



EUROPEAN COMMISSION
DG Competition

Case M.10475 - UNITED GROUP / WIND HELLAS

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 21/12/2021

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EUROPEAN COMMISSION

Brussels, 21.12.2021
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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 Where possible the information omitted has been replaced by ranges of figures or a general description.

United Group B. V.
Spicalaan 41
2132 JG Hoofddorp
The Netherlands

**Subject: Case M.10475 – UNITED GROUP/WIND HELLAS
Commission decision pursuant to Article 6(1)(b) of Council Regulation
No 139/2004¹ and Article 57 of the Agreement on the European Economic
Area²**

Dear Sir or Madam,

- (1) On 16 November 2021, the European Commission (“the Commission”) received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which United Group BV (“United Group”, the Netherlands) intends to acquire, within the meaning of Article 3(1)(b) of the Merger Regulation, sole control of the whole of Wind Hellas (“Wind”, Greece) (the “Transaction”). United Group is designated hereinafter as the “Notifying Party”, while United Group and Wind are jointly referred to as the “Parties”.

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’).

1. THE PARTIES

- (2) **United Group** is active in the provision of telecoms and media services in Southeastern Europe. Its activities focus on the production and supply of pay-TV channels and audio-visual content, and the retail distribution of audio-visual services, broadband internet and fixed and mobile telecommunication services. United Group entered the Greek market in November 2020 with the acquisition of Forthnet (now renamed into Nova Telecommunication S.M.S.A. ("Nova")), a telecommunications operator that provides retail fixed telephony and retail broadband internet access in Greece as well as retail audio-visual services in Greece and Cyprus, but no mobile telecommunications services.³ United Group is ultimately solely controlled by BC Partners LLP ("BC Partners", the United Kingdom), an equity global investment firm.⁴
- (3) **Wind** is a Greek telecommunications provider with headquarters in Athens, Greece. It is active in Greece in the provision of wholesale and retail mobile telephony, retail fixed telephony, retail broadband internet access services, as well as retail audio-visual services through its over-the-top ("OTT") platform, and in the provision of multiple-play packages, i.e. packages that include a combination of fixed telephony, broadband internet services, mobile telephony and pay-TV services for a single price. Wind does not offer retail pay-TV services on a stand-alone basis, but only as part of multiple-play packages and in combination with its broadband internet services. Wind is indirectly wholly owned by Crystal Almond Holdings Limited ("CAH", Guernsey), an equity holding company.

2. THE OPERATION AND THE CONCENTRATION

- (4) On 14 August 2021, United Group and CAH, Wind's holding company, entered into a share purchase agreement (the "SPA"). Pursuant to the SPA, United Group will acquire Crystal Almond Intermediary Holdings ("CAIH"), a wholly-owned subsidiary of CAH, which indirectly wholly owns Wind.⁵ The Transaction therefore consists in the acquisition of sole control over Wind by United Group within the meaning of Article 3(1)(b) EUMR.

3. UNION DIMENSION

- (5) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million⁶ (United Group/BC Partners: [...]; Wind: [...]). Each of them has a Union-wide turnover in excess of EUR 250 million (United Group: [...]; Wind: [...]). While Wind generated the entirety of its turnover in Greece,

³ The Commission approved the acquisition of Forthnet by United Group on 13 August 2020 in Case M.9866 -United Group/Forthnet https://ec.europa.eu/competition/mergers/cases1/20216/m9866_262_3.pdf.

⁴ The Commission approved the acquisition of United Group by BC Partners on 17 December 2018 in Case M.9152 – BC Partners/United Group: https://ec.europa.eu/competition/mergers/cases/decisions/m9152_151_3.pdf.

⁵ Before the Transaction, by means of a de-merger that should take place before 2 January 2022, Wind will spin-off its fibre roll-out business in an entity under the name of FibreCO. FibreCO shall, after de-merger, remain to be wholly (indirectly) owned by CAIH and part of the envisaged Transaction.

⁶ Turnover calculated in accordance with Article 5 of the Merger Regulation.

United Group did not achieve more than two-thirds of its Union-wide turnover within one and the same Member State.

- (6) Therefore, the Transaction has a Union dimension pursuant to Article 1(2) of the Merger Regulation.

4. MARKET DEFINITION

- (7) The Transaction concerns the following markets in Greece: (i) the retail supply of mobile telecommunications services; (ii) the retail supply of fixed telephony services; (iii) the retail supply of fixed broadband internet access services; (iv) the retail supply of audio-visual services; (v) the retail provision of multiple play services; (vi) the wholesale market for termination and hosting of calls to non-geographic numbers; and (vii) the wholesale supply and acquisition of TV channels.

4.1. Retail supply of mobile telecommunications services

4.1.1. Product market definition

4.1.1.1. Previous Commission decisions

- (8) In previous decisions, the Commission has identified an overall retail market for mobile telecommunications services constituting a separate market, distinct from retail fixed telecommunication services. The Commission considered that the retail mobile telecommunications market does not need to be further segmented based on the type of service (voice calls, SMS, MMS, mobile Internet data services), or the type of network technology (2G, 3G, 4G).⁷ The Commission considered a number of possible segmentations of the overall retail market for mobile telecommunication services (pre-paid vs post-paid services;⁸ private customers vs. business customers;⁹ high-value vs low-value customers;¹⁰ sim-card only (“SIMO”) and handset

⁷ Commission decision of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets*, recital 66; Commission decision of 30 May 2018 in case M.7000 – *Liberty Global/Ziggo*, paragraph 207; Commission decision of 1 September 2016 in case M.7758, *Hutchison 3G Italy/Wind/JV*, recitals 135 to 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 259 to 265 and 287; Commission decision of 02 July 2014 in case M.7018 – *Telefónica Deutschland/E-Plus*, recitals 31 to 55; 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*, recitals 43 to 58.

⁸ Commission decision of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets*, recitals 64 to 67; Commission decision of 27 November 2018 in case M.8792 – *T-Mobile NL/Tele2 NL*, recital 202; Commission decision of 30 May 2018 in case M.7000 – *Liberty Global/Ziggo*, paragraphs 200 to 207; Commission decision of 1 September 2016 in case M.7758 – *Hutchison 3G Italy/Wind/JV*, recitals 146 to 149; Commission decision of 3 August 2016 in case M.7978 – *Vodafone/Liberty Global/Dutch JV*, paragraphs 72 to 74; Commission decision of 11 May 2016 in case M.7612 – *Hutchison 3G UK/Telefónica UK*, recitals 266 to 270 and 287; Commission decision of 2 July 2014 in case M.7018 – *Telefónica Deutschland/E-Plus*, recitals 37 to 39 and 65 to 71; Commission decision of 28 May 2014 I case M.6992 – *Hutchison 3G UK/Telefónica Ireland*, recitals 141 to 143; Commission decision of 12 December 2012 in case M.6497 – *Hutchison 3G Austria/Orange Austria*, recitals 38 to 41 and 58.

⁹ Commission decision of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets*, recitals 64 to 67; Commission decision of 30 May 2018 in case M.7000 – *Liberty Global/Ziggo*, paragraphs 200 to 207; Commission decision of 3 August 2016 in case M.7978 – *Vodafone/Liberty Global/Dutch JV*, paragraphs 72 to 74; Commission decision of 11 May 2016 in case M.7612 – *Hutchison 3G UK/Telefónica UK*, recitals 276 to 279; Commission decision of 2 July 2014 in case M.7018 – *Telefónica Deutschland/E-Plus*, recitals 30 to 36; Commission decision of 28 May 2014 in case M.6992 – *Hutchison 3G UK/Telefónica Ireland*, recitals 141, 149 and 150; Commission decision of 12 December 2012 in case M.6497 – *Hutchison 3G Austria/Orange Austria*, recitals 32 to 35.

¹⁰ Commission decision of 2 July 2014 in case M.7018 – *Telefónica Deutschland/E-Plus*, recitals 40 to 44.

subscriptions;¹¹ different distribution channels¹²) but considered that they do not constitute separate product markets but rather segments of the same market.

- (9) The Commission considered that Over-the-top (“OTT”)¹³ services, whether provided over Wi-Fi or via mobile telecommunications data networks, were not part of the market for mobile telecommunications services, as OTT rely on mobile telecommunications (data) services and/or fixed broadband services to function.¹⁴ Finally, the Commission excluded Machine-to-Machine (“M2M”, e.g. energy metering or burglar alarm)¹⁵ services from the overall retail mobile telecommunications market, due to the particular characteristics of the demand for and supply of these services.¹⁶

4.1.1.2. The Notifying Party’s view

- (10) The Notifying Party considers that the relevant product market is the overall market for the provision of retail mobile telecommunication services without the need to segment it further. In any event, considering that there is no overlap between the Parties’ activities in relation to this market, the precise market definition can be left open as it will have no impact on the assessment of the Transaction.

4.1.1.3. The Commission’s assessment

- (11) The results of the market investigation support the conclusion as to the existence of an overall retail market for mobile telecommunications services constituting a separate market, distinct from retail fixed telecommunications services. One respondent explains that that retail mobile telecommunications market should be defined as one single market without further subdivisions. The subscribers, in fact, purchase all services as a bundle and all mobile operators are able to offer all mobile services. The respondent also indicates that mobile services do not belong (at least yet) in the same market with fixed services, as there are still significant technical and commercial differences between them from the point of view of the subscriber.¹⁷
- (12) In light of the above, for the purpose of this Decision, the Commission considers that there is an overall retail market for mobile telecommunications services.

¹¹ Commission decision of 11 May 2016 in case M.7612 – *Hutchison 3G UK/Telefónica UK*, recitals 271 to 275.

¹² In Commission decision of 11 May 2016 in case M.7612 – *Hutchison 3G UK/Telefónica UK*, recitals 280 to 286, the Commission took into account also the segmentation between direct distribution and independent specialist retailers in view of the important role played in the retail market by independent specialist retailers and since direct distribution and independent specialist retailers account for the largest part of the market.

¹³ In the present context OTT services are understood to be telecommunications services that rely on an internet connection to function, such as instant messaging (e.g. WhatsApp, Facebook Messenger, Apple iMessage) and voice over IP (“VoIP” e.g. WhatsApp, Skype, Apple FaceTime)

¹⁴ Commission decision of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets*, recital 65 to 66; Commission decision of 27 November 2018 in case M.8792 – *T-Mobile NL/Tele2 NL*, recitals 168 to 169;; Commission decision of 1 September 2016 in case M.7758 – *Hutchison 3G Italy/WIND/JV*, recitals 138 to 145 and 162, Commission decision of 11 May 2016 in case M.7612 – *Hutchison 3G UK/Telefónica UK*, recitals 262 to 265 and 286s.

¹⁵ These allow machines, devices, appliances, etc., to connect wirelessly to the internet via mobile networks, or other technologies, permitting the transmission and receipt of data to a central server.

¹⁶ Commission decision of 15 July 2019 in case M.9370 – *Telenor/DNA*, paragraphs 39 to 42; Commission decision of 27 November 2018 in case M.8792 – *T-Mobile NL/Tele2 NL*, recitals 223 and 224.

¹⁷ Replies to Q1 to Competitors, questions 3 and 3.1.

4.1.2. *Geographic market definition*

4.1.2.1. Previous Commission decisions

- (13) In previous decisions, the Commission found that the market for the retail supply of mobile telecommunications services was national in scope.¹⁸

4.1.2.2. The Notifying Party's view

- (14) The Notifying Party considers that the relevant geographic market for the retail provision of mobile telecommunications services corresponds to the territory of Greece.

4.1.2.3. The Commission's assessment

- (15) A majority of the respondents to the market investigation indicated that it would be appropriate to consider that the geographic scope of the market for the retail supply of mobile telecommunications services in the present case is the territory of Greece.¹⁹
- (16) In light of the above, the Commission considers that, for the purpose of this Decision, the relevant geographic market for the retail supply of mobile telecommunication services is the territory of Greece.

4.2. **Retail supply of fixed telephony services**

4.2.1. *Product market definition*

4.2.1.1. Previous Commission's decisions

- (17) In previous decisions, the Commission considered whether to distinguish between residential and non-residential customers in the market for the retail supply of fixed telephony services.²⁰ While the Commission left the precise scope of the market for the retail supply of fixed telephony services open in several decisions,²¹ it found in recent decisions that such a market does not contain further segmentations²² and that the overall product market for fixed telephony services includes fixed telephony services provided over the Internet Protocol (Voice-over-IP or "VoIP" services).²³

¹⁸ Commission decision of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets*, recital 70; Commission decision of 2 October 2008 in case M.5148 – *Deutsche Telekom/OTE*, paragraphs 18 to 20.

¹⁹ Replies to Questionnaire Q1 to competitors, question 6.

²⁰ Commission decision of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets*, recitals 35 to 40; Commission decision of 8 October 2018 in case M.8842 – *Tele2/Com Hem Holding*, paragraphs 14 to 17.

²¹ Commission decision of 8 October 2018 in case M.8842 – *Tele2/Com Hem Holding*, paragraph 17; Commission decision of 29 January 2010 in case M.5730 – *Telefónica/Hansenet Telekommunikation*, paragraph 17; Commission decision of 26 June 2009 in case M.5532 – *Carphone Warehouse/Tiscali UK*, paragraphs 35 to 39; Commission decision of 27 November 2007 in case M.4947 – *Vodafone/Tele2 Italy/Tele2 Spain*, paragraph 12

²² Commission decision of 26 October 2020 in case M.9963 – *Iliad/Play Communications*, paragraphs 19 to 23; Commission decision of 4 February 2016 in case M.7637 – *Liberty Global/Base Belgium*, recitals 68 and 69.

²³ Commission decision of 29 September 2019 in case M.6990 – *Vodafone/Kabel Deutschland*, paragraph 131; Commission decision of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets*, recitals 35 to 40; In Commission decision of 8 October 2018 in case M.8842 – *Tele2/Com Hem Holding*, paragraph 17, the Commission left open the exact scope of the product market with respect to VoIP services.

4.2.1.2. The Notifying Party's view

- (18) The Notifying Party considers that VoIP and traditional telephony services can be considered as interchangeable and belong to the same product market for fixed telephony. The Notifying Party also considers that distinguishing, within the market for fixed telephony services, between local/national and international calls, is not appropriate, since customers subscribe to a single fixed line access with which they are able to make both local/national and international calls. Fixed telephony operators offer packages with a greater or lesser number of international call minutes, but customers generally subscribe to packages including both types of calls.²⁴

4.2.1.3. The Commission's assessment

- (19) The majority of the competitors responding to the market investigation agreed that the market for fixed telephony services encompasses the retail provision of fixed telephony services both through fixed telephony lines and through VoIP services.²⁵ The market investigation did not provide a clear indication as to whether a distinction between local/national and international calls is appropriate. The Commission observes that the use of fixed telephony (in minutes), both for domestic and international calls has been consistently decreasing over the years, with the volume (in minutes) of international calls being less than 2% of the total usage. In parallel, all market players sell multiple-play bundle for a comprehensive fee including their individual services. The Commission therefore does not consider that a separate market exists for local and international calls.
- (20) The results of the market investigation are mixed when it comes to a potential distinction of the market between residential and non-residential customers. The explanations provided by about half of the respondents point to a distinction existing between the two categories. In fact, it has been explained, non-residential customers, in particular medium and large enterprises, have different requirements from residential customers, in terms of products and quality of services, and for this reason are supported from different departments/personnel of telecommunications service providers. It has also been observed that services and prices applicable to the two categories differ and that, both on the demand and on the supply side, residential and non-residential customers cannot be considered as part of the same market²⁶ One respondent, on the other hand, points also to similarities between the two categories, both in terms of demand and supply characteristics. At the same time, the same respondent explains that, notwithstanding such similarities, residential customers are more likely to buy fixed services as part of multiple-play bundles.²⁷ The Commission considers that such preference for multiple-play offers excludes supply side substitutability between the two services, as suppliers of services to business customers are not necessarily able to provide multiple-play offers to residential customers, with a nation-wide reach, like suppliers of residential customers are typically able to do.

²⁴ Form CO, paragraph 152.

²⁵ Replies to Questionnaire Q1 to competitors, question 7.

²⁶ Replies to Questionnaire Q1 to Competitors, questions 9 and 9.1

²⁷ Replies to Questionnaire Q1 to Competitors, question 9.1

- (21) In light of the above, the Commission considers that, for the purpose of this Decision, the relevant product market is the market for the retail supply of fixed telephony services including VoIP services. With respect to a possible distinction between residential and non-residential (business) customers, the Commission considers that the market definition can be left open, as this distinction does not affect the outcome of the assessment. The Parties, in fact, have limited activities in the segment including large business customers and the Transaction does not lead to an affected market in that respect.

4.2.2. Geographic market definition

4.2.2.1. Previous Commission's decisions

- (22) In *Iliad/Play Communications*,²⁸ the Commission found the market for the retail supply of fixed telephony services to be national in scope, in particular due to the importance of national regulation in the telecommunications sector and the national basis upon which upstream wholesale services are provided. The Commission has also found such market to be national in scope several other decisions.²⁹

4.2.2.2. The Notifying Party's view

- (23) The Notifying Party considers that the relevant geographic market for the retail supply of fixed telephony services corresponds to the territory of Greece.

4.2.2.3. The Commission's assessment

- (24) A majority of respondents to the market investigation indicated that— it is appropriate to consider that the geographic scope of the market for the retail supply of fixed telephony services in the present case is the territory of Greece. In fact, through a combination of their own infrastructure and the use of wholesale services, the same competitors are active throughout the whole of Greece. Furthermore, all operators charge geographically uniform prices for retail fixed telephony services and provide those services under the same terms and conditions at national level.³⁰
- (25) In light of the above, the Commission considers that, for the purpose of this Decision, the relevant geographic market for the retail supply of fixed telephony services is the territory of Greece.

28 Commission decision of 26 October 2020 in case M. 9963 – *Iliad/Play Communications*, paragraph 26.

29 Commission decision of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets*, recital 46; Commission decision of 30 May 2018 in case M.7000 – *Liberty Global/Ziggo*, paragraph 150; Commission decision of 3 August 2016 in case M.7978 – *Vodafone/Liberty Global/Dutch JV*, paragraph 29; Commission decision of 19 May 2015 in case M.7421 – *Orange/Jazztel*, recital 37; Commission decision of 3 July 2012 in case M.6584 – *Vodafone/Cable & Wireless*, paragraph 13..

30 Replies to Questionnaire Q1 to competitors, question 10.

4.3. Retail fixed broadband internet access services

4.3.1. Product market definition

4.3.1.1. Previous Commission's decisions

- (26) Internet access services consist of the provision of a telecommunications link enabling customers to access the internet. Internet access may be provided as dial-up ("narrowband") access, as higher bandwidth ("broadband") access via xDSL, as a cable modem or mobile broadband technology or in the form of dedicated access involving leased lines linking one point to the internet and guaranteeing higher levels of performance and security.³¹
- (27) In recent cases,³² the Commission has considered that the relevant product market consists of the overall retail market for the provision of fixed internet access services, including all product types (narrowband, broadband, dedicated access), distribution modes (DSL, cable, fibre, fixed-wireless-access ("FWA")) and speeds/bandwidths, to residential and small business customers, excluding the supply of fixed internet services provided through mobile network infrastructure (i.e. "fLTE").³³
- (28) As for large business customers, the Commission indicated that they belong to a separate market for the retail supply of business connectivity services.³⁴
- (29) As regards fLTE services in particular, in its past practice (including recent decisions), the Commission did not identify these services as being part of a standalone market. It rather considered that fLTE services should be included in the overall market for retail mobile telecommunications services.³⁵

4.3.1.2. The Notifying Party's view

- (30) The Notifying Party considers that the product market definition adopted by the Commission in previous cases is appropriate and therefore that the market for the retail supply of fixed broadband internet access services includes all technologies and may be segmented between residential and small-office/home office ("SOHO") customers, on the one hand, and large business customers, on the other hand.

³¹ Commission decision of 29 January 2010 in case M.5730 – *Telefónica/Hansenet Telekommunikation*, paragraph 7.

³² Commission decision of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets*, recitals 55 and 56.

³³ Commission decision of 6 March 2020 in case M.9674 – *Vodafone Italia/TIM/Inwit JV*, paragraph 110; Commission decision of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets*, recitals 53 to 56; Commission decision of 9 July 2018 in case M.8808 – *T-Mobile Austria/UPC Austria*, paragraphs 39, 41; Commission decision of 30 May 2018 in case M.7000 – *Liberty Global/Ziggo*, paragraphs 165 seq.

³⁴ Commission decision of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets*, recitals 50 to 56; Commission decision of 30 May 2018 in case M.7000 – *Liberty Global/Ziggo*, paragraphs 165 seq.; In Commission decision of 9 July 2018 in case M.8808 – *T-Mobile Austria/UPC Austria*, paragraphs 39, 41, the Commission left the exact product market open definition in that regard; Commission decision of 26 June 2009 in case M.5532 – *Carphone Warehouse/Tiscali UK*, paragraphs 21 to 27.

³⁵ Commission decision of 2 July 2014 in case M.7018 – *Telefonica Deutschland/E-Plus*, recitals 51-55.

4.3.1.3. The Commission's assessment

- (31) In line with the Notifying Party's submission and the results of the market investigation³⁶, the Commission considers that it would be appropriate to consider an overall retail market for the supply of fixed internet access services, including all product types, distribution modes and speeds/bandwidths, to residential and SOHO customers, but excluding fLTE.
- (32) In fact, with regard to fixed internet access services provided through mobile network infrastructure, the respondents to the market investigation confirmed that fixed broadband internet access services are not substitutable with mobile broadband access services, because of differences, primarily in pricing models, but also because of their different uses. Internet access via mobile networks is designed with mobility as a key feature, which greatly affects bandwidth and data transmission, as compared to fixed internet access services. Further, mobile access does not have the same levels of reliability and stability, as the speed of the networks depends on the network that covers the area where the end user is located.³⁷ As to supply-side substitutability between fixed internet access and fLTE, a respondent to the market investigation explains that mobile operators in Greece are in the process of deploying 5G. It is possible that, over time, these next-generation mobile services will bring significant improvements to the broadband services offered via mobile connections including high-speed access and very high network capacity. As such, 5G services have the potential, depending on location, to pose a greater competitive constraint on fixed broadband. However, limitations will remain and the expansion of 5G will be gradual and will not ensure, at least for the time being, homogeneity in supply.³⁸
- (33) With respect to a possible distinction by customer type, most respondents to the market investigation took the view that fixed internet access services provided to residential and SOHO customers, on the one hand, and large business and government customers, on the other hand, belong to separate markets.³⁹ This is because, according to the respondents, the interchangeability between the two services is not perfect. Also, the requirements and purchase processes of larger business customers for fixed or fixed-mobile services are usually materially different (e.g. they may use tender or other competitive procedures).⁴⁰ The Commission further notes that, also from a supply side perspective, there is no perfect substitution between the services provided to the two categories. In fact, a provider supplying services to residential and SOHO customers could (at least in theory) switch to supplying large business customers.⁴¹ The reverse, however, could be more difficult, as supplying residential customers would require an extended network with a vast footprint, which not all suppliers of large business and government customers might have.⁴²

36 Replies to Questionnaire Q1 to competitors, question 11.

37 Replies to Questionnaire Q1 to competitors, question 12.

38 Replies to Questionnaire Q1 to competitors, question 12.1.

39 Replies to Questionnaire Q1 to competitors, question 13.

40 Replies to Questionnaire Q1 to competitors, question 13.1.

41 Replies to Questionnaire Q1 to competitors, question 14.1.

42 Replies to Questionnaire Q1 to competitors, question 15.1.

- (34) The Commission, therefore, concludes that services provided to residential customers and SOHO customers, on the one hand, and to large business and government customers belong to separate product markets.
- (35) In light of the above, the Commission considers that, for the purpose of this Decision, the relevant product market is the market for the retail supply of fixed internet access services, including all product types, distribution modes, and speeds/bandwidth, to residential and SOHO customers, excluding fixed internet access services provided through mobile network infrastructure.

4.3.2. *Geographic market definition*

4.3.2.1. Previous Commission decisions

- (36) In previous decisions, the Commission has found the market for the retail supply of fixed internet access services to be national in scope.⁴³

4.3.2.2. The Notifying Party's view

- (37) The Notifying Party considers that the relevant geographic market for the retail supply of fixed internet access services corresponds to the territory of Greece.

4.3.2.3. The Commission's assessment

- (38) A majority of respondents to the market investigation indicated that the geographic scope of the market for the retail supply of fixed internet access services in the present case would be the territory of Greece. In fact, they explain, the market is based on regulated, upstream wholesale access services available at national level. Pricing policies are also homogenous depending on the wholesale access offer that is used and the usage profiles.⁴⁴
- (39) In light of the above, the Commission considers that, for the purpose of this Decision, the relevant geographic market for the retail supply of fixed internet access services is the territory of Greece.

4.4. Retail supply of audio-visual services

4.4.1. *Product market definition*

4.4.1.1. Previous Commission decisions

- (40) In previous cases, the Commission has identified a relevant product market for the retail supply of audio-visual ("AV") services, which includes suppliers of linear and non-linear⁴⁵ AV services and AV content to end customers. The Commission considered a number of possible segmentations (i) between Free-to-Air ("FTA) and

⁴³ Commission decision of 3 August 2016 in case M.7978 – *Vodafone/Liberty Global/Dutch JV*, paragraph 40; Commission decision of 29 September 2019 in case M.6990 – *Vodafone/Kabel Deutschland*, paragraph 197; Commission decision of 26 June 2009 in case M.5532 – *Carphone Warehouse/Tiscali UK*, paragraph 47; Commission decision of 29 January 2010 in case M.5370 – *Telefónica/Hansenet Telekommunikation*, paragraph 28.

⁴⁴ Replies to Questionnaire Q1 to competitors, questions 16 and 16.1.

⁴⁵ Linear services are based on scheduled programming, while non-linear services (e.g. video-on-demand) include content that viewers can access and view whenever they want to.

pay-TV services; (ii) within pay-TV services, between linear and non-linear services (Pay-Per-View (“PPV”), Video-on-Demand (“VOD”)); (iii) between distribution technologies (cable, satellite, terrestrial television and Internet Protocol Television (“IPTV”)); and (iv) premium and basic pay AV services, but ultimately left the exact product market definition open.⁴⁶

4.4.1.2. The Notifying Party’s views

- (41) The Notifying Party submits that the Transaction should be assessed on the basis of an overall market for the retail supply of TV services and that it is not appropriate to segment the market. First, approx. 75% of households in Greece rely exclusively on FTA for TV viewing. FTA and pay-TV therefore compete for the same audience. Second, it is not appropriate to segment the market for the retail supply of pay-TV services on the basis of the distribution technology/platform since all technology platforms (except cable) are present and all players are able to offer pay-TV services on the basis of different technologies.⁴⁷
- (42) As to the segmentation between linear and non-linear services, the Notifying Party submits that it is irrelevant. Linear and non-linear services have converged to the extent that it has become increasingly difficult to distinguish between them, especially insofar as IPTV and OTT services are concerned. Pay-TV providers generally package linear and non-linear services within a single subscription.⁴⁸

4.4.1.3. The Commission’s assessment

- (43) The results of the market investigation are mixed as to the possible distinctions in the retail market for the provision of audio-visual services, with a single respondent indicating that FTA and pay-TV channels are part of separate markets. Slightly less than half of respondents to the market investigation indicated that pay-TV services and FTA services would not fall into separate product markets. In particular, OTE, the leading pay-TV provider in Greece, indicates that the increasing offering of streaming on-demand content by FTA channels in Greece (ERTflix etc.) as well as the offering of premium sports and film content by FTA channels allows FTA channels to exert competitive pressure on pay-TV channels.⁴⁹ In addition, another competitor adds, customers appear to use an array of choices for the consumption of video content (including pay-TV, OTT, transaction-video-on-demand (“TVOD”), video sharing, free video, advertising-supported video, etc.). The same competitor indicated that while some customers may watch pay TV channels as an alternative or substitute to FTA TV channels, customers may rely on these channels or, for example, subscription video-on-demand (“SVOD”) services as complementary

⁴⁶ Commission decision of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets*, recitals 76 to 83; Commission decision of 30 May 2018 in case M.7000 – *Liberty Global/Ziggo*, paragraphs 70 to 79; Commission decision of 6 February 2018 in case M.8665 – *Discovery/Scripps*, paragraphs 31 to 33; Commission decision of 7 April 2017 in case M.8354 – *Fox/Sky*, paragraphs 97 to 102; Commission decision of 3 August 2016 in case M.7978 – *Vodafone/Liberty Global/Dutch JV*, paragraphs 55 to 62; Commission decision of 24 February 2015 in case M.7194 – *Liberty Global/Corelio/W&W/De Vijver Media*, recitals 117 to 127; In Commission decision of 25 June 2008 in case M.5121 – *News Corp/Premiere*, paragraphs 21 to 22, the Commission only distinguished between FTA TV on the one hand and Pay TV on the other; Commission decision as of 18 July 2007 in case M.4504 – *SFR/Télé 2 France*, recitals 37 to 44.

⁴⁷ Form CO, paragraphs 305-307.

⁴⁸ Form CO, paragraph 309.

⁴⁹ Replies to Questionnaire Q1 to competitors, question 28.1.

sources of video content. The same respondent that considers FTA and pay-TV services as part of separate markets, however, indicated that the differences in pricing between FTA services (free to customers and advertisement-funded) and pay-TV services as well as the different equipment needed from the part of the end users to view them attest that the two belong to two separate markets.⁵⁰

- (44) With respect to the possible distinction between linear and non-linear services, the market investigation results were inconclusive as to demand-side substitutability. Some respondents indicated that non-linear services are growing in Greece and that linear and non-linear services are just different modalities for viewers to access content, in competition between them. Others indicate that they are rather complements to each other.⁵¹ One single respondent took the view that since non-linear services cover different content genres or thematic categories (mainly series, films, documentaries) and linear is the prevalent form of transmission for other content (mainly news, sports etc.), a distinction between linear and non-linear services is appropriate⁵² The Commission observes that there is supply-side substitutability between linear and non-linear services as pay-TV providers integrate their offer with a non-linear distribution mode (e.g. OTE launched its VOD service in 2018; Nova launched Novaflix VOD in in 2019; Vodafone launched an OTT offer in 2018; Wind is only available in OTT).⁵³ Based on the above, the Commission considers that there is some indication that linear and non-linear AV services might belong to the same market in Greece.
- (45) Regarding the possibility that SVOD OTT services may be (i) substitutes to linear premium pay-TV films and series channels; and (ii) complementary to FTA and basic pay-TV channels the market investigation results were inconclusive. One of the respondents in particular, agreed that OTT players are direct competitors of pay-TV operators and part of the same market as they are considered substitutes by the subscribers. However, the respondent did not agree that they are complementary with FTA, as it tended to view all these business models for retail distribution of audio-visual services as part of the same market.⁵⁴
- (46) As to the distinction between basic and premium pay-TV, the results of the market investigation were mixed. Two respondents, indicated that a distinction between basic and premium pay-TV applies in Greece, pointing to differences in content offering, pricing conditions and in the ability to attract customers between premium pay-TV channels and basic pay-TV channels. The majority of respondents did not have a clear opinion on this issue and no one replied that such distinction should not apply.⁵⁵ For such reasons, the Commission considers that the exact market definition can be left open, as this does not affect the outcome of the assessment.

50 Replies to Questionnaire Q1 to competitors, question 28.1.

51 Replies to Questionnaire Q1 to competitors, questions 29 and 29.1.

52 Replies to Questionnaire Q1 to competitors, questions 29 and 29.1.

53 Form CO, paragraph 615

54 Replies to Questionnaire Q1 to competitors, question 31 and 31.1.

55 Replies to Questionnaire Q1 to competitors, questions 18 and 18.1.

- (47) With respect to distribution technologies, from a demand-side perspective, the results of the market investigation indicated that there is substitutability for end-customers between all technical forms of AV distribution.⁵⁶
- (48) In any event, and in light of the above, the Commission considers that, for the purpose of this Decision, the relevant product market is the market for the retail supply of AV services encompassing all distribution technologies as well as linear and non-linear distribution. The question whether the market should be segmented (i) between FTA and pay-TV services; and (ii) basic and premium pay-TV services can be left open as the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible product market definition.

4.4.2. Geographic market definition

4.4.2.1. Previous Commission decisions

- (49) In previous decisions, the Commission concluded that the market for the retail supply of audio-visual services is national in scope or at most corresponds to linguistically homogenous areas.⁵⁷ The Commission has further considered the coverage of a service provider's (cable) network as the geographical scope but ultimately left the exact geographic market definition open in such cases.⁵⁸

4.4.2.2. The Notifying Party's view

- (50) The Notifying Party considers that the relevant geographic market for the retail supply of audio-visual services corresponds to the territory of Greece.

4.4.2.3. The Commission's assessment

- (51) A majority of respondents to the market investigation indicated that the geographic scope of the market for the retail supply of audio-visual services in the present case is the territory of Greece, because domestic audio-visual retailers offer their services to residential or business subscribers across the Greek territory.⁵⁹

⁵⁶ Replies to Questionnaire Q1 to competitors, questions 30 and 30.1.

⁵⁷ Commission decision of 30 May 2018 in case M.7000 – *Liberty Global/Ziggo*, paragraph 89; Commission decision of 24 February 2015 in case M.7194 – *Liberty Global/Corelio/W&W/De Vijver Media*, recital 139; In Commission decision of 15 April 2013 in case M.6880 – *Liberty Global/Virgin Media*, paragraphs 51 to 54, the Commission found a respective geographic market to be national in scope or, at most, to comprise the United Kingdom and Ireland; Commission decision of 21 December 2011 in case M.6369 – *HBO/Ziggo/HBO Nederland*, paragraph 42; Commission decision of 21 December 2010 in case M.5932 – *NewsCorp/BSkyB*, paragraph 110; In Commission decision of 25 January 2010 in case M.5734 – *Liberty Global Europe/Unitymedia*, paragraph 40, the Commission found the market for the retail supply of Pay TV services to be national in scope; In Commission decision of 25 June 2008 in case M.5121 – *News Corp/Premiere*, paragraph 27, the Commission found the respective markets for the retail supply of Pay TV to be national in scope; In Commission decision of 26 February 2007 in case M.4521 – *LGI/Telenet*, paragraph 25, the Commission considered the respective market for the retail supply of audio-visual services to be either limited to the coverage of each cable operator and national in case other platforms are included but ultimately left the exact geographic market definition open.

⁵⁸ Commission decision of 26 February 2007 in case M.4521 – *LGI/Telenet*, paragraph 25; Commission decision of 15 June 2004 in case M.3355 – *Apollo/JPMorgan/Primacom*, paragraph 10.

⁵⁹ Replies to Questionnaire Q1 to competitors, question 32.

- (52) In light of the above, the Commission considers that, for the purpose of this Decision, the relevant geographic market for the retail supply of audio-visual services is the territory of Greece.

4.5. Multiple play services

4.5.1. Product market definition

4.5.1.1. Previous Commission decisions

- (53) Multiple-play services include varying combinations of mobile telecommunications services, fixed internet access, fixed telephony services and TV services. When the offer includes mobile telecommunications services, the fixed-mobile bundle is also referred to with the “FMC” acronym (i.e. fixed-mobile convergence). In previous decisions, the Commission has considered, but ultimately left open, the question as to whether there exists a multiple-play services market, distinct from each of the underlying individual telecommunication services. The Commission has previously also noted that, instead of one possible market for multiple-play, there could be several possible multiple-play markets: a market for fixed bundles (dual play, and triple play)⁶⁰ and another separate market for FMC bundles.

4.5.1.2. The Notifying Party’s view

- (54) The Notifying Party submits that precise definition of the relevant product market for multiple play offers may be left open since the Transaction does not raise any competition concerns in the retail supply of multiple-play offers under any possible market segmentation.

4.5.1.3. The Commission’s assessment

- (55) Overall, the results of the market investigation highlighted a preference of Greek consumers for multiple-play bundles, although they were inconclusive with respect to the existence of a distinct product market for the retail supply of multiple-play services as opposed to the various bundled options.⁶¹
- (56) With respect to demand side substitutability with standalone solutions, the market investigation results indicated that consumers in Greece generally favour multiple-play services over a combination of separate mobile and fixed offers, primarily due to the attractive prices offered by the providers.⁶² In terms of demand-side substitution, market investigation participants consider early termination fees and loss of the benefits that accompany bundles to be the main barriers that prevent consumers from switching from bundled to standalone offers.⁶³ Regarding contractual conditions, a majority of market participants indicated that multiple-play services in Greece are equally sold as a combination of standalone fixed and mobile offers from the same provider with various types of benefits attached (“soft

⁶⁰ Fixed dual play bundles include fixed telephony and fixed internet access. Fixed triple play includes the latter two and pay-TV.

⁶¹ Replies to Questionnaire Q1 to competitors, questions 33 to 36.

⁶² Replies to Questionnaire Q1 to competitors, questions 33 and 33.1.

⁶³ Replies to Questionnaire Q1 to competitors, question 34 and 34.1.

bundles”), and as multiple-play offers containing pre-defined fixed and mobile benefits (“hard bundles”).⁶⁴

- (57) Neither the replies to the market investigation nor any evidence in the file clarify whether the market for multiple-play services should be segmented in fixed vs FMC bundles.
- (58) In any event, the Commission considers that the question whether a separate product market for the retail supply of multiple-play services exists and whether there are separate markets for fixed bundles and FMC bundles can be left open as the Transaction does not raise serious doubts as to its compatibility with the internal market under any possible product market definition.

4.5.2. *Geographic market definition*

4.5.2.1. Previous Commission decisions

- (59) In previous decisions, the Commission considered that the geographic scope of any possible retail market for multiple-play services would be (either regional or) at most national in scope.⁶⁵

4.5.2.2. The Notifying party’s view

- (60) The Notifying Party considers that the relevant geographic segment for the retail supply of multiple-play services corresponds to the territory of Greece.

4.5.2.3. The Commission’s assessment

- (61) A majority of the respondents to the market investigation indicated that the geographic scope of the market for the retail supply of multiple-play services in the present case is the territory of Greece. This is because the constituent elements of multiple-play offers are also offered individually on a national basis.⁶⁶
- (62) In light of the above, the Commission considers that, for the purpose of this Decision, the relevant geographic market for the retail supply of multiple play services is the territory of Greece.

⁶⁴ Replies to Questionnaire Q1 to competitors, question 36.

⁶⁵ In Commission decision of 30 May 2018 in case M.7000 – *Liberty Global/Ziggo*, paragraph 232, Commission decision of 3 August 2016 in case M.7978 – *Vodafone/Liberty Global/Dutch JV*, paragraphs 109 to 112 and Commission decision of 19 May 2015 in Case M.7421 – *Orange/Jazztel*, recitals 89 to 90, the respective market investigation suggested such possible markets would be national in scope; In Commission decision of 24 February 2015 in case M.7194 – *Liberty Global/Corelio/W&W/De Vijver Media*, recital 132, the Commission found the geographic market to be the footprint of the operator in question; In Commission decision of 20 September 2013 in Case M.6990 - *Vodafone/Kabel Deutschland*, paragraphs 263 to 265, the Commission considered such possible markets for bundles would be national in scope; In Commission decision of 16 June 2011 in Case M.5900 - *LGI/KBW*, paragraphs 183-186, the Commission considered such possible markets to be at most national in scope.

⁶⁶ Replies to Questionnaire Q1 to competitors, question 39.

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

4.6.1. Product market definition

4.6.1.1. Previous Commission decisions

- (63) Voice calls are not only made to geographic numbers but also to non-geographic numbers. A non-geographic number is a number associated with a country, but not to any single geographic location within that country. Non-geographic number services are less frequently used than standard telecommunications services and are typically used for free and paid information services, for example, for helpdesks, subscription services, TV voting lines etc.
- (64) When a caller initiates a call to a non-geographic number, the call is automatically transferred from the originating operator to the terminating operator hosting the service provider that operates the service related to the non-geographic number, irrespective of the location.
- (65) Unlike ordinary call termination services, call origination and call termination regulation does not apply to these numbers. Therefore, different revenue sharing agreements exist between the originating operator, the terminating operator, and the service provider.⁶⁷
- (66) In previous decisions, the Commission considered that there is a product market for the wholesale supply of termination and hosting of calls to non-geographic numbers without it being necessary to consider further possible segmentations.⁶⁸

4.6.1.2. The Notifying Party's view

- (67) The Notifying Party considers that the product market definition adopted by the Commission in previous cases is appropriate and therefore that the market for wholesale call termination and hosting of non-geographic numbers is distinct from a regular wholesale termination market.

4.6.1.3. The Commission's assessment

- (68) The results of the market investigation did not provide reasons to depart from the Commission's decisional practice.⁶⁹
- (69) In light of the above, the Commission considers that, for the purpose of this Decision, the relevant product market is the market for the wholesale supply of termination and hosting of calls to non-geographic numbers that is distinct from other wholesale termination services.

⁶⁷ Commission decision of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets*, recitals 204 to 206.

⁶⁸ Commission decision of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets*, recitals 209 to 211; Commission decision of 4 February 2016 in case M.7637 – *Liberty Global/BASE Belgium*, recitals 137 to 139; Commission decision in case M.6584 – *Vodafone/Cable & Wireless*, paragraphs 14 to 18; In Commission decision of 3 July 2012 in case M.6584 – *Vodafone/Cable & Wireless*, paragraphs 58 to 60, the Commission considered that market shares could be defined differently depending on whether one considered one overall market across networks, or distinguishing each terminating network as a separate market.

⁶⁹ Replies to Questionnaire Q1 to competitors, question 11.

4.6.2. *Geographic market definition*

4.6.2.1. Previous Commission decisions

- (70) In previous decisions, the Commission considered that the geographic scope of the wholesale market for the supply of termination and hosting of calls to non-geographic numbers is national.⁷⁰

4.6.2.2. The Notifying Party's view

- (71) The Notifying Party considers that the relevant geographic market for the wholesale supply of termination and hosting of calls to non-geographic numbers corresponds to the territory of Greece.

4.6.2.3. The Commission's assessment

- (72) Neither the results of the market investigation nor any evidence on the Commission's file provide reasons to depart from the Commission's decisional practice.
- (73) In light of the above, the Commission considers that, for the purpose of this Decision, the relevant geographic market for the wholesale supply of termination and hosting of calls to non-geographic numbers is the territory of Greece.

4.7. Wholesale supply and acquisition of TV channels

4.7.1. *Product market definition*

4.7.1.1. Previous Commission decisions

- (74) In the wholesale market for TV channels, TV broadcasters supply linear channels that retail TV providers either purchase or carry in order to provide audio-visual services to end-users. In particular, TV broadcasters package the TV content that they have acquired or produced in-house in order to create linear TV channels. Subsequently, retailers of TV services incorporate those TV channels in their TV offerings to final viewers.⁷¹
- (75) In previous decisions, the Commission identified a market for the wholesale supply and acquisition of TV channels.⁷² Within that market, the Commission has identified

70 Commission decision of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets*, recital 213; Commission decision of 4 February 2016 in case M.7637 – *Liberty Global/BASE Belgium*, recital 142; Commission decision of 3 July 2012 in case M.6584- *Vodafone/Cable & Wireless*, paragraph 18.

71 Commission decision of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets*, recital 267.

72 Commission decision of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets*, recitals 269 to 276; Commission decision of 30 May 2018 in case M.7000 – *Liberty Global/Ziggo*, paragraphs 99 to 115; Commission decision of 7 April 2017 in case M.8354 – *Fox/Sky*, paragraphs 76 to 85; Commission decision of 20 September 2013 in case M.6990 – *Vodafone/Kabel Deutschland*, paragraphs 30 to 41.

separate product markets for: (i) FTA TV channels; and (ii) pay-TV channels⁷³ and more recently left the exact product market definition open.⁷⁴

- (76) In addition, the Commission found that within the pay-TV channels market, there are different segments⁷⁵ or, more recently, product markets⁷⁶ for (i) premium pay-TV channels and (ii) basic pay-TV channels. In certain cases, the Commission has considered FTA channels to be part of the same market as basic pay-TV channels.⁷⁷
- (77) Further, the Commission also examined a number of other potential segmentations, including: (i) by genre or thematic content (such as films, sports, news, youth, and others);⁷⁸ (ii) between linear and non-linear;⁷⁹ and (iii) between the different means of infrastructure used to deliver channels to the viewer (cable, satellite, terrestrial or IPTV)⁸⁰ but ultimately left the exact market definition open.

4.7.1.2. The Notifying Party's view

- (78) The Notifying Party considers that there is no need to segment the market for the wholesale supply of TV channels: retail players (whether pay-TV or FTA) all require content diversity as customers expect to be provided with a broad line-up of channels.

73 Commission decision of 24 February 2015 in case M.7194 - *Liberty Global/Corelio/W&W/De Vijver Media*, recital 101; Commission decision of 20 September 2013 in case M.6990 - *Vodafone/Kabel Deutschland*, paragraph 41.

74 Commission decision of 6 October 2020 - *PPF Group/Central European Media Enterprises*, paragraph 39; Commission decision of 18 July 2019 in case M.8864 - *Vodafone/Certain Liberty Global Assets*, recital 273; In Commission decision of 30 May 2018 in case M.7000 - *Liberty Global/Ziggo*, paragraph 111, the Commission left open the question as to whether FTA and Pay TV belong to separate markets, because of peculiarities of the Dutch TV market; In Commission decision of 7 April 2017 in case M.8354 - *Fox/Sky*, paragraph 85, the Commission left open the question whether the market for the wholesale supply of TV channels should be further segmented among FTA, basic Pay TV and premium Pay TV. In Commission decision of 18 August 2014 in case M.7194 - *Liberty Global/Corelio/W&W/De Vijver Media*, recital 91, the Commission considered that wholesale supply of premium Pay TV constitutes a product market that is separate from the wholesale supply of basic Pay TV/FTA channels.

75 Commission decision of 18 August 2014 in case M.7194 - *Liberty Global/Corelio/W&W/De Vijver Media*, recital 89.

76 Commission decision of 12 November 2019 in case M.9064 - *Telia Company/Bonnier Broadcasting Holding*, recital 157; Commission decision of 30 May 2018 in case M.7000 - *Liberty Global/Ziggo*, paragraph 113.

77 Commission decision of 18 July 2019 in case M.8864 - *Vodafone/Certain Liberty Global Assets*, recital 273; Commission decision of 30 May 2018 in case M.7000 - *Liberty Global/Ziggo*, paragraph 111; Commission decision of 7 April 2017 in case M.8354 - *Fox/Sky*, paragraph 80, 81 and 85; Commission decision of 18 August 2014 in case M.7194 - *Liberty Global/Corelio/W&W/De Vijver Media*, recitals 90 and 91.

78 Commission decision of 18 July 2019 in case M.8864 - *Vodafone/Certain Liberty Global Assets*, recital 273; Commission decision of 30 May 2018 in case M.7000 - *Liberty Global/Ziggo*, paragraph 112; Commission decision of 7 April 2017 in case M.8354 - *Fox/Sky*, paragraphs 82 to 85; Commission decision of 24 February 2015 in case M.7194 - *Liberty Global/Corelio/W&W/De Vijver Media*, recital 92; Commission decision of 21 December 2010 in case M.5932 - *News Corp/BskyB*, paragraph 81; Commission decision of 26 August 2008 in case M.5121 - *News Corp/Premiere*, paragraph 35; Commission decision of 18 July 2007 in case M.4504 - *SFR/Télé 2 France*, recitals 41 and 42; Commission decision of 2 April 2003 in case M.2876 - *Newscorp/Telepiù*, recitals 74 to 76.

79 Commission decision of 18 August 2014 in case M.7194 - *Liberty Global/Corelio/W&W/De Vijver Media*, recital 94.

80 In Commission decision of 18 July 2019 in case M.8864 - *Vodafone/Certain Liberty Global Assets*, recital 273, the Commission left such question open for Romania and discussed it further for Germany in section VIII.2.11; In Commission decision of 30 May 2018 in case M.7000, *Liberty Global/Ziggo*, paragraph 114, the Commission considered that at least cable, IPTV over DSL, fiber and possibly satellite (DTH) are part of the same product market; In Commission decision of 7 April 2017 in case M.8354 - *Fox/Sky*, paragraphs 84 and 85 Commission decision of 24 February 2015 in case M.7194 - *Liberty Global/Corelio/W&W/De Vijver Media*, recital 98 and Commission decision of 18 July 2007 in case M.4504 - *SFR/Télé 2 France*, recital 44, the Commission left a segmentation by infrastructure open.

- (79) The Notifying Party also submits that, in this market, it is necessary to take into account channels which are not supplied to third parties, but are produced for internal use only (i.e. the so-called "captive channels"). The decision not to supply these channels to third parties is not the result of any specific or technical constraint but only of a discretionary strategic and commercial decision. Therefore, such production which is merely subject to an internal exclusivity needs to be taken into account in the relevant market to properly assess the competitive constraint exerted by such channels on other channels that are supplied to third parties.
- (80) In any event, the Notifying Party submits that the product market definition can be left open in the present case. Irrespective of the exact definition, only Nova is active in the wholesale supply of TV channels.
- (81) As to the acquisition side of the market, the Notifying Party further adds that similar considerations apply as regarding the supply side of the market. In other words, there may be separate markets for the acquisition of FTA and pay-TV channels, and within the latter, separate markets for the acquisition of premium and basic pay-TV channels. The market for the acquisition of TV channels could also be further segmented by type of channels acquired (e.g. news channels, kids' channels, general entertainment channels). However, the Notifying Party considers that there is no need to segment the market for the acquisition of TV channels. Customers expect to be provided with a broad line-up of channels in the retail pay-TV services they subscribe to, channel acquirers aim to acquire many channels of various genres, both FTA and pay-TV, from a range of channel suppliers for incorporation into their retail offerings.

4.7.1.3. The Commission's assessment

- (82) On the wholesale market for TV channels, broadcasters that have acquired or produced in-house audio-visual content package such content in linear channels and sell them to retail providers of FTA services or pay-TV services.
- (83) With regard to the distinction between the wholesale supply of FTA TV channels and pay-TV channels, the market investigation has triggered mixed replies, from both the Parties' competitors and from TV channel providers, as to whether the distinction is still relevant in Greece.⁸¹ In particular, some responses by suppliers of TV channels and from a competitor of the Parties' pointed to the well-known differences between FTA TV and pay-TV channels. In particular, it is noted that advertising revenues are the main financing source for FTA channels, while subscription revenues are the main financing source of pay-TV channels and, also, that pay-TV channels are distributed in encrypted format.⁸²
- (84) At the same time, however, OTE pointed out that there is no significant difference in the content and the price of FTA TV and pay-TV channels that justifies the definition of separate markets.⁸³ A number of responses by TV channel suppliers indicated that FTA and pay-TV channels have similar audiences, similar content and

81 Replies to Questionnaire Q1 to competitors, question 17, Questionnaire Q2 to suppliers of TV channels, question 4.

82 Replies to Questionnaire Q1 to competitors, questions 17 and 17.1. Replies to Questionnaire Q2 to suppliers of TV channels, question 4.1.

83 OTE's reply to Questionnaire Q1 to competitors, questions 17 and 17.1.

similar technical features and therefore a distinction would lead to an unduly narrow segmentation⁸⁴

- (85) With respect to a further segmentation between basic pay-TV channels and premium pay-TV channels, replies were also mixed. None of the competitors answering the market investigation considered the distinction irrelevant, but the majority of them did not express an opinion.⁸⁵ The suppliers of TV channels, on the one hand, were either unable to answer or took the view that such a segmentation does not apply to the Greek TV market, possibly as a result of the wide availability and penetration of FTA channels.⁸⁶ One supplier of TV channels indicated that there is no consistent definition of premium and basic pay-TV channels in the industry and that the Greek market is too small for this distinction to apply.⁸⁷
- (86) Based on the above, the Commission considers that the exact definition of the wholesale market for the acquisition and supply of TV channels in Greece, and in particular whether it should be segmented between FTA channels and pay-TV channels, as well as between premium pay-TV and basic pay-TV channels can be left open. This, in fact, would not change the outcome of the assessment.
- (87) With respect to a distinction of separate markets based on genre or thematic content, the results of the market investigation were mixed and thus proved inconclusive.⁸⁸ In particular, suppliers of TV channels take the view that a) it is not easy to categorise genres or themes, b) such categorisation may be misleading as a channels offering can change over time, and c) retailers do not decide on the acquisition of channels based on the genre on which they belong.⁸⁹
- (88) Based on the above, the Commission considers that the distinction of separate markets based on genre or thematic content can be left open.
- (89) With respect to a distinction into separate markets based on the infrastructure/platform used for the delivery to the viewer (cable, satellite, digital video broadcasting (DBV), or internet protocol television IPTV)), the market investigation participants, both from the supply and the acquisition side, take the view that this distinction would not be applicable in the Greek market.⁹⁰ None of the competitors replying to the market investigation supported such distinction.⁹¹ Suppliers of TV channels pointed out that channels are available on a wide range of distribution technologies and that, from a broadcaster's perspective, the key factor is to access as many viewers as possible. In addition, with a penetration of internet (both fixed and mobile) above 90%, pay-TV may be provided by operators as an OTT service to the vast majority of homes (with the satellite option remaining available for the rest). It is evident that suppliers consider that the content offering is

84 Replies to Questionnaire Q2 to suppliers of TV channels, question 4.1.

85 OTE's reply to Questionnaire Q1 to competitors, questions 18 and 18.1.

86 Replies to Questionnaire Q2 to suppliers of TV channels, questions 5 and 5.1.

87 Replies to Questionnaire Q2 to suppliers of TV channels, questions 5 and 5.1.

88 Replies to Questionnaire Q1 to competitors, questions 19 and 19.1. Replies to Questionnaire Q2 to suppliers of TV channels, question 6 and 6.1.

89 Replies to Questionnaire Q2 to suppliers of TV channels, question 6 and 6.1.

90 Replies to Questionnaire Q1 to competitors, questions 20 and 20.1, Replies to Questionnaire Q2 to suppliers of TV channels, question 7 and 7.1.

91 Replies to Questionnaire Q1 to competitors, questions 20 and 20.1.

key to consumer acquisition and not the means used for delivery. As such, technology does not in itself merit a further segmentation of the market for the supply of pay-TV channels.⁹²

- (90) Based on the above, the Commission considers that the wholesale market for the supply of TV channels should not be further segmented by type of infrastructure used for the delivery of the signal to the end-customer.
- (91) In any event, the Commission concludes that the question whether the product market for wholesale TV channels should be further segmented i) between FTA TV channels and pay-TV channels; ii) between basic pay-TV channels and premium pay-TV channels; iii) by genre/thematic content can be left open as the Transaction does not raise serious doubts as to its compatibility with the internal market under any possible product market definition. The Commission considers that all technology distribution platforms are part of the same market

4.7.2. *Geographic market definition*

4.7.2.1. Previous Commission's decision

- (92) In previous decisions, the Commission considered that the wholesale supply and acquisition of TV channels is either national in scope or comprises a broader (or narrower) linguistically homogeneous area.⁹³

4.7.2.2. The Notifying Party's view

- (93) The Notifying Party considers that the relevant geographic market for the wholesale supply and acquisition of TV channels corresponds to the territory of Greece.

4.7.2.3. The Commission's assessment

- (94) A majority of responses by suppliers of TV channels indicated TV channels are licensed on a national basis.⁹⁴ This is due to the fact that the broadcasting rights for content included in the channels are also allocated on a national basis.⁹⁵ In light of the above, the Commission considers that, for the purpose of this Decision, the relevant geographic market for the wholesale supply and acquisition of TV channels is the territory of Greece.

⁹² Replies to Questionnaire Q2 to suppliers of TV channels, question 7 and 7.1.

⁹³ Commission decision of 21 December 2010 in case M.5932 – *News Corp/BSkyB*, paragraphs 72 to 75; Commission decision of 2 April 2003 in case M.2876 – *News Corp/Telepiù*, recitals 62 and 63, Commission decision of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets*, recital 328

⁹⁴ Replies to Questionnaire Q2 to suppliers of TV channels, question 9.

⁹⁵ Replies to Questionnaire Q2 to suppliers of TV channels, question 9.1. Replies to Questionnaire Q1 to competitors, question 22.1.

5. COMPETITIVE ASSESSMENT

5.1. Market shares

(95) According to the Horizontal Merger Guidelines and the Non-Horizontal Merger Guidelines,⁹⁶ 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.

5.1.1. Retail supply of mobile telecommunications services

(96) Table 1 sets out the Parties' and their main competitors' market shares on the market for the retail supply of mobile telecommunications services in Greece by value and volume for the years 2018 to 2020.

Table 1: Market shares on the market for the retail supply of mobile telecommunications services in Greece (2018-2020)

| | 2018 | 2019 | 2020 |
|---|-----------------|-----------------|-----------------|
| Market shares in value (EUR) | | | |
| Nova | 0% | 0% | 0% |
| Wind | [10-20%] | [10-20%] | [10-20%] |
| Combined | [10-20%] | [10-20%] | [10-20%] |
| Vodafone | [30-40%] | [30-40%] | [30-40%] |
| OTE/Cosmote | [50-60%] | [50-60%] | [50-60%] |
| Total market | 100% | 100.0% | 100.0% |
| Market shares in volume (# of subscribers) | | | |
| Nova | 0% | 0% | 0% |
| Wind | [20-30%] | [20-30%] | [20-30%] |
| Combined | [20-30%] | [20-30%] | [20-30%] |
| Vodafone | [30-40%] | [20-30%] | [20-30%] |
| OTE/Cosmote | [40-50%] | [40-50%] | [40-50%] |
| Total market | 100% | 100% | 100% |

Source: Parties' best estimates based on ANCOM statistical report 2019, competitors' quarterly results and Parties' best estimates for 2020 market shares

(97) There is no overlap between Nova and Wind in this market: Nova is not active in the supply of mobile telecommunications services in Greece. OTE (under the Cosmote brand) is the leader in the Greek mobile telecommunications market with a share of around [50-60%] in value. Vodafone is a strong second player with a market share of [30-40%] in value. Wind is the third player with a market share of less than [10-20%].

5.1.2. Retail supply of fixed telephony services.

(98) Table 2 sets out the Parties' and their main competitors' market shares on the market for the retail supply of fixed telephony services in Greece by value and volume for the years 2018 to 2020.

⁹⁶ Horizontal Merger Guidelines, paragraph 14; Non-Horizontal Merger Guidelines, paragraph 24.

Table 2: Market shares on the market for the retail supply of fixed telephony services in Greece (2018-2020)

| | 2018 | 2019 | 2020 |
|---|----------|----------|----------|
| Market shares in value (EUR) | | | |
| Nova | [5-10%] | [5-10%] | [5-10%] |
| Wind | [10-20%] | [10-20%] | [10-20%] |
| Combined | [10-20%] | [10-20%] | [10-20%] |
| Vodafone | 15-20% | 15-20% | 15-25% |
| OTE | 60-65% | 60-65% | 60-65% |
| Total market | 100.0% | 100.0% | 100.0% |
| Market shares in volume (# of lines) | | | |
| Nova | [10-20%] | [10-20%] | [10-20%] |
| Wind | [10-20%] | [10-20%] | [10-20%] |
| Combined | [20-30%] | [20-30%] | [20-30%] |
| Vodafone | [20-30%] | [20-30%] | [20-30%] |
| OTE | [50-60%] | [50-60%] | [50-60%] |
| Total market | 100.0% | 100.0% | 100.0% |

- (99) On the market for the retail supply of fixed telephony services OTE retains a very prominent market position, with a market share of more than [50-60%] in volume. Vodafone holds a share of around [20-30%] in volume, while the Parties are the two smallest operators with market shares of [10-20%] for Nova and [10-20%] for Wind. Post-Transaction, the merged entity will become the second player, with a combined market share of approx. [20-30%], slightly exceeding that of Vodafone. Apart from OTE, which is the incumbent operator, all alternative operators, including Wind and Nova, provide the vast majority of their fixed telephony services as part of bundles with fixed internet access services.

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

- (100) Table 3 sets out the Parties' and their main competitors' market shares on the wholesale market for termination and hosting of calls to non-geographic numbers in Greece by value and volume for the years 2018 to 2020.

Table 3: Market shares on the wholesale market for termination and hosting of calls to non-geographic numbers in Greece (2018-2020)

| | 2018 | 2019 | 2020 |
|---|-----------------|-----------------|-----------------|
| Market shares in value (EUR) | | | |
| Nova | [0-5%] | [0-5%] | [5-10%] |
| Wind | [40-50%] | [30-40%] | [30-40%] |
| Combined | [40-50%] | [30-40%] | [30-40%] |
| Vodafone | [0-5%] | [0-5%] | [0-5%] |
| OTE | [30-40%] | [40-50%] | [40-50%] |
| Others | [10-20%] | [10-20%] | [10-20%] |
| Total market | 100.0% | 100.0% | 100.0% |
| Market shares in volume (# of lines) | | | |
| Nova | [5-10%] | [5-10%] | [10-20%] |
| Wind | [20-30%] | [20-30%] | [20-30%] |
| Combined | [20-30%] | [30-40%] | [30-40%] |
| Vodafone | [5-10%] | [5-10%] | [5-10%] |
| OTE | [40-50%] | [50-60%] | [40-50%] |
| Others | [10-20%] | [10-20%] | [10-20%] |
| Total market | 100.0% | 100.0% | 100.0% |

- (101) Nova and Wind's combined market share ([30-40%] in value, ([30-40%] in volume) remains below that of OTE ([40-50%] in value, [40-50%] in volume), which is still the first player on the market. Nova has very few activities on this market, with a market share limited to [5-10%] in value.

5.1.4. Retail supply of fixed internet access services

- (102) Table 4 sets out the Parties' and their main competitors' market shares on the market for the retail supply of fixed internet access services in Greece by value and volume for the years 2018 to 2020.

Table 4: Market shares on the market for the retail supply of fixed broadband internet access services in Greece (2018-2020)

| | 2018 | 2019 | 2020 |
|---|-----------------|-----------------|-----------------|
| Market shares in value (EUR) | | | |
| Nova | [5-10%] | [5-10%] | [5-10%] |
| Wind | [10-20%] | [10-20%] | [10-20%] |
| Combined | [10-20%] | [10-20%] | [10-20%] |
| Vodafone | 15%-20% | 15%-20% | 15%-25% |
| OTE | 60%-65% | 60%-65% | 60%-65% |
| Total market | 100.0% | 100.0% | 100.0% |
| Market shares in volume (# of connections) | | | |
| Nova | [10-20%] | [10-20%] | [10-20%] |
| Wind | [10-20%] | [10-20%] | [10-20%] |
| Combined | [20-30%] | [20-30%] | [20-30%] |
| Vodafone | [20-30%] | [0-5%] | [20-30%] |
| OTE | [40-50%] | [40-50%] | [50-60%] |
| Total market | 100.0% | 100.0% | 100.0% |

(103) As shown in the table above, the Parties' combined market share in volume slightly exceeds [20-30%] when considering the overall retail supply of fixed internet access services in Greece. The market shares of the merged entity in fixed internet access services will remain modest, about half the size of the market shares of the leading operator OTE and not significantly higher than Vodafone's market shares.

5.1.5. Retail supply of audio-visual services

5.1.5.1. Potential segmentation between FTA and pay-TV services

(104) As regards the potential market of retail FTA TV services, Nova does not provide FTA services to its subscribers. While some of its pay-TV packages provide subscribers with access to FTA content/channels (as part of the overall content/channel offering), all Nova packages are offered on a subscription basis only.

(105) As regards Wind, in February 2020, it launched as a pilot project the Wind Vision Box service, which enables customers to access FTA TV services through the Wind Vision user interface, without any additional fee other than the fee paid to acquire Wind Vision Box. There are [...]. Since the parties are not active in the provision of FTA channels, their market shares in that market are not provided.

(106) Table 5 sets out the Parties' and their main competitors' market shares on the market for the retail supply of AV services in Greece by value and volume for the years 2018 to 2020.

Table 5: Market shares on the market for the retail supply of pay-TV services in Greece (2018-2020)

| | 2018 | 2019 | 2020 |
|---|-----------------|-----------------|-----------------|
| Market shares in value (EUR) | | | |
| Nova | [40-50%] | [30-40%] | [30-40%] |
| Wind | [0-5%] | [0-5%] | [0-5%] |
| Combined | [40-50%] | [40-50%] | [30-40%] |
| Vodafone | 0-5% | 0-5% | [5-10%] |
| OTE | 50-55% | 50-55% | [50-60%] |
| Total market | 100.0% | 100.0% | 100.0% |
| Market shares in volume (# of connections) | | | |
| Nova | [30-40%] | [30-40%] | [20-30%] |
| Wind | [0-5%] | [5-10%] | [5-10%] |
| Combined | [30-40%] | [30-40%] | [30-40%] |
| Vodafone | [5-10%] | [10-20%] | [10-20%] |
| OTE | [50-60%] | [50-60%] | [50-60%] |
| Total market | 100.0% | 100.0% | 100.0% |

5.1.5.2. Potential segmentation between premium and basic pay-TV services

(107) Table 6 below sets out the Parties' and their main competitors' market shares on the market for the retail supply of premium pay-TV services in Greece by value and volume for the years 2018 to 2020.

Table 6: Market shares on the market for the retail supply of premium pay-TV services in Greece (2018-2020)

| | 2018 | 2019 | 2020 |
|---|-----------------|-----------------|-----------------|
| Market shares in value (EUR) | | | |
| Nova | 40-45% | 40-45% | 35-40% |
| Wind | 0-5% | 0-5% | 0-5% |
| Combined | 40-50% | 40-50% | 35-45% |
| Vodafone | 0-5% | 0-5% | 5-10% |
| OTE | 50-55% | 55-60% | 55-60% |
| Total market | 100.0% | 100.0% | 100.0% |
| Market shares in volume (# of connections) | | | |
| Nova | [30-40%] | [30-40%] | [30-40%] |
| Wind | [0-5%] | [0-5%] | [0-5%] |
| Combined | [30-40%] | [30-40%] | [30-40%] |
| Vodafone | [0-5%] | [0-5%] | [5-10%] |
| OTE | [60-70%] | [60-70%] | [50-60%] |
| Total market | 100.0% | 100.0% | 100.0% |

(108) The Parties' combined market share (approximately [30-40%] in volume and 35-45% in value) in the market for retail supply for premium pay-TV services is still well behind that of OTE. Furthermore, as seen in the table above, Nova's market share

has decreased over the past few years. The increment is also small (below 5% in average in volume and value).

- (109) Table 7 below sets out the Parties' and their main competitors' market shares on the market for the retail supply of basic pay TV channels in Greece by value and volume for the years 2018 to 2020.

Table 7: Market shares on the market for the retail supply of basic pay-TV services in Greece (2018-2020)

| | 2018 | 2019 | 2020 |
|---|-----------------|-----------------|-----------------|
| Market shares in value (EUR) | | | |
| Nova | 50-55% | 40-45% | 25-30% |
| Wind | 0-5% | 0-5% | 5-10% |
| Combined | 50-60% | 40-50% | 30-40% |
| Vodafone | 0-5% | 20-25% | 20-25% |
| OTE | 25-30% | 30-35% | 35-40% |
| Total market | 100.0% | 100.0% | 100.0% |
| Market shares in volume (# of connections) | | | |
| Nova | [40-50%] | [30-40%] | [20-30%] |
| Wind | [5-10%] | [10-20%] | [20-30%] |
| Combined | [40-50%] | [40-50%] | [40-50%] |
| Vodafone | [30-40%] | [30-40%] | [20-30%] |
| OTE | [20-30%] | [20-30%] | [20-30%] |
| Total market | 100.0% | 100.0% | 100.0% |

- (110) The Parties' combined market shares in this market are around, or slightly above, 40% in volume and in value in 2020. The increment is small, because Wind's market share in value is limited in 2020 and marginal before 2020. In addition, it is evident from the table above that Nova's market share has decreased significantly, from above 50% in value and [40-50%] in volume, in 2018, to below [20-30%] in value and [20-30%] in volume, in 2020. Additionally, OTT providers such as Netflix, pose a strong competitive constraint on the Parties.⁹⁷ Finally, the Commission has received no complaints as to possible anticompetitive effects of the Transaction in this segment. As further explained in the paragraphs below, the Transaction does not raise competitive concerns in this segment.
- (111) In addition to the above, Wind's and Nova's subscriber base is differently split between premium and basic pay-TV subscribers. [...] of Wind's pay-TV subscribers subscribe to the basic package and [...] to the premium package. In contrast, more than [...] of Nova's pay-TV subscribers are premium subscribers, with less than [...] subscribe to the basic package.
- (112) Furthermore, the Commission has received no complaints pertaining to this potential sub-segment.

⁹⁷ Replies to Questionnaire 1 to competitors, questions 60 and 60.1.

5.1.5.3. Potential segmentation between linear and non-linear

- (113) The Notifying Party notes that Nova and Wind do not offer non-linear services on a stand-alone basis but offer such services to the subscribers of their linear pay-TV services for free. Nova and Wind therefore do not have any subscribers to non-linear services only and they do not earn any revenue from the provision of non-linear services. Like Nova and Wind, OTE and Vodafone only offer non-linear services to the subscribers of their linear pay-TV services and therefore they do not have subscribers to non-linear services only either. However, unlike Nova and Wind, OTE and Vodafone do charge a separate fee for non-linear services.⁹⁸
- (114) Table 8 below sets out the Parties' and their main competitors' market shares on the market for the retail supply of linear pay TV channels in Greece by value and volume for the years 2018 to 2020.

Table 8: Market shares on the market for the retail supply of linear pay-TV services in Greece (2018-2020)

| | 2018 | 2019 | 2020 |
|---|-----------------|-----------------|-----------------|
| Market shares in value (EUR) | | | |
| Nova | [40-50%] | [30-40%] | [30-40%] |
| Wind | [0-5%] | [0-5%] | [0-5%] |
| Combined | [40-50%] | [40-50%] | [30-40%] |
| Vodafone | 0-5% | 0-5% | [5-10%] |
| OTE | 50-55% | 50-55% | [50-60%] |
| International OTT players | [0-5%] | [0-5%] | [0-5%] |
| Total market | 100.0% | 100.0% | 100.0% |
| Market shares in volume (# of connections) | | | |
| Nova | [30-40%] | [30-40%] | [20-30%] |
| Wind | [0-5%] | [5-10%] | [5-10%] |
| Combined | [30-40%] | [30-40%] | [30-40%] |
| Vodafone | [5-10%] | [10-20%] | [10-20%] |
| OTE | [50-60%] | [50-60%] | [50-60%] |
| International OTT players | [0-5%] | [0-5%] | [0-5%] |
| Total market | 100.0% | 100.0% | 100.0% |

- (115) The Parties' combined market shares remain below 40% in volume and value for 2020, which means it has remained unchanged for the years 2018-2020 in volume and has slightly decreased during the same period for value. In any case, OTE

⁹⁸ The Notifying Party was however unable to provide a breakdown of the revenues that OTE and Vodafone earn from the provision of linear and non-linear services respectively. For the purposes of responding to his question, the entirety of OTE and Vodafone's revenues has been allocated to linear services in view of the fact that their revenues derived from non-linear services are expected to be insignificant compared to their revenues derived from linear services.

remains a market leader with a market share of above 50% both in volume and value for the period 2018-2020.

5.1.5.4. Potential segmentation by distribution technology (satellite/Direct-to-Home “DTH” or OTT and IPTV)

- (116) As regards the supply of pay-TV services through satellite/DTH, Nova’s market share is above 40% in value and around [40-50%] in volume (in 2020). However, Wind is not active in the retail supply of satellite/DTH audio-visual services. Therefore, this market is not affected.
- (117) As regards the supply of pay-TV services through OTT and IPTV, Wind’s market share is around [20-30]% in value and almost [20-30%] in volume for the year 2020. However, Nova is not active in the retail supply of OTT and IPTV audio-visual services. Therefore, this market is not affected.

5.1.6. Wholesale supply of TV channels

- (118) Table 9 sets out the Parties’ and their main competitors’ market shares on the market for the wholesale supply of TV channels in Greece by value and volume for the years 2018 to 2020.

Table 9: Market shares on the market for the wholesale supply of TV channels in Greece (2018-2020)

| | 2018 | 2019 | 2020 |
|---|-----------------|-----------------|-----------------|
| Market shares in value (EUR) | | | |
| Nova | [20-30%] | [20-30%] | [30-40%] |
| Wind | 0% | 0% | 0% |
| Combined | [20-30%] | [20-30%] | [30-40%] |
| FTA | [30-40%] | [30-40%] | [30-40%] |
| Disney | [20-30%] | [20-30%] | [20-30%] |
| Discovery | [5-10%] | [5-10%] | [5-10%] |
| MTV | [0-5%] | [0-5%] | [0-5%] |
| Other | [5-10%] | [5-10%] | [5-10%] |
| Total market | 100.0% | 100.0% | 100.0% |
| Market shares in volume (# of connections) | | | |
| Nova | [5-10%] | [5-10%] | [5-10%] |
| Wind | 0% | 0% | 0% |
| Combined | [5-10%] | [5-10%] | [5-10%] |
| FTA | [30-40%] | [20-30%] | [20-30%] |
| Disney | [5-10%] | [5-10%] | [5-10%] |
| Discovery | [5-10%] | [5-10%] | [5-10%] |
| MTV | [5-10%] | [5-10%] | [5-10%] |
| Other | [40-50%] | [50-60%] | [50-60%] |
| Total market | 100.0% | 100.0% | 100.0% |

- (119) There is no overlap between Wind and Nova in the market for the wholesale supply of TV channels given that Wind, unlike Nova, is not active in this market: it simply acquires channels for distribution through its retail pay-TV service.

(120) The Greek markets for the wholesale supply of TV channels and for the retail supply of pay-TV services are deemed vertically affected given that Nova's market share slightly exceeds 30% on the upstream market for the wholesale supply of TV channels and both Nova and Wind are active in the downstream market for the retail supply of pay-TV services.

5.1.7. *Wholesale acquisition of TV channels*

(121) Table 10 sets out the Parties' and their main competitors' market shares on the wholesale market for the acquisition of TV channels in Greece by value and volume for the years 2018 to 2020.

(122) In this respect, the vast majority of Wind's acquisition spend on TV channels (approx. [...]) is accounted for by the Novasports channels which it acquires from Nova. When excluding the Novasports channels (which will be "captive" acquisitions post-Transaction), Wind's current market share would decrease considerably, from [20-30%] to only [5-10%] in value.⁹⁹ The Parties' combined market share would thus amount to [20-30%] with a limited increment of [5-10%]. If "captive" channels were also excluded from the total market size, then the shares of each operator would be as follows: Nova: [20-30%], Wind: [5-10%] (Nova and Wind combined: [20-30%], Vodafone: [30-40%], and OTE: [40-50%]).

Table 10: Market shares on the wholesale supply of TV channels (acquisition side) in Greece (2018-2020)

| | 2018 | 2019 | 2020 |
|--|--------------------|-----------------|-----------------|
| Market shares in value (EUR) | | | |
| Nova | [30-40%] | [20-30%] | [10-20%] |
| Wind (pre-transaction) | [10-20%] | [10-20%] | [20-30%] |
| Wind (post-transaction) | N/A ¹⁰⁰ | N/A | [5-10%] |
| Combined (pre-transaction) | [40-50%] | [40-50%] | [40-50%] |
| Combined (post-transaction) | N/A | N/A | [20-30%] |
| Vodafone | [10-20%] | [20-30%] | [20-30%] |
| OTE | [30-40%] | [30-40%] | [30-40%] |
| Total market | 100.0% | 100.0% | 100.0% |
| Market shares in volume (# of channels) | | | |
| Nova | [20-30%] | [20-30%] | [20-30%] |
| Wind (pre-transaction) | [20-30%] | [20-30%] | [20-30%] |
| Wind (post-transaction) | N/A | N/A | [20-30%] |

⁹⁹ For the year 2020, the outstanding [10-20%] in value in the table is not accounted for by any TV broadcaster. Rather, the outstanding [10-20%] is a consequence of the fact that, in calculating the Parties' post-Transaction market share, the acquisition costs for the channels that will become "captive" post-Transaction have been excluded from the Parties' acquisition spending, but not from the total market size.

¹⁰⁰ Post-Transaction, the acquisition of Nova's channels by Wind will be considered "captive sales" which means they are taken into account in the volume of the market but not in the value. For this reason, this is not relevant for the market shares for the years 2018 and 2019.

| | 2018 | 2019 | 2020 |
|------------------------------------|-------------------------|-------------------------|-------------|
| Combined (pre-transaction) | [30-40%] ¹⁰¹ | [30-40%] ¹⁰² | [30-40%] |
| Combined (post-transaction) | N/A | N/A | [30-40%] |
| Vodafone | [20-30%] | [20-30%] | [10-20%] |
| OTE | [30-40%] | [30-40%] | [20-30%] |
| Total market | 100.0% | 100.0% | 100.0% |

5.1.8. Retail provision of multiple-play services

(123) Table 11 sets out the Parties' and their main competitors' market shares on the market for the retail provision of multiple play services in Greece in volume for the year 2020.

Table 11: Market shares on the market for the retail supply of multiple-play services in Greece (2020)

| Market shares in volume (# of connections) 2020 | |
|--|----------|
| Nova | [10-20%] |
| Wind | [10-20%] |
| Combined | [20-30%] |
| Vodafone | 15-25% |
| OTE | 45-55% |
| Total market | 100.0% |

(124) The Notifying Party considers that the market shares should not be different for 2019 and 2018.

(125) The Notifying Party was not in a position to provide market share estimates in value considering that there is no publicly available data and, in addition, it could not estimate its competitors' sales given possible discounts or any other advantages granted to customers.

5.1.9. Potential segmentation by package (double-play, triple play, quadruple play)

(126) Table 12 sets out the Parties' and their main competitors' market shares on the market for the retail supply of double play (i.e. fixed telephony and fixed broadband access) services in Greece in volume for the year 2020.

¹⁰¹ Excluding all the channels that were available both on Wind's and Nova's platforms in November 2018 and that would have been double-counted otherwise.

¹⁰² Excluding all the channels that were available both on Wind's and Nova's platforms in December 2019 and that would have been double-counted otherwise.

Table 12: Market shares on the market for the retail supply of double play (fixed telephony and fixed broadband access) services in Greece (2020)

| Market shares in volume (# of connections) 2020 | |
|---|-----------------|
| Nova | [10-20%] |
| Wind | [10-20%] |
| Combined | [30-40%] |
| Vodafone | 20-30% |
| OTE | 35-45% |
| Total market | 100.0% |

- (127) The Parties' combined market share will still be slightly below that of OTE's post-transaction.
- (128) The Notifying Party considers that the market shares should not be different for 2019 and 2018.
- (129) The Notifying Party was not in a position to provide market share estimates in value considering that there is no publicly available data and, in addition, it could not estimate their competitors' sales given possible discounts or any other advantages granted to customers.
- (130) Table 13 sets out the Parties' and their main competitors' market shares on the market for the retail supply of triple play (all bundles) services in Greece in volume for the year 2020.

Table 13: Market shares on the market for the retail supply of triple play (all bundles) services in Greece (2020)

| Market shares in volume (# of connections) 2020 | |
|---|-----------------|
| Nova | [5-10%] |
| Wind | [10-20%] |
| Combined | [20-30%] |
| Vodafone | 15-25% |
| OTE | 55-65% |
| Total market | 100.0% |

- (131) The Parties' combined market share will still be much lower than that of OTE post-transaction. OTE is the market leader with a share of 55-65%.
- (132) The Notifying Party considers that the market shares should not be different for 2019 and 2018.
- (133) The Notifying Party was not in a position to provide market share estimates in value considering that there is no publicly available data and, in addition, it could not estimate their competitors' sales given possible discounts or any other advantages granted to customers.

- (134) Table 14 sets out the Parties' and their main competitors' market shares on the market for the retail supply of triple play (fixed telephony, fixed broadband access and pay-TV) services in Greece in volume for the year 2020.

Table 14: Market shares on the market for the retail supply of triple play (fixed telephony and fixed broadband access and pay-TV) services in Greece (2020)

| Market shares in volume (# of connections) 2020 | |
|---|-----------------|
| Nova | [20-30%] |
| Wind | [0-5%] |
| Combined | [30-40%] |
| Vodafone | 5-15% |
| OTE | 50-60% |
| Total market | 100.0% |

- (135) The Parties' combined market share will still be much lower than that of OTE post-transaction. OTE leads the market with a share of 50-60%.¹⁰³
- (136) The Notifying Party considers that the market shares should not be different for 2019 and 2018.
- (137) The Notifying Party was not in a position to provide market share estimates in value considering that there is no publicly available data and, in addition, it could not estimate their competitors' sales given possible discounts or any other advantages granted to customers.

5.2. Analytical Framework

- (138) Under Article 2(2) and (3) of the Merger Regulation, the Commission must assess whether a proposed concentration would significantly impede effective competition in the internal market or in a substantial part of it, in particular through the creation or strengthening of a dominant position.
- (139) In this respect, a merger may entail horizontal and/or non-horizontal (namely, vertical or conglomerate) effects. Horizontal effects are those deriving from a concentration where the undertakings concerned are actual or potential competitors of each other in one or more of the relevant markets concerned. Vertical effects are those deriving from a concentration where the undertakings concerned are active on different or multiple levels of the supply chain. Conglomerate effects are those deriving from a concentration where the undertakings concerned are in a relationship that is neither horizontal nor vertical. A concentration may involve all three types of effects. In such a case, the Commission will appraise horizontal and non-horizontal effects in accordance with the guidance set out in the relevant notices, that is to say the Horizontal Merger Guidelines¹⁰⁴ and the Non-Horizontal Merger Guidelines.¹⁰⁵

¹⁰³ In the segments for triple-play and quadruple-play services including mobile telecommunications, Nova is not active, as it does not offer mobile services. Therefore, the Parties' combined market shares post-Transaction ([10-20%] in triple-play and [20-30%] in quadruple-play) reflect only Wind's activities.

¹⁰⁴ Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings ("Horizontal Merger Guidelines"), OJ C31, 5.2.2004, p. 5.

(140) In assessing the competitive effects of a merger, the Commission compares the competitive conditions that would result from the notified merger with the conditions that would have prevailed without the merger. In most cases, the competitive conditions existing at the time of the merger constitute the relevant comparison for evaluating the effects of a merger. However, in some circumstances, the Commission may take into account future changes to the market that can reasonably be predicted.¹⁰⁶

5.3. Identification of affected markets

5.3.1. Horizontally affected markets

(141) Based on the market shares submitted by the Notifying Party, the Transaction gives rise to the following horizontally affected markets.

Table 15: Horizontally affected markets in Greece (2020)

| | Volume | | | Value | | |
|--|----------|------------------------|-------------------------|----------|-----------------------|---------------------------------------|
| | Nova | Wind | Combined | Nova | Wind | Combined |
| Retail supply of fixed telephony services | [10-20%] | [10-20%] | [20-30%] | [5-10%] | [10-20%] | [10-20%] |
| Retail supply of fixed internet access services | [10-20%] | [10-20%] | [20-30%] | [5-10%] | [10-20%] | [10-20%] |
| Retail supply of audio-visual services (pay-TV) | [20-30%] | [5-10%] | [30-40%] | [30-40%] | [0-5%] | [30-40%] |
| - Retail supply of premium pay-TV channels | [30-40%] | [0-5%] | [30-40%] | 35-40% | 0-5% | 35-45% |
| - Retail supply of basic pay-TV channels | [20-30%] | [20-30%] | [40-50%] | 25-30% | 5-10% | 30-40% |
| Retail supply of multiple-play services | [10-20%] | [10-20%] | [20-30%] | - | - | - |
| - Double-play | [10-20%] | [10-20%] | [30-40%] | - | - | - |
| - Triple-play all bundles | [5-10%] | [10-20%] | [20-30%] | - | - | - |
| - Triple play fixed telephony, fixed broadband access and pay-TV | [20-30%] | [0-5%] | [30-40%] | - | - | - |
| - Quadruple-play | [0-5%] | [20-30%] | [20-30%] | - | - | - |
| Wholesale supply and acquisition of TV channels (acquisition side) | [20-30%] | [20-30%] [(20-30%)] | [30-40%] ¹⁰⁷ | [10-20%] | [20-30%] [(5-10%)] | [40-50%] [(20-30%)] ¹⁰⁸ |
| Wholesale supply for termination and hosting of calls to non-geographic numbers | [10-20%] | [20-30%] | [30-40%] | [5-10%] | [30-40%] | [30-40%] |

¹⁰⁵ 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.

¹⁰⁶ Horizontal Merger Guidelines, paragraph 9; Non-Horizontal Merger Guidelines, paragraph 20.

¹⁰⁷ Figure obtained by excluding the Novasports channels which will become captive post-Transaction.

¹⁰⁸ Figure obtained by excluding the Novasports channels which will become captive post-Transaction.

(142) As regards the market for the supply of the fixed telephony services, the retail fixed telephony services are provided by the Parties (i) either on a standalone basis, or (ii) as part of a dual-play or other multiple-play offer (whereby the customer also receives internet broadband access).¹⁰⁹ The market for standalone fixed telephony subscriptions is not affected, due to Wind's and Nova's very limited number of standalone subscribers (market shares of [0-5%] and [0-5%], respectively, in volume, in 2020). In fact, the vast majority of their customers subscribes to dual-play or other multiple-play offers and thus have access to internet services in addition to voice services. Only OTE, the incumbent operator, has a significant number of standalone fixed telephony services subscribers ([90-100%] in volume in 2020).

5.3.2. Vertically affected markets

(143) In addition, the Transaction gives rise to the following vertically affected markets.

Table 16: Vertically affected markets in Greece (2020)

| Upstream markets | Downstream markets |
|--|---|
| <p>Wholesale supply and acquisition of TV channels Nova: [30-40%]</p> <p>Wholesale supply and acquisition of premium sports pay-TV channels Nova: [70-80%]</p> | <p>Retail provision of audio-visual services Volume: Nova: [20-30%]; Wind: [5-10%]; Combined [30-40%]; Value: Nova: [30-40%]; Wind: [0-5%]; Combined [30-40%];</p> |
| <p>Wholesale supply of call termination services on Nova's and Wind's respective fixed networks Nova: 100% Wind: 100%</p> | <p>Retail market for mobile telecommunications in Greece Wind: [20-30%] in volume; [10-20%] in value Nova: not active Combined: [20-30%] in volume, [10-20%] in value</p> <p>Retail market for fixed telephony services in Greece Volume: Wind: [10-20%]; Nova: [10-20%]; Combined: [20-30%] Value: Wind: [10-20%]; Nova:[5-10%]; Combined: [10-20%]</p> |
| <p>Wholesale supply of call termination services on Wind's mobile network Wind: 100%</p> | <p>Retail market for fixed telephony services in Greece Volume: Wind: [10-20%]; Nova: [10-20%]; Combined: [20-30%] Value: Wind: [10-20%]; Nova: [5-10%]; Combined: [10-20%]</p> |

¹⁰⁹ The Parties submit that it is difficult to break down revenues between retail fixed telephony and retail broadband internet access, as Greek customers mainly acquire these services in bundles. Greek operators report to the EETT, the national regulator, the numbers of subscribers and total revenues on retail fixed telephony and internet access services served at a fixed location as a whole (hereafter, indicated as the "fixed lines services"), including both fixed telephony and broadband internet access (whether sold standalone or as part of multiple play offers).

5.4. Assessment of horizontal non-coordinated effects

5.4.1. Introduction

- (144) Under Article 2(2) and (3) of the Merger Regulation, the Commission must assess whether a proposed concentration would significantly impede effective competition in the internal market or in a substantial part of it, in particular through the creation or strengthening of a dominant position. In this respect, a merger may entail horizontal and/or vertical effects.¹¹⁰
- (145) Horizontal effects are those deriving from a concentration where the undertakings concerned are actual or potential competitors of each other in one or more of the relevant markets concerned. The Commission appraises such effects in accordance with the guidance set out in the relevant notice, that is to say the Horizontal Merger Guidelines.¹¹¹
- (146) 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*".¹¹²
- (147) Generally, a merger that gives rise to such non-coordinated effects would significantly impede effective competition by creating or strengthening of the dominant position of a single firm, one which, typically, would have an appreciably larger market share than the next competitor post-merger.
- (148) However, under the substantive test set out in Article 2(2) and (3) of the Merger Regulation, mergers that do not lead to the creation or the strengthening the dominant position of a single firm may create competition concerns in oligopolistic markets. Indeed, the Merger Regulation recognises that in oligopolistic markets, it is all the more necessary to maintain effective competition.¹¹³ This is in view of the more significant consequences that mergers may have on such markets. For this reason, the Merger Regulation provides that: "*under certain circumstances, concentrations involving the elimination of important competitive constraints that the merging parties had exerted upon each other, as well as a reduction of competitive pressure on the remaining competitors, may, even in the absence of a*

¹¹⁰ Vertical effects are those deriving from a concentration where the undertakings concerned are active on different or multiple levels of the supply chain. A concentration may involve both types of effects.

¹¹¹ 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.

¹¹² Horizontal Merger Guidelines, paragraph 24.

¹¹³ Merger Regulation, recital 25.

likelihood of coordination between the members of the oligopoly, result in a significant impediment to effective competition."¹¹⁴

- (149) Paragraph 24 of the Horizontal Merger Guidelines, which sets out the economic rationale underlying non-coordinated anti-competitive effects in horizontal mergers, states that a merger may significantly impede effective competition in a market by removing important competitive constraints on one or more firms. This paragraph furthermore clarifies that the most direct effect of the merger will be the loss of competition between the merging firms. In order to assess whether a notified merger will result in a significant impediment of effective competition on the basis of non-coordinated effects, the Commission therefore needs to analyse primarily the extent of the competitive constraint imposed pre-merger by each of the merging parties on each other. The following sentence of paragraph 24 of the Horizontal Merger Guidelines clarifies that the removal of the rivalry between the parties may have consequences also on the other players, who may find it profitable to increase their prices. The ultimate effect would thus typically be price increases by the merging parties but also by competitors in the relevant market.
- (150) The Commission carries out an overall assessment of the likely effects of the Transaction arising from the elimination of important competitive constraints, taking into consideration the overall body of evidence in its file. The conclusion that a transaction leads to a significant impediment of effective competition is reached taking into account the degree to which all the relevant factors, including the ones listed in paragraphs 27 - 38 of the Horizontal Merger Guidelines, are present in the case under consideration.
- (151) 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. However, not all of these factors need to be present to make significant non-coordinated effects likely and it is not an exhaustive list.¹¹⁵
- (152) Among the factors listed in the Horizontal Merger Guidelines are included: 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; the fact that the merged entity would be able to hinder expansion by competitors; and the fact that the merger would eliminate an important competitive force.¹¹⁶
- (153) As regards the elimination of an important competitive force, according to the Horizontal Merger Guidelines, some firms have more of an influence on the competitive process than their market share would suggest. A merger involving such a firm may change the competitive dynamics in a significant anticompetitive way, in particular in a market that is already concentrated.¹¹⁷ In this respect, paragraph 37 of the Horizontal Merger Guidelines refers to the example of a firm that is a recent entrant on the market, and is expected to exert significant competitive pressure in the

¹¹⁴ Merger Regulation, recital 25. Similar wording is also found in paragraph 25 of the Horizontal Merger Guidelines. See also Commission decision of 2 July 2014 in case M.7018 – *Telefónica Deutschland/E-Plus*, recital 113; Commission decision of 28 May 2014 in case M.6992 – *Hutchison 3G UK/Telefónica Ireland*, recital 179; Commission decision of 12 December 2012 in case M.6497 – *Hutchison 3G Austria/Orange Austria*, recital 88.

¹¹⁵ Horizontal Merger Guidelines, paragraph 26.

¹¹⁶ Horizontal Merger Guidelines, paragraphs 27 et seq.

¹¹⁷ Horizontal Merger Guidelines, paragraph 37.

future. There may be, however, also other situations where a merger may lead to significant non-coordinated effects by removing an important competitive force.

- (154) Finally, the Horizontal Merger Guidelines describe a number of factors, which could counteract the harmful non-coordinated effects of the merger on competition, that is, the likelihood of buyer power, entry, efficiencies and the fact that one of the merging parties is a failing firm ("failing firm defence").

5.4.2. *Horizontal non-coordinated effects in the market for the retail supply of fixed telephony services*

5.4.2.1. The Notifying Party's view

- (155) The Notifying Party submits that the proposed Transaction would not give rise to any competitive concerns in relation to the retail market for the supply of fixed telephony services in Greece for the following reasons.
- (156) First, the Notifying Party submits that the overall market for the retail supply of fixed telephony in Greece, the Parties are relatively small players (Nova approx. [10-20%] and Wind approx. [10-20%] in volume) and their combined market share therefore does not exceed 25%. Considering the segment for residential and SOHO customers, the combined market share of the Parties increases to [20-30%] (in volume, in 2020), but the market shares of OTE and Vodafone remain significant (approx. [50-60%] and [20-30%] respectively). On the market for large business customers, the Parties' combined market share, in 2020, is [10-20%] in volume and [0-5%] in value. Should the market for large business customers be considered as a separate market, therefore, it would not be an affected market.
- (157) Second, Wind and Nova are respectively number 3 and 4 player in the market. The market shares of the merged entity in fixed telephony services, therefore, will remain modest, about half the size of the market shares of OTE (approx. [50-60%] in volume in 2020) and not significantly higher than Vodafone's market share (approx. [20-30%] in volume in 2020).
- (158) In addition, OTE owns the vast majority of the fixed access infrastructure, which enables it to earn large wholesale revenues from its competitors. OTE's competitors, in particular Nova and Wind, are heavily dependent on OTE's network.

5.4.2.2. The Commission's assessment

- (159) The Commission considers that the Transaction does not raise horizontal concerns in the market for retail supply of fixed telephony services for the following reasons.
- (160) First, the combined market share of the parties remains modest on the overall market for the retail provision of fixed telephony services, where the Parties have a combined market share in volume, in 2020, of [20-30%], which is below the 25% threshold provided for in the Horizontal Merger Guidelines¹¹⁸ (considering residential and SOHO customers only, the combined market share would be [20-

¹¹⁸ Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings OJ C 31, 5.2.2004, paragraph 18.

30%] in volume). Market shares in value, in 2020, are even smaller (combined market share [10-20%] and, for residential and SOHO customers only, [20-30%]).

- (161) Second, the increment is small and more specifically [10-20%] in volume and [5-10%] in value.
- (162) Third, Wind and Nova are respectively number 3 and number 4, in a market with sufficient alternatives and with a strong leading presence of OTE ([50-60%] in volume and 60-65% in value) and with a significant presence by Vodafone (around [20-30%] in volume and 15-25% in value). Regardless of the market segmentation, the merged entity's combined market share is generally below (or slightly above) the 25% threshold which triggers the presumption that the Transaction is not harmful to competition.
- (163) Finally, the Commission notes that it has not received any complaints from the respondents to the market investigation regarding the market for retail supply of fixed telephony services.
- (164) Therefore, for the reasons set out above, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market, as a result of horizontal effects on the market for the retail supply of fixed telephony services in Greece.¹¹⁹

5.4.3. Horizontal non-coordinated effects in the market for retail supply of fixed broadband internet access

5.4.3.1. The Notifying Party's view

- (165) The Notifying Party submits that the proposed Transaction would not give rise to any competitive concerns in relation to the retail market for the supply of fixed internet broadband access in Greece for the following reasons.
- (166) First, the Notifying Party submits that in the overall market for the retail supply of fixed broadband internet access in Greece, the Parties are relatively small players (Nova [10-20%] and Wind [10-20%]) and their combined market share only slightly exceeds 25%. Considering the segment for residential and SOHO customers, the combined market share of the Parties achieves [20-30%] (in volume, in 2020), but the market shares of OTE and Vodafone remain significant (55-65% and 15-25% respectively).
- (167) Second, the Parties' combined market share has been slightly decreasing in the last three years, while OTE has even managed to strengthen its market position in recent years. Vodafone is currently the second operator with a market share above 20% (in volume), and Wind and Nova are respectively number three and number four player

¹¹⁹ As to coordinated effects, the Commission considers that a number of factors make coordination unsustainable, and therefore unlikely. First, the market shares of the Parties and of the competitors remaining on the market are asymmetric, which makes it difficult for them to align their interests and reach a common strategy. Second, Nova has no fixed access network and relies on wholesale access to other operators' networks. Wind has a small fibre optic network but relies for [...] of its fixed communications services on OTE's wholesale offer. The cost structures and the commercial strategies of the market player therefore are likely to diverge. In addition, customers are price-sensitive and willing to switch and there are no significant barriers that would prevent them from switching operator.

in the market. The market shares of the merged entity in fixed broadband internet access, therefore, will remain modest, about half the size of the market shares of OTE (approx. [50-60%] in volume in 2020) and not significantly higher than Vodafone's market shares (approx. [20-30%] in volume in 2020).

- (168) In addition, OTE owns the vast majority of the fixed access infrastructure, which enables it to earn large wholesale revenues from its competitors. OTE's competitors, in particular Nova and Wind, are heavily dependent on OTE's network.
- (169) The Notifying Party has indicated that market entry is possible and some projects have already been announced (e.g. Inalan, Starlink and the Ultra-Fast Broadband ("UFBB") project, a public private partnership).

5.4.3.2. The Commission's assessment

- (170) The Commission considers that the Transaction does not raise competition concerns in the retail market for fixed broadband internet access. This for the reasons explained below.
- (171) First, the Parties' combined market shares in the retail provision of fixed broadband internet access to residential and SOHO customers is [20-30%] in volume, in 2020. The increment by Nova is approx. [10-20%] in volume. However, the market is led by OTE, with a market share of approx. 55-65% and Vodafone has a relatively substantial market share of 15-25%
- (172) Second, the results of the market investigation has not identified the Parties as being close competitors.¹²⁰
- (173) Third, the Greek customers are at least moderately sensitive to price and switch operator in search of better price offers and network quality.¹²¹ As to possible barriers to switching, a competitor explains "*there are not specific barriers as there is strict regulatory framework. However, there may be contractual penalties for terminating before the end of the commitment period. Still, customer can switch operator...*".¹²²
- (174) Fourth, at least a few respondents to the market investigation expect market entry in the next 2-3 years.¹²³ In addition, half of the competitors responding to the market investigation consider the market as characterised by growing demand, which the Commission considers will make entry more attractive and more viable.¹²⁴
- (175) In this respect, the Greek national regulatory authority (EETT), has explained in pre-notification that they are aware of three entry projects by Greek companies in the context of the UFBB.
- (176) For the above reasons, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market as a consequence of

¹²⁰ Replies to Questionnaire Q1 to competitors, questions 49.1 and 49.2.

¹²¹ Replies to Questionnaire Q1 to competitors, questions 52 and 54.

¹²² Replies to Questionnaire Q1 to competitors, questions 55.

¹²³ Replies to Questionnaire Q1 to competitors, questions 56.

¹²⁴ Replies to Questionnaire Q1 to competitors, questions 57 and 57.1.

horizontal, non-coordinated effects in the retail market for fixed broadband internet access.¹²⁵

5.4.4. *Horizontal non-coordinated effects in the assumed market for retail provision of multiple-play services*

5.4.4.1. The Notifying Party's view

- (177) The Notifying Party submits that the proposed Transaction would not give rise to any competitive concerns in relation to the assumed market for the retail supply of multiple-play services in Greece for the following reasons.
- (178) First, the Notifying Party submits that the combined market share of Nova and Wind will be modest in an overall market including all multiple-play services, estimated at [20-30%]. OTE is and will remain the leading player in multiple-play services with a market share between 45%-55%. Vodafone's market share (between 15%-25%) will be close to the Parties' combined share. When looking at triple-play offers combining fixed telephony, fixed broadband access and pay-TV services, the Parties' combined market share is [30-40%], but Wind's increment is only marginal ([0-5%]).
- (179) Second, according to the Notifying Party, the Parties are not close competitors. The Parties' activities do not overlap in the supply of fixed/mobile bundles because Nova is not active in the supply of mobile communications services. In addition to that, Wind provides dual-play (fixed telephony and fixed broadband) offers, triple-play offers including mobile telecommunications services, and also quadruple-play packages, in the sense that it offers pay-TV services to the subscribers of its triple-play offer. Wind's pay-TV services however are not available on a stand-alone basis. Nova also provides similar dual-play packages, but does not offer fixed-mobile triple-play packages, nor quadruple-play packages.
- (180) Third, the Notifying Party submits that customers can easily switch providers. As for the fixed and internet retail services, customers can easily switch mobile operators and are not loyal to an operator. Additionally, it appears that when considering changing supplier, the ability to bundle a stand-alone service with another service is not the main criterion of choice for the customers.
- (181) Fourth, the Notifying Party submits that market entry is likely. Indeed, Volton is highly likely to enter the Greek market and aims to provide fixed internet, fixed telephony and mobile services at retail level. Hence, it would be in position to offer dual-play and fixed/mobile triple-play bundles in the near future.

¹²⁵ As to possible coordinated effects, the Commission considers that a number of factors make coordination unsustainable in the present case. The market shares of the parties and of the competitors remaining on the market are asymmetric (the market is led by OTE with a [50-60%] market share), which makes it difficult for them to align their interests and reach a common strategy. Second, consumers are price sensitive and tend to switch providers. The main reason for switching remains the price but market participants have also indicated the network quality (broadband speed) as a reason for switching. Finally, new entries are possible in the near future in the retail market for fixed internet access services.

5.4.4.2. The Commission's assessment

- (182) The Commission considers that the Transaction does not raise horizontal concerns in the market for retail supply of multiple-play services for the following reasons.
- (183) The market shares of the Parties are moderate. On the overall market for multiple-play services, the combined market share of the Parties is [20-30%] in volume in 2020 (with an increment by Nova of approximately [10-20%]). OTE is and will remain the leading player in multiple-play services with a market share between 45%-55% in volume. Vodafone's market share (between 15%-25% in volume) will be close to the Parties' combined share.
- (184) If the market is segmented in fixed bundles (i.e. double play, with fixed telephony-fixed broadband, and triple-play, with fixed telephony-fixed broadband and pay-TV) and FMC bundles including mobile services, the Commission observes that Nova is not active in mobile telecommunications services and the Transaction would therefore have no effects in the latter segment.
- (185) When looking at double-play, fixed telephony-fixed broadband internet access, the combined market share of the Parties reaches [30-40%] (in volume, in 2020). In this case, the merged entity is the second player after OTE, which has a market share of 35-45% in volume, and slightly above Vodafone, with a market share of 20-30% in volume. The Commission considers that the market has significant alternatives to the merged entity and that Nova and Wind remain dependent on OTE for access to the fixed infrastructure, which weakens their ability to compete.
- (186) In the fixed triple-play segment (i.e. fixed mobile, fixed broadband and pay-TV), the combined market share of the Parties is slightly above 30% in volume in 2020. The increment brought by Wind is a mere [0-5%] in volume. The market is characterised by a very significant presence by OTE, with a market share of 50-60% in volume and Vodafone has a significant presence of 5-15% in volume. The Commission considers that the aforementioned consideration that the Parties do not have access to their own fixed infrastructure also applies to this segment. In addition, with respect to pay-TV, OTE offers standalone pay-TV propositions that would put pressure on the merged entity. Also, Nova has recently faced financial difficulties in acquiring TV content for its pay-TV offer.
- (187) In terms of closeness of competition, at least in the bundles including pay-TV, the Parties do not appear to be close competitors, as with respect to that specific service Nova is close to OTE, while Wind has a stronger proposition in mobile services.¹²⁶ More in general, respondents to the market investigation do not identify the Parties as close competitors in multiple-play services.¹²⁷
- (188) With respect to customers' ability to switch between different providers of bundled services, the market investigation has indicated that contractual barriers exist.

¹²⁶ Replies to Questionnaire Q1 to competitors, question 66.3.

¹²⁷ Replies to Questionnaire Q1 to competitors, questions 66.1 and 66.2.

However, OTE indicates that such barrier do not prevent customers from switching.¹²⁸

- (189) Finally, the Commission notes that it has not received any complaints from the respondents to the market investigation regarding the market for retail supply of multiple-play services.
- (190) Therefore, for the reasons set out above, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market as a result of horizontal effects on the market for retail provision of multiple-play services.¹²⁹

5.4.5. *Horizontal non-coordinated effects in the market for retail provision of audio-visual services*

5.4.5.1. The Notifying Party's view

- (191) The Notifying Party submits that the proposed Transaction would not give rise to any competitive concerns in relation to the retail market for the supply of audio-visual services in Greece for the following reasons.
- (192) First, the Notifying Party submits that unlike Nova, Wind does not provide retail pay-TV services on a standalone basis but only in combination with fixed internet access services. This results in no real overlap between the Parties' activities in the retail supply of pay-TV services in Greece.
- (193) Second the Notifying Party submits that there is also no overlap between the Parties' activities upstream in the audio-visual value chain in Greece given that Wind, unlike Nova, is not active in the production and supply of content or in the wholesale supply of TV channels: it simply acquires channels that it aggregates on its retail pay-TV service.
- (194) Third, according to the Notifying Party the merged entity will still be the second largest pay-TV operator following the Transaction with a market share of [30-40%] in volume, far behind OTE.
- (195) Fourth, the Notifying Party submits that the Parties are not close competitors in the retail supply of paid-TV services. In particular, unlike Nova (and OTE and Vodafone), Wind does not provide retail pay-TV services on a stand-alone basis but only in combination with fixed broadband services. Additionally, Wind and Nova use different distribution technologies to provide their pay-TV services. Nova's pay-TV offering is perceived as more premium than Wind's. While Nova's offering encompasses four different packs (family, sports, cinema and full pack), Wind's

¹²⁸ Replies to Questionnaire Q1 to competitors, question 67.1. According to OTE: “*there may be contractual penalties for terminating before the end of the commitment period. Still, customer can switch operator....*”.

¹²⁹ As to possible coordinated effects, the Commission considers that a number of factors make coordination unsustainable and, therefore, unlikely in the present case. First, after the Transaction, the market shares of the Parties and of the competitors remaining on the market will be asymmetric, which makes it difficult for them to align their interests and reach a common strategy. Second, bundled offers make tariffs complex and opaque. There is no evidence to suggest that the Transaction will increase the degree of transparency on the market.

offering is limited to two packs (family and full pack, which includes sports). Finally, Nova is active in the acquisition of premium content, acquiring sports rights and films rights in competition with OTE, to produce its own channels. Wind only distributes third-party channels and does not invest in acquiring broadcasting rights. Based on the above, Nova's closest competitor in the supply of pay-TV services is OTE, which has a similar positioning and produces its own TV channels.

5.4.5.2. The Commission's assessment

- (196) The Parties are only active in the retail provision of pay-TV services. Therefore, whether retail FTA offerings are considered or not part of the same market as pay-TV, this does not affect the outcome of the assessment, as in an overall market, the Parties would compete with a large number of FTA retail services (FTA TV has a penetration of 75% in Greece) and their combined market share would be diluted.
- (197) The Commission considers that the Transaction does not raise horizontal concerns in the market for retail provision of audio-visual services.
- (198) First, in 2020, in the overall market for the retail supply of pay-TV, the merged entity's market share was [30-40%] in volume and [30-40%] in value, but has been decreasing in the last three years. In fact, the Parties' combined market share in volume was [30-40%] in 2019 and [30-40%] in 2018. Similarly, their combined market share in value was [40-50%] in 2019 and [40-50%] in 2018. In particular, the market share of Nova has been declining in recent years, partly due to its financial difficulties, leading to reduced investments in content and channel acquisition. At the same time, Wind, since its market entry in 2018, has only grown to a limited extent and has positioned itself mainly as a basic pay-TV provider.¹³⁰
- (199) Second, the increment brought by Wind is limited ([0-5%] in value and approx. [5-10%] in volume), while the market share of OTE remains above 50% and Vodafone has been increasing its market share, both in value (from 0-5% in 2018 to the current [5-10%]) and in volume (from [5-10%] in 2018 to the current [10-20%]).
- (200) Third, if the market is segmented in premium and basic pay-TV, the Parties' combined market share in premium pay-TV is significant (35-45% in value and [30-40%] in volume), but the overlap is rather limited ([0-5%] at most). OTE remains the strongest competitor (55-60% in value and [50-60%] in volume). In the basic pay-TV segment, the Parties' combined market share remains significant (30-40% in value and approx. [40-50%] in volume), but so does competition from Vodafone (20-25% in value, approx. [30-40%] in volume) and OTE (35-40% in value approx. [20-30%] in volume), in a market segment that is significantly smaller than the premium segment both in value and in volume and subject to strong competition from FTA TV services, which have a large penetration in Greece.
- (201) Fourth, the Parties do not appear to be close competitors.¹³¹ As mentioned above, unlike Nova (and OTE and Vodafone), Wind does not provide retail pay-TV services on a standalone basis but only in combination with broadband internet services.

¹³⁰ Wind has a market share of [0-5%] in volume in premium pay-TV and [20-30%] in volume in basic pay-TV.

¹³¹ Replies to Questionnaire 1 to competitors, question 58.

Wind and Nova also use different distribution technologies to provide their pay-TV services to their subscribers. Nova has a similar positioning and subscriber base to OTE, which also produces its own TV channels. There are also differences in Wind's and Nova's respective product offering. While Nova's offering encompasses four different packs (family, sports, cinema and full pack), Wind's offering is limited to two packs (family and full pack, which includes sports).

- (202) Fifth, the market investigation results have confirmed that the Parties are not close competitors and that Wind is not a particularly important competitive force. Indeed, none of the respondents to the market investigation considers them as close competitors.¹³² Also, ranking providers of audio-visual services according to various criteria (i.e. price, quality of network, quality of content, discounts and availability of bundled offers), the Parties do not rank close to each other. In fact, Wind ranks high for prices (but according to a respondent, behind Netflix) and discounts, while Nova is preferred for availability of attractive content and the quality of the services (a respondent, however, ranks Netflix higher in both parameters). Another respondent ranks Nova close to OTE and Wind close to Vodafone.¹³³
- (203) Sixth, the results of the market investigation confirm that OTT players (such as Amazon and Netflix) exert significant competitive pressure on market players using other distribution methods.¹³⁴ In addition, the majority of respondents to the market investigation expects new market entry in the next 2-3 years.¹³⁵
- (204) Finally, the Commission notes that it has not received any complaints from the respondents to the market investigation regarding the market for retail provision of audio-visual services.
- (205) Therefore, for the reasons set out above, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market as a result of horizontal effects in the market for retail provision of audio-visual services.¹³⁶

¹³² Replies to Questionnaire 1 to competitors, question 58.1.

¹³³ Replies to Questionnaire 1 to competitors, question 59.

¹³⁴ Replies to Questionnaire 1 to competitors, question 60.

¹³⁵ Replies to Questionnaire 1 to competitors, question 62.

¹³⁶ As to coordinated effects, the Commission considers that a number of factors make coordination unsustainable. First, the market shares of the Parties and of the competitors remaining on the market are asymmetric, which makes it difficult for them to align their interests and reach a common strategy. Indeed, after the Transaction, OTE will have a market share of approx. [50-60%] in volume. The merged entity approx. [30-40%] and Vodafone will be the smallest operator with [10-20%]. Second, the Commission notes that the important variety of offers which exist on the market limits market transparency. There is also no evidence to suggest that the Transaction will increase the existing degree of market transparency. Third, the market investigation has indicated that there is a high degree of competition in the market, with existing OTT platforms (such as Netflix) exerting a competitive constraint on the market of retail audio-visual services and new entries (such as Disney+ and HBO Max) expected to launch in Greece in 2022.

5.4.6. *Horizontal non-coordinated effects in the wholesale market for the supply of TV channels (acquisition side)*

5.4.6.1. The Notifying Party's view

- (206) The Parties' activities overlap on the acquisition side of the wholesale market for the supply of TV channels, where both Nova and Wind acquire TV channels. There is no overlap on the supply side of such market, as only Nova, not Wind, is active in the wholesale supply of TV channels. In this respect, the Notifying Party submits that the proposed Transaction would not give rise to any competitive concerns in relation to the wholesale market for the acquisition of TV channels in Greece for the following reasons.
- (207) First, the Notifying Party submits that the vast majority of Wind's acquisition spend on TV channels, will be "captive" acquisitions post-Transaction, which means that its market share would be considerably lower ([5-10%]) than in case the captive-sales were also to be taken into account ([20-30%]). In any event, the Parties' combined market share would thus not exceed 25%. Consequently, the merged entity will not be in a position to impose its own terms and conditions on channel suppliers.
- (208) Second, the Notifying Party submits that it does not acquire any premium pay-TV channels as the premium pay-TV channels available on its retail pay-TV service are its own channels, Novasports and Novacinema. This contrasts with Wind, which acquires primarily premium pay-TV channels. There is, therefore, only a limited overlap in the acquisition of FTA and basic pay-TV channels.

5.4.6.2. The Commission's assessment

- (209) The Commission considers that the Transaction does not raise horizontal concerns in the wholesale market for the supply of TV channels.
- (210) The Parties' combined market share, based on pre-transaction spending, in the overall market for TV channels, is [40-50%] in value and [30-40%] in volume. However, the majority of Wind's acquisition spending on TV channels (...) is accounted for by Nova's Novasports channels. Post-transaction, such spending in channels will be internalised by the merged entity and Wind's market share (in value) will be only [5-10%] (and no longer [20-30%]). The Parties' combined market share would thus not exceed 25%.¹³⁷ In this respect, the Commission also notes that in particular Nova's investments in the acquisition of TV channels have decreased in the last three years, with its market share in value decreasing almost by half, from [30-40%] in 2018 to [10-20%] in 2020.
- (211) If the wholesale market for the supply of TV channels is segmented in FTA channels and pay-TV channels, there is no overlap between the Parties in the acquisition of FTA channels, as Wind's market share is [0-5%]. In the segment for the acquisition

¹³⁷ Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings OJ C 31, 5.2.2004, paragraph 18. Concentrations which, by reason of the limited market share of the undertakings concerned, are not liable to impede effective competition may be presumed to be compatible with the common market. An indication to this effect exists, in particular, where the market share of the undertakings concerned does not exceed 25% either in the common market or in a substantial part of it.

of pay-TV channels, the combined market share of the Parties, in value, in 2020, is [20-30%] (with an increment by Wind of [10-20%] in value, excluding the channels it currently purchases from Nova). Nova's market share has nearly halved in the last three years (from [30-40%] to [10-20%] in value), while the market share of OTE has remained stable around [20-30%] in value and Vodafone's market share has increased from [20-30%] to [20-30%] in value.

- (212) If the market for pay-TV channels is segmented in basic and premium pay-TV channels, Nova has an [5-10%] market share, in value, in 2020, in the acquisition of premium pay-TV channels. Wind acquires its premium pay-TV channels exclusively from Nova and has a market share in value of [40-50%], which will be 0% post-Transaction. With respect to basic pay-TV channels, the Parties' combined market share, in value, in 2020, is [50-60%] (with an increment of [20-30%] by Wind). Such market share, however, has been decreasing since 2018, when it was [50-60%] in value. Over the same period, Vodafone has more than doubled its market share in value from [5-10%] to [10-20%], and OTE has remained stable around [30-40%] in value.
- (213) If the market for premium pay-TV channels is segmented in premium sports and premium film channels, Nova produces in-house most of its sports premium channels and thus has a market share of just [5-10%], in value, in 2020, in such segment. Wind has a pre-Transaction market share of [40-50%] in value, but only acquires the Novasports channels from Nova and thus its market share post-transaction will be 0%, as all of its acquisitions will become captive. Neither party acquires premium film pay-TV channels and therefore their combined market share is 0%.
- (214) The Commission further considers that other factors contribute to exclude competition concerns, as explained below.
- (215) First Vodafone and OTE will still have market shares in value of [20-30%] and [30-40%] respectively in the overall wholesale market for the acquisition of TV channels. The Commission considers, in particular, that Vodafone's market share in value has increased in the last three years, from [10-20%] in 2018 to [20-30%] in 2020. This shows that, on the acquisition side of the market, the Parties' competitors are investing and, post-Transaction, there will be sufficient alternatives to the merged entity.
- (216) Second, in light of the market share evolution of the Parties and of their competitors, the Transaction does not appear to significantly increase the Parties' bargaining power, particularly in consideration of the fact that, on the supply side, the providers of TV channels are large entities such as Disney/Fox, NBC Universal and Discovery, capable of exerting significant negotiation power.
- (217) Third, the competitors responding to the market investigation do not identify the Parties as close competitors.¹³⁸ It appears that Nova's and Wind's current channel purchasing strategies have a different focus and therefore the Transaction would not necessarily lead to an overlap. Nova, in fact, produces in-house part of its channel

¹³⁸ Replies to Questionnaire Q1 to competitors, question 63.1. Replies to Q2 to TV channel providers, questions 12.1 and 12.2.

proposition, for both sports and movies, and ranks itself as a premium pay-TV provider at retail level. Wind, on the other hand, seems to position itself as a basic pay-TV provider and appears to have a commercial approach relying more on competitive pricing, discounts and bundled offers, than on the acquisition of attractive TV content.¹³⁹

- (218) Fourth, the market investigation participants have not expressed concerns that the Transaction could materially increase the bargaining power of the merged entity vis-à-vis third party channel suppliers. They also took the view that post-transaction there will be a sufficient number of alternative acquirers other than Nova/Wind.¹⁴⁰ Two TV channel providers have also indicated that the merged entity would have an incentive to pass on to customers any price reduction it might obtain from such channel providers post-Transaction.¹⁴¹
- (219) Finally, the Commission notes that it has not received any complaints from the respondents to the market investigation regarding the wholesale market for the acquisition of TV channels. In particular, TV channels suppliers have no concerns as to the effects of the Transaction on their business or on the market for the acquisition of TV channels (two of them expect a positive impact).¹⁴² TV channels providers responding to the market investigation indicate that their remarks apply to all market segments.¹⁴³
- (220) Therefore, for the reasons set out above, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market as a result of horizontal effects on the wholesale market for the acquisition of TV channels.¹⁴⁴

¹³⁹ Replies to Questionnaire Q1 to competitors, question 59.

¹⁴⁰ Replies to Questionnaire 2 to TV channel providers, questions 14 and 16.

¹⁴¹ Replies to Questionnaire 2 to TV channel providers, questions 15 and 15.1.

¹⁴² Replies to Questionnaire 2 to TV channel providers, questions 17 and 18.

¹⁴³ Replies to Questionnaire 2 to TV channel providers, question 20.

¹⁴⁴ As to coordinated effects, the Commission considers that a number of factors make coordination unsustainable and, therefore, unlikely in the present case. First, the Commission observes that the market shares of the parties and of the competitors remaining on the market are asymmetric, which makes it difficult for them to align their interests and reach a common strategy. Second, the level of transparency with respect to prices in the market is limited, due to the absence of public information. Distribution agreements are often confidentially negotiated, on a bilateral basis, between the supplier and the provider of TV channels. If operators active in the retail supply of TV channels can observe the catalogue of TV channels offered by their competitors, information on the prices and contractual terms at which these TV channels have been acquired are hardly accessible. There is also no evidence to suggest that the Transaction will increase the existing degree of transparency. Third, the Commission further notes that competition in the retail side of the market compels TV providers to acquire a wide variety of channels, in order to offer a good variety of packages and content. Therefore, the suppliers of TV channels hold a certain degree of power with respect to the bilateral negotiations, which makes it more difficult for acquirers of TV channels to reaching terms of coordination.

5.4.7. *Horizontal non-coordinated effects in the wholesale market for termination and hosting of calls to non-geographic numbers in Greece*

5.4.7.1. The Notifying Party's view

- (221) The Notifying Party submits that the proposed Transaction would not give rise to any competitive concerns in relation to the wholesale market for termination and hosting of calls to non-geographic numbers in Greece for the following reasons.
- (222) First, the Notifying Party submits that the Parties' combined market share remains below that of OTE. Nova has very few activities on this market, with a market share limited to [5-10%] in value.
- (223) Second, according to the Notifying party, customers may easily switch suppliers as contracts are concluded for a maximum period of two years. They also have very significant countervailing buyer power.
- (224) Third, the Notifying Party submits that both premium and non-premium non-geographic numbers are declining because of the increasing use of internet. People resort to websites and corporate customers are also increasingly relying on their own websites and applications for helpdesk services, instead of non-geographic numbers. Only public sector companies still resort to non-geographic numbers.

5.4.7.2. The Commission's assessment

- (225) The Commission considers that the Transaction does not raise competition concerns for a number of reasons. First, Nova and Wind's combined market share is [30-40%] in value and [30-40%] in volume.
- (226) Second, the respective increments by Nova are small, namely [5-10%] and [10-20%] in value and volume respectively.
- (227) Third, there are sufficient alternatives in the market. The Parties' combined market share is still lower than that of OTE ([40-50%] in value, [40-50%] in volume), which is still and by far the first player on the market. Nova has very few activities on this market, with a market share limited to [5-10%] in value.
- (228) Fourth, customers may easily switch suppliers and have very significant countervailing buyer power.¹⁴⁵ Wind's revenues are [...]. Contracts concluded with customers are for a short duration, one to two years maximum. Commercial negotiations or tender processes are regularly triggered by customers at the end of their contract to obtain better pricing conditions.¹⁴⁶ Both premium and non-premium non-geographic numbers are declining because of the increasing use of internet, which progressively replaces non-geographic numbers.¹⁴⁷
- (229) Finally, the Commission notes that it has not received any complaints from the respondents to the market investigation regarding the wholesale market for termination and hosting of calls to non-geographic numbers in Greece.

¹⁴⁵ Replies to Questionnaire 1 to competitors, questions 69 and 70.

¹⁴⁶ Form CO, paragraph 549.

¹⁴⁷ Form CO, paragraph 552.

(230) Therefore, for the reasons set out above, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market as a result of horizontal effects in the wholesale market for termination and hosting of calls to non-geographic numbers in Greece.¹⁴⁸

5.5. Assessment of vertical effects

5.5.1. Introduction

(231) In this Section, the Commission will assess whether the proposed Transaction would give rise to foreclosure in any of the markets that are vertically affected. 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 merger, thereby reducing these companies' ability and/or incentive to compete.¹⁴⁹

(232) 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).

(233) Customer foreclosure may occur when a supplier integrates with an important customer in the downstream market. Because of this downstream presence, the merged entity may foreclose access to a sufficient customer base to its actual or potential rivals in the upstream market (the input market) and reduce their ability or incentive to compete.¹⁵⁰

(234) In assessing the likelihood of an anticompetitive customer foreclosure scenario, the Commission examines the three following cumulative elements: first, whether the merged entity would have the ability to foreclose access to downstream markets by reducing its purchases from its upstream rivals; second, whether it would have the incentive to reduce its purchases upstream; and third, whether a foreclosure strategy would have a significant detrimental effect on consumers in the downstream market intertwined.¹⁵¹

5.5.2. Vertical effects in the wholesale market for the supply of TV channels

(235) Nova is active upstream in the wholesale market for the supply of TV channels (with a market share of [30-40%] in value), while both Wind and Nova are active downstream in the Greek market for the retail provision of audio-visual services

¹⁴⁸ As to coordinated effects, the Commission observes that the current market situation is characterised by a certain market share asymmetry, which the Transaction will not modify, and will make it difficult to align the operators' interest and reach an agreement on a common strategy. In fact, Nova and Wind's combined market share ([30-40%] in value, [30-40%] in volume) remains significantly below that of OTE ([40-50%] in value, [40-50%] in volume), which is still by far the first player on the market. Vodafone has only [0-5%] of the market. In addition, the Commission notes that the demand for such services is decreasing, as customers increasingly use websites and chatbots. Also, the market is characterised by a certain degree of buyer power and barriers to entry are rather low, allowing the entry of new players, such as call centres providers.

¹⁴⁹ Non-Horizontal Merger Guidelines, paragraph 29.

¹⁵⁰ Non-Horizontal Merger Guidelines, paragraph 58.

¹⁵¹ Non-Horizontal Merger Guidelines, paragraph 59.

(with combined market share of [30-40%] in volume and [30-40%] in value in 2020).

- (236) In particular, Nova produces the Novasports channels, available on its own pay-TV offer and supplied wholesale to third parties. Nova also produces Novacinema channels, which it reserves for its own pay-TV offer.
- (237) If the market is segmented in basic pay-TV channels and premium pay-TV channels, Nova is not active in basic pay-TV channels. If premium pay-TV channels are segmented in premium sports pay-TV channels and premium film pay-TV channels, Nova is not active in premium film pay-TV channels, while it has a market share of [70-80%] in premium sports pay-TV channels.

5.5.2.1. Input foreclosure

5.5.2.2. The Notifying Party's views

- (238) In terms of possible input foreclosure of the premium sports pay-TV channels, the Notifying Party emphasises that Nova does not have the ability to engage in an input foreclosure strategy because its market share in the market for the wholesale supply of TV channels is limited ([30-40%]) and because it lacks market power. Indeed, none of its channels are “must have”. Even when looking at narrow segments such as the supply of premium sports pay-TV channels, Nova would not be able to effectively soften competition on the retail market as Nova's main competitor OTE would not be affected by any foreclosure strategy given it has its own captive sports channels. Furthermore, independent of any agreement regarding the Novasports channels, Vodafone (which is an established operator both in Greece and internationally) will in any case remain able to switch to in-house supply of premium sport content by bidding for sport rights itself.
- (239) Nova does not have the incentive to engage in an input foreclosure strategy either. The Notifying Party submits that Vodafone's announcement not to carry the Novasports channels, after the end of the contract with Nova, only triggered a very limited churn. Therefore, according to the Notifying Party, Nova has barely anything to gain from an input foreclosure strategy. Any downstream gains resulting from this churn would thus be dwarfed by the upstream losses associated with the carriage fees and advertising revenues that Nova earns by supplying its Novasports channels to third parties, making any input foreclosure strategy unprofitable. Furthermore, Nova is already vertically integrated pre-Transaction and, given Wind's minor presence in retail pay-TV, the Transaction does not in any case materially change Nova's incentives to offer its Novasports channels to third parties on reasonable and fair terms.
- (240) Finally, the Notifying Party submits, such a strategy would not in any event have any anti-competitive effect. Indeed, it would not significantly affect the competitive pressure the merged entity would face, as evidenced by the minimal churn the Notifying Party estimates has affected Vodafone since the expiration of the Novasports agreement. The merged entity will continue to face strong competitive pressure from OTE which has a very strong offering including sports channels, is pricing aggressively and is the leader in the pay-TV retail market with more than 500 000 subscribers and a market share close to [50-60%], as well as from ERT and Eurosport.

5.5.2.3. The Commission's assessment

(241) In line with the Non-Horizontal Guidelines, in assessing the likelihood of an anticompetitive input foreclosure scenario, the Commission examines, first, whether the merged entity would have, post-merger, the ability to substantially foreclose access to inputs, second, whether it would have the incentive to do so, and third, whether a foreclosure strategy would have a significant detrimental effect on competition downstream.¹⁵²

(A) Ability to foreclose

(242) The Commission preliminarily notes that, in carrying out its assessment, the Commission must take into account only the changes brought about by the Transaction. In this respect, the Commission notes that Nova already controlled the Novasports channels and could therefore, in theory, already have withheld them to downstream providers of retail TV services pre-Transaction. The change, as a result of the Transaction, is the addition of Wind's downstream customer base. The aim of such a foreclosure strategy would be to increase demand for the merged entity's own downstream retail pay-TV services simultaneously reducing demand for competitor's retail services thereby increasing the merged entity's downstream profits.

(243) Even considering that Nova's ability to engage into such conduct would ensue from the Transaction, the Commission considers that the merged entity will not have the ability to engage in input foreclosure by restricting access to the merged entity's premium sports pay-TV channels (the Novasports channels) for a number of reasons explained in the following paragraphs.

(244) First, the Commission considers that Nova is subject to the pressure of sports rights holders, which favour maximal exposure of their content, given the importance of sponsorship and advertisement income in addition to the income accrued through the licensing of the content. Therefore, some rights holders push broadcasters to distribute their content as widely as possible and Nova will not be able to foreclose the Novasports channels without harming its relationship with right holders, in view of future broadcasting rights acquisitions.

(245) Second, in order to determine whether the merged entity has the ability to foreclose the Novasports channels, the Commission shall consider whether such channels are an important input.¹⁵³

(246) The evidence on the Commission's file supports the conclusion that premium sports channels are not a decisive factor to compete on the downstream market for the provision of retail audio-visual services.

(247) Studies and market surveys provided by the Notifying Party, in fact, indicate that [...].¹⁵⁴

¹⁵² See Non-Horizontal Guidelines, paragraph 32. These three conditions are cumulative, so that the absence of only one of them is sufficient to exclude the risk of an anticompetitive input foreclosure. See General Court judgment of 23 May 2019, in case T-370/17, *KPN v Commission*, paragraph 119.

¹⁵³ Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings, OJ C 265/6, paragraph 34.

¹⁵⁴ Annex 1 A to Reply to RFI 4 [...].

- (248) Another study,¹⁵⁵ dated April 2021 (thus preceding the Transaction), indicates that [...].¹⁵⁶ As to the relevance of pay-TV sports channels, in attracting viewers to pay-TV, the study notes that [...].¹⁵⁷ Among the reasons to subscribe pay-TV services, [...].¹⁵⁸ In terms of reasons for accepting the renewal of a pay-TV contract, [...].
- (249) While the assessment of the competitive relevance of premium sports channels is done from the perspective of their acquirers (TV services retailers), indication of a relatively low relevance of sport content as an input for pay-TV and, in turn, of pay-TV as a driver for subscribing multiple-play services comes also from the market investigation. In fact, a competitor of the Parties, indicates that “*the most popular multiple play package in Greece i[s] still Fixed Internet access – Fixed telephony. The reasons are: (i) economy, and (ii) non-extensive use of TV services (excluding the sports public).*”¹⁵⁹
- (250) The figures submitted by the Notifying Party confirm that viewers are attracted to pay-TV by movies and entertainment, more than by sports. In fact, a significant proportion of Nova’s customers ([...], equal [...] customers) have subscribed to Nova’s pay-TV as a standalone service.¹⁶⁰ They did so at a time when the Novasports channels were available on both Vodafone and Wind platforms and OTE had a significant offer of sports channels. The Commission thus considers that their choice of Nova has been determined by the possibility to watch the Novacinema channels that Nova has never licensed to any third party.
- (251) Third, Even assuming that sports are an important input to differentiate a provider’s commercial offer in pay-TV and in multiple play (quod non), the Commission considers that there is a broad offering of broadcasting rights, which are contestable and up for tender or negotiations. Therefore, as a counterstrategy, TV retailers that are unable to buy the rights to the Novasports channels could themselves bid for the acquisition of broadcasting rights for sport content and produce their own channels.
- (252) In this respect, the Commission considers that broadcasting rights of sport events are widely contestable and come up for tender regularly. The Greek Super League, for example, does not sell its broadcasting rights through a collective tender but, since 2018, teams are free to award the rights to their matches individually through bilateral negotiations.¹⁶¹ The Commission considers that such market structure increases the amount of broadcasting rights available and the opportunity for bidders to secure broadcasting rights for at least some of the teams. In addition, the current contracts signed by the football teams of the Greek Super League with Nova and OTE expire either in 2022 or in 2023, opening further opportunity for any operator to secure such rights.¹⁶² Other sports broadcasting rights, domestic and international, will be up for tender, beginning in 2022 and 2023 (Greek basketball league, UEFA Champions League and UEFA Europa League, Basketball Euroleague, Wimbledon

¹⁵⁵ Annex 2 to Reply to RFI 4, [...].

¹⁵⁶ [...].

¹⁵⁷ [...].

¹⁵⁸ [...].

¹⁵⁹ Q1 to Competitors, replies to question 65.1.

¹⁶⁰ Reply to RFI 4, paragraph 12.1.

¹⁶¹ Form CO, paragraph 469.

¹⁶² Reply to RFI 4, Table 2.

and possibly Formula 1). For such reasons, the Commission considers that Nova's position is contestable in the upstream market for the acquisition of broadcasting rights to sports events.

- (253) Fourth, offering premium sports channels is not the only way for a retail TV provider to differentiate itself. Particularly in a country, such as Greece, where multiple-play services are increasingly popular, TV retail providers that are active in other markets are able to differentiate themselves through discount and promotions involving other services. Vodafone, in particular, seems to have adopted such a strategy. In fact, pending the negotiations with Nova over the Novasports contract renewal, it has invested resources in the acquisition of HBO broadcasting rights¹⁶³
- (254) Vodafone would also have the possibility to differentiate its pay-TV offer, by carrying other sports channels, including Eurosport and FTA channels that offer sports events. Eurosport's portfolio of sports events, in fact, includes the Olympic Games, three tennis Grand Slam tournaments (the Australian Open, Roland Garros, and the US Open), athletics, major cycling events, such as the Tour de France, the Giro d'Italia, and La Vuelta, winter sports (alpine skiing, ski jumping, biathlon, curling, ice hockey, etc.) and the golf PGA Tour. Eurosport estimated market share in the wholesale market for premium sports pay-TV channels is [10-20%] and the channel provider ranks as a premium sports channel, not only for its portfolio of broadcasting rights, but also in terms of viewership and pricing strategy.¹⁶⁴
- (255) Fifth, even if in Greece there is no list of major sports event that must be broadcast free-to-air, the Notifying Party points to a current business practice, whereby the pay-TV operator, which owns the TV rights of the Greek Football Final Cup, usually grants the right to an FTA channel for a delayed broadcast of the match. Furthermore, the finals of the UEFA and Europa Champions League (football) are also broadcast via FTA channels (usually by ERT, the public broadcaster). These practices do not result from a specific mandatory provision of the Greek legislation since no list of major events has been issued yet. The Commission considers that such practice *de facto* constraints Nova's ability to engage into input foreclosure.
- (256) Sixth, there is a significant availability of alternative channels, which, in Greece, broadcast attractive sports events. Premium sports content is also available to Vodafone subscribers on an FTA basis. In particular: (i) FTA broadcaster ERT holds the rights to the UEFA EURO 2024 and 2028, which it acquired very recently, as well as to the Greek Basketball League (first division of men's basketball championship), (ii) ANT-1 broadcast the EURO 2021 and currently holds the

¹⁶³ See, for example, <https://www.insider.gr/epiheiriseis/172771/nees-mahes-sti-syndromiti-ki-pyrodotei-athlitikoperiehomeno> "Vodafone TV continues its radio and television advertising campaign in November. Its communication messages do not focus on the sports events of the platform but on series and movies, since the clear goal of the company is to let the public know that Vodafone TV is the "home of HBO"". See also an interview given in March 2020 by Vodafone Greece's pay-TV manager who highlighted the variety of Vodafone's on-demand catalogue and the exclusive cooperation with HBO but makes no reference to the premium sports content offered through the Novasports channels (<https://www.techpress.gr/index.php/archives/147227>). See also <https://www.vodafone.gr/tv/hbo/>.

¹⁶⁴ Reply to RFI 4, paragraph 9. For example, during the broadcasting of the Australian Open Tennis Grand Slam on Nova's service via the Eurosport channels, during Stefanos Tsitsipas' matches, Eurosport always ranked in Nova's top 5 channels in terms of reach, with viewership shares ranging between 18% and 35%. In terms of pricing, the Notifying Party indicates that [...] fees paid by Nova to Discovery for these channels, [...], is allocated to the Eurosport channels.

exclusive rights for the 2022 FIFA World Cup, (iii) MEGA holds the exclusive rights to the UEFA Champions League first pick match on Wednesdays, and (iv) ALPHA TV is the rights holder for Greece's National Team matches in the context of the UEFA Nations League and the UEFA European qualifiers (2022-2028).

- (257) Finally, concerning the merger specificity of Nova's ability to foreclose its sports channels, Vodafone has pointed to difficulties in renewing the current license for the Nova channels, as evidence of the fact that input foreclosure is not only possible, but is already being implemented. Following such difficulties, Vodafone has announced that, since October 2021, the Novasports channels would no longer be available on Vodafone's pay-TV offers. However, on 30 July 2021 and on 9 December 2021, Nova has submitted to Vodafone two offers to renew the expired contract. [...].
- (258) Therefore, for the reasons set out above, the Commission concludes that the merged entity would not have the ability to engage in a foreclosure strategy in relation to the Novasports channels.

(B) Incentive to foreclose

- (259) The Commission considers that the merged entity will not have the incentive to engage in input foreclosure by restricting access to the merged entity's premium pay-TV sports channel.
- (260) First, the Commission observes that Nova, already before the Transaction, was active on the retail market for audio-visual services and was licensing the Novasports channels to Wind. The Transaction, therefore, would not significantly alter the customer base for the Novasports channels (because Wind's customers were already viewers of the Novasports channels before the Transaction), providing an incentive to Nova to forego the revenue Vodafone would pay for such channels. Nova, in fact, would lose the entire customer base of Vodafone, which has a market share of [10-20%] in volume in the pay-TV market and [40-50%] in the OTT market. In addition, in case of foreclosure, the merged entity would not have the certainty to attract all customers leaving Vodafone, as the merged entity's market share in the retail pay-TV market would be approx. [30-40%] in volume, while such retail market is led by OTE (approx. [50-60%] in volume) with a strong offer of self-produced pay-TV channels. The merged entity therefore would be facing high, upfront investments for the acquisition of broadcasting rights and the risk of not generating revenues at retail level sufficient to cover them. The Commission considers, in fact, that Wind's brings a limited increment to Nova's customer base ([5-10%] in volume and only [0-5%] in value), while Vodafone has a market share of [10-20%] in value and [10-20%] in volume. In this respect, entering into a wholesale agreement with Vodafone would be a less risky option.
- (261) As to the difficulties in renewing the contract for the Novasports channels, possibly linked to the Transaction, the Notifying Party has explained that in 2017, Nova entered into wholesale agreements with Vodafone and Wind allowing the two operators to include the Novasports channels in their respective pay-TV offers. [...]. The agreement with Vodafone expired in September 2021. Following its acquisition of Nova (and before starting negotiations for the acquisition of Wind), [...]. In 2020,

in fact, Vodafone accounted for [...] of Novasports subscribers but was [...] of Novasports costs ([...]).¹⁶⁵

- (262) The Commission observes, in relation to the above, that the acquisition of Nova by United was authorised in August 2020, one year before the Transaction was announced. Also, the Notifying Party provided evidence that an email correspondence to discuss the contract renewal started in July 2021 (i.e. 2 months before the term of the agreement, 15 September 2021) and so pre-dates the date on which the SPA for the acquisition of Wind was entered into (14 August 2021).¹⁶⁶ Even if Nova had refused to renew the contract for the Novasports channels, therefore, such refusal would be precedent (and unrelated) to the Transaction.
- (263) Vodafone submits that the Transaction, by adding Wind's mobile business to Nova, increases the latter's customer base and improves the financial conditions of the company. Nova, therefore, would have an incentive not to license its channels to third parties at wholesale level, in order to monetise them more profitably through retail distribution. Vodafone adds that such foreclosure is already taking place, since [...].
- (264) As mentioned above, the Transaction will only marginally alter the merged entity's customer base, exposing at the same time the merged entity to the risk that the revenues Vodafone would have paid under the license contract, once foregone, will not be recouped on the retail market, where OTE has a very strong position.
- (265) Furthermore, Nova, on 9 December 2021, submitted an updated offer to Vodafone [...].¹⁶⁷ [...]. Further evidence that Nova has no incentive nor intention to foreclosure Vodafone's access to the Novasports channels is the fact that, pending the contract renewal, Nova has extended the duration of the contract from September to October 2021, in order to allow the negotiations to proceed.¹⁶⁸
- (266) On the basis of the above considerations, the Commission concludes that the merged entity would lack the incentive to engage in a foreclosure strategy in relation to the Novasports channels.

(C) Effect on competition

- (267) The Commission considers that due to the lack of ability and incentive, it is not necessary to conclude on the question whether any foreclosure strategy would have a negative impact on effective competition.
- (268) In any event, the Commission considers that, even if Nova decided not to license its sport channels, Vodafone would have the possibility to differentiate its pay-TV offer, by carrying other sports channels, including Eurosport and FTA channels that offer sports events.
- (269) Eurosport's portfolio of sports events, in fact, include the Olympic Games, three tennis Grand Slam tournaments (the Australian Open, Roland Garros, and the US

¹⁶⁵ Form CO, paragraph 503.

¹⁶⁶ Reply to RFI 4, paragraph 5.2.

¹⁶⁷ Reply to RFI 4, paragraph 11.3.

¹⁶⁸ Reply to RFI 3, paragraph 1.13.

Open), athletics, major cycling events, such as the Tour de France, the Giro d'Italia, and La Vuelta, winter sports (alpine skiing, ski jumping, biathlon, curling, ice hockey, etc.) and the golf PGA Tour. Eurosport estimated market share in the wholesale market for premium sports pay-TV channels is [10-20%] and the channel provider ranks as a premium sports channel, not only for its portfolio of broadcasting rights, but also in terms of viewership and pricing strategy.¹⁶⁹

- (270) In addition, some FTA channels broadcast premium sports content and are (or might be, in case of agreement) also available as part of certain pay-TV platforms.¹⁷⁰ The Notifying Party estimates that such channels have a market share of [10-20%] in the wholesale supply of premium sports pay-TV channels. Many FTA channels show sports events¹⁷¹ and/or offer highlights of sports event produced by Nova. Alpha TV, in particular, is the current right holder of the Greek national football team matches in the UEFA Nations League and the European qualifiers for the period 2022-2028.¹⁷² Vodafone could negotiate a carriage fee with such channels and differentiate its channel offer, including sports content.
- (271) In case Vodafone were not successful in securing access to channels offering premium sports events and decided not to bid directly for sports content, the Commission considers that a possible foreclosure of the Novasports channels would not have a significant impact on the Greek customers. In fact, Greece has a low penetration of pay-TV. In total, approx. 75% of the Greek households still rely on FTA TV as their primary TV viewing platform, and the willingness of Greek TV viewers to pay for TV content remains low.¹⁷³ At the same time, FTA channels have a wide offer of sports events. In particular:
- ANT-1 broadcasted EURO 2021 and holds exclusive rights for FIFA World Cup in 2022.
 - ERT has the broadcasting rights for UEFA Euro 2024 and 2028; the Greek Basketball League; Formula 1. In addition, ERT has been the previous right holder, in past years, of other popular sports events and has bid for them in past years;
 - Alpha TV it is the rights holder for Greece's National Team matches in the context of the UEFA Nations League and the UEFA European qualifiers (2022-2028).

¹⁶⁹ Reply to RFI 4, paragraph 9.

¹⁷⁰ Form CO, paragraph 497 and footnotes 8 and 10 to Reply to RFI 4. The Greek FTA channels which broadcast premium content are ERT (3 channels), Ant1, Alpha, Mega, Skai, Star, and Open Beyond. All these FTA channels broadcast both premium and non-premium content. Nova estimates that [...] of their wholesale revenue (i.e. the carriage fees that the FTA channels receive from the retailers that carry them) relates to premium content (sports, local films/series/productions and other content). The Greek FTA channels which broadcast premium sports content are ERT, Ant1, Alpha and Mega. Nova estimates that [...] of their wholesale revenue that relates to premium content relates to sports content.

¹⁷¹ Reply to RFI 3, paragraph 6.1.

¹⁷² Reply to RFI 4, Table 2.

¹⁷³ Form CO, paragraph 598.

- MEGA channel: it is the exclusive rights holder of the UEFA Champions League first pick match on Wednesdays.¹⁷⁴

(272) At the same time, both Nova (with the EON service, including either two or all Novasports channels, at the subscriber's choice) and OTE (offering a sports pack) have launched their OTT service, that can be subscribed as a standalone service by customer of a third-party operator.

(273) On the basis of the above considerations, the Commission concludes that, even if Nova had the ability and the incentive to engage in a foreclosure strategy (*quod non*), such foreclosure would not have a significant impact on competition. First, Vodafone would be able to differentiate its pay-TV offer by either including other channels (*i.e.* Eurosport or FTA channels offering premium sports events) or bidding directly for sport events. Second, should Vodafone not have sports contents, its customers could have access to sports through FTA channels and/or the OTT offers of other providers that they can purchase while keeping their other Vodafone services.

(274) On the basis of the above considerations, the Commission concludes that any foreclosure strategy would not have a negative impact on effective competition.

(D) Conclusion

(275) In light of the above, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to possible input foreclosure of premium sports pay-TV channels on the upstream market for the supply of TV channels

5.5.2.4. Customer foreclosure

5.5.2.5. The Notifying Party's view

(276) In relation to the risk of customer foreclosure, the Notifying Party submits that Nova and Wind currently acquire channels from a variety of channel suppliers including *inter alia* Disney/Fox, Discovery, and NBCUniversal. Following the Transaction, the merged entity will continue acquiring channels from third parties so as to offer a retail pay-TV proposition that is as attractive as possible. The Transaction will not change the Parties' incentives in this regard given that Nova is already vertically integrated and Wind is not a channel supplier.

5.5.2.6. The Commission's assessment

(A) Ability

(277) In relation to the merged entity's ability to engage into customer foreclosure after the Transaction, the Commission considers that the merged entity will not have such ability, as the Transaction does not combine a channel supplier with an important customer.

¹⁷⁴ Reply to RFI 3, paragraph 6.7 and Reply to RFI 4, Table 2.

- (278) Nova is the only party to the Transaction which is a channel supplier (it provides its Novasports channels). Wind cannot be considered an important customer. First, [...] of Wind channels purchases consists of its acquisition of the Novasports channels (which the Transaction will internalise, reducing Wind's market share in the acquisition of TV channels from [20-30%] to [5-10%] in value). Already before the Transaction, Wind was not a significant customer and source of revenues for channel suppliers.
- (279) Second, Wind has a limited market share on the retail market for audio-visual services ([0-5%] in value and [5-10%] in volume in 2020). These figures indicate Wind's limited ability to attract viewers and supports the conclusion that Wind is not an important customer.
- (280) Third, after the Transaction, a significant part of the downstream market will remain contestable for TV channels suppliers, due to the presence of Vodafone ([20-30%] in value in the acquisition of TV channels, approx. [10-20%] in volume in the retail pay-TV market) and OTE ([30-40%] in value in the acquisition of TV channels, approx. [50-60%] in volume in the retail pay-TV market).
- (281) The Commission therefore considers that the merged entity will not have the ability to engage into a customer foreclosure strategy.

(B) Incentive

- (282) As to possible customer foreclosure, the Commission considers that the addition of Wind's limited retail operations is unlikely to provide sufficient incentive for the merged entity to stop buying channels from other providers.
- (283) In particular, in order to compete in the retail market for audio-visual services, it is necessary for providers to offer a diverse channel bouquet. Nova and Wind currently acquire channels from a variety of channel suppliers including inter alia Disney/Fox, Discovery, and NBC Universal. Focusing all channel purchases on Nova's channels, following the Transaction, would result in a reduction in channel diversity and attractiveness.
- (284) The Commission therefore considers that the merged entity will likely continue acquiring channels from third parties so as to offer a retail pay-TV proposition as broad and attractive as possible. It will thus lack the incentive to engage into a customer foreclosure strategy.

(C) Effect on competition

- (285) The Commission considers that due to the lack of ability and incentive, it is not needed to conclude on the question whether any customer foreclosure strategy would have a negative impact on effective competition.

(D) Conclusion

- (286) In light of the above, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to possible customer foreclosure of the merged entity on the upstream wholesale market for the provision of TV channels.

5.5.3. Wholesale call termination on fixed network

(287) The vertical relationship between the Parties consists, upstream, of Nova's and Wind's wholesale provision of call termination services on the respective fixed networks (where each of them has a market share of 100%) and, downstream, of (i) Wind's activities on the downstream market for retail mobile telecommunications services, where it has a market share of approx. [20-30%] in volume and approx. [10-20%] in value; (ii) Nova's and Wind's activities in the retail market for fixed telephony, where the Parties' combined market share is approx. [20-30%] in volume and approx. [10-20%] in value. This vertical relationship is affected within the meaning of the Merger Regulation, as the Parties exceed the 30% threshold on the upstream market for the wholesale provision of call termination services on fixed network.

5.5.3.1. The Notifying Party's view

(288) The Notifying Party submits that the Transaction does not raise any concerns in these markets because they are heavily regulated and termination rates are capped by EU regulation. The markets for wholesale call termination on fixed networks are regulated ex-ante by the EETT. This national regulation imposes on each network operator an obligation to provide termination services to competing operators. It also ensures that access to call termination is granted on reasonable conditions and that rates remain reasonable and non-discriminatory.

(289) On 1 July 2021, the Delegated Regulation setting single maximum EU-wide voice termination rates became applicable.¹⁷⁵ The Delegated Regulation sets maximum termination rates, directly applicable to EU operators. Therefore, the rates set out in the Delegated Regulation supersede the maximum termination rates as previously defined by the National Regulatory Authorities. Accordingly, the Notifying Party explains, EU operators are to apply a rate no higher than the relevant maximum rate for the respective Member State as envisaged in the Delegated Regulation. The Delegated Regulation includes a transitional period during 2021 to allow for a gradual adjustment. By 2022, all fixed operators will be subject to a maximum fixed termination rate of EUR 0.07 per minute.

(290) As a result of such regulation, the Notifying Party submits, the Transaction cannot raise any competition concerns in the markets for call termination services because the provision of termination services is mandatory and termination rates are capped by EU regulation at a very low level. The merged entity would therefore be prevented from engaging into any foreclosure strategy.

5.5.3.2. The Commission's assessment

(291) With respect to possible input foreclosure, the Commission considers that the merged entity will lack both the ability and the incentive to engage in such conduct.

¹⁷⁵ Commission Delegated Regulation (EU) 2021/654 of 18 December 2020 supplementing Directive (EU) 2018/1972 of the European Parliament and of the Council by setting a single maximum Union-wide mobile voice termination rate and a single maximum Union-wide fixed voice termination rate, OJEU L 137, 22.4.2021, p. 1-9.

- (292) In fact, as of 1 July 2021, the termination rates set out by the Delegated Regulation are applicable. The merged entity therefore will have to comply with such rates and will not have the ability to either raise the prices for the wholesale call termination services or discriminate between its customers. In addition, the Commission considers that the merged entity's incentives to foreclose will not change as the competitive conditions prevailing before the Transaction are similar to the competitive conditions that would result from the proposed Transaction on the upstream market (the Parties will continue to have a 100% market share on each individual fixed network).
- (293) With respect to the risk of customer foreclosure, the Commission considers that, after the Transaction, a sufficient portion of demand will remain contestable. In fact, only Wind is active in the retail market for mobile telecommunications services, with a market share below 30%, both in value and in volume and is thus not an important customer. In the retail market for fixed telephony services, the Parties' combined market share remains below 30% and therefore a large portion of the demand remains contestable, with the market being led by OTE and with Vodafone which has a market share around [20-30%] in volume.
- (294) The Commission therefore concludes that the Transaction does not lead to serious doubts as to its compatibility with the internal market as a result of input foreclosure on the wholesale market for call termination on fixed network.

5.5.4. Wholesale call termination on mobile network

- (295) The vertical relationship between the Parties consists, upstream, of Wind's wholesale provision of call termination services on its mobile network and, downstream, of Nova's activities in the retail market for the provision of fixed telephony, with a market share of approx. [10-20%] in volume and approx. [10-20%] in value (the Parties' combined market share is approx. [20-30%] in volume and approx. [10-20%] in value). This vertical relationship is affected within the meaning of the Merger Regulation, as the Parties exceed the 30% threshold on the upstream market for the wholesale provision of call termination services on mobile network where Wind has a 100% market share.

5.5.4.1. The Notifying Party's view

- (296) The Notifying Party submits that, like the market for wholesale call termination on fixed networks, the markets for wholesale call termination on mobile networks are regulated ex-ante by the EETT. This national regulation imposes on each network operator an obligation to provide termination services to competing operators. It also ensures that access to call termination is granted on reasonable conditions and that rates remain reasonable and non-discriminatory.
- (297) On 1 July 2021, the Delegated Regulation setting single maximum EU-wide voice termination rates became applicable, setting maximum termination rates, directly applicable to EU operators. Therefore, the rates set out in the Delegated Regulation supersede the maximum termination rates previously defined by the National Regulatory Authorities. Accordingly, EU operators are to apply a rate no higher than the relevant maximum rate for the respective Member State as envisaged in the Delegated Regulation. For mobile calls, the single maximum termination rate

provided for by the Delegated Regulation is EUR 0.2 per minute and will be achieved gradually by 2024.

- (298) As a result of such EU and Greek regulations, the Notifying Party submits, the Transaction cannot raise any competition concerns in the markets for call termination services because the provision of termination services is mandatory and termination rates are capped by EU regulation at a very low level. The merged entity would therefore be prevented from engaging into any foreclosure strategy.

5.5.4.2. The Commission's assessment

- (299) With respect to possible input foreclosure, the Commission considers that the merged entity will lack both the ability and the incentive to engage in such conduct.
- (300) In fact, as of 1 July 2021, the termination rates set out by the Delegated Regulation are applicable. The merged entity therefore will have to comply with such rates and will not have the ability to either raise the prices for the wholesale call termination services or discriminate between its customers. In addition, the Commission considers that the merged entity's incentives to foreclose will not change as the competitive conditions prevailing before the Transaction are similar to the competitive conditions that would result from the proposed Transaction on the upstream market (Wind will continue to have a 100% market share on its mobile network).
- (301) With respect to the risk of customer foreclosure on the Commission considers that, after the Transaction, a sufficient portion of demand will remain contestable. In fact, in the retail market for fixed telephony services, the Parties' combined market share remains below 30%, the market is led by OTE and Vodafone has a market share around [20-30%] in volume.
- (302) The Commission therefore concludes that the Transaction does not give rise to serious doubts as to its compatibility with the internal market as a result of input foreclosure on the wholesale market for call termination on mobile network.

6. CONCLUSION

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

For the Commission

(Signed)
Margrethe VESTAGER
Executive Vice-President