EUROPEAN COMMISSION
DG Competition

Case M.10855 - CAPGEMINI / ORANGE / JV

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 12/06/2023

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EUROPEAN COMMISSION

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PUBLIC VERSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

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Subject: **Case M.10855 – CAPGEMINI / ORANGE / JV**
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004[1] and Article 57 of the Agreement on the European Economic Area[2]

Dear Sir or Madam,

(1) On 2 May 2023, the European Commission received notification of a proposed concentration (the "Transaction") pursuant to Article 4 of Council Regulation (EC) No 139/2004 ("Merger Regulation") by which Capgemini S.E. ("Capgemini", France) and Orange S.A. ("Orange", France) (together, the "Notifying 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').

propose to establish and acquire joint control, within the meaning of Articles 3(1)(b) and 3(4) of the Merger Regulation, over a newly-created full-function joint-venture ("JV" or "Bleu", together with the Notifying Parties, the "Parties").

1. THE PARTIES

(2) **Capgemini** is active in the areas of strategy and transformation, applications and technology, engineering and operations in 50 countries, and provides IT services to develop, extend, secure and manage the IT infrastructure systems and digital environments of large companies and organizations.

(3) **Orange** is an electronic communications operator that provides a wide range of services mainly in the area of fixed-line, internet and mobile telephony as well as IT services in a number of countries worldwide.

(4) **Bleu** will provide sovereign cloud services compliant with the criteria of the "*Cloud de Confiance*" label in France, *i.e.*, sovereign cloud services meeting specific security requirements set by the French Cybersecurity Agency (*Agence nationale de la sécurité des systèms d'information*, "ANSSI") to a specific set of customers.

2. THE OPERATION

(5) The Transaction provides for the creation by Capgemini and Orange of a new full-function joint venture incorporated and headquartered in France, to offer sovereign cloud services compliant with the "*Cloud de Confiance*" label in France. Capgemini and Orange will each own 50% of the capital and voting rights of the JV.

(6) Bleu will provide its sovereign cloud services only to a specific set of customers, namely French public and private entities that are designated as operators of vital importance or essential services operators (the "Eligible Customers"[3]).

(7) For Bleu to provide its services, Capgemini and Orange will enter into an agreement with Microsoft whereby the latter will license to the JV the right to use Microsoft's Azure cloud technology on an exclusive basis. According to a term sheet for such agreement (the "Microsoft Term Sheet"), Microsoft will grant such exclusive license to Bleu only for the provision of sovereign cloud services to the Eligible Customers.

(8) Bleu will also offer Microsoft Azure's software-as-a-service solutions, as well as the productivity solutions of Microsoft 365 as part of its sovereign cloud services on an exclusive basis. This means that no other cloud service provider will be able to offer *[business secrets relating to commercial agreements of the parties]* as part of the sovereign cloud package to any Eligible Customers.

[3] The notion of "Eligible Customers" is a designation to describe the customers covered by the scope of the licence granted by Microsoft to Bleu. Pursuant to Article *[relevant contractual provision]* of the Microsoft Term Sheet, "Eligible Customers" is defined as follows: *[contractual definition of Eligible Customers]*.

(9) Furthermore, according to the Microsoft Term Sheet, Microsoft will provide support to develop the JV. In particular, Microsoft will ***[details on support provided by Microsoft]*** once the JV has received all regulatory clearances and has been set up.

3. THE CONCENTRATION

3.1. Joint control

(10) As a result of the concentration, the Notifying Parties will exercise joint control over Bleu within the meaning of Article 3 of the Merger Regulation. Each of Capgemini and Orange will hold 50% of the capital and the voting rights of Bleu. Strategic decisions will be taken by *[decision-making body for the JV]* in which Orange and Capgemini will have *[details on Capgemini and Orange's voting rights in the JV]*. All strategic decisions such as the approval of Bleu's annual budget, Bleu's annual business plan, and the appointment of Bleu's senior management shall be approved by *[decision-making body for the JV and voting rights of its members]*. Therefore, both Orange and Capgemini will have a veto right over such decisions.

(11) With respect to the contractual relationship with Microsoft, the role of the latter will be limited to: *[details on support provided by Microsoft]*[4]. The Notifying Parties submit that the relationship with Microsoft will have no effect on Bleu's autonomy because the cloud infrastructure hosting Microsoft's technology will be located in France and owned, operated and managed by Bleu.

(12) Microsoft will not be able to exercise any *de jure* or *de facto* decisive influence over Bleu for the purpose of the Merger Regulation.[5] More specifically:

(a) Microsoft will not be a shareholder of Bleu, and will not participate in the Board of Bleu;

(b) Microsoft will not have any influence on the determination of strategic decisions of Bleu such as the business plan, the budget, the appointment or dismissal of senior management or the investments to be made by Bleu;

(c) Microsoft will not be placed in a position where its advisory role and specific expertise would give Bleu strong incentives to follow Microsoft's directions and the operational agreements to be entered into between Bleu and Microsoft will not grant similar prerogatives to Microsoft; and

(d) While the licence granted by Microsoft is indispensable for Bleu to operate, Microsoft's license is granted to Bleu for a long period[6], such that Microsoft

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[4] Microsoft's support to the technological development of Bleu will *[details on the limited support provided by Microsoft for the technological development of the JV]*. Microsoft's support to the development of Bleu will mostly concern *[further details on the support provided by Microsoft for the development of the JV]*.

[5] If Microsoft were to exercise any influence over Bleu, Bleu would not be able to receive the "Cloud de Confiance*"* label from ANSSI, which requires operators to be independent from non-EU entities.

[6] The license will be granted until the *[duration of the licence]* from the date in which the core Azure technology will become available to Eligible Customers. After such period, the license will be *[details on the terms of renewal of the licence]*.

does not have the ability to influence Bleu's business by potentially threatening not to renew the license.

(13) Based on the above, Bleu will be jointly controlled by the Notifying Parties within the meaning of Article 3 of the Merger Regulation.

3.2. Full functionality

(14) Bleu will be a full-function joint venture. First, Bleu will have sufficient resources to operate independently on the market on a lasting basis. Specifically, Bleu will have a management dedicated to its day-to-day operations, it will be run independently of its parents and will set prices in its own discretion. Bleu will employ its own staff, which will be recruited directly.[7] Furthermore, Bleu will have access to sufficient financial resources (through large initial contributions and shareholder loans) as well as tangible and intangible assets.[8] Bleu will have activities that go beyond those of Capgemini and Orange, as Bleu will provide a complete, standalone and independent offer of sovereign cloud services to Eligible Customers. Bleu will not be dependent on its parents for its purchases and sales. In particular, Bleu will have direct access to third party customers on the market, and no exclusivity will be granted to Orange and Capgemini for the distribution of Bleu's sovereign cloud services. Finally, Bleu is intended to operate on a lasting basis.[9]

(15) For the reasons set out above, Bleu will perform all the functions of an autonomous economic entity in the market on a lasting basis within the meaning of Article 3(4) of the Merger Regulation.

4. UNION DIMENSION

(16) The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 000 million (Capgemini: EUR 21 995 million, Orange: EUR 43 471 million). Each of at least two of the Parties have a Union-wide turnover of more than EUR 250 million (Capgemini: *[turnover data]*; Orange: *[turnover data]*). While *[one of the notifying parties]* generates more than two-thirds of its Union-wide turnover in *[country]*, *[the other notifying party]* does not. As such, the Parties do not each achieve more than two-thirds of their aggregate Union-wide turnover within one and the same Member State. The Transaction therefore has a Union dimension pursuant to Article 1(2) of the Merger Regulation.

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7 During the initial phase, this may include employees from Orange or Capgemini, as the case may be, who would then leave Orange and Capgemini to be directly employed by Bleu. According to Bleu's business plan, Bleu expects to have *[number of employees]* employees in 2023 and *[number of employees]* employees in 2032.

8 Bleu will own all of the JV's intangible and tangible assets with the exception of *[assets that will not be owned by the JV]*.

9 The Shareholders' Agreement will be entered into for an initial period of *[duration of the Shareholders' Agreement]* years which shall be automatically extended for additional periods of *[duration of the Shareholders' Agreement upon renewal]* years.

5. RELEVANT MARKETS

5.1. The Parties' activities

(17) The **JV** will be active in France as a sovereign cloud services provider.

(18) Sovereign cloud services are cloud services that comply with specific security and data privacy standards. In particular, they ensure that the data is hosted and processed within the boundaries of a given jurisdiction, and cannot be subject to any extraterritorial jurisdiction (e.g., data hosted in EU sovereign cloud services solutions are not subject to subpoena from non-EU jurisdictions). In France, ANSSI is the authority tasked with formally certifying that a given sovereign cloud service provider guarantees such security standards, by granting the "*Cloud de Confiance*" certification. According to the applicable French rules, the French administration's digital services dealing with sensitive data shall be hosted either on an internal inter-ministerial cloud of the French State or on third-party cloud offers that have received ANSSI's "*Cloud de Confiance*" label. Bleu expects to meet all the relevant requirements to receive the "Cloud de Confiance" label from ANSSI.[10] The Notifying Parties expect Bleu to receive the "Cloud de Confiance" label *[…]*.

(19) The JV will provide Infrastructure-as-a-Service ("IaaS"), Platform-as-a-Service ("PaaS") and Software-as-a-Service ("SaaS") cloud solutions only to customers qualified as Eligible Customers as defined in footnote 3 above.

(20) **Capgemini** is active worldwide in the provision of IT services. In the area of cloud computing, Capgemini provides the following services: (i) consulting, (ii) integration services, (iii) managed services and (iv) resale of cloud services. In consideration of the recent 2021 Gartner classification, Capgemini is active in the following market segments: (i) consulting, (ii) application implementation and managed services, (iii) infrastructure implementation and managed services[11], and (iv) business process services.[12]

(21) While **Orange** is also active in the provision of application/infrastructure implementation and managed services, its core activity is the provision of a wide range of electronic communications services mainly in the area of fixed-line, internet and mobile telephony across more than 20 EU Member States.

(22) Orange is active in the IT services market via its subsidiary Orange Business Services ("OBS") that provides cloud-related business services. Other entities of the Orange Group also provide some services related to the cloud.

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[11] Infrastructure implementation and managed services and application implementation and managed services consist of services to assist customers with the implementation and upgrading of new applications using the cloud, and the management of cloud platforms.

[12] Business process services consist of the delegation of one or more IT-enabled business processes to an external provider that, in turn, owns, administers and manages the processes and agreed-upon outcomes based on predefined performance metrics. Outsourced processes include knowledge-based processes as well as transactional ones, along with the support and administration of front-office, middle-office and back-office activities.

(23) In that context, Orange offers trusted public cloud services (at IaaS level) called Flexible Engine. It is the public cloud solution ran by OBS. It provides companies with an infrastructure for hosting their traditional and cloud native applications. However, contrary to the JV's future sovereign cloud offer, Flexible Engine does not comply with the requirements to qualify as "*Cloud de Confiance*".

(24) Orange has also another subsidiary providing cloud computing services called Cloud Avenue. Cloud Avenue is an IaaS private cloud solution launched in March 2022 with dedicated (semi-private) cloud and proprietary technology options. Contrarily to Flexible Engine, Cloud Avenue is eligible for the "*Cloud de Confiance*" qualification. On *[starting date of the certification procedure]*, Orange officially started the certification procedure for Cloud Avenue (a process that generally takes approximately 18 months).

(25) Orange's cloud strategy therefore consists in *[details on the range of cloud services provided by Orange and its cloud strategy]*.

5.2. Market definitions

5.2.1. IT services and IT software

5.2.1.1. Product market definition

5.2.1.1.1. The Commission's past decisional practice

(26) In previous decisions, the Commission considered a relevant product market for the overall provision of IT services. More recently, the Commission considered segmenting such market on the basis of (i) the functionality of the services; and (ii) the industry verticals in which the customers are active, but ultimately left the product market definition open.[13] The Commission also considered to segment the IT services market, similar to Gartner's reports, between (i) consulting, (ii) implementation, (iii) IT outsourcing, (iv) business process outsourcing, (v) software support, and (vi) hardware support.[14] When assessing the market for cloud computing (*i.e.*, IaaS and PaaS solutions), the Commission referred to a sub-segmentation of IT outsourcing, but ultimately left the market definition open.[15]

(27) As regards SaaS solutions, the Commission's previous decisional practice considered such solutions as part of the separate IT software market. The Commission considered possible segmentations of such market based on (i) the software's functionalities, (ii) the industry sector concerned and (iii) the end uses offered by a particular software.[16] As regards the functionality, the Commission

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[13] See Cases M.7458 - IBM / INF Business of Deutsche Lufthansa (2014), paragraph 15; M.6921 - IBM Italia / Ubis (2013), paragraph 10; and M.6127 - Atos Origin / Siemens IT Solutions & Services (2011), paragraph 14.

[14] See Case M.9460 – Capgemini / Altran (2019), paragraphs 9-10; Case M.8765 - Lenovo / Fujitsu / FCCL (2018), paragraph 23; Case M.7458 - IBM/ INF Business of Deutsche Lufthansa (2014), paragraphs 16-19; and Case M.6921 - IBM Italia / Ubis (2013), paragraphs 10-12.

[15] See Cases M.10416 - Stellantis/FIH/JV (2021), paragraph 17; and M.8994 - Microsoft/Github (2018), paragraph 59.

[16] Case M.10146 – Penta Investments / Asseco Poland / Supernius / Prosoft Kosice (2021), paragraph 14; Case M.7458 – IBM / INF Business of Deutsche Lufthansa (2014), paragraph 35; and Case M.6237 – Computer Sciences Corporation / iSoft Group (2011), paragraph 22

considered possible distinctions between: (i) infrastructure software (further segmented into security software, IT operations management (ITOM) software, application development software and storage management software), (ii) middleware software[17], (iii) application software and office software, and (iv) operating/browser software.[18]

(28) The Commission, in its past decisional practice, has not assessed whether there are separate markets for the provision of sovereign cloud services and non-sovereign cloud services.

5.2.1.1.2. The Notifying Parties' views

(29) The Notifying Parties consider that the relevant product market definition should correspond to the latest Gartner segmentation of the IT services market from 2021. More specifically, within the IT services market, the following distinctions should be made: (i) consulting, (ii) IaaS, (iii) infrastructure implementation and managed services, (iv) application implementation and managed services, (v) business process services, (vi) hardware support, (vii) PaaS and (viii) SaaS. The Notifying Parties consider, in addition, that Gartner correctly proposed a novel taxonomy describing the cloud services market, to be segmented between (i) IaaS, (ii) PaaS and (iii) SaaS. The Notifying Parties do not consider it appropriate to segment the market further.[19]

(30) The Notifying Parties also clarify that they do not consider it appropriate to distinguish, within IaaS, PaaS and SaaS cloud computing services, between public, private and hybrid cloud services. This is because, from the demand-side perspective, private, hybrid and public clouds meet the same needs of customers for access to a data centre to store their data. Moreover, from a supply-side perspective, cloud service providers are increasingly offering both public and private cloud services to their customers, including hybrid solutions.[20] Furthermore, the Notifying Parties also do not consider that sovereign cloud services form a separate product market from non-sovereign cloud services within IaaS, PaaS and SaaS solutions. This is mainly because, from a technical point of view, sovereign and non-sovereign cloud services are essentially the same services: they offer access to a data centre. What differs between the two is the applicable regulation, with the sovereign cloud services being subject to stricter standards in terms of security and data residency. Moreover, from the supply-side perspective, as the services are the same from a technical point of view, it is easy according to the Notifying Parties for a non-sovereign cloud services provider to start offering sovereign cloud services. In fact, many cloud services providers offer both sovereign and non-sovereign cloud services to their customers. The same applies to ANSSI-certified sovereign cloud services in particular, which according to the Notifying Parties do not form a separate market.[21] According to the Notifying

17 Case M.9538 - Broadcom / Symantec Entreprise Security Business (2019), paragraph 15.

18 See Case M.10146 - Penta Investments / Asseco Poland / Supernius / Prosoft Kosice (2021), paragraph 15; Case M.9538 - Broadcom / Symantec Enterprise Security Business (2019), paragraph 15; and Case M.7458 – IBM / INF Business of Deutsche Lufthansa (2014), paragraph 35.

19 Form CO, paragraphs 233 – 234.

20 Form CO, paragraph 236.

21 Form CO, pararaphs 240 – 245.

Parties, Bleu's competitors can partner with the other hyperscalers[22] (e.g. Google and Amazon Web Services) and with other cloud services providers such as Outscale and OVHcloud, to source the relevant technology and data centreers to provide ANSSI-certified sovereign cloud services.[23]

(31) In any event, the Notifying Parties submit that the product market definition can be left open, since the Transaction will not give rise to competition concerns regardless of the exact product market delineation.[24]

5.2.1.1.3. The Commission's assessment

(32) Overall, competitors and customers provided indications that **IaaS, PaaS and SaaS** are not interchangeable and belong therefore to separate product markets.[25] According to competitors that replied so, the main reason for the lack of interchangeability would be the fact that customers generally purchase IT services by first defining their objectives and requirements, and then looking at a broad set of options, including IaaS, PaaS and SaaS, that might help meet them, instead of proceeding the other way around. Some customers indicated that only IaaS and PaaS are interchangeable, but not SaaS.[26]

(33) Most competitors consider that suppliers cannot switch from producing one solution (IaaS, PaaS or SaaS) to another easily and at low costs.[27] However, it was also submitted by some competitors that all major public cloud service providers actually offer the full range of IaaS, PaaS and SaaS services to customers.

(34) With respect to the possible distinction between **public, private and hybrid cloud**, the results of the Commission's market investigation are inconclusive, as no clear view emerged from either competitors or customers as to whether public, private and hybrid cloud solutions are interchangeable.[28] Some competitors specified that customers source IT services according to their specific requirements, often on a workflow-by-workflow basis, and that, as result, providers often adopt hybrid models to accommodate customers' requests. While the majority of customers indicated that public, private and hybrid cloud services are not interchangeable, they also indicated that suppliers can usually switch between such different solutions easily.[29] It was also indicated that while these three different types of cloud services can technically be interchangeable, they do not fulfil the same requirements in terms of security and performance.[30]

(35) With respect to the existence of a possible separate market for **sovereign cloud services**, and in particular ANSSI-certified sovereign cloud services, the majority of competitors and customers who expressed a view consider that ANSSI-certified

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22 "Hyperscaler" refers to an operator that runs and offers access to large-scale datacenters and significant computing resources to its customers.
23 Form CO, paragraph 240.
24 Form CO, paragraph 248.
25 Q1 – questionnaire to competitors, question B.1.
26 Q2 – questionnaire to customers, questions B.1.
27 Q1 – questionnaire to competitors, questions B.2. to B.4.
28 Q1 – questionnaire to competitors, questions B.6. to B.8. ; Q2 – questionnaire to customers, questions B.5. to B.8.
29 Q2 . questionnaire to customers, questions B.5 – B.8.
30 Q2 – questionnaire to customers, question B.5.

sovereign cloud services are not interchangeable with standard (non-sovereign) cloud services from a demand-side perspective.[31] From a supply-side perspective, the majority of competitors indicated that a supplier could easily and at low cost switch from supplying ANSSI-certified sovereign cloud services to supplying standard cloud services, but not vice-versa.[32] In that respect, one competitor submitted that "*it is not possible for a standard cloud services provider to offer ANSSI-certified cloud services (also referred to as SecNumCloud) in a timely manner and at no significant additional cost. To fulfil current ANSSI certification requirements, a standard cloud service provider […] not headquartered in the EU would need to make multibillion-Euros investments to build new infrastructure, change its operating model to construct a joint-venture with a third party, transfer its technology to that third party joint-venture, and significantly raise its public pricing (between 20% to 60%) in order to recoup its costs*".[33] Overall, competitors submitted that it takes years and an investment of several millions to start supplying ANSSI-certified sovereign cloud services.

(36) The results of the Commission's market investigation are similar with respect to the difference between **ANSSI-certified sovereign cloud services and sovereign cloud services that are not ANSSI-certified**. The vast majority of the competitors and all customers indicated that they are not interchangeable, although some competitors indicated that there is a degree of supply-side substitutability, but mainly from ANSSI-certified to non-ANSSI certified sovereign cloud services and not vice-versa.[34] Furthermore, similar results were recorded with respect to the lack of interchangeability between ANSSI-certified sovereign cloud services and private IaaS, PaaS and SaaS solutions.[35]

(37) Finally, the majority of competitors and customers indicated that IaaS, PaaS and SaaS solutions should not be further segmented on the basis of the **industry verticals**.[36] With respect to (i) application implementation and (ii) infrastructure implementation and managed services (together referred to as "managed services"), the majority of competitors and customers who provided a view indicated that such services are interchangeable across industry verticals.[37] In that respect, all competitors indicated that suppliers can either, easily and at low cost, (i) switch from supplying such managed services from an industry vertical to another, or (ii) do so only between certain sectors (as it would be difficult to switch to sectors that are heavily regulated).[38]

(38) However, not all competitors were aligned. For example, one competitor submitted that "*verticals have very specific legal, regulatory or operational constraints like, banking, insurance, network operators, manufacturing, defense*

31 Q1 – questionnaire to competitors, question B.9 and Q2 – questionnaire to customers, question B.9.
32 Q1 – questionnaire to competitors, questions B.10.
33 Q1 – questionnaire to competitors, question B.10.
34 Q1 – questionnaire to competitors, question B.13. and Q2 – questionnaire to customers, question B.13.
35 Q1 – questionnaire to competitors, question B.15. and Q2 – questionnaire to Customers, question B.15.
36 Q1 – questionnaire to competitors, question B.17. and Q2 - questionnaire to customers, question B.17.
37 Q1 – questionnaire to competitors, question B.29. and Q2 – questionnaire to customers, question B.29.
38 Q1 – questionnaire to competitors, questions B.31., B.32., B.35. and B.36.

etc. As a consequence, very specific expertise or profiles are needed specifically in terms of design, development or configuration of very specific applications. Most large IT service providers are organised to address different verticals".[39] Another competitor indicated that "*the services delivered are similar (same type of services), however the business processes change according to each industry's particularities. In such cases, the delivery process needs to be adapted. Interoperability rules and standards may also differ between industries and eco system of cloud (for instance in manufacturing industry with a link to production systems)*".[40]

(39) In any event, the Commission considers that the question whether the IT services market should be distinguished between (i) IaaS, PaaS and SaaS (the latter being a possible segment of the IT software market); (ii) public, hybrid and private cloud services; (iii) ANSSI-certified sovereign cloud services and non-ANSSI-certified cloud services; (iv) infrastructure implementation and managed services; and (v) application implementation and managed services can be left open as the Transaction does not raise competition concerns regardless of the exact product market definition. Likewise, the questions whether (i) IaaS, PaaS and SaaS solutions as well as (ii) managed services should be distinguished on the basis of the industry verticals can be left open, as the Transaction does not raise competition concerns under the Merger Regulation regardless of such possible distinction.

5.2.1.2. Geographic market definition

5.2.1.2.1. The Commission's past decisional practice

(40) In its decisional practice, the Commission has acknowledged that the IT services market is likely broader than national[41] but has ultimately left the geographic market definition open. As regards the IT software market, the Commission previously concluded that the geographic scope is at least EEA-wide.[42]

5.2.1.2.2. The Notifying Parties' views

(41) The Notifying Parties consider that the geographic scope of the markets for IT services and IT software, and possible segments thereof, is worldwide or at least EEA-wide.[43]

5.2.1.2.3. The Commission's assessment

(42) The results of the market investigation were mixed as regards the geographic scope of the markets for IT services and IT software. While the many respondents indicated that the geographic scope of IaaS, PaaS and SaaS as well as private, hybrid and public cloud services is at least EEA-wide, a majority of customers and

39 Q1 – questionnaire to Competitors, question B.30.

40 Q1 – questionnaire to Competitors, question B.30.

41 See cases M.6237 - Computer Sciences Corporation / iSoft Group (2011), paragraph 17; M.7458 - IBM / INF Business of Deutsche Lufthansa (2014), paragraph 31; and M.6127 - Atos Origin / Siemens IT Solutions & Services (2011), paragraph 18.

42 Case M.9538 - Broadcom / Symnted Entreprise Security Business (2019), paragraph 28.

43 Form CO, paragraphs 251 and 258.

competitors also indicated that sovereign cloud services, including ANSSI-certified cloud services, are national in scope, because of the requirements for the ANSSI certification according to which the relevant operators have to be based in France.[44]

(43) As regards managed services, the majority of competitors that provided a view indicated that their geographic scope is worldwide, because the conditions for supply of such services are generally homogeneous regardless of the geography.[45] While the majority of customers also indicated that the geographic scope of managed services is worldwide, replies were more mixed as a number of customers pointed to a national dimension of managed services.[46]

(44) In any event, the Commission considers that, for the purpose of the present Decision, the exact geographic market definition for the provision of IT services and IT software can be left open as the Transaction does not raise competition concerns under the Merger Regulation under any plausible product market definition.

5.2.2. Fixed telephony services

5.2.2.1. Product market definition

5.2.2.1.1. The Commission's past decisional practice

(45) In its past decisional practice, the Commission has considered that within the retail market for the supply of fixed telephony services a distinction could be made between (i) local/national and (ii) international calls, as well as between (i) residential and (ii) non-residential customers, but ultimately left the product market definition open.[47] In its most recent practice, the Commission has also considered that that managed Voice over Internet Protocol ("VoIP") services belonged to the same market as traditional fixed telephony services.[48]

5.2.2.1.2. The Notifying Parties' views

(46) The Notifying Parties consider that the relevant product market is the retail market for the supply of fixed telephony services including VoIP services, without further segmentation.[49]

5.2.2.1.3. The Commission's assessment

(47) The majority of respondents to the market investigation considered that the product market definition for retail fixed telephony services as defined previously by the

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44 Q1 – questionnaire to competitors, question C.1 and Q2 – questionnaire to customers, question C.1.
45 Q1 – questionnaire to competitors, questions C.9 and C.11.
46 Q2 – questionnaire to customers, questions C.9. and C.11.
47 Commission decisions in Cases M.10515 – Iliad/UPC Polska (2022), paragraph 24; M.8864 – Vodafone/Certain Liberty Global Assets (2019), paragraphs 35 to 40; M.8842 – Tele2/Com Hem Holding (2018), paragraphs 14 to 17.
48 Case M.10515 – Iliad/UPC Polska (2022), paragraph 30; Case M.7978 - Vodafone/Liberty Global/Dutch JV (2019), paragraph 26
49 Form CO, paragraph 359.

Commission still applies.[50] In addition, the majority of respondents indicated that requirements of a business customer in terms of fixed telephony services are not the same as those of a residential customer.[51] Comments were also made about the fact that traditional fixed telephony services would no longer be relevant, as they have largely been replaced by online tools such as Teams, WhatsApp and Zoom.[52]

(48) In light of the above and in line with its precedents, the Commission considers that, for the purpose of the present Decision, the relevant market is the market for the retail supply of fixed telephony services, including VoIP services. The question whether such market should be further segmented between local/national and international calls or between the different types of end-users can be left open, as the Transaction does not raise competition concerns under the Merger Regulation regardless of the precise product market definition for fixed telephony services.

5.2.2.2. Geographic market definition

5.2.2.2.1. The Commission's past decisional practice

(49) In previous decisions, the Commission considered that the geographic market for the retail supply of fixed telephony services could be national or narrower in scope.[53] In some decisions, the Commission concluded that the market is national in scope.[54]

5.2.2.2.2. The Notifying Parties' views

(50) The Notifying Parties consider, in line with the Commission, that the market for the retail supply of fixed telephony services is national in scope.[55]

5.2.2.2.3. The Commission's assessment

(51) The results of the Commission's market investigation produced mixed views as to the most appropriate geographic scope of the market. Indeed, while majority of the customers who expressed a view consider it primarily as national[56] in scope, some competitors consider that it could be wider than national essentially because with the VoIP technology there would no longer be any boundaries.[57] Other respondents indicated that it can vary depending on the type of customers actually using the services (e.g., large enterprises will have the tendency to consider the market as wider than national because of their use of multinational telephony systems while smaller, more local customers, will mostly consider it as national), the requirement

50 Q1 – questionnaire to competitors, questions B.20 and Q2 – questionnaire to customers, questions B.20.

51 Q1 – questionnaire to competitors, questions B.20. to B.22. and Q2 – questionnaire to customers, questions B.20. to B.22.

52 Q2 – questionnaire to customers, question B.22.

53 See Case M.10087 – Proximus/Nexus Infrastructure/JV (2021), paragraph 65; Case M.9433 – MEIF 6 Fiber/KCOM Group (2019), paragraphs 24 and 25; Case M.7637 – Liberty Global/BASE Belgium (2019), paragraph 73.

54 See Case M.8864 – Vodafone/Certain Liberty Global Assets (2019), paragraph 46; Case M.7000 – Liberty Global/Ziggo (2018), paragraph 150; Case M.7978 – Vodafone/Liberty Global/Dutch JV (2016), paragraph 29.

55 Form CO, paragraph 359.

56 Q2 – questionnaire to customers, questions C.5. to C.6.

57 Q2 – questionnaire to customers, question C.6.

of local sales teams and the applicable regulation (which remains primarily national).[58]

(52) In any event, the Commission considers that, for the purpose of the present Decision, the exact geographic definition of the market for the retail supply of fixed telephony services can be left open, as the Transaction does not raise competition concerns under the Merger Regulation regardless of the precise geographic market definition.

5.2.3. Business connectivity services

5.2.3.1. Product market definition

5.2.3.1.1. The Commission's past decisional practice

(53) In its decisional practice, the Commission has considered that the supply of business connectivity services could be segmented into (i) broadband access for large business customers[59], (ii) leased lines[60], and (iii) virtual private networks ("VPN") services[61], but ultimately left the market definition open.[62] The Commission also considered distinctions between (i) connectivity services to residential and small business customers and ii) connectivity services to large business customers.[63] In a recent decision, the Commission considered the relevant product market to be the market for the retail supply of business connectivity services to large businesses and public sector customers, leaving it open whether this should be segmented into (i) broadband access for large business customers, (ii) leased lines, and (iii) VPN services.[64]

5.2.3.1.2. The Notifying Parties' views

(54) The Notifying Parties consider that, for the purpose of this Transaction, the relevant product market is the market for the retail supply of business connectivity services to large business and public sector customers.[65]

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58 Q2 – questionnaire to competitors, questions C.5. to C.6.

59 According to the Commission, this covers "*retail broadband access to business customers with significant needs which require higher performance in terms of security, bandwidth and functionality*". See Case M.10153 - Orange/Telekom Romania Communications (2021), paragraph 77, footnote 67.

60 According to the Commission, "*leased lines are part-circuits that allow communication providers to connect their own networks to end user sites for the supply of business connectivity*". See Case M.10153 - Orange/Telekom Romania Communications (2021), paragraph 77, footnote 68.

61 According to the Commission, these services refer to "*an encryption technology enabling to secure shared access as if it were a dedicated one*". See Case M.10153 - Orange/Telekom Romania Communications (2021), paragraph 77, footnote 69.

62 See for example Case M.10153 - Orange/Telekom Romania Communications (2021), paragraph 81; Case M.8864 – Vodafone/Certain Liberty Global Assets (2019), paragraphs 169 to 171; Case M.8808 – T-Mobile Austria/UPC Austria (2018), paragraphs 66 to 68

63 See for example Case M.8864 – Vodafone/Certain Liberty Global Assets (2019), paragraphs 169 to 171; Case M.7988 – Vodafone/Liberty Global/Dutch JV (2019), paragraph 126.

64 Case M.10153 - Orange/Telekom Romania Communications (2021), paragraph 81.

65 Form CO, paragraph 358.

5.2.3.1.3. The Commission's assessment

(55) A majority of respondents to the market investigation considered that the requirements of large business customers are not the same as those of residential, SME and SOHO[66] customers.[67] In that context, some respondents specified that the requirements differ in terms of performance (bandwidth) security, availability and latency.[68]

(56) In addition, some competitors indicated that a supplier that only provides business connectivity services to large business customers could not easily switch to providing business connectivity services to residential, SME and SOHO customers (and vice-versa) in a timely manner and with no significant additional costs.[69] This indication supports the view of those competitors that the product market definition for business connectivity services as previously defined by the Commission (large business customers vs. residential, SME and SOHO customers) remains applicable.[70]

(57) In any event, the Commission considers that, for the purpose of the present Decision, and in line with its precedents, the relevant market is the market for the retail supply of business connectivity services to large businesses and public sector customers. The question whether this market should be further segmented between the different types of networks and services can be left open as the Transaction does not raise competition concerns under the Merger Regulation regardless of the precise product market definition.

5.2.3.2. Geographic market definition

5.2.3.2.1. The Commission's past decisional practice

(58) In its decisional practice, the Commission considered that the market for the provision of business connectivity services to large business and public sector customers is national in scope.[71]

5.2.3.2.2. The Notifying Parties' views

(59) The Notifying Parties share the Commission's view.[72]

5.2.3.2.3. The Commission's assessment

(60) The results of the Commission's market investigation produced comparable views among customers and competitors who expressed their opinions. Indeed, in their

[66] Small Office/Home Office customers.

[67] Q1 – questionnaire to competitors, questions B.23. to B.26. and Q2 – questionnaire to customers, questions B.23. to B.26.

[68] Q1 – questionnaire to competitors, question B.26. and Q2 - questionnaire to customers, questions B.26.

[69] Q1 – questionnaire to competitors, questions B.27. to B.28.

[70] Q1 - questionnaire to competitors, questions B.23.

[71] See Case M.10153 - Orange/Telekom Romania Communications (2021), paragraph 85; Case M.8864 – Vodafone/Certain Liberty Global Assets (2019), paragraph 176; Case M.7109 – Deutsche Telekom/GTS (2014), paragraph 33; Case M.6584 – Vodafone/Cable & Wireless (2012), paragraph 10.

[72] Form CO, paragraph 358.

respective majorities, both customers and competitors consider that the most appropriate geographic scope of the market should be national or wider[73] for reasons such as the one put forward by one competitor who summarized the situation by submitting that "*some services like VPN have a worldwide scope as they can be provided over the public Internet while other services may be limited to certain geographic areas due to the physical infrastructure required*".[74] In that respect, another competitor indeed confirmed that the "*extension outside a national footprint remains very complex in Europe due to the fragmentation and complexity of the wholesale and access markets*" and that "*provisions to access to ducts, fiber (FTTH or FTTO) or bitstream offers remain very different from one country to another which makes it very complex to extend the reach of a network outside its original national footprint*". [75] Some customers do, however, argue that selling and contracting take place at national level and that the regulation is national (even if under international constraints), which would in turn plead for a national geographic scope of the market.[76]

(61) In any event, the Commission considers that, for the purpose of the present Decision, the exact geographic definition of the market for the provision of business connectivity services can be left open as the Transaction does not raise competition concerns under the Merger Regulation regardless of the precise geographic market definition.

6. COMPETITIVE ASSESSMENT

6.1. Legal framework

(62) 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.

(63) 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

[73] Q1 – questionnaire to competitors, question C.7. and Q2 – questionnaire to customers, questions C.7.
[74] Q1 – questionnaire to competitors, question C.8.
[75] Q1 – questionnaire to competitors, question C.8.
[76] Q2 – questionnaire to customers, question C.8.

notices, that is to say the Horizontal Merger Guidelines[77] and the Non-Horizontal Merger Guidelines.[78]

(64) 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.[79]

6.2. Affected markets

6.2.1. No horizontally affected markets

(65) Orange's and Bleu's activities overlap in the provision of IaaS and PaaS solutions, where the JV will be active. Orange provides IaaS and PaaS services through its Flexible Engine and Cloud Avenue cloud offerings. As mentioned, Flexible Engine does not *[details on Orange business strategy in relation to its Flexible Engine offer]* provide ANSSI-certified sovereign cloud services. Therefore, according to the Notifying Parties, it will not compete closely with Bleu. Cloud Avenue, on the contrary, is seeking to obtain the ANSSI-qualification. Capgemini and Bleu's activities do not overlap.[80]

(66) Irrespective of the above, the Transaction does not lead to horizontally affected markets because Orange's and Bleu's combined market shares are (and are expected to remain) below 20% under any plausible product or geographic market definition.[81] Indeed, the horizontal overlap occurs on the IaaS and PaaS market segments and is very limited as Orange's market shares on those segments do not exceed [5-10]% on any geographic dimension. In addition, while the Notifying Parties indicated that *[details on Orange's business strategy regarding Cloud Avenue]*, Orange estimates that Cloud Avenue's market shares in the foreseeable future (between 2023 and 2027) will remain below [0-5]% on the IaaS segment in France.[82] With respect to Bleu, the Notifying Parties explain that the Parties do not expect Bleu's market share to exceed [10-20]% in any geographic dimension within five years, with reference to a possible market for sovereign cloud services. In addition, they submit that, even if a hypothetical narrower market for the supply of ANSSI-certified sovereign cloud services only market were to be considered, the Notifying Parties consider that it is highly unlikely that the JV's market shares in this market would exceed [10-20]% within the next five years. [83]

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[77] 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.

[78] 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, 190.2008.

[79] Non-Horizontal Merger Guidelines, paragraph 20.

[80] Form CO, paragraphs 266 and 275.

[81] For the narrowest possible market definition, the provision of ANSSI-certified sovereign cloud services in France, the Parties expect a combined market share of *[a range within 10-20]%* within the next five years (reply to RFI 8, question 8).

[82] Form CO, paragraph 304.

[83] Reply to the Commission's RFI 8, question 4.

6.2.2. No vertically affected markets

(67) Orange's and Capgemini's respective consulting activities and the JV's future IaaS, PaaS and SaaS activities are vertically related to the extent that future customers of Bleu's services may want to consider consulting services[84] as a possible input into their roll out of sovereign cloud services.

(68) Orange and Capgemini are also active in IT security services, through the provision of managed security services.[85] Among many other uses, IT security services may be purchased by users of cloud services, such as Bleu's, as an input to protect their IT networks and connections to their various cloud providers.

(69) However, the Transaction does not lead to vertically affected markets because the combined market shares of Orange and Capgemini on those markets remain below 30% under any plausible product or geographic market definition.

6.2.3. Conglomerate relationships

(70) The Transaction gives rise to affected conglomerate relationships between the JV's future provision of IaaS, PaaS and SaaS solutions and Capgemini's and Orange's activities in narrow possible segments of the markets for the provision of (i) application implementation and managed services and (ii) infrastructure implementation and managed services, namely[86]:

(a) Application implementation and managed services provided to wholesale trade customers in the EEA ([30-40]% combined, 2022), Western Europe ([30-40]% combined, 2022), and France ([50-60]% combined, 2022);

(b) Application implementation and managed services provided to customers active in the manufacturing and natural resources sector in France ([30-40]% combined, 2022);

(c) Infrastructure implementation and managed services provided to wholesale trade customers in France ([40-50]% combined, 2022);

(d) Infrastructure implementation and managed services provided to customers active in the transportation sector in France ([30-40]% combined, 2022).

(71) Furthermore, the Transaction gives rise to affected conglomerate relationships between the JV's future supply of IaaS, PaaS and SaaS and Orange's activities in possible narrower segments of the markets for:

(a) Business connectivity services in France, in particular to large business and public sector customers ([30-40]%, 2021), to large businesses and public sector customers through broadband access ([40-50]%, 2021) and to to large businesses and public sector customers through VPN services ([50-60]%, 2021);[87]

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84 Capgemini had a share of [0-5]% and Orange a share of [0-5]% of the market for consulting services in France in 2021(see Form CO, Table 19).

85 Capgemini had a share of [5-10]% and Orange a share of [5-10]% of the market for IT security services in France in 2021(see Form CO, paragraph 304).

86 Where not otherwise specified, market shares are in value.

87 The Notifying Parties indicated that sources for the 2022 market shares for those possible markets/segments were not yet available/updated (reply to the Commission's RFI 8, question 1).

(b) Retail fixed telephony services (including VoIP services) in France, where several possible narrower markets are affected, from the (i) retail supply of fixed telephony services including VoIP services for international calls ([30-40]% in volume, 2022) to the (ii) retail supply of traditional fixed telephony services for non-residential customers ([80-90]%, 2021).[88]

6.3. Market shares

(72) According to the Horizontal Merger Guidelines and the Non-Horizontal Merger Guidelines,[89] 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.

(73) In the following recitals, the Commission presents the market shares of the Parties to the Transaction and their competitors in all non-horizontally affected markets where the Parties have an individual or combined market share above 30%.

6.3.1. Markets for the provision of application implementation and managed services provided to wholesale trade customers in France, Western Europe and in the EEA

(74) The following table presents the 2022 market shares (in value) on the possible market for provision of application implementation and managed services provided to wholesale trade customers in France, Western Europe and in the EEA.

Table 1: Market shares on the market for the provision of application implementation and managed services provided to wholesale trade customers in France, Western Europe and in the EEA (2022)

	France	**Western Europe**	**EEA**
Capgemini	[40-50]%	[20-30]%	[30-40]%
Orange	[5-10]%	[0-5]%	[0-5]%
Combined	**[50-60]%**	**[30-40]%**	**[30-40]%**
IBM	[5-10]%	[5-10]%	[5-10]%
SAP	[5-10]%	[5-10]%	[5-10]%
All for One Group	[0-5]%	[0-5]%	[0-5]%
Others	[30-40]%	[40-50]%	[40-50]%
Total market	100%	100%	100%

Source: Response to RFI 8, Annexe A

(75) Capgemini is the leading provider of application implementation and managed services provided to wholesale trade customers in France, Western Europe and in the EEA and is the only one of the Notifying Parties with market shares above the 30% threshold (in France and at EEA level only).

6.3.2. Markets for the provision of application implementation and managed services provided to manufacturing and natural resources customers in France

(76) The following table presents the 2022 market shares (in value) on the possible market for provision of application implementation and managed services provided to manufacturing and natural resources customers in France.

[88] The Notifying Parties indicated that sources for the 2022 market shares for those possible markets/segments were not yet all available/updated (reply to the Commission's RFI 8, question 1).

[89] Horizontal Merger Guidelines, paragraph 14; Non-Horizontal Merger Guidelines, paragraph 24.

Table 2: Market shares on the market for the provision of application implementation and managed services provided to manufacturing and natural resources customers in France (2022)

	France
Capgemini	[20-30]%
Orange	[0-5]%
Combined	**[30-40]%**
CGI	[10-20]%
Sopra Steria	[5-10]%
Accenture	[5-10]%
Others	[40-50]%
Total market	100%

Source: Response to RFI 8, Annexe A

(77) Capgemini is the leading provider of application implementation and managed services provided to manufacturing and natural resources customers in France. The Notifying Parties only exceed the 30% market share threshold when combined.

6.3.3. Markets for the provision of infrastructure implementation and managed services provided to wholesale trade customers in France

(78) The following table presents the 2022 market shares (in value) on the possible market for provision of infrastructure implementation and managed services provided to wholesale trade customers in France.

Table 3: Market shares on the market for the provision of infrastructure implementation and managed services provided to wholesale trade customers in France (2022)

	France
Capgemini	[20-30]%
Orange	[10-20]%
Combined	**[40-50]%**
Cisco	[0-5]%
BT	[0-5]%
IBM	[0-5]%
Others	[50-60]%
Total market	100%

Source: Response to RFI 8, Annexe A

(79) Capgemini is the leading provider of infrastructure implementation and managed services provided to wholesale trade customers in France. The Notifying Parties only exceed the 30% market share threshold when combined.

6.3.4. Markets for the provision of infrastructure implementation and managed services provided to transportation customers in France

(80) The following table presents the 2022 market shares (in value) on the possible market for provision of infrastructure implementation and managed services provided to transportation customers in France.

Table 4: Market shares on the market for the provision of infrastructure implementation and managed services provided to transportation customers in France (2022)

	France
Capgemini	[5-10]%
Orange	[20-30]%
Combined	**[30-40]%**
Atos	[5-10]%
Econocom	[5-10]%
Kyndryl	[5-10]%
Others	[40-50]%
Total market	100%

Source: Response to RFI 8, Annexe A

(81) Orange is the leading provider of infrastructure implementation and managed services provided to transportation customers in France. The Notifying Parties only exceed the 30% market share threshold when combined.

6.3.5. Markets for the provision of retail fixed telephony services (including VoIP services) in France

(82) The following table presents the 2022 market shares (in volume) on the market for provision of retail fixed telephony services (including VoIP services) in France.

Table 5: Market shares[90] on the market for the provision of retail fixed telephony services (including VoIP services) in France (2022)

	France
Orange	[50-60]%
SFR	not provided
Bouygues Telecom	not provided
Free	not provided
Colt	not provided
Others	not provided
Total market	100%

Source: Response to RFI 8, Annexe D

(83) Orange is the leading provider of retail fixed telephony services (including VoIP services) in France. Capgemini is not active on that market.

(84) In a possible market for the provision of retail fixed telephony services including VoIP services for local/national calls in France, Orange is the leading provider. Capgemini is not active in this market. The Notifying Parties estimate the 2022 market shares (in volume) of Orange to amount to [50-60]%.[91]

90 The Notifying Parties indicated that Orange's main competitors on the market for the retail provision of fixed telephony services are SFR, Bouygues Telecom, Free and Colt but that they were not able to gather any market share information for these competitors (reply to the Commission's RFI 8, question 3).

91 Response to RFI 8, Annex D. The Notifying Parties indicated that Orange's main competitors on the market for the retail provision of fixed telephony services are SFR, Bouygues Telecom, Free and Colt but that they were not able to gather any market share information for these competitors (reply to the Commission's RFI 8, question 3).

(85) In a possible market for the provision of retail fixed telephony services including VoIP services for international calls in France, Orange has a strong market position whereas Capgemini is not active in such market. The Notifying Parties estimate the 2022 market shares (in volume) of Orange to amount to [30-40]%.[92]

(86) In a possible market for the provision of retail fixed telephony services including VoIP services for non-residential in France, Orange is the market leader. Capgemini is not active in such market. The Notifying Parties estimate the 2022 market shares (in volume) of Orange to amount to [40-50]%.[93]

6.3.6. Markets for the provision of business connectivity services in France

(87) The following table presents the 2021[94] market shares (in value) on the market for provision of business connectivity services in France.

Table 6: Market shares on the market for the provision of business connectivity services to large businesses and public sector customers in France (2021)

	France
Orange	[30-40]%
SFR	[20-30]%
Adista	[5-10]%
Bouygues Telecom	[5-10]%
Colt	[5-10]%
Others	[10-20]-[20-30]%
Total market	100%

Source: Response to RFI 8, Annexe D

(88) Orange is the leading provider of business connectivity services in France. Capgemini is not active on that market.

(89) When looking at the potential narrower market of business connectivity services to large business and public sector customers through broadband access in France, Orange is the leading providing with a market share in 2021 (in value) of [40-50]%. [95] Capgemini is not active on that market.

In a potential market for the provision of business connectivity services to large businesses and public sector customers through virtual private networks ("VPN")

92 Response to RFI 8, Annex D. The Notifying Parties indicated that Orange's main competitors on the market for the retail provision of fixed telephony services are SFR, Bouygues Telecom, Free and Colt but that they were not able to gather any market share information for these competitors (reply to the Commission's RFI 8, question 3).

93 Response to RFI 8, Annex D. The Notifying Parties indicated that Orange's main competitors on the market for the retail provision of fixed telephony services are SFR, Bouygues Telecom, Free and Colt but that they were not able to gather any market share information for these competitors (reply to the Commission's RFI 8, question 3).

94 The Notifying Parties indicated that sources for the 2022 market shares for that market were not yet available/updated (reply to the Commission's RFI 8, question 1).

95 Response to RFI 8, Annex D. The Notifying Parties indicated that Orange's main competitors on the market for the retail provision of business connectivity services are SFR, Adista, Bouygues Telecom and Colt but that they were not able to gather any market share information for these competitors (reply to the Commission's RFI 8, question 3).The Notifying Parties further indicated that sources for the 2022 market shares for that market were not yet available/updated (reply to the Commission's RFI 8, question 1).

in France, Orange is the leading provider with a market share of [50-60]% in 2021. Capgemini is not active on that market.

6.4. Conglomerate effects

(90) The Commission has assessed the possible impact on effective competition on the plausible market(s) for the supply of IaaS, PaaS and SaaS sovereign cloud services in France resulting from the conglomerate relationships between Bleu's supply of IaaS, PaaS and SaaS sovereign solutions and Orange's and/or Capgemini's supply of (i) managed services; (ii) fixed telephony services and (iii) business connectivity services.

6.4.1. Legal framework

(91) According to the Non-Horizontal Guidelines, in the majority of circumstances, conglomerate mergers will not lead to any competition problems.[96]

(92) However, foreclosure effects may arise when the combination of products in related markets may confer on the merged entity the ability and incentive to leverage a strong market position from one market to another closely related market by means of tying or bundling or other exclusionary practices. While tying and bundling have often no anticompetitive consequences, in certain circumstances such practices may lead to a reduction in actual or potential competitors' ability or incentive to compete. This may reduce the competitive pressure on the merged entity allowing it to increase prices.[97]

(93) In assessing the likelihood of such a scenario, the Commission examines, first, whether the merged firm would have the ability to foreclose its rivals[98], second, whether it would have the economic incentive to do so[99] and, third, whether a foreclosure strategy would have a significant detrimental effect on competition, thus causing harm to consumers.[100] In practice, these factors are often examined together as they are closely intertwined.

(94) In order to be able to foreclose competitors, the merged entity must have a significant degree of market power, which does not necessarily amount to dominance, in one of the markets concerned. The effects of bundling or tying can only be expected to be substantial when at least one of the merging parties' products is viewed by many customers as particularly important and there are few relevant alternatives for that product.[101] Further, for foreclosure to be a potential concern, it must be the case that there is a large common pool of customers, which is more likely to be the case when the products are complementary.[102] Finally, bundling is less likely to lead to foreclosure if rival firms are able to deploy

96 Non-Horizontal Guidelines, paragraph 92.
97 Non-Horizontal Guidelines, paragraphs 91 and 93.
98 Non-Horizontal Merger Guidelines, paragraphs 95 to 104.
99 Non-Horizontal Merger Guidelines, paragraphs 105 to 110.
100 Non-Horizontal Merger Guidelines, paragraphs 111 to 118.
101 Non-Horizontal Merger Guidelines, paragraph 99.
102 Non-Horizontal Merger Guidelines, paragraph 100.

effective and timely counter-strategies, such as single-product companies combining their offers.[103]

(95) The incentive to foreclose rivals through bundling or tying depends on the degree to which this strategy is profitable.[104] Bundling and tying may entail losses or foregone revenues for the merged entity.[105] However, they may also allow the merged entity to increase profits by gaining market power in the tied goods market, protecting market power in the tying good market, or a combination of the two.[106]

(96) It is only when a sufficiently large fraction of market output is affected by foreclosure resulting from the concentration that the concentration may significantly impede effective competition. If there remain effective single-product players in either market, competition is unlikely to deteriorate following a conglomerate concentration.[107] The effect on competition needs to be assessed in light of countervailing factors such as the presence of countervailing buyer power or the likelihood that entry would maintain effective competition in the upstream or downstream markets.[108]

6.4.2. Foreclosure of rival providers of IaaS, PaaS and SaaS sovereign cloud services by tying or bundling Orange's and Capgemini's managed services with Bleu's sovereign cloud services

(97) In the present section, the Commission has assessed whether the Parties would have the ability and incentive to foreclose rival IaaS, PaaS and SaaS sovereign cloud services providers in France by potentially bundling or tying Orange's and Capgemini's managed services with Bleu's IaaS, PaaS and SaaS sovereign cloud services. The Commission has also assessed whether such hypothetical foreclosure strategies would have an impact on effective competition on the plausible market(s) for the supply of IaaS, PaaS and SaaS sovereign cloud services in France.

6.4.2.1. The Notifying Party's views

6.4.2.1.1. Ability to foreclose

(98) The Notifying Parties submit that the Parties will not have, post-Transaction, the ability to foreclose any of Bleu's competitors on the possible market for the supply of sovereign cloud services for the following reasons.

(99) First, the Notifying Parties submit that the possible markets where Orange and Capgemini, alone or collectively, have more than a 30% market share, *i.e.*, the provision of application implementation and managed services to wholesale trade customers, to manufacturing and natural resources customers and to transportation customers in France, do not constitute relevant product markets from a market definition perspective. Consequently, the market shares calculated are artificial and

103 Non-Horizontal Merger Guidelines, paragraph 103.
104 Non-Horizontal Merger Guidelines, paragraph 105.
105 Non-Horizontal Merger Guidelines, paragraph 106.
106 Non-Horizontal Merger Guidelines, paragraph 108.
107 Non-Horizontal Merger Guidelines, paragraph 113.
108 Non-Horizontal Merger Guidelines, paragraph 114.

in no way a display of any possible market power on the side of Orange and/or Capgemini.

(100) Second, the Notifying Parties argue that it cannot be considered that cloud services provided by Bleu, on the one hand, and managed services, on the other hand, are directed to a large pool of common customers such that a bundling or tying strategy could somehow affect competition on those markets. In that respect, the Notifying Parties submit that (i) managed services can be used for a very wide variety of applications, cloud computing services representing only a small portion of such uses, and (ii) the Notifying Parties' managed services can be offered to all medium-size and large companies, whereas Bleu's solution is only available to Eligible Customers, i.e., to a restricted number of customers. The Notifying Parties therefore consider that those customers that may buy both Bleu's services, on the one hand, and managed services, on the other hand, represent a very small portion of the market segment for managed services and cloud services, in particular when wholesale trade customers, manufacturing and natural resources customers or transportation customers are the only ones concerned.

(101) Finally, the Notifying Parties argue that customers typically select the cloud services provider, on the one hand, and the integrator/provider of managed services, on the other hand, through separate tender procedures. As a consequence, the Parties will not have the ability to engage in exclusionary strategies as Bleu's services, on the one hand, and managed services, on the other hand, are marketed by different providers at different times.[109]

(102) Based on the above, the Notifying Parties consider that the Parties will not have, post-Transaction, the ability to foreclose any of Bleu's competitors on the possible market(s) for the supply of sovereign cloud services.

6.4.2.1.2. Incentive to foreclose

(103) The Notifying Parties submit that they will not have, post-Transaction, the incentive to foreclose any of Bleu's competitors on the possible market for the supply of sovereign cloud services.

(104) The Notifying Parties indeed argue that, in that respect, most of their respective customers in managed services would not be Eligible Customers and/or would purchase these services for applications unrelated to sovereign cloud services. As a consequence, the Parties would have no interest in trying to sell Bleu's services to their managed services customers, since in most cases the latter do not need such services. A tied or bundled offer between Bleu's solutions and managed services would be rejected by customers and could only lead to the Parties losing contracts.

(105) Based on the above, the Notifying Parties consider that the Parties will not have, post-Transaction, the incentive to foreclose any of Bleu's competitors on the possible market(s) for the supply of sovereign cloud services by bundling or tying Bleu's sovereign cloud solutions to the Notifying Parties' managed services.

109 Form CO, paragraph 457.

6.4.2.1.3. Effects on competition

(106) The Notifying Parties submit that the potential tying strategy at hand will have no adverse effects on competition in the possible market for IaaS, PaaS and SaaS sovereign solutions in France, as the Parties will not have the ability or the incentive to engage in anti-competitive leveraging.

6.4.2.2. The Commission's assessment

6.4.2.2.1. Ability to foreclose

(107) The Commission considers that the Notifying Parties will not have the ability to foreclose of Bleu's competitors by leveraging their respective positions in the provision of managed services to wholesale trade customers, to manufacturing and natural resources customers or to transportation customers in France for the following reasons.

(108) First, depending on the precise market definition, the respective market shares of Orange and Capgemini are most often only slightly above[110] or even below 30%. Below such threshold, competition concerns are unlikely to be found. The Commission notes that, while under one potential market definition Capgemini's share of the possible markets for the provision of managed services to wholesale trade customers in France is [40-50]% (in 2022), customers would still have the ability to choose other providers of managed services active as competitors of Capgemini, such as IBM and SAP.[111]

(109) Second, the results of the Commission's market investigation confirm that cloud services, on the one hand, and managed services, on the other hand, are typically selected and purchased separately. Indeed, the vast majority of the customers who responded indicate that they usually purchase these services separately, on a standalone basis.[112]

(110) Third, the vast majority of the customers who responded to the Commission's market investigation indicate that they would not be interested or likely to buy Bleu's cloud services bundled with Orange or Capgemini's managed services as such bundles would not make sense commercially. In that respect, none of the respondents indicated that the Notifying Parties would provide "must have" managed services.

(111) Therefore, the conglomerate relationship at hand does not concern products or services generally purchased by the same set of customers for the same end use, nor products and services that share a large pool of common customers, as set out in the Non-Horizontal Merger Guidelines.

(112) For the reasons set out above, the Commission concludes that the Notifying Parties do not have the ability to foreclose Bleu's rival providers of IaaS, SaaS and PaaS sovereign solutions by leveraging their respective positions on the possible affected markets for the provision of managed services in France.

110 [30-40]% at EEA level (reply to the Commission's RFI 8, question 2).
111 Reply to the Commission's RFI 8, question 2.
112 Q2 – questionnaire to customers, question D.9.

6.4.2.2.2. Incentive to foreclose

(113) The Commission considers that the Notifying Parties will not have the incentive to foreclose Bleu's rival providers of IaaS, SaaS and PaaS sovereign solutions by leveraging their respective positions on the possible affected markets for the provision of managed services in France.

(114) First, the Commission considers that such an attempt would be unprofitable for the Parties, as the customers that the Notifying Parties would try to harm could decide not to select their respective services and find alternative options, thereby ceasing their relationship with the Notifying Parties. This would make a tying or bundling strategy even more unprofitable for Capgemini, as the only one of the Notifying Parties with a significant position on the possible affected markets, in light of the fact that possible gains from additional Bleu sales would have to be shared with Orange. Therefore, Capgemini would risk losing profits from its own sales of managed services and still not being able to reap the full potential benefits deriving from a bundling or tying strategy. In addition, customers of Bleu would have the possibility to source sovereign cloud services, including ANSSI-certified ones, from a number of alternative suppliers such as NUMSPOT or OVHcloud.

(115) In that respect, the vast majority of the customers who responded consider that they would have sufficient alternative supply of ANSSI-certified cloud computing services and managed services on a standalone basis if Bleu's services were only offered in a bundle with Orange's or Capgemini's managed services.[113]

(116) On the basis of the above, the Commission concludes that the Parties would not have the incentive to foreclose Bleu's rival providers of IaaS, SaaS and PaaS sovereign solutions by leveraging their respective positions on the possible affected markets for the provision of managed services in France.

6.4.2.2.3. Effects on competition

(117) The Commission notes that due to the lack of ability and incentive, it would not be necessary to conclude on the question whether a foreclosure strategy concerning Bleu's IaaS, SaaS and PaaS sovereign solutions and the Notifying Parties' managed services would have a negative impact on effective competition in the possible market for sovereign cloud services in France.

(118) In any event, the Commission considers that any hypothetical foreclosure strategy of competing sovereign cloud services providers would have no significant detrimental effect on competition because the pool of common customers is small and customers do not normally buy managed services and IaaS/PaaS/SaaS solutions together. In additions, customers of IaaS, SaaS and PaaS sovereign solutions would maintain the ability to mix and match, by turning to alternative suppliers both of sovereign cloud services and of managed services.

(119) Therefore, a potential foreclosure strategy by bundling or tying the Notifying Parties' managed services and Bleu's IaaS, PaaS and SaaS sovereign solutions

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[113] Q2 – questionnaire to customers, question D.21.

would not have detrimental effects on competition in the possible market for the provision of sovereign cloud services in France.

6.4.2.3. Conclusion

(120) In light of the above, the Commission concludes that the Transaction does not raise serious doubts as to the compatibility with the internal market with respect to the possible foreclosure of Bleu's rival providers of IaaS, PaaS and SaaS sovereign cloud solutions by bundling or tying Bleu's IaaS, PaaS and SaaS sovereign cloud solutions to the Notifying Parties' managed services.

6.4.3. Foreclosure of rival providers of IaaS, PaaS and SaaS sovereign cloud services by tying or bundling Orange's business connectivity services with Bleu's sovereign cloud services

(121) The Commission has assessed whether the Parties would have the ability and incentive to foreclose rival providers of IaaS, PaaS and SaaS sovereign cloud solutions in France by potentially bundling or tying Orange's business connectivity services to Bleu's IaaS, PaaS and SaaS sovereign cloud solutions. The Commission has also assessed whether such a hypothetical foreclosure strategy would have an impact on effective competition on the plausible market(s) for the supply of IaaS, PaaS and SaaS sovereign cloud services in France.

6.4.3.1. The Notifying Parties' views

6.4.3.1.1. Ability to foreclose

(122) The Notifying Parties submit that Orange will not have, post-Transaction, the ability to foreclose any of Bleu's competitors for the following reasons.

(123) First, the Notifying Parties submit that retail business connectivity services are used for a multitude of other than cloud-related applications and activities and that, as such, any use linked to cloud computing services represents only a very small share of the applications for which business connectivity services are delivered.[114]

(124) Second, the Notifying Parties argue that it cannot be considered that sovereign cloud services provided by Bleu, on the one hand, and business connectivity services, on the other hand, are directed to a large pool of common customers such that a tying or bundling strategy could affect competition on those markets. In that respect, the Notifying Parties submit that Bleu's sovereign cloud services and Orange's business connectivity services are sold to customer categories that differ widely in size and homogeneity, and for potentially extremely different uses. Accordingly, the Notifying Parties submit that those respective services cannot be considered to entertain connections that would make them closely related or to constitute sufficiently complementary products.

(125) Finally, the Notifying Parties argue that customers typically select the cloud services provider, on the one hand, and the provider of retail business connectivity services, on the other hand, through separate tender procedures. Therefore, Orange will not have the ability to engage in exclusionary strategies as Bleu's services, on

114 Form CO, paragraph 361.

the one hand, and business connectivity services, on the other hand, are not purchased together by customers.[115]

(126) Based on the above, the Notifying Parties consider that the Parties will not have, post-Transaction, the ability to foreclose any of Bleu's competitors on the possible market(s) for the supply of sovereign cloud services.

6.4.3.1.2. Incentive to foreclose

(127) The Notifying Parties submit that Orange will not have, post-Transaction, the incentive to foreclose any of Bleu's competitors on the possible market for the supply of sovereign cloud services in France.

(128) The Notifying Parties argue that most of Orange's customers in business connectivity services would not be Eligible Customers. Even if there were some Eligible Customers among Orange's business connectivity customers, they would purchase business connectivity services for applications unrelated to sovereign cloud services. As a consequence, Orange would have no interest in trying to sell them Bleu' services – *i.e.*, services they do not need – as part of a tied or bundled offer with retail business connectivity services as such package would be rejected by these customers and could only lead to Orange losing contracts.

(129) Finally, the Notifying Parties submit that Orange would have to share Bleu's profits from a possible foreclosure strategy with Capgemini, while potentially forgoing some of its own profits on its business connectivity services to improve Bleu's position. This would decrease Orange's benefits from, and consequently incentive to engage into, any such hypothetical tying/bundling strategy.[116]

(130) Based on the above, the Notifying Parties consider that Orange will not have, post-Transaction, the incentive to foreclose any of Bleu's competitors on the possible market(s) for the supply of sovereign cloud services in France.

6.4.3.1.3. Effects on competition

(131) The Notifying Parties submit that there will be no adverse effects on competition on the potential market for the supply of sovereign cloud services in France as a result of a possible tying or bundling strategy between Bleu's IaaS, PaaS and SaaS sovereign cloud solutions and Orange's business connectivity services, because the Parties will not have the ability or the incentive to engage in anti-competitive leveraging.

6.4.3.2. The Commission's assessment

(132) The Commission has left open, for the purpose of this Decision, whether the market for business connectivity services to large businesses and public sector customers should be further segmented between the different types of networks and services. Therefore, the Commission has carried out the below assessment under the assumption that the relevant product markets are the narrowest possible affected segments of the market for business connectivity services to large business

[115] Form CO, paragraph 383.
[116] Form CO, paragraph 388.

and public sector customers, namely (i) business connectivity services to large businesses and public sector customers through broadband access in France and (ii) business connectivity services to large businesses and public sector customers through VPN in France. The below assessment applies to both possible relevant product markets.

(133) Furthermore, since the Commission concluded that the Transaction does not raise competition concerns under such narrow product market definitions, the Commission considers that the assessment below applies, *a fortiori,* also to a scenario in which the relevant market is the market for the broader supply of business connectivity services to large businesses and public sector customers, since the Parties' market shares in such broader market are lower.

6.4.3.2.1. Ability to foreclose

(134) The Commission considers that the Parties will not have the ability to foreclose Bleu's rival suppliers of IaaS, PaaS and SaaS sovereign cloud solutions by tying or bundling Bleu's sovereign cloud solutions to Orange's business connectivity services.

(135) First, despite Orange's market shares being significant in the narrowest possible market product markets for business connectivity services ([40-50]% in business connectivity services to large businesses and public sector customers through broadband access in France and [50-60]% in business connectivity services to large businesses and public sector customers through VPN in France), customers would still have the ability to choose their provider of those services among multiple competing options such as SFR, Adista, Bouygues Telecom, Colt, etc.[117]

(136) Second, the results of the Commission's market investigation confirm that cloud services, on the one hand, and business connectivity services, on the other hand, are typically selected and purchased separately. Indeed, the vast majority of the customers who responded indicate that they usually purchase these services separately, on a standalone basis.[118]

(137) Third, the majority of the customers who expressed an opinion indicate that they would not be interested or likely to buy Bleu's cloud services bundled with Orange's business connectivity services as such bundles would not make sense commercially. The rest of the respondents indicate that they could be interested to buy such services only if they would be commercially attractive.[119] In that respect, none of the respondents indicated that Orange would provide "must have" services.

(138) For the reasons set out above, the Commission concludes that Orange does not have the ability to engage in foreclosure strategies by leveraging its position on the market for the provision of business connectivity services in France, Western Europe and the EEA.

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117 In addition, Orange's market share is expected to decrease in the next few years because of the more contested fibre-to-the-office (FTTO) market into which Orange is progressively moving following its plan to switch off the copper network as fibre is the other main technology used for the provision of business connectivity services.

118 Q2 – questionnaire to customers, question D.14.

119 Q2 – questionnaire to customers, question D.19.

6.4.3.2.2. Incentive to foreclose

(139) The Commission considers that the Orange will not have the incentive to engage in foreclosure strategies by leveraging its position on the market for the provision of business connectivity services for the following reasons.

(140) The Commission indeed considers that Orange does not have the incentive to engage in such practices as any such attempt would be mostly counter-productive and unprofitable for Orange, This is because the customers that it would try to harm could decide not to select its services and find alternative options from (i) competitors of the JV in the ANSSI-certified sovereign cloud segment such as NUMSPOT or OVHcloud and Atos or Whaller for instance[120], and from (ii) competitors of Orange in the business connectivity services segment such as SFR, Adista, Bouygues Telecom, Colt, etc.

(141) In that respect, half of the customers who expressed an opinion consider that they would have sufficient alternative supply of both ANSSI-certified cloud computing services and retail business connectivity services on a standalone basis if Bleu' services were only offered in a bundle with Orange's business connectivity services. Less than a third of the respondents considered that this would not be the case.[121]

(142) Furthermore, Orange, as the only one of the Notifying Parties with a relatively significant position, in France, on the market that it would need to leverage to try and impose Bleu' services onto its customers through hypothetical tying/bundling strategies, would need to share the profits of additional Bleu sales with Capgemini. Orange would therefore see its benefits from a hypothetical tying/bundling strategy reduced as it would have to forgo profits on business connectivity services to increase Bleu's position only to its partial benefit.

(143) For the reasons set out above, the Commission concludes that Orange does not have the incentive to engage in foreclosure strategies by leveraging its position on the market for the provision of business connectivity services in France, Western Europe and the EEA.

6.4.3.2.3. Effects on competition

(144) The Commission considers that due to the lack of ability and incentive, it is not necessary to conclude on the question whether any hypothetical foreclosure strategy as a result of the conglomerate relationships brought about by the Transaction, in particular in France, would have a negative impact on effective competition.

(145) In any event, the Commission considers that any hypothetical foreclosure strategy of competing sovereign cloud services providers would have no significant detrimental effect on competition because bundling is not a *de facto* practice in the industry. Customers confirmed that they will always be able to rely on alternative solutions from other suppliers that offer competing services to those of the Parties.

[120] Form CO, paragraph 404.

6.4.3.3. Conclusion

(146) 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 the possible foreclosure of Bleu's rival suppliers of IaaS, PaaS and SaaS sovereign cloud solutions as a result of the possible bundling or tying of Bleu's IaaS, PaaS and SaaS sovereign cloud solutions to Orange's business connectivity services in France.

6.4.4. Foreclosure of rival providers of IaaS, PaaS and SaaS sovereign cloud services by tying or bundling Orange's retail fixed telephony services with Bleu's sovereign cloud services

(147) In the present section, the Commission has assessed whether the Parties would have the ability and incentive to foreclose rival IaaS, PaaS and SaaS sovereign cloud services providers in France by potentially bundling or tying Orange's retail fixed telephony services with Bleu's IaaS, PaaS and SaaS sovereign cloud solutions. The Commission has also assessed whether such hypothetical foreclosure strategies would have an impact on effective competition on the plausible market(s) for the supply of IaaS, PaaS and SaaS sovereign cloud services in France.

6.4.4.1. The Notifying Party's views

6.4.4.1.1. Ability to foreclose

(148) The Notifying Parties submit that Orange will not have, post-Transaction, the ability to foreclose any of Bleu's competitors on the possible market for the supply of sovereign cloud services for the following reasons.

(149) First, the Notifying Parties submit that retail fixed telephony services are used for a multitude of other than cloud-related applications and activities and that, as such, any use linked to cloud computing services represents only a very small share of the applications for which retail business connectivity services are delivered.[122]

(150) Second, the Notifying Parties argue that it cannot be considered that cloud services provided by Bleu, on the one hand, and retail fixed telephony services, on the other hand, are directed to a large pool of common customers that could somehow affect competition on those markets. In that respect, the Notifying Parties submit that Bleu's services and Orange's retail fixed telephony services are sold to customer categories that differ widely in size and homogeneity, and for potentially extremely different uses. Accordingly, the Notifying Parties submit that those respective services cannot be considered to entertain connections that would make them closely related or to constitute sufficiently complementary products.

(151) Third, the Notifying Party submits that Orange's market share that is currently above 30% in retail fixed telephony services mainly results from Orange's historical strong position in the provision of traditional fixed telephony services through the public switched telephone network ("PSTN") but that it is expected to decrease over time due to Orange's decision to stop marketing and operating this

122 Form CO, paragraph 382.

obsolete technology. The Notifying Parties indicate in that respect that the technical shutdown of Orange's PSTN network is currently being implemented by Orange and is expected to be completed in 2030.[123]

(152) Finally, the Notifying Parties argue that customers typically select the cloud services provider, on the one hand, and the provider of retail fixed telephony services, on the other hand, through separate tender procedures and that, as a consequence, Orange will not have the ability to engage in exclusionary strategies as Bleu's services, on the one hand, and retail fixed telephony services, on the other hand, are marketed by different providers at different times.[124]

(153) Based on the above, the Notifying Parties consider that the Parties will not have, post-Transaction, the ability to foreclose any of Bleu's competitors on the possible market(s) for the supply of sovereign cloud services.

6.4.4.1.2. Incentive to foreclose

(154) The Notifying Parties submit that Orange will not have, post-Transaction, the incentive to foreclose any of Bleu's competitors on the possible market for the supply of sovereign cloud services in France by leveraging its position on the market for the provision of retail fixed telephony services in order to increase the sales of Bleu's sovereign cloud services to Eligible Customers.

(155) The Notifying Parties indeed argue that, in that respect, most of Orange's customers in retail fixed telephony services would not be Eligible Customers and/or would purchase these services for applications unrelated to sovereign cloud services. As a consequence, Orange would therefore have no interest in trying to sell them Bleu' services – i.e., services they do not need – as part of a tied or bundled offer with retail fixed telephony services as such package would clearly be rejected by these customers and could only lead to Orange losing contracts.

(156) Finally, the Notifying Parties submit that the fact that, in such situations, Orange would have to share Bleu's profits with Capgemini while forgoing its own profits on its retail fixed telephony services to increase Bleu's position would decrease Orange's benefits from, and consequently incentive to engage into, any such hypothetical tying/bundling strategy.[125]

(157) Based on the above, the Notifying Parties consider that Orange will not have, post-Transaction, the incentive to foreclose any of Bleu's competitors on the possible market(s) for the supply of sovereign cloud services.

6.4.4.1.3. Effects on competition

(158) The Notifying Parties submit that there will be no adverse effects on competition in the markets affected by the conglomerate relationships in France, Western Europe and the EEA as the Parties will not have the ability or the incentive to engage in anti-competitive leveraging.

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123 Form CO, paragraph 380.
124 Form CO, paragraph 383.
125 Form CO, paragraph 388.

6.4.4.2. The Commission's assessment

(159) The Commission considered, for the purpose of this Decision, that there is a relevant product market for the retail supply of fixed telephony services including VoIP services. The Commission left it open whether such market should be further segmented between local/national and international calls or between the different types of end-users. Therefore, the Commission has carried out the below assessment considering both the overall market for fixed telephony services including VoIP services, and the narrowest possible affected segments within such market, namely (i) retail supply of fixed telephony services including VoIP services for local/national calls; (ii) retail supply of fixed telephony services including VoIP services for international calls; and (iii) retail supply of fixed telephony services including VoIP services for non-residential customers. The arguments set out below apply regardless of the precise product market definition. Ability to foreclose

(160) The Commission considers that the Orange will not have the ability to foreclose Bleu's rival suppliers of IaaS, PaaS and SaaS sovereign cloud solutions by bundling or tying Bleu's IaaS, PaaS and SaaS sovereign cloud solutions to Orange's fixed telephony services in France.

(161) First, despite Orange's market share reaching up to [50-60]% depending on the possible relevant product market considered (see Section 6.3.1.5. above), Orange's share of that market is expected to decrease over time as it has already initiated the commercial and technical shutdown of that legacy technology under the control of ARCEP, the French regulator.[126] While Orange was the leading provider of such services on the legacy copper network, it will not enjoy the same position on the new optical fibre network which is being rolled out in France by multiple commercial operators and not just Orange as the legacy incumbent.[127]

(162) Second, customers already have, and will increasingly have in the future, the ability to choose fixed telephony services from alternative competing providers such as SFR, Adista, Bouygues Telecom, Celeste, Ciel or Linkt.[128]

(163) Third, fixed telephony services and IaaS, PaaS and SaaS solutions are not generally purchased by the same set of customers for the same end use, nor do they have a large pool of common customers. Therefore, the conditions set out in the Non-Horizontal Merger Guidelines for a conglomerate relationship to potentially raise competition concerns are not met. Indeed, the results of the Commission's market investigation confirm that cloud services, on the one hand, and retail fixed telephony services, on the other hand, are typically selected and purchased separately by customers of both services. In particular vast majority of the customers who expressed an opinion indicate that they usually purchase these services separately, on a standalone basis.[129] Therefore, Orange would not have the ability to increase Bleu's customers by potentially obliging its fixed telephony services customers to buy Bleu's IaaS, PaaS and SaaS solutions.

[126] See: https://en.arcep fr/news/press-releases/view/n/copper-switch-off-01-070222 html
[127] Form CO, paragraph 380.
[128] Form CO, paragraph 361.
[129] Q2 – questionnaire to customers, question D.13.

(164) Fourth, the vast majority of the customers who expressed an opinion indicate that they would not be interested or likely to buy Bleu's cloud services bundled with Orange's retail fixed telephony services, as such bundles would not make sense commercially. In addition, none of the respondents indicated that Orange would provide "must have" fixed telephony services.[130]

(165) For the reasons set out above, the Commission concludes that Orange does not have the ability to foreclose Bleu's rival suppliers of IaaS, PaaS and SaaS sovereign cloud solutions by bundling or tying Bleu's IaaS, PaaS and SaaS sovereign cloud solutions to Orange's fixed telephony services in France.

6.4.4.2.1. Incentive to foreclose

(166) The Commission considers that Orange would not have the incentive to foreclose Bleu's rival suppliers of IaaS, PaaS and SaaS sovereign cloud solutions by bundling or tying Bleu's IaaS, PaaS and SaaS sovereign cloud solutions to Orange's fixed telephony services in France.

(167) First, such foreclosure practices would be unprofitable and counter-productive for Orange. This is because the customers that it would try to harm could decide not to select its fixed telephony services or Bleu's sovereign cloud services, and find alternative options from (i) competitors of the JV in the ANSSI-certified sovereign cloud segment such as NUMSPOT, OVHcloud and Atos or Whaller[131], and from (ii) competitors of Orange in the retail fixed telephony services segment such as SFR, Adista, Bouygues Telecom, Celeste, Ciel or Linkt.

(168) In that respect, half of the customers who expressed an opinion consider that they would have sufficient alternative supply of both ANSSI-certified cloud computing services and retail fixed telephony services on a standalone basis if Bleu' services were only offered in a bundle with Orange's retail fixed telephony services.[132]

(169) Furthermore, Orange, would need to share the profits deriving from a potential foreclosure strategy with Capgemini. On the other hand, Orange would risk to loose part of its own profits from the supply of fixed telephony services to customers that would not accept the bundle. Therefore, Orange would have its benefits from a hypothetical tying/bundling strategy reduced as it would have to forgo profits on retail fixed telephony services to increase Bleu's position only to its partial benefit.

(170) For the reasons set out above, the Commission concludes that Orange would not have the incentive to foreclose Bleu's rival suppliers of IaaS, PaaS and SaaS sovereign cloud solutions by bundling or tying Bleu's IaaS, PaaS and SaaS sovereign cloud solutions to Orange's fixed telephony services in France.

6.4.4.2.2. Effects on competition

(171) The Commission considers that due to the lack of ability and incentive, it is not necessary to conclude on the question whether any hypothetical foreclosure

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130 Q2 – questionnaire to customers, question D.17.
131 Form CO, paragraph 404.
132 Q2 – questionnaire to customers, question D.23.

strategy as a result of the bundling or tying of Bleu's IaaS, PaaS and SaaS sovereign cloud solutions with Orange's fixed telephony services would have significant effects on competition on the market for the supply of sovereign cloud services in France.

(172) In any event, the Commission considers that any hypothetical foreclosure strategy of this kind would not have negative effects on competition between Bleu and its rival providers of sovereign cloud services. This is because, as mentioned above, customers do not typically purchase fixed telephony services and sovereign cloud services together for the same end use. Furthermore, as confirmed by almost the entirety customers in reply to the market investigation,[133] a bundle between sovereign cloud services and fixed telephony services would not be attractive and would not make commercial sense, therefore customers would likely refuse it and source such services from alternative suppliers.

(173) Therefore, the Commission considers that a hypothetical foreclosure strategy between Orange's fixed telephony services and Bleu's IaaS, PaaS and SaaS sovereign solutions would not have significant negative effects on competition on the potential market for the supply of sovereign cloud services in France.

6.4.4.3. Conclusion

(174) 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 the possible foreclosure of Bleu's rival suppliers of IaaS, PaaS and SaaS sovereign cloud solutions as a result of the possible bundling or tying of Bleu's IaaS, PaaS and SaaS sovereign cloud solutions to Orange's fixed telephony services in France.

6.5. Overall impact

(175) In line with the Commission's competitive assessment as set out above, no customer responding to the market investigation raises concerns about the Transaction. In fact, they consider that the Transaction is going to have a positive effect on their business. The main reasons mentioned include that the Transaction will add one more supplier of sovereign cloud services and that the JV's offering is expected to solve current operational issues at customer level.[134] More generally, the vast majority of the customers also consider the Transaction as a positive development for the cloud services market in France and the sovereign cloud services segment in particular.[135]

(176) In addition, competitors of Bleu generally did not raise concerns related to the possible tying or bundling of Bleu's IaaS, PaaS and SaaS sovereign cloud solutions to Orange's and/or Capgemini's managed services, fixed telephony services and business connectivity services. Only one competitor mentioned that the possibility for Orange to bundle its connectivity services to Blue's sovereign cloud services will strengthen Orange's position.[136]

133 Q2 – questionnaire to customers, question D.17.
134 Q2 – questionnaire to customers, question E.2.
135 Q2 – questionnaire to customers, questions E.2 – E.4.
136 Q1 – questionnaire to competitors, question E.5.

(177) However, the majority of Bleu's competitors on the sovereign cloud services market have expressed concerns, because of the exclusivity agreed between the Parties and Microsoft, whereby Bleu will be the sole provider able to offer M365 software suites as part of a sovereign cloud offering in France. In particular, competitors expressed concerns that the dominance of M365 combined with Bleu's sovereign cloud services could lead to the foreclosure of smaller sovereign cloud service providers from a large part of the market. This would be the result of the competitive advantage of offering M365 in the ANSSI-certified sovereign cloud offering[137] and the fact that there would be no other credible alternative collaborative software suites.

(178) With respect to the cloud services market in general, although some competitors do recognise that the Transaction will bring a new player offering sovereign cloud services, slightly more than half of the competitors who provided a view submit that the impact of the exclusivity on cloud services in general is going to be negative.[138] Furthermore, about two thirds of the respondents consider a similar impact on the possible narrower ANSSI-certified sovereign cloud services segment.[139] The reason put forward includes the alleged lack of replicability of Bleu's offering due to M365 and Microsoft's Azure technology, which would allegedly confer Bleu a competitive advantage..[140]

(179) The results of the Commission's market investigation further revealed that almost all customers who provided a view indicate that they are interested to move their collaborative/productivity tools to their sovereign cloud solution environment once available.[141] In that context, the majority of those respondents indicate that a sovereign cloud service provider offering Microsoft's M365 productivity software as part of the ANSSI-certified cloud services would be considerably more attractive, mainly because M365 is largely used by businesses and having it as part of a secure cloud service is particularly attractive.[142] In addition, no customer considers that there are a sufficient number of effective alternatives to M365 to be possibly included as a productivity/collaboration software solution as part of an alternative ANSSI-certified cloud service. Any alternative collaboration software would be "*based on smaller players*" and "*the migration would be very burdensome*" for those that already use M365.[143]

(180) As a result, the vast majority of the competitors who provided a view consider that their ability to compete in the ANSSI-certified sovereign cloud services space will be significantly impaired following the Transaction.[144]

(181) Pursuant to the Merger Regulation, the Commission can only assess the impact of competition on the relevant markets deriving from the specific changes brought about by a transaction. However, the agreement between the Notifying Parties and

[137] Q1 – questionnaire to competitors, question E.2.
[138] Q1 – questionnaire to competitors, question E.4.
[139] Q1 – questionnaire to competitors, question E.6.
[140] Q1 – questionnaire to competitors, question E.9.
[141] Q2 – questionnaire to customers, question D.2.
[142] Q2 – questionnaire to customers, question D.3.
[143] Q2 – questionnaire to customers, question D.8.
[144] Q1 – questionnaire to competitors, question E.1.

Microsoft does not amount to a change in the market brought about by Orange's and Capgemini's acquisition of joint control over Bleu for the following reasons.

(182) First, Microsoft is not a party to the Transaction under the Merger Regulation. As explained in paragraphs 11 to 13 above, Microsoft will not acquire any rights to decisively influence decisions regarding Bleu's business. Therefore, Microsoft does not acquire *de jure* or *de facto* control within the meaning of the Merger Regulation..

(183) Second, more generally, agreements between a JV and third parties are not directly related to the transaction for the purposes of merger control. They are not part of the structural change in the market brought about by the transaction and therefore do not fall under the scope of the Merger Regulation.[145] In this regard, the Commission notes that, while in the case at hand the agreement with Microsoft has been negotiated in parallel to the agreement for the creation of Bleu, it might have been negotiated at a later stage post-Transaction without changing the nature of the Transaction, *i.e.*, the acquisition of joint control by the Notifying Parties over Bleu.

(184) Therefore, the Commission considers that possible concerns stemming from the exclusive relationship between Microsoft and Bleu do not fall under the scope of the Commission's review of the Transaction under the Merger Regulation. As such, they will not be assessed further in the present decision. The Commission notes though that its assessment of the Transaction under the Merger Regulation is without prejudice to the application of other competition rules to the agreement between Bleu and Microsoft. Articles 101 and 102 TFEU, for instance, continue to apply to any potential anti-competitive effects that might be caused by the agreement with Microsoft and in particular the exclusivity arrangements therein – same as for any other agreements between a JV and/or its parents and third parties. The review of such effects under competition rules is not excluded under Art. 21(1) of the Merger Regulation.

[145] It also follows from the Commission Notice on restrictions directly related and necessary to concentrations (OJ C 56, 5.3.2005, p. 24–31) that, in the case of a JV, only agreements between the JV and its parent companies (such as non-competition obligations, licence agreements, purchase and supply obligations) may, under certain conditions, be deemed directly related and necessary to the implementation of the concentration and therefore covered by the clearance decision. Agreements with third parties are not deemed directly related to the Transaction.

7. CONCLUSION

(185) 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