conveniently located across the country. These features would explain why there are no local TowerCos for MNOs.
- (83) The Commission has in its previous decisions considered that the market for hospitality services for mobile operators is national in scope, because it is driven by nationally licensed operators and the relevant planning rules are guided by national law⁵⁸ and because all the site hosting activities are subject to a national regulatory environment.⁵⁹ In addition, national competition authorities have considered in past decisions that the market for hospitality services is national in scope.⁶⁰
- (84) The results of the market investigation generally confirm a national dimension of the market, at least with respect to macro-sites. The majority of the respondents submitted that they normally negotiate framework agreements to obtain/provide access to a set of locations across the territory under license (usually nation-wide) and for the management of the entire national network, in particular for macro-sites.⁶¹ Furthermore, the vast majority of the respondents submitted that the main suppliers of hospitality services are the same across Italy, although for micro-sites a

⁵⁷ In this respect, see Section 7.2.2.

⁵⁸ Case COMP/ 38.370 – *O2 UK Limited / T-Mobile UK Limited ("UK Network Sharing Agreement")*, 30 April 2003, para. 52; Case COMP/38.369 – *T-Mobile Deutschland/O2 Germany: Network Sharing Rahmenvertrag*, 16 July 2003, para. 56.

⁵⁹ Commission decision of 15 November 2002 in case M.2925 – *Charterhouse/CDC/TDF*, paragraph 27.

⁶⁰ For Italy see the decision of the Italian Competition Authority No. 23117 in case C11205 – *Elettronica Industriale/Digital Multimedia Technologies*, 14 December 2011, paragraph 30. See also the French Competition Authority Decision No. 19-DCC-169, 30 August 2019, *relative à la prise de contrôle exclusif de la société Iliad 7 par la société Cellnex France Groupe*, paragraph 16.

⁶¹ Replies to RFI Q3 and RFI Q4, questions 14.1 and 14.2.

certain number of respondents did not provide a definite answer, as micro-sites market would still be nascent.⁶²

- (85) However, one complainant submitted that in Italy providers of hospitality services would price access to their infrastructure at local level, with access to some sites being much more costly than others.⁶³ This difference in pricing would show the local dynamics of the market, that will depend on:
- (a) the number of sites available locally, the level of occupation of these sites and their owner;
 - (b) the actual possibility to erect new sites that could be extremely limited in certain area of historic interest;
 - (c) the limits placed by local authorities with regard to the power of the transmission equipment to be placed on the sites;
 - (d) the population reachable via the site concerned.

Those persistent price differences would be incompatible with a national dimension of the market, would show that there are significant local barriers to entry and thus would lead to specific local competitive dynamics. The structure of supply would be very different depending on the local area concerned. The Italian Competition Authority would have confirmed the obstacles encountered by tower companies (or MNOs) wishing to extend their presence in certain areas.⁶⁴

- (86) The Commission considers that those observations are not sufficient to put into question the results of the market investigation. First, pricing conditions are just one element among others to be considered in the assessment of the geographic dimension of the market. Other relevant elements to be taken into account are the basic demand characteristics, the significant suppliers' presence, and the distribution of market shares. In this respect, as explained above at paragraph (84) agreements for hospitality services are generally negotiated at national level to obtain/provide access to a set of locations on the whole national territory and the main suppliers of hospitality services are the same across Italy.
- (87) With respect to the distribution of market shares, the same complainant has provided the Parties' market shares at local level (municipalities), based on the number of sites managed (see below at section 7.2.1.2). Although the Commission has some reservations on the use of this metric to calculate the real market power of tower companies (notably as it would not distinguish between captive sales and sales to third parties, see further below in section 7.2.1.2), the data show that the Parties are generally consistently present on the national territory, with similar market shares.
- (88) Furthermore, with regard to the alleged price differences, from the analysis of the agreements in place between tower companies and telecom operators (included the

⁶² Replies to RFI Q3 and RFI Q4, questions 15.1 and 15.2.

⁶³ Iliad's submission of 17 January 2020, *Iliad's observations in case M.9674 – Vodafone Italia/TIM/Inwit JV*.

⁶⁴ Italian Competition authority, report No. AS1551 of 21 December 2018 – *Ostacoli nell'installazione di impianti di telecomunicazione mobile e broadband wireless access e allo sviluppo delle reti di telecomunicazione in tecnologie 5G*.

agreement between INWIT and the complainant) it results that the price differences are not directly linked to the geographical location of the sites (in terms of different places in Italy). Sites are generally priced per categories, with sites in urban areas generally more expensive than sites in rural areas and sites in big cities more expensive than sites in towns and smaller cities (other price categories are possible, as touristic places). In general, the pricing categories seem linked to the characteristics of the area served (in terms of coverage and population reachable, as the complainant itself acknowledges) and not to the specific geographic areas. That implies that sites in urban areas are generally more valuable than sites in rural areas. Although it cannot be excluded that in some specific locations there could be specific problems of site scarcity and/or of local authorization processes longer and more difficult than on average (and that this can have an influence on the specific pricing), the Commission considers that this element only cannot justify a market definition at local level, considering that all the other elements point to a national dimension of the market. In any case, the Commission in its analysis will consider a potential distinction between rural and urban areas – also in connection with the existing passive arrangements between the Parties – to take into account this possible difference in the competitive dynamics between rural areas and areas more densely populated, where barriers to entry could be somehow more relevant.

6.2. Retail mobile telecommunications services (“retail mobile markets”)

- (89) Mobile telecommunications services to end customers consists of the sale of subscriptions enabling access to public mobile telecommunications networks. Such access allows end users to make voice national and international calls, send and receive messages and use mobile data.⁶⁵

6.2.1. Product market definition

- (90) The Parties submit that, in line with previous Commission decisions, the relevant product market is the overall retail market for mobile telecommunications services. Furthermore, they consider that it is not necessary for the Commission to consider whether any potential segmentation may be appropriate, in the absence of any plausible vertical competition concerns on any basis.
- (91) The Commission has considered the retail mobile market in several past decisions, including with specific reference to the Italian market.⁶⁶ In these decisions, the Commission has considered that there is an overall retail market for mobile telecommunications services constituting a separate market from retail fixed telecommunications services.⁶⁷ The Commission did not further subdivide the overall retail mobile market based on the type of service (voice calls, SMS, MMS,

⁶⁵ See, among others, Commission decision of 1 September 2016 in case M.7758 – *Hutchison 3G Italy / Wind / JV*, recital 118; Commission decision of 30 May 2018 in Case M.7000 – *Liberty Global/Ziggo*, paragraph 199.

⁶⁶ Commission decision of 1 September 2016 in case M.7758 – *Hutchison 3G Italy / Wind / JV*; Commission decision of 30 August 2018 in case M.9041 – *Hutchison 3G Italy / Wind Tre*.

⁶⁷ Commission decision of 27 November 2018 in case M.8792 – *T-Mobile NL/Tele2 NL*, recital 160; Commission decision of 11 May 2016 in case M.7612 – *Hutchison 3G UK/Telefónica UK*, recital 252; Commission decision of 30 May 2018 in Case M.7000 – *Liberty Global/Ziggo*, paragraph 206 and Commission decision of 2 July 2014 in case No M.7018 – *Telefónica Deutschland/E-Plus*, recital 64.

mobile internet data services), or network technology.⁶⁸ The Commission considered possible distinctions in the overall retail market for mobile telecommunications services between pre-paid or post-paid services and concluded that these did not constitute separate product markets, but represent rather market segments within an overall retail market.⁶⁹ In addition, the Commission did not identify separate markets for the provision of mobile telecommunications services to private customers and business customers. This was principally due to supply-side substitutability considerations relevant to the area of overlap between the parties involved in those cases.⁷⁰ Finally, the Commission ultimately concluded that OTT services do not fall within the same relevant market as mobile telecommunications services, as OTT services rely on mobile telecommunications (data) services and fixed broadband services to function.⁷¹ In relation to M2M subscriptions, in recent decisions, the Commission has concluded that these belong to a separate market.⁷²

- (92) There are no elements in the Commission's file in the present case that would justify a departure from the position in previous cases.
- (93) For the purposes of this Decision, the Commission therefore retains its previous product market definition and considers that there is an overall product market for the retail provision of mobile telecommunications services, excluding M2M subscriptions, and the product market for the retail provision of M2M subscriptions. Since suppliers in each of these markets use the same network is used for the their activities , the vertical analysis of the effects of the Transaction in relation to these retail services will be undertaken jointly and in the following any reference to the “retail mobile markets” should be intended to both the overall product market for the

⁶⁸ Commission decision of 1 September 2016 in case M.7758 – *Hutchison 3G Italy / Wind / JV*, recitals 135-140; Commission decision of 3 August 2016 in case M.7978 – *Vodafone/Liberty Global/Dutch JV*, paragraph 74; Commission decision of 11 May 2016 in case M.7612 – *Hutchison 3G UK/Telefónica UK*, recitals 255, 261, 270, 279, 287; Commission decision of 2 July 2014 in case M.7018 – *Telefónica Deutschland/E-Plus*, recitals 31 to 55; Commission decision of 30 May 2018 in Case M.7000 – *Liberty Global/Ziggo*, paragraph 206; Commission decision of 28 May 2014 in case M.6992 – *Hutchison 3G UK/Telefónica Ireland*, recital 141; Commission decision of 12 December 2012 in case M.6497 – *Hutchison 3G Austria/Orange Austria*, recital 58.

⁶⁹ Commission decision of 27 November 2018 in case M.8792 – *T-Mobile NL/Tele2 NL*, recital 202; Commission decision of 1 September 2016 in case M.7758 – *Hutchison 3G Italy / Wind / JV*, recitals 146-149; Commission decision of 3 August 2016 in case M.7978 – *Vodafone/Liberty Global/Dutch JV*, paragraph 74; Commission decision of 11 May 2016 in case M.7612 – *Hutchison 3G UK/Telefónica UK*, recitals 255, 261, 270, 279, 287; Commission decision of 2 July 2014 in case M.7018 – *Telefónica Deutschland/E-Plus*, recitals 31 to 55; Commission decision of 30 May 2018 in Case M.7000 – *Liberty Global/Ziggo*, paragraph 206; Commission decision of 28 May 2014 in case M.6992 – *Hutchison 3G UK/Telefónica Ireland*, recital 141; Commission decision of 12 December 2012 in case M.6497 – *Hutchison 3G Austria/Orange Austria*, recital 58.

⁷⁰ Commission decision of 1 September 2016 in case M.7758 – *Hutchison 3G Italy / Wind / JV*, recitals 153-161; Commission decision of 3 August 2016 in case M.7978 – *Vodafone/Liberty Global/Dutch JV*, paragraph 74; Commission decision of 11 May 2016 in case M.7612 – *Hutchison 3G UK/Telefónica UK*, recitals 255, 261, 270, 279, 287; Commission decision of 2 July 2014 in case M.7018 – *Telefónica Deutschland/E-Plus*, recitals 31 to 55; Commission decision of 30 May 2018 in Case M.7000 – *Liberty Global/Ziggo*, paragraph 206; Commission decision of 28 May 2014 in case M.6992 – *Hutchison 3G UK/Telefónica Ireland*, recital 141; Commission decision of 12 December 2012 in case M.6497 – *Hutchison 3G Austria/Orange Austria*, recital 58.

⁷¹ Commission decision of 27 November 2018 in case M.8792 – *T-Mobile NL/Tele2 NL*, recital 169; Commission decision of 1 September 2016 in case M.7758 – *Hutchison 3G Italy/WIND/JV*, recital 145; Commission decision of 11 May 2016 in case M.7612 – *Hutchison 3G UK/Telefónica UK*, recital 265.

⁷² Commission decision of 27 November 2018 in case .8792 – *T-Mobile NL/Tele2 NL*, recitals 223 and 224; Commission decision of 15 July 2019 in case M.9370 – *Telenor / DNA*, paragraph 31.

retail provision of mobile telecommunications services, excluding M2M subscriptions, and the product market for the retail provision of M2M subscriptions.

6.2.2. *Geographic market definition*

- (94) The Parties submit that, in line with the Commission's previous decisions, the market for mobile telecommunications services to end customers is national in scope.
- (95) In line with previous decisions⁷³ and taking into account that nothing in the Commission's file would justify a departure from the previous position, for the purposes of this Decision, the Commission considers that the geographic scope of the market for mobile telecommunications services is national in scope and corresponds to the territory of Italy.

6.3. **Wholesale access and call origination on mobile networks (“wholesale mobile market”)**

- (96) MNOs provide wholesale access and call origination services which enable operators without their own network, namely MVNOs and Service Providers, to have access to one or more of the MNOs' networks in order to provide mobile telecommunications services to end customers. “Full” or “thick” MVNOs maintain their own core infrastructure and use MNOs only for access to a radio network. By contrast, “light” or “thin” MVNOs do not have their own infrastructure and rely entirely on the infrastructure of an MNO.⁷⁴

6.3.1. *Product market definition*

- (97) In line with previous Commission decisions, the Parties submit that there is an overall market for wholesale access and call origination services on mobile networks.
- (98) In previous cases, the Commission defined a wholesale market for access and call origination on public mobile networks.⁷⁵ The services provided by MNOs to non-MNOs were considered as key elements required for non-MNOs to be able to

⁷³ Commission decision of 1 September 2016 in case M.7758 – *Hutchison 3G Italy / Wind / JV*, recital 166; Commission decision of 3 August 2016 in case M.7978 – *Vodafone/Liberty Global/Dutch JV*, paragraph 76; Commission decision of 11 May 2016 in case M.7612 – *Hutchison 3G UK/Telefónica UK*, recitals 293; Commission decision of 30 May 2018 in Case M.7000 – *Liberty Global/Ziggo*, paragraph 211; Commission decision of 2 July 2014 in case No M.7018 – *Telefónica Deutschland/E-Plus*, recital 74; Commission decision in case M.6497 – *Hutchison 3G Austria/Orange Austria*, recital 73; Commission decision in case No M.5650 – *T-Mobile/Orange UK*, paragraphs 25 and 26 and Commission decision of 28 May 2014 in case No M.6992 – *Hutchison 3G UK/Telefónica Ireland*, recital 164.

⁷⁴ Light MVNOs may also use the services of a mobile virtual network enabler (“MVNEs”), an organisation that provides business infrastructure solutions to MVNOs such as billing, administration, operations support, mobile site subsystem support and other related services.

⁷⁵ Commission decision of 3 August 2016 in case M.7978 – *Vodafone / Liberty Global / Dutch JV*, paragraph 187; Commission decision of 11 May 2016 in case M.7612 – *Hutchison 3G UK/Telefónica UK*, recitals 295 to 300; Commission decision of 2 July 2014 in case M.7018 – *Telefónica Deutschland/E-Plus*, recitals 77 to 79; Commission decision of 28 May 2014 in case M.6992 – *Hutchison 3G UK/Telefónica Ireland*, recital 156; Commission decision of 12 December 2012 in case M.6497 – *Hutchison 3G Austria/Orange Austria*, recitals 61 to 63; Commission decision of 1 March 2010 in case M.5650 – *T-Mobile/Orange*, paragraphs 27 to 30; Commission decision of 27 November 2007 in case M.4947 – *Vodafone/Tele2 Italy/Tele2 Spain*, paragraph 15.

provide retail mobile communication services. Since both services were considered to be generally supplied together, they were seen as being part of a single market.

- (99) Nothing in the Commission's file would justify a departure from the previous position.
- (100) For the purposes of this Decision, the Commission therefore retains its previous product market definition and considers that there is a distinct wholesale market for access and call origination on public mobile telephone networks.

6.3.2. *Geographic market definition*

- (101) In line with previous Commission decisions, the Parties submit that the relevant geographic scope of the market for wholesale access and call origination on mobile networks is national, that is to say, limited to the territory of Italy.
- (102) In previous cases, the Commission considered the wholesale market for access and call origination to be national in scope due to regulatory barriers stemming from the fact that licenses granted to MNOs are generally national in scope.⁷⁶
- (103) In line with previous decisions and taking into account that nothing in the Commission's file would justify a departure from the previous position, for the purposes of this Decision, the Commission considers that the geographic scope of the wholesale market for access and call origination on public mobile networks is national in scope and corresponds to the territory of Italy.

6.4. **Retail fixed internet access services (“retail fixed markets”)**

- (104) Fixed internet access services at the retail level consist of the provision of subscriptions enabling customers to access the internet through a fixed telecommunications connection.

6.4.1. *Product market definition*

- (105) The Parties note that the Italian telecoms regulator (AGCOM) has previously identified a single relevant market for retail broadband access services in Italy, including all the fixed network access technologies available on the market. AGCOM concluded that the relevant market for fixed access included services through copper, mixed copper-fibre, only optical fiber and fixed wireless technologies.⁷⁷ However, the Parties consider that it is not necessary to conclude on product market definition, and in particular whether a further segmentation between broadband and ultra-broadband would be appropriate in the fixed internet market, in the absence of any competition concern.
- (106) In previous decisions, the Commission considered but ultimately left open possible segmentations within the supply of retail fixed internet access services according to

⁷⁶ Commission decision of 3 August 2016 in case M.7978 – *Vodafone / Liberty Global / Dutch JV*, paragraph 190; Commission decision of 11 May 2016 in case M.7612 – *Hutchison 3G UK/Telefónica UK*, recitals 305 and Commission decision of 12 December 2014 in case M.6497 – *Hutchison 3G Austria/Orange Austria*, recitals 74 to 77 with further references.

⁷⁷ AGCOM decision No. 348/19/CONS of 18 July 2019, available at <https://www.agcom.it/documents/10179/15564025/Delibera+348-19-CONS/1fe1fd57-1b27-4755-bfd6-89455e12ce09?version=1.0>.

(i) product type, distinguishing between narrowband, broadband and dedicated access and (ii) distribution mode, distinguishing between xDSL, fiber, cable, and mobile broadband.⁷⁸ Conversely, the Commission noted that the retail market for fixed internet access services should not be segmented according to download speed.⁷⁹ The Commission also considered distinguishing between residential and small business customers, on the one hand, and larger business and public authorities, on the other hand, but ultimately left the question open.⁸⁰

- (107) In a recent case, the Commission considered that the relevant product market was the overall retail market for the provision of fixed internet access services, including all product types, distribution modes and speeds/bandwidths, to residential and small business customers, excluding only the supply of fixed internet services provided through mobile network infrastructure.⁸¹
- (108) For the purpose of this Decision, the Commission notes that retail fixed services are relevant to the extent a vertical link arises with the supply of hospitality services on macro-sites. From a technological point of view, such link exists only in relation to FWA networks. In this respect, the Commission notes that TIM has recently launched retail fixed services based on FWA technology (to both business and residential customers) and Vodafone [...]. In this context, a hypothetical market for the supply of retail fixed services via FWA technology only could be envisaged. Such hypothetical market would be vertically affected by the Transaction and the effects of a potential foreclosure strategy in such market could be more pronounced than in an overall market.⁸²
- (109) Further, the Commission notes that, from a network stand-point, the needs of a FWA supplier are likely to be the same, regardless of whether the services are offered to residential and small business customers or to large business customers.
- (110) Thus, for the purpose of this Decision, the Commission considers that the relevant product market is either the overall retail market for the provision of fixed Internet access services, including all customer groups, product types, distribution modes and speeds/bandwidths, excluding only the supply of fixed internet services provided through mobile network infrastructure⁸³, or a hypothetical narrower market where services are only supplied based on FWA technology. As the operators in these

⁷⁸ See Commission decision of 29 June 2010 in Case M.5532 – *Carphone Warehouse/Tiscali UK*, paragraphs 7-21; Case M.6990 *Vodafone/Kabel Deutschland*, paragraphs 192-194. Commission decision of 3 August 2016 in case M.7978 – *Vodafone/Liberty Global/Dutch JV*, paragraph 38.

⁷⁹ See Commission decision of 29 June 2010 in Case M.5532 – *Carphone Warehouse/Tiscali UK*, paragraphs 7-21; Case M.6990 – *Vodafone/Kabel Deutschland*, paragraphs 192-194. Commission decision of 3 August 2016 in case M.7978 – *Vodafone/Liberty Global/Dutch JV*, paragraph 38.

⁸⁰ See Commission decision of 19 May 2015 in case M.7421 – *Orange/Jazztel*, recital 42; Commission decision of 30 May 2018 in case M.7000 – *Liberty Global/Ziggo*, paragraph 165; Commission decision of 7 October 2016 in case M.8131 – *Tele2 Sverige/TDC Sverige*, paragraph 32.

⁸¹ Commission decision of 18 July 2019 in Case M.8864 - *Vodafone/ Certain Liberty Global Assets*, recital 56.

⁸² FWA retail fixed services still account for a small percentage of the overall market; see market shares of Eolo and Linkem (the largest FWA players) in Section 7.2.5.

⁸³ Since fixed internet services provided through mobile network infrastructure are provided by MNOs or at best by customers of MNOs on the wholesale mobile market, the effects of the Transaction on this potential segment are the same as on the retail and wholesale mobile market. Thus the effects of the Transaction on the supply of fixed internet services through mobile network infrastructure will not be further discussed in this Decision.

markets which would be affected by the Transaction are the same, the vertical analysis of the effects of the Transaction in relation to these retail services will be undertaken jointly and in the following any reference to the “retail fixed markets” should be intended to cover both the overall retail market for the provision of fixed internet access services and the hypothetical narrower market where services are only supplied based on FWA technology.

6.4.2. *Geographic market definition*

- (111) The Parties submit that the relevant geographic scope is national.
- (112) In previous decisions, the Commission concluded that the retail market for the provision of fixed internet services was national in scope.⁸⁴ In *Liberty Global/BASE Belgium* the Commission considered whether the geographic scope of the market should be defined on a regional basis or by reference to the footprint of the operators' networks, but ultimately left the question open.⁸⁵ In *Vodafone/Certain Liberty Global Assets*, the Commission considered that the relevant geographic market for the retail provision of fixed internet services was national in scope.⁸⁶
- (113) There are no elements in the Commission's file in the present case that would justify a departure from the position in previous cases.
- (114) The Commission therefore concludes that, for the purpose of the present Decision, the relevant geographic market for the retail provision of fixed internet services is national in scope and correspond to the territory of Italy.

6.5. **Wholesale fixed internet access services (“wholesale fixed markets”)**

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

6.5.1. *Product market definition*

- (116) The Parties do not take a view on the exact definition of the market for wholesale fixed access.
- (117) In previous decisions⁸⁷, the Commission defined a separate market for wholesale broadband access and left open the question of whether it should be sub-divided per type of access (LLU, bitstream or resale of the incumbent's offering).

⁸⁴ See Commission decision of 29 June 2010 in Case M.5532 – *Carphone Warehouse/Tiscali UK*, paragraph 47; Case M.5730 – *Telefónica/Hansenet*, paragraph 28; Case M.6990 – *Vodafone/Kabel Deutschland*, paragraph 197. Commission decision of 3 August 2016 in case M.7978 – *Vodafone/Liberty Global/Dutch JV*, paragraph 40.

⁸⁵ Commission decision of 4 February 2016 in case M.7637 – *Liberty Global/BASE Belgium*, recitals 62-64.

⁸⁶ Commission decision of 18 July 2019 in Case M.8864 – *Vodafone/ Certain Liberty Global Assets*, recital 61.

⁸⁷ Commission decision of 20 September 2013 in Case M.6990 – *Vodafone/Kabel Deutschland*, paragraph 161; Commission decision of 29 June 2009 in Case M.5532 – *Carphone Warehouse/Tiscali UK*, paragraphs 28- 34.

- (118) For the purpose of this Decision, the Commission notes that wholesale fixed services are relevant to the extent a vertical link arises with the supply of hospitality services on macro-sites. From a technological point of view, such link exists only in relation to FWA networks. In this respect, the Commission notes that TIM has recently launches FWA wholesale fixed services, whilst [...]. In this context, an hypothetical market for the supply of wholesale fixed services via FWA technology only could be envisaged. Such hypothetical market would be vertically affected by the Transaction and the effects of a potential foreclosure strategy in such market could be more pronounced than in an overall market.⁸⁸
- (119) Thus, for the purposes of this Decision, the Commission considers that the relevant product market is either the overall wholesale supply of fixed access, encompassing all technologies, or a hypothetical narrower market where services are only supplied based on FWA technology. As the operators in these markets which would be affected by the Transaction are the same, the vertical analysis of the effects of the Transaction in relation to these wholesale services will be undertaken jointly and in the following any reference to the “wholesale fixed markets” should be intended to cover both the overall wholesale supply of fixed access, encompassing all technologies, or the hypothetical narrower market where services are only supplied based on FWA technology.

6.5.2. *Geographic market definition*

- (120) The Parties do not take a view on the geographic market definition for wholesale Internet access services.
- (121) In *Carphone Warehouse/Tiscali UK*, while there were indications supporting a national scope of the market, the Commission ultimately left open the exact geographic market definition.⁸⁹ In *Liberty Global/BASE Belgium*, the Commission considered whether the geographic scope of wholesale access to Internet services should be national or limited to the network footprint of each operator, but ultimately left the product market definition open.⁹⁰
- (122) For the purpose of this Decision, the exact geographic market definition can be left open, as the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to wholesale Internet access services under any alternative geographic market definition.

6.6. **Wholesale supply of fixed backhaul services**

- (123) Backhaul services are the connections between the antennae in an infrastructure and the switches in the core network and are used to ensure the proper functioning of a mobile network. Backhaul networks can be comprised of wireless backhaul (i.e. microwaves) or fixed backhaul. MNOs have typically operated their own microwave backhaul while fixed backhaul has been provided by fixed network operators such as TIM, Open Fiber and Fastweb in Italy. Fixed backhaul services are

⁸⁸ As TIM has only recently launched these services, its market share is likely to be more limited compared to its competitors.

⁸⁹ Commission decision of 29 June 2009 in Case M.5532 – *Carphone Warehouse/Tiscali UK*, paragraphs 48-54.

⁹⁰ Commission decision of 4 February 2016 in Case M.7637 – *Liberty Global/BASE Belgium*, recital 172.

provided on either (i) fiber optic cables or (ii) copper cables. However, wireless backhaul can be used in areas where fixed backhaul is not available.

6.6.1. *Product market definition*

- (124) The Parties submit that wholesale fixed backhaul forms part of a wider set of fixed telecommunication services, which enable telecommunications providers to connect their own networks to end user sites for the supply of business connectivity services (“wholesale leased lines”). The wholesale market for leased lines could be segmented by trunk and terminating segments as well as between active infrastructure (traditional managed leased lines and Ethernet services with guaranteed bandwidth) and passive infrastructure (dark fiber). Wholesale fixed backhaul would not correspond to any particular segment of wholesale fixed leased lines but rather would comprise different segments of leased lines depending on the particular needs of the relevant telecommunications customer. In any case, the Parties submit the exact product market definition can be left open, as the Transaction would not give rise to any competition concern on any possible basis in this respect.
- (125) In previous cases, the Commission has left open the product market definition for backhaul services.⁹¹
- (126) The vast majority of the respondents to the market investigation submitted that the different transmission means (i.e. wireless, fiber and copper lines) do not satisfy the same backhauling needs (e.g. in terms of capacity and other relevant parameters).⁹² The different transmission would address different backhauling needs in relation to capacity, stability, time-to-deploy and costs. However, fiber would offer the highest reliability in terms of capacity, throughput, latency, etc. and would be the only option for future 5G backhauling. For example, Iliad notes that fixed copper backhaul is not in use anymore and that wireless backhaul does not provide the same performance. Fastweb further confirms that copper is a legacy technology and that wireless and fixed fiber backhauling are two separate services.
- (127) As regard the question whether passive and active infrastructure services satisfy the same backhauling needs (e.g. in terms of capacity and other relevant parameters), the result of the market investigation has been inconclusive: some respondents pointed to a significant substitutability between the two services, others submitted that dark fiber would allow much higher capacity and lower latency with respect to leased lines and Ethernet services.⁹³
- (128) Finally, most respondents submitted that suppliers of backhauling connections from the sites to the aggregation point are the same as the suppliers of backhauling connections from the aggregation point to the core network.⁹⁴
- (129) In the present case, the question of the exact product market definition for wholesale services for fixed backhaul can be left open, as the Transaction does not raise competition concerns under any possible product market definition. In any case, the

⁹¹ Case M.6990 – *Vodafone/Kabel Deutschland*, paragraph 148; Case M.6584 – *Vodafone/Cable & Wireless*, paragraph 30; Case M.7758 – *Hutchison 3G Italy / Wind / JV*, 1 September 2016, recitals 206-211.

⁹² Replies to RFI Q3 and RFI Q4, questions 11 and 11.1.

⁹³ Replies to RFI Q3 and RFI Q4, questions 12 and 12.1.

⁹⁴ Replies to RFI Q3 and RFI Q4, question 13.

competitive analysis will focus on fixed fiber backhauling services, irrespective of a segmentation by active or passive infrastructure services, considering that (i) future roll-out would mainly involve fiber connections due to 5G capacity requirements, (ii) MNOs typically self-supply wireless backhaul services.

6.6.2. *Geographic market definition*

- (130) The Parties submit that the geographic market definition for wholesale services for backhaul services is at least national in scope. However, they submit that the exact geographic market definition can be left open, as the Transaction would not give rise to any competition concern on any possible basis.
- (131) In a previous case, the Commission has left the exact geographic scope of the possible market for wholesale services for fixed backhaul open.⁹⁵
- (132) Respondents to the market investigation submitted that in general the main suppliers of backhauling services are the same across Italy and offer their services on a national basis. However, some respondents submitted that there are also local suppliers (in particular public infrastructure suppliers).⁹⁶
- (133) For the purposes of this Decision and in line with the result of the market investigation, the Commission considers that the geographic scope of the market for wholesale services for fixed backhaul is national in scope and corresponds to the territory of Italy. A national scope appears to be the most appropriate to assess the Transaction in light of the concerns expressed by some market participants, linked to possible detrimental effects of the Transaction on potential competition at national level.

7. **COMPETITIVE ASSESSMENT**

7.1. **Introduction**

- (134) The Transaction gives rise to a number of horizontally affected markets in the supply of hospitality services on macro-sites to customers other than TV and radio broadcasters (possibly split by customer type into MNOs and FWA suppliers) in Italy.
- (135) Furthermore, both Parties will remain independently active in a series of telecommunications markets in Italy that are downstream from the hospitality service market, notably: (i) the retail mobile markets, (ii) the wholesale mobile market, (iii) the retail fixed markets, and (iv) the wholesale fixed markets. In this respect, the Transaction gives rise to vertically affected markets.
- (136) In addition, customers of hospitality services also purchase fixed backhaul services. TIM and the Joint Venture are active in the market for wholesale supply of fixed backhaul services. Thus, the Transaction also gives rise to potential conglomerate effects.

⁹⁵ Commission decision of 1 September 2016 in case M.7758 – *Hutchison 3G Italy / Wind / JV*, recital 211.

⁹⁶ Replies to RFI Q3 and RFI Q4, questions 16 and 16.1.

- (137) Finally, a risk of cooperative effects from the Transaction arises in relation to (i) the retail mobile markets and (ii) the wholesale mobile market (see footnote 225).
- (138) Each of these potential effects is discussed in turn in the following sections. After setting out the market shares in the relevant markets, the Commission will first assess the potential non-coordinated effects stemming from the Transaction (horizontal, vertical and then conglomerate effects). Then the Commission will assess the potential coordinated effects stemming from the Transaction (horizontal and vertical effects). Finally, the Commission will assess the potential cooperative effects of the Transaction.

7.2. Market shares

- (139) According to the Horizontal Merger Guidelines and the Non-Horizontal Merger Guidelines,⁹⁷ in the assessment of the effects of a merger, market shares constitute a useful first indication of the structure of the markets at stake and of the competitive importance of the relevant market players.

7.2.1. Hospitality services on macro-sites

7.2.1.1. Sales market shares

Parties' submission

(a) Hospitality services on macro-sites to MNOs

- (140) Based on the data provided by Parties in the Form CO, the market shares by value and volume for the hypothetical market for the supply of hospitality services on macro-sites to MNOs, at national level and excluding captive sales in 2018, are illustrated in Table 1.

⁹⁷ Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings ("Horizontal Merger Guidelines"), OJ C 31, 05.02.2004, paragraph 14; Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings ("Non-Horizontal Merger Guidelines"), OJ C 265, 18.10.2008, paragraph 24.

Table 1 - Market shares for the supply of hospitality services on macro-sites to MNOs (non-captive sales, 2018)

Suppliers	Volume (tenancies)		Value (Euro)	
	000	Market share	Million	Market share
TIM/INWIT	[...]	[20-30]%	[...]	[10-20]%
Of which sales to Vodafone	[...]	[10-20]%	[...]	[10-20]%
Vodafone	[...]	[20-30]%	[...]	[10-20]%
Of which sales to TIM	[...]	[10-20]%	[...]	[5-10]%
Combined	[...]	[40-50]%	[...]	[30-40]%
Of which sales to TIM and Vodafone	[...]	[30-40]%	[...]	[20-30]%
Cellnex	[...]	[30-40]%	[...]	[40-50]%
Wind Tre	[...]	[5-10]%	[...]	[0-5]%
Ei Towers	[...]	[0-5]%	[...]	[10-20]%
Iliad	[...]	[0-5]%	[...]	[0-5]%
Others	[...]	[5-10]%	[...]	[5-10]%

Source: Commission computation based on the data provided by the Parties in the Form CO.

- (141) Based on the above Table, the Parties' combined market share would be [40-50]% by volume and [30-40]% by value. The Joint Venture would thus be, post-Transaction, number one supplier by volume, followed by Cellnex (at [5-10] percentage points distance). Conversely, by value, Cellnex would be the market leader with [40-50]% market share, followed at a distance of almost [20-30] percentage points by the Joint Venture. No other suppliers would have a market share above 10%, by either volume or value, with the exception of Ei Towers by value ([10-20]% market share).

(b) Hospitality services on macro-sites to FWA suppliers

- (142) Based on the data provided by Parties in the Form CO, the market shares by value and volume for the hypothetical market for the supply of hospitality services on macro-sites to FWA suppliers, at national level in 2018, are illustrated in Table 2.

Table 2 - Market shares for the supply of hospitality services on macro-sites to FWA suppliers (2018)

Suppliers	Volume (tenancies)		Value (Euro)	
	000	Market share	Million	Market share
TIM/INWIT	[...]	[20-30]%	[...]	[10-20]%
Vodafone	[...]	[5-10]%	[...]	[0-5]%
Combined	[...]	[20-30]%	[...]	[10-20]%
Cellnex	[...]	[20-30]%	[...]	[70-80]%
Wind Tre	[...]	[10-20]%	[...]	[5-10]%
Others	[...]	[40-50]%	[...]	[...]

Source: Commission computation based on the data provided by the Parties in the Form CO.

- (143) Based on the above Table, the Parties' combined market share would be [20-30]% by volume and [10-20]% by value. The Joint Venture would thus be, post-Transaction, number one supplier by volume, followed by Cellnex (at [0-5] percentage points distance). Conversely, by value, Cellnex would be the clear market leader with [70-80]% market share, followed at a distance of more than [60-70] percentage points by the Joint Venture. The Parties provided only data on Wind Tre as individual alternative supplier, which would have a market share of [10-20]% by volume and [5-10]% by value. For other suppliers, the Parties only provided an aggregated market share by volume, equal to [40-50]%. Importantly, the Parties

were not able to provide disaggregated data on sales by Cellnex and Wind Tre to FWA suppliers and others customers. Thus, the above figures are likely to underestimate the Parties' position in relation to the sales to FWA suppliers.

(c) Hospitality services on macro-sites to customers other than TV and radio broadcasters, MNOs and FWA customers

- (144) Based on the dataset provided by the Parties it is not possible to estimate market shares for the hypothetical market for the supply of hospitality services on macro-sites to customers other than TV and radio broadcasters, MNOs and FWA customers, such as providers of IoT services.

(d) Hospitality services on macro-sites to customers other than TV and radio broadcasters

- (145) Based on the data provided by Parties in the Form CO, the market shares by value and volume for the hypothetical overall market for the supply of hospitality services on macro-sites to customers other than TV and radio broadcasters, at national level and excluding captive sales in 2018, are illustrated in Table 3.

Table 3 - Market shares for the overall supply of hospitality services on macro-sites (non-captive sales, 2018)

Suppliers	Volume (tenancies)		Value (Euro)	
	000	Market share	Million	Market share
TIM/INWIT	[...]	[20-30]%	[...]	[10-20]%
Of which sales to Vodafone	[...]	[10-20]%	[...]	[5-10]%
Vodafone	[...]	[20-30]%	[...]	[10-20]%
Of which sales to TIM	[...]	[10-20]%	[...]	[5-10]%
Combined	[...]	[40-50]%	[...]	[30-40]%
Of which sales to TIM and Vodafone	[...]	[20-30]%	[...]	[10-20]%
Cellnex	[...]4	[30-40]%	[...]	[50-60]%
Wind Tre	[...]	[5-10]%	[...]	[0-5]%
Ei Towers	[...]	[0-5]%	[...]	[5-10]%
Iliad	[...]	[0-5]%	[...]	[0-5]%
Others	[...]	[5-10]%	[...]	[5-10]%

Source: Commission computation based on the data provided by the Parties in the Form CO.

- (146) Based on the above Table, the Parties' combined market share would be [40-50]% by volume and [30-40]% by value. The Joint Venture would thus be, post-Transaction, number one supplier by volume, followed by Cellnex (at more than [10-20] percentage points distance). Conversely, by value, Cellnex would be the market leader with [50-60]% market share, followed at a distance of more than [20-30] percentage points by the Joint Venture. No other suppliers would have a market share above 10%, by either volume or value.

Commission's market reconstruction

- (147) The Commission has conducted a market reconstruction exercise collecting data from the Parties and their main competitors on actual sales, and estimates on the future sales, of hospitality services on macro-sites, in revenues and volume (as number of tenancies), over the period 2017 to 2027. The purpose of this exercise was to assess the exact extent of the overlap between the Parties' activities as well as their

relative importance compared to their competitors at national level and, in relation to sales by volume, at sub-national level. In this respect, the Commission has collected data distinguishing between areas where the Parties are already implementing passive sharing arrangements (thus areas with less than 35 000 inhabitants) and areas where this is not the case (thus areas with more than 35 000 inhabitants). This is because, where passive sharing is already implemented, the Parties are already giving priority to each other for hospitality services on the macro-sites, as reflected by the fact that [...]. Considering the physical and electromagnetic limitations, this means that the competitive dynamics for the Parties' merchant activities vary depending on whether passive sharing is already implemented or not: in the former case the level of freedom to sell to third parties, and the likelihood that space for third parties (in particular MNOs) would be available, is indeed lower.

- (148) Estimates on future sales have been provided by the information providers based on the assumption that the site Joint Venture between TIM and Vodafone would have not been created. [...] The Parties have provided estimates on future sales also on the basis of the assumption that the Passive and Active Sharing Agreements are implemented. In this respect, the Commission notes that, at the time of the adoption of this Decision, the Parties have [...].
- (149) The market shares computed on the basis of the resulting dataset are thus underestimating the market position of the Parties:
 - (a) [...].
 - (b) According to the Parties, the implementation of the Passive Sharing Agreement would result into a reduction by [...] of the number of their tenancies on third parties' sites for each of the Parties in areas with more than 35 000 inhabitants. Assuming a worst-case scenario where not all of these tenancies would be occupied by third party customers, the position of competing providers of hospitality services is thus likely to be overestimated in the Commission's dataset.
 - (c) According to the Parties, the extension of the passive sharing arrangements would result into an increase of ca. [...] of the number of the tenancies of each Party on the sites of the other Party in areas with more than 35 000 inhabitants. Assuming these additional tenancies are to the detriment of each of the Parties' sales to third parties, the Parties' non-captive market shares are thus likely to be underestimated in the Commission's dataset compared to what they would be in a counterfactual where the passive sharing is not extended.

(a) Hospitality services on macro-sites to MNOs

- (150) On the basis of the Commission's market reconstruction, the following tables present the Parties' and their competitors market shares in the supply of hospitality services on macro-sites to MNOs at national level as well as, in terms of tenancies, disaggregated shares considering separately the areas where the Parties were already passively sharing (areas with less than 35 000 inhabitants) and those where the passive sharing will be extended (areas with more than 35 000 inhabitants). Data for sales to MNOs are computed both including and excluding captive sales (where captive sales do not include sales of the Parties to each other).

**Table 4 - Market shares by revenues for the supply of hospitality services on macro-sites to MNOs
(national level)**

Suppliers	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027
Including captive sales											
TIM/INWIT	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
VF	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Combined	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Cellnex	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Fastweb	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Iliad	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Wind 3	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
EI Towers	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Rai Way	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Excluding captive sales											
TIM/INWIT	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
VF	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Combined	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Cellnex	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Fastweb	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Iliad	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Wind 3	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
EI Towers	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Rai Way	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]

**Table 5 - Market shares by volume for the supply of hospitality services on macro-sites to MNOs
(national level)**

Suppliers	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027
Including captive sales											
TIM/INWIT	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
VF	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Combined	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Cellnex	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Fastweb	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Iliad	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Wind 3	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
EI Towers	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Rai Way	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]

Suppliers	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027
Excluding captive sales											
TIM/INWIT	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
VF	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Combined	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Cellnex	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Fastweb	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Iliad	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Wind 3	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
EI Towers	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Rai Way	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]

**Table 6 - Market shares by volume for the supply of hospitality services on macro-sites to MNOs
(areas with more than 35 000 inhabitants)**

Suppliers	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027
Including captive sales											
TIM/INWIT	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
VF	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Combined	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Cellnex	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Fastweb	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Iliad	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Wind 3	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
EI Towers	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Rai Way	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Excluding captive sales											
TIM/INWIT	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
VF	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Combined	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Cellnex	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Fastweb	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Iliad	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Wind 3	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
EI Towers	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Rai Way	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]

**Table 7 - Market shares by volume for the supply of hospitality services on macro-sites to MNOs
(areas with less than 35 000 inhabitants)**

Suppliers	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027
Including captive sales											
TIM/INWIT	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
VF	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Combined	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Cellnex	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Fastweb	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Iliad	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Wind 3	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
EI Towers	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Rai Way	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Excluding captive sales											
TIM/INWIT	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
VF	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Combined	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Cellnex	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Fastweb	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Iliad	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Wind 3	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
EI Towers	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Rai Way	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]

- (151) In order to assess the effective extent to which the Parties will compete in the supply of hospitality services on macro-sites to third parties in the post-Transaction scenario and in view of the implementation of the Passive Sharing Agreement, the Commission has also computed market shares for the sales of hospitality services on macro-sites to MNOs excluding not only captive sales, but also the Parties' sales to each other. These shares are presented in the following tables.

**Table 8 - Market shares by revenues for the supply of hospitality services on macro-sites to MNOs
(national level)**

Suppliers	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027
Excluding captive sales and sales of the Parties to each other											
TIM/INWIT	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
VF	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Combined	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Cellnex	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Fastweb	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Iliad	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Wind 3	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
EI Towers	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Rai Way	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]

**Table 9 - Market shares by volume for the supply of hospitality services on macro-sites to MNOs
(Excluding captive sales and sales of the Parties to each other)**

Suppliers	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027
National level											
TIM/INWIT	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
VF	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Combined	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Cellnex	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Fastweb	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Iliad	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Wind 3	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
EI Towers	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Rai Way	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Areas with more than 35 000 inhabitants											
TIM/INWIT	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
VF	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Combined	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Cellnex	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Fastweb	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Iliad	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Wind 3	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
EI Towers	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Rai Way	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]

Suppliers	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027
Areas with less than 35 000 inhabitants											
TIM/INWIT	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
VF	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Combined	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Cellnex	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Fastweb	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Iliad	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Wind 3	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
EI Towers	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Rai Way	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]

- (152) A third party has submitted that the Commission should carefully consider whether Wind Tre sales to Iliad and Cellnex' sales to, respectively, Wind Tre and Iliad are really part of the non-captive market, due to the origin of such sales (that is, a commitment to the Commission in a previous merger case or a sale of sites simultaneous to the conclusion of service agreements with some degree of preferential treatment with the seller which remain anchor tenant). The Commission has thus estimated market shares also excluding these sales from the merchant market. In this context, the Commission has calculated market shares both including and excluding the sales of the Parties to each other. The reason for excluding cross-sales of the Parties in this context is to give due account to the impact of Passive

Sharing Agreement and thus to consider the origin of such sales also for the cross-Party sales, in line with what suggested by the complainant for Wind Tre sales to Iliad and Cellnex' sales to, respectively, Wind Tre and Iliad. These shares are presented in the following tables.

Table 10 - Market shares by revenues for the supply of hospitality services on macro-sites to MNOs (national level)

Suppliers	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027
Excluding captive sales and assimilated to captive											
TIM/INWIT	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
VF	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Combined	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Cellnex	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Fastweb	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Iliad	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Wind 3	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
EI Towers	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Rai Way	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Excluding captive sales, assimilated to captive and sales of the Parties to each other											
TIM/INWIT	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
VF	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Combined	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Cellnex	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Fastweb	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Iliad	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Wind 3	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
EI Towers	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Rai Way	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]

Table 11 - Market shares by volume for the supply of hospitality services on macro-sites to MNOs (national level)

Suppliers	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027
Excluding captive sales and assimilated to captive											
TIM/INWIT	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
VF	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Combined	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Cellnex	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Fastweb	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Iliad	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Wind 3	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
EI Towers	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Rai Way	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]

Suppliers	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027
Excluding captive sales, assimilated to captive and sales of the Parties to each other											
TIM/INWIT	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
VF	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Combined	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Cellnex	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Fastweb	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Iliad	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Wind 3	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
EI Towers	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Rai Way	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]

Table 12 - Market shares by volume for the supply of hospitality services on macro-sites to MNOs (areas with more than 35 000 inhabitants)

Suppliers	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027
Excluding captive sales and assimilated to captive											
TIM/INWIT	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
VF	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Combined	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Cellnex	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Fastweb	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Iliad	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Wind 3	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
EI Towers	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Rai Way	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]

Suppliers	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027
Excluding captive sales, assimilated to captive and sales of the Parties to each other											
TIM/INWIT	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
VF	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Combined	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Cellnex	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Fastweb	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Iliad	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Wind 3	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
EI Towers	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Rai Way	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]

**Table 13 - Market shares by volume for the supply of hospitality services on macro-sites to MNOs
(areas with less than 35 000 inhabitants)**

Suppliers	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027
Excluding captive sales and assimilated to captive											
TIM/INWIT	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
VF	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Combined	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Cellnex	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Fastweb	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Iliad	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Wind 3	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
EI Towers	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Rai Way	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Excluding captive sales, assimilated to captive and sales of the Parties to each other											
TIM/INWIT	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
VF	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Combined	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Cellnex	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Fastweb	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Iliad	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Wind 3	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
EI Towers	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Rai Way	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]

- (153) Based on the market reconstruction, the Commission notes that affected markets would arise in relation to the supply of hospitality services to MNOs under any possible market reconstruction, with the exclusion of the market reconstruction that excludes captive sales and sales of the Parties to each other at national level and in the areas with more than 35 000 inhabitants. In the same market reconstruction which excludes captive sales and sales of the Parties to each other in areas with less than 35 000 inhabitants, the Parties' combined market shares would be below the 25% threshold set out at paragraph 18 of the Horizontal Merger Guidelines at which a concentration may be presumed to be compatible with the internal market. With the exception of a few years, in all other market reconstructions, the Parties' combined market shares are above 40% and in several years also above the 50% threshold set out at paragraph 17 of the Horizontal Merger Guidelines at which a dominant market position maybe considered to exist.

(b) Hospitality services on macro-sites to FWA suppliers

- (154) On the basis of the market reconstruction, the following tables present the Parties' and their competitors market shares in the supply of hospitality services to FWA suppliers at national level as well as, in terms of tenancies, disaggregated shares considering separately the areas where the Parties were already passively sharing (areas with less than 35 000 inhabitants) and those where the passive sharing will be

extended (areas with more than [...]*) inhabitants). The Parties' data on their future sales to FWA suppliers also includes sales to all other customers other than TV and radio broadcasters and MNOs. However, as the Parties' to these customers are negligible⁹⁸, it is unlikely that the Parties' shares are overestimated.

Table 14 - Market shares by revenues for the supply of hospitality services on macro-sites to FWA suppliers (national level)

Suppliers	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027
TIM/INWIT	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
VF	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Combined	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Cellnex	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Fastweb	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Iliad	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Wind 3	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
EI Towers	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Rai Way	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]

Table 15 - Market shares by volume for the supply of hospitality services on macro-sites to FWA suppliers

Suppliers	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027
National level											
TIM/INWIT	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
VF	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Combined	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Cellnex	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Fastweb	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Iliad	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Wind 3	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
EI Towers	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Rai Way	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]

Suppliers	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027
Areas with more than 35 000 inhabitants											
TIM/INWIT	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
VF	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Combined	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Cellnex	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Fastweb	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Iliad	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Wind 3	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
EI Towers	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Rai Way	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]

* Should read: "35 000".

⁹⁸ See footnote 52.

Suppliers	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027
Areas with less than 35 000 inhabitants											
TIM/INWIT	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
VF	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Combined	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Cellnex	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Fastweb	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Iliad	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Wind 3	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
EI Towers	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Rai Way	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]

- (155) Based on the market reconstruction, the Commission notes that affected markets would arise in relation to the supply of hospitality services to FWA suppliers under all considered geographic delineations. With the exception of a few years, the Parties' combined market shares are above 40% and in some years also above the 50% threshold which, as indicated in paragraph 17 of the Horizontal Merger Guidelines, may in themselves be evidence of the existence of a dominant position.

(c) Hospitality services on macro-sites to customers other than TV and radio broadcasters, MNOs and FWA customers

- (156) As explained at paragraph (154), the Parties' data on their future sales to FWA suppliers also includes sales to all other customers other than TV and radio broadcasters and MNOs. Thus, they have not been able to provide data on this residual category of customers. However, they submitted that currently INWIT [...] and Vodafone [...] hosted on a combined total of [...]. Further, in the Form CO they provided aggregated sales for the years 2016 to 2018 to the residual category of customers. Based on these figures, in 2018 Fastweb had [...] tenancies belonging to this category, and TIM/INWIT [...], both at national level.⁹⁹ In the same year and at national level, the Commission notes that, according to the market reconstruction, [...]. The Commission notes that on this basis affected markets would arise also in relation to the supply of hospitality services to customers other than TV and radio broadcasters, MNOs and FWA suppliers, as the Parties could be estimated to have around [...] of the market.

(d) Hospitality services on macro-sites to customers other than TV and radio broadcasters

- (157) As regards the overall market for the supply of hospitality services to customers other than TV and radio broadcasters, based on the market reconstruction, the Commission notes sales to MNOs (including captive sales) represent by value almost the totality of such overall market, as illustrated in the below table.

⁹⁹ Form CO, Tables 3 and 5.

Table 16 – Relative importance of customers within the overall market for the supply of hospitality services to customers other than TV and radio broadcasters (including captive sales)

	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027
Revenues (national)											
MNOs	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
FWAs	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Volume (national)											
MNOs	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
FWAs	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Volume (areas with more than 35 000 inhabitants)											
MNOs	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
FWAs	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Volume (areas with less than 35 000 inhabitants)											
MNOs	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
FWAs	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]

- (158) Based on the above the Commission notes that, in the market reconstruction, the shares of the Parties in the overall market are in line with those in relation to the supply of hospitality services on macro-sites to MNOs. Further, the Commission notes that there is a discrepancy of volume and value figures in relation to the relative importance of customer groups in the business of suppliers of hospitality services. However, value figures are likely to provide a better indication of the power that suppliers have vis-à-vis their customers, as well as of the importance of a customer group in the overall economy of the business strategy of suppliers. In this context, the Commission considers that the effects of the Transaction are likely to be the same in the overall market and in the hypothetical market for the supply of hospitality services to MNOs.

7.2.1.2. Alternative market share metrics

- (159) A third party has submitted that another relevant metric to assess market power in the supply of hospitality services is the number of sites managed by an operator. It has also submitted market shares based on this metric at local level (municipality). According to the figures provided by this third party the situation would be as the one represented in the below table.

Table 17 – HHI delta and combined market shares post-Transaction per municipality clusters

[...]

Source: Third party's submission.

- (160) Thus, based on the third party's submission, in 3 400 cities the Parties' combined market shares would be above 50% and in 1 400 [...] the Parties' combined market shares would be above 60%. More in detail, based on the third party submission the situation in the Italian cities with more than 50 000 inhabitants where the Joint Venture will have a market share above 50% and the HHI will be over 3000 post-Transaction would be the one illustrated in the following table.

* Should read: "cities".

Table 18 – HHI delta and combined market shares post-Transaction per municipalities

[...]

Source: Third party's submission.

- (161) In the Form CO the Parties submitted that the number of sites would not be a suitable capacity metric essentially because installed capacity can easily vary depending on customers' demand.
- (162) The Commission agrees with the Parties in relation to the unsuitability of number of sites as a relevant market share metric. Indeed, capacity shares based on the number of sites reflect the capacity potentially available in the market based on the offers made by the TowerCos to customers (which usually list the full set of sites managed by an operator at least on the side of INWIT and TIM). However, the actual presence of free capacity on a site can be verified only after technical testing by the potential customer of the free physical and electromagnetic space on the site. This is demonstrated by Iliad's statement that [...].¹⁰⁰ By the same token, [...].¹⁰¹
- (163) In this context, looking at number of sites as a proxy of capacity may not be representative of the effective capacity on the market and likely overestimate the ability of the Parties to host third parties. This is because of the existing veto rights that each Party retains on its sites and the fact that the Parties are already hosted on a number of each other sites.
- (164) Nonetheless, the Commission notes that the conclusions that can be drawn in terms of market power of the Parties from the shares by capacity (which apply to all possible product market delineations in terms of customers as these customers are hosted on the very same sites) are not very different from the conclusions that can be drawn from the shares in terms of sales. This is particularly evident if considering the results of the market reconstruction at national level, as well as sub-local distinguishing between areas where passive sharing already existed between the Parties and where it will be extended.

Table 19 – Capacity shares by number of sites

Suppliers	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027
National											
TIM/INWIT	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
VF	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Combined	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Cellnex	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Fastweb	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Iliad	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Wind 3	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
EI Towers	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Rai Way	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]

¹⁰⁰ Agreed minutes of the conference call of 28 November 2019 with Iliad, paragraph 7.

¹⁰¹ Agreed minutes of the conference call of [...], paragraph 4.

Suppliers	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027
Areas with more than 35 000 inhabitants											
TIM/INWIT	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
VF	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Combined	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Cellnex	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Fastweb	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Iliad	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Wind 3	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
EI Towers	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Rai Way	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Areas with less than 35 000 inhabitants											
TIM/INWIT	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
VF	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Combined	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Cellnex	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Fastweb	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Iliad	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Wind 3	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
EI Towers	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Rai Way	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]

(165) In this context, the Commission notes the following. In the market reconstruction, the Commission has not collected data on sales at local level (in Italy there are around 5 220 cities where either or both the Parties have a site). This is because of the difficulties in identifying an appropriate geographic level at which to conduct the exercise, as substitutability between sites is a function of the spectrum portfolio of the customer. Nonetheless, the third party complainant submitting that the geographic scope of the market should be local provided market shares at municipality level based on number of sites. As shares based on this same metric at national level do not seem to depart from the shares based on sales at national level as reconstructed by the Commission, the Commission considers that there is no reason to believe that the combined market shares of the Parties would be different even if a narrower geographic scope of the market were to be considered.

7.2.2. Hospitality services on micro-sites

(166) Based on the data provided by Parties in the Form CO, the market shares by volume for the overall market for the supply of hospitality services on micro-sites at national level and excluding captive sales in 2018, are illustrated in the table below.

Table 20 – Supply of hospitality services on micro sites

Mobile Operators	2018
Vodafone	[0-5]%
INWIT	[5-10]%
Rest of the market	[90-100]%

Source: Form CO, Table 7.

- (167) Based on the above Table, the Parties' combined market share would be [5-10]% by volume and Cellnex would be the market leader with [90-100]% market share.
- (168) In order to assess the reliability of the data provided by the Parties, the Commission has conducted a market reconstruction exercise collecting data from the Parties and their main competitors on actual sales, and estimates on the future sales, of hospitality services on micro-sites, in revenues and volume (as number of tenancies), over the period 2017 to 2027.
- (169) Estimates on future sales have been provided by the information providers based on the assumption that the site Joint Venture between TIM and Vodafone would have not been created. The Parties have provided estimates on future sales also on the basis of the assumption that the Passive and Active Sharing Agreements are implemented. In this respect, the Commission notes that, at the time of the adoption of this Decision, the Parties have [...].
- (170) Whilst it will roll-out micro-cells, [...] has not provided any data on sales. However, it cannot be excluded that it will sell access to its micro-sites. Further, the data used for the market reconstruction do not include the DAS sales of [...] in the instances where it is the owner of the DAS and MNOs pay a recurring fee to have their frequency repeated by the DAS. As well as in the instances where the DAS is sold to a customer (e.g. IKEA). Finally, several respondents to the market investigation indicated that, with the massive rollout of 5G networks, new entrant specialized in micro-sites deployment, not accounted for in the market reconstruction, could emerge. Thus, the market shares computed on the basis of the resulting dataset are likely overestimating the market position of the Parties.
- (171) On this basis, the following tables present the Parties' and their competitors market shares in the supply of hospitality services on micro-sites at national level by revenues and by volume in terms of tenancies. Data for sales to MNOs are computed both including and excluding captive sales (where captive sales do not include sales of the Parties to each other).

Table 21 - Market shares by revenues for the supply of hospitality services on micro-sites

Suppliers	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027
Including captive sales											
TIM/INWIT	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Vodafone	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Combined	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Cellnex	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Fastweb	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Iliad	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Wind 3	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
EI Towers	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Rai Way	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]

Suppliers	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027
Excluding captive sales											
TIM/INWIT	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Vodafone	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Combined	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Cellnex	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Fastweb	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Iliad	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Wind 3	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
EI Towers	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Rai Way	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]

Table 22 - Market shares by volume for the supply of hospitality services on micro-sites

Suppliers	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027
Including captive sales											
TIM/INWIT	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Vodafone	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Combined	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Cellnex	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Fastweb	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Iliad	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Wind 3	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
EI Towers	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Rai Way	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Excluding captive sales											
TIM/INWIT	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Vodafone	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Combined	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Cellnex	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Fastweb	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Iliad	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Wind 3	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
EI Towers	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Rai Way	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]

- (172) In order to assess the effective extent to which the Parties will compete in the supply of hospitality services on micro-sites to third parties in the post-Transaction scenario and in view of the implementation of the Passive Sharing Agreement, the Commission has also computed market shares for the sales of hospitality services on micro-sites excluding not only captive sales, but also the Parties' sales to each other. These shares are presented in the following table.

**Table 23 - Market shares for the supply of hospitality services on micro-sites
(excluding captive sales and sales of the Parties to each other)**

Suppliers	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027
Revenues											
TIM/INWIT	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Vodafone	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Combined	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Cellnex	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Fastweb	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Iliad	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Wind 3	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
EI Towers	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Rai Way	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Volume											
TIM/INWIT	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Vodafone	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Combined	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Cellnex	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Fastweb	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Iliad	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Wind 3	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
EI Towers	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Rai Way	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]

- (173) Based on the market reconstruction, the Commission notes that affected markets would arise in relation to the supply of hospitality services on micro-sites only at the earliest in year 2022, unless captive sales are included. Post-Transaction, the market reconstruction also show an intense head-to-head competition between the Parties and Cellnex, especially when excluding not only captive sales but also the sales of the Parties to each other.

7.2.3. Retail mobile markets

- (174) In the Form CO, the Parties provided their shares and the ones of their competitors (in value and volume) in an hypothetical market including both the retail mobile markets in Italy, which are presented in the following table.

Table 24 – Retail mobile services, including M2M, in Italy

Mobile Operators	Share by value (%)		
	2016	2017	2018
Vodafone	30.9%	31.3%	30.5%
TIM	32.1%	33.1%	34.5%
Wind Tre	33.3%	31.8%	29.8%
Iliad	0%	0%	0.8%
MVNOs (including Fastweb)	3.7%	3.8%	4.4%
	Share by volume (%)		
	2016	2017	2018
Vodafone	29.4%	30.2%	29.2%
TIM	30.2%	30.7%	30.7%
Wind Tre	33.1%	31.2%	29.2%
Iliad	0%	0%	2.7%
MVNOs (including Fastweb)	7.4%	8%	8.1%

Source: Form CO, based on Italian Telecommunications Authority annual reports (percentages).

- (175) Whilst market shares by value are not available, based on volume data published by AGCOM for the year September 2018 to September 2019, the Commission has estimated the market shares of the Parties and their competitors in the overall market for the retail provision of mobile telecommunications services, excluding M2M subscriptions, and in the market for the retail provision of M2M subscriptions, which are presented in the following table.

Table 25 – Retail mobile markets in Italy – share by volume (September 2018 to September 2019)

	Retail mobile services excluding M2M	M2M subscriptions
Vodafone	25.1%	39%
TIM	27.4%	41%
Wind Tre	30.7%	19%
Iliad	5.6%	0%
Poste Mobile	5.3%	0%
MVNOs (including Fastweb)	5.9%	0%

Source: AGCOM Communication Markets Monitoring System, no. 4/2019 available at <https://www.agcom.it/documents/10179/4386532/Allegato+23-1-2020/7b245499-7f9f-45af-80c0-76b41a197b7c?version=1.0> and Commission's calculation based on that data.

7.2.4. Wholesale mobile market

- (176) Both TIM and Vodafone are active in Italy in the market for wholesale access and call origination on mobile networks:
- (a) TIM provides wholesale mobile network access to a number of MVNOs such as Coop Voce, Tiscali Mobile, Welcome Italia;
 - (b) Vodafone provides wholesale mobile network access to a number of MVNOs: PostePay Spa, Daily Telecom Srl, Lycamobile Srl, Optima Italia Spa, Compagnia Italia Mobile Srl, Rabona Srl, Noitel Italia Srl, Nexus Telecom Srl and Europe Energy Spa.

- (177) Based on the data provided by Parties in the Form CO, the market shares of the Parties and of their competitor in the wholesale mobile market in Italy are in the following tables (in value and volume):

Table 26 – Wholesale mobile in Italy – value

Operators	Value (in EUR millions and %)					
	2016 (M)	2016 (%)	2017 (M)	2017 (%)	2018 (M)	2018 (%)
Vodafone	[...]	[50-60]%	[...]	[30-40]%	[...]	[20-30]%
TIM	[...]	[10-20]%	[...]	[30-40]%	[...]	[40-50]%
Wind Tre	[...]	[20-30]%	[...]	[20-30]%	[...]	[30-40]%
Total	[...]	100%	[...]	100%	[...]	100%

Source: Parties' estimates

Table 27 – Wholesale mobile in Italy – volume

Operators	Volume (in subscribers millions and %)					
	2016 (M)	2016 (%)	2017 (M)	2017 (%)	2018 (M)	2018 (%)
Vodafone	[...]	[20-30]%	[...]	[20-30]%	[...]	[10-20]%
TIM	[...]	[10-20]%	[...]	[30-40]%	[...]	[30-40]%
Wind Tre	[...]	[50-60]%	[...]	[40-50]%	[...]	[40-50]%
Total	[...]	100%	[...]	100%	[...]	100%

Source: Parties' estimates

7.2.5. Retail fixed markets

- (178) Both Parties are active in Italy in the supply of retail fixed Internet services to end customers. Vodafone provides fixed broadband services to its customers as well as packages including fixed Internet access and mobile or TV services. TIM also provides Internet access to final customers, offering packages including voice, TV and smart home services, including via FWA technology since 2019.

7.2.5.1. Overall retail supply of fixed Internet access services

- (179) Based on the data provided by Parties,¹⁰² the market shares of the Parties and of their competitors in the overall retail market for fixed Internet access services in Italy are in the following table (in value):

Table 28 – Retail fixed Internet in Italy – value (consumers spending)

Operator	Share by value (%)		
	2016	2017	2018
TIM	39.7%	36.6%	38.2%
Vodafone	8.6%	9.8%	12.0%
Fastweb	26.3%	28.0%	26.2%
Wind Tre	12.7%	12.2%	11.2%
Tiscali	2.8%	0.5%	2.3%
Eolo	N/A	N/A	2.0%
Linkem	N/A	2.9%	2.0%
BT Italia	0.8%	N/A	N/A
Others	9.1%	9.9%	6.2%

Source: AGCOM annual reports.

¹⁰² Parties' reply to RFI 19.

7.2.5.2. Retail supply of fixed Internet access services based on FWA technology

- (180) The Parties did not provide market shares for their competitors in the retail supply of fixed Internet access services based on FWA technology, but estimate that TIM's market share by the end of September 2019 was approximately [0-5]%.¹⁰³

7.2.6. Wholesale fixed markets

7.2.6.1. Overall wholesale supply of fixed access, encompassing all technologies

- (181) The Parties have not provided market shares at national level for the overall market for wholesale fixed services. They submitted that market data for the Italian wholesale fixed market could be retrieved in the official publications of AGCOM.
- (182) Notably, in its decision No. 348/19/CONS, AGCOM provided market shares for:
- (a) the market for wholesale local access provided at fixed location (WLA),¹⁰⁴ defining such a market as the demand and supply of wholesale local access services at fixed location, by means of copper, fiber and FWA technologies. Services included in the relevant market are, amongst others: local loop unbundling (LLU), sub-loop unbundling (SLU), Virtual unbundling local access (VULA)); and
 - (b) the market for wholesale central access provided at fixed location for mass-market products (WCA),¹⁰⁵ defining such a market as the demand and supply for wholesale central access services provided at fixed location, by means of copper, optical fiber and FWA technologies.
- (183) Based on the data provided by Parties,¹⁰⁶ the market shares of the Parties and of their competitors in the two mentioned wholesale markets in Italy are in the following table (in volume):

Table 29 – Wholesale fixed access, encompassing all technologies (volume)

Operator	Share by volume (%)		
	2016	2017	2018
Wholesale local access provided at fixed location			
TIM	92.56%	90.24%	89.28%
Others	7.44%	9.76%	10.72%
Wholesale central access provided at fixed location for mass market products			
TIM	55.08%	54.51%	51.54%
Fastweb	11.36%	11.97%	12.45%
Wind	14.91%	13.36%	13.67%
Vodafone	10.30%	10.90%	12.57%
Tiscali	2.04%	2.16%	2.25%
Others	6.32%	7.10%	7.52%

Source: AGCOM.

¹⁰³ Parties' reply to RFI 21, question 2.

¹⁰⁴ Market 3 of Commission Recommendation 2014/710/EU of 9 October 2014 on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services, in OJ L 295, 11.10.2014, p. 79–84.

¹⁰⁵ Market 3b of Commission Recommendation 2014/710/EU.

¹⁰⁶ Parties' reply to RFI 19.

7.2.6.2. Wholesale supply of fixed access based on FWA

- (184) Based on the data provided by Parties,¹⁰⁷ the market share by value of TIM and its competitors (on an aggregated basis) in 2019 and estimates for 2020 are the following:

Table 30 – Wholesale fixed access based on FWA technology (value)

Operator	Share by value (%)	
	2019	2020
TIM	[0-5]%	[0-5]%
Fastweb	[20-30]%	[20-30]%
Others (including Eolo and Linkem)	[70-80]%	[70-80]%

7.2.7. Fixed backhauling services

- (185) Vodafone does not supply backhaul services to third parties. It operates its own fixed and wireless backhaul services and sources backhaul services from third parties. Vodafone uses a range of fixed and wireless backhaul to connect its radio access network to its own core network.
- (186) TIM offers to third parties both active backhauling services and passive backhauling services such as dark fiber. TIM's dark fiber backhaul service is comprised of the supply and maintenance of a fiber connection of a pair of "unlit" optical fiber lines (i.e. without the supply of equipment) to connect an MNO's radio access network to its core network. The MNO's point of presence can be located on an INWIT/TIM site or on a third party site.
- (187) INWIT in 2017 started to offer backhaul services to TIM and in 2018 entered the market for providing fixed backhauling services to third parties and through the provision of dark fiber (i.e. only the passive infrastructure not the active service).
- (188) Based on the data provided by Parties in the Form CO, the market shares of TIM and of its competitors in the wholesale market for fixed backhaul services in Italy (copper and fiber) are in the following table (in value):

Table 31 – wholesale backhaul services in Italy – value

Operators	Market share by revenues (Euro million)					
	2016	%	2017	%	2018	%
INWIT¹⁰⁸	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
TIM	[...]	[20-30]%	[...]	[30-40]%	[...]	[30-40]%
Fastweb	[...]	[20-30]%	[...]	[20-30]%	[...]	[20-30]%
Others	[...]	[40-50]%	[...]	[40-50]%	[...]	[40-50]%
Total	[...]	100%	[...]	100%	[...]	100%

Source: TIM Internal Estimates

- (189) The Parties have also provided TIM's market shares in the market for leased lines (and related sub-segments), that are consistent with the market shares in the backhauling services:

¹⁰⁷ Parties' reply to RFI 22, question 2.

¹⁰⁸ Parties' response to RFI 2, Table 3.

Table 32 – Leased Lines in Italy – value

Operators	Market share by revenues (Euro million)					
	2016	%	2017	%	2018	%
Leased Lines						
TIM	[...]	[30-40]%	[...]	[30-40]%	[...]	[30-40]%
Total	[...]	100%	[...]	100%	[...]	100
(i) Dedicated capacity						
TIM	[...]	[30-40]%	[...]	[30-40]%	[...]	[40-50]%
Total	[...]	100%	[...]	100%	[...]	100%
(a) Dedicated capacity – Copper and leased lines						
TIM	[...]	[60-70]%	[...]	[60-70]%	[...]	[60-70]%
Total	[...]	100%	[...]	100%	[...]	100%
(b) Dedicated capacity – Fiber						
TIM	[...]	[20-30]%	[...]	-20-30)%	[...]	[30-40]%
Total	[...]	100%	[...]	100%	[...]	100%
(ii) Leased Lines – Infrastructure – Ducts and Dark Fiber						
TIM	[...]	[20-30]%	[...]	[20-30]%	[...]	[30-40]%
Total	[...]	100%	[...]	100%	[...]	100%

Source: TIM internal estimates

(190) Other relevant leased lines operators in Italy are Fastweb, Open Fiber and Retelit.

7.2.8. Affected markets

(191) Based on the above, the Transaction gives rise to the following horizontally affected markets:

- (a) The supply of hospitality services on macro-sites to MNOs;
- (b) The supply of hospitality services on macro-sites to FWA suppliers;
- (c) The supply of hospitality services on macro-sites to customers other than TV and radio broadcasters, MNOs and FWA customers;
- (d) The supply of hospitality services on macro-sites to customers other than TV and radio broadcasters;
- (e) The supply of hospitality services on micro-sites.

(192) The Transaction gives rise to vertically affected markets in relation to the links between the following markets:¹⁰⁹

- (a) The upstream market for the supply of hospitality services on macro-sites to MNOs (and/or the upstream market for the supply of hospitality services on macro-sites to customers other than TV and radio broadcasters) and the downstream retail mobile markets;¹¹⁰
- (b) The upstream market for the supply of hospitality services on macro-sites to MNOs (and/or the upstream market for the supply of hospitality services on macro-sites to customers other than TV and radio broadcasters) and the downstream wholesale mobile market;

¹⁰⁹ See also footnote 45.

¹¹⁰ See also footnote 152.

- (c) The upstream market for the supply of hospitality services on macro-sites to FWA suppliers (and/or the upstream market for the supply of hospitality services on macro-sites to customers other than TV and radio broadcasters) and the downstream retail fixed markets;
 - (d) The upstream market for the supply of hospitality services on macro-sites to FWA suppliers (and/or the upstream market for the supply of hospitality services on macro-sites to customers other than TV and radio broadcasters) and the downstream wholesale fixed markets;
 - (e) The upstream market for the supply of hospitality services on micro-sites and the downstream retail mobile markets;¹¹¹
 - (f) The upstream market for the supply of hospitality services on micro-sites and the downstream wholesale mobile markets.¹¹²
- (193) Finally, the Transaction may have a significant impact within the meaning of Section 6.4 of Annex I to the Implementing Regulation¹¹³ in relation to the supply of fixed fiber backhaul services (irrespective of a segmentation between active and passive infrastructure), which is neighbouring to:
- (a) The supply of hospitality services on macro-sites to MNOs;
 - (b) The supply of hospitality services on macro-sites to FWA suppliers;
 - (c) The supply of hospitality services on macro-sites to customers other than TV and radio broadcasters, MNOs and FWA customers;
 - (d) The supply of hospitality services on macro-sites to customers other than TV and radio broadcasters;
 - (e) The supply of hospitality services on micro-sites.

7.3. Non-coordinated effects

7.3.1. Introduction

7.3.1.1. Horizontal effects

- (194) A merger giving rise to significant impediment of effective competition may do so as a result of the creation or strengthening of a dominant position in the relevant markets. Moreover, mergers in oligopolistic markets involving the elimination of important constraints that the parties previously exerted on each other, together with a reduction of competitive pressure on the remaining competitors, may also result in

¹¹¹ In this respect, see footnote 160.

¹¹² In this respect, see footnote 160.

¹¹³ Consolidated version of the Commission Regulation (EC) No 802/2004 of 21 April 2004 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings and its annexes (Form CO, Short Form CO, Form RS and Form RM) (OJ L 133, 30.04.2004, p. 1-39), as amended by Commission Regulation (EC) No 1033/2008 (OJ L 279, 22.10.2008, p.3-12) and by Commission Implementing Regulation (EU) No 1269/2013 of 5 December 2013 (OJ L 336, 14.12.2013, p. 1-36).

a significant impediment to effective competition, even in the absence of dominance.¹¹⁴

- (195) In fact, the Horizontal Merger Guidelines describe horizontal non-coordinated effects as follows: “A merger may significantly impede effective competition in a market by removing important competitive constraints on one or more sellers who consequently have increased market power. The most direct effect of the merger will be the loss of competition between the merging firms. For example, if prior to the merger one of the merging firms had raised its price, it would have lost some sales to the other merging firm. The merger removes this particular constraint. Non-merging firms in the same market can also benefit from the reduction of competitive pressure that results from the merger, since the merging firms’ price increase may switch some demand to the rival firms, which, in turn, may find it profitable to increase their prices. The reduction in these competitive constraints could lead to significant price increases in the relevant market.”¹¹⁵
- (196) The Horizontal Merger Guidelines list a number of factors which may influence whether or not significant horizontal non-coordinated effects are likely to result from a merger, such as the large market shares of the merging firms, the fact that the merging firms are close competitors, the limited possibilities for customers to switch suppliers, or the fact that the merger would eliminate an important competitive force.¹¹⁶ That list of factors applies equally regardless of whether a merger would create or strengthen a dominant position, or would otherwise significantly impede effective competition due to non-coordinated effects. Furthermore, not all of these factors need to be present to make significant non-coordinated effects likely and it is not an exhaustive list.¹¹⁷
- (197) In addition, the Horizontal Merger Guidelines describe a number of factors, which could counteract the harmful effects of the merger on competition, including the likelihood of buyer power, the entry of new competitors on the market, and efficiencies.

7.3.1.2. Vertical effects

- (198) Vertical mergers are generally less likely to significantly impede effective competition than horizontal mergers. However, there are circumstances in which non-horizontal mergers may significantly impede effective competition. This is essentially because a non-horizontal merger may change the ability and incentive to compete of the merging companies and their competitors in ways that cause harm to consumers.¹¹⁸
- (199) One way in which vertical mergers may significantly impede effective competition is through non-coordinated effects, which may principally arise when mergers give rise to foreclosure. A merger is said to result in foreclosure where actual or potential rivals’ access to supplies or markets is hampered or eliminated as a result of the

¹¹⁴ Horizontal Merger Guidelines, paragraph 25.

¹¹⁵ Horizontal Merger Guidelines, paragraph 24.

¹¹⁶ Horizontal Merger Guidelines, paragraphs 27 and following.

¹¹⁷ Horizontal Merger Guidelines, paragraph 26.

¹¹⁸ Non-horizontal Merger Guidelines, Section II.

merger, thereby reducing these companies' ability and/or incentive to compete.¹¹⁹ Such foreclosure may discourage entry or expansion of rivals or encourage their exit. Such foreclosure is regarded as anti-competitive where the merging companies — and, possibly, some of its competitors as well — are as a result able to profitably increase the price charged to consumers.¹²⁰

- (200) Two forms of foreclosure can be distinguished. The first is where the merger is likely to raise the costs of downstream rivals by restricting their access to an important input (input foreclosure). The second is where the merger is likely to result in foreclosure of upstream rivals by restricting their access to a sufficiently large customer base (customer foreclosure). The former is the type of foreclosure that is relevant for the assessment of the Transaction.

7.3.1.3. Conglomerate effects

- (201) The Non-Horizontal Guidelines indicate that competition concerns can arise in circumstances where a merger involves companies that are active in closely related markets. While in the majority of circumstances conglomerate mergers will not lead to any competition problems, in certain circumstances they can lead to anticompetitive effects. One such example is when the combination of products in related markets would give the merged entity the ability and incentive to leverage a strong market position in one of the markets to the other market by means of tying or bundling. Where tying or bundling is likely to lead to a reduction in actual or potential rivals' ability or incentive to compete it may reduce competitive pressure on the merged entity, allowing it to increase prices.

7.3.2. *Horizontal non-coordinated effects in the supply of hospitality services on macro-sites to MNOs*

7.3.2.1. Parties' view

- (202) The Parties submit that the Transaction would not raise any competition concerns, for the following reasons.
- (203) First, the TowerCo business historically developed as a by-product of each MNO building its own network for captive use. TIM, Vodafone and the other MNOs have generally self-sourced to a large extent their needs, with third-party hospitality services to complement each MNO's network. Therefore, post-Transaction the market structure for third-party tenancies would not change significantly.
- (204) Second, TIM and Vodafone entered into a passive sharing agreement already in 2007 and since then Vodafone has been [...]. Thus, the Transaction would bring under the same roof sites that were already to a large extent shared between the Parties and conversely were not an important competitive source of tower space for other MNOs.
- (205) Third, the two other MNOs active in Italy, Wind Tre and Iliad already have a set of cooperation agreements in force.

¹¹⁹ Non-horizontal Merger Guidelines, paragraph 29.

¹²⁰ Non-Horizontal Merger Guidelines, paragraph 29.

- (206) Fourth, there would be sufficient availability of sites/tenancies, as acknowledged by the Commission in previous cases.¹²¹ In particular, the independent TowerCo Cellnex will remain the leading provider of third-party tenancies in Italy and TowerCos will be able to develop new sites to the extent there is a demand for that.
- (207) Fifth, TV and radio TowerCos could easily use their existing sites to accommodate demand from MNOs if needed.

7.3.2.2. Commission's assessment

- (208) In relation to potential horizontal non-coordinated effects in the supply of hospitality services on macro-sites to MNOs, the Commission notes the following.
- (209) First, as illustrated in Section 7.2.1, based on the Commission's market reconstruction, whatever the metric considered, the Parties' combined shares, both historical and projected up to 2027, are very large and virtually always above 40%. This is true regardless of the geographic level considered.
- (210) Second, as regards closeness of competition, the evidence in the Commission's file is mixed. On the one hand, the Parties plan to [...] and to build a common grid leveraging their combined portfolio.¹²² This is in fact the purpose of the Passive Sharing Agreement. In the same vein, albeit the third party complainant submitting that the relevant market should be locally defined provided market shares at municipality level, this geographic dimension may be larger than the effective area where site substitutability occurs. Looking at narrower data on site location based on postal codes, it appears that an actual overlap between the Parties' sites would arise only in [...] postal codes where both the Parties' sites are present.¹²³
- (211) On the other hand, postal codes may also be a too narrow dimension and the actual analysis of closeness between sites should be done depending on the spectrum portfolio of the customer that is seeking access. In this context, for players with different spectrum portfolios than those of the Parties, the Parties' sites may constitute more alternatives than complements to each other, especially given the limited availability of sites in urban areas. In this respect, the Commission notes that MNOs responding to the market investigation indicated that the Parties are very close competitors (if not the closest competitors) due to the size and quality of their site portfolio.¹²⁴
- (212) Third, it is unclear to what extent the Parties so far exerted an important competitive constraint on each other in the supply of hospitality services to MNOs. Indeed, before the Transaction TIM has continued to be the main customer of INWIT representing still ca. [...] % of its revenues in the latest published financial report (third quarter of 2019)¹²⁵, even if INWIT's business plan before the Transaction foresaw an increase of the revenues realised with third parties (in line with TIM' objective to monetise the financial potential of its sites by increasing the number of tenants). The [...] customer of INWIT has been Vodafone, with sales driven from

¹²¹ Commission decision of 1 September 2016 in case M.7758 – *Hutchison 3G Italy / Wind / JV*.

¹²² See Parties' reply to RFI 19, question 6.e.

¹²³ See Annex 1u to the Active Sharing Agreement.

¹²⁴ See replies to RFI Q3, questions 19 and 20.

¹²⁵ See INWIT's presentation to the investors of 5 November 2019, available at <https://www.inwit.it/sites/default/files/INWIT-9M%2719%20Financial%20Results.pdf>

the strategic decision of TIM and Vodafone to engage in passive sharing before the creation of INWIT.¹²⁶

- (213) As regards Vodafone, so far it has managed its tower operations as part of its mobile business and [...].¹²⁷ In this respect, as also noted by Ei Towers¹²⁸, Vodafone has operated only marginally as TowerCo, neither has exerted a strong competitive pressure on the market. Whilst in an hypothetical counterfactual Vodafone may have spun off its tower operations in an independent company (as it is doing for its European business)¹²⁹, there is no indication that the strategy of primarily serving itself would have changed, as it has been the case for INWIT so far.
- (214) The fact that the Parties would likely continue to primarily serve themselves and each other even if they were not to combine their tower business is supported by the fact that they would in any event engage in an increase of their passive sharing arrangements under the Passive Sharing Agreement.
- (215) In addition, as explained in Section 5.3., for MNOs, the location of the site is the primary driver of demand. However, for the Parties, the location of their sites has not been driven by their willingness to satisfy, and compete for, merchant demand, but rather to fulfil the requirements of their mobile network. There is no indication that this is likely to change in the future. In fact, the Commission notes that other MNOs in the market engaged in strategic partnership with independent TowerCos rather than with the Parties for their site deployment. Indeed, both Wind Tre and Iliad have sold part of their passive assets to Cellnex and entered into an anchor tenant agreement with this operator, including the supply of new “built-to-suit” sites.¹³⁰
- (216) Further, the fact that the Parties are unlikely to have exerted an important competitive constraint on each other in the supply of hospitality services to MNOs, as well as that they are unlikely to exert such constraint in the counterfactual, is supported by the view of Wind Tre, according to which *“it should be generally noted in the context of describing competition among the providers of hospitality services that site portfolios do not necessarily per se overlap, and given the physical and electromagnetic emissions limitations on sites and relatively-long term contractual commitments for installed equipment, even where there is comparable overall footprint and even where there is a direct, alternative site location from another tower company, such alternative sites may often not be actually available to host the needs of a prospective MNO customer”*.¹³¹ Likewise, Ei Towers stated that the competitive pressure exerted on INWIT by the MNOs, Vodafone, Wind Tre and Iliad, is of less relevance compared to the one exerted by Cellnex and Ei Towers.¹³²
- (217) Fourth, the supply of hospitality services to MNOs is characterised by long-term contracts. In particular, other than the agreements with Cellnex described in

¹²⁶ See INWIT’s stand alone business plan, see Annex 4 to the Form CO.

¹²⁷ See Vodafone’s stand alone business plan, see Annex 4 to the Form CO.

¹²⁸ See Ei Towers’ reply to RFI Q4, question 19.

¹²⁹ See Vodafone’s press release of 26 July 2019, available at <https://www.vodafone.com/news-and-media/vodafone-group-releases/news/create-europe-largest-tower-company-unlocking-value-for-shareholders>

¹³⁰ See above Section 5.3.

¹³¹ Wind Tre’s reply to RFI Q3, question 19.

¹³² Ei Towers’ reply to RFI Q4, question 18.

Section 5.3, Wind Tre has agreements in place with [...] as well as with the Parties themselves: [...].

- (218) Likewise, Iliad, other than the agreements with Cellnex described in Section 5.3, it has a long term contract with [...] and with [...]. [...].
- (219) With respect to Fastweb, [...]. However, the Commission notes that, [...]. In fact, as explained in Section 5.3., in the Wind Tre/Fastweb partnership it will be for Wind Tre to manage the mobile network. Thus, it is unclear to what extent Fastweb will be an active customer of hospitality services for a mobile network, to the extent it would rely on the partnership with Wind Tre to roll-out its 5G mobile network.
- (220) The long duration of the framework contracts is likely to offer adequate protection vis-à-vis any worsening of terms and conditions for hospitality services deriving from a potential reduction of the competitive pressure in the market due to the Transaction (albeit, as explained above, it is unclear to what extent the Parties exerted such pressure on each other, in the first place). In this respect, the Commission also notes that most market participants have not expressed concern in relation to the early termination of the contracts by the Parties¹³³ and that, in any event, the Parties committed not to terminate their contracts with third parties by exercising their early termination rights.¹³⁴
- (221) Moreover, the Commission notes that, due to the implementation of the Passive Sharing Agreement, the Parties plan to [...]. Based on the Parties' estimates, [...]. Whilst there is no commitment from the Parties to do so, the Commission notes that should this actually occur it would constitute another mitigating factor of any potential reduction of the competitive pressure in the market due to the Transaction. Indeed, especially TowerCos are likely to intensify competition between themselves [...].
- (222) Finally, as explained by Cellnex,¹³⁵ the Commission notes that pursuant to Article 3(2) of the Broadband Cost Reduction Directive, implemented in Italy by the legislative decree n. 33 of 15 February 2016,¹³⁶ *"any network operator has the obligation to meet all reasonable requests for access to its physical infrastructure under fair and reasonable terms and conditions, including price"*.¹³⁷
- (223) In this context, despite the high barriers to entry, the Commission considers it unlikely that the Transaction would negatively affect MNOs as a result of a worsening of the terms and conditions offered to them.
- (224) Likewise, to the extent that new sites can be built, it is unlikely that the Transaction would negatively affect MNOs. Indeed, as mentioned, construction of new sites by

¹³³ See Replies to Market Test questionnaire, question 11.

¹³⁴ A commitment in this respect has also been included in the Final Commitments.

¹³⁵ Replies to Market Test questionnaire, question 9.

¹³⁶ Decreto legislativo n. 33 del 15 febbraio 2016, relativo all'attuazione della direttiva 2014/61/UE del Parlamento europeo e del Consiglio, del 15 maggio 2014, recante misure volte a ridurre i costi dell'istallazione di rete di comunicazione elettronica ad alta velocità,, Italian OJ "Serie Generale" n.57 of 09.03.2016.

¹³⁷ Directive 2014/61/EU of the European Parliament and of the Council of 15 May 2014 on measures to reduce the cost of deploying high-speed electronic communications networks, OJ L 155, 23.5.2014, p. 1-14.

the Parties has been primarily driven by their mobile network needs and other MNO operators have strategic partnerships with Cellnex for build-to-suit sites. Moreover, in relation to the construction of new sites, buyer power, in the form of self-supply, is likely to mitigate any potential effect of the Transaction.

- (225) Nonetheless, especially in urban areas, the possibilities to build new sites are negligible, and TowerCos' inventories are the only alternative. As discussed in Section 7.3.6. below, due to the potential decrease in space, and thus capacity, to be offered to third parties in the market by the Joint Venture, as result of the MSAs and the preferential rights foreseen therein, MNOs may see reduced capacity available to them in the market.¹³⁸
- (226) In this context, the Commission notes that Wind Tre and Fastweb are unlikely to be negatively affected as a result of horizontal unilateral effects deriving from this reduction in capacity, despite the latter having expressed concerns in the market investigation.¹³⁹ This is because, as further discussed in Section 7.3.6. below, based on the projections on network roll-out submitted by Wind Tre in the market reconstruction, it plans [...]. Further, as explained at paragraph (219), Fastweb is unlikely to constitute an active customer of hospitality services for a mobile network, to the extent it would rely on the partnership with Wind Tre to roll-out its 5G mobile network.
- (227) Further, there is no indication in the file that entry of a new MNO in Italy (other than Fastweb) is likely.
- (228) However, the Commission notes that Iliad is still in the process of developing its mobile network independently. Due to the difficulties of building new sites in Italy, especially in urban areas, in order to be able to roll-out a competitive network, Iliad might need to rely on the Parties' sites. In fact, as discussed in Section 7.3.6. below, based on the projections on network roll-out submitted by Iliad in the market reconstruction, it plans to rely on [...]. Assuming that Iliad's projections of reliance on the Parties' sites are based on a previous verification of the inability of other suppliers to satisfy its network planning needs in a given area with their site stock, for areas where no new sites can be built, the reduction of the capacity in the market resulting from the Transaction, in combination with the MSAs, is not likely to be compensated by the competing TowerCos or self-supply.
- (229) For these reasons, (i) Iliad being one of the only two MNO active customers in the possible market for the supply of hospitality services to MNOs, other than the Parties, and (ii) to the extent Fastweb were not to rely on the partnership with Wind Tre to roll-out its 5G mobile network and/or a new MNO were to enter in Italy, the Commission cannot exclude that the Transaction gives rise to serious doubts as to its compatibility with the internal market in relation to the supply of hospitality services to MNOs on macro-sites as a result of horizontal non-coordinated effects.

¹³⁸ [...].

¹³⁹ See Fastweb's reply to RFI Q3.

7.3.3. *Horizontal non-coordinated effects in the supply of hospitality services on macro-sites to FWA suppliers*

7.3.3.1. Parties' view

- (230) The Parties submit that the Transaction would not raise any competition concerns in relation to the supply of hospitality services on macro-sites to FWA suppliers, but have not provided any specific argument in this respect other than those reported in Section 7.3.2.1.

7.3.3.2. Commission's assessment

- (231) In relation to potential horizontal non-coordinated effects in the supply of hospitality services on macro-sites to FWA suppliers, the Commission notes the following.
- (232) First, as illustrated in Section 7.2.1, based on the Commission's market reconstruction, whatever the metric considered, the Parties' combined shares, both historical and projected up to 2027, are very large and virtually always above 40%. This is true regardless of the geographic level considered.
- (233) Second, as regards closeness of competition, the evidence in the Commission's file is mixed. Indeed, whilst FWA suppliers responding to the market investigation indicated that the Parties are very close competitors (if not the closest competitors) due to the size and quality of their site portfolio,¹⁴⁰ the actual substitutability between the Parties' sites may vary depending on the spectrum portfolio and the technology used by the FWA customer. For example, should technologies requiring direct visual transmission (i.e. LoS – Line of Sight) be used, the presence of obstacles impeding direct visual between the transmitting antenna and the receiving antenna, such as buildings between two sites, prevent those sites from being substitutes.¹⁴¹
- (234) Third, it is unclear to what extent the Parties did exert an important competitive constraint on each other in the supply of hospitality services to FWA suppliers. As explained at paragraphs (212)-(214), the Parties' site operations have been primarily driven by the need to satisfy their mobile network needs. Thus, whilst, as explained in Section 5.3., the primary driver of FWA suppliers' demand is the location of the sites (together with price), for the Parties, the location of their sites has not been driven by their willingness to satisfy, and compete for, merchant demand.
- (235) Fourth, the supply of hospitality services to FWA suppliers is characterised to a large extent by long-term contracts. For example, [...]. Further, [...]. Likewise, [...] [...].
- (236) The long duration of the framework contracts is likely to offer adequate protection vis-à-vis any worsening of terms and conditions for hospitality services deriving from a potential reduction of the competitive pressure in the market due to the Transaction (albeit, as explained above, it is unclear to what extent the Parties exerted such pressure to each other, in the first place). In this respect, the Commission also notes that most market participants have not expressed concern in

¹⁴⁰ See replies to RFI Q3, questions 19 and 20.

¹⁴¹ Agreed minutes of the conference call of 4 December 2019 with Eolo, paragraph 6.

relation to the early termination of the contracts by the Parties¹⁴² and that, in any event, the Parties committed not to terminate their contracts with third parties by exercising their early termination rights.¹⁴³

- (237) Moreover, the Commission notes that, due to the implementation of the Passive Sharing Agreement, the Parties plan to [...]. As explained at paragraph (221), based on the Parties' estimates, [...]. Whilst there is no commitment from the Parties to do so, the Commission notes that should this actually occur it would constitute another mitigating factor of any potential reduction of the competitive pressure in the market due to the Transaction. Indeed, especially TowerCos are likely to intensify competition between themselves [...].
- (238) Finally, as explained by Cellnex¹⁴⁴ as well as in paragraph (222), the Commission notes that pursuant to Article 3(2) of the Broadband Cost Reduction Directive, implemented in Italy by the legislative decree n. 33 of 15 February 2016, "*any network operator has the obligation to meet all reasonable requests for access to its physical infrastructure under fair and reasonable terms and conditions, including price*".
- (239) In this context, despite the high barriers to entry, the Commission considers it unlikely that the Transaction would negatively affect FWA suppliers as a result of a worsening of the terms and conditions offered to them.
- (240) Likewise, to the extent that new sites can be built, it is unlikely that the Transaction would negatively affect FWA suppliers. Indeed, as mentioned, construction of new sites by the Parties has been primarily driven by their mobile network needs and not by the intention to satisfy merchant demand.
- (241) Finally, as further discussed in Section 7.3.8. below, the Commission considers that it is unclear whether, due to the potential decrease in space, and thus capacity, to be offered to third parties in the market by the Joint Venture, as result of the MSAs and the preferential rights foreseen therein, FWA suppliers may see reduced capacity available to them in the market.¹⁴⁵
- (242) Indeed, even if the Parties were to roll-out two 5G networks on all of the sites that will be managed by the Joint Venture, it seems that there would still remain space on those sites for some FWA network operators. Indeed, depending on the FWA technology used, the physical and electromagnetic space occupied by FWA networks is generally more limited than the one of a mobile network. In this respect, Eolo explained that, while no site is likely to be able to host more than two 5G antennas, its antennas would still be able to be hosted given their neutral impact on EMF limits.¹⁴⁶ In addition, based on the market reconstruction, the Commission notes that currently FWA suppliers are active the most in the rural areas below 35 000 inhabitants where the Parties are already installing [...] mobile network antennas, and still space have been rented to FWA players.

¹⁴² See Replies to Market Test questionnaire, question 11.

¹⁴³ A commitment in this respect has also been included in the Final Commitments.

¹⁴⁴ Replies to Market Test questionnaire, question 9.

¹⁴⁵ [...].

¹⁴⁶ Agreed minutes of the conference call of 4 December 2019 with Eolo, paragraph 10.

- (243) However, the Commission notes that, for example, the largest FWA provider, Linkem, leverages the same mobile technology as mobile operators and plans to upgrade its LTE 4G network to 5G.¹⁴⁷ Thus, its future demand for sites may more frequently enter into conflict with the one of the Parties in the context of their passive sharing to which the MSAs are instrumental. [...].¹⁴⁸
- (244) Further, as explained above, the implementation of the Passive Sharing Agreement is likely to [...]. As illustrated above, the capacity that could be freed up on third parties' sites would amount to more than the current number of tenancies by the main FWA players in the areas with more than 35 000 inhabitants and to a considerable portion of the national demand in 2019. This is because the requirements of FWA suppliers in relation to sites differ from those of MNOs, not only in terms of space needed, but also in terms of number of sites, which is much lower.
- (245) Nonetheless, on the one hand, there is no commitment from the Parties to actually withdraw from third party sites and, on the other hand, as the overall number of sites over which the Parties will engage in passive sharing will increase, there would still a reduction of the capacity available on the market.
- (246) In this context, it cannot be concluded whether the capacity that would remain in the market would be sufficient to satisfy the demand of FWA suppliers.
- (247) For these reasons, the Commission cannot exclude that the Transaction will give rise to serious doubts as to its compatibility with the internal market in relation to the supply of hospitality services to FWA suppliers as a result of horizontal non-coordinated effects.

7.3.4. Horizontal non-coordinated effects in the supply of hospitality services on macro-sites to customers other than TV and radio broadcasters, MNOs and FWA suppliers

7.3.4.1. Parties' view

- (248) The Parties submit that the Transaction would not raise any competition concerns in relation to the supply of hospitality services on macro-sites to customers other than TV and radio broadcasters, MNOs and FWA suppliers, but have not provided any specific argument in this respect other than those reported in Section 7.3.2.1.

7.3.4.2. Commission's assessment

- (249) In relation to potential horizontal non-coordinated effects in the supply of hospitality services on macro-sites to customers other than TV and radio broadcasters, MNOs and FWA suppliers, the Commission notes the following.
- (250) First, as illustrated in Section 7.2.1, based on the Commission's market reconstruction, the Parties' combined shares in the supply of services to this residual category of customers are likely to be large and above the 25%, the threshold below which market shares may provide an indication that a concentration is not liable to impede effective competition, as indicated in paragraph 18 of the Horizontal Merger Guidelines.

¹⁴⁷ See above Section 5.3.

¹⁴⁸ Agreed minutes of the conference call of [...], paragraph 4.

- (251) Second, as regards closeness of competition, the results of the market investigation have been inconclusive. Only one customer belonging to this customer group replied to the market investigation and considered INWIT, Vodafone, Cellnex and Wind Tre all at the same level of closeness of competition.¹⁴⁹
- (252) Third, it is unclear to what extent the Parties did exert an important competitive constraint on each other in the supply of hospitality services to customers other than TV and radio broadcasters, MNOs and FWA suppliers. As explained at paragraphs (212)-(214), the Parties' site operations have been primarily driven by the need to satisfy their mobile network needs. Thus, whilst, based on the only responding customer to the market investigation, the primary driver of customer demand is the location of the sites,¹⁵⁰ for the Parties, the location of their sites has not been driven by their willingness to satisfy, and compete for, merchant demand.
- (253) Finally, the Commission notes that this residual customer group is highly heterogeneous and includes private and public surveillance networks, environmental monitoring systems, operators of IoT networks, etc. The demand of these customers is very limited, both in terms of number of sites and in terms of physical and electromagnetic space required. For this reason, the Commission understands that for this customer group framework contracts are uncommon.
- (254) Nonetheless, in the market investigation no merger specific concern has been raised in relation to the effects of the Transaction with respect to hospitality services vis-à-vis this customer group.
- (255) Further, it is unlikely that, due to their very limited space requirements, this customer group would see a reduction of the capacity available to them as result of the MSAs and the preferential rights foreseen therein.¹⁵¹
- (256) For these reasons, the Commission considers that the Transaction does not give rise to serious doubts as to its compatibility with the internal market in relation to the supply of hospitality services to customers other than TV and radio broadcasters, MNOs and FWA suppliers as a result of horizontal non-coordinated effects.¹⁵²

¹⁴⁹ See replies to RFI Q3, questions 19 and 20.

¹⁵⁰ See replies to RFI Q3, question 18.

¹⁵¹ [...].

¹⁵² A third party submitted in the market investigation that, “on the long term, IoT and mobile services will be complementary” but it nonetheless suggested that MNOs try to prevent the expansion of IoT networks. It stated that “at the current stage of development still limited awareness on the demand side represents a good ground for competitive aggressiveness by MNOs, that overemphasize potential weaknesses of non the cellular technology (actually largely compensated by cost efficiency and operational benefits for prospect clients). A further reason of difficulty is represented by the fact that the frequencies required, unlicensed across whole Europe, in Italy are owned by the Ministry of Defence who does not release them on a permanent basis for free use (as it should, according to ITU rules)” (see agreed minutes of the conference call of 29 November 2019 with Ei Towers, paragraph 25).

The Commission has not found any evidence that IoT connectivity and M2M services belong to the same market (in fact the same third parties does not claim substitutability), thus a vertical link between IoT connectivity and the Parties' activity in the supply of hospitality services on macro-sites does not technically arise.

Nonetheless, for the same reasons outlined in Section 7.3.6, the Commission does not consider that vertical input foreclosure effects to the detriment of customers other than TV and radio broadcasters, MNOs and FWA suppliers would arise with respect of the supply of hospitality services on macro-sites. Thus, such effects will not be further discussed in this Decision.

7.3.5. *Horizontal non-coordinated effects in the supply of hospitality services on macro-sites to customers other than TV and radio broadcasters*

7.3.5.1. Parties' view

(257) The Parties submit that the Transaction would not raise any competition concerns in relation to the supply of hospitality services on macro-sites to customers other than TV and radio broadcasters, but have not provided any specific argument in this respect other than those reported in Section 7.3.2.1.

7.3.5.2. Commission's assessment

(258) As explained at paragraph (158), the Commission considers that the effects of the Transaction are likely to be the same in the overall market and in the possible market for the supply of hospitality services to MNOs. This is because of the significant relative importance that this customer group has in the overall market.

(259) For the reasons set out in Section 7.3.1., which are in any event reinforced by the Commission findings in relation to the supply of hospitality services to FWA suppliers set out in Section 7.3.2, the Commission cannot exclude that the Transaction will give rise to serious doubts as to its compatibility with the internal market in relation to the overall supply of hospitality services as a result of horizontal non-coordinated effects.

7.3.6. *Horizontal non-coordinated effects in the supply of hospitality services on micro-sites*

7.3.6.1. Parties' view

(260) The Parties submit that the Transaction would not raise any competition concerns in relation to the supply of hospitality services on micro-sites, but have not provided any specific argument in this respect other than those reported in Section 7.3.2.1.

7.3.6.2. Commission's assessment

(261) In relation to potential horizontal non-coordinated effects in the supply of hospitality services on micro-sites, the Commission notes the following.

(262) First, the Commission notes that the market for the supply of hospitality services on micro-sites is still under development. This is clearly shown by the market reconstruction: as illustrated in the Table below, the annual growth rate of the total market size is very high.

Table 33 - Year over Year increase of total market size for hospitality services on micro-sites

	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027
Growth rate	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]

(263) This observation has been confirmed by respondents to the market investigation. Open Fiber explained that “[m]icro-sites market is taking up and volumes will increase in the next future”.¹⁵³

¹⁵³ Replies to RFI Q4, question 9.

- (264) The Commission also notes that so far the main supplier of hospitality services on micro-sites has been Cellnex. Indeed the supply of INWIT has been mainly focused on captive sales to TIM, [...], as clearly shown in the Tables in Section 7.2.2. above. Vodafone, in turn, [...]. The absence of any active involvement by Vodafone in the market has been confirmed by [...] who is not aware of Vodafone being significantly present in the micro-cells market.¹⁵⁴
- (265) In this context, no conclusion can be made as to the degree of closeness of competition between the Parties' offerings.
- (266) Further, as explained in Section 5.3., for MNOs, the location of the site is the primary driver of demand. However, considering the primary captive focus of the Parties' activities in the supply of hospitality services on micro-sites, the location of their sites will unlikely be driven by their willingness to satisfy, and compete for, merchant demand, but rather to fulfil the requirements of their mobile network. In this context, it is unclear to what extent the Parties will exert a competitive constraint on each other in the supply of merchant hospitality services on micro-sites.
- (267) Second, the Commission notes, on the basis of the market reconstruction, that post-Transaction head-to-head competition between the Joint Venture and Cellnex is likely to remain.
- (268) Respondents to the market investigation have explained that micro-cells deployment in Italy is still marginal. In this vein, Fastweb stated that "*the micro-sites market is still marginal and fragmented among small players mainly focused on specific areas.*"¹⁵⁵ In this context, it cannot be concluded that the Parties enjoy any incumbency advantage in relation to location of their micro-cells as for macro-cells.
- (269) In fact, respondents to the market investigation have explained that the market for hospitality services on micro-sites is today characterized by competition for the market rather than competition in the market.¹⁵⁶ Moreover, with the massive rollout of 5G networks, respondents to the market investigation have an expectation that several new players will enter the market. Wind Tre explained that the "*key variable for a provider of micro-sites is ownership or access to fiber ducts / fiber optic backhauling. There are various entities that have this (e.g., fiber companies and utilities), both at local and nationwide level*".¹⁵⁷ Building micro-cells appears also to be easier than building macro-sites, while subject to the same electromagnetic limits. In this respect, Open Fiber explained that the development of micro-sites is less time-consuming and less expensive than macro-sites and 12 months is a coherent period to build a micro-site.¹⁵⁸
- (270) Finally, the Commission notes that customers of hospitality services on micro-sites did not raise concerns in the market investigation.¹⁵⁹ In fact, based on the market reconstruction, the Commission notes that over 95% of the sales of hospitality services on micro-sites goes to MNOs, which either already have a partnership with

¹⁵⁴ Replies to RFI Q3, question 20.3.

¹⁵⁵ Replies to RFI Q3, question 15.

¹⁵⁶ Replies to RFI Q3, question 24.3.

¹⁵⁷ Replies to RFI Q3, question 19.4.

¹⁵⁸ Replies to RFI Q4, question 8.

¹⁵⁹ Replies to RFI Q3, question 35.2.

Cellnex for the supply of such services or in-house capabilities to satisfy their micro-sites needs.

- (271) For these reasons, the Commission considers that the Transaction does not give rise to serious doubts as to its compatibility with the internal market in relation to the supply of hospitality services on micro-sites as a result of horizontal non-coordinated effects.¹⁶⁰

7.3.7. Vertical non-coordinated effects to the detriment of suppliers of retail mobile services (input foreclosure)

7.3.7.1. Parties' view

- (272) The Parties submit that there are no plausible prospects that the Joint Venture would engage in an input foreclosure strategy to the detriment of suppliers of retail mobile services.
- (273) First, the Parties submit that the rationalisation that will occur in the passive infrastructure to avoid overlaps between Vodafone's and TIM's sites will increase tower capacity.¹⁶¹ Accordingly, third parties will have access to those sites that have been freed by either Vodafone or TIM following the rationalisation process.
- (274) Second, the Parties submit that the Joint Venture will not have sufficient market power for any input foreclosure strategy to be successful. The Parties stress their low market power in the market for towers or any segment of such market. Barriers to entry on the market appear to be low, as evidenced by Cellnex' recent entry on the market.¹⁶²
- (275) Third, the Parties note that no third party relies extensively on the passive infrastructure of Vodafone or TIM pre-Transaction. Accordingly, Vodafone and TIM have only hosted third parties on [...] % and [...] % of their sites respectively. Moreover, MNOs already have access to proprietary passive infrastructures or have entered into agreements with tower companies such as Cellnex to have access to passive infrastructures. The Parties also consider that eviction of currently hosted third parties may induce such third parties to engage in retaliatory measures, which would ultimately reduce the Joint Venture's likelihood of engaging in any form of input foreclosure.¹⁶³

7.3.7.2. Commission's assessment

- (276) As explained in Section 5, macro-sites constitute an essential input for the roll-out of mobile networks. Thus, the supply of hospitality services to MNOs is vertically related to the retail mobile markets and the Commission assesses in this Section the likelihood of vertical non-coordinated effects to the detriment of competing suppliers of retail mobile telecommunications services.

¹⁶⁰ For the same reasons, despite micro-cells will be important in the deployment of 5G mobile networks, the Commission does not consider that vertical input foreclosure effects to the detriment of competing MNO would arise with respect of the supply of hospitality services on micro-sites. Thus, such effects will not be further discussed in this Decision.

¹⁶¹ Form CO, paragraph 394.

¹⁶² Form CO, paragraphs 395-396.

¹⁶³ Form CO, paragraph 397.

- (277) In relation to the Parties' ability to foreclose, the Commission notes the following.
- (278) First, as illustrated in Section 7.2.1, based on the Commission's market reconstruction, whatever is the metric considered (with the exception of the instances where sales to the Parties are also excluded), the Joint Venture will hold a market share above the 30% threshold, below which, according to paragraph 25 of the Non-Horizontal Merger Guidelines, competition concerns are unlikely to be found. This is true regardless of the geographic level considered.
- (279) Second, the Commission has conducted a market reconstruction, collecting data on the network roll out plans of the Parties' MNO competitors, to assess to what extent they plan to densify their network and to rely on the Parties' sites for this purpose. The results of this exercise are illustrated in the following table, showing: (i) the number of the Parties' sites over which Fastweb, Wind Tre and Iliad plan to roll out their network up till 2027; (ii) the percentage that these sites represent out of the total number of sites of Fastweb's, Wind Tre's and Iliad's respective networks; and (iii) the increase year over year of the number of these sites.

Table 34 - Competing MNOs' reliance on the Parties' sites

Number of sites of INWIT and Vodafone on which the customer relies											
Customer	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027
Urban areas (more than 35 000 inhabitants)											
Wind 3	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Fastweb	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Iliad	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Rural areas (less than 35 000 inhabitants)											
Wind 3	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Fastweb	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Iliad	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Percentage of sites of INWIT and Vodafone on which the customer relies											
Customer	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027
Urban areas (more than 35 000 inhabitants)											
Wind 3	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Fastweb	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Iliad	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Rural areas (less than 35 000 inhabitants)											
Wind 3	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Fastweb	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Iliad	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
YoY increase of the number of sites of INWIT and Vodafone on which the customer relies											
Customer	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027
Urban areas (more than 35 000 inhabitants)											
Wind 3	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Fastweb	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Iliad	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Rural areas (less than 35 000 inhabitants)											
Wind 3	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Fastweb	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Iliad	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]

(280) On the basis of the above, the Commission notes the following:

- (a) Wind Tre [...].
 - (b) Fastweb [...]. In fact, as explained in Section 5.3., in the Wind Tre/Fastweb partnership it will be Wind Tre to manage the mobile network. Thus, it is unclear to what extent Fastweb will be an active customer of hospitality services for a mobile network, to the extent it would rely on the partnership with Wind Tre to roll-out its 5G mobile network.
 - (c) Iliad instead, by 2027, plans to build up to [...] of its network in areas populated by more than 35 000 inhabitants on INWIT/Vodafone sites, [...] in areas populated by less than 35 000 inhabitants. In absolute numbers, the additional INWIT/Vodafone sites on which Iliad plans to build its network (compared to the situation as of 31 December 2019) are [...] in areas with more than 35 000 inhabitants and [...] in areas with less than 35 000 inhabitants.
- (281) There is no indication in the file that entry of a new MNO in Italy (other than Fastweb) is likely.
- (282) In this context, the Commission considers that the Parties would have the ability to foreclose access to an important input to Iliad.¹⁶⁴
- (283) As explained in Section 5, pre-Transaction the Parties already engaged in a passive sharing arrangement. In that context, whilst they did not control each other sites within the meaning of Article 3 of the Merger Regulation, they were already able to affect third party's ability to access also the sites they did not control by affecting the electromagnetic and physical space available on the site.
- (284) Further, already pre-Transaction, Iliad experienced a high failure rate when requesting access to sites to INWIT.¹⁶⁵ In particular, Iliad explained that [...].¹⁶⁶ This is confirmed by the Parties' submission, according to which in 2019 INWIT denied access to Iliad [...] times out of the [...] requests of access made by the latter, i.e. [...] % of the times.¹⁶⁷
- (285) The Commission has thus assessed the merger specific change in the Parties' ability to foreclose Iliad.

¹⁶⁴ Nonetheless, whilst there is no evidence in the file that this is likely, to the extent Fastweb were not to rely on the partnership with Wind Tre to roll-out its 5G mobile network, it is likely that the Parties would be able to access to an important input to Fastweb. The same would be the case should a new MNO enter in Italy. In both these instances, the analysis made with respect to the foreclosure to Iliad would apply. Indeed, any new MNO entrant, including Fastweb to the extent it would not rely on the partnership with Wind Tre to roll-out its 5G mobile network, would likely have the same needs in terms of access to the Parties' sites as Iliad.

¹⁶⁵ Iliad [...] where previously Wind Tre was hosted and where Iliad has succeeded to Wind Tre as a result of the commitments in case M.7758 – *Hutchison 3G Italy / Wind / JV* and in case M.9041 – *Hutchison 3G Italy / Wind Tre*..

¹⁶⁶ Agreed minutes of the conference call of 28 November 2019 with Iliad, paragraph 7.

¹⁶⁷ Parties' reply to RFI 19, question 3.

- (286) In this respect, based on the data submitted by the Parties,¹⁶⁸ the Commission notes that, pre-Transaction, a significant difference existed in the number of sites shared by the Parties depending on the location of the sites, and precisely on whether the sites were located in areas with less or more than 35 000 inhabitants. More in detail, pre-Transaction the Parties already shared over [...] % of their combined sites in areas with less than 35 000 inhabitants, but only [...] % of their combined sites in areas with more than 35 000 inhabitants.
- (287) Further the Commission notes that, post-Transaction, the Parties plan to increase the number of sites they share, and thus reduce the capacity available to third parties (and in particular Iliad), in an asymmetric manner depending on the location. Indeed, in areas with less than 35 000 inhabitants, the Parties plan to increase the number of sites they will share by [...] %, from around [...] to [...], whilst having preferential rights under the MSAs on over [...] sites in these areas. Conversely, in areas with more than 35 000 inhabitants, the Parties plan to increase the number of sites they will share by almost [...] %, from around [...] to over [...], corresponding to the total number of sites over which they would have preferential rights under the MSAs in these areas.¹⁶⁹ Thus, they are more likely to use the rights afforded to them by the MSAs and this may prevent the Joint Venture from selling hospitality services to Iliad in areas with more than 35 000 inhabitants, thereby increasing the failure rate of the access requests of Iliad to the Joint Venture.
- (288) The Commission also notes that, as a result of the commitments which allowed the entry of Iliad,¹⁷⁰ the latter benefits from an option to enter into a RAN sharing arrangement with Wind Tre, which [...]. Further, in the market investigation, Iliad explained that *“in relation to macro-cells there is a strong distinction between sites in rural / less densely populated areas and large cities / densely populated areas. In the first, the localization of the site will be relevant but generally there will be a possibility to put in competition several players [...]. In large cities / densely populated areas, it is often the case that actually available sites are scarce, thus leading to a situation where the MNO needing a site will above all consider the location / availability of the site and will be less concerned about other variables due to limited competition / choice”*.¹⁷¹ Finally, in the market investigation, Iliad also submitted [...].
- (289) In this context, the Commission considers that a merger-specific change in ability to foreclose Iliad exists and is limited to the areas with more than 35 000 inhabitants.
- (290) In relation to the Parties' incentives to foreclose, the Commission notes that the strategic rationale of the Transaction is for the Parties to better manage their site assets with a view to deploy faster a 5G network and thus being able to better compete on the retail mobile markets. In the retail mobile markets, Iliad has been created as new fourth MNO to eliminate the anticompetitive effects stemming from the creation of Wind Tre, which would have entailed a reduction of the competitive

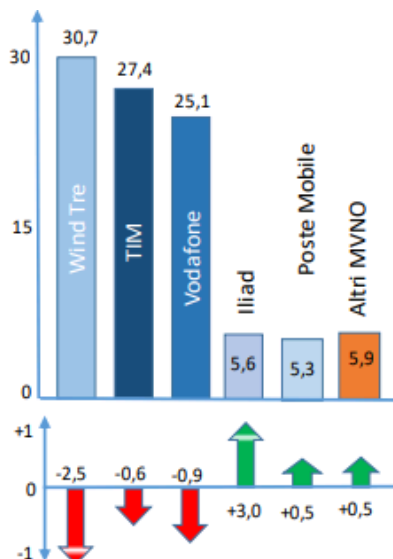
¹⁶⁸ Parties' reply to RFI 19, question 6(e).

¹⁶⁹ Parties' reply to RFI 19, question 6(e). [...] in the reply to RFI 19.

¹⁷⁰ See Commission decision of 1 September 2016 in case M.7758 – *Hutchison 3G Italy / Wind / JV*; Commission decision of 30 August 2018 in case M.9041 – *Hutchison 3G Italy / Wind Tre*.

¹⁷¹ Iliad's reply to RFI Q3, question 18.

pressure to the benefit also of Vodafone and TIM.¹⁷² Based on the latest figures released by AGCOM, the Italian telecom regulator, it can be observed that Iliad is delivering on this mission and the Parties, along with Wind Tre, are keeping on losing market shares, to the benefit of Iliad and MVNOs, as illustrated by the below Figure which compares market shares in September 2019 with those in September 2018 (see arrows below the horizontal line).¹⁷³



- (291) In this context, the Commission considers that the Parties have both a symmetric incentive in foreclosing Iliad's roll-out. Indeed, the Parties' gains in the downstream retail mobile markets as a result of the foreclosure of an aggressive competitor like Iliad would likely largely outweigh what they would lose upstream by not offering hospitality services to Iliad.
- (292) As regards the effects of a possible foreclosure strategy, as outlined above, Iliad plans, by 2027, to build up to [...] of its network in areas populated by more than 35 000 inhabitants on INWIT/Vodafone sites. This represents a considerable percentage of the site needs of Iliad. Further, due to its more limited spectrum portfolio compared to its MNO competitors,¹⁷⁴ Iliad is likely to need a greater densification of the network to ensure adequate capacity to cater for the demand of the Italian retail mobile customers, which has grown considerably over the years since its entry.¹⁷⁵ Considering the difficulties of building new sites in Italy in urban areas, it is unlikely that the reduction of the capacity in the market resulting from the Transaction, in combination with the MSAs, would be compensated by the competing TowerCos or self-supply.

¹⁷² See Commission decision of 1 September 2016 in case M.7758 – *Hutchison 3G Italy / Wind / JV*; Commission decision of 30 August 2018 in case M.9041 – *Hutchison 3G Italy / Wind Tre*.

¹⁷³ AGCOM, Communication Markets Monitoring System, no. 4/2019 available at <https://www.agcom.it/documents/10179/4386532/Allegato+23-1-2020/7b245499-7f9f-45af-80c0-76b41a197b7c?version=1.0>

¹⁷⁴ See <https://www.agcom.it/documents/10179/9304077/Studio-Ricerca+25-01-2018/ed5ed802-c105-4aad-82c7-3877fb32b70d?version=1.0>

¹⁷⁵ As to network densification as a tool to avoid capacity constraints, see Commission decision of 11 May 2016 in case M.7612 – *Hutchison 3G UK/Telefónica UK*, Annex C. As to the evolution of data usage in Italy, see AGCOM, Communication Markets Monitoring System.

- (293) The foreclosure strategy is thus likely to significantly reduce Iliad's ability to deliver quality services to retail mobile customers in Italy and thus Iliad's ability to compete in the retail mobile markets. A potential foreclosure of Iliad's network rollout possibilities is in turn likely to have significant anticompetitive effects in the retail mobile markets: as explained in Section 5, Iliad has indeed been created as new fourth MNO to eliminate the anticompetitive effects stemming from the creation of Wind Tre and, as outlined above, is exerting an important competitive constraint on retail mobile markets, in particular in the supply of retail mobile services, excluding M2M, which account for over 70% of mobile retail subscriptions.¹⁷⁶
- (294) For these reasons, the Commission considers that the Transaction gives rise to serious doubts as to its compatibility with the internal market as a result of vertical non-coordinated effects to the detriment of Iliad (or any new MNO entrant with the same needs in terms of access to the Parties' sites as Iliad¹⁷⁷) as supplier of retail mobile services.

7.3.8. Vertical non-coordinated effects to the detriment of suppliers of wholesale mobile services (input foreclosure)

7.3.8.1. Parties' view

- (295) The Parties submit that there are no plausible prospects that the Joint Venture would engage in an input foreclosure strategy to the detriment of suppliers of wholesale mobile services for the same reasons outlined in Section 7.3.7.1.

7.3.8.2. Commission's assessment

- (296) As explained in Section 5, macro-sites constitute an essential input for the roll-out of mobile networks. Thus, the supply of hospitality services to MNOs is vertically related to the wholesale mobile market and the Commission assesses in this Section the likelihood of vertical non-coordinated effects to the detriment of competing suppliers of wholesale access and call origination on mobile networks.
- (297) In this respect, the Commission notes that the same considerations made in Section 7.3.7 in relation to the ability and the incentives of the Parties to foreclose suppliers of retail mobile services also apply in relation to suppliers of wholesale mobile services. This is because the same network is used by MNOs to provide both wholesale and retail mobile services.
- (298) In terms of effects, the Commission notes that, while based on the market share data provided by the Parties, Iliad would have not won any contract for an MVNO customer, the wholesale mobile demand is extremely lumpy and tenders are infrequent.
- (299) Nonetheless, any potential foreclosure of Iliad's network rollout possibilities is likely to have significant anticompetitive effects in the wholesale mobile market by

¹⁷⁶ The foreclosure effects on the retail mobile markets are likely to be worsen by the foreclosure on the wholesale mobile market, assessed in Section 7.3.8.

¹⁷⁷ See footnote 164.

reducing the number of alternative MNOs, in line with the predictions made by the Commission when assessing the creation of Wind Tre.¹⁷⁸

- (300) For these reasons, the Commission considers that the Transaction gives rise to serious doubts as to its compatibility with the internal market as a result of vertical non-coordinated effects to the detriment of Iliad (or any new MNO entrant with the same needs in terms of access to the Parties' sites as Iliad¹⁷⁹) as supplier of wholesale mobile services.

7.3.9. Vertical non-coordinated effects to the detriment of suppliers of retail fixed services (input foreclosure)

7.3.9.1. Parties' view

- (301) The Parties have not submitted their views in relation to the possibility that the Joint Venture would engage in an input foreclosure strategy to the detriment of suppliers of retail fixed services.

7.3.9.2. Commission's assessment

- (302) As explained in Section 5, macro-sites constitute an essential input for the roll-out of FWA networks used for the delivery of retail fixed telecommunications services. Thus, the supply of hospitality services to FWA suppliers is vertically related to the retail fixed markets and the Commission assesses in this Section the likelihood of vertical non-coordinated effects to the detriment of competing suppliers of retail fixed telecommunications services.
- (303) In relation to the Parties' ability to foreclose, the Commission notes the following.
- (304) First, as illustrated in Section 7.2.1, based on the Commission's market reconstruction, whatever is the metric considered, the Joint Venture will hold a market share above the 30% threshold, below which, according to paragraph 25 of the Non-Horizontal Merger Guidelines, competition concerns are unlikely to be found. This is true regardless of the geographic level considered.
- (305) Second, the Commission has conducted a market reconstruction, collecting data on the network roll out plans of the main FWA suppliers, to assess to what extent they plan to densify their network and to rely on the Parties' sites for this purpose. The results of this exercise are illustrated in the following table, showing: (i) the number of the Parties' sites over which Fastweb, Eolo and Linkem plan to roll out their network up till 2027; (ii) the percentage that these sites represent out of the total number of sites of Fastweb's, Eolo's and Linkem's respective networks; and (iii) the increase year over year of the number of these sites.

¹⁷⁸ Commission decision of 1 September 2016 in case M.7758 – *Hutchison 3G Italy / Wind / JV*; Commission decision of 30 August 2018 in case M.9041 – *Hutchison 3G Italy / Wind Tre*.

¹⁷⁹ See footnote 164.

Table 35 - Competing FWA suppliers' reliance on the Parties' sites

Number of sites of INWIT and Vodafone on which the customer relies											
Customer	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027
Urban areas (more than 35 000 inhabitants)											
Fastweb	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Eolo	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Linkem	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Rural areas (less than 35 000 inhabitants)											
Fastweb	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Eolo	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Linkem	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]

Percentage of sites of INWIT and Vodafone on which the customer relies											
Customer	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027
Urban areas (more than 35 000 inhabitants)											
Fastweb	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Eolo	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Linkem	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Rural areas (less than 35 000 inhabitants)											
Fastweb	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Eolo	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Linkem	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
YoY increase of the number of sites of INWIT and Vodafone on which the customer relies											
Customer	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027
Urban areas (more than 35 000 inhabitants)											
Fastweb	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Eolo	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Linkem	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Rural areas (less than 35 000 inhabitants)											
Fastweb	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Eolo	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Linkem	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]

(306) On the basis of the above, the Commission notes the following:

- (a) as explained in Section 5.3., Fastweb has entered into a cooperation with Linkem for the reciprocal provision of network slice services and [...]. Thus, it is unclear to what extent Fastweb will be an active customer of hospitality services on macro-sites for an FWA network. However, at this stage this possibility cannot be excluded, given its obligation to give reciprocal access to Linkem.
- (b) Eolo, by 2027, plans to build up to [...] of its network in areas populated by more than 35 000 inhabitants on INWIT/Vodafone sites, [...] in areas populated by less than 35 000 inhabitants. In absolute numbers, the additional INWIT/Vodafone sites on which Eolo plans to build its network (compared

to the situation as of 31 December 2019) are [...] in areas with more than 35 000 inhabitants and [...] in areas with less than 35 000 inhabitants.

- (c) Linkem, by 2027, plans to build up to [...] of its network in areas populated by more than 35 000 inhabitants on INWIT/Vodafone sites, [...] in areas populated by less than 35 000 inhabitants. In absolute numbers, the additional INWIT/Vodafone sites on which Eolo plans to build its network (compared to the situation as of 31 December 2019) are [...] in areas with more than 35 000 inhabitants and [...] in areas with less than 35 000 inhabitants.

(307) In this context, the Commission considers that the Parties would have the ability to foreclose access to an important input to FWA suppliers.

(308) As explained in Section 5, pre-Transaction the Parties already engaged in a passive sharing arrangement. In that context, whilst they did not control each other sites within the meaning of Article 3 of the Merger Regulation, they were already able to affect third party's ability to be technically able to access also the sites they did not control by affecting the electromagnetic and physical space available on the site.

(309) Further, already pre-Transaction, FWA players experienced a high failure rate when requesting access to sites to the Parties' sites. For example, Linkem explained that [...]. Further, according to the data submitted by the Parties, in the past three years they already denied access to their sites in response to over [...] % of the requests they received by the main FWA suppliers, [...].

Table 36 - Number of access requests and denials by the Parties

Vodafone	FY 2018			FY 2019			FY 2020		
	Requests	Denials	Failure rate	Requests	Denials	Failure rate	Requests	Denials	Failure rate
Areas with more than 35 000 inhabitants									
Fastweb	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Eolo	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Linkem	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Overall	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Areas with less than 35 000 inhabitants									
Fastweb	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Eolo	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Linkem	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Overall	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
INWIT / TIM	2017			2018			2019		
	Requests	Denials	Failure rate	Requests	Denials	Failure rate	Requests	Denials	Failure rate
Areas with more than 35 000 inhabitants									
Fastweb	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Eolo	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Linkem	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Overall	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Areas with less than 35 000 inhabitants									
Fastweb	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Eolo	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Linkem	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Overall	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]

Note: For Vodafone the reference is to fiscal years.

(310) The Commission has thus assessed the merger specific change in the Parties' ability to foreclose FWA suppliers.

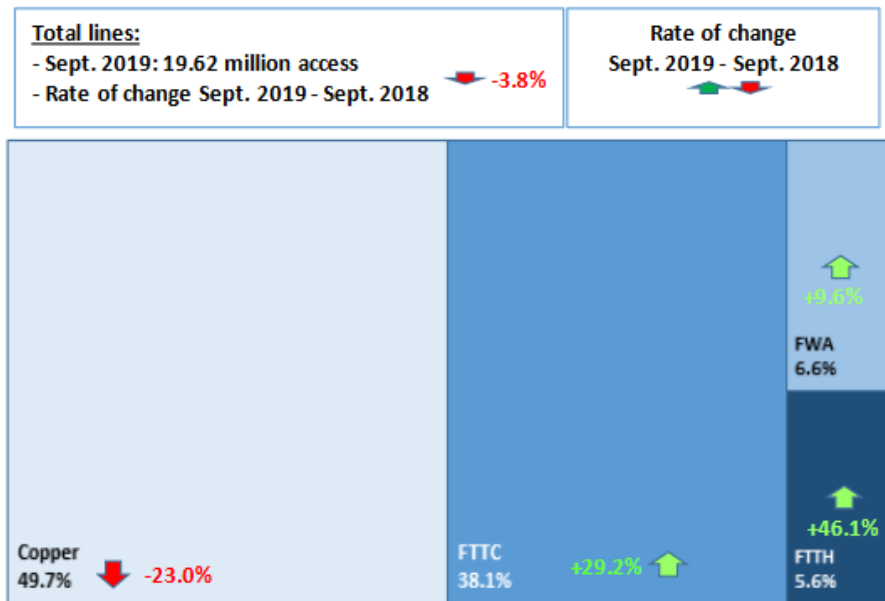
- (311) In this respect, based on the data submitted by the Parties,¹⁸⁰ the Commission notes that, pre-Transaction, a significant difference existed in the number of sites shared by the Parties depending on the location of the sites, and precisely on whether the sites were located in areas with less or more than 35 000 inhabitants. More in detail, pre-Transaction the Parties already shared over [...] % of their combined sites in areas with less than 35 000 inhabitants, but only [...] % of their combined sites in areas with more than 35 000 inhabitants.
- (312) Further the Commission notes that, post-Transaction, the Parties plan to increase the number of sites they share, and thus reduce the capacity available to third parties (and in particular Iliad), in an asymmetric manner depending on the location. Indeed, in areas with less than 35 000 inhabitants, the Parties plan to increase the number of sites they will share by [...] %, from around [...] to [...], whilst having preferential rights under the MSAs on over [...] sites in these areas. Conversely, in areas with more than 35 000 inhabitants, the Parties plan to increase the number of sites they will share by almost [...] %, from around [...] to over [...], corresponding to the total number of sites over which they would have preferential rights under the MSAs in these areas.¹⁸¹ Thus, they are more likely to use the rights afforded to them by the MSAs and this may prevent the Joint Venture from selling hospitality services to FWA suppliers in areas with more than 35 000 inhabitants, thereby increasing the failure rate of the access requests of FWA suppliers to the Joint Venture.
- (313) In this context, the Commission considers that a merger-specific change in ability to foreclose FWA suppliers exists but it is limited to the areas with more than 35 000 inhabitants.
- (314) In relation to the Parties' incentives to foreclose, the Commission considers that this cannot be excluded. Indeed, based on AGCOM's data, the number of fixed access lines based on FWA technologies in September 2019 have been increasing compared to September 2018,¹⁸² as illustrated in the following Figure.

¹⁸⁰ Parties' reply to RFI 19, question 6(e).

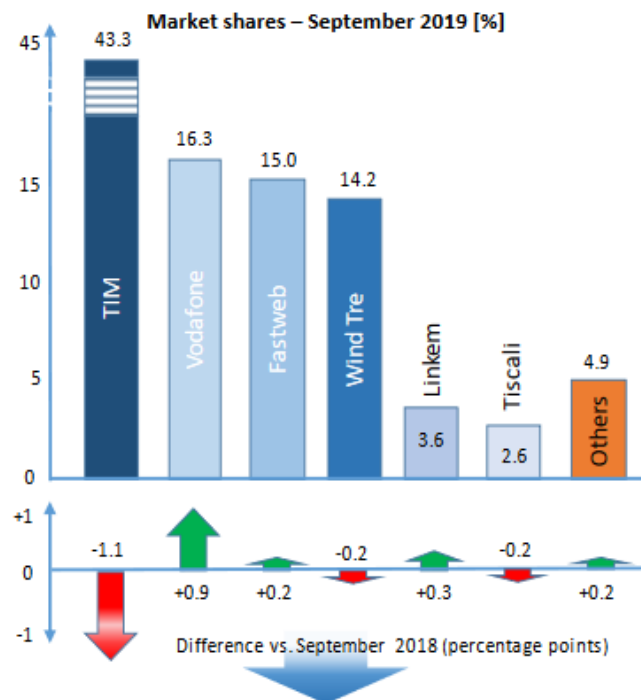
¹⁸¹ Parties' reply to RFI 19, question 6(e). [...] in the reply to RFI 19.

¹⁸² AGCOM, Communication Markets Monitoring System, no. 4/2019 available at <https://www.agcom.it/documents/10179/4386532/Allegato+23-1-2020/7b245499-7f9f-45af-80c0-76b41a197b7c?version=1.0>

Figure 1 - Distribution of fixed access lines by infrastructure and trend compared to September 2018
[%]



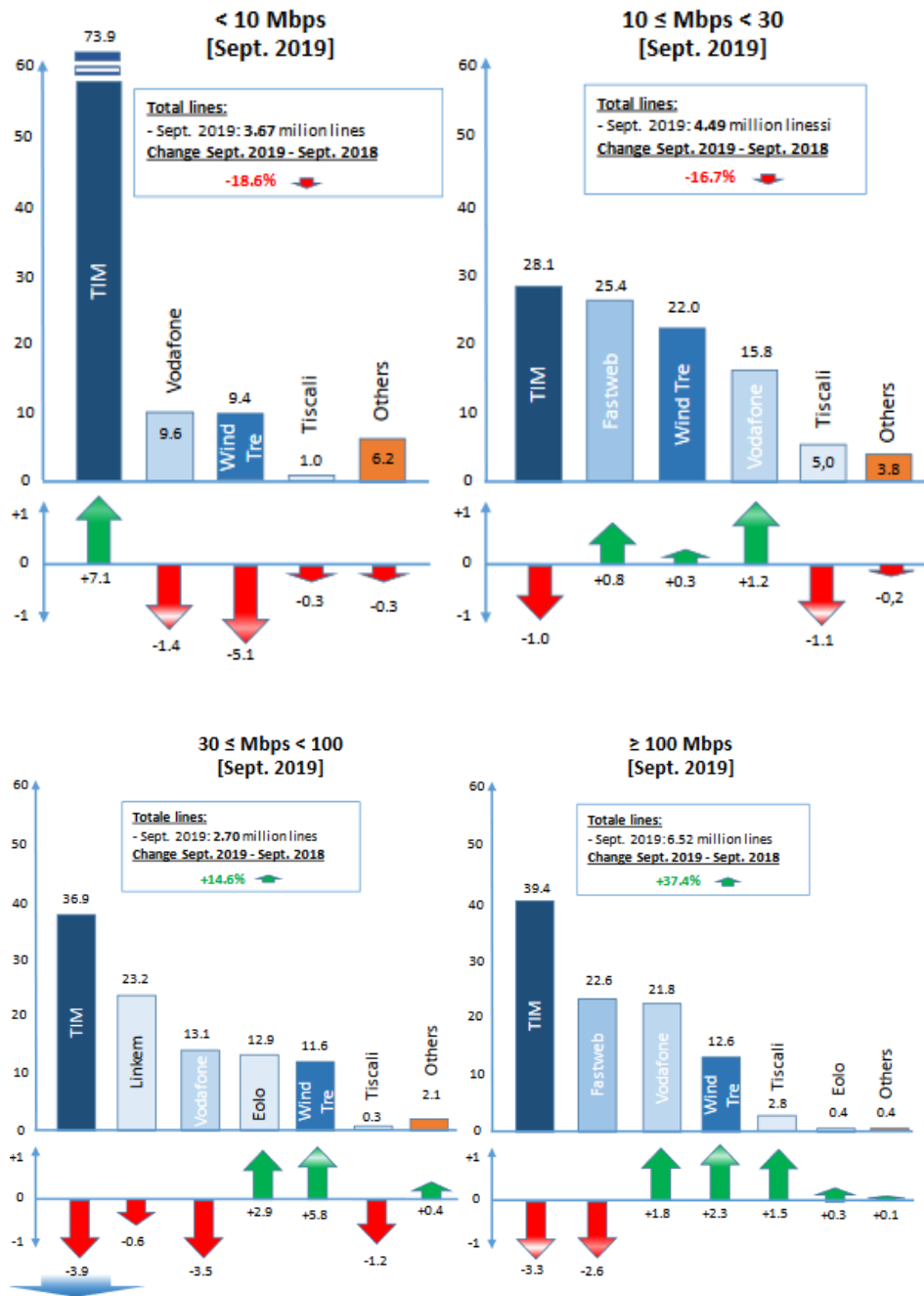
- (315) Specifically in relation to fixed broadband connections, AGCOM found that, whilst TIM's share is decreasing and Vodafone's increases, Fastweb (mainly its services offered via fiber), Linkem and other operators offering services based on FWA technologies have increased their market share.¹⁸³



- (316) The growth of shares by FWA suppliers (in particular Linkem and Eolo), in particular with respect to TIM, is more pronounced when considering higher

¹⁸³ AGCOM, Communication Markets Monitoring System, no. 4/2019 available at <https://www.agcom.it/documents/10179/4386532/Allegato+23-1-2020/7b245499-7f9f-45af-80c0-76b41a197b7c?version=1.0>

connections for the suppliers of higher internet speeds, above 30 Mbps, as illustrated by the below Figure.¹⁸⁴



- (317) In this context, the Commission considers that the Parties have both an incentive in foreclosing FWA suppliers' roll-out. This is the case in areas with more than 35 000 inhabitants, where the Parties are more likely to have already, or plan to roll-out, fixed infrastructure for the supply of fixed internet services. Indeed, the significant investments needed to roll-out fixed infrastructure are likely to have been (or to be) made in more populated areas. This is even the more the case in a potential market for the supply of retail fixed services via FWA technologies only, where TIM has recently entered and Vodafone is [...]. Indeed, the Parties' gains in the downstream

¹⁸⁴ AGCOM, Communication Markets Monitoring System, no. 4/2019 available at <https://www.agcom.it/documents/10179/4386532/Allegato+23-1-2020/7b245499-7f9f-45af-80c0-76b41a197b7c?version=1.0>

retail fixed markets as a result of the foreclosure of aggressive FWA competitors like Linkem would likely largely outweigh what they would lose upstream by not offering hospitality services to FWA suppliers.

- (318) As regards the effects of a possible foreclosure strategy, as outlined above, FWA suppliers are increasing their market shares, which indicate an increasing interest by Italian consumers for fixed internet services based on FWA technology.
- (319) Further, as explained at paragraph (306), the main FWA providers, Linkem and Eolo, plan to expand their network based to a considerable extent on the Parties' sites. Considering the difficulties of building new sites in Italy in urban areas, it is unlikely that the reduction of the capacity in the market resulting from the Transaction, in combination with the MSAs, would be compensated by the competing TowerCos or self-supply.
- (320) A foreclosure strategy by the Parties is thus likely to reduce FWA players' ability to expand their network. In this context, the Commission cannot exclude that the Transaction will have significant effects in the downstream market for fixed retail services, in particular in terms of reduction of choice.¹⁸⁵ Indeed, FWA suppliers offer consumers in Italy an alternative technology which high performance in terms of speed, in particular in the areas where fiber has not yet been rolled out.
- (321) For these reasons, the Commission cannot exclude that the Transaction gives rise to serious doubts as to its compatibility with the internal market as a result of vertical non-coordinated effects to the detriment of FWA suppliers of retail fixed services.

7.3.10. Vertical non-coordinated effects to the detriment of suppliers of wholesale fixed services (input foreclosure)

7.3.10.1. Parties' view

- (322) The Parties have not submitted their views in relation to the possibility that the Joint Venture would engage in an input foreclosure strategy to the detriment of suppliers of wholesale fixed services.

7.3.10.2. Commission's assessment

- (323) As explained in Section 5, macro-sites constitute an essential input for the roll-out of FWA networks used for the delivery of wholesale fixed telecommunications services. Thus, the supply of hospitality services to FWA suppliers is vertically related to the wholesale fixed market and the Commission assesses in this Section the likelihood of vertical non-coordinated effects to the detriment of competing suppliers of wholes fixed telecommunications services.
- (324) In this respect, the Commission notes that the same considerations made in Section 7.3.9 in relation to the ability of the Parties to foreclose suppliers of retail fixed services also apply in relation to suppliers of wholesale fixed services. This is because the same network is used by FWA providers to provide both wholesale and retail fixed services.

¹⁸⁵ The foreclosure effects on the retail fixed markets are likely to be worsen by the foreclosure on the wholesale fixed markets, assessed in Section 7.3.10.

- (325) As regards the incentives to foreclose, these cannot be excluded. Indeed, both Parties may have an incentive to foreclose a competitor at wholesale level which would enable competition at retail level, where TIM is active and Vodafone is [...]. Further, TIM is active as provider of wholesale fixed services based on FWA technology, which appears in itself an attractive market as demonstrated by the fact that there exist players which are active only in the supply of wholesale fixed services via FWA technologies without being active at retail level. In particular, Open Fiber has explained that it plans to offer wholesale fixed services using FWA technologies in relation to almost 15% of the premises it will connect (i.e. 19 million).¹⁸⁶ In such context, the Parties' gains in the downstream wholesale fixed markets as a result of the foreclosure of competitors would likely outweigh what they would lose upstream by not offering hospitality services to FWA suppliers.
- (326) In terms of effects, the Commission notes that, while based on the market share data provided by the Parties, it cannot be concluded that FWA suppliers have played an important role in the overall supply of wholesale fixed services, the wholesale fixed demand is extremely lumpy and tenders are infrequent. Further, if one were to consider only the possible market for the supply of wholesale fixed services based on FWA technology, the effects of the transaction would be greater as the market is likely to expand¹⁸⁷ and the competing providers would see reduce their expansion possibilities.
- (327) Any potential foreclosure of FWA suppliers' network rollout possibilities is likely to have anticompetitive effects in the wholesale mobile market by reducing the number of alternative providers, in particular if the supply based on FWA technology is considered.
- (328) For these reasons, the Commission cannot exclude that the Transaction gives rise to serious doubts as to its compatibility with the internal market as a result of vertical non-coordinated effects to the detriment of FWA suppliers of wholesale fixed services.

7.3.11. Vertical non-coordinated effects to the detriment of suppliers of hospitality services on macro-sites (customer foreclosure)

7.3.11.1. Parties' view

- (329) The Parties have not submitted their views in relation to the possibility that the Joint Venture would engage in a customer foreclosure strategy to the detriment of suppliers of hospitality services on macro-sites.

7.3.11.2. Commission's assessment

- (330) In the market investigation, the Commission has received complaints in relation to the potential anticompetitive effects of the Transaction to the detriment of suppliers of hospitality services on macro-sites, in particular independent TowerCos not vertically integrated in the operation of communications networks, as a result of customer foreclosure. According to the complainants, the Transaction, in combination with the MSAs and the status of preferred supplier therein foreseen for

¹⁸⁶ Open Fiber's reply to RFI Q4, question 1.

¹⁸⁷ This is demonstrated by TIM's recent entry in the market and by the fact that, as mentioned, Open Fiber plan to offer wholesale fixed services based on FWA network.

the Joint Venture with respect to TIM and Vodafone as customers of hospitality services on macro-sites, would prevent TIM and Vodafone from contracting with alternative suppliers of hospitality services on macro-sites. As TIM and Vodafone are two of the largest suppliers of retail (and wholesale) mobile services, competitors of the Joint Venture would thus be foreclosed from access to a sufficient customer base and their ability and incentives to compete post-Transaction would be reduced.

- (331) In this respect, the Commission notes that indeed it is likely that the Parties have the ability and the incentive to insource their demand of macro-sites. In fact, as explained at paragraph (149), according to the Parties' estimates, the extension of the passive sharing arrangements would result into a [...] on third parties' sites for each of the Parties in areas with more than 35 000 inhabitants. It can be considered that post-Transaction, [...]. Further, due to the preferred supplier clause included in the MSA, it is likely that the Parties will be less active in looking for hospitality services from third party suppliers.
- (332) Nonetheless, the Commission does not consider that a withdrawal of the Parties' networks from third party sites would have a foreclosure effect on suppliers of hospitality services on macro-sites, which would have a significant detrimental effect on consumers in the downstream market, be it the supply of mobile or fixed services at retail or wholesale level, pursuant to paragraph 59 of the Non-Horizontal Merger Guidelines.
- (333) First, the Parties are already vertically integrated and source the majority of their hospitality services in-house or from each other as a result of the passive sharing arrangement already in place. There is no indication that this is likely to change in the future, in particular in relation to the construction of new sites. In fact, as explained above, due to the Passive Sharing Agreement the Parties would in any event increase their sales to each other and reduce their tenancies on third parties' sites.
- (334) Second, the Commission has conducted a market reconstruction, collecting data on TowerCos' actual sales, and estimates on the future sales, of hospitality services on macro-sites, in revenues and volume (as number of tenancies), per customer over the period 2017 to 2027. In this respect, the Commission has collected data distinguishing between rural areas where the Parties are already implementing passive sharing arrangements (thus areas with less than 35 000 inhabitants) and areas where this is not the case (thus areas with more than 35 000 inhabitants). This is because, where passive sharing is already implemented, the Parties are already giving priority to each other for hospitality services on the macro-sites.
- (335) Estimates on future sales have been provided by the information providers based on the assumption that the site Joint Venture between TIM and Vodafone would have not been created. [...].
- (336) On this basis, the following table presents Cellnex', Ei Towers' and Rai Way's as well as Wind Tre's expected reliance on TIM and Vodafone as customers of hospitality services on the macro-sites, showing: (i) the percentage of the total sales by volume and value of each TowerCo achieved with sales to TIM and Vodafone; (ii) the absolute number of tenancies of each TowerCo achieved with sales to TIM and Vodafone; and (iii) the increase year over year of the sales by volume and value of each TowerCo with TIM and Vodafone.

Table 37- TowerCos' reliance on sales to the Parties

Percentage of sales to TIM and Vodafone out of total sales by value at national level											
TowerCo	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027
Wind Tre	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Cellnex	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Ei Towers	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Ray Way	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
YoY increase of sales to TIM and Vodafone out of total sales by value at national level											
TowerCo	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027
Wind Tre	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Cellnex	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Ei Towers	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Ray Way	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Sales to TIM and Vodafone by volume (tenancies)											
TowerCo	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027
Urban areas (more than 35 000 inhabitants)											
Wind Tre	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Cellnex	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Ei Towers	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Ray Way	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Rural areas (less than 35 000 inhabitants)											
Wind Tre	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Cellnex	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Ei Towers	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Ray Way	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Percentage of sales to TIM and Vodafone out of total sales by volume (tenancies)											
TowerCo	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027
Urban areas (more than 35 000 inhabitants)											
Wind Tre	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Cellnex	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Ei Towers	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Ray Way	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Percentage of sales to TIM and Vodafone out of total sales by volume (tenancies)											
TowerCo	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027
Rural areas (less than 35 000 inhabitants)											
Wind Tre	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Cellnex	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Ei Towers	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Ray Way	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]

YoY increase of sales to TIM and Vodafone out of total sales by volume (tenancies)											
TowerCo	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027
Urban areas (more than 35 000 inhabitants)											
Wind Tre	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Cellnex	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Ei Towers	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Ray Way	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Rural areas (less than 35 000 inhabitants)											
Wind Tre	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Cellnex	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Ei Towers	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Ray Way	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]

(337) On the basis of the above, the Commission notes the following:

- (a) Whilst in terms of tenancies, the sales to the Parties account for a share of each of the TowerCos' total sales above [...], with the exception of [...], the year over year increase of such sales is never above [...] as from 2020 and in certain cases is even [...]. Moreover, when considering the absolute increase of the number of tenancies to be achieved with sales to the Parties by 2027 compared to sales at 31 December 2019, the increase would be very limited or negative, with the exception of [...]. In more detail, the change in 2027 compared to 2019 would be: for Wind Tre [...] at national level; for Cellnex [...] at national level; for Ei Towers [...] at national level; for Rai Way [...] at national level.
- (b) In terms of revenues, the sales to the Parties account for a share of Wind Tre and Cellnex below [...] and so is the year over year increase as from 2020. The share in relation to Ei Tower is [...] but the year over year increase as from 2020 is [...]. Rai Way [...] and the year over year increase is [...].

(338) With regard to Ei Towers and Rai Way, based on the results of the market reconstruction, the Commission further notes that they are considered to be particularly focused on the TV and radio customers. In fact, Rai Way is vertically integrated in the supply of broadcasting services. In addition, for each Ei Tower and Rai Way, [...]. In fact, Ei Towers explained that [...] and that it is particularly interested in Iliad's entry on the market and its initiative to build up its own active infrastructure.¹⁸⁸ In this context, the Commission considers it unlikely that either Ei Towers or Rai Way would be negatively affected by a potential strategy aimed at customer foreclosure. Moreover, given their limited market share as outlined in Section 7.2.1., the Commission considers it unlikely that a potential customer foreclosure strategy against Ei Towers or Rai Way would have a negative impact on the customers in the downstream market. To the contrary, it is likely that the space freed up by the Parties on Ei Towers' or Rai Way's sites would become available to other customers, MNOs, FWA suppliers or other customers.

¹⁸⁸ Agreed minutes of the conference call of 29 November 2019 with Ei Towers, paragraph 9.

- (339) With regard to Wind Tre, based on the results of the market reconstruction, the Commission further notes that [...]. In addition, Wind Tre has raised no customer foreclosure concern. In this context, the Commission considers it unlikely that Wind Tre would be negatively affected by a potential customer foreclosure strategy. Moreover, given its limited market share as outlined in Section 7.2.1., the Commission considers it unlikely that a potential customer foreclosure strategy against Wind Tre would have a negative impact on the customers in the downstream market. To the contrary, it is likely that the space freed up by the Parties on Wind Tre's sites would become available to other customers, MNOs, FWA suppliers or other customers.
- (340) Finally, with regard to Cellnex, the Commission recalls that it has in place strategic partnerships with Wind Tre and Iliad, as a result of the asset sale it undertook with each of these customers in, respectively 2015 and 2019, as explained in Section 5.2. Further, based on the results of the market reconstruction, the Commission notes that, [...]. In this context, the Commission considers that, whilst, as outlined in Section 7.2.1., Cellnex has a significant market share and it would be the main competitors of the Joint Venture, it is unlikely that Cellnex would be negatively affected by a potential customer foreclosure. Likewise, it is unlikely that a potential customer foreclosure strategy against Cellnex would have a negative impact on the customers in the downstream market. To the contrary, it is likely that the space freed up by the Parties on Cellnex' sites would become available to other customers, MNOs, FWA suppliers or other customers (albeit, as explained above, such space may not fully compensate the reduction of capacity which may give rise to input foreclosure to the detriment of MNOs and FWA suppliers).
- (341) For these reasons, the Commission considers that the Transaction does not give rise to serious doubts as to its compatibility with the internal market as a result of vertical non-coordinated effects to the detriment of suppliers of hospitality services on macro-sites.

7.3.12. Vertical non-coordinated effects to the detriment of suppliers of hospitality services on micro-sites (customer foreclosure)

7.3.12.1. Parties' view

- (342) The Parties have not submitted their views in relation to the possibility that the Joint Venture would engage in a customer foreclosure strategy to the detriment of suppliers of hospitality services on micro-sites.

7.3.12.2. Commission's assessment

- (343) In the market investigation, the Commission has received a complaint in relation to the potential anticompetitive effects of the Transaction to the detriment of suppliers of hospitality services on micro-sites, in particular independent TowerCos not vertically integrated in the operation of mobile networks, as a result of customer foreclosure. According to the complainant, the Transaction, in combination with the MSAs and the status of preferred supplier therein foreseen for the Joint Venture with respect to TIM and Vodafone as customers of hospitality services on micro-sites, would prevent TIM and Vodafone from contracting with alternative suppliers of hospitality services on micro-sites. As TIM and Vodafone are two of the largest suppliers of retail (and wholesale) mobile services, competitors of the Joint Venture

would thus be foreclosed from access to a sufficient customer base and their ability and incentives to compete post-Transaction would be reduced.

- (344) In this respect, the Commission does not consider that, even if the Parties have the ability and the incentive to insource their demand of micro-sites, this would have a foreclosure effect on suppliers of hospitality services on micro-sites, which would have a significant detrimental effect on consumers in the downstream market, be it the supply of mobile or fixed services at retail or wholesale level, pursuant to paragraph 59 of the Non-Horizontal Merger Guidelines.
- (345) First, the Commission notes that, as explained in Section 7.3.6, the market for the supply of hospitality services on micro-sites is still under development and aim at primarily satisfying the demand of MNOs. MNOs have in turn in-house capabilities to build micro-sites. This is in particular the case of the Parties pre-Transaction, as illustrated by the market share figures including captive sales presented in Section 7.2.2. Indeed, if captive sales are considered, sales by MNOs would account to over [...] in 2020 and over [...] % of the market in 2027.
- (346) Second, based on the market reconstruction, the Commission notes that, for suppliers of hospitality services, sales of hospitality services on micro-cells represent a small percentage of the total sales of hospitality services (...). In particular, for neither of the independent TowerCos, [...].
- (347) For these reasons, the Commission considers that the Transaction does not give rise to serious doubts as to its compatibility with the internal market as a result of vertical non-coordinated effects to the detriment of suppliers of hospitality services on micro-sites.

7.3.13. Conglomerate non-coordinated effects in relation to TIM's and INWIT's activities in the supply of fixed fiber backhaul services and INWIT's activities in the supply of hospitality services

7.3.13.1. Parties' view

- (348) The Parties consider that the Transaction would not give rise to any negative competitive effect on the market for the provision of hospitality services and backhauling services. In particular, the Parties consider that there is no risk of foreclosing competing providers of fixed fiber backhaul services by either (i) bundling or tying INWIT's hospitality services with TIM's fixed fiber backhaul service, or (ii) preventing them from accessing Vodafone as a customer for fixed backhaul services.
- (349) First, the Parties consider that they will lack the ability to foreclose since, first, Vodafone does not represent a substantial share of demand in the market and, second, INWIT will not have market power in the market for the supply of hospitality services on either micro or macro sites.
- (350) Second, the Parties consider that they will not have the incentive to foreclose since any attempt to enter in such a strategy would be unprofitable or not attractive to customers. Moreover, the Parties consider that Vodafone would likely not have the incentive to engage in bundling or tying strategy since the increased revenue from the supply of fixed fiber backhaul services would mainly benefit TIM.

- (351) Lastly, the Parties consider that any hypothetical foreclosure strategy would not have a negative effect on effective competition. In particular, even if the Parties would engage in such strategy, rivals would not be disincentivised from investing in their fiber networks since revenues from fixed fiber backhaul services, in particular fiber, are only marginal compared to the overall revenue that rivals generate from providing fiber services to end customers.

7.3.13.2.Commission's assessment

- (352) As described in Section 5, wireless telecommunications networks are composed of a number of radio access network sites, essentially a mast with an antenna and a radio-frequency system, linked to a core network by backhaul networks. Backhaul networks can be comprised of wireless backhaul (i.e. microwaves) or fixed backhaul. MNOs typically operates their own microwave backhaul while fixed backhaul has been provided by fixed network operators such as TIM, Open Fiber and Fastweb in Italy. The upcoming 5G rollout has further impacted the way backhaul services are provided in the markets with the Parties and respondents to the market investigation highlight the need for fiber fixed backhaul connections to macro and micro sites to guarantee the achievement of 5G performance and the decreasing relevance of copper fixed backhauling¹⁸⁹.
- (353) In order to provide their services to end customers, MNOs and providers of fixed broadband services through FWA acquire both (i) hospitality services on macro and micro sites, and (ii) fixed fiber backhaul services.
- (354) With reference to hospitality services, Vodafone and INWIT are active in the supply of hospitality services on macro and micro-sites.
- (355) With reference to fixed fiber backhaul services, TIM is active in the market for the supply of (active and passive) fixed backhaul services and INWIT is active in the supply of (passive) backhaul services. Vodafone [...].
- (356) On the demand side of the market, TIM and Vodafone are both customers in the market for the supply of hospitality services. On the market for the supply of fixed fiber backhaul services, only Vodafone is active as a customer [...].¹⁹⁰
- (357) The Commission has also received a third party complaint indicating that the Transaction could reduce competition in the fixed fiber backhaul service market in Italy. The complainant indicates that, post-Transaction, INWIT may tie or bundle hospitality services with fixed fiber backhaul services (offered by TIM) and to divert Vodafone's demand for fixed fiber backhaul services to TIM. As a consequence, the majority of the demand from hospitality service market could be foreclosed to competing providers of fixed fiber backhaul services.¹⁹¹

¹⁸⁹ Replies to RFI Q4, question 29.

¹⁹⁰ TIM's reply to RFI 20, question 3. [...].

¹⁹¹ [...]’s letter to the Commission of 7 February 2020.

- (358) The Commission has therefore assessed the risk of foreclosure of competing suppliers of fixed fiber backhaul services by implementing the above presented foreclosing strategies.¹⁹²
- (359) Therefore, in the following sections, the Commission analyses whether the Parties would have the ability and incentive to foreclose rival suppliers of fixed fiber backhaul services. The Commission then assesses whether the foreclosure strategy would likely result in a negative impact on prices and choice in each relevant market and potential sub-segment.

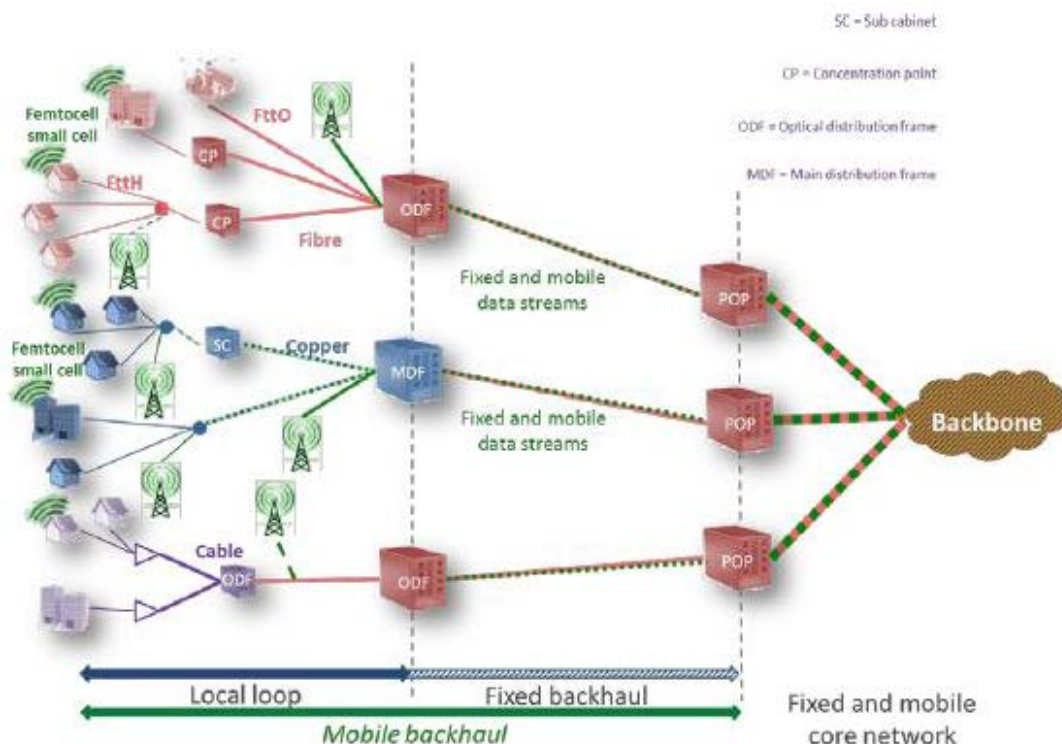
Ability to foreclose competing providers of fixed fiber backhaul services

- (360) Respondents to the market investigation consider that INWIT and the Parties will have the ability to foreclose competing providers of backhaul services. In particular, INWIT could prevent its customers of hospitality services from purchasing fixed backhaul connections from third parties.¹⁹³ Respondents indicate that the Parties and INWIT would have the technical ability to tie or bundle such services and that the Transaction increases the number of sites on populated areas where INWIT will be present. Moreover, Retelit indicates that Vodafone would start sourcing fixed fiber backhaul services from TIM therefore reinforcing TIM's position in such market to the detriment of its competitors.
- (361) The Commission considers that the Parties would not likely have the ability to foreclose competing providers of fixed fiber backhaul services by either (i) bundling or tying INWIT's hospitality services with TIM's fixed fiber backhaul service, or (ii) denying access to Vodafone as customer in the market for the following reasons.
- (362) First, with respect to INWIT's market position in the market for the supply of hospitality services and all possible sub-segments, the Commission refer to Sections 7.3.2 to 7.3.6 where it analysed the merger specific change of the Joint Venture in its ability to compete in such market and all possible sub-segments. In particular, the Transaction would not likely lead to an increase of market power in the market for the supply of hospitality services on micro sites (see Section 7.3.6), on macro sites to customers other than TV and radio broadcasters, MNOs and FWA suppliers (see Section 7.3.4) and on macro sites to MNOs and FWA suppliers in the areas below 35 000 inhabitants (see Section 7.3.2 and 7.3.3).
- (363) Second, there is no trend - neither from the supply nor from the demand site - to tie or bundle fixed fiber backhaul and hospitality services when offering or demanding such services to third parties in the market. Hospitality services and backhauling services are sourced largely by the same pool of customers. Indeed, customers such as MNOs or FWAs providers when acquiring access to a macro or micro site they also require fixed backhaul services in order to link their active equipment on the site with their core network as shown in Figure 2.

¹⁹² The Commission has not received in the course of its market investigations any complaints on the potential foreclosure of competing providers of hospitality services by leveraging TIM's position in the market for the supply of fixed backhaul services. Nevertheless, the Commission note that, first, there would be no change in ability since [...]. Second, even if already active in both markets pre-Transaction, TIM has not implemented any foreclosing strategy in the past. Third, any strategy would not likely have an impact on effective competition since competing providers of hospitality services would have the ability to source fixed backhaul services from TIM's competitors such as Open Fiber and Fastweb.

¹⁹³ Replies to RFI Q3, question 31; RFI Q4, question 30.

Figure 2: architecture of fixed and mobile networks



- (364) Before the Transaction, customers such as MNOs or FWA suppliers generally sourced hospitality and fixed fiber backhaul services separately. Moreover, no bundling or tying of such services was implemented by companies able to supply both services such as TIM and Vodafone. Indeed, TIM, while active on both the supply of hospitality services and backhaul services, [...].¹⁹⁴ Likewise, even if it is technically capable to provide both backhauling and hospitality services, Vodafone only offers hospitality services to third parties, [...].
- (365) The above trend is confirmed by respondents to the market investigation active on both the supply and the demand side of the market. From the supply side, Retelit indicates that tower companies normally do not offer fixed fiber backhaul services together with hospitality services. Open Fiber indicates that backhauling services are not bundled with hospitality services.¹⁹⁵ From the demand side, [...].¹⁹⁶ Wind Tre procures fiber to sites through its own fiber network or through its partnership with fiber operators. It also indicated that generally no fiber backhaul service is provided by TowerCos. Similarly, Fastweb indicated that it mainly source fixed fiber backhaul services internally. For MNOs sites, Fastweb plans to source backhauling services captively, from WindTre and Open Fiber depending on infrastructure availability. For FWA sites, Fastweb plans to source backhauling services internally.
- (366) Third, INWIT and Vodafone already have in place agreements with third parties for the provision of hospitality services. On such sites, INWIT and Vodafone will continue to provide their services and customers would continue to source fixed fiber

¹⁹⁴ Form CO, paragraph 49.

¹⁹⁵ Replies to RFI Q4, question 28.

¹⁹⁶ Replies to RFI Q3, question 30.

backhaul services from their preferred suppliers.¹⁹⁷ Therefore, any impact of such strategy would be limited to new access to sites offered by the JV post-Transaction.

- (367) Fourth, Vodafone is not an important customer on the demand side of the market for the supply of fixed fiber backhaul services. First, Vodafone similarly to other vertically integrated operators in the market (TIM, WindTre and Fastweb) relies on self-supply for fixed fiber backhaul services. In 2019, [...] % of Vodafone's fixed fiber backhauling costs in 2019 were attributable to Vodafone's own backhaul.¹⁹⁸ Vodafone is also relying more intensively on internal supply for new fixed backhaul connections. In fact, over [...] % of Vodafone's new backhaul connections were self-supplied in 2019, which increased from approximately [...] % in 2018. Second, Vodafone does not represent a significant proportion of revenue for third party providers of fixed backhaul services. TIM estimates that in the period of 2019-2022, Vodafone would account for [...] % of TIM's fixed fiber backhaul revenues and only [...] % of TIM's leased lines capacity revenue.¹⁹⁹ In the same period, Retelit expects that [...].²⁰⁰ Fastweb [...].²⁰¹ Open Fiber [...].²⁰² Third, the above conclusions would not change looking to historic data. Vodafone spent for the provision of fixed backhaul services from third parties (excluding TIM and Vodafone) respectively EUR [...] in 2017 and EUR [...] in 2018 corresponding to respectively [...] % and [...] % of third party's revenues in the market.

Incentive to foreclose competing providers of fixed fiber backhaul services

- (368) Respondents to the market investigation consider that INWIT and the Parties will have the incentive to foreclose competing providers of fixed fiber backhaul services by either (i) bundling or tying INWIT's hospitality services to TIM's fixed fiber backhaul service, or (ii) denying access to Vodafone as customer of backhauling services.²⁰⁴ More in detail:
- (a) Fastweb considers that, post-Transaction, INWIT will have an increased incentive to leverage its site portfolio to provide also backhauling services to all hosted customers.
 - (b) Retelit considers that Vodafone would have a greater incentive to divert its demand from competing providers of fixed fiber backhaul services and source its needs of fixed fiber backhaul services needs from INWIT.
 - (c) Iliad considers that the Transaction accelerates the pace and intensity of INWIT's entry in the market for the supply of fixed fiber backhaul services and that, post-Transaction, INWIT will have naturally an incentive to maximize its return on its investment providing the backhaul services together with the hosting services.

¹⁹⁷ Parties' reply to RFI 22, question 2. [...].

¹⁹⁸ Form CO, table 25.

¹⁹⁹ Commission's calculation based on TIM's reply to RFI 9.

²⁰⁰ Commission's calculation based on Retelit's reply to RFI 15.

²⁰¹ Commission's calculation based on Fastweb's reply to RFI 9.

²⁰² Open Fiber's reply to RFI 14.

²⁰³ Vodafone's reply to RFI 7.

²⁰⁴ Replies to RFI Q3, question 32; RFI Q4, question 31.

- (369) Nevertheless, the Commission considers that the Parties would not likely have the incentive to foreclose competing providers of fixed fiber backhaul services by bundling or tying INWIT's hospitality services with TIM's fixed fiber backhaul service for the following reasons.
- (370) First, the Commission notes that neither of the Parties engaged pre-Transaction in any tying and bundling strategy even if technically capable of implementing such strategy. In particular, as of December 2019, TIM provided approximately [...] backhaul connections for over [...] INWIT sites where third party MNOs were present. Therefore, it seems that TIM did not consider such strategy profitable pre-Transaction and that third party providers of fixed fiber backhaul services were able pre-Transaction to host third party MNOs on INWIT sites.
- (371) Second, Vodafone would likely not have the incentive to engage in any foreclosure strategy. A tying or bundling strategy would exclusively benefit TIM and its revenues and profits in the market for the supply of fixed fiber backhaul services. Vodafone would not benefit from any increased revenue/profit to TIM because of any arrangement benefiting, directly or indirectly TIM. To this end, the Commission further notes that also INWIT's minority shareholders would try to oppose any such strategy.
- (372) Third, the potential costs of JV's revenue loss from the supply of hospitality services seem higher than any potential gain from TIM's additional revenue from the supply of fixed fiber backhaul services. In 2018, Vodafone and INWIT generated more than EUR [...] from the supply of hospitality services to third parties. To recoup the potential loss of such revenues, TIM should increase its sales in the market for the supply of fixed fiber backhaul services by over [...] % from EUR [...] revenues.
- (373) The Commission further considers that the Transaction would not materially change the Parties' incentive to source fixed fiber backhaul services from third party providers post-Transaction.
- (374) First, [...] and its incentive would not materially change post-Transaction.
- (375) Second, as indicated in paragraph (367) above, [...] and the Transaction does not change its incentive to implement such strategy in the next years.
- (376) Third, the Commission has assessed whether, the Backhauling Agreement²⁰⁵, entered between the Parties at the same time of the signing of the Shareholders' Agreement, could lead to any merger specific change in the Parties' incentive to source fixed backhaul services. [...] . On access to existing fixed fiber backhaul connections, the Commission notes that, first, the Backhauling Agreement provides [...], the Commission considers that such provisions further strengthen each of the Parties standalone incentive to rely mainly on captive sale for the provision of fixed fiber backhaul services as described in paragraphs (356) and (367) above.

²⁰⁵ See above Section 3.3.

Impact on price and choice in the market for the supply of fixed fiber backhaul services

- (377) Respondents to the market investigation consider that a potential foreclosure strategy implemented by the Parties and INWIT would have a significant detrimental effect on alternative suppliers of fixed backhaul services.²⁰⁶ In particular, Fastweb indicates that the Transaction would lead to a reduction of 25% of the contestable market for the supply of fixed backhaul services. Retelit notes that, absent the Transaction, Vodafone would have sourced fixed backhaul services also from TIM's competitors and that such additional demand will be lost over the next years.
- (378) Regardless of whether the Parties have either the ability or the incentive to foreclose competing provider of fixed backhaul services, the Commission assessed whether any of the practices presented above would likely have a significant detrimental impact on effective competition. The Commission considers that it is unlikely that any foreclosure of competing providers of fixed backhaul services will have a significant detrimental effect on effective competition for the supply of fixed backhaul services, for the following reasons.
- (379) First, the Transaction will not lead to a significant reduction of sales for competing providers of fixed fiber backhaul services. In the first place, any tying or bundling strategies would not affect the sites where third party tenants are already hosted by INWIT or Vodafone. On such sites, third parties would continue to source their services from competing providers of fixed fiber backhaul services if they were doing so pre-Transaction. In the second place, Vodafone [...]. Moreover, as indicated above in paragraph (367), Vodafone is not an important customers for competing providers of fixed backhaul services since it would account, at best for [...] of third party's providers expected revenues from the supply of fixed fiber backhaul services. Therefore, the Transaction does not change materially the revenue that competing providers of fixed fiber backhaul services would have generated from supplying their services to Vodafone absent the Transaction. .
- (380) Second, the Commission considers that any foreclosure strategy would not affect existing competitors on the market for the supply of fixed fiber backhaul services, such as Fastweb and Open Fiber, and would not deter entry or expansion of the Parties' competitors in fixed fiber backhaul services or potential competitors. This is because revenue from fixed fiber backhaul services is not an important driver for future investments in the roll-out of fiber networks in Italy. TIM generated in 2018 approximately EUR [...] from the supply of such services corresponding to [...] % of TIM's revenues from the supply of fixed-line services. Similarly, Fastweb's [...].²⁰⁷ With reference to Open Fiber, the Commission considers unlikely that any loss of revenue from the supply of fixed fiber backhaul services would impact their future investments in the roll-out of fiber networks in Italy. Open Fiber [...].²⁰⁸ It is unlikely that any potential loss of part of such revenue would impact its fiber rollout plans in Italy to invest EUR 3.7 billion in Italy to reach approximately 9.5 million households in over 250 cities in Italy²⁰⁹ and to develop the ultra-broadband network in the "white areas" of the Italian government's broadband plan. Moreover, the

²⁰⁶ Replies to RFI Q3, question 33; RFI Q4, question 32.

²⁰⁷ Commission's calculation based on Fastweb's reply to RFI 9.

²⁰⁸ Commission's calculation based on Open Fiber's reply to RFI 14.

²⁰⁹ Commission decision of 15 December 2016 in case M.8234 – *Enel / CDP Equity / Cassa Depositi e Prestiti / Enel Open Fiber / Metroweb Italia*, paragraph 27.

Commission considers that competing providers of fixed fiber backhaul services would remain active in the market since, as indicated in paragraph (379), the Transaction does not change materially the revenue that they would have likely generated from supplying fixed fiber backhaul services absent the Transaction.

Conclusion

- (381) Based on the above, the Commission considers that the Transaction does not give rise to serious doubts as to its compatibility with the internal market as a result of conglomerate non-coordinated effects to the detriment of competing providers of fixed fiber backhaul services.

7.4. Coordinated effects

7.4.1. Introduction

- (382) A merger in a concentrated market may significantly impede effective competition due to horizontal coordinated effects where, through the creation or the strengthening of a collective dominant position, it increases the likelihood that firms are able to coordinate their behaviour and raise prices, even without entering into an agreement or resorting to a concerted practice within the meaning of Article 101 TFEU. A merger may also make coordination easier, more stable or more effective for firms that were already coordinating before the merger, either by making the coordination more robust or by permitting firms to coordinate on even higher prices.²¹⁰
- (383) To assess whether a merger gives rise to horizontal coordinated effects, the Commission should examine, first, whether it would be possible to reach terms of coordination and, second, whether the coordination would be likely to be sustainable.²¹¹
- (384) As regards the possibility of reaching terms of coordination, coordination is more likely to emerge in markets where it is relatively simple to reach a common understanding on the terms of coordination.²¹² Coordination may take various forms, including keeping prices above the competitive level, or dividing the market, for instance by customer characteristics or by allocating contracts in bidding markets.²¹³
- (385) As regards the sustainability of coordination, three conditions are necessary for coordination to be sustainable.²¹⁴ First, the coordinating firms must be able to monitor to a sufficient degree whether the terms of coordination are being adhered to.²¹⁵ Second, discipline requires that there is a credible deterrent mechanism that can be activated if deviation is detected.²¹⁶ Third, the reactions of outsiders, such as current and future competitors not participating in the coordination, as well as

²¹⁰ Horizontal Merger Guidelines, paragraph 39.

²¹¹ Horizontal Merger Guidelines, paragraph 42.

²¹² Horizontal Merger Guidelines, paragraph 41.

²¹³ Horizontal Merger Guidelines, paragraph 40.

²¹⁴ Horizontal Merger Guidelines, paragraph 42.

²¹⁵ Horizontal Merger Guidelines, paragraph 42.

²¹⁶ Horizontal Merger Guidelines, paragraph 42.

customers, should not be able to jeopardise the results expected from the coordination.²¹⁷

- (386) Moreover, in examining the possibility and sustainability of coordination, the Commission should specifically consider the changes that the Transaction brings about.²¹⁸ The reduction in the number of firms in a market may in itself be a factor that facilitates coordination.
- (387) The Non-Horizontal Merger Guidelines set out a similar framework in relation to vertical coordinated effects.²¹⁹

7.4.2. *Horizontal coordinated effects in the supply of hospitality services on macro- and micro-sites*

7.4.2.1. Parties' view

- (388) The Parties submit that there is no plausible risk of horizontal coordinated effects in the market for the provision of hospitality services in Italy, in all its configurations.
- (389) First, the market would be already insufficiently symmetric for coordinated effects: Wind Tre is partially integrated but with a proportion of its passive infrastructure held by Cellnex; Iliad is a partially integrated market player; Cellnex is growing as a significant “pure” passive infrastructure player, managing a portfolio of towers in Italy and several other countries, with significant hosting arrangements with MNOS and smaller scale agreements with others; and finally Rai Way and EI Towers will likewise remain “pure” passive infrastructure players offering hosting to third parties.
- (390) Second, the Transaction will increase asymmetry by creating a new type of TowerCo that operates a business plan that is different to any of the other TowerCos in Italy.
- (391) Third, the non-public nature of contractual arrangements on the market would not be suited to firms reaching terms of coordination: TowerCos' contractual relationships would be a mix of framework agreements, anchor tenant arrangements, “built-to-suit” arrangements and/or other more ad hoc agreements. Even within each category of agreement, there could be significant differences.
- (392) Fourth, the market is undergoing significant change with the advent of 5G, implying significant investments and a reconfiguration and expansion of existing infrastructure networks. The market structure would not be fully settled, and thus not conducive to coordination. Barriers to entry would lower as the market is expected to grow significantly in the next 5 – 8 years with the roll out of infrastructure for 5G networks.
- (393) Fifth, there is no evidence of past collusion on the market for access to passive infrastructure.

²¹⁷ Horizontal Merger Guidelines, paragraph 42.

²¹⁸ Horizontal Merger Guidelines, paragraph 42.

²¹⁹ Non-Horizontal Merger Guidelines, paragraphs 79 and following.

- (394) Sixth, firms would not have the ability to monitor deviation nor have any mechanism to punish deviation, considering the limited transparency in the market and the long-term agreements in place.
- (395) Finally, new entrants and customers would be well placed to undermine the terms of any coordination. MNOs will have the option to self-supply by entering / expanding upstream to deter any such coordination. Equally, entrants such as Cellnex have expanded in recent years and would be capable of disrupting any coordination on the market. A range of other Tower companies would be able to offer hosting opportunities in important locations such as along highways and railways, and thus would be well positioned to disrupt any attempts of price or any other anticompetitive coordination between the established service providers.

7.4.2.2. Commission's assessment

- (396) As set out in the case law²²⁰ and the Horizontal Merger Guidelines,²²¹ to find coordinated effects evidence is needed that the horizontal merger changes the nature of competition in such a way that firms that previously were not coordinating their behaviour are now significantly more likely to coordinate and raise prices or otherwise harm effective competition. A merger may also make coordination easier, more stable or more effective for firms that were coordinating prior to the merger.²²²
- (397) As a preliminary remark, the Commission notes that the analysis below is relevant for all possible configurations of the markets for hospitality services in Italy, for both macro and micro-sites, irrespective of any possible segmentation by type of customers. Where relevant, reference will be done to specific segments.
- (398) The Commission notes that only few respondents to the market investigation pointed to the risk of coordinated effects. A respondent submitted that there could be a risk of coordinated effects in the market for hospitality services on macro-sites, considering the transparency of the economic conditions proposed for hosting services (each tower company providing services to the MNOs controlling the other competing tower company). The only independent tower company would not be sufficient to eliminate the risk of coordinated effects and the entry of new players would be difficult.²²³
- (399) In this respect, on the basis of the market investigation and of the analysis of the internal documents, the Commission has not found any element pointing to coordination already ongoing between the main market players – or some of them – in the markets for hospitality services (both macro and micro-sites). This appears to suggest that the market conditions are currently not likely to be conducive to coordination.

²²⁰ Case C-413/06 P, *Bertelsmann AG and Sony Corporation of America v Independent Music Publishers and Labels Association (Impala)* [2008] ECRI-4951, and in particular paragraphs 122-123 regarding the conditions for tacit coordination; Case T-342/99, *Airtours v Commission* [2002] ECR II-2585, and in particular paragraphs 58 and 82 regarding the fact that “[i]f there is no significant change in the level of competition obtaining previously, the merger should be approved because it does not restrict competition”.

²²¹ Horizontal Merger Guidelines, paragraphs 22, 39 and following.

²²² Horizontal Merger Guidelines, paragraph 22(b).

²²³ Iliad's reply to RFI Q3, question 25.3.

- (400) Furthermore, the Transaction appears to increase the current asymmetry in the markets for hospitality services in Italy. Irrespective of the metric used and of the different customers' categories (MNOs, FWA suppliers, others), after the Transaction the difference in market share between INWIT and the only other vertically integrated operator (Wind Tre) will increase substantially (see Section 7.2). INWIT will hold a market share (at least) more than double of that of Wind Tre. The only operator of a comparable size would be Cellnex (to a certain extent depending on the market considered; see market shares provided in Sections 7.2.1 and 7.2.2), that however is not vertically integrated and has a completely different business model. Indeed, whilst the Joint Venture will be still controlled by the Parties, and thus be vertically integrated in the wholesale and retail fixed/mobile markets, this is not the case for Cellnex, which is an independent TowerCo. Moreover, other independent TowerCos are and will remain active in the markets for hospitality services, with different market shares and different business models (Ei Towers, Raiway).
- (401) The Commission considers that changes in demand and supply are an element to be taken into consideration in the assessment of any possible coordinated effects. In particular, in the coming years there is likely to be a significant growth in demand of hospitality services due to the upcoming launch of 5G mobile services. That will probably introduce further instability in the market. Therefore, demand conditions do not look sufficiently stable to make coordination likely. This is particularly true with respect to micro-sites, as the market for the supply of hospitality services on these sites has just started to develop.
- (402) Furthermore, although a certain degree of transparency in the market cannot be excluded (in particular due to the cross supply of hospitality services by vertically integrated operators), the presence of independent tower companies and of different categories of agreements seems to limit this transparency. There is also no evidence to suggest that the Transaction would significantly alter the existing degree of transparency on the hospitality services markets, and therefore the Commission considers that any possible impact of the Transaction on transparency will not materially change the existing ability of firms to monitor deviations.
- (403) The Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to horizontal coordinated effects in the markets for hospitality services on macro and micro-sites in Italy.

7.4.3. Vertical coordinated effects in relation to the supply of hospitality services on macro- and micro-sites to the detriment of suppliers of retail and wholesale mobile services (input foreclosure)

7.4.3.1. Parties' view

- (404) The Parties submit that there is no plausible risk of vertical coordinated effects given that the Joint Venture will not meaningfully change the structure of the market. On the contrary, the Parties stress that the Joint Venture will have the effect of decreasing symmetry in the market. This is mainly due to Vodafone and TIM's different structure from other MNOs due to partial unbundling of their passive infrastructure as well as the mixed environment in which the Joint Venture will operate, made of vertically integrated MNOs as well as independent TowerCos.

7.4.3.2. Commission's assessment

- (405) The Commission has assessed whether the Transaction would change the nature of competition in the market in such a way that the Parties and Wind Tre would be significantly more likely to coordinate their behaviour in relation to the supply of hospitality services and thus foreclose Iliad as supplier of retail and wholesale mobile services.
- (406) In this respect, the Commission considers that it is unlikely that the Transaction would make coordination between the Parties and Wind Tre more likely be it in relation to the supply of hospitality services on macro- or micro-sites.
- (407) First, the same considerations outlined in Section 7.4.2. above apply.
- (408) Second, the level of symmetry between the Parties and Wind Tre in relation to the supply of hospitality services would not increase as a result of the Transaction, but rather decrease.
- (409) Third, other than the increase of the number of sites controlled by the Parties, the Transaction does not change the level of vertical integration of the Parties and Wind Tre.
- (410) Fourth, several colocation contracts between Wind Tre and Iliad in relation to the supply of hospitality services on macro-sites are mandated by the commitments accepted by the Commission in Cases M.7758 and M.9041.²²⁴
- (411) Finally, the Commission notes that no specific complaint in relation to vertical coordinated effects to the detriment of Iliad has been made in the market investigation.
- (412) The Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to vertical coordinated effects to the detriment of suppliers of retail and wholesale mobile services.

7.4.4. *Vertical coordinated effects in relation to the supply of hospitality services on macro-sites to the detriment of suppliers of retail and wholesale fixed services (input foreclosure)*

7.4.4.1. Parties' view

- (413) The Parties have not submitted their views in relation to potential vertical coordinated effects in relation to the supply of hospitality services on macro-sites to the detriment of suppliers of retail and wholesale fixed services.

7.4.4.2. Commission's assessment

- (414) The Commission has assessed whether the Transaction would change the nature of competition in the market in such a way that the Parties and Wind Tre would be significantly more likely to coordinate their behaviour in relation to the supply of

²²⁴ Commission decision of 1 September 2016 in case M.7758 – *Hutchison 3G Italy / Wind / JV*; Commission decision of 30 August 2018 in case M.9041 – *Hutchison 3G Italy / Wind Tre*.

hospitality services and thus foreclose FWA suppliers of retail and wholesale fixed services.

- (415) In this respect, the Commission considers that it is unlikely that the Transaction would make coordination between the Parties and Wind Tre more likely in relation to the supply of hospitality services on macro-sites.
- (416) First, the same considerations outlined in Section 7.4.2. above apply.
- (417) Second, the level of symmetry between the Parties and Wind Tre in relation to the supply of hospitality services would not increase as a result of the Transaction, but rather decrease.
- (418) Third, other than the increase of the number of sites controlled by the Parties, the Transaction does not change the level of vertical integration of the Parties and Wind Tre.
- (419) Finally, the Commission notes that no specific complaint in relation to vertical coordinated effects to the detriment of FWA providers has been made in the market investigation.
- (420) The Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to vertical coordinated effects to the detriment of suppliers of retail and wholesale fixed services.

7.5. Cooperative effects

7.5.1. Introduction

- (421) Under Article 2(4) of the Merger Regulation, to the extent that the creation of a joint venture constituting a concentration pursuant to Article 3 has as its object or effect the coordination of the competitive behaviour of undertakings that remain independent, such coordination shall be appraised in accordance with the criteria of Article 101(1) and (3) of the Treaty, with a view to establishing whether or not the operation is compatible with the common market.
- (422) Under Article 2(5) of the Merger Regulation, in making this appraisal, the Commission shall take into account in particular: (i) whether two or more parent companies retain, to a significant extent, activities in the same market as the joint venture or in a market which is downstream or upstream from that of the joint venture or in a neighbouring market closely related to this market; and (ii) whether the coordination which is the direct consequence of the creation of the joint venture affords the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the products or services in question.
- (423) A restriction of competition under Article 101(1) TFEU is established when the coordination of the parent companies' competitive behaviour is likely and appreciable and results from the creation of the joint venture, be it as its object or its effect.
- (424) INWIT will consolidate the Parties' mobile passive infrastructure and will provide the Parties with access to their combined passive infrastructure for hosting their radio access networks, under the terms of the MSAs. As both Parties are and will remain independently active in the downstream markets of (i) retail and

(ii) wholesale mobile services in Italy, the Commission has assessed the potential cooperative effects in those downstream markets.²²⁵

7.5.2. *Retail mobile markets in Italy*

7.5.2.1. Parties' view

- (425) The Parties submit that the Transaction cannot give rise to any risk of collusive effects in relation to Vodafone's and TIM's downstream mobile businesses.
- (426) First, the Transaction will only marginally increase the degree of cooperation in relation to passive infrastructure which would be in place between the Parties absent the Transaction. Vodafone and TIM already engage in extensive sharing of their passive infrastructure in approximately half of the country, which will expand to cover all of Italy under the Passive Sharing Agreement (irrespective of the Transaction). Moreover, the Active Sharing Agreement and the Backhaul Agreement will expand the scope of network sharing to include, inter alia, partial sharing of their respective radio access network equipment as well as their backhauling arrangements. The creation of the Joint Venture will not result in a material change in relation to the degree of passive sharing between the Parties or in the degree of cooperation between the Parties.
- (427) Second, in any case the Parties' passive sharing would not be capable of leading to spill-over effects in relation to retail mobile services, because:
- (a) INWIT will not have significant market power for the supply of passive infrastructure, considering MNOs ability to switch to self-supply and that its primary function will continue to be to act as the preferred supplier to its parents;
 - (b) the Transaction will equally not lead to a direct limitation of competition between the Parties, as (i) INWIT will be able to supply third parties on market terms as it sees fit; (ii) passive infrastructure is a relatively small component of network infrastructure and does not affect the key facets of competition between the Parties in the downstream markets for retail mobile services; and (iii) there is no risk of the Joint Venture's pricing leading to a price increase in the downstream markets for retail mobile services;
 - (c) passive infrastructure will not constitute a large proportion of the Parties' variable costs incurred in the provision of retail mobile services. Also considering total costs, overall passive sharing costs will only make up a small ([...])% proportion of both Parties' overall costs.
- (428) Third, the downstream markets for retail mobile services is not susceptible to restrictive spill-over effects, given the very competitive structure of the retail mobile

²²⁵ Some respondents to the market investigation submitted that the Transaction could have cooperative effects in other markets, notably backhauling services/leased lines, fixed telecommunications markets (Cellnex's and Irideos' reply to RFI Q4, question 33.3.1; Tiscali's reply to RFI Q5, question 3.3.1). In this respect, the Commission notes that the activity of Vodafone in the market for leased lines and backhauling services is limited, [...]. As for fixed services in general, hospitality services of the kind offered by INWIT do not represent a relevant input for the provision of any fixed services provided by the Parties, [...]. Therefore, the Commission will not consider those markets as candidate markets for cooperative effects within the meaning of article 2(4) of the Merger Regulation.

markets in Italy, in particular following the entry of the new MNO operator in Italy, Iliad, and the evolution of Fastweb from MVNO to a fifth MNO.

- (429) Fourth, the Joint Venture will create significant efficiencies through (i) the release of equity to the Parties by enabling them to reduce their shareholding over their passive infrastructure to generate capital for investment in their 5G networks; (ii) INWIT being better placed to monetise Vodafone's passive infrastructure by increasing third party tenancies; and (iii) enabling INWIT to save on variable costs vis-a-vis the counterfactual of the Parties continuing to operate independent tower businesses. Further efficiencies will result from the wider network sharing agreements between the Parties.

7.5.2.2. Commission's assessment

- (430) A number of respondents to the market investigation submitted that the Transaction could lead to some form of coordination between TIM and Vodafone in the markets for retail mobile communications.²²⁶
- (431) One respondent submitted that the Joint Venture, managing a single radio network for the two main MNOs, will lead to a levelling of retail service quality among operators, and this will likely have a negative impact on competition. The Joint Venture will include the two best national networks – for coverage, capacity, technology, performance – and will segment the market in two categories of operators, with very limited differentiation of quality inside each category.²²⁷ Another respondent submitted that TIM and Vodafone were found in the past to adopt coordinated behaviour and that the Transaction will enhance their symmetry (in terms of costs, network development strategies) on the market and their ability to cooperate and coordinate their market behaviour. The planned active network sharing agreement, if implemented, will further enhance the Parties' ability to coordinate their commercial and technology strategies.²²⁸
- (432) Another respondent submitted that the Transaction may result in an increased risk of co-ordination of the competitive behaviour of the parties in the markets for retail mobile services in Italy as the Joint Venture will create structural links between the parties, a sharing of significant profits at the level of the Joint Venture and an extensive commonality of costs and technology (especially with regard to new technology, new sites and backhauling services). According to the respondent, the Italian retail mobile markets would display several structural characteristics, which would make co-ordination between INWIT's parent companies likely:
- (a) First, the market is highly concentrated with TIM, Vodafone and Wind Tre accounting for a share of sales of approximately 90%. These operators would have somehow symmetrical market shares and the remaining competitors all have market shares, which do not exceed 10%.
 - (b) More importantly, the parent companies of INWIT would be close competitors, competing for premium customers on the basis of "superior" networks and technology. In light of the closeness of competition between

²²⁶ Replies to RFI Q3, question 34.1; RFI Q4, question 33.1; RFI Q5, question 3.1.

²²⁷ Coop Italia's reply to RFI Q5, question 3.1.1.

²²⁸ Fastweb's reply to RFI Q3, question 34.1.1.

the Parties, any co-ordination between the Parties would cause the elimination of competition in respect of a substantial part of the market.

- (c) Any co-ordination between the Parties would furthermore be appreciable. Both Parties will jointly hold a share of sales greater than 60% and will be the largest competitors with Wind Tre accounting for around 30% but lagging significantly in terms of profitability.²²⁹
- (433) Another participant submitted that a serious concern could arise with respect to the risk of the exchange of competitively sensitive information, as TIM and Vodafone would continue to compete with one another outside of INWIT. Therefore, it should be ensured that INWIT could not be used as a conduit for the coordination of Vodafone's and TIM's activities in Italy and/or in other countries.²³⁰
- (434) In this respect, the Commission first notes that the activities of the Joint Venture are expected to be relatively limited in terms of value, compared to the Parties' respective activities in the retail mobile markets in Italy. According to internal data and estimates provided by the Parties, costs for hospitality services would make up less than [...] % and [...] % of Vodafone's and TIM's overall costs for providing retail mobile services respectively. Commonality of costs increases the risk of a collusive outcome only if those costs constitute a large proportion of the variable costs concerned.²³¹ Whilst a more detailed review of the Parties' internal documents would be needed to assess whether the costs for hospitality services are treated (to some extent) as variable costs (directly affecting their pricing behaviour) or as fixed costs, from a general point of view the former option seems to be unlikely considering the nature of the services at stake.²³² Given the limited percentage represented by the costs for hospitality services compared to the overall costs for providing retail mobile services, the Transaction in itself appears unlikely to create a sufficiently strong incentive for the Parties to coordinate their competitive behaviour in the markets concerned.
- (435) Secondly, as already mentioned at Section 5.4, since 2007 the Parties have a number of passive sharing arrangements in Italy, mainly in municipalities with a population of up to 35 000 inhabitants (and in certain cases up to 50 000 inhabitants). Moreover, the Parties plan to increase their passive sharing arrangements up to 100% of Italy to establish a fully combined grid of mobile passive infrastructure/sites, via a specific agreement [...] ²³³ (see previous section 7.2.1.1). Finally, they also plan to engage in active sharing in cities with less than 100 000 inhabitants. Therefore, the Transaction in itself will add little to the cooperation already in place between the Parties and to the future one envisaged by the cooperation agreements to be implemented in the next months, irrespective of the Transaction.
- (436) As for the alleged risk of exchanging competitive sensitive information within INWIT, the limited importance of the Joint Venture's activity with respect to the commercial activities of the Parties in the downstream retail mobile markets seems

²²⁹ Iliad's submission of 17 January 2020, *Iliad's observations in case M.9674 – Vodafone Italia/TIM/Inwit JV*.

²³⁰ Cellnex's submission of 29 January 2020, *Cellnex Position Paper*.

²³¹ Commission's *Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements*, in OJ C 11, 14.1.2011, p. 1–72, paras. 178–180.

²³² [...].

²³³ See article 20 of the Passive Sharing Agreement.

to limit the relevance of any information related to one party that will be available to the other party thanks to the common participation in INWIT. As for any further exchange of sensitive information – not directly connected to INWIT’s activity – that the Parties could plan to undertake within INWIT, the Transaction does not appear to change the current situation, taking into account that the Parties already have several opportunities to meet, considering that they cooperate extensively via the passive agreements in force and will continue to do so under the new network agreements under discussion and presented in Section 3.3 above.

- (437) As for the characteristics of the Italian retail mobile markets, which would make co-ordination between the Parties likely, although past episodes of collusion took place in this market, the recent entries of a new aggressive operator (Iliad) and of a fifth MNO (Fastweb) seems to indicate that collusion could be less stable. The Transaction does not appear to change this ongoing evolution of the retail mobile markets. Further, the Final Commitments will ensure that the competitive constraints played by new entrants in process of rolling out autonomously their networks would not be harmed by the Transaction and thus will preserve their ability to prevent or destabilise collusion.
- (438) Therefore, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to cooperative effects in the retail mobile markets in Italy.

7.5.3. Wholesale mobile market in Italy

7.5.3.1. Parties’ view

- (439) The Parties submit that the Transaction cannot give rise to any risk of collusive effects in relation to Vodafone’s and TIM’s downstream activities in the wholesale mobile market for the same reasons outlined in Section 7.5.2.1.

7.5.3.2. Commission’s assessment

- (440) A number of respondents to the market investigation submitted that the Transaction could also lead to some form of coordination between TIM and Vodafone in the market for wholesale mobile communications.²³⁴ A respondent submitted that TIM and Vodafone could coordinate their strategy on pricing of the call origination wholesale market, as this market in Italy is not subject to ex-ante regulation.²³⁵ Two respondents to the market investigation maintained that the same observations submitted with respect to possible negative effects on the retail mobile markets are valid for the wholesale mobile market as well, as the situation of the two markets would be quite similar: limited number of market players, symmetric nature of their market position and shared characteristics of the MNOs party to the Transaction.²³⁶
- (441) In this respect the Commission considers that the same observations made for the retail mobile markets can be extended to the wholesale mobile market:
- (a) the activities of the Joint Venture are expected to be relatively limited in terms of value, compared to the Parties’ respective activities in the wholesale

²³⁴ Replies to RFI Q3, question 34.2; RFI Q4, question 33.2; RFI Q5, question 3.2.

²³⁵ Irideos’ reply to RFI Q4, question 33.2.1.

²³⁶ Iliad’s and Fastweb’s reply to RFI Q3, question 34.2.1.

mobile market in Italy. According to internal data and estimates provided by the Parties, costs for hospitality services would make up less than [...] % and [...] % of Vodafone's and TIM's overall costs for providing wholesale mobile services respectively. Whilst a more detailed review of the Parties' internal documents would be needed to assess whether the costs for hospitality services are treated as (to some extent) variable costs (directly affecting their pricing behaviour) or fixed costs, from a general point of view the former option seems to be unlikely considering the nature of the services at stake. Given the limited percentage represented by the costs for hospitality services compared to the overall costs for providing wholesale mobile services, the Transaction in itself appears unlikely to create a sufficiently strong incentive for the Parties to coordinate their competitive behaviour in the market concerned;

- (b) the Transaction in itself will add little to the cooperation already in place between the Parties and to the future one envisaged by the cooperation agreements to be implemented in the next months and illustrated in Section 3.3.

(442) The Commission further notes that, although the Italian wholesale mobile market display some structural characteristics that would make co-ordination possible, as a matter of fact past difficulties for MVNOs in obtaining a wholesale access in Italy appears more connected to the fact that MNOs are vertically integrated and operate at both retail and wholesale level, and the resulting risk of them losing some of their retail subscribers to the MVNOs they host (so called "risk of cannibalization"). Thus, only if the MNOs and the MVNOs target different customer segments in the retail market, the risk of cannibalisation is lower, and MNOs may be more inclined to provide wholesale access to the MVNO. Considering that both Parties are already vertically integrated, there is no indication that the Transaction would have any impact on the extent of this risk of cannibalization and therefore on the incentive of the Parties to cooperate in denying wholesale access.

(443) Therefore, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to cooperative effects in the market for wholesale mobile services in Italy.

7.6. Conclusion

(444) On the basis of the above, the Commission considers that the Transaction gives rise to serious doubts as to its compatibility with the internal market as a result of vertical non-coordinated effects to the detriment of Iliad (or any new MNO entrant with the same needs in terms of access to the Parties' sites as Iliad²³⁷) as supplier of retail and wholesale mobile services.

(445) Furthermore, the Commission cannot exclude that the Transaction gives rise to serious doubts as to its compatibility with the internal market as a result of:

- (a) Horizontal non-coordinated effects in relation to the supply of hospitality services on macro-sites to MNOs;

²³⁷ See footnote 164.

- (b) Horizontal non-coordinated effects in relation to the supply of hospitality services on macro-sites to FWA suppliers;
- (c) Horizontal non-coordinated effects in relation to the supply of hospitality services on macro-sites to customers other than TV and radio broadcasters;
- (d) Vertical non-coordinated effects to the detriment of FWA operators as suppliers of retail and wholesale fixed services.

8. COMMITMENTS

8.1. Introduction

- (446) With a view to removing the serious doubts arising from the Transaction described in Section 7, on 14 February 2020 the Parties submitted commitments pursuant to Article 6(2) of the Merger Regulation (the “Initial Commitments”).
- (447) The Commission launched a market test of the Initial Commitments on 17 February 2020, seeking responses from MNOs, FWA suppliers and other customers, as well as TowerCos and providers of fixed backhauling services. The Commission also received comments from national competition authorities and in particular from the Italian competition authority, AGCM.
- (448) The Commission informed the Parties of the results of the market test on 27 February 2020.
- (449) Following the feedback received from market participants in the market test, the Parties submitted revised commitments on 3 March 2020 (the “Final Commitments”), which are annexed to this Decision and form an integral part thereof.

8.2. Description of the proposed commitments

8.2.1. The Initial Commitments

- (450) The central element of the Initial Commitments is the undertaking by the Parties to, over a period of 8 years, make available Free Space on a minimum number of 4 000 Available Sites on the Joint Venture’s network to host third party MNOs and FWA providers in municipalities with more than 35 000 inhabitants based on Reasonable Requests. Such sites shall be evenly distributed across the main regions in Italy. Requests for access will be processed on a “first come, first served” basis, with an exception for “New Entrant MNO” (defined as an MNO that has entered the Italian market in the last 4 years or that will enter in the period of duration of the Initial Commitments), which shall benefit from a one month exclusive period to make a request for access.
- (451) Hospitality services on each of the Joint Venture’s sites will be offered by the Joint Venture for a term of between [...] years from the date of the relevant agreement and renewable for another [...] years (unless a different duration is agreed with the relevant third party). Such hospitality services will further be offered on fair, Reasonable and Non-Discriminatory Terms which include standard contractual terms and conditions that are not worse than those applied by the Parties prior to the Transaction.

- (452) In addition, the Initial Commitments guarantee that third parties are made aware of the available capacity in a timely fashion. The Joint Venture will, within 6 months of closing, publish on its website (or other channels as per market practice and regularly update on a three-monthly basis) details of all anticipated sites on which space is expected to be available and for which third parties may request access from the Joint Venture.
- (453) Additional safeguards in favour of third parties requesting access will include the obligation on the Joint Venture to:
- (a) respond to third party requests on a non-discriminatory basis and thus on a first come, first served principle, provided requests contain the minimum required information and are in line with the prevailing market standard for hosting services;
 - (b) respond to requests for hospitality services pursuant to a defined process and within a maximum time-frame; and
 - (c) only decline to provide the requested hospitality services for specific and identified technical reasons (e.g. electromagnetic frequency changes) or force majeure.
- (454) The Parties have also committed to ensure that all existing third party hosting contracts in place with Vodafone or INWIT shall not be terminated pursuant to any early termination right that may exist under such contracts. Such third parties shall also be offered the opportunity to extend their existing hosting contracts up to the duration of these Initial Commitments.
- (455) The Parties will appoint a monitoring trustee, to be approved by the Commission, to ensure their compliance with the Initial Commitments. The monitoring trustee will report periodically to the Commission.
- (456) Furthermore, the Initial Commitments also provide for a fast track expert dispute resolution procedure as means of resolving possible disputes regarding a decision not to provide hospitality services on technical grounds. This procedure provides for such disputes to be referred to an independent expert approved by the monitoring trustee whose determination shall be binding on the Joint Venture and the Parties. Standard mediation and arbitration processes will apply to any other disputes in relation to the Initial Commitments.
- (457) The Initial Commitments will expire eight years from first publication of available sites.

8.2.2. *Results of the market test*

- (458) In the market test, several respondents reiterated the concerns they put forward in the market investigation, which the Commission has dismissed in Section 7, in particular in relation to cooperative effects in the wholesale mobile market, the conglomerate effects to the detriment of fixed backhauling service providers and customer foreclosure effects to the detriment of suppliers of hospitality services. In such context, the majority of respondents stated that the Initial Commitments were not

suitable to remove the competition concerns they considered as arising from the Transaction.²³⁸

- (459) The respondents that focused on the suitability of the Initial Commitments to effectively remove the Commission's serious doubts resulting from the horizontal overlaps and the vertical links between the Parties outlined in Section 7 of this Decision expressed mixed views, with two respondents considering the Initial Commitments suitable, and other two requiring several improvements along the lines summarised below.²³⁹ The same view was expressed by AGCM, which considers the remedy conceptually suitable to solve the Commission's serious doubts (in line with similar remedies it accepted in Italy for the provision of hospitality services on macro-sites to TV and radio broadcasters in Italy²⁴⁰), subject to improvements also summarised below.²⁴¹
- (460) As regards the specific provisions of the Initial Commitments, the results of the market test have been the following.
- (461) Whilst the majority of the respondents to the market test considered that the provisions of the Initial Commitments (including its Schedules) are sufficiently clear and capable of being implemented,²⁴² the same majority considered that several definitions included in the Initial Commitments were not appropriate.²⁴³ In particular, respondents to the market test indicated that the following definitions needed to be improved:
- (a) **“Reasonable and Non-Discriminatory Terms”**: according to some respondents, such terms should refer to terms and conditions that are not worse than those applied by INWIT to Vodafone and TIM, whilst another respondent considered this benchmark not appropriate as the Parties may accept terms and conditions which are specific to the economics of their transactions with INWIT (to which they have sold their sites) and also of their controlling shareholder status. Respondents suggested that the elements of the agreements that allow for non-discriminatory and reasonable contracts should be specified, especially if there are no previous agreements between the parties, and, if contracts are already in place, these should remain applicable. Considering the possibility that the different conditions and terms are applied between the Parties and INWIT prior to the Transaction, a respondent suggested that the definition of Reasonable and Non-Discriminatory Terms should refer to the “best available” terms and conditions applied prior to the Transaction, whilst another respondent suggested that the temporal reference should be to the conditions “[...] *applied prior to the announcement of the Concentration*”, in order to avoid

²³⁸ Replies to Market Test questionnaire, question 21.

²³⁹ Replies to Market Test questionnaire, question 21.

²⁴⁰ AGCM's decision n. 23117 of 14 December 2011, case C11205 – *Elettronica Industriale/Digital Multimedia Technologies*; and AGCM's decision n. 27984 of 12 November 2019, case C12245 – *F2I SGR/Persidera*.

²⁴¹ AGCM's letter of 25 February 2020.

²⁴² Replies to Market Test questionnaire, question 20.

²⁴³ Replies to Market Test questionnaire, question 4.

any negative impact from intentional changes implemented by the Parties in anticipation of the application of the Initial Commitments.²⁴⁴

- (b) **“Free Space”**: according to respondents it should be better qualified in terms of minimum requirements to ensure that it corresponds to enough capacity in terms of electromagnetic emissions limits to allow one or more party to install and operate their equipment with all the relevant spectrum and technologies available at the moment and prospectively for the duration of the Initial Commitments.²⁴⁵
 - (c) **“Reasonable Request”**: according to respondents, this term should be applied in a proportionate way taking into account the costs and effectiveness of the technologies to be used by the requestor. To this effect, a reference to reasonable market best practice should be inserted in the definition.²⁴⁶
 - (d) **“Available Sites”**: according to a respondent, to avoid a dilution of the scope of the Initial Commitments, the definition should include only those sites that INWIT owns.²⁴⁷
 - (e) A respondent²⁴⁸ and a competition authority indicated that the Initial Commitments lack a definition of the **“hosting services”** to be provided.
- (462) As regards the identification of the sites over which access should be provided, the majority of respondents considered that these should not be limited to sites in municipalities in Italy with more than 35 000 inhabitants.²⁴⁹ However, this is mainly because, according to these respondents, the scope of the serious doubts arising from the Transaction should go beyond these areas and be nationwide. Likewise, the majority of respondents, as well as AGCM, did not consider the provision of the Initial Commitments (paragraph 4) concerning the distribution of the sites appropriate to ensure that access to hospitality services is in principle available on all areas in Italy.²⁵⁰ According to respondents, population density, lack of alternatives and thus difficulties of deployment in the site location should be considered as criteria for the selection of the sites. Further, to ensure no selection bias, and thus that these criteria are properly applied, the number of sites to be made available could be increased. Alternatively, it is suggested that the number of sites to be made available should replicate the geographical distribution characterizing all the sites in INWIT availability.²⁵¹
- (463) As regards the number of sites covered by the Initial Commitments and/or the timetable for their release, the majority of the respondents, as well as AGCM, consider them not to be adequate to ensure that access to hospitality services in Italy would not be restricted following the Transaction.²⁵² In particular, all respondents and AGCM stressed that the release should be faster and occur in the next 2 to

²⁴⁴ Replies to Market Test questionnaire, questions 4 and 9.

²⁴⁵ Replies to Market Test questionnaire, question 4.

²⁴⁶ Replies to Market Test questionnaire, question 4.

²⁴⁷ Replies to Market Test questionnaire, question 4.

²⁴⁸ Replies to Market Test questionnaire, question 4.

²⁴⁹ Replies to Market Test questionnaire, question 5.

²⁵⁰ Replies to Market Test questionnaire, question 7.

²⁵¹ Replies to Market Test questionnaire, questions 5 and 7.

²⁵² Replies to Market Test questionnaire, question 6.

3 years, which is the expected timeframe for the roll-out of 5G networks in municipalities with more than 35 000 inhabitants. A respondent notes that, out of the 4 000 sites to be made available, at least the 75% should be released in the first 3 years.

- (464) The majority of respondents to the market test expressed the view that the effectiveness of the Initial Commitments and the number of sites offered to third parties would be limited as a result of the application of the provision in paragraph 10 of the Initial Commitments.²⁵³ According to this provision, in the absence of requests by Third Parties 12 months from publication on the Transparency Register, the Joint Venture shall have the right to (i) remove sites on which no tenants are present from the Transparency Register (ii) make a different use of those sites (including, without limitation, offering the Free Space to prospective customers other than Third Parties). In this respect, several respondents explained that an operator's deployment plans go far beyond the 12-month foreseen by the Initial Commitment. In this context, an assessment as to whether a site is needed or not could be done only in a context in which third parties will have visibility on a large share of the sites available, rather than a limited share of the same (with the risk in this last case that third parties will be forced to book sites they would not have done otherwise and vice-versa). Thus, lack of interest on a site over a 12-month period would not be lack of interest in absolute terms and the situation could change once other sites are made available. At the same time, a respondent added that if a site is removed from the list it should not count towards the number of sites set out in Schedule A if it were to be the case that the site has limited appeal because of its location. In this context, a site that has not received interest from third parties for 12 months should be replaced, at least once, with an "equivalent" site.
- (465) As regards the procedure foreseen in the Initial Commitments, the majority of the respondents considers the publication of information regarding available capacity in the Transparency Registry adequate and proportionate, to the extent that it is put in place in a manner that does not increase the risk of collusion (for example via a log-in process).²⁵⁴ Nonetheless, respondents also indicated that the update should be more frequent than on a 3-month basis and/or the publication of the full list of sites should occur within 2 years from closing with indication of the date when the sites will be available. Suggestions were also made as to the content of schedule D of the Initial Commitments, which contains a template for the Transparency Registry. In this respect, it was in particular indicated that the registry should include an indication of the available physical and electromagnetic space, the site's height at ground level and the date on which the site is likely to be available for use.
- (466) As regards the other elements of the procedure, the majority of the respondents did not consider that they would be sufficient to ensure unrestricted and timely access for third parties to the hospitality services on the Available Sites, as they would not be in line with market practice.²⁵⁵ This is in particular due to the length of the procedure, which would be too long, the lack of possibility to visit the sites before making a request to the Joint Venture as per market practice and the limited number of requests that the Joint Venture would process over the guaranteed timeframe as per Schedule C of the Initial Commitments. Respondents also stressed how the

²⁵³ Replies to Market Test questionnaire, question 8.

²⁵⁴ Replies to Market Test questionnaire, question 12.

²⁵⁵ Replies to Market Test questionnaire, questions 13 and 15.

procedure would not cater for the FWA suppliers' needs: for example, the spectrum bands used by them would not be included in the templates to request access.

- (467) In addition, respondents noted that the compensation mechanism foreseen at paragraph 19 of the Initial Commitments (whereby “*INWIT shall be entitled to charge a fee where INWIT makes the third party a Firm Hospitality Offer and the Third Party opts not to proceed with the hosting agreement without a justified reason*”) is too onerous for third parties and it is not justified given that the Initial Commitments have been submitted to address the competitive concerns raised by the Transaction.
- (468) Finally, a respondent stated that the procedure should prevent companies requiring access to “book” spaces for a long time without transforming “booked spaces” in “ordered spaces”.
- (469) As regards the priority rule for New Entrant MNOs, most of the respondents consider that this provision is not adequate to safeguard New Entrant MNOs.²⁵⁶ Whilst FWA providers and Wind Tre consider this provision discriminatory with respect to them, others stated that a distinction should be made between New Entrant MNOs that have no plan to autonomously roll-out a national network and those which have this plan, to avoid that the former opportunistically use the sites to the detriment of the latter. As regards the possibility to exclude from the priority rule New Entrant MNOs that significantly rely on an existing network through sharing partnership with other MNOs, the majority of respondents consider that this is appropriate.²⁵⁷
- (470) As regards the duration of the contracts for hospitality services on the Available Sites, the majority of market participants considers it appropriate.²⁵⁸
- (471) As regards the provision whereby INWIT/Vodafone will not exercise any early termination right and will also offer third parties the opportunity to extend their existing contracts, on market conditions terms, up to the duration of the Initial Commitments, the majority of respondents do not consider that this could be adequate to prevent INWIT from exercising increased market power in the provision of hospitality services in Italy on the sites that INWIT and Vodafone are currently locating to third parties.²⁵⁹ Nonetheless, also in this instance respondents have justified their reply in relation to the additional concerns that the Transaction would raise in their view, dismissed by the Commission in Section 7. Importantly, several players have not expressed concerns in relation to the early termination, but with denial of access of specific requests under a framework agreement in force. Further, a respondent stated that the continuity of existing hosting contracts is only a part of the necessary provision needed to prevent INWIT from exercising increased market power.
- (472) As regards the provisions regarding the Fast Track Dispute Resolution Mechanism (Section E of the Initial Commitments), the majority of respondents considers them

²⁵⁶ Replies to Market Test questionnaire, question 14.1.

²⁵⁷ Replies to Market Test questionnaire, question 14.2.

²⁵⁸ Replies to Market Test questionnaire, question 10.

²⁵⁹ Replies to Market Test questionnaire, question 11.

sufficient to ensure the proper functioning of the Initial Commitments.²⁶⁰ Likewise, the majority of the respondents to the market test considers that the provisions of the Initial Commitments regarding monitoring are sufficient to ensure that the Initial Commitments are complied with.²⁶¹

- (473) Conversely, the majority of respondents does not consider that the provisions of the Initial Commitments regarding arbitration are sufficient to ensure that the Initial Commitments are complied with.²⁶² This is because it would not be clear what the role of the Arbitrator is, and to what extent the provision may be interpreted as precluding Third Parties' rights to bring proceedings before national courts, as well as because the higher costs of arbitration compared to judicial proceedings.
- (474) Finally, as regards the duration of the Initial Commitments, the majority of the respondents considers that it is not sufficient.²⁶³ The views in relation to the proper duration are however mixed. According to a respondent, the duration should be shortened and the site release be quicker, whilst others indicate that the duration should be longer, up to 10 years.

8.2.3. *The Final Commitments*

- (475) The Final Commitments present the following changes compared to the Initial Commitments:

- (a) Clearer definitions in relation to:
- (i) Available Sites: it is specified that newly built sites shall make up a maximum of [...] % of the total number of sites the Parties shall cause INWIT to make available over the first four years of duration of the Final Commitments starting from the publication of the Transparency Register, and a maximum of [...] % of the total number of sites the Parties shall cause INWIT to make available over the total period of the Final Commitments.
 - (ii) The services to be provided or "Hosting Services", which include the rent of space on the Available Sites and all related services, as per market practice, to enable one or more Third Parties to install, operate, maintain and use their equipment for the provision of mobile and FWA services. With all the relevant spectrum and technologies available at the point at which the site becomes an Available Site and is added to the Transparency Register.
 - (iii) New Entrant MNO: it is clarified that the beneficiary of the exclusivity period is an MNO that is in the active process of rolling out autonomously its own spectrum coverage, through its own radio sites and equipment, in municipalities with more than 35 000 inhabitants.

²⁶⁰ Replies to Market Test questionnaire, question 16.

²⁶¹ Replies to Market Test questionnaire, question 17.

²⁶² Replies to Market Test questionnaire, question 18.

²⁶³ Replies to Market Test questionnaire, question 19.

- (iv) Reasonable and Non-Discriminatory Terms: it is clarified that, to the extent that framework agreements are already in place between the Third Parties and the Parties/INWIT prior to the announcement of the Transaction, the terms of such framework agreements shall remain in place and shall be regarded as corresponding to Reasonable and Non-Discriminatory Terms, insofar as they cover the same or equivalent relevant services as those being requested.
- (v) Reasonable Request: it is specified that such request shall ensure that the use of power is consistent with the relevant emitted frequencies, uses up-to-date equipment and all reasonable electromagnetic frequency efficiency options which optimise the use of electromagnetic and physical space as per best market practice.
- (b) A commitment that at least [...] % of the Available Sites would be located in [...] municipalities listed in Schedule C of the Final Commitments. This percentage applies both over the 8 year period of duration of the Final Commitments and over the first four years.
- (c) A revised Schedule A for the release of the Available Sites, whereby [...] % of the sites will be made available over the first three years and [...] % over the first four years, as illustrated in the below table:

Table 38 – Schedule A

Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8
[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]

- (d) It is clarified that the Parties' right to (i) remove sites on which no tenants are present from the Transparency Register would apply only to sites on which there are no longer tenants and in the absence of Reasonable Requests within [...] months from the publication on the Transparency Registry (ii) make a different use of other sites in the absence of Reasonable Requests within [...] months from the publication on the Transparency Registry. In both cases, the Parties' exercise of the right is subject to agreement of the monitoring trustee.
- (e) As regards the procedure to make the sites available:
 - (i) It is clarified that the access to the Transparency Registry would be done on the basis of a user ID and a password provided by INWIT within 5 working days from the request as a result of a process where the requester is qualified as New Entrant MNO or other Third Party. The status of New Entrant MNO/Third Party can be reviewed as appropriate during the duration of the Final Commitments.
 - (ii) The Available Sites will be published on the Transparency Registry as soon as it is sufficiently clear to INWIT that the relevant site will become an Available Site, with monitoring of the Parties' network planning to ensure compliance, irrespective of the date when the sites will become available. The Transparency Registry will be updated on a [...] basis and it will also indicate the date on which the Available Site is expected to be ready for use for Hosting Services. Additional information on the sites are included in the template Transparency

Registry, to add an indication of the available physical space and the site's height at ground level.

- (iii) The template to submit a request in Schedule D has been amended to allow the use of different spectrum bands and configurations.
- (iv) The processing of requests has been shortened with the Parties committing that the Joint Venture will review [...] requests per month in [...] working days and enabling the possibility of a site visit as per market practice.
- (v) A clarification that any denial for EMF changes should have origin in causes outside of the Parties' control.
- (vi) A clarification that, in cases of abuses by Third Parties, the Joint Venture could make use of remedies foreseen by the applicable laws, including Italian contract law, with the agreement of the monitoring trustee.
- (vii) A clarification that, where a Third Party (including New Entrant MNOs) does not make effective use of the relevant Available Site within 12 months from the date it received an offer from the Joint Venture or the date of availability/release of site according to the Transparency Registry (the latter if the date of the offer is before the date of availability/release of site) without justified reason to be assessed by the monitoring trustee, the Parties shall cause the Joint Venture to terminate the hosting contract for the relevant site and such site shall be re-included in the Transparency Registry and be made available to other Third Parties.
- (f) A clarification that the exclusivity period for the New Entrant MNO applies only if the sites are used by the latter for the purposes of coverage and deployment of a stand-alone network, without any possibility to use it to implement any RAN sharing agreement with an MNO, in force or to be concluded within 4 years following the date of publication of the relevant sites in the Transparency Register, or otherwise to transmit frequencies of an MNO within 4 years following the date of publication of the relevant sites in the Transparency Register. Should such restrictions be infringed or circumvented by the relevant New Entrant MNO, the Parties shall cause the Joint Venture to terminate the hosting contract for the relevant site and such site shall be re-included in the Transparency Registry and be made available to other Third Parties. The relevant New Entrant MNO shall be prevented from access to the relevant site with respect to which it infringed the use restrictions for a period of 2 years.
- (g) A clarification that the new contracts to be offered by the Joint Venture relate only to the case where no existing hosting or framework contract existed at the date of this Decision.
- (h) A clarification that the option offered to third parties (including but not limited to Third Parties) for the extension of existing contracts covers also framework contracts, whatever their geographic scope.

8.3. Commission's assessment

8.3.1. Introduction

- (476) When a concentration raises serious doubts as to its compatibility with the internal market, the parties may undertake to modify the concentration so as to remove the grounds for the serious doubts identified by the Commission and thereby gain clearance of their merger in Phase I.²⁶⁴
- (477) It is for the parties to the concentration to put forward commitments.²⁶⁵ The Commission only has power to accept commitments that are deemed capable of rendering the concentration compatible with the internal market.²⁶⁶ In Phase I, commitments can only be accepted where the competition problem is readily identifiable and can easily be remedied. The remedies therefore need to solve the competition problem identified in a clear-cut manner, so 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.²⁶⁷
- (478) As concerns the form of acceptable commitments, the Merger Regulation leaves discretion to the Commission as long as the commitments meet the requisite standard.²⁶⁸
- (479) While divestiture commitments are generally the best way to eliminate competition concerns resulting from horizontal overlaps, other structural commitments, such as access remedies, or other non-divestiture remedies may be suitable to resolve concerns if they are equivalent to divestitures in their effects.²⁶⁹
- (480) In the ultimate assessment of proposed commitments, 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 concerned, including the position of the parties and other participants on the market.²⁷⁰ The commitments must be capable of being implemented effectively within a short period.²⁷¹

8.3.2. Assessment of the Final Commitments

- (481) The Commission considers that the Final Commitments are sufficient to remove the serious doubts regarding the compatibility of the Transaction with the internal market outlined in Section 7.

²⁶⁴ Commission notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (the "Remedies Notice"), OJ C 267, 22.10.2008, p.1, paragraph 5.

²⁶⁵ Remedies Notice, paragraph 6.

²⁶⁶ Remedies Notice, paragraph 9.

²⁶⁷ Remedies Notice, paragraph 81.

²⁶⁸ Case T-177/04 *easyJet v Commission* [2006] ECR II-1913, paragraph 197.

²⁶⁹ Remedies Notice, paragraph 19.

²⁷⁰ Remedies Notice, paragraph 12.

²⁷¹ Remedies Notice, paragraph 9.

- (482) More in detail, the Commission considers that the commitment to make available 4 000 available sites to MNOs and FWA suppliers during a period of 8 years, as per the revised Schedule A and with a cap to the new sites to be included in such commitment, addresses the Commission's serious doubts in relation to the horizontal effects in the supply of hospitality services on macro-sites set out in Sections 7.3.2, 7.3.3. and 7.3.5. as well as the input foreclosure concerns related to access to the same sites for MNOs and FWA suppliers set out in Sections 7.3.7 to 7.3.10 for the following reasons.
- (483) First, based on the Commission's market reconstruction presented in paragraphs (279)-(280) and (305)-(306), the main customers of the Parties which would need access to the Parties' sites for expanding their network declared a need of around [...] tenancies up until 2027. As more than one tenant can be hosted on a site and assuming all sites to be made available by the Parties will be vacated and could host two customers²⁷², these tenancies would translate in a minimum of around [...] sites, [...]. This number would be largely covered by the existing sites that the Parties commit to make available, that is at least [...]. There is no indication that new MNO (other than Fastweb) or large FWA only-players would enter in Italy, but even if it were to be the case, the Final Commitments would be able to satisfy demand of such new entrant, in the same way as pre-Transaction.
- (484) Importantly, the Commission notes that:
- (a) Currently Vodafone owns [...] sites in the municipalities with more than 35 000 inhabitants of which around [...] already pre-Transaction in co-location or sharing with TIM. In turn TIM owns [...] sites in the municipalities with more than 35 000 inhabitants of which around [...] already pre-Transaction in co-location or sharing with Vodafone.²⁷³ In such context, the fact that the Parties guarantee free space for one or more customers over 4 000 sites corresponds to more than the overlap of site brought by either Vodafone or TIM, where both the Parties are not currently hosted and thus the Transaction, due to the preferential rights stemming from the MSAs, could bring about a reduction of the capacity to be made available to Third Parties.
 - (b) Further, to ensure the quality of the sites to be made available to third parties, the Final Commitments include a guarantee that at least [...] % of the sites, i.e. at least [...] will be located in [...] municipalities listed in Schedule C. Based on the market investigation and in particular [...] 's submission, the [...] cities included in Schedule C are the most densely populated municipalities with more than 35 000 inhabitants and/or those with more difficulties for rolling out sites due to historical reasons. In the Parties' portfolio and network plans for their common grid, [...] % of the sites in areas with more than 35 000 inhabitants are located in the municipalities included in Schedule C. In this respect the Commission notes that the Final Commitments guarantee that at least [...] % of the sites would be located in

²⁷² See above paragraph (242).

²⁷³ Parties' reply to RFI 19, question 6.e.

these municipalities, which corresponds to almost [...] of the [...] sites needed by [...].²⁷⁴

- (c) In addition, to prevent circumvention by the Parties, by terminating existing hosting or framework contracts with customers in the areas covered by the Final Commitments, the Parties committed that the Joint Venture shall not exercise any early termination right and neither shall Vodafone prior to the transfer of the sites to the Joint Venture. Moreover, the Final Commitments afford third parties a further protection by offering them an option to extend the duration of all existing hosting or framework contracts, which are due to expire during the implementation of the Final Commitments, at least up to the duration of these Commitments (unless a different duration is agreed with the third party). This commitment applies to framework contracts whatever is their geographic scope (i.e. also national) and more generally to contracts which relate to sites in both municipalities in Italy with more than 35 000 inhabitants and municipalities in Italy with less than 35 000 inhabitants.²⁷⁵

- (485) Second, based on the revised Schedule A, the Commission considers that the release of the sites would be appropriate. Indeed, [...] % of the total sites to be made available (i.e. [...]) will be made available over the first three years and [...] % of the total sites (i.e. [...]) over the first four years. If benchmarking the number of sites to be released every year with the actual incremental needs of the Parties' main competitors on the basis of the market reconstruction presented in paragraphs (279)-(280) and (305)-(306), the situation would be the following.

Table 39 – Schedule A compared to site needs of competitors

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Total
Sites to be releases	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Competitors' sites needs	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
% of competitors' needs covered by released sites	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]

²⁷⁴ The Commission considers that the size of the Final Commitments in terms of sites to which access is to be given is not affected by the revised provisions of paragraph 10 of the Final Commitments, whereby “for Available Sites on which tenants are no longer present, in the absence of requests by Third Parties within [...] months from publication, INWIT shall have the right to remove them from the Transparency Register (for sale or other purposes), subject to the agreement of the Monitoring Trustee. For all other Available Sites, in the absence of requests by Third Parties [...] months from publication INWIT shall be entitled to offer the Free Space to prospective customers other than Third Parties, subject to the agreement of the Monitoring Trustee.” Indeed, the period of time the sites should remain on the Transparency Registry, coupled with the commitment of the Parties to cause INWIT to publish on the Transparency Registry as many sites as possible as soon as it is sufficiently clear that they will become available, and the oversight of the monitoring trustee provide sufficient guarantee that the number of these sites will be limited and/or the Parties will not be able to circumvent the Final Commitments.

²⁷⁵ This commitment applies also to third parties, other than MNOs and FWA suppliers, the latter being the only beneficiaries of the access commitment.

- (486) Based on the above table, the Commission notes that for the first four years, the sites to be released under the Final Commitments will cover almost [...] the needs of their main competitors.²⁷⁶
- (487) Likewise, the Commission considers that the temporal scope of the Final Commitments is adequate. Indeed, it is sufficiently long to ensure that macro-site capacity will remain in the market in the crucial years for the deployment of 5G and expansions of FWA networks.
- (488) Third, the Commission considers that the exclusivity period granted to the New Entrant MNOs is appropriate to ensure that competitors of the Parties in greater need of access to their sites would be protected against a reduction of the capacity in the market resulting from the Transaction, in combination with the MSAs. Indeed, MNOs need to deploy a greater number of sites than FWA suppliers, as illustrated by the market reconstruction presented in paragraphs (279)-(280) and (305)-(306). Further, they need more space on the sites, compared to FWA suppliers.
- (489) The amendments made in the Final Commitments as to the definition of New MNO Entrant as well as the limitation to the eligibility of a New MNO Entrant for the exclusivity (in cases where the sites are used to implement any RAN sharing agreement with an MNO other than a New MNO Entrant, in force or to be concluded within 4 years following the date of publication of the relevant sites in the Transparency Register, or otherwise to transmit frequencies of an MNO other than a New MNO Entrant within 4 years following the date of publication of the relevant sites in the Transparency Register) appear to be appropriate to limit the applicability of the exclusivity to the instances where it is really needed as well as to avoid abuses by competing MNO to the detriment of new entrants.
- (490) Fourth, the Commission considers that the definitions foreseen in the Final Commitments as well as the procedure for making the sites available to third parties are sufficiently clear for the latter to be effectively implemented.
- (491) Indeed, several definitions have been improved so to clarify the services to be offered by the Joint Venture, as well as the requirements for requests being made by third parties to qualify as Reasonable Requests. The Commission considers that no burden is imposed on third parties so to make for them more difficult to obtain access compared to what is usual market practice. In particular, the requirement to use up-to-date equipment and all reasonable electromagnetic frequency efficiency options which optimise the use of electromagnetic and physical space appears indeed to correspond to market practice. For example, Wind Tre explained that “[s]ome agreements between towercos and customers include clauses requiring tenants to actively cooperate to ensure that space on a given site is efficiently used. These agreements are negotiated for each individual hosting agreement, balancing the incentives of towercos to increase co-tenancy ratios, with MNO concerns of ensuring no adverse impact on their equipment and coverage. Lack of cooperation

²⁷⁶ As the size of the pool of sites to be made available under the Final Commitments has been tailored to match the actual needs of tenancies on the Parties’ sites by customers in a pre-Transaction scenario, with an additional number of sites to cater for potential new entrants’ demand, and the release of such sites will be done over a period of 8 years, the Commission does not consider that the Final Commitments will give rise to any issue of customer foreclosure for competing providers of hospitality services on macro-sites.

*by current tenants may de facto result in an additional obstacle for new customers to access a site.*²⁷⁷

- (492) Further, the Commission finds also appropriate the revised definition of Reasonable and Non-Discriminatory Terms. Indeed, as all main customers have already in place contracts (including framework contracts) with either or both the Parties, a clear reference point is provided for the assessment of such Terms.²⁷⁸
- (493) As regards the revised access procedure as outlined in paragraph (475)(e), the Commission consider that it has been aligned to market practice²⁷⁹ and revised so to cater also to the needs of FWA suppliers. Importantly, the publication on the Transparency Registry has been disconnected (and thus anticipated) from the actual date of release of the site, what gives third parties greater visibility on capacity availability for network planning purposes. Further, the duration of the request review has been shortened and it has been clarified that the EMF responsibility is only on the third parties requesting access.²⁸⁰ Further, it has been clarified that the possibility for the Parties to use of remedies (including compensation) in cases of abuses by third parties requesting access would be subject to applicable laws and to trustee oversight. Similarly, against potential third party abuses, a provision has been added, in response to market test feedback, to ensure that, if a third party does not make effective use of a site within 12 months, as described at paragraph (475)(e)(vii), the site is re-included in the Transparency Registry and be made available to other third parties.
- (494) Finally, the Commission considers that the procedures for monitoring and dispute resolution are clear and in line with Commission's precedents.
- (495) In light of the above, the Commission considers the Final Commitments entered into by the Parties are sufficient to eliminate the serious doubts as to the compatibility of the Transaction with the internal market outlined in Section 7. The commitments in

²⁷⁷ Agreed minutes of the conference call of 26 November 2019 with Wind Tre, paragraph 10.

²⁷⁸ As outlined by Iliad in the market test, the Commission notes that if the term of reference for third parties' Reasonable and Non-Discriminatory Terms for access were to be the commercial conditions in the MSAs, these would be more onerous than market terms for non-anchor tenants. In this respect, see above paragraph (16).

To the extent hosting or framework contracts do not exist, paragraph 6 of the Final Commitments foresee that the new contracts would have a duration of between [...] years from the date of the relevant agreement and renewable for another [...] years (unless a different duration is agreed with the relevant third party). Based on a review of [...] as well as the replies to RFI Q3, question 17, and the results of the market test, the Commission considers that such duration corresponds to market practice.

²⁷⁹ See in particular responses of Ei Towers' and Wind Tre's to Market Test questionnaire, question 13.

²⁸⁰ For this reason the Parties cannot provide on the Transparency Registry an indication of the estimated electromagnetic space available on the site to be made available. Nonetheless, for a site to be considered an Available Site within the meaning of the Final Commitments, it shall contain Free Space, that is to say sufficient space "*in terms of physical and electromagnetic space to provide, from a technical perspective, a Reasonable Request for Hosting Services to one or more Third Parties*", where Hosting Services are "*the rent of space on the Available Sites and all related services, as per market practice, to enable Third Parties to install, operate, maintain and use their equipment for the provision of wireless and wireline (e.g. FWAs) communication services, with all the relevant spectrum and technologies available at the point at which the site becomes an Available Site and is added to the Transparency Register*". In such context, for the Parties to comply with the Final Commitments, free electromagnetic space should exist on the sites to be made available, albeit the Parties may not be able to exactly quantify it. A denial on an Available Site for changes to the available electromagnetic space could occur only as a result of changes which are outside the control of the Parties or due to force majeure.

sections A to D and H of the annex to this Decision 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 annex to this Decision constitute obligations, as they concern the implementing steps which are necessary to achieve the modifications sought in a manner compatible with the internal market.

9. CONCLUSION

- (496) For the above reasons, the Commission has decided not to oppose the notified operation as modified by the 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 sections A to D and H of the Final Commitments annexed to this Decision and with the obligations contained in the other sections 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
Executive Vice-President

Dated 3 March 2020

Vodafone Group Plc
and
Telecom Italia S.p.A.

CASE NO. COMP/M.9674 - VODAFONE ITALIA / TIM / INWIT JV

Commitments to the European Commission

CASE NO. COMP/M.9674 - VODAFONE ITALIA / TIM / INWIT JV

Commitments to the European Commission

Pursuant to Article 6(2) of Council Regulation (EC) No. 139/2004 (the “Merger Regulation”), Vodafone Group Plc (“**Vodafone Group**”) and Telecom Italia S.p.A. (“**Telecom Italia**”) hereby enter into the following commitments (the “**Commitments**”) vis-à-vis the European Commission (the “**Commission**”) with a view to rendering the creation of the joint venture which will combine Vodafone Italia S.p.A.’s (“**Vodafone Italia**”) passive mobile telecommunications infrastructure with Infrastrutture Wireless Italiane S.p.A. (“**INWIT**”) (the “**Concentration**”) compatible with the internal market and the functioning of the EEA Agreement.

This text shall be interpreted in the light of the Commission’s decision pursuant to Article 6(1)(b) 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 the light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under the 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 the Parties and/or by the ultimate parents of the Parties, including INWIT, whereby the notion of control shall be interpreted pursuant to Article 3 of the Merger Regulation and in the 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”).

Arbitration Institution: means the International Chamber of Commerce as set out in paragraph 38.

Arbitral Tribunal: means the three-person arbitral tribunal or, as the case may be, sole arbitrator as set out in paragraph 43.

Available Sites: means all sites of INWIT, following Closing, which have Free Space in municipalities with more than 35,000 inhabitants (including both existing and new sites). Newly built sites shall make up a maximum of [...] % of the total number of sites the Parties shall cause INWIT to make available pursuant to paragraph 3 below, over the first four years of duration of the Commitments starting from the publication of the Transparency Register, and a maximum of [...] % of the total number of sites the Parties shall cause INWIT to make available pursuant to paragraph 3 below over the total period of the Commitments. A list of existing sites in municipalities with more than 35,000 inhabitants is provided at Schedule B.

Closing: means the completion of the Concentration whereby the Parties create the notified joint venture.

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

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

Effective Date: the date of adoption of the Decision.

Fast Track Expert Dispute Resolution Mechanism: has the meaning given in paragraph 23.

Firm Hospitality Offer: means an offer by INWIT to provide hospitality services on the terms set out in the offer as set out in paragraph 18.

Free Space: means available space on sites that, as at the date on which an Available Site is added to the Transparency Register, is sufficient in terms of physical and electromagnetic space to provide, from a technical perspective, a Reasonable Request for Hosting Services to one or more Third Parties.

FWA: a provider of fixed wireless access services in Italy.

Hosting Services: the rent of space on the Available Sites and all related services, as per market practice, to enable Third Parties to install, operate, maintain and use their equipment for the provision of wireless and wireline (e.g. FWAs) communication services, with all the relevant spectrum and technologies available at the point at which the site becomes an Available Site and is added to the Transparency Register. Related services include but are not limited to works & studies activities necessary to enable the installation, power supply and other ancillary services of facility management (including, but not limited to cleaning services, maintenance of green areas, control and maintenance of the state of integrity of the infrastructures and equipment, such as electrical equipment, energy systems, generators, signalling systems, heating and air conditioning equipment; beacon lights on towers).

Incumbent MNO: any MNO other than the New Entrant MNOs.

Indemnified Party: means the Monitoring Trustee and its employees and agents as set out in paragraph 69.

MNO: a mobile network operator that provides wireless voice and data communication services in Italy.

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

New Entrant MNO: means any MNO that has been authorised to operate a mobile network in Italy in the last 4 years, or that will be authorised to operate a mobile network in Italy in the period of the duration of the Commitments, which is in the active process of rolling out autonomously its own spectrum coverage, through its own radio sites and equipment, in municipalities with more than 35,000 inhabitants.

Parties: Vodafone Group and Telecom Italia and their Affiliated Undertakings.

Reasonable and Non-Discriminatory Terms: means the provision of Hosting Services on fair, reasonable and non-discriminatory terms and conditions ("FRAND") which, for the avoidance of doubt, shall include standard contractual terms and conditions as commonly interpreted in the telecommunications industry. For the avoidance of any doubt, to the extent that framework agreements are already in place between the Third Parties and the Parties/INWIT prior to the announcement of the Concentration, the terms of such framework agreements shall remain in place and shall be regarded as corresponding to Reasonable and Non-Discriminatory Terms, insofar as they cover the same or equivalent relevant services as those being requested.

Reasonable Request: means, from a technical perspective, a request for Hosting Services by a Third Party which, in particular, shall ensure that the use of power is consistent with the relevant emitted frequencies, uses up-to-date equipment and all reasonable electromagnetic frequency efficiency options which optimise the use of electromagnetic and physical space as per best market practice.

Requesting Party: means a Third Party that requests access to an Available Site as set out in paragraph 13.

Third Party: means any MNO or FWA other than the Parties and their Affiliated Undertakings which submits a Reasonable Request.

Transparency Register: means the register of Available Sites expected to be available as set out in paragraph 8.

Section B. Commitments to offer access to space

2. The Commitments apply only to sites in municipalities in Italy with more than 35,000 inhabitants.

I. Commitment to offer Available Sites

3. The Parties shall cause INWIT to make available to Third Parties at least the number of Available Sites set out in Schedule A and in accordance with the timetable set out therein. Schedule A sets a minimum number of Available Sites to be made available per year (the first year starts on the first day of the month following the publication of the Transparency Register). The Parties may vary, by up to 10% of the total number, the Available Sites set for a particular year, provided that they meet the cumulative threshold number over the period set out in Schedule A.
4. The Parties shall cause INWIT to ensure that the Available Sites will be distributed across municipalities with more than 35,000 inhabitants. At least [...] % of the Available Sites which must be made available pursuant to paragraph 3 (as set out in Schedule A), shall be located in municipalities listed in Schedule C. Such percentage applies over the aggregate period of the Commitments (i.e. 8 years) and over the aggregate of the municipalities listed in Schedule C. In particular, during the first four-year period (starting from publication of the Transparency Register), at least [...] % of such Available Sites (i.e. at least [...]) which must be made available pursuant to paragraph 3 (as set out in Schedule A) shall be located in the municipalities listed in Schedule C. Such percentage applies over the aggregate of the first four-year period and over the aggregate of the municipalities listed in Schedule C.
5. The Parties shall cause INWIT to offer Hosting Services for the Available Sites to Third Parties subject to the provisions set out in Section D below and on Reasonable and Non-Discriminatory Terms.
6. To the extent a hosting or framework contract between the Parties or INWIT and the Third Party does not exist at the Effective Date and subject to paragraph 7 below, the Parties shall cause INWIT to offer Hosting Services for between [...] years starting from the execution of the relevant agreement between INWIT and the Third Party, renewable for another [...] years, unless a different duration is agreed with the Third Party (for the avoidance of doubt, the agreed terms may be shortened but they shall not be shorter than [...] years for the initial term and [...] years for the renewed term).

II. Commitment as regards existing hosting contracts

7. The Parties shall ensure that, as regards all existing hosting contracts (including framework contracts whatever their geographic scope) in place as of the date of these Commitments between Vodafone Italia and / or INWIT with third parties (including but not limited with Third Parties), INWIT shall not exercise any early termination right and neither shall Vodafone prior to the transfer of the sites to INWIT. The Parties shall also offer all such third parties the option to extend the duration of all existing hosting contracts (including framework contracts whatever their geographic scope), which are due to expire during the implementation of the Commitments, at least up to the duration of these Commitments (unless a different duration is agreed with the third party). For the avoidance of any doubt, this paragraph applies also to contracts which relate to sites in both municipalities in Italy with more than 35,000 inhabitants and municipalities in Italy with less than 35,000 inhabitants.

Section C: Publication of information regarding available capacity

8. Within 6 months of Closing, the Parties shall cause INWIT to publish on its website (or such other channels as per current market practice) a register of Available Sites (the **"Transparency Register"**). The Transparency Register will also indicate the date on which the Available Site is expected to be ready for use for Hosting Services (the **"Ready for Service Date"**), subject to the Relevant Third Party obtaining all necessary permits (for the avoidance of doubt, the Ready for Service Date is also not subject to, and is independent from, the actions needed by the relevant Third Party to make use of the relevant site). The Parties commit that: (a) they will cause INWIT to publish Available Sites on the Transparency Register as soon as it is sufficiently clear to INWIT that the relevant site will become an Available Site; and (b) on the Ready for Service Date, the Available Sites will be ready to host one or more Third Parties subject to any events or actions beyond the control of the Parties or INWIT.
9. All Available Sites published on the Transparency Register shall count towards the number of sites which the Parties have committed to make available under paragraph 3 (for the avoidance of doubt, this shall include sites where such sites are subsequently delisted in accordance with paragraph 10 below).
10. For the avoidance of doubt, after publication on the Transparency Register, Available Sites might become unavailable due to actions or events of third parties beyond the Parties' and INWIT's control, namely changes to the electromagnetic space and/or force majeure. In addition, for Available Sites on which tenants are no longer present, in the absence of requests by Third Parties within [...] months from publication, INWIT shall have the right to remove them from the Transparency Register (for sale or other purposes), subject to the agreement of the Monitoring Trustee. For all other Available Sites, in the absence of requests by Third Parties [...] months from publication INWIT shall be entitled to offer the Free Space to prospective customers other than Third Parties, subject to the agreement of the Monitoring Trustee.
11. Information to be published in the Transparency Register in relation to each Available Site shall include, on a site by site basis, the relevant site code, the owner of the site, the GPS coordinates, the site characteristics (including available physical space for installation (based on INWIT's best estimates possible at the time of publication) and the infrastructure height, as per the form set out in Schedule F). The Parties shall cause INWIT to update on a

[...] basis the information published in the Transparency Register. Access to the Transparency Register shall be managed in accordance with Schedule G.

12. At the request of a Third Party, the Parties shall cause INWIT to provide any such additional information and documentation reasonably necessary for such Third Party to make a request for hospitality services, with the same level of detail that the Parties and/or INWIT provided Third Parties with prior to the Concentration and in line with best market practice.

Section D: Procedure for obtaining access to Available Sites

13. The Parties shall cause INWIT to adopt a procedure whereby it will respond to Third Parties who make a request (the "**Requesting Party**") for access to Available Sites on a non-discriminatory basis and thus on a first come first served basis subject to paragraph 14 below.
14. The Parties shall cause INWIT to ensure that, as of the date of publication in the Transparency Register of an Available Site, a New Entrant MNO will benefit from a one-month exclusive period to make a request for Available Sites. The Available Sites accessed by a New Entrant MNO benefiting from the one-month exclusive period (the "**Priority Sites**") shall be effectively used by the relevant New Entrant MNO within 12 months from the date of the Firm Hospitality Offer pursuant to paragraph 18 or the date of availability/release of site according to the Transparency Registry (the latter if the date of the Firm Hospitality Offer is before the date of availability/release of site) and be employed only for the purposes of coverage and deployment of the relevant New Entrant MNO's stand-alone network.
15. For the avoidance of doubt a New Entrant MNO shall not use the Priority Sites to implement any RAN sharing agreement with an Incumbent MNO, in force or to be concluded within 4 years following the date of publication of the Priority Sites in the Transparency Register, or otherwise to transmit frequencies of an Incumbent MNO within 4 years following the date of publication of the Priority Sites in the Transparency Register. Such restrictions on the use of the Priority Sites will cease to exist after 4 years following the date of publication of the Priority Sites in the Transparency Register. Should such restrictions be infringed or circumvented by the relevant New Entrant MNO, the Parties shall cause INWIT to terminate the hosting contract for the relevant Priority Site and such Priority Site shall be re-included in the Transparency Registry and be made available to other Third Parties. The relevant New Entrant MNO shall be prevented from access to the Priority Site with respect to which it infringed the use restrictions for a period of 2 years.
16. Any request by a Requesting Party for Hosting Services on an Available Site submitted to INWIT must contain as a minimum information relating to required configuration in terms of physical and electromagnetic space required. The request must be submitted using the template provided for as Schedule D. This template may be updated, from time to time, to adapt to best market practice with the approval of the Monitoring Trustee.
17. The Parties shall ensure that INWIT will communicate to the Requesting Party within [...] days from receipt of the request with a copy to the Monitoring Trustee, when a request in relation to an Available Site does not satisfy the conditions set out Schedule D.
18. Following receipt of a request, the Parties shall cause INWIT to follow the procedure set out in Schedule E and either (i) agree to provide the Hosting Services on the terms set out in the offer which shall be on Reasonable and Non-Discriminatory Terms ("**Firm Hospitality Offer**") to be accepted within a reasonable period, in line with market practice and INWIT's /

the Parties' framework contracts with the relevant Third Party in force prior to announcement of the Concentration (if applicable) or (ii) formally decline to provide Hosting Services for specific and identified technical reasons (with in this instance a copy of any such denial to be sent to the Monitoring Trustee).

19. As it is the case for all prospective tenants on towers, following receipt of a Firm Hospitality Offer, Third Parties shall remain in charge of any administrative step necessary to obtain the relevant permissions by the competent public administration, including for those instances where a joint request by INWIT and the Third Party is to be submitted (e.g. infrastructural adjustments to be implemented on the site). The Parties shall cause INWIT to cooperate in good faith with the Third Party for the purposes of obtaining all relevant permissions. For the avoidance of doubt, Third Parties shall retain responsibility for obtaining the necessary permits.
20. The Parties shall cause INWIT to set up, for the duration of the Commitments, a repository that guarantees that all the requests made to it and the related offer or refusal can be retrieved and traced by the appropriate persons (including the Monitoring Trustee), taking into account appropriate confidentiality requirements.
21. The Parties reserve the right to adopt any appropriate procedural rules deemed necessary to ensure that the proper and efficient functioning of INWIT is not jeopardised by (the timing, size, frequency of) requests for Hosting Services and/or abuses of the procedure by Third Parties (including where appropriate, and in compliance with the applicable laws, including Italian contract law, the right to compensation, indemnification and / or temporary suspension where a Third Party engages in abuse of the procedure) in agreement with the Monitoring Trustee. For the avoidance of doubt, the timing, size, frequency of requests made by potential customers other than Third Parties shall not be a factor justifying the adoption of any procedural rule affecting the timeliness of processing requests by Third Parties.
22. Where a Third Party (including New Entrant MNOs), which has accepted the Firm Hospitality Offer, does not make effective use of the relevant Available Site (including Priority Sites) within 12 months from the date of the Firm Hospitality Offer or the date of availability/release of site according to the Transparency Registry (the latter if the date of the Firm Hospitality Offer is before the date of availability/release of site) without justified reason to be assessed by the Monitoring Trustee, the Parties shall cause INWIT to terminate the hosting contract for the relevant Available Site and such site shall be re-included in the Transparency Registry and be made available to other Third Parties. A provision to this effect shall be included in hosting contracts for Hosting Services with Third Parties.

Section E. Fast Track Expert Dispute Resolution

23. In the event that there is a dispute between INWIT and the Requesting Party as to any matter arising from paragraph 18 in Section D (Procedure for obtaining access to Available Sites) in relation to an Available Site, the Requesting Party shall have recourse to the following fast track dispute resolution mechanism (the "**Fast Track Expert Dispute Resolution Mechanism**").

I. Pre-dispute escalation

24. If the Requesting Party wishes to avail itself of the Fast Track Expert Dispute Resolution Mechanism, it shall send a written request to that effect to the Parties and INWIT, with a

copy to the Monitoring Trustee. In the request, the Requesting Party shall set out in detail the reasons leading it to believe that the determination declining access is not correct. The Parties and INWIT shall provide a response, by no later than 15 working days following the receipt of the request, with copies to the Monitoring Trustee.

25. If the Parties and the Requesting Party have failed to resolve their differences under within 20 working days following the receipt of the request, the dispute resolution procedure below shall apply.

II. Fast Track Expert Dispute Resolution Mechanism

26. At the latest a month after Closing, the Parties and INWIT shall propose a list of names for the Monitoring Trustee and the Commission to consider as potential experts to adjudicate in disputes (the "Experts"). The Experts shall be independent, suitably qualified, and have sufficient relevant experience in mobile telecommunication networks.
27. Where paragraph 23 applies, the Monitoring Trustee shall appoint one of the Experts to adjudicate on the dispute within 5 working days of expiry of the period set out therein.
28. The process shall be conducted in private and shall be confidential. The language of the process shall be in English or Italian.
29. The Expert shall act on the following basis:
- (a) the Expert shall act fairly and impartially;
 - (b) each party shall submit to the Expert its brief and its submission in relation to the matter in dispute within 10 working days of the Expert's appointment;
 - (c) Each party shall assist and provide such documentation as the Expert reasonably requires to consider the matters referred to it;
 - (d) the Expert's determination shall be given within a maximum period of 20 working days of the Expert's appointment;
 - (e) the Expert's determination in relation to any matter pursuant to paragraph 23 shall (save for manifest error or fraud) be final and binding on the Parties and the Requesting Party, and the Parties shall cause INWIT to comply;
 - (f) any challenge to the Expert's determination in accordance with the clause above shall be made according to Section F below;
 - (g) each party shall carry out the actions required to comply with the obligations set out in the Expert's determination in relation to any matter pursuant to paragraph 23 within any time-limits specified by the Expert; and
 - (h) the Requesting Party shall pay the Expert's costs if the Expert's determination upholds INWIT's decision. The Parties shall cause INWIT to pay the Expert's costs if the Expert's determination overturns INWIT's decision. The Expert shall otherwise determine how and by whom the costs of the determination are to be paid.

III. Involvement of the Commission

30. The Commission shall be allowed and enabled to participate in all stages of the procedure by:
- (a) receiving all written submissions (including documents and reports, etc.) made each party to the procedure;

- (b) receiving all documents exchanged by the Expert with the parties to the procedure;
 - (c) filing any written submissions; and
 - (d) being present at the hearing(s) and being allowed to ask questions to the parties.
31. The Expert shall forward, or shall order the parties to forward, the documents mentioned in the previous paragraph to the Commission without delay.
32. The Monitoring Trustee shall receive copies of:
- (a) all submissions made by the parties to the procedure in relation to the matters they wish to have resolved by the Expert, on the day when these have been submitted to the Expert;
 - (b) all other documentation provided by the parties, on the day when these have been submitted to the Expert; and
 - (c) the determination made by the Expert, on the day when the determination has been provided to the parties.

Section F. Arbitration

33. The Parties shall abide by the terms of the dispute resolution procedure as described below, and consent to submit any dispute with any Third Party relating to compliance by the Parties with the requirements of the Commitments above vis-à-vis such Third Party to the dispute resolution procedure set out herein, subject to the terms set out below.
34. The dispute resolution procedure detailed in this Section shall apply to disputes between the Parties and any Third Party as to any matter arising in relation to Sections B, C and D of these Commitments.

I. Mediation

35. In the event that a Third Party claims that the Parties are failing to comply with Sections B, C or D of the Commitments vis-à-vis that Third Party, the Third Party shall utilise the mediation process.
36. If so, the Third Party shall send a written request to the Parties, with a copy to the Monitoring Trustee, setting out in detail the reasons leading that party to believe that the Parties are failing to comply with the requirements of these Commitments. The Parties shall use their commercially reasonable efforts to resolve all differences of opinion with the Third Party about the application of the Commitments and to settle all disputes that may arise through cooperation and consultation within a reasonable period of time not exceeding 15 working days after receipt of the request.
37. The Monitoring Trustee shall present its own proposal for resolving the dispute within 8 working days specifying in writing the action, if any, to be taken by the Parties in order to ensure compliance with the Commitments vis-a-vis the Third Party, and be prepared, if requested, to facilitate the settlement of the dispute. To the extent that the dispute is settled and the Parties comply with such settlement, the Parties shall be deemed not to have breached the Commitments.

II. Arbitration

38. Should the Parties fail to resolve their dispute with the Third Party in the mediation phase described above, the Third Party may, within 20 working days of such failure, serve a request for arbitration, to the International Chamber of Commerce (the “**Arbitration Institution**”), with a copy of such request to the Parties and the Monitoring Trustee.
39. The request for arbitration shall provide, in addition to what is set out in the applicable arbitration rules of the Arbitration Institution, in detail the dispute, difference or claim and shall contain, inter alia, all issues of both fact and law, including any suggestions as to the procedure, and all documents relied upon shall be attached. The request for arbitration shall also contain a detailed description of the action to be undertaken by the Parties and the Monitoring Trustee’s proposal, including a comment as to its appropriateness.
40. The Parties shall, within 10 working days from receipt of the request for arbitration, submit their answer, which shall provide, in addition to what is set out in the applicable arbitration rules, detailed reasons for their conduct and set out, inter alia, all issues of both fact and law, including any suggestions as to the procedure, and all documents relied upon. The answer shall, if appropriate, contain a detailed description of the action which the Parties propose to undertake vis-a- vis the Third Party (without such proposal being construed as any admission of breach of the Commitments) and the Monitoring Trustee’s proposal (if not already submitted), including a comment as to its appropriateness.
41. Any dispute, controversy or claim related to the subject matter of the request for arbitration shall be finally settled by arbitration in accordance with the applicable arbitration rules of the Arbitration Institution. The seat of arbitration shall be Rome and the arbitration shall be conducted in English or Italian, at the choice of the Third Party.
42. The Third Party and the Parties shall each nominate one arbitrator in the request for arbitration and the answer, respectively. The two arbitrators nominated shall, within 5 working days of the nomination of the latter, nominate the chairperson, making such nomination known to the parties to the arbitration and the Arbitration Institution which shall forthwith confirm the appointment of the 3 arbitrators. Should the parties to the arbitration wish to have the dispute decided by a sole arbitrator, they may agree on a sole arbitrator and communicate this to Arbitration Institution which shall confirm the appointment. Absent such joint appointment, the three-person panel default option shall be followed. Should the Parties fail to nominate an arbitrator, or if the 2 arbitrators fail to agree on the chairperson or should the parties to the arbitration fail to agree on a sole arbitrator (if they have chosen to do so), the default appointment(s) shall be made by the Arbitration Institution.
43. The three-person panel or, as the case may be, the sole arbitrator, are herein referred to as the arbitral tribunal (the “**Arbitral Tribunal**”). The procedure shall be a fast track procedure. For this purpose, the Arbitral Tribunal shall shorten all applicable procedural time-limits under the applicable arbitration rules of the Arbitration Institution as far as admissible and appropriate in the circumstances. The parties to the arbitration shall consent to the use of e-mail for the exchange of documents.
44. The Arbitral Tribunal shall, as soon as practical after the confirmation of the Arbitral Tribunal, hold an organisational conference to discuss any procedural issues with the parties to the arbitration. Terms of reference shall be drawn up and signed by the parties to the arbitration and the Arbitration Tribunal at the organisational meeting or thereafter and a procedural time-table shall be established by the Arbitral Tribunal. An oral hearing shall, as a rule, be established within two months of the confirmation of the Arbitral Tribunal.

45. In order to enable the Arbitral Tribunal to reach a decision, it shall be entitled to request any relevant information from the parties to the arbitration, to appoint experts and to examine them at the hearing, and to establish the facts by all appropriate means. The Arbitral Tribunal is also entitled to ask for assistance by the Monitoring Trustee in all stages of the procedure if the parties to the arbitration agree.
46. The Arbitral Tribunal shall not disclose Confidential Information and apply the standards attributable to confidential information under the Merger Regulation. The Arbitral Tribunal may take the measures necessary for protecting Confidential Information in particular by restricting access to Confidential Information to the Arbitral Tribunal, the Monitoring Trustee, and outside counsel and experts of the opposing party.
47. The burden of proof in any dispute under the applicable arbitration rules shall be borne as follows: (i) the Third Party who has requested the arbitration must produce evidence of a prima facie case and (ii) if the Third Party produces evidence of a prima facie case, the Arbitral Tribunal must find in favour of the Third Party unless the Parties can produce evidence to the contrary. If the Parties produce such evidence and the arbitration is not decided in favour of the Third Parties on the basis of prima facie evidence, then the issues in dispute in the arbitration will be decided on the basis of the evidence presented by the parties on the balance of probabilities.

III. Involvement of the Commission

48. The Commission shall be allowed and enabled to participate in all stages of the procedure by:
- (a) receiving all written submissions (including documents and reports, etc.) made by the parties to the arbitration;
 - (b) receiving all orders, interim and final awards and other documents exchanged by the Arbitral Tribunal with the parties to the arbitration (including terms of reference and procedural timetable);
 - (c) having the opportunity to file *amicus curiae* briefs; and
 - (d) being present at the hearings and being allowed to ask questions to the parties to the arbitration, witnesses and experts.
49. The Arbitral Tribunal shall forward, or shall order the parties to the arbitration to forward, the documents mentioned in the previous paragraph to the Commission without delay.
50. In the event of disagreement between the parties to the arbitration regarding the interpretation of the Commitments, the Arbitral Tribunal may seek the Commission's interpretation of the Commitments before finding in favour of any party to the arbitration and shall be bound by the interpretation.

IV. Decisions of the Arbitral Tribunal

51. The Arbitral Tribunal shall decide the dispute on the basis of the Commitments and the Decision. Issues not covered by the Commitments and the Decision shall be decided (in the order as stated) by reference to the Merger Regulation, European Union law and general principles of law common to the legal orders of the Member States without a requirement to apply a particular national system. The Arbitral Tribunal (in case of a three-person panel) shall take all decisions by majority vote.

52. Upon request of the Third Party having made the request for arbitration, the Arbitral Tribunal may make a preliminary ruling on the dispute. The preliminary ruling shall be rendered within 1 month after the confirmation of the Arbitral Tribunal, shall be applicable immediately and, as a rule, remain in force until a final decision is rendered.
53. The Arbitral Tribunal shall, in the preliminary ruling as well as in the final award, specify the action, if any, to be taken by the Parties in order to comply with the Commitments vis-à-vis the Third Party. The final award shall be final and binding on the parties to the arbitration and shall resolve the dispute and determine any and all claims, motions or requests submitted to the Arbitral Tribunal. The arbitral award shall also determine the reimbursement of the costs of the successful party and the allocation of the arbitration costs. In case of granting a preliminary ruling or if otherwise appropriate, the Arbitral Tribunal shall specify that terms and conditions determined in the final award apply retroactively.
54. The final award shall, as a rule, be rendered within 6 months after the confirmation of the Arbitral Tribunal. The time-frame shall, in any case, be extended by the time the Commission takes to submit an interpretation of the Commitments if asked by the Arbitral Tribunal.
55. The parties to the arbitration shall prepare a non-confidential version of the final award, without business secrets. The Commission may publish the non-confidential version of the award. The parties to the arbitration, the Arbitral Tribunal, all other persons participating in the proceedings and all further persons involved, i.e. in the administration of the arbitral proceedings, shall maintain confidentiality towards all persons regarding the conduct of arbitral proceedings. All proceedings will be held in private and remain confidential.
56. Nothing in the arbitration procedure shall affect the power to the Commission to take decisions in relation to the Commitments in accordance with its powers under the Merger Regulation.

Section G: Monitoring Trustee

I. Appointment procedure

57. The Parties shall appoint a Monitoring Trustee to carry out the functions specified in these Commitments for a Monitoring Trustee. The Parties commit not to close the Concentration before the appointment of the Monitoring Trustee. They shall make a proposal to this effect pursuant paragraph 60 below.
58. The Monitoring Trustee shall:
 - (e) at the time of appointment, be independent of Vodafone Group and Telecom Italia and their Affiliated Undertakings;
 - (f) possess the necessary qualifications to carry out its mandate, for example have sufficient relevant experience as an investment banker or consultant or auditor; and
 - (g) neither have nor become exposed to a Conflict of Interest.
59. The Monitoring Trustee shall be remunerated by the Parties in a way that does not impede the independent and effective fulfilment of its mandate.

Proposal by the Parties

60. No later than two weeks after the Effective Date, the Parties shall submit the name or names of one or more natural or legal persons whom the Parties propose to appoint as the Monitoring Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the person or persons proposed as Monitoring Trustee fulfil the requirements set out in paragraph 58 and shall include:
- (a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Monitoring Trustee to fulfil its duties under these Commitments;
 - (b) the outline of a work plan which describes how the Monitoring Trustee intends to carry out its assigned tasks.

Approval or rejection by the Commission

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

New proposal by the Parties

62. If all the proposed Monitoring Trustees are rejected, the Parties 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 57 and 61 of these Commitments.

Monitoring Trustee Nominated by the Commission

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

II. Functions of the Monitoring Trustee

64. The Monitoring 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 Monitoring Trustee or the Parties, give any orders or instructions to the Monitoring Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

Duties and obligations of the Monitoring Trustee

65. 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) monitor the implementation of and compliance by the Parties with the conditions and obligations attached to the Decision;
 - (iii) propose to the Parties such measures as the Monitoring Trustee considers necessary to ensure the Parties' compliance with the conditions and obligations attached to the Decision;
 - (iv) act as a contact point for any requests by third parties, in particular Third Parties, in relation to the Commitments;
 - (v) provide to the Commission, sending the Parties a non-confidential copy at the same time, a written report in relation to the Commitments, within 15 days after the end of every month, from the appointment of the Monitoring Trustee until the first publication of Available Sites on the Transparency Registry, and thereafter within 15 days after the end of a 6 month period until expiry of the Commitments;
 - (vi) promptly report in writing to the Commission, sending the Parties a non-confidential copy at the same time, if it concludes on reasonable grounds that the Parties are failing to comply with these Commitments;
 - (vii) assume the functions assigned to the Monitoring Trustee in relation to the Fast Track Expert Dispute Resolution Mechanism;
 - (viii) monitor the implementation of the provisions in paragraph 8 above in relation to the obligation to publish sites on the Transparency Register as soon as it is sufficiently clear that they will become Available Sites.
 - (ix) monitor the implementation of the provisions in paragraphs 14 and 15 above in relation to the rights and obligations of New MNO Entrants;
 - (x) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision.
66. The documents provided for above shall be prepared in English (or in Italian with an English translation, if the Parties so prefer).

III. Duties and obligations of the Parties

67. The Parties shall provide and shall cause its advisors to provide the Monitoring Trustee with all such co-operation, assistance and information as the Monitoring Trustee may reasonably require to perform its tasks. The Monitoring Trustee shall have full and complete access to the Transparency Registry, repository pursuant to paragraph 20 above and any of the Parties' (including INWIT's) books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments and the Parties shall provide the Monitoring Trustee upon request with copies of any document. In relation to paragraph 65(viii) specifically, the Parties shall provide quarterly updates to the Monitoring Trustee on their respective progress in terms of their own network planning. The Parties shall make available to the Monitoring Trustee one or

more offices on their premises and shall be available for meetings in order to provide the Monitoring Trustee with all information necessary for the performance of its tasks.

68. The Parties shall provide the Monitoring Trustee with all administrative support that it may reasonably request.
69. The Parties shall indemnify the Monitoring Trustee and its employees and agents (each an **"Indemnified Party"**) and hold each Indemnified Party harmless against, and hereby agree that an Indemnified Party shall have no liability to the Parties for, any liabilities arising out of the performance of the Monitoring Trustee's duties under the Commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Monitoring Trustee, its employees, agents or advisors.
70. At the expense of the Parties, the Monitoring Trustee may appoint advisors (in particular for technical advice), subject to the Parties approval (this approval not to be unreasonably withheld or delayed) if the Monitoring Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Monitoring Trustee are reasonable. Should the Parties refuse to approve the advisors proposed by the Monitoring Trustee the Commission may approve the appointment of such advisors instead, after having heard the Parties. Only the Monitoring Trustee shall be entitled to issue instructions to the advisors. Paragraph 69 of these Commitments shall apply *mutatis mutandis*.
71. The Parties agree that the Commission may share Confidential Information proprietary to the Parties with the Monitoring Trustee. The Monitoring Trustee shall not disclose such information and the principles contained in Article 17 (1) and (2) of the Merger Regulation apply *mutatis mutandis*.
72. The Parties agree 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 of the identity and the tasks of the Monitoring Trustee.
73. For a period of 10 years from the date of adoption of the Decision the Commission may request all information from the Parties that is reasonably necessary to monitor the effective implementation of these Commitments.

IV. Replacement, discharge and reappointment of the Monitoring Trustee

74. If the Monitoring Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Monitoring Trustee to a Conflict of Interest:
- (a) the Commission may, after hearing the Monitoring Trustee and the Parties, require the Parties to replace the Monitoring Trustee; or
 - (b) the Parties may, with the prior approval of the Commission, replace the Monitoring Trustee.
75. If the Monitoring Trustee is removed according to paragraph 74 of these Commitments, the Monitoring Trustee may be required to continue in its function until a new Monitoring Trustee is in place to whom the Monitoring Trustee has effected a full hand over of all relevant information. The new Monitoring Trustee shall be appointed in accordance with the procedure referred to in paragraphs 57 to 63 of these Commitments.
76. Unless removed according to paragraph 74 of these Commitments, the Monitoring Trustee shall cease to act as Monitoring Trustee only after the Commission has discharged it from

its duties after all the Commitments with which the Monitoring Trustee has been entrusted 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 H. Duration

77. The Commitments will expire 8 years from the first publication of the Transparency Register, unless in response to a request by Parties in accordance with the Review Clause, the Commission decides to waive, modify or substitute these Commitments on grounds that the conditions of competition would no longer justify the undiminished continuation of these Commitments.

Section I. Review Clause

78. The Commission may extend the time periods foreseen in the Commitments in response to a request from the Parties or, in appropriate cases, on its own initiative. Where the Parties request an extension of a time period, they 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 Parties.
79. The Commission may further, in response to a reasoned request from the Parties showing good cause waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to the Parties. 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 J. Entry into force

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

duly authorised for and on behalf of

Vodafone Group Plc

Telecom Italia S.p.A.

SCHEDULE A

NUMBER OF AVAILABLE SITES PURSUANT TO PARAGRAPH 3 OF THE COMMITMENTS

[...]

SCHEDULE B

LIST OF VODAFONE ITALIA'S AND INWIT'S EXISTING SITES IN MUNICIPALITIES WITH MORE THAN 35,000 INHABITANTS

[...].

SCHEDULE C

LIST OF SPECIFIC CITIES

[...]

SCHEDULE D

REQUEST TEMPLATE

[...]

,

SCHEDULE E

PROCEDURE FOR REQUESTING ACCESS TO AVAILABLE SITES

[...]

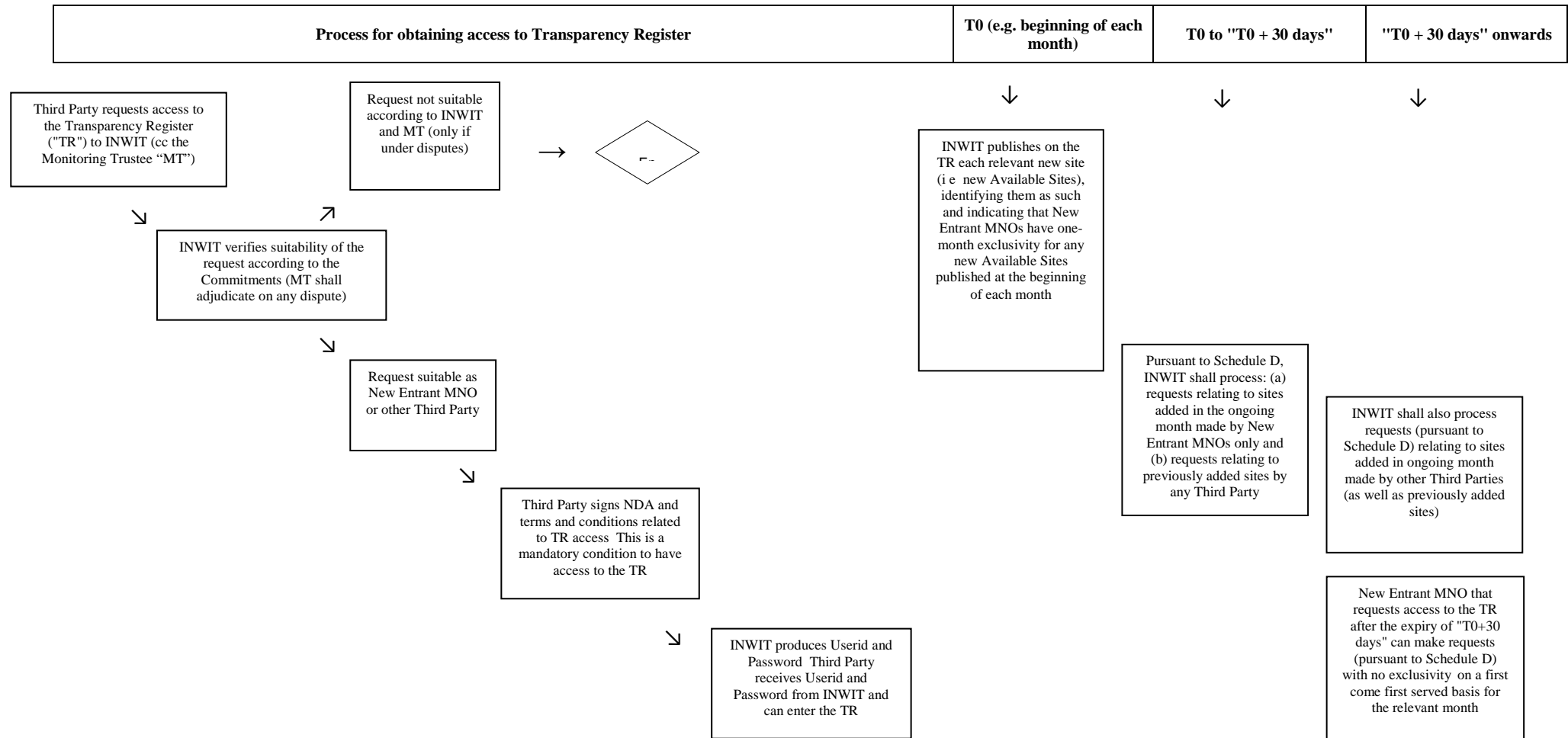
SCHEDULE F

FORM AND CONTENT OF SITE LIST

[...]

SCHEDULE G

PROCESS FOR OBTAINING ACCESS TO THE TRANSPARENCY REGISTER



INWIT shall respond to a request for access to the TR within 3 working days. The timing of the MT response (after a potential Third Party disputes INWIT's response to a request for access to the TR) shall be determined by the MT according to its best practices.

INWIT shall produce a Userid and Password in 2 working days following confirmation of a New Entrant MNO's or other Third Party's suitability for obtaining access. Userid and Password will be subject to security rules. For security reasons, Third Parties shall change passwords every 3 months. The status of New Entrant MNO/Third Party can be reviewed as appropriate during the period of the Commitments.

Third Parties will have access to all Available Sites. Third Parties other than New Entrant MNOs can also make requests (pursuant to Schedule D) relating to new sites during the New Entrant MNO exclusivity period (T0 to "T0+30 days") but such requests will only be processed after the expiry of the New Entrant MNO exclusivity period.

In determining the ranking of New Entrant MNOs' and other Third Parties' requests to new sites, INWIT will take into account the date of the request made pursuant to Schedule D.