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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 ... information. The omissions are shown thus […]. Where possible the information omitted has been replaced by ranges of figures or a general description.

To the notifying party

Subject: **Case M.9866 – United Group / Forthnet**
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 9 July 2020, the European Commission received notification of a proposed concentration (the "Transaction") pursuant to Article 4 of the Merger Regulation by which United Group B.V. ("United Group", Netherlands; the "Notifying Party"), through Newco United Group Hellas S.A.R.L, ("NewCo", Luxembourg),[3] acquires within the meaning of Article 3(1)(b) sole control of the Hellenic Company for Telecommunications and Telematic applications S.A. (with the trading name "Forthnet", Greece, or the "Target").[4] United Group and Forthnet are designated hereinafter as the "Parties".

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

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

3 Newco, is a special purpose vehicle through which United Group acquires Forthnet. It is the entity which enters into the transaction agreements with the Sellers of Forthnet. (Reply to Commission's request for information dated 30 July 2020.)

4 Publication in the Official Journal of the European Union No C 234,*16.07.20,* p.4.

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1. THE PARTIES

(2) **United Group** is active in the provision of telecommunication and media services in South East Europe where it operates a multi-play cable and media platform. United Group's activities focus on the production of pay-TV channels and content, distribution of content, retail distribution of pay-TV services, broadband internet and fixed and mobile telecommunication services. Within the EEA, it is active in Slovenia, Croatia, and Bulgaria with some minor activity in Greece and Cyprus. United Group is ultimately solely controlled by BC Partners LLP ("BC Partners", United Kingdom), an international private equity firm, whose sole activity is to provide advisory services.[5] The Transaction follows a stream of recent acquisitions by United Group, which most recently in 2020 acquired BTC,[6] prior to which it acquired Tele2 Croatia in May 2019 and NOVA TV in Croatia in August 2018.

(3) **Forthnet** is a telecommunications provider active in Greece and Cyprus, operating under the brand "NOVA".[7] Forthnet provides fixed telephony and broadband internet services, only in Greece. Its pay-TV services are offered in both countries. At retail level, Forthnet's pay-TV services are distributed via satellite ("direct-to-home" or "DTH") and internet (through "Over-The-Top" services or "OTT"). At wholesale level, Forthnet is active in the supply of its own produced "NOVA" channels to pay-TV providers. Forthnet is a public company incorporated in Greece, with shares listed on the Athens Stock Exchange. Forthnet shares are currently held by Wind Hellas Telecommunications S.A. (21,05%), Piraeus Bank (15,11%), Go Plc (14,42%), Massar Investments LLC (14,42%), National Bank of Greece (12,14%), Alpha Bank (8,48%), Vodafone S.A. (4,15%), Attica Bank (0,46%) and the remaining shares (9,77%) being held by other shareholders.[8] [Information on corporate governance].[9]

2. THE OPERATION

(4) The Transaction consists of an acquisition of shares. Pursuant to [...][10] [...],[11] [...], United Group will acquire sole control over Forthnet.

(5) [Information strictly related to the implementation of the Transaction].

(6) [Information strictly related to the implementation of the Transaction].[12]

(7) [Information strictly related to the implementation of the Transaction][13] [Information strictly related to the implementation of the Transaction].[14]

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5 BC Partners' acquisition of United Group has been approved by the Commission in Case M.9152 of 17 December 2018.

6 United Group's acquisition of the Bulgarian Telecommunications Company ("BTC") has been approved by Commission's decision in Case M.9679 of 3 April 2020 (not published yet).

7 The NOVA brand is unrelated to United Group's NOVA TV.

8 Form CO, paragraph 36.

9 Reply to Commission's request for information dated 13 August 2020.

10 [...].

11 [...].

12 Reply to Commission's request for information dated 7 August 2020.

13 Form CO, paragraph 49.

14 Form CO, paragraph 49.

(8) Following, therefore, [...], United Group will acquire sole control over Forthnet.

(9) [Information strictly related to the implementation of the Transaction].[15]

(10) [Information strictly related to the implementation of the Transaction].[16]

(11) [Information strictly related to the implementation of the Transaction].[17] [Information strictly related to the implementation of the Transaction][18] [Information strictly related to the implementation of the Transaction].

(12) In view of the above, the Commission considers that the completion of [Information strictly related to the implementation of the Transaction] can be treated as a single concentration for the purposes of the Merger Regulation.

3. EU DIMENSION

(13) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million (EUR [...]). Each of them has an EU-wide turnover in excess of EUR 250 million (United Group: EUR [...]; Forthnet: EUR [...]), but not each of the undertakings concerned achieves more than two-thirds of its aggregate EU-wide turnover within one and the same Member State. The notified operation therefore has an EU dimension within the meaning of Article 1(2) of the Merger Regulation.

4. RELEVANT MARKETS

(14) The Transaction gives rise to a limited horizontal overlap in respect to the market for the retail supply of pay-TV services, where both United Group and Forthnet are active.

(15) The Transaction also gives rise to vertically affected markets in connection with:

- at the upstream level: the supply of (i) wholesale mobile call terminations services and (ii) wholesale fixed call terminations services, in the countries where United Group and Forthnet operate;

- at the downstream level: (i) retail mobile communications services and (ii) retail supply of fixed telephony services in the countries where United Group and Forthnet operate (see table 3).[19]

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15 [Information strictly related to the implementation of the Transaction]. Form CO, paragraphs 55-57, Reply to Commission's request for information of 17 July 2020.

16 [Information strictly related to the implementation of the Transaction.]. See also Form CO, paragraph 54.

17 [Information strictly related to the implementation of the Transaction].

18 [...].

19 [information related to the Acquirer's shareholding structure].

4.1. Television markets

4.1.1. Retail supply of TV services

(16) Providers of retail TV services offer end users packages of linear and/or non-linear TV services. Linear services are services that broadcast scheduled programs, not streamed by a specific user. Non-linear services, or video-on-demand ("VOD") services, are services provided for the viewing of programmes at the moment chosen by the users and at their individual request, on the basis of a catalogue of programmes.[20] TV services may be offered either on a free-to-air ("FTA") or pay-TV basis. Providers of retail TV services deliver their content to end customers via a number of technical means: (i) traditional networks, such as cable, satellite ("direct-to-home" or "DTH"), internet protocol television ("IPTV"), and to a lesser extent, digital terrestrial TV ("DTT") and/or (ii) the "Over-The-Top" ("OTT") distribution technology which allows TV content to be delivered through the use of open internet.

(17) In the retail provision of TV services to end users: (a) Forthnet (under the brand NOVA) distributes pay-TV services via the use of satellite (DTH) and OTT platforms, in Greece and Cyprus; (b) United Group distributes pay-TV services via cable, satellite (DTH) and OTT at global level, including in Greece, Cyprus, Slovenia, Croatia and Bulgaria.[21] Its OTT services are offered under the "Net.TV.Plus" brand.

4.1.1.1. Product market definition

(18) The Commission has previously considered the retail provision of free-to-air ("FTA") and pay TV services as separate product markets, but ultimately left open the product market definition.[22] It has further considered whether pay-TV services could be segmented according to: (i) linear vs. non-linear TV services, (ii) premium vs. basic pay-TV services and (iii) the distribution technology employed, but has left the market open with regard to each of these potential sub-segments.[23] Nevertheless, in *Telia/Bonnier Broadcasting*, with regard to a segmentation of the market per type of distribution technology, the Commission recently concluded that the retail market for the provision of pay-TV services should be considered as encompassing all distribution technologies.[24]

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20 Non-linear services can be further differentiated into Advertising Video On Demand ("AVOD"), Subscription Video On Demand ("SVOD"), Transactional Video-On-Demand ("TVOD") and Pay-per-view.

21 In particular, United Group offers pay-TV services, cable Pay TV through its SBB/Telemach brand, and DTH pay TV through its Total TV brand in Slovenia, Serbia, Montenegro, Bosnia and Herzegovina and North Macedonia (Total TV only). United Group owns three national TV stations which include Nova TV in Croatia, Nova BH in Bosna and Herzegovina, and Nova M in Montenegro.

22 Commission decisions: of 6 November 2018 in case M.8785 - Disney/Fox, paragraph 98; of 24 February 2015 in case M.7194 - Liberty Global/Corelio/W&W/De Vijver Media, paragraph 152.

23 Commission decisions: of 7 April 2017 in case M.8354, Fox/Sky, paragraphs 80 and 81; of 24 February 2015 in case M.7194, Liberty Global / Corelio / W&W / De Vijver Media, paragraphs 90, 119 and 124; of 6 November 2018 in case M.8785 - Disney/Fox, paragraphs 94 and 98.

24 Commission decision of 12 November 2019 in case M.9064, Telia Company/Bonnier Broadcasting, paragraph 200. The Commission has, nevertheless, left open the question with regard to alternative possible segmentations discussed in this section. In Greece, the media law (Law 3592/2007 on the concentration and licensing of media enterprises, as amended and in force) makes a distinction between media of informative and non-informative content, and sets specific provisions for the former, aiming,

(19) The Notifying Party submits that the relevant market is the market for the retail provision of pay-TV services encompassing: (i) all distribution technologies, since most, if not at all of the content, is available on each technology; (ii) non-linear and linear content, as both compete for viewing time and (iii) basic and premium pay TV. In its view, the precise product market can be left open, since the Transaction does not give rise to any competitive concerns irrespective of the precise market definition. [25]

(20) For the purpose of the present decision, the Commission considers that the question whether the retail supply of TV services can be segmented between FTA and pay TV services and in turn pay TV services should be further segmented according to: (i) linear and non-linear pay TV services, (ii) basic and premium pay TV services, and (iii) the distribution technology employed, can be left open since the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement under any of the possible product market definitions set out in this paragraph.

4.1.1.2. Geographic market definition

(21) In its previous decisions, the Commission has considered that the geographic scope of the market for the retail provision of TV services is either national, since TV distributors compete on a nationwide basis or limited to the coverage area of each cable operator.[26]

(22) The Notifying Party submits that the precise geographic market can be left open, given that the Transaction does not raise any competitive concerns irrespective of the precise geographic market definition.

(23) Commission's market investigation has confirmed that pay-TV operators in Greece, offer their services at national level. The Commission further observes, that, in Greece, the provision of pay-TV services, including the licensing procedure of pay-TV operators are subject to national regulatory framework.[27]

(24) In light of the above and for the purpose of the present decision, the Commission considers that the relevant market for the retail supply of TV services is national in scope. The Commission considers that the competitive assessment in Section 5.3 would remain the same also on a geographic market comprising the coverage area of each cable operator.

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principally at safeguarding media pluralism and freedom of expression. The said legislation provides that concentrations of media of non-informative content are governed by the general competition rules set forth by Law 3959/2011 ("Protection of Free Competition", Gov't Gazette Issue A' *93*/20.04.2011). The Hellenic Competition Commission (HCC), in its recent decision No 656/2018, on the acquisition of CYTA Hellas by Vodafone Greece, considered that the market for the retail provision of pay-TV services, irrespective of the different means of distribution, constitutes a distinct market, which is not included in the market for media of informative content and, thus, falls within the provisions of Law 3959/2011.

25 Form CO, paragraph 167.

26 Commission decisions: of 8 December 2018 in case M.8842 – Tele2/Com Hem Holding paragraphs 37-38; of 24 February 2015 in case M.7194, Liberty Global / Corelio / W&W / De Vijver Media, paragraphs 132-139;; of 21 December 2010 in case M.5932, News Corp/BskyB, paragraphs 86–88.

27 Articles 1-3, Law 2644/1998 and Article 15 Law 3592/2007.

4.2. Telecommunication markets

4.2.1. Retail mobile communication services

(25) Mobile communications services to end customers or "retail mobile communication services" include services for national and international voice calls, SMS (including MMS and other messages), mobile internet with data services, access to content via the mobile network and retail international roaming services.

4.2.1.1. Product market definition

(26) In previous decisions, the Commission has not further segmented the overall retail mobile market based on the type of service (voice calls, SMS, MMS, mobile Internet data services), or the type of network technology. The Commission has considered possible segments of the overall retail market for mobile telecommunication services by distinguishing between pre-paid and post-paid services and between private customers and business customers, concluding that these did not constitute separate product markets but rather were market segments within an overall retail market. [28]

(27) The Notifying Party submits that, in the present case, the relevant product market should be defined in line with the Commission's previous decisional practice, i.e. as the overall retail market for the mobile telecommunication services without further segmentation.

(28) For the purpose of the present decision, the Commission considers that the exact product market definition in relation to the provision of retail mobile telecommunications services (whether there is an overall market for retail mobile communication services or whether this market should be segmented between pre-paid and post-paid or between private and business customers) can be left open since the Transaction does not give rise to serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement under any such product market definition.

4.2.1.2. Geographic market definition

(29) The Commission has consistently found the market for retail mobile communication services to be national in scope.[29]

(30) The Notifying Party considers that the market should be considered national in scope, in line with the approach adopted by the Commission in previous decisions.

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[28] Commission decisions: of 15 July 2019 in case M.9370, Telenor/DNA, paragraph 41; of 27 November 2018 in case M.8792, T-Mobile NL/Tele2 NL.

[29] Commission decisions: of 12 November 2019, in case M.9064, Telia/Bonnier Broadcasting, paragraph 251; of 15 July 2019 in case M.9370, Telenor/DNA, paragraphs 44-46; of 27 November 2018 in case M.8792, T-Mobile NL/Tele2 NL, paragraphs 232-233; 8 October 2018 in case M.8842 – Tele2/Com Hem, paragraph 49; of 27 July 2018 in case M.8883, PPF/Telenor Target Companies paragraphs 15-16. The Greek National Regulatory Authority (National Telecommunications and Post Commission or "EETT"), responsible, *inter alia*, for regulating any issue related to the market definition of the relevant electronic communications products or services within Greece (under Law 4070/2012), has found that the geographic scope of the market for the retail provision of mobile communication services corresponds to the territory of Greece (EETT decision 399/1/16.8.2016, on the acquisition by Cosmote Greece of MOBILBEEP Ltd; Gov't Gazette Issue B΄1376 / 14.09.2006).

(31) The Commission observes that nothing in the present case indicates that it would be justified to depart from its position – in particular considering that licences to mobile operators are granted on a national basis. Consequently, for the purpose of the present decision and in line with its previous decisional practice, the Commission considers the market for retail mobile services to be national in scope.

4.2.2. Retail supply of fixed telephony services

(32) Fixed telephony services comprise the provision of connection services at a fixed location or access to the public telephone network, for the purpose of making and/or receiving calls and related services.

4.2.2.1. Product market definition

(33) In previous decisions, the Commission considered that managed Voice over Internet Protocol ("VoIP")[30] services and fixed voice services provided through fixed lines are interchangeable and therefore belong to the same market.[31]

(34) The Notifying Party submits that the relevant product market should be defined in line with previous Commission decisions, as the overall retail market for fixed line telephony services, including VoIP services.

(35) For the purpose of the present decision, the Commission considers that the exact product market definition (whether there is an overall market for the retail supply of fixed telephony services or whether this market should be segmented into fixed voice services and VoIP services) can be left open as the Transaction does not give rise to serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement under any such possible product market definition.

4.2.2.2. Geographic market definition

(36) In previous decisions, the Commission has consistently found the market for the supply of fixed telephony services to be national in scope, as this reflects the continuing importance of the role of national regulation in the telecommunications sector, the supply of upstream wholesale services on a national basis, as well as the fact that the pricing policies of telecommunications providers are predominantly national.[32]

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30 Voice over internet protocol, is a technology allowing to deliver voice communication services through IP network, such as the internet.

31 Commission decisions: of 03 August 2016 in case M.7978, Vodafone/Liberty Global/Dutch JV, paragraph 40; of 04 February 2016 in case M.7637, Liberty Global/BASE Belgium, paragraph 64.

32 Commission decisions: of 27 November 2018 in case M.8792, T-Mobile NL/Tele2 NL, paragraph 271; of 27 July 2018 in case M.8883, PPF/Telenor Target Companies, paragraph 22; of 3 August 2016 in case M.7978, Vodafone/Liberty Global/Dutch JV, paragraph 40; of 4 February 2016 in case M.7637, Liberty Global/BASE Belgium, paragraph 64. The Greek NRA, taking into account, *inter alia*, the barriers to entry which are structural and related to high and non-recoverable costs and the pricing policy of both the incumbent and alternative operators, considered that the market for the retail provision of fixed telephony services is national and corresponds to the Greek territory. (Notification to the European Commission, BEREC and National Regulatory Authorities on the definition of, the analysis of competition and the proposed regulatory obligations, on inter alia, the markets for retail fixed telephony services October 2016; Under decision No 792/08/22.12.2016, the Greek NRA found that this market is no longer susceptible to ex ante regulation.) In its earlier decision No 733/047/18.09.2014, on the acquisition by

(37) The Notifying Party, based on the Commission's precedents, considers the market to be national in scope.

(38) The Commission observes that nothing in the present case indicates that it would be justified to depart from its position –in particular taking into account the importance of national regulation in the telecommunications sector and the fact that the upstream wholesale services are provided on a national basis. Consequently, or the purpose of the present decision and in line with its previous decisional practice, the Commission considers that the market for the supply of fixed telephony services is national in scope.

4.2.3. Wholesale market for mobile and fixed call termination services

(39) Call termination is the service provided by a network operator on the supply side to other network operators on the demand side, whereby a call originating in a demand side operator's network is delivered to a user in the supply side operator's network. This service is required by every originating operator, as it is necessary for its customers to be able to communicate with the customers of other networks. Call termination is therefore a wholesale service that is resold or used as an input for the provision of downstream retail telephony and mobile services. In previous decisions, the Commission has identified relevant markets for the provision of wholesale call termination on mobile and fixed networks.[33]

4.2.3.1. Wholesale market for mobile call termination services

4.2.3.1.1. Product market definition

(40) In previous decisions, the Commission has found that there is no substitute for call termination on each individual network, as the operator transmitting the call can reach the intended recipient only through the operator of the network to which the recipient is connected.[34]

(41) The Notifying Party agrees with the Commission's approach and, submits that the relevant product market is the market for wholesale call termination services.

Vodafone Greece of Hellas Online, EETT considered that the relevant geographic market shall correspond to the entire territory of Greece, to the extent that conditions of competition are not differentiated.

33 Accordingly, the 2003 Commission's Recommendation on the relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with the Framework Directive (Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services) has distinguished call termination on individual networks, mobile or fixed as separate markets. A distinction between termination on these networks is further justified by the characteristics of the terminals themselves such as the different functionalities and the mobility guaranteed by the mobile service.

34 Commission decisions: of 27 November 2018 in case M.8792, T-Mobile NL/Tele2 NL, paragraph 259; of 15 July 2019 in case M.9370, Telenor/DNA, paragraph 70; of 27 July 2018 in case M.8883, PPF/Telenor Target Companies, paragraph 26; of 12 December 2012 in case M.6497, Hutchison 3G Austria/Orange Austria, paragraph 68. Similarly, the Greek NRA, in its decision No 815/002/22.06.2017 (Gov't Gazette Issue B' 2530/20.07.2017), concerning "*The definition of wholesale voice call termination on individual mobile networks, the determination of operators holding significant market power and the regulatory obligations imposed on them*" ("Market 2" in Commission's recommendation of 9 October 2014) has considered the existence of a distinct market for the provision of wholesale mobile call termination services per each individual mobile network operator. Accordingly, it has designated each mobile network operator in Greece, as having significant market power on their respective networks.

(42) The Commission observes that nothing in the present case indicates that it would be justified to depart from its position –in particular considering that a network operator transmitting a call can reach the intended recipient only through the operator of the network to which the recipient is connected. Consequently, for the purpose of the present decision, and in line with its previous decisional practice, the Commission considers that, as regards wholesale call termination services, termination on each individual mobile network constitutes a separate product market.

4.2.3.1.2. Geographic market definition

(43) In previous decisions, the Commission considered that the market for wholesale mobile call termination services is national in scope, as each wholesale market for call termination corresponds to the dimensions of the operator's network and is limited to the national territory of the operator's network.[35] This is primarily due to regulatory barriers as the geographic scope of a network licence is, in principle, limited to areas which do not extend beyond the borders of a Member State.

(44) In line with previous Commission decisions, the Notifying Party submits that the market for wholesale mobile call termination services should be considered national in scope.

(45) The Commission observes that nothing in the present case indicates that it would be justified to depart from its position – in particular, considering that the geographic scope of each wholesale market for mobile call termination corresponds to the geographic dimension of each mobile operator's network which, due to regulatory barriers, is limited to the national territory within which it operates. Consequently, for the purpose of the present decision, and in line with its previous decisional practice the Commission considers that the market for wholesale mobile call termination services is national in scope.

4.2.3.2. Wholesale market for fixed call termination services

4.2.3.2.1. Product market definition

(46) As in the case of wholesale mobile call termination services, in previous decisions the Commission has established that there are no potential substitutes for call termination on each fixed network since the operator transmitting the call can reach the intended recipient only through the operator of the network to which the recipient is connected.[36]

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35 Commission decisions: of 27 November 2018 in case M.8792, T-Mobile NL/Tele2 NL, paragraph 263; of 15 July 2019 in case M.9370, Telenor/DNA, paragraph 73; of 27 July 2018 in case M.8883, PPF/Telenor Target Companies, paragraph28; of 3 August 2016 in case M.7978, Vodafone/Liberty Global/Dutch JV, para 196.

36 Commission decisions: of 27 November 2018 in case M.8792, T-Mobile NL/Tele2 NL, paragraph 259, of 15 July 2019 in case M.9370, Telenor/DNA, paragraph78, of 27 July 2018 in case M.8883, PPF/Telenor Target Companies, paragraph 32; of 12 December 2012 in case M.6497, Hutchison 3G Austria/Orange Austria, paragraph 68. Accordingly, the Greek NRA, in its decision No 714/09/10.04.2014 (Gov't Gazette Issue B' 1049/08.04.2014), concerning "*The definition of wholesale call termination on public telephone network provided at fixed location, the determination of operators holding significant market power and the regulatory obligations imposed on them*" (third round of market analysis), has found distinct markets for the provision of wholesale call termination services per each individual fixed network operator.

(47) The Notifying Party, in accordance with Commission's decisional practice, submits that the relevant product market is the market for wholesale call termination services on fixed networks.

(48) The Commission observes that nothing in the present case indicates that it would be justified to depart from its position –in particular considering that a fixed network operator transmitting a call can reach the intended recipient only through the operator of the network to which the recipient is connected. Consequently, for the purpose of the present decision, and in line with its previous decisional practice the Commission considers that, as regards wholesale call termination services, termination on each individual fixed network constitutes a separate product market.

4.2.3.2.2. Geographic market definition

(49) In previous decisions, the Commission has found that the market for wholesale fixed call termination services is national in scope, considering that the geographic scope of each wholesale market for call termination should correspond to the dimensions of the operator's network, which is limited to national borders due to regulatory barriers.[37]

(50) The Notifying Party submits that, in line with previous Commission decisions, the market for wholesale fixed call termination services is national.

(51) The Commission observes that nothing in the present case indicates that it would be justified to depart from its position –in particular, considering that the geographic scope of each wholesale market for fixed call termination corresponds to the dimension of each operator's network which, due to regulatory barriers, is limited to the national territory within it operates. Consequently, for the purpose of the present decision, and in line with its previous decisional practice the Commission considers that the market for wholesale fixed call termination services is national in scope.

5. COMPETITIVE ASSESSMENT

5.1. Analytical framework

(52) Article 2 of the Merger Regulation requires the Commission to examine whether notified concentrations are compatible with the internal market, by assessing whether they 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.

(53) The Commission Guidelines on the assessment of horizontal mergers under the Merger Regulation (the "Horizontal Merger Guidelines") distinguish two main ways in which mergers between actual or potential competitors on the same

[37] Commission decisions: of 27 November 2018 in case M.8792, T-Mobile NL/Tele2 NL, paragraph 263; of 15 July 2019 in case M.9370, Telenor/DNA, paragraph 81; of 27 July 2018 in case M.8883, PPF/Telenor Target Companies, paragraph 35; of 3 August 2016 in case M.7978, Vodafone/Liberty Global/Dutch JV, paragraph 210.

relevant market may significantly impede effective competition, namely non-coordinated effects and coordinated effects.[38]

(54) Non-coordinated effects may significantly impede effective competition by eliminating the competitive constraint imposed by one merging party on the other, as a result of which the merged entity would have increased market power without resorting to coordinated behaviour.

(55) The Horizontal Merger Guidelines list a number of factors which may influence whether or not significant non-coordinated effects are likely to result from a merger, such as the large market shares of the merging firms, the fact that the merging firms are close competitors, the limited possibilities for customers to switch suppliers, or the fact that the merger would eliminate an important competitive force. Not all of these factors need to be present for significant non-coordinated effects to be likely. The list of factors, any one is not necessarily decisive, is also not an exhaustive list.[39]

(56) A transaction may also entail vertical effects. In that respect, the Commission Guidelines on the assessment of non-horizontal mergers under the Merger Regulation (the "Non-Horizontal Merger Guidelines") distinguish between two main ways in which vertical mergers may significantly impede effective competition, namely input foreclosure and customer foreclosure.

(57) For a transaction to raise input foreclosure competition concerns, the merged entity must have a significant degree of market power upstream. In assessing the likelihood of an anticompetitive input foreclosure strategy, the Commission has to examine whether (i) the merged entity would have the ability to substantially foreclose access to inputs; (ii) whether it would have the incentive to do so; and (iii) whether a foreclosure strategy would have a significant detrimental effect on competition downstream.

(58) For a transaction to raise customer foreclosure competition concerns, the merged entity must be an important customer with a significant degree of market power in the downstream market. In assessing the likelihood of an anticompetitive customer foreclosure strategy, the Commission has to examine whether (i) the merged entity would have the ability to foreclose access to downstream markets by reducing its purchases from upstream rivals; (ii) whether it would have the incentive to do so and (iii) whether a foreclosure strategy would have a significant detrimental effect on consumers in the downstream market.

5.2. Identification of affected markets

(59) In the present case, the Transaction gives rise to horizontally affected markets in the retail supply of pay-TV services, in Greece.[40]

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38 Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings, OJ C 31, 5.2.2004 p.5.

39 Horizontal Merger Guidelines, paragraphs 26-38.

40 As set out in recital (17), Forthnet offers its pay-TV services in Cyprus, via both satellite and OTT. According to the Parties' submission, Forthnet's market share in Cyprus: (i) in the overall market for the retail supply of pay-TV services, is estimated at [0-5]% (in volume). The Notifying Party submits that there is no public information on value data and the Cypriot Authority only reports volume data for the

(60) The Transaction also gives rise to vertically affected markets in connection with the (A) upstream markets for the wholesale supply of call termination services on mobile and fixed networks and (B) the downstream markets for retail mobile communication services and the retail supply of fixed telephony services, in the countries where United Group and Forthnet operate.

5.3. Horizontally affected markets

5.3.1. Retail supply of pay-TV services in Greece

5.3.1.1. The Notifying Party's view

(61) The Notifying Party considers that the Transaction is unlikely to raise any horizontal non-coordinated effects on the market for pay-TV (and its possible segments) in Greece for the reasons set out below.

(62) First, the Notifying Party argues that the Transaction results in a very limited increment of less than [0-5]% (even in the narrowest possible segment for retail supply of pay-TV services distributed through OTT). In the Notifying Party's view, [information related to the geographic coverage of the Acquirer's activities], Greece is not the target market. This is further demonstrated by the limited number of subscribers and revenues United Group generates from that activity ([...]).[41]

(63) Second, the Notifying Party submits that post-Transaction, Forthnet and United Group (together forming the merged entity) will continue to face strong competitive pressure from telecom operators providing such services as well as from global or regional OTT platform. In Greece, in particular, international OTT operators (Netflix, Amazon Prime and Apple TV) are active since two years and are expanding their activities significantly.[42]

5.3.1.2. The Commission's assessment

(64) Both Forthnet and United Group are active in the markets for the retail supply of pay-TV services in Greece, and in particular in the possible market for the retail provision of OTT services.

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pay-TV market. In its consideration, as a rough estimate, for 2019, the market shares in value should be comparable to the market shares in volume; (ii) in the possible narrower OTT segment, its market share is estimated at [0-5]%, in both value and volume. United Group's market share, in the possible segment of the retail provision of pay-TV services via OTT in 2019, is estimated to be below [0-5]%, both in value and volume. In addition, the Parties submit that OTT services in Cyprus are offered by the local telecom operators (Cytavision, Cablenet, Primetel and MTN) and global operators (such as Netflix). (Form CO paragraph 199; Annex 11. 1 to the Form CO; Response to Commission's RFI dated 17 July 2020). The Parties' combined market share is, therefore, estimated to be below [0-5]% (both value and volume), in the possible market for the retail supply of OTT services, and therefore, as to the market for pay-TV services in Cyprus the Transaction does not lead to affected markets and is not liable. to impede effective competition. Respondents to Commission's market investigation, on the supply-side, have confirmed that "[t]he Transaction is not expected to have any impact on the intensity of competition in the retail market for the supply of TV services in Cyprus". (Questionnaire Q1, replies to questions 8.1.2 and 8.1.2.1).

41 Form CO, paragraphs 193-195.

42 Form CO, paragraphs 197-199.

(65) The table below illustrates Forthnet's and its main competitors' market shares, in 2019, both in value and in volume (by number of subscribers), in Greece.[43]

Table 1 – Overall market for the retail supply of pay-TV services,

Operator	2018		2019	
	Market share based on value (EUR) [44]	**Market share based on volume (subscribers)**	**Market share based on value (EUR)**	**Market share based on volume (subscribers)**
Forthnet	[40-50]%	[30-40]%	[40-50]%	[30-40]%
United Group	<[0-5]%	<[0-5]%	<[0-5]%	<[0-5]%
Combined	**<[40-50]%**	**<[30-40]%**	**<[40-50]%**	**<[30-40]%**
OTE	>[50-60]%	[50-60]%	> [50-60]%	[50-60]%
Vodafone	<[10-20]%	[5-10]%	<[10-20]%	[10-20]%
Wind	<[10-20]%	[0-5]%	<[10-20]%	[5-10]%
Total	**100%**	**100%**	**100%**	**100%**

Source: Form CO

(66) The Notifying Party provided market shares for Forthnet and its main competitors, in the possible narrower market for the retail provision of pay-TV services via OTT, illustrated in Table (2) below (in value and volume). As demonstrated, the Parties will have a combined market share of less than [0-5]%, both in value and in volume, lying well below [20-30]%. Therefore, this possible market segment is not an affected market, within the purposes of the present decision.

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43 Considering alternative segmentations of the market for retail supply of pay-TV services, Forthnet held a market share of [30-40]% (by volume), in 2019, in a possible market for distribution of pay-TV services via satellite. The Commission observes that in this possible sub-segment, OTE is also active with a market share of [60-70]%. Forthnet does not offer TV services via internet protocol television. (In this sub-segment, Vodafone appears to hold a significant market position with a market share of [60-70]%, followed by Wind ([20-30]%) and OTE ([10-20]%) (Reply to Commission's request for information of 30 July 2020). The Parties submit that, in the possible narrower segments for (i) premium and basic pay-TV services and (ii) linear and non-linear pay-TV services, and without taking into account international players (such as Netflix), Forthnet's market shares are similar to those achieved in the overall market for retail supply of pay-TV services. The Parties in addition submit that the market shares of Forthnet's competitors in these possible narrower segments are similar to those achieved in the overall pay TV market. In a market including also international players, the Parties estimate Forthnet's market share in these possible narrow segments to remain below [20-30]%. (Replies to Commission's request for information of 2 August 2020 and of 7 August 2020). Therefore, in light of the above, Forthnet's market position in possible narrower market segmentations does not materially differ from its position in the overall market for retail provision of pay-TV services.

44 Reply to Commission's request for information dated 30 July 2020.

Table 2 – Retail supply of pay-TV services via OTT, in Greece, 2019

Operator	**Market share in value (EUR)**	**Market share in volume (subscribers)**
Forthnet	<[0-5]%	<[0-5]%
United Group	<[0-5]%	<[0-5]%
Combined	<[0-5]%	<[0-5]%
OTE	<[0-5]%	<[0-5]%
Vodafone	-	-
International OTT operators (Netflix, Amazon, etc.)	~[90-100]%	~[90-100]%
Total	**100%**	**100%**

Source: Form CO

(67) Post-Transaction, in the overall market for the retail provision of pay-TV services, the merged entity will have a combined market share of below: [40-50]% in value and [30-40]% in volume.

(68) The Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to horizontal non-coordinated effects as to the market for the retail provision of pay-TV services in Greece, for the following reasons.

(69) First, the Commission observes that the increment brought by the Transaction would be marginal (less than [0-5]%). The market investigation confirmed that the Transaction is not expected to "*have a significant impact on the competitive dynamics in* [the market for the retail supply of pay-TV services]".[45] Therefore, the Commission observes that, even though the merged entity will hold an important market share, the Transaction will not significantly affect the structure of the market.

(70) Second, several alternative suppliers will remain active in the market after the Transaction (even if a segmentation per distribution technology is assumed), to ensure a sufficient level of competition.[46] In the overall market for the retail supply of pay-TV services in Greece, the merged entity will face competitive pressure, *inter alia*, from the incumbent OTE[47] with a market share higher than the merged entity's position (>[50-60]%) and Wind Hellas, which entered recently the Greek pay-TV market and already increased its presence (with its market share estimated though below [10-20]%).[48] As demonstrated in Table 2, in the retail provision of pay-TV services via OTT, international OTT operators hold a particularly

45 Questionnaire Q1 - Response to question 6.1 (Vodafone Group).

46 See also Questionnaire Q1 –Reply to question 8.1.1.1. [...]

47 OTE Group is the largest telecommunications provider in the Greek market and one of the leading telecommunication groups in South East Europe. Deutsche Telecom currently holds 46.91% of its share capital, while the Hellenic State's participation stands at 5.58%. (Reply to question 2.1 of Questionnaire Q1).

48 In January 2018, see reply to question 4 - Questionnaire Q1.

significant market position, who will continue exerting a significant competitive constraint on the merged entity. The Commission's market investigation has confirmed their significant presence. [49]

(71) Third, the market investigation indicated an absence of competition concerns.[50] A vast majority of respondents considered that the Transaction would not have a negative effect on the market for the retail supply of pay-TV services.[51]

(72) Additionally, the Commission observes that the market investigation indicated that potential advantages to competition could arise from the Transaction, to the extent that "*it will provide Forthnet with extra financing, which will improve its status in the market*".[52] In that respect, from the supply side, a pay-TV provider active in Greece considers that [...].[53] The Transaction is, therefore, likely to result in an increase in competition in the retail market for the supply of pay-TV services in Greece.[54]

(73) On the basis of the foregoing, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to horizontal non-coordinated effects as to the market for the retail provision of pay-TV services and its possible narrower sub-segments (according to: (i) linear and non-linear pay TV services; (ii) basic and premium pay TV services; and (iii) the distribution technology employed), in Greece.

5.4. Non-horizontally affected markets

(74) As set out in paragraph (39), call termination services are wholesale services provided by network operators that allow users of different networks to communicate with each other. The market for wholesale termination of calls on mobile fixed networks is therefore vertically related to the retail markets for fixed and mobile telephony services. In this regard, the Transaction gives rise to the below vertically affected markets in the telecommunications sector:

(a) the upstream market for the wholesale provision of call termination services on Forthnet's fixed network in Greece, in connection with:

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49 Questionnaire Q1 – Replies to questions 2.3 [...]

50 The Commission recalls that, as set out in paragraph (3) Forthnet is also active in the production of its own TV channels (and its own TV content), which it subsequently offers to pay-TV providers, active downstream, at the retail supply of TV services (see also Reply of Wind to question 3.2 –Questionnaire Q1). This upstream market for the "wholesale supply and acquisition of TV channels" is not an affected market. In any event, the Commission considers that the Transaction is not likely to indirectly affect this upstream market, as result of the increase of merged entity's market position downstream: Due to marginal increment to be brought, as discussed in this section, the Transaction is not in the nature of reinforcing the merged entity's market position. Second, according to the Notifying Party, OTE is also active on the production and supply of TV content, and will exert a pressure in the entity post-Transaction. Third, the Commission considers that it will be in Forthnet's interest to distribute its channels and content to a large number of TV platforms, with the aim to attract a large customer base. In this regard, it will not have the incentive to offer its content at unfavorable terms.

51 Questionnaire Q1 – Replies to questions 8.1.1.1 and 6.1.

52 Questionnaire Q1 – Reply by a federation active in Greece, in question 8.1.1.1.

53 Questionnaire Q1 – Reply to question 6.1.

54 Questionnaire Q1 – Replies to question 8.1.1. (Vodafone Group; S.E.P.E.: Federation of Hellenic ICT Enterprises).

- the downstream market for the retail provision of mobile communication services in the countries where United Group is active (Slovenia, Croatia and Bulgaria); and

- the downstream market for the retail provision of fixed telephony services in the countries where United Group is active (Slovenia and Bulgaria);

(b) the upstream market for the wholesale provision of call termination services on United Group's fixed networks in Slovenia (Telemach) and Bulgaria (BTC) in connection with the downstream market for the retail provision of fixed telephony services in Greece (Forthnet);

(c) the upstream market for the wholesale provision of call termination services on United Group's mobile networks in Slovenia (Telemach), Croatia (Tele2) and Bulgaria (BTC) in connection with the downstream market for the retail provision of fixed telephony services in Greece (Forthnet).

Table 3: Non-horizontally affected markets in Greece, Slovenia, Croatia and Bulgaria

Upstream markets	**Downstream markets**
Wholesale fixed call termination services: - Forthnet (100% in Greece)	**(i) Retail mobile telecommunications services:** - United Group: Slovenia, Croatia and Bulgaria **(ii) Retail fixed telephony services in:** - United Group: Slovenia, Bulgaria
Wholesale fixed call termination services: - United Group: 100% in Slovenia (Telemach); 100% in Bulgaria (BTC)	**(ii) Retail fixed telephony services in:** - Forthnet: Greece
Wholesale mobile call termination services: - United Group: 100% in Slovenia (Telemach); 100% in Bulgaria (BTC); 100% in Croatia (Tele2)	

Source: Form CO

5.4.1. Market for wholesale call termination services on mobile and fixed networks

(75) With regard to the wholesale markets for mobile and fixed call termination services, to the extent that each operator's network constitutes a separate market, each of the Parties holds a 100% market share in the market for call termination services on their own mobile and fixed networks ("one net – one market" principle). Therefore, Forthnet has a 100% market share on fixed call termination on its own network in Greece, United Group holds a 100% market share in mobile and fixed call termination on its networks in Slovenia (through Telemach) and Bulgaria (through BTC) and a 100% market share on its mobile network in Croatia (through Tele2).

(76) The market is upstream to the markets for the retail supply of mobile communication services and the retail supply of fixed telephony services, where the Parties' market shares are as follows:

Table 4 - Retail Mobile Communications Services (in value, 2019)[55]

Operator	**Slovenia**	**Croatia**	**Bulgaria**
BTC (under the brand Vivacom)	-		[20-30]%
Telemach	[10-20]%	-	
Tele2		[20-30]%	

Source: Form CO

[55] In terms of subscribers, in 2019, United Group held a market share of [20-30]% in Slovenia, [10-20]% in Croatia and [20-30]% in Bulgaria. Considering alternative segmentations of the market for retail mobile communication services, United Group's market shares, in 2019 in the possible segment of pre-paid mobile services were: in Bulgaria (BTC), [20-30]% (by volume) and [10-20]% (by value), in Slovenia (Telemach) [20-30]% (in both volume and value) and in Croatia, [10-20]% (in both volume and value); in post-paid mobile services, it respectively held: in Bulgaria [20-30]% (by volume) and [30-40]% (by value), in Slovenia [20-30]% (in both volume and value) and in Croatia, [10-20]% (in both volume and value). In a possible segmentation of the market per type of customers: (i) in the narrower segment for private customers, United Group held: in Bulgaria [30-40]% (in both value and volume), in Slovenia [20-30]% (in both value and volume), in Croatia [20-30]% (in both volume and value); (ii) in the narrower segment for business customers, United Group held: in Bulgaria [10-20]% (in both value and volume), in Slovenia [10-20]% (by volume) and [10-20]%(by value) , in Croatia [5-10]% (in both volume and value). Finally, in a possible segmentation per type of services, United Group's market shares, in 2019, in the EEA countries it operates were as follows: (i) for voice call services: in Bulgaria [20-30]% and [20-30]% (in volume and value, respectively), in Slovenia [20-30]% (in both volume and value), in Croatia, [20-30]% (in both volume and value), (ii) for SMS: in Bulgaria [20-30]% and [40-50]% (volume and value, respectively), in Slovenia [20-30]% (in both volume and value), in Croatia, [20-30]% (in both volume and value), (iii)for MMS: in Bulgaria [10-20]% and [10-20]% (volume and value, respectively), in Slovenia [20-30]% (in both volume and value), in Croatia [30-40]% (in both volume and value), (iv): for Internet: in Bulgaria [30-40]% and [30-40]% (in volume and value, respectively), in Slovenia [20-30]% (in both volume and value) and in Croatia [30-40]% (in both volume and value). (Reply to Commission's request for information dated 2 August 2020).

Table 5 - Retail Fixed Telecommunications Services (in value, 2019) [56]

Operator	Greece	Bulgaria	Slovenia
Forthnet	<[5-10]%		
BTC (under the brand Vivacom)		[80-90]%	
Telemach			[30-40]%

Source: Form CO

5.4.1.1. Wholesale market for mobile call termination services – Retail market for fixed telephony services

(77) United Group is active on the market for wholesale call termination services on its own individual networks in Slovenia, Croatia and Bulgaria. Forthnet is not active in this upstream market.[57] The wholesale market for mobile call termination services where United Group has 100% market share on its own networks is upstream of the market for the retail supply of fixed telephony services in Greece, where Forthnet is active.

5.4.1.1.1. The Notifying Party's view

(78) The Notifying Party submits that the Transaction will not result in any anticompetitive foreclosure concerns for the reasons set out below.

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56 In terms of subscribers, in 2019, United Group held a market share of [30-40]% in Slovenia, [60-70]% in Bulgaria. Forthnet's market share was estimated at [10-20]%. Considering alternative segmentations of the market for retail fixed telecommunication services, Forthnet, in the possible segment for VoIP services held a market share of [0-5]% (by volume) and [0-5]% (by value), in 2019, and respectively, [0-5]% and [0-5]% in 2018. In a possible market segment for fixed voice services ("non-managed VoIP services), Forthnet held in 2019 a market share of [30-40]% (by volume) and [20-30]% (by value). In 2018, the respective market shares stood at [10-20]% and [10-20]%. United Group held in 2019, in Bulgaria, in the possible segment of fixed voice services (fixed lines) a market share of [60-70]% (by volume) and [80-90]% (by value). According to the Notifying Party, BTC does not offer VoIP services. In Slovenia, United Group, in the possible segment of VoIP services, held a market share of [10-20]% (both volume and value), whereas it does not offer fixed voice services. (Reply to Commission's request for information dated 2 August 2020).

57 In the context of the market investigation, it has been indicated that Forthnet is expected to enter the market for the retail mobile communications services as a Mobile Virtual Network Operator (MVNO), in Greece. *Pursuant to the EETT Decision No 881/9/28.1.2019 and a service agreement entered into between Vodafone Greece and Forthnet, Vodafone has committed to offer Forthnet wholesale access to its infrastructure as soon as Forthnet's technical and commercial planning has been finalized*. Therefore, the Commission observes that existing mobile operators will face one more competitor, post-Transaction. It could be anticipated, therefore, that the existing operators will have the incentive to invest in innovation or improve the performance of their networks, in order to remain competitive. In that respect, Forthnet's MVNO launch is expected to lead to an intensification of competition in the retail mobile market in Greece. Accordingly, a possible increase in competition at retail level, may be reflected as side-effect, in the upstream market for wholesale mobile call termination services "*due to Forthnet's efforts to increase its mobile subscriber base, the traffic towards Forthnet mobile subscriber base and therefore the wholesale mobile call termination to Forthnet mobiles is expected to increase*" (See Vodafone's response to question 7.2.1 and 7.4.1–Questionnaire Q1).

(79) First, the Notifying Party submits that the markets for provision of wholesale mobile call termination services are subject to e*x ante* regulation in the Member States. Such national regulations ensure that access to call termination is granted on reasonable conditions and rates remain reasonable and non-discriminatory. In addition, the Notifying Party submits that, by 31 December 2020, mobile and fixed termination rates will no longer be established by the national regulators, but by the Commission through a delegated act.[58] Therefore, in the Notifying Party's view, in line with previous Commission decisions,[59] the merged entity would not have the ability to discriminate against Forthnet's competitors in Greece for access to mobile call termination services in Slovenia, Croatia and Bulgaria.[60]

(80) Second, the Notifying Party asserts, in essence, that any attempt by United Group to foreclose Forthnet's competitors in Greece, by means of wholesale mobile call termination services is unlikely to be effective, since neither Telemach, Tele2 or BTC can influence the cost structure of Forthnet's competitors in a significant manner.[61] According to the Notifying Party, traffic flows originating from Greece and terminating in Slovenia, Croatia or Bulgaria are extremely limited. Any attempt, therefore, by United Group to increase its termination charges would have little or no impact on the cost structure of Forthnet's competitors in Greece. In addition, the Notifying Party submits that traffic flows originating from Slovenia, Croatia and Bulgaria and terminating to Greece, are limited. Therefore, Forthnet cannot influence the cost structure of United Group's competitors in Slovenia, Bulgaria and Croatia.[62]

5.4.1.1.2. The Commission's assessment

(81) The Commission considers that the Transaction does not raise any input foreclosure concerns on the market for retail fixed telephony services in Greece, by means of discrimination against Forthnet's competitors for access to call termination services in the countries where United Group operates (Slovenia, Croatia and Bulgaria) or by degrading terms and conditions for access to these services, for the following reasons.

(82) First, the Commission notes the existence of a regulatory framework for the electronic communications networks and services comprising of five Directives. This legislative package aims at establishing a harmonised regulatory framework for networks and services across the EU. Pursuant to Article 15 of the Framework Directive,[63] the Commission is required to adopt a recommendation on relevant product and services markets with the aim to identify those product and services markets within the electronic communications sector whose characteristics justify the imposition of regulatory obligations. The market for wholesale call termination services on mobile networks has been identified as one of these markets and as such has been listed in the Annex to the Recommendation on the relevant product and service markets within the electronic communication sector of 9 October

58 Form CO, paragraph 216.

59 Commission decisions: of 15 July 2019 in case M.9370, Telenor/DNA, paragraph 136; of 3 April 2020 in case M.9679, United Group/Bulgarian Telecommunications Company, paragraph 95.

60 Form CO, paragraph 217.

61 Form CO, paragraph 232.

62 Form CO, paragraphs 219-220.

63 Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communication networks and services. OL L 108, 24 04 2002, p. 0033-0050.

2014,[64] which the Commission has adopted pursuant to the Framework Directive. By this inclusion, this market is subject to *ex ante* regulation.[65] Pursuant to this *ex ante* regulation, which is laid out in the specific Directives, the National Regulatory Authorities ("NRAs") have designated operators with significant market power, including operators of wholesale call termination services on mobile networks, and imposed on them a number of regulatory obligations. Accordingly, the Slovenian, Croatian and Bulgarian NRAs, by virtue of the relevant decisions, have designated Telemach (United Group), Tele2 (United Group) and BTC (United Group) as operators holding significant market power in the market for the provision of wholesale mobile call termination services.[66]

(83) Those regulatory obligations include access to and use of specific network facilities.[67] In this regard, operators are required, *inter alia*, to give third parties access to specified network elements, to negotiate in good faith with undertakings requesting access and to not withdraw access to facilities already granted. Additional obligations include transparency (in relation to the publication of draft interconnection agreements on the network operator's website),[68] non-discrimination, to ensure that operators apply equivalent conditions in equivalent circumstances to undertakings providing equivalent services,[69] including a ban on favouring their own services, and price control. [70]

(84) Furthermore, as established by Article 75 of the European Electronic Communications Code,[71] by 31 December 2020 the Commission shall adopt a delegated act setting the Eurorates (a single Union-wide mobile and a single Union-wide fixed termination rate). More precisely, the European Electronic Communications Code, with the aim to "*reduce the regulatory burden in addressing the competition problems relating to wholesale voice call termination consistently across the Union*", empowers the Commission to establish by means of a delegated act a single maximum voice termination rate for mobile services, that apply Union-wide. That means that termination rates, currently established by the Bulgarian, the Slovenian and the Croatian regulators, will be determined by the European Commission through a delegated act, to be adopted pursuant to the said

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64 Commission Recommendation of 9 October 2014, on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services. OJ L 295, 11.10.2014, p. 79–84 (revising the Recommendation 2007/879/EC of 17 December 2007.

65 Ibid.

66 For Telemach (ex Tusmobil), see decision of Agency for Communication Networks and Services of the Republic of Slovenia (AKOS), No 38294-8/2009-3 of 24.09.2009; For Tele-2, see decision of Croatian Regulatory Authority for Network Industries (HAKOM) 376-11-13-16, of 10 June 2013; For BTC see decision of Communications Regulations Commission (CRC) of 23 June 2016.

67 Article 12 of the Access Directive.

68 Article 9 of the Access Directive.

69 Article 10 of the Access Directive.

70 With respect to Slovenia, see Commission decision of 8 March 2016, in case SI/2016/1841: *Wholesale voice call termination on individual mobile networks in Slovenia – Remedies.* With respect to Bulgaria, see Commission Decision of 21 November 2016 in case BG/2016/1924, *Call termination on individual mobile telephone networks in Bulgaria and corresponding national market review performed by the national regulatory authority*. With respect to Croatia, see Commission Decision of 13 February 2019 in ;case HR/2019/2140: *Wholesale voice call termination on individual mobile networks in Croatia*.

71 Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code.

Directive. The Commission observes that while the said act is not yet in force, the fact that its introduction is imminent implies that even if the merged entity could discriminate– which does not appear likely in light of the reasons set out in this section – any such effects would not be long-term.

(85) In addition, the Commission observes that the provision of wholesale mobile call termination services originating from Greece and terminating in Slovenia, Croatia and Bulgaria,–*ie*., to Telemach, Tele2 and BTC and their competitors are limited.[72] In this regard, the Commission considers that any increase by the merged entity of its termination charges upstream would have little or no impact on the cost structure of the merged entities' competitors in Greece. Therefore, a possible input foreclosure strategy is unlikely to be profitable for the merged entity. In addition, in view of the small traffic volume of fixed calls originating from Greece and terminating in Slovenia, Croatia or Bulgaria, the Transaction is not expected to have a detrimental effect on competition in the downstream market for the retail supply of fixed telephony services in Greece.

(86) The Commission further considers that the Transaction does not lead to any customer foreclosure concerns, in United Group's network in Slovenia, Croatia and Bulgaria.

(87) In that respect, the Commission observes that Forthnet's presence in the downstream market for the retail supply of fixed telephony services is limited (estimated below [5-10]% in value). Assuming possible segmentations of this market, in the possible narrower segment of VoIP services, Forthnet held a market share of [0-5]% (in value). The Commission observes that in the possible segment of fixed lines, in 2019, Forthnet's presence appears to be more significant (with a market share of [20-30]%, in value, and [30-40]% in volume). In 2017 and 2018, however, the respective market shares Forthnet held in this possible sub-segment, were more limited ([10-20], in value and [10-20]%, in volume). The Parties submit that, the significant increase in Forthnet's 2019 market shares is due to [information related to a competitor's activities].[73]

(88) The Commission considers that in view of the regulatory obligations applicable to the upstream market for wholesale mobile call termination services, set out in recitals (82)-(84), foreclosure of United Group's rivals in the upstream market, cannot be effective. Such obligations include an obligation on operators to meet a reasonable request for access to and use of their network facilities, in, *inter alia*, situations "*where denial of access or unreasonable terms and conditions having a similar effect would hinder the emergence of a sustainable competitive market at the retail level*".[74] In that respect, the Commission recalls that such regulatory obligations aim at addressing market failures identified at retail level.[75] Additional obligations such as non-discrimination or price control are likely to reduce, the

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72 In line with the Notifying Party's submission, the traffic flow originating from Greece (all operators, in minutes), in 2019, and terminating in Slovenia, Bulgaria and Croatia, represented respectively: [0-5]% ; [5-10]% % and [0-5]% of total international traffic which terminates in Telemach's, BTC's and Tele2' network, respectively. (Information generated from Annexes 11.1, 11.2, 11.3 and 11.4 to the Form CO).

73 Reply to Commission's request for information dated 30 July 2020.

74 Article 12 of the Access Directive.

75 See Commission's Recommendation of 9 October 2014, recital (7), providing that "For both the Commission and national regulatory authorities the starting point for the identification of wholesale markets susceptible to ex ante regulation is the analysis of corresponding retail markets".

merged entity's incentive to reduce purchases from United Group's rivals in the upstream market, since United Group will not have the possibility to benefit from higher prices in the upstream market.

(89) On the basis of the data provided by the Notifying Party, in this market there are alternative operators active, with higher market shares in the overall market of retail fixed telephony services (in 2019, OTE: of [50-60]%, Vodafone: [20-30]% and Wind: [10-20]%, in volume).[76] With regard to a possible segment for fixed voice services, the Commission's market investigation indicated that alternative telecoms operators are active in this narrower possible segment, where Forthnet has a modest market share of [30-40]%.[77] In view of this, the Transaction is not expected to have detrimental effects on the upstream market for the provision of wholesale mobile call termination services in Slovenia, Croatia and Bulgaria.

(90) Finally, the Commission notes that the vast majority of the respondents to the market investigation did not raise any concerns related to vertical issues arising from the Transaction in the market for wholesale mobile call termination services on the one hand, and the retail supply of fixed telephony services on the other hand.[78] In that respect, according to a Greek telecommunications operator, no "*material change in the structure of the retail market for fixed telephony services*" should be anticipated in the foreseeable future.[79]

(91) Therefore, the Commission considers that the Transaction will not have any appreciable negative impact on prices or other terms or conditions in the downstream markets for the retail supply of fixed telephony services (and all possible sub-segments set out at paragraph (32)), in Greece.

(92) On the basis of the foregoing, the Commission concludes that the Transaction does not give rise to serious doubts as to its compatibility with the internal market in relation to the vertical link between the upstream markets for wholesale mobile call termination services and the downstream market for retail supply of fixed telephony services.

5.4.1.2. Wholesale market for fixed call termination services – Retail market for fixed telephony services and retail market for mobile telecommunications services

(93) Forthnet is active on the market for wholesale fixed call termination services on its own network in Greece. United Group is also active on the market for wholesale fixed call termination services on its own networks in Slovenia and Bulgaria. The wholesale market where the Parties hold 100% market share on their own networks is upstream of the markets for (i) the retail supply of fixed telephony services and (ii) the retail supply of mobile communication services, where the Parties' market shares are presented in the Tables (4) and (5) above.

76 Annex 11.1 to the Form CO.

77 Questionnaire Q1 – reply to questions 3.2,4, and 5.2.

78 Questionnaire Q1 – Vodafone's response to question 7.1.1.

79 ("over the next 3-5 years) Questionnaire Q1 – reply to questions 7.1, 7.1.1, 7.4 and 7.4.1.

5.4.1.2.1. Wholesale market for fixed call termination services – Retail market for fixed telephony services.

5.4.1.2.1.1. The Notifying Party's view

(94) The Notifying Party submits that the Transaction will not result in any anticompetitive foreclosure concerns for the reasons set out below.

(95) First, the Notifying Party submits that the market for the provision of wholesale fixed call termination services are subject to *ex ante* regulation by the respective national regulatory authorities. Such regulations ensure that access to call termination is granted on reasonable conditions and rates remain reasonable and non-discriminatory. In addition, as set out in paragraph (75) following the adoption of the respective delegated act, by 31 December 2020, mobile and fixed termination rates will no longer be established by the national regulators, but by the Commission through a delegated act.[80] Therefore, in the Notifying Party's view, in line with previous Commission decisions,[81] the merged entity would not have the ability to discriminate against each United Group's competitors in Slovenia, Bulgaria and Forthnet's competitors in Greece, for access to fixed call termination services in these countries.[82]

(96) Second, the Notifying Party asserts that in essence, any attempt by the Parties to foreclose each other's competitors is unlikely to be effective, since neither Forthnet nor United Group can influence the cost structure of Telemach/BTC and Forthnet's competitors, respectively, in a significant manner. In view of the extremely limited traffic flows between, on the one hand Slovenia, Bulgaria and Greece, on the other hand, according to the Notifying Party, any attempt by Forthnet or United Group to increase its termination charges would have little or no impact on the cost structure of United Group's competitors in Slovenia and Bulgaria and on Forthnet's competitors in Greece.[83]

5.4.1.2.1.2. The Commission's assessment

(97) The Commission, first, considers that the Transaction does not raise any input foreclosure concerns with respect to the market for (i) the retail supply of fixed telephony services in Slovenia and Bulgaria, and (ii) the retail supply of fixed telephony services in Greece, by means of discrimination against Telemach's (United Group) and BTC' (United Group) competitors for access to fixed call termination services in Greece, and Forthnet's competitors for access to fixed call termination services in Slovenia and Bulgaria,or by degrading terms and conditions for access to these services, for the following reasons.

(98) In line with what has been discussed in recital (82), the Commission notes that, pursuant to Article 15 of the Framework Directive, the upstream market for the provision of wholesale call termination services on fixed networks is included in the Annex to Commission's Recommendation, on the relevant product and service markets within the electronic communication sector susceptible to *ex ante*

80 Form CO, paragraphs 228-231.

81 Commission decisions: of 15 July 2019 in case M.9370, Telenor/DNA, paragraph 136; of 3 April 2020 in case M.9679, United Group/Bulgarian Telecommunications Company, paragraph 95.

82 Form CO, paragraph 217.

83 Form CO, paragraph 232.

regulation.[84] In this regard, the National Regulatory Authorities, in each of Greece, Slovenia and Bulgaria have imposed a number of regulatory obligations on operators holding a significant market power.[85] Such regulatory obligations include obligation of access to and use of specific network facilities.[86] Accordingly, the Slovenian, Bulgarian and Greek NRAs, by virtue of their decisions, have designated Telemach (United Group), BTC (United Group) and Forthnet (Greece) as operators holding significant market power in the market for the provision of wholesale fixed call termination services.[87]

(99) In this regard, network operators should meet reasonable requests for access to and use of their network elements and associated facilities. Additional obligations include, transparency (in relation to publication of draft interconnection agreements on the network operator's website),[88] non-discrimination, aiming at ensuring that operators apply equivalent conditions in equivalent circumstances to undertakings providing equivalent services, including a ban on favouring their own services[89] and price control. [90]

(100) Furthermore, as established by Article 75 of the European Electronic Communications Code, by 31 December 2020 the Commission shall adopt a delegated act setting the Eurorates (a single Union-wide mobile and a single Union-wide fixed termination rate). More precisely, the European Electronic Communications Code, with the aim to "*reduce the regulatory burden in addressing the competition problems relating to wholesale voice call termination consistently across the Union*", empowers the Commission to establish by means of a delegated act a single maximum voice termination rate for fixed services that apply Union-wide. That means that termination rates, currently established by the Bulgarian, Slovenian and the Greek regulators, will be set by the European Commission through a delegated act, to be adopted pursuant to the said Directive. The Commission observes that while the said act is not yet in force, the fact that its introduction is imminent implies that even if the merged entity could discriminate – which does not appear likely in light of the reasons set out in this section– any such effects would not be long-term.

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

85 With respect to Greece, see Commission decision of 10/03/2014 in case EL/2OL4/1563, Wholesale call termination on individual public telephone networks provided at a fixed location in Greece, With respect to Bulgaria, see Commission Decision of 26 May, 2016 in case BG/2016/1862, *Call termination on individual public telephone* provided at a fixed location in Bulgaria. With respect to Slovenia, see Commission Decision of 7 March 2016, in case SI/2016/1840, *Wholesale call termination on individual public telephone networks provided at a fixed location in Slovenia – Remedies.*

86 Article 12 of Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive), O.J. L. 108, 24.04.2002, p.007.

87 For Telemach, see decision of Agency for Communication Networks and Services of the Republic of Slovenia (AKOS), No 38294-8/2009-3 of 24.09.2009; For BTC see decision of Communications Regulations Commission (CRC) of 23 June 2016; For Forthnet see decision of EETT No 714/09 of 28 April 2014 (third round of analysis).

88 Article 9 of the Access Directive.

89 Article 10 of the Access Directive.

90 Article 13 of the Access Directive.

(101) Therefore, Forthnet will not have the ability to discriminate against United Group's competitors in Slovenia and Bulgaria for access to fixed call termination services in Greece. Similarly, United Group would not have the ability to discriminate against Forthnet's competitors in Greece for access to fixed call termination in Slovenia and Bulgaria.

(102) In addition, the Commission observes that the provision of (i) wholesale fixed call termination services in Slovenia and Bulgaria to Greece (fixed networks) and (ii) wholesale fixed call termination services in Greece to Slovenia, and Bulgaria (fixed networks) are limited. [91] In this regard, the Commission considers that any increase by the merged entity of its termination charges would have little or no impact on the cost structure of the merged entities' competitors in these countries. Therefore, a possible input foreclosure strategy is unlikely to be profitable for the merged entity. In addition, in view of the small traffic volume, the Transaction is not expected to have a detrimental effect on the downstream retail markets for fixed telephony services in Slovenia, Bulgaria and Greece.

(103) The Commission, second, considers that the Transaction does not lead to any customer foreclosure concerns in the market for the provision of wholesale fixed call termination services nor in the countries where United Group is active (Slovenia and Bulgaria) neither in Greece (Forthnet's network).

(104) In that respect, the Commission observes that Forthnet's presence on the downstream market for retail fixed telephony services in Greece is limited ([5-10]%, see also recital (85)). United Group is active in Slovenia, where, on the market for the retail provision of fixed telephony services, it holds a market share of [30-40]% (Telemach) and in Bulgaria, with a market share of [80-90]% (BTC).[92] The Commission, on the basis of the provided information, observes that in Slovenia there are alternative operators active, with Telecom Slovenia holding a market share of [30-40]%.[93] In Bulgaria, nevertheless, the merged entity will hold a strong presence in the downstream market for the retail supply of fixed telephony services. The Commission, however, considers, that to the extent that each network operator holds a 100% market share in its individual network in the upstream market for wholesale fixed call termination services, and, as set out in recital (100), and in line with what has been discussed in recital (88) regulatory obligations exist, foreclosure of rivals in the upstream market is not effective. To the extent that fixed voice call termination rates is envisaged to be established by the European Commission, following adoption of the relevant delegated act, the merged entity will not be in a position to impede United Group's and Forthnet's competitors from obtaining access to fixed call termination services, in the Greece on the one hand, and, on the other hand, in Slovenia and Bulgaria.

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91 In line with the Notifying Party's submission, the incoming traffic flow to Slovenia (Telemach) and Bulgaria (BTC), originating from Greece (all operators; fixed networks, minutes) represented: [0-5]% and [0-5]%, against total international traffic which terminates in Telemach's and BTC's network, respectively. Similarly, the incoming traffic flow to Greece (all operators; fixed networks, minutes), originating from Slovenia (all operators) and Bulgaria (all operators), represented, respectively: [0-5]% and [0-5]% from all other International and Transit Operators that Forthnet is in commercial agreement with. (Information generated from Annexes 11.1, 11.2 and 11.4 to the Form CO).

92 Assuming possible segmentations of the market, the Commission recalls that United Group's achieved market shares do not materially differ than those achieved in the overall market for retail fixed telecommunication services (see footnote 60).

93 Annex 11.2 to the Form CO.

(105) Finally, the Commission notes that the majority of the respondents to the market investigation did not raise any concerns related to the vertical issues arising from the Transaction in the market for wholesale fixed call termination services on the one hand, and the retail supply of fixed telephony services, on the other hand.[94] The market investigation has confirmed that the level of competition in these markets, in Greece, is anticipated to not change as a result of the Transaction.[95] In addition, from the supply-side, telecommunications operators active in Bulgaria and Slovenia, do not expect "*any changes in the level of competition*" in the countries where they operate.[96]

(106) Furthermore, according to some participants to the market investigation, the Transaction will improve Forthnet's financial position, which is, accordingly, expected to "*improve* [Forthnet's] *status on the market*" for retail fixed telephony services.[97] To the extent that Forthnet, post-Transaction may gain access to financial resources, as has been observed in the context of the market investigation, [...].[98] In this regard, the Transaction is likely to intensify competition in fixed telecommunications markets.[99]

(107) On the basis of the foregoing, the Commission concludes that the Transaction does not give rise to serious doubts as to its compatibility with the internal market in relation to the vertical link between the upstream market for wholesale fixed call termination services and the downstream markets for retail supply of fixed telephony services (and its possible sub-segments into fixed voice services and VoIP services).

5.4.1.2.2. Wholesale market for fixed call termination services – Retail market for mobile communication services.

5.4.1.2.2.1. The Notifying Party's view

(108) The Notifying Party submits that the Transaction will not result in any anticompetitive foreclosure concerns.

(109) In addition to the arguments put forth in recital (96), the Notifying Party asserts that any attempt by Forthnet to foreclose United Group's competitors is unlikely to be effective, since Forthnet cannot influence the cost structure of Telemach/Tele2/BTC' competitors in a significant manner. In view of the extremely limited traffic flows between, on the one hand Slovenia, Croatia, Bulgaria and Greece, on the other hand, according to the Notifying Party, any attempt by Forthnet to increase its termination charges would have little or no impact on the cost structure of United Group's competitors in these countries.[100]

94 Questionnaire Q1 – replies to questions 7.1.1, 7.2.1, 7.3 and 7.3.1.

95 Questionnaire Q1 – replies to questions 7.1, 7.2, 7.3 and 7.4 (Telenor Bulgaria).

96 Questionnaire Q1 – replies to questions 7.1.1 and 7.2.1 (Telenor Bulgaria, Telekom Slovenia).

97 Questionnaire Q1 – replies to question 7.1.1.

98 Questionnaire Q1 – replies to question 7.1.1.

99 Questionnaire Q1 – replies to questions 7.1, 7.2, 7.2.1 (Vodafone Group) 7.3, 7.4 (S.E.P.E.: Federation of Hellenic ICT Enterprises), 7.4.1 (Vodafone Group) and 8.1.1.1.

100 Form CO, paragraphs 219 and 232.

5.4.1.2.2.2. The Commission's assessment

(110) First, the Commission considers that the Transaction does not raise any input foreclosure concerns in the market for the retail supply of mobile communication services in Slovenia, Croatia and Bulgaria.

(111) The Commission observes that, for the reasons set out in recitals (98) - (100), the merged entity will not have the ability to discriminate against United Group's competitors in Slovenia, Croatia and Bulgaria, for access to fixed call termination services in Greece. Accordingly, the Commission also considers that the merged entity will also not have the ability to otherwise degrade terms and conditions for the provision of wholesale fixed call termination services.

(112) In addition, the Commission observes that the provision of wholesale fixed call termination services, originating from Slovenia, Croatia and Bulgaria (mobile networks) and terminating to Greece are limited.[101] In this regard, the Commission considers that any increase by the merged entity of its termination charges would have little or no impact on the cost structure of United Group's competitors in these countries. Therefore, in view of the small traffic volume, the Transaction is not expected to have a detrimental effect on competition in the downstream markets for the supply of retail mobile communication services, in Slovenia, Croatia and Bulgaria.

(113) The Commission, second, considers that the Transaction does not lead to any customer foreclosure concerns in the wholesale market for the provision of fixed call termination services in Greece.

(114) In that respect, the Commission observes that United Group's market shares in the countries where it operates are modest (for Telemach: [10-20]%, Tele2: [20-30]% and BTC: [20-30]%). Furthermore, due to the existence of regulatory obligations in the upstream market for wholesale fixed call termination services which Forthnet is subject to, as set out in recital (100), in line with what has been discussed in recital (88) and recital (104), foreclosure of Forthnet's rivals in the upstream market is not effective. On the basis of the data provided by the Notifying Party, in this market, there are alternative operators holding higher market shares, in 2019 such as: "Telekom Slovenije", and "A1 Slovenia" holding, respectively, a market share of [40-50]% and [20-30]%, in Slovenia; "HT" and "A1", with a market share of, respectively, [40-50]% and [30-40]%, in Croatia; and "Telenor" and "A1 Bulgaria" holding, respectively, a market share of [40-50]% and [30-40]%, in Bulgaria.[102] In view, therefore, of a sufficient large customer base to be addressed, other than the merged entity's customer base, the Transaction is not expected to have a detrimental effect on the upstream market for the provision of wholesale fixed call termination services in Greece.

(115) Assuming possible segmentations of the market, the Commission recalls that United Group's market shares remain moderate and similar to those achieved in the overall market for retail mobile communication services (see footnote 56).

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[101] In line with the Notifying Party's submission, the traffic flow originating from Slovenia (Telemach), Bulgaria (BTC), and Croatia (Tele2) and terminating to Greece represented (in minutes): [0-5]%; [0-5]%; and [0-5]%, against total incoming traffic from all other International and Transit Operators that Forthnet is in commercial agreement. (Information generated from Annexe 11.1 to the Form CO).

[102] Annexes 11.2, 11.3 and 11.4 to the Form CO.

However, in certain sub-segments, and in particular, in a possible segmentation per type of customers and per type of services, United Group appears to hold an important market share in Bulgaria ([30-40]% in a possible narrow segment for private customers; [40-50]% -by value- in a possible narrow segment for SMS) and in Croatia ([30-40]%, in both value and volume, in a possible sub-segment for MMS). The Commission observes the presence of alternative operators in these possible sub-segments.[103] In the context of the market investigation, it has been indicated that the Transaction will provide Forthnet with additional financing. In that respect, a market participant observes that [...]. Therefore, [...], and is likely to lead into an intensification of competition in the market for the provision of wholesale fixed call termination services in Greece.[104] Additionally, according to a participant, *if voice traffic increases as a result of the Transaction, there will be more opportunity*, for other operators to win traffic. As has been further observed, in view of Forthnet's upcoming entry in the retail mobile market as a Mobile Virtual Network Operator, Forthnet should attempt to increase its customer base. On the basis of the foregoing, it will not be profitable for the merged entity to engage in a customer foreclosure strategy. The market investigation confirmed that telecommunication operators, active in Bulgaria, Croatia and Slovenia do not expect competition in the retail market for mobile communication services, in the countries where they operate to be affected, as a result of the Transaction.

(116) Finally, the Commission notes that the majority of the respondents to the market investigation did not raise any concerns related to the vertical issues arising from the Transaction in the market for wholesale fixed call termination services on the one hand, and the retail supply of mobile communication services, on the other hand.[105]

(117) On the basis of the foregoing, the Commission concludes that the Transaction does not give rise to serious doubts as to its compatibility with the internal market in relation to the vertical link between the upstream market for wholesale fixed call termination services and the downstream market for retail mobile telecommunications services and its possible sub-segments (between pre-paid and post-paid; private and business customers; or per type of service provided).

103 Questionnaire Q1 –replies to question 5.2 (Telenor Bulgaria; HT Croatia).

104 Questionnaire Q1 –replies to questions 7.3, 7.3.1 and 7.4.1.

105 Questionnaire Q1 – replies to questions 7.2, 7.3 and 7.3.1.

6. CONCLUSION

(118) 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