EUROPEAN COMMISSION

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PUBLIC VERSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Ministero dell'Economia e delle Finanze della Repubblica Italiana
Via XX Settembre 97
00187 Rome
Italy

Retelit S.p.A.
Via Pola 9
20124 Milano
Italy

Subject: **Case M.11992 - MEF / RETELIT / TELECOM ITALIA SPARKLE**
Commission decision pursuant to Article 6(1)(b) of the Merger Regulation ([1]) and Article 57 of the EEA Agreement ([2])

Dear Sir or Madam,

(1) On 3 March 2026, the Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation, by which the *Ministero dell'Economia e delle Finanze della Repubblica Italiana* ("**MEF**", Italy), and Retelit S.p.A. ("**Retelit**", Italy, jointly with the MEF: the "**Notifying Parties**"), will acquire joint control, within the meaning of Article 3(1)(b) of the Merger Regulation, of Telecom Italia Sparkle S.p.A. ("**Sparkle**", Italy), by way of purchase of shares (the "**Transaction**"). ([3])

([1]) Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings, OJ L 24, 29.1.2004, page 1 (the "**Merger Regulation**").
([2]) Agreement on the European Economic Area, OJ L 1, 3.1.1994, page 3 (the "**EEA Agreement**").
([3]) OJ C/2026/1636, 11.03.2026.

1. THE PARTIES

(2) The **MEF** is the Italian Ministry of Economy and Finance, responsible for public finance, taxation, and state shareholdings in strategic companies.

(3) **Retelit** is an Italian telecommunications service provider offering fibre connectivity, housing, and cloud solutions, including an interconnection data centre. Retelit's assets include 36 000 km of fibre-optic network and multiple data centres in Italy, including the Avalon Campus, the largest Italian interconnection hub. Retelit is solely controlled by Asterion Industrial Partners SGEIC S.A., a Spanish independent investment management firm active in European infrastructure assets.

(4) **Sparkle** is an international telecommunications company providing voice, data, internet protocol, cloud, and data centre services. Sparkle owns and manages a global network of over 600 000 km of fibre with terrestrial and subsea backbones in Europe, the Mediterranean basin and the Americas. It holds stakes in submarine cables connecting Europe with South-East Asia. Sparkle is currently controlled by Telecom Italia S.p.A. ("**TIM**").

2. THE PROCEDURE

(5) The Transaction was initially notified on 10 November 2025 under the simplified procedure pursuant to the Commission's Notice on a Simplified Treatment for certain concentrations under the Merger Regulation ("**Simplified Notice**"). ([4])

(6) Following observations (the "**Complaint**") from a market participant (the "**Complainant**") the Parties withdrew that notification and re-notified the Transaction under the normal procedure on 12 December 2025.

(7) During that normal procedure, the Commission requested additional information from the Parties and conducted a market investigation with customers and competitors of Retelit and/or Sparkle.

(8) In particular, on 18 December 2025, the Commission sent to the Parties a request for information with several questions regarding information that was missing in the notification, most notably the market shares for the plausible markets in relation to which concerns had been raised by the Complainant. The Notifying Parties provided a partial response to that request for information on 23 December 2025 and supplemented their response on 13 January 2026. The Commission considered that this response did not provide the complete set of information required.

(9) On 22 January 2026, the Parties withdrew their notification.

(10) On 3 March 2026, the Parties submitted a new notification under the normal procedure. The Commission gathered further information from the Parties and third parties before adopting the present Decision.

3. THE CONCENTRATION

(11) The Transaction consists in the acquisition of joint control by the MEF and Retelit over Sparkle, through the purchase of all Sparkle shares currently held by TIM pursuant to a share and purchase agreement signed on 14 April 2025 (the "**SPA**").

([4]) OJ C 160, 5.5.2023, page 1.

(12) On the date of completion of the Transaction (the "**Closing**"), TIM will transfer 100% of the shares of Sparkle to Boost BidCo S.r.l. ("**BidCo**"), a wholly-owned subsidiary of Boost HoldCo S.r.l. ("**HoldCo**"), a newly incorporated vehicle. 70% of the share capital of HoldCo is owned by the MEF and 30% by Retelit. Following the Closing, BidCo will merge with Sparkle, which will become a direct subsidiary of HoldCo.

(13) [Composition of the Board of Directors and contractual arrangement between the parties]

(14) Sparkle will therefore be jointly controlled by the MEF and Retelit.

(15) Further, post-Transaction, Sparkle (the Target) and TIM (the Seller) will enter into a framework agreement, which will govern the provision of certain services between Sparkle and TIM (the "**Framework Agreement**"). ([5]) The Notifying Parties submit that the Framework Agreement does not establish control over Sparkle by the MEF and Retelit. ([6]) The Commission agrees with the Notifying Parties' view and considers that the Framework Agreement and its provisions do not constitute part of the scope of the Transaction as it is not an agreement that establishes control over Sparkle within the meaning of Article 3(2) of the Merger Regulation and therefore does not fall within the scope of the Transaction. ([7])

4. UNION DIMENSION

(16) The Notifying Parties and Sparkle have a combined aggregate world-wide turnover of more than EUR 5 000 million ([8]) (the MEF: more than EUR […] million; Retelit: EUR […] million; Sparkle: EUR […] million). Each of them has a Union-wide turnover in excess of EUR 250 million (the MEF: more than EUR […] million; Retelit: EUR […] million; Sparkle: EUR […] million) and it is not the case that each of them achieves more than two-thirds of their aggregate Union-wide turnover within one and the same Member State. The Transaction therefore

([5]) The Framework Agreement extends existing reciprocal service contracts for ten years from the Transaction closing date, covering services such as [Framework Agreement commercial terms]. An exclusivity regime applies only to [Framework Agreement commercial terms]. The agreement includes a price revision mechanism (allowing alignment with market benchmarks), a preferential supplier scheme (granting a [Framework Agreement commercial terms]), and [Framework Agreement commercial terms]. It further includes a reciprocal non-compete obligation for [Framework Agreement commercial terms]. It also covers real estate arrangements for Sparkle's continued use of TIM facilities.

([6]) According to the Notifying Parties, "*the Framework Agreement constitutes a separate and self-standing commercial arrangement between TIM and Sparkle* [Notifying Parties' characterization of the purpose and nature of the Framework Agreement]. *The purpose of the Framework Agreement* [Notifying Parties' characterization of the purpose and nature of the Framework Agreement]. Form CO, paragraph 114.

([7]) The Commission neither considers the Framework Agreement as an ancillary restriction directly related and necessary to the concentration under Article 6(1)(b) of the Merger Regulation. This Decision shall not be deemed to cover the Framework Agreement. As established by the Commission Notice on restrictions directly related and necessary to concentrations (OJ C 56, 5.3.2005, page 24), the Merger Regulation "*introduces a principle of self-assessment of such restrictions. This reflects the intention of the legislature not to oblige the Commission to assess and individually address ancillary restraints*". In other words, it is "*the task of the undertakings concerned to assess for themselves whether and to what extent their agreements can be regarded as ancillary to a Transaction*". Thus, the Commission Notice on restrictions directly related and necessary to concentrations limits the Commission's role to undertake an assessment of the ancillary character of restrictions a "*residual function*": solely at the request of the undertakings concerned and if a case presents "*novel and unresolved questions giving rise to genuine uncertainty*".

([8]) Turnover calculated in accordance with Article 5 of the Merger Regulation.

has a Union dimension.

5. RELEVANT MARKETS

(17) The wholesale market of global telecommunication services ("**GTS**") involves the provision of transmission capacity i.e., the data throughput available on a telecommunications link, expressed in terms of bandwidth (Terabits per second, Tbps), and comprising both the total installed physical capacity of the infrastructure (wet capacity) and the portion thereof that has been activated for commercial or operational use (lit capacity) on telecommunications infrastructure (typically international cable networks, such as submarine cables) to other telecommunications companies and business communications providers.

(18) For the assessment of the Transaction, the following business activities of the Parties are relevant: (i) wholesale capacity on submarine cables; (ii) the provision of cable landing stations ("**CLS**"); and (iii) wholesale of internet connectivity services, specifically in what concerns backhaul connectivity between CLS and data centres ("**CLS backhaul connectivity services**").

(19) Considering the Complaint, the Parties' activities as well as other concerns emerged in the market investigation, for the purposes of this Decision, the Commission will focus its relevant markets' assessment on whether the following services could constitute separate markets (from the broader GTS market and between themselves): (i) wholesale capacity on submarine cables (Section 5.1); (ii) provision of CLS (Section 5.2); and (iii) CLS backhaul connectivity services (Section 5.3).

5.1. Wholesale capacity on submarine cables

5.1.1. Product market definition

5.1.1.1. Commission's precedents

(20) The wholesale market for GTS involves the provision of transmission capacity on telecommunications infrastructure (typically international cable networks, such as submarine cables) to other telecommunications companies and business communications providers. This comprises: (i) the lease of transmission capacity and (ii) the provision of related services to third party telecommunications, traffic carriers and service providers.

(21) The Commission has previously assessed, but ultimately left open, whether the provision of each of these two types of services would constitute separate market segments. The Commission has previously considered the wholesale GTS market to be worldwide in scope. ([9])

(22) The Commission has not previously considered whether the wholesale capacity on submarine cables constitutes a separate market from the overall wholesale of GTS.

([9]) Commission decisions of 14 April 2014 in Case M.7109 - DEUTSCHE TELEKOM/GTS, paragraphs 10-14; of 3 August 2016 in Case M.7978 - VODAFONE/LIBERTY GLOBAL/DUTCH JV, paragraphs 227-233; and of 18 July 2019 in Case M.8864 - VODAFONE/CERTAIN LIBERTY GLOBAL ASSETS, paragraphs 222-228.

5.1.1.2. Notifying Parties' views

(23) The Notifying Parties submit that there is no need to decide on further potential segmentation of the wholesale market for GTS into (i) lease of transmission capacity and (ii) provision of related services to third party telecommunications, traffic carriers and service providers, as this would have no impact on the assessment of the Transaction. ([10])

(24) In addition, the Notifying Parties submit that the wholesale capacity on submarine cables should not be considered a separate market segment distinct from the overall wholesale market for GTS. ([11])

(25) Wholesale GTS services are typically purchased by carriers (*e.g.*, Vodafone) who have an international framework agreement for retail global telecommunications services with particular end customers (*e.g.*, Ikea) but do not have the network necessary to connect each and every local site of that end customer. These services are available across both submarine cable systems and terrestrial optical transport networks. Hence, submarine cable capacity represents only one technological means of providing international transmission capacity within the broader wholesale GTS market. ([12])

5.1.1.3. Commission's assessment

(26) The feedback of market respondents is inconclusive about a possible separate market for wholesale capacity on submarine cables. ([13])

(27) *First*, the Commission's market investigation confirmed the Notifying Parties' submission that wholesale capacity on submarine cables constitutes a service available for commercial procurement at CLS level, as the majority of respondents expressing a view selected this option when asked which services are typically provided at a CLS. ([14])

(28) *Second*, when asked whether the wholesale capacity on submarine cables is a separate market from the overall market for the wholesale of GTS only a slight majority (by a difference of one respondent) replied affirmatively. ([15])

(29) *Third*, the Commission notes that submarine cable capacity represents one technological means of providing international transmission capacity and a potential segmentation by transmission means has not been previously considered by the Commission within the market for wholesale GTS.

(30) For the purpose of this Decision and based on the feedback received during the Commission's initial Phase I examination, the Commission concludes that there are no sufficient grounds to take a final position as to whether wholesale of capacity in submarine cables constitutes a separate market from the overall market for wholesale GTS or for concluding that this is the case.

([10]) Form CO, paragraph 238.
([11]) Form CO, paragraph 565 and Notifying Parties' partial response of 23 December 2025 to RFI 4, paragraph 44.
([12]) Form CO, paragraph 565 and Notifying Parties' partial response of 23 December 2025 to RFI 4, paragraph 44.
([13]) Replies to Commission's first questionnaire to market participants, question C.9.
([14]) Replies to Commission's first questionnaire to market participants, question C.1.
([15]) Replies to Commission's first questionnaire to market participants, question C.9.

5.1.2. Geographic market definition

5.1.2.1. Commission's precedents

(31) The Commission has previously considered the wholesale GTS market to be worldwide in scope. ([16])

(32) The Commission has not previously considered whether the wholesale capacity on submarine cables constitutes a separate market from the overall wholesale of GTS. Therefore, the Commission has not defined the geographic scope of this potential market.

5.1.2.2. Notifying Parties' views

(33) The Notifying Parties submit that the geographic scope of wholesale GTS markets is worldwide, and the same conclusion can be reached for the potential market for wholesale capacity on submarine cables.

(34) According to the Notifying Parties, submarine cables are inherently international infrastructure, and their capacity is purchased by telecommunications carriers as part of broader global connectivity requirements rather than as standalone products. ([17])

5.1.2.3. Commission's assessment

(35) In what concerns the market for wholesale GTS, the Commission has previously considered a worldwide scope.

(36) In what concerns the potential market for wholesale capacity on submarine cables, most respondents who expressed a view indicated that it would be wider than national, i.e., either regional or EEA. ([18])

(37) For the purpose of this Decision ([19]), based on the feedback received during the Commission's initial Phase I examination and without prejudice to whether a distinct product market exists, the Commission concludes that a potential market for wholesale capacity on submarine cables would be wider than national in scope.

5.1.3. Conclusion

(38) In light of the above, for the purposes of this Decision and based on the feedback received during the Commission's initial Phase I examination, the Commission considers that the precise product market definition may be left open because the Transaction would not lead to any competitive concerns regardless of whether a narrow or broader market definition is applied. Nonetheless, the Commission will

([16]) Commission decisions of 14 April 2014 in Case M.7109 - DEUTSCHE TELEKOM/GTS, paragraphs 15-18; of 3 August 2016 in Case M.7978 - VODAFONE/LIBERTY GLOBAL/DUTCH JV, paragraphs 234-237; and of 18 July 2019 in Case M.8864 - VODAFONE/CERTAIN LIBERTY GLOBAL ASSETS, paragraphs 229-231.

([17]) Form CO, paragraph 566 and Notifying Parties' partial response of 23 December 2025 to RFI 4, paragraph 45.

([18]) Replies to Commission's first questionnaire to market participants, question C.13.

([19]) For the avoidance of doubt, any conclusion in this Decision is without prejudice to a different approach to market definition in other contexts (e.g., Guidelines on market analysis and the assessment of significant market power under the EU regulatory framework for electronic communications networks and services (OJ C 157, 7.5.2018, page 1), paragraph 10: "*... markets defined for the purposes of EU competition law and those defined for the purposes of sector-specific regulation might not always be identical*").

assess the Transaction on the potential narrower product market for wholesale capacity on submarine cables at a wider than national geographic scope i.e., either regional or EEA, since the market investigation suggests that a potential market for wholesale capacity on submarine cables would be wider than national in scope.

5.2. Cable Landing Stations

(39) For background, a CLS is a specialized, secure facility where a submarine cable physically lands, receives power, and interconnects with terrestrial networks. The related infrastructure typically includes the beach landing facilities and the terrestrial connections linking the CLS to backhaul networks or data centres.

5.2.1. Product market definition

5.2.1.1. Commission's precedents

(40) The Commission has not previously assessed the provision of CLS as a potential separate market.

5.2.1.2. Notifying Parties' views

(41) The Notifying Parties submit that there is no plausible market for the provision of CLS. ([20]) A CLS is a technical facility, essentially a "big plug" for submarine cables. The landing party i.e., the entity operating the CLS, is responsible for the wet-to-dry transition of the cable, including securing beach landing permits, constructing the beach manhole, supervising the marine operations of pulling the cable ashore and ensuring proper protection of the shore section of the cable. The landing process is typically performed by a telecom operator. ([21])

(42) While CLS would be an integral part of the submarine cable system, as a component of the infrastructure used to provide wholesale GTS, the Notifying Parties argue that access to CLS is not provided on the downstream market separately from the capacity on the submarine cable. ([22]) Therefore, the market-facing services provided at CLS would be:

(a) Wholesale capacity on submarine cables, sold by cable operators or consortia i.e., the purchase of transmission capacity on a cable system as part of the wholesale market of GTS, which operators then use to provide retail international connectivity to end customers; and

(b) Colocation/interconnection services, enabling customers, such as hyperscalers, to access international connectivity. According to the Notifying Parties, these services are generally not provided at the CLS itself but at data centres, which are connected to the CLS via a backhaul connectivity. The physical connection between the CLS and the data centre can be operated by the cable consortium owning the cable or by a qualified electronic communications operator (which may have its own terrestrial network or just be a reseller). ([23])

([20]) Form CO, paragraph 348.
([21]) Form CO, paragraphs 352.
([22]) Form CO, paragraph 421 and Notifying Parties' partial response to RFI 5 of 23 December 2025, page 6 under "*Conclusions on the relevant product definition*".
([23]) Form CO, paragraph 359.

5.2.1.3. Position taken in the Complaint

(43) The Complainant submits that the provision of CLS facilities and related infrastructure to submarine cable consortia or third parties constitutes a separate market on which both Retelit and Sparkle are active. The Complainant submits that, while the Commission has not previously considered such potential market, CLS would constitute a plausible market segment, separate from the overall market for the provision of wholesale GTS. ([24])

5.2.1.4. Commission's assessment

(44) The feedback from the market investigation clearly indicated that a separate market for the provision of CLS exists, specifically in what concerns wet-to-dry cable transition.

(45) *First*, when asked which services are typically offered at CLS, the majority of the respondents who expressed a view replied that CLS offer wet-to-dry transition for submarine cables. In contrast, the results of the market investigation tend to confirm the Notifying Parties argument that colocation/interconnection services enabling customers to access international connectivity are not necessarily provided at CLS. ([25])

(46) *Second*, all respondents to the market investigation who expressed a view replied that the provision of CLS would constitute a market on its own. In addition, the majority of respondents who expressed a view indicated that such market would refer to the provision of wet-to-dry transition services. ([26])

(47) *Third*, the majority of respondents who expressed a view considered there are no alternatives to CLS for the wet-to-dry transition of a submarine cable. ([27])

(48) *Fourth*, although BEREC has stated that national approaches may vary (though in the context of a 2025 report on domestic, not international, submarine cables) ([28]), Italian and French regulators have considered CLS as a separate market segment:

(a) In Italy, historically both the competition authority and the regulator treated access to CLS (*stazioni di atterraggio*, *stazioni di approdo*, *cable station*) and backhaul as distinct layers. A specific CLS access obligation existed for Telecom Italia roughly between 2000 and 2006. ([29])

([24]) Complaint, page 3.

([25]) Replies to Commission's first questionnaire to market participants, question C.1.

([26]) Replies to Commission's first questionnaire to market participants, question C.5.

([27]) Replies to Commission's first questionnaire to market participants, question C.2.

([28]) A BEREC's recent analysis focuses on domestic (as opposed to International) submarine cable connections, though '*information on cable landing stations or other specific aspects of each submarine cable are not provided in the report*' because '*submarine cables are critical infrastructure and some data was considered confidential by some BEREC members*' (Report on domestic submarine cables connectivity in Europe, 4 December 2025).

([29]) In 2000, the Italian regulator (*Autorità per le Garanzie nelle Comunicazioni*, AGCOM) imposed on Telecom Italia an obligation to offer 'in a disaggregated manner' the circuits of access to submarine cable landing stations (*stazioni di approdo dei cavi sottomarini*), at transparent and non-discriminatory conditions and prices comparable to leased lines (*Delibera* 10/00/CIR, Art. 6(2)). In that same year, the Italian competition authority (*Autorità Garante della Concorrenza e del* Mercato, AGCM) noted in its annual report that regulation required disaggregation between 'access to the cable station' and 'backhauling circuits', with backhaul to be provided separately on leased-line conditions (AGCM 2000 annual report, page 111). That said, AGCOM repealed the old specific

(b) In France, the regulator explicitly structures the value chain around the CLS (*station d'atterrissement*), distinguishing it from the terrestrial complement, and spelling out alternative access modalities (*colocation* vs *déport optique* vs *complément terrestre*). ([30])

(49) *Fifth*, the Commission does not consider that route-specific presence (i.e., presence on a particular international corridor, such as Italy-Middle East or Italy-Asia) warrants defining a separate route-specific product market. Where relevant, route specificity operates as a demand-side product characteristic rather than a geographic delineation criterion: the destination served by a submarine cable system is determined at the design and landing-selection stage and cannot be altered ex post once the cable is in operation. A CLS serving a cable connecting Italy to Asia does not compete, from the perspective of a cable consortium selecting a landing station, with a facility serving a cable connecting Italy to Northern Europe. This non-substitutability reflects the configuration of the cable system itself (a characteristic of the service) rather than the geographic location of the CLS facility as such (see also paragraph (106)). When asked about appropriate metrics for assessing operators' market position in the CLS market, no single indicator clearly stood out. Whilst a majority of respondents considered route-specific presence to be relevant, a broadly comparable number of respondents pointed instead to the number of CLS facilities and the number of submarine cable systems landing at the operators' CLS as appropriate metrics. ([31]) Furthermore, when respondents who had identified route-specific presence as a relevant metric were asked whether a corridor or route cluster constitutes a separate relevant geographic market distinct from the Italian CLS market more broadly, fewer than half answered affirmatively, while a significant proportion expressed no view and a further group considered the answer to depend on the service type involved. The market investigation therefore does not provide a sufficient basis for defining a separate route-specific market.

(50) For the purpose of this Decision and based on the feedback received during the Commission's initial Phase I examination, the Commission concludes that there is a plausible market for provision of CLS, at least in what concerns wet-to-dry transition of submarine cables, but the precise market definition may be left open.

5.2.2. Geographic market definition

5.2.2.1. Commission's precedents

(51) The Commission has not previously assessed the provision of CLS as a potential separate market. Therefore, the Commission has not defined the geographic scope

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obligation to provide access circuits to submarine CLS in 2006 (*Delibera* 417/06/CONS, Art. 42(3)). AGCOM assessed that obstacles to market access had 'significantly reduced' and that 'progressive development of alternative infrastructure' suggested the market was 'destined to reach a sufficient degree of competition in a short timeframe' (Annex on market analysis to *Delibera* 417/06/CONS, paras 102-5, 677-9, 692).

([30]) In 2023, the French regulator (*Autorité de régulation des communications électroniques, des postes et de la distribution de la presse*) separates submarine component from terrestrial access component, with three access modalities identified for cable landing station access: colocation in landing station (direct access), optical extension (*déport optique* - backhaul from CLS to nearby PoP), terrestrial complement (*complément terrestre* - from CLS to distant hub) (*Décision* 2023-2803, Annex 7 - Glossary, page 149) and defines three distinct layers: submarine cable capacity (wet segment), CLS access (wet-to-dry interconnection point) and terrestrial backhaul (from CLS to operator networks) (ibid., page 150).

([31]) Replies to Commission's second questionnaire to market participants, question C.3.

of this potential market.

5.2.2.2. Notifying Parties' views

(52) The Notifying Parties submit that the geographic scope of the potential market for the provision of CLS would be at least regional, encompassing Southern Europe and the Mediterranean basin ([32]), and potentially even wider in scope.

(53) According to the Notifying Parties, operators of submarine cables can choose between CLS in different countries in which to land their cables or connect their networks, and operators of CLS often operate in different countries. ([33])

5.2.2.3. Position taken in the Complaint

(54) The Complainant takes the view that the geographic scope of the CLS market is national, given that national players are only interested in sourcing access to CLS located in Italy in this case, whereas they would not consider CLS located in other European countries. The Complainant argues there could even be a narrower market, encompassing only CLS for international connections between Italy and Middle East and Asia, where the Parties activities would more largely overlap. ([34])

5.2.2.4. Commission's assessment

(55) With regards to the geographic scope, while most respondents who expressed a view indicated that CLS services are procured at a regional level (i.e., a CLS in France or Greece is an alternative to a CLS in Italy), other respondents indicated a national scope. ([35])

(56) The Complainant's argument for a narrower geographic market limited to CLS serving international connections between Italy and the Middle East and Asia is not supported by the results of the market investigation. As set out in paragraph (49), route-specificity operates as a product characteristic determined at the cable design stage rather than a criterion for geographic market delineation. Treating it as the latter would require defining a corridor-specific geographic market, for which the market investigation provides no majority support: fewer than half of the respondents who addressed the question considered route corridors to constitute a separate relevant geographic market, with a significant proportion either expressing uncertainty or conditioning their view on the service type involved. In addition, the qualitative responses confirm that where route-specific competitive dynamics arise, they reflect the characteristics of individual cable systems (consortium membership, cable configuration, landing rights) rather than geography in the conventional sense of the spatial dimension of supply and demand. The Commission accordingly does not consider that a route- or corridor-specific geographic market should be defined.

(57) For the purposes of this Decision and based on the feedback received during the

([32]) For the purpose of this Decision, the Mediterranean basin corresponds to Cyprus, France, Greece, Italy and Spain (within the EEA) and Albania, Algeria, Egypt, Israel, Lebanon, Libya, Morocco, Syria, Tunisia and Turkey (outside the EEA) (Notifying Parties' follow-up response to RFI 10, question 1).

([33]) Form CO, paragraphs 466, 636, 428.

([34]) Complaint, page 4.

([35]) Replies to the Commission's first questionnaire to market participants, question C.12.

Commission's initial Phase I examination, ([36]) the Commission considers that the plausible market for the provision of CLS would have at least a national scope, but the precise market definition may be left open. For the reasons set out in paragraph (56), the Commission also rejects the Complainant's argument for a narrower corridor-specific market.

5.2.3. Conclusion

(58) In light of the above, for the purpose of this Decision and based on the feedback received during the Commission's initial Phase I examination, the Commission considers that the precise market definition may be left open because the outcome of the competition assessment remains the same regardless of whether a narrow or broader market definition is applied. Nonetheless, the Commission will assess the Transaction on the plausible market for provision of CLS at least with a national scope.

5.3. CLS backhaul connectivity services

(59) CLS backhaul connectivity services are connections between a CLS and a data centre.

(60) As explained by the Notifying Parties and the Complainant, CLS are typically operated under one of the following models:

(a) Closed model: the CLS is operated and maintained typically by a member of a submarine cable consortium and designed to only host the backhaul connectivity services of the CLS operator;

(b) Open model: carrier-neutral environment that allows third parties to connect the submarine landed cable to alternative backhaul networks or data centres.

5.3.1. Product market definition

5.3.1.1. Commission's precedents

(61) The Commission has not previously assessed the provision of backhaul connectivity services from CLS to data centre.

5.3.1.2. The Notifying Parties' position

(62) The Notifying Parties submit that the Commission's decisional practice and the applicable regulatory framework do not support the definition of a separate relevant product market specifically for the provision of backhaul connectivity

([36]) The Commission notes that the degree of substitutability between CLS located in different countries depends on factors that may vary considerably based on, amongst others, the cost of backhauling traffic from a more distant CLS to the targeted customers, the administrative permits and authorisations required for CLS construction and operation in each Member State, and the security and redundancy requirements of the cable operators concerned; these factors may, in particular cases, support a narrower geographic market than the one assessed in this Decision. For the avoidance of doubt, any conclusion in this Decision is without prejudice to a different market definition in other contexts (e.g., Guidelines on market analysis and the assessment of significant market power under the EU regulatory framework for electronic communications networks and services (OJ C 157, 7.5.2018, page 1), paragraph 10: "*... markets defined for the purposes of EU competition law and those defined for the purposes of sector-specific regulation might not always be identical*").

services between CLS and data centres. ([37])

(63) The Notifying Parties submit that where it has examined whether backhaul connectivity services would be separate from a wholesale market for the supply of leased lines, the Commission has systematically left the market definition open. ([38]) Moreover, the fact that the Commission's defined a separate market for data centre colocation services does not imply the existence of a separate market for the external connectivity linking data centres to CLS. ([39])

(64) In addition, the Notifying Parties submit that, while earlier regulatory instruments contemplated the possibility of a dedicated backhaul market, the Commission has since clarified that it does not consider it essential to define access to backhaul connectivity services as a separate relevant market. ([40])

5.3.1.3. Commission's assessment

(65) The Commission considers that there are no sufficient grounds to take a final position as to whether backhaul connectivity services constitute a distinct market from the wholesale market for the supply of leased lines.

(66) *First*, the feedback from the market investigation is inconclusive about a potential separate market for the provision of backhaul connectivity services.

(67) When asked whether backhaul connectivity services to connect CLS to a data centre is a separate product market, a slight majority of the respondents who expressed a view replied negatively. ([41])

(68) In addition, the results of the market investigation did not confirm that backhaul connectivity services are typically provided at CLS. ([42]) In contrast, the majority of market respondents indicated that both submarine cable consortia/operators and internet connectivity customers (for example internet service providers, hyperscalers, etc.) procure backhaul connectivity services from CLS facilities. ([43])

(69) *Second*, the Commission's precedents referred to by the Notifying Parties are not applicable to the case of CLS backhaul connectivity services. In such precedents, the Commission considered and ultimately left open whether wholesale fixed backhaul connectivity services connecting the networks of telecommunication providers to end user sites for the supply of business connectivity services constitute a distinct product market from the wholesale market for the supply of leased lines. ([44]) The precedents refer to a complete distinct type of backhauling

([37]) Form CO, paragraph 452 and Notifying Parties' partial response of 23 December 2025 to RFI 4, paragraph 20.

([38]) Form CO, paragraph 454 and Notifying Parties' partial response of 23 December 2025 to RFI 4, paragraph 22.

([39]) Form CO, paragraph 457 and Notifying Parties' partial response of 23 December 2025 to RFI 4, paragraph 25.

([40]) Form CO, paragraph 458 and Notifying Parties' partial response of 23 December 2025 to RFI 4, paragraph 27. The Notifying Parties claim this position is confirmed by Commission Recommendation (EU) 2020/2245, which does not identify backhaul as a market susceptible to ex ante regulation and instead focuses on wholesale local access (market 1/2020) and wholesale dedicated capacity (market 2/2020).

([41]) Replies to Commission's first questionnaire to market participants, question C.10.

([42]) Replies to Commission's first questionnaire to market participants, question C.1.

([43]) Replies to Commission's first questionnaire to market participants, question C.4.

([44]) See Commission decisions of 6 March 2020 in Case M.9674 - VODAFONE ITALIA / TIM / INWIT JV, paragraphs 125-129; of 31 August 2018, Case M.9041 - HUTCHISON / WINDTRE,

service, directed at the provision of fixed telecommunication services to end users, and cannot be compared with a connection between a CLS and a data centre.

(70) For the purpose of this Decision and based on the feedback received during the Commission's initial Phase I examination, the Commission concludes that there are no sufficient grounds to take a final position as to whether backhaul connectivity services constitute a separate market.

5.3.2. Geographic market definition

5.3.2.1. Commission's precedents

(71) The Commission has not previously assessed the provision of backhaul connectivity services from CLS to data centres. Therefore, the Commission has not defined the geographic scope of this potential market.

5.3.2.2. The Notifying Parties' position

(72) The Notifying Parties submit that the geographic scope of a possible market for the provision of backhaul connectivity services between CLS and data centres, would be broader than national, given that such market would be composed essentially of international market players and infrastructure (*i.e.*, the submarine cables, telecommunications operators and infrastructure providers operate on a pan-European or global basis, and international carriers and content providers).

5.3.2.3. Commission's assessment

(73) The market investigation did not provide any conclusive results with regards to the geographic scope of the potential market. ([45]) Respondents identified a spectrum of possible scopes: some considered colocation/interconnection in cable landing stations to be procured at purely local level, tied to the specific landing point, given that each CLS hosts different cable systems and is not substitutable with another CLS even within the same country; others pointed to a national scope, noting that procurement decisions are driven by domestic network interconnection requirements, local peering ecosystems, and country-specific regulatory frameworks; a further group indicated a regional or EEA-wide scope.

(74) For the purpose of this Decision and based on the feedback received during the Commission's initial Phase I examination, in light of this divergence, and without prejudice to whether a distinct product market exists, the Commission considers that the national level represents the narrowest plausible candidate market definition supported by the evidence.

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paragraphs 46-49 and of 1 September 2016 in Case M.7758 - HUTCHISON 3G ITALY / WIND / JV, paragraphs 206-211.

([45]) Question C.14 of Commission's first questionnaire to market participants asked for the geographic scope of a potential market for colocation/interconnection services in CLS. While colocation/interconnection in CLS refer would refer to backhaul connection services, the Commission considers that the terminology may have mislead the respondent (in particular by conflating CLS colocation with broader interconnection markets) and therefore treats the results of this question with caution and does not rely on them as determinative of the geographic market definition.

5.3.3. Conclusion

(75) In light of the above, for the purpose of this Decision, the Commission considers that the precise market definition may be left open because the outcome of the competition assessment remains the same regardless of whether a narrow or broader market definition is applied. Nonetheless, the Commission will assess the Transaction on the potential market for backhaul connectivity services, at the narrower national level.

6. COMPETITIVE ASSESSMENT

(76) The Commission must assess whether a proposed concentration would significantly impede effective competition in the internal market or in a substantial part of it, in particular through the creation or strengthening of a dominant position, pursuant to Article 2(2) and (3) of the Merger Regulation. ([46]) A merger may entail: horizontal effects, where the undertakings concerned are actual or potential competitors in one or more of the relevant markets concerned (Section 6.2.1); and vertical effects, where the undertakings concerned are active on different or multiple levels of the supply chain (Section 6.3.1). A concentration may involve all these types of effects. In such a case, the Commission will appraise horizontal and non-horizontal effects in accordance with the guidance set out in the relevant notices. ([47])

(77) This Transaction gives rise to horizontal overlaps and vertical links between the activities of Sparkle and at least one of the Notifying Parties, Retelit. Based on the information available to date, under the narrowest plausible product and geographic market definitions, Sparkle and Retelit are, amongst others, both present in the following markets: submarine-cable wholesale capacity, CLS (wet-to-dry) and backhaul connectivity services (Section 6.2).

(78) In addition, the Transaction gives rise to a relevant vertical relationship between Sparkle and Retelit's CLS business (upstream) and Sparkle and Retelit's backhaul business (downstream) (Section 6.3).

(79) The Transaction also results in horizontal overlaps and vertical links for a number of other markets. ([48]) However, none of these overlaps or links give rise to

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

([47]) Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings (OJ C 31, 5.2.2004, page 5) ("**Horizontal Merger Guidelines**"). Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings (OJ C 265, 18.10.2008, page 6) ("**Non-Horizontal Merger Guidelines**").

([48]) Other horizontal overlaps include: (i) wholesale market for GTS, (ii) wholesale market for internet connectivity services, (iii) retail market for IT services, (iii) retail market for bulk SMS services (Form CO, Table 5). Other vertical links include: (i) wholesale market for GTS (upstream) and retail markets for GTS, business connectivity and fixed internet access services to residential customer (downstream); (ii) wholesale market for internet connectivity services (upstream) and retail market for GTS, internet hosting services and business connectivity (downstream); (iii) retail market for IT services (upstream) and retail market for internet hosting services (downstream); (iv) wholesale supply of broadband access services (upstream) and wholesale and retail markets for GTS

affected markets within the meaning of recital 25(g) Annex I to Regulation (EU) 2023/914 ([49]), as they meet the conditions for review under point 5 or benefit from the flexibility clauses of point 8 of the Notice on Simplified Treatment ([50]). Therefore, these overlaps and vertical links will not be further discussed in this Decision.

6.1. Market shares

(80) According to the Horizontal Merger Guidelines and the Non-Horizontal Merger Guidelines, ([51]) in the assessment of the effects of a merger, market shares constitute a useful first indication of the structure of the markets at stake and of the competitive importance of the relevant market players.

6.1.1. Wholesale capacity on submarine cables

(81) The Commission presents the market shares in Table 1 below, as submitted by the Notifying Parties.

(82) The market shares provided in Table 1 below are based on a study submitted by the Notifying Parties, which used 'total used capacity' figures estimated by a third-party data provider TeleGeography for subsea cable routes globally in 2025. The figures for EEA and Mediterranean consider the sum of the total used capacity of subsea corridors connecting each of these regions. ([52])

(83) The combined market share of Retelit and Sparkle in a potential market for wholesale capacity on submarine cables using wet capacity would be [0-5]%, in the EEA, and [10-20]% at regional level (Mediterranean).

Table 1: Market shares for wholesale capacity on submarine cables (Mediterranean basin and Europe, 2025)

	Wet capacity (Tbps) ([53])		Shares (%)	
	Mediterranean	**EEA**	**Mediterranean**	**EEA**
Sparkle	[…]	[…]	[10-20]%	[0-5]%
Retelit	[…]	[…]	[0-5]%	[0-5]%
Combined	[…]	[…]	[10-20]%	[0-5]%
Others	[…]	[…]	[80-90]%	[90-100]%
Total	[…]	[…]	100%	100%

Source: Form CO, Table 7

6.1.2. Cable Landing Stations

(downstream); and, (v) wholesale leased lines (upstream) and wholesale and retail market for GTS (downstream) (Form CO, Table 6).

([49]) Commission Implementing Regulation (EU) 2023/914 of 20 April 2023 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings and repealing Commission Regulation (EC) No 802/2004, OJ L 119, 5.5.2023, page 22.

([50]) Commission Notice on a simplified treatment for certain concentrations under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings 2023/C 160/01, OJ C 160, 5.5.2023, page 1.

([51]) Horizontal Merger Guidelines, paragraph 14; Non-Horizontal Merger Guidelines, paragraph 24.

([52]) Annex 1 to Response to RFI 5, page 1. According to TeleGeography's definition, 'total used capacity' refers to the sum of capacity actively deployed by internet backbone providers, content providers, research and education networks, and enterprises. It reflects capacity in service at the relevant point in time; it does not correspond to design capacity and it does not necessarily represent traffic volumes.

([53]) See paragraph (17) of the Decision.

(84) The market shares presented below for the provision of CLS are based on a study submitted by the Notifying Parties, which estimates market shares based on the number of CLS where submarine telecommunication cables land in Italy.

(85) In relation to CLS, the Notifying Parties explain that there are multiple subsea cable systems that land in Italy, including: (i) intercontinental subsea cable systems (e.g., AAE-1, 2Africa, IEX or SEA-ME-WE 4/5 systems), (ii) regional systems connecting countries within the Mediterranean basin (e.g., MedNautilus, EMC West systems, or bilateral cable systems such as Italy-Greece (e.g., IONIAN, Italy-Greece 1), Italy-Albania, Italy-Libya), as well as (iii) domestic subsea cable systems limited to Italy (like Unitirreno/Unidata or submarine cables that connect Italian islands with the mainland). Some CLS in Italy host both domestic and international cable systems (this is the case, for example, for the Genoa Lagaccio CLS operated by Sparkle) ([54])

(86) Accordingly, accounting for all CLS where submarine telecommunication cables land in Italy, the Notifying Parties' combined market share in the potential market for the provision of CLS in Italy would be in [5-10]% (Table 2).

Table 2: Market shares for CLS in Italy (2025)

CLS Operator	Number of CLS	Market Share
Retelit	[…]	[0-5]%
Sparkle	[…]	[5-10]%
Combined	[…]	[5-10]%
Equinix	[…]	[0-5]%
EXA Infrastructure	[…]	[5-10]%
FiberCop	[…]	[30-40]%
Infratel	[…]	[30-40]%
IslaLink	[…]	[0-5]%
Melita	[…]	[0-5]%
Open Hub Med (OHM)	[…]	[0-5]%
Siportal	[…]	[0-5]%
Telecom Egypt	[…]	[0-5]%
Terna	[…]	[0-5]%
Unidata	[…]	[0-5]%
Vodafone	[…]	[0-5]%
Wind	[…]	[0-5]%
Total	[…]	100%

Source: Form CO, Table 8

(87) The Notifying Parties submit that a further possible segmentation would be between "international" vs. "domestic" CLS, with international CLS being defined as CLS where at least one optical fibre pair terminating in these CLS is directly connected to a foreign country (i.e., not Italy). Accordingly, if considering only international CLS, the combined market share would be [20-30]% in the EEA countries of Mediterranean basin (Table 3), and [30-40]% in Italy (Table 4).

([54]) Form CO, paragraph 628 and Partial Response to RFI 4 of 13 January 2026, page 1.

Table 3: International CLS in EEA countries of Mediterranean (2025)

CLS Operator	Number of CLS	Market Share
Retelit	[…]	[0-5]%
Sparkle	[…]	[20-30]%
Combined	[…]	[20-30]%
AFR-IX Telecom	[…]	[0-5]%
ALBtelecom	[…]	[0-5]%
Cyta	[…]	[0-5]%
Digital Realty	[…]	[0-5]%
EDF	[…]	[0-5]%
Equinix	[…]	[0-5]%
EXA Infrastructure	[…]	[10-20]%
IslaLink	[…]	[5-10]%
Melita	[…]	[0-5]%
Open Hub Med (OHM)	[…]	[0-5]%
Orange	[…]	[5-10]%
OTEGLOBE	[…]	[0-5]%
PrimeTel	[…]	[0-5]%
Telecom Egypt	[…]	[0-5]%
Telefonica	[…]	[0-5]%
Terna	[…]	[0-5]%
Verizon	[…]	[0-5]%
Vodafone	[…]	[0-5]%
Wind	[…]	[0-5]%
Total	[…]	100%

Source: Form CO, Table 9

Table 4: International CLS in Italy (2025)

CLS Operator	Number of CLS	Market Share
Retelit	[…]	[5-10]%
Sparkle	[…]	[30-40]%
Combined	[…]	[30-40]%
Equinix	[…]	[5-10]%
EXA Infrastructure	[…]	[20-30]%
IslaLink	[…]	[5-10]%
Melita	[…]	[5-10]%
Open Hub Med (OHM)	[…]	[5-10]%
Telecom Egypt	[…]	[5-10]%
Terna	[…]	[10-20]%
Vodafone	[…]	[5-10]%
Wind	[…]	[5-10]%
Total	[…]	100%

Source: Form CO, Table 10

6.1.3. Backhaul connectivity services

(88) The market shares presented in Table 5 below were also based on the aforementioned study of the external consultant. The study explains that the starting point for the estimation of market shares for the hypothetical segment of

backhaul between CLS and data centres is the subsea cables used capacity. As there are no sources providing specific country by country data, the study estimates that wet capacity for Italy amounts to [40-50]% of the capacity in the Mediterranean region. Considering that not all the subsea capacity requires a terrestrial link between the CLS and a data centre, the market shares assume that approximately [20-30]% of the wet capacity does not require backhauling services once touching land. In other words, about [70-80]% of landing wet capacity is associated with backhauling to enable connectivity to estimate market size in capacity for backhauling services. ([55])

Table 5: Backhauling between CLS and data centres (Italy, Mediterranean basin and EEA, 2025)

	Backhaul capacity sold (Tbps)			Shares (%)		
	Italy	**Mediterranean**	**EEA**	**Italy**	**Mediterranean**	**EEA**
Sparkle	[…]	[…]	[…]	[10-20]%	[10-20]%	[0-5]%
Retelit	[…]	[…]	[…]	[5-10]%	[0-5]%	[0-5]%
Combined	[…]	[…]	[…]	[20-30]%	[10-20]%	[0-5]%
Others ([56])	[…]	[…]	[…]	[70-80]%	[80-90]%	[90-100]%
Total	[…]	[…]	[…]	100%	100%	100%

Source: Form CO, Table 11

6.2. Horizontal overlaps between the Parties' activities

6.2.1. Legal framework

(89) The Horizontal Merger Guidelines ([57]) describe two main ways in which horizontal mergers may significantly impede effective competition, in particular, by creating or strengthening a dominant position: (i) by eliminating important competitive constraints on one or more firms, which consequently would have increased market power, without resorting to coordinated behaviour (unilateral effects); and (ii) by changing the nature of competition in such a way that firms that previously were not coordinating their behaviour, are significantly more likely to coordinate and raise prices or otherwise harm effective competition (coordinated effects).

(90) The Horizontal Merger Guidelines list a number of factors which may influence whether or not significant horizontal unilateral effects are likely to result from a merger, such as the large market shares of the merging firms (e.g., combined market shares above 40% may lead to the creation or the strengthening of a

([55]) Form CO, paragraph 325 and Annex 1 to Response to RFI 5, page 3, paragraphs 8, 9.

([56]) The Notifying Parties have identified the following the following providers of CLS backhaul connectivity services in Italy (in no particular order): EXA Infrastructure (the largest dedicated digital infrastructure platform in Europe), Fastweb, Open Fiber and FiberCop. Considering wider geographic markets, the Notifying Parties have also indicated that the following operators are rival providers of CLS backhaul connectivity services: Orange, Vodafone, Telefónica/Telxius, COLT/Lumen, Zayo Europe, euNetworks and BICS. See Form CO, paragraphs 914-915.

([57]) Horizontal Merger Guidelines, paragraph 22.

dominant position in several cases), ([58]) 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 those factors need to be present to make significant horizontal unilateral effects likely and it is not an exhaustive list. ([59])

6.2.2. The Notifying Parties' views

6.2.2.1. Market for the supply of CLS services

(91) The Notifying Parties submit that their combined market share in the provision of CLS varies significantly depending on the market definition:

(a) Approximately [5-10]% for all CLS in Italy (including both domestic and international cables); ([60])

(b) Approximately [20-30]% for international CLS in the EEA countries of the Mediterranean basin; ([61])

(c) Approximately [30-40]% for international CLS in Italy only. ([62])

(92) The Notifying Parties argue that the CLS segment is highly competitive, with 15 entities owning operational CLS in Italy, 21 entities owning international CLS in Italy and EEA countries with Mediterranean seafront and 11 entities owning international CLS in Italy. They submit that barriers to entry are relatively low, with CapEx required to build a CLS ranging from €[…] to €[…] (or even lower if an existing building is used). ([63])

(93) The Notifying Parties further submit that several international CLS in Italy are under construction or planned, and that if these were included, the combined share would drop to [30-40]%. ([64])

6.2.2.2. CLS backhaul connectivity services

(94) The Notifying Parties submit that the Transaction cannot give rise to anticompetitive concerns in relation to horizontal effects in the Italian CLS backhaul connectivity services market for the following reason.

(95) *First*, the CLS backhaul connectivity services market is characterised by the presence of multiple alternative providers, such as EXA Infrastructure, Fastweb, FiberCop and Open Fiber. ([65])

(96) *Second*, both Sparkle and Retelit's new CLS in Italy are open, thus allowing operators to interconnect and provide CLS backhaul connectivity services. ([66])

6.2.3. Position taken in the Complaint

(97) As a starting point, the Complainant submits that the Transaction has a horizontal

([58]) Horizontal Merger Guidelines, paragraph 17.
([59]) Horizontal Merger Guidelines, paragraph 26.
([60]) Form CO, Table 8 at page 142 and Response of 13 January 2026 to RFI 4, Table 1 at page 2; Form CO, Annex 35, Table 1 at page 5.
([61]) Form CO, Table 9 at page 143 and Response of 13 January 2026 to RFI 4, Table 2 at page 3; Form CO, Annex 35, Table 2 at page 6.
([62]) Form CO, Table 10.
([63]) Form CO, Annex 35, page 8.
([64]) Form CO, paragraph 641 and Response of 13 January 2026 to RFI 4, page 4.
([65]) Form CO, paragraph 690.
([66]) Form CO, paragraph 691.

nature, insofar as Retelit and Sparkle are active on the same product markets both upstream, in the market for the provision of CLS, and downstream, in the market for the provision of CLS backhaul connectivity services. ([67])

(98) According to the Complaint, Sparkle is the landing party for over 45% of all international cables currently in operation in Italy, whilst Retelit is the second most significant operator in the Italian submarine cable landing market. ([68])

(99) The Complainant argues that there are "*insurmountable economic and technical barriers to invest into the creation of a CLS*". ([69])

(100) When responding to the Commission's questionnaire, the Complainant also acknowledges that competition between CLS facilities occurs mainly at the stage when a new submarine cable system is selecting its landing location and that, once a cable has landed, competition shifts away from the CLS level. ([70])

6.2.4. Commission's assessment

(101) In order to address the concerns expressed in the Complaint, the Commission will assess below the horizontal effects in relation to the market for the provision of cable landing station services (Section 6.2.4.1) and the market for the provision of backhaul connectivity services between CLS and data centres (Section 6.2.4.2). The Commission will not assess the wholesale capacity on submarine cables as the relevant market shares, under any plausible market definition, do not give rise to affected markets as defined in paragraph (79).

6.2.4.1. Market for the supply of international CLS connectivity services in Italy ([71])

(102) The Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market as a result of non-coordinated horizontal effects in the market for the supply of international CLS services in Italy, for the following reasons. ([72])

(103) *First*, the Commission considers that the Parties' combined market shares on the market for the provision of CLS services are not significant.

(104) In the first place, the Commission has closely examined the Parties' combined market share in the market for the provision of international CLS services in Italy: approximately [30-40]%, corresponding to […] out of […] international CLS in

([67]) Complaint, page 3.
([68]) Complaint, page 4.
([69]) Complaint, page 6.
([70]) Reply to the Commission's second questionnaire to market participants, question C.2.1.
([71]) As outlined in Table 4 above, the Commission notes that the Parties' combined market shares would be the highest in the market for the supply of international CLS connectivity services in Italy. As such, the Commission considers that the outcome of the assessment in this section would equally apply to relevant CLS markets in which the combined market shares of the Parties would be lower. On this basis, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market as a result of coordinated and non-coordinated horizontal effects in the market for the supply of CLS services in Italy and in the market for the supply of international CLS services in the EEA countries of the Mediterranean basin.
([72]) The Commission considers that the reasons outlined below, and in particular the existence of several large providers for wet-to-dry CLS services with different geographic footprints and business models are such that the Transaction is not making coordinated horizontal effects more likely. Thus, the Commission considers that the Transaction does not raise serious as to its compatibility with the internal market as a result of horizontal coordinated effects in the market for the supply of international CLS services in Italy.

Italy. ([73]) This share falls below the 40% threshold above which *prima facie* competition concerns typically arise (paragraph (90)).

(105) In the second place, the Commission notes that when asked about appropriate metrics for assessing operators' market position in the CLS market, no single indicator clearly stood out. A majority of respondents considered route-specific presence (e.g. Italy–Middle East, Africa or Asia) to be relevant but a broadly comparable number of respondents pointed instead to the number of CLS facilities and the number of submarine cable systems landing at the operators' CLS as appropriate metrics. ([74])

(106) In the third place, the Commission notes, as the Complainant itself acknowledges, that competitive interaction between CLS facilities occurs mainly at the design and landing-selection stage of a cable system, rather than post-landing once a cable is in operation (paragraph (100)). The high route-specific presence of the Parties on Italy-Asia/Middle East routes therefore reflects legacy consortium arrangements rather than commercial market power exercisable against backhaul customers in a post-merger setting. ([75]) Furthermore, several respondents noted that CLS facilities serving new cable systems are being developed by newer entrants, which further limits the competitive significance of the Parties' current route-specific positions. ([76]) In any event, any residual concern regarding the Parties' route-specific position is addressed by the finding, further elaborated in the vertical assessment below, that the merged entity would lack a credible incentive to restrict access to its CLS infrastructure.

(107) *Second*, the Commission notes that there are sufficient alternatives on the market for the supply of wet-to-dry CLS services.

(108) In the first place, the Commission notes that the next largest competitor, EXA Infrastructure, holds approximately [10-20]% ([…] CLS), indicating that the merged entity, […], would not operate in the absence of significant competitors. The majority of respondents expressing a view consider 3 to 5 operators capable of serving their needs in the CLS wet-to-dry transition market. ([77])

(109) In the second place, the Commission notes that when asked whether credible alternatives to Retelit and Sparkle for the provision of wet-to-dry transition services would exist post-Transaction, no respondent expressing a view indicated that there would be no alternatives available. ([78])

(110) *Third*, the Commission has considered that, while the Notifying Parties submit that barriers to entry are low, the Complainant refers to "*insurmountable*" barriers (paragraph (99)). Some replies from the market investigation point towards the existence of some barriers to establishing new CLS, mostly associated with

([73]) Form CO, Table 10.
([74]) Replies to Commission's second questionnaire to market participants, question C.3.
([75]) For example, Retelit's landing party status at Bari derives from its membership in the AAE-1 consortium, not from a competitive process (Form CO, Table 4).
([76]) Replies to the Commission's second questionnaire to market participants, questions C.1-2 and C.3.2.
([77]) Replies to the Commission's second questionnaire to market participants, question C.1.
([78]) Replies to the Commission's first questionnaire to market participants, question D.12. The Commission notes that qualitative responses were mixed: while several respondents considered that credible alternatives would remain available post-Transaction, others expressed concern about the cost and feasibility of switching. Those views are addressed in the context of the vertical assessment in Section 6.3below.

regulatory permits and authorizations. ([79]) In particular, respondents indicated that it typically takes […] years and around […] investment to build and operationalize a CLS. ([80]) At the same time, the respondents to the Commission's questionnaire, including the Complainant, identified several CLS facilities currently under development in Italy by operators other than the Parties, including Quadrivium's Digital GEN01 landing station in Genova, the Unitirreno facility under development at Mazara del Vallo, and a new open CLS in Genova. The EAGLE submarine cable system, with a planned landing in the Puglia region, is also at an […]. ([81]) The Commission considers that barriers to CLS entry, while not negligible, are not of a nature that would entrench the merged entity's position so as to give rise to serious doubts as to its compatibility with the internal market over the relevant time horizon.

(111) *Fourth*, the Commission has also considered that one of the Notifying Parties, the MEF, is a public shareholder with a broad portfolio of interests in infrastructure and network industries in Italy. Publicly available information indicates that certain undertakings active in the ownership or operation of CLS infrastructure in Italy (including, inter alia, Terna ([82]) or Infratel ([83])) are wholly or partly within the broader Italian public-sector shareholding sphere or are linked to it through shareholdings held by *Cassa Depositi e Prestiti* ("**CDP**") or other public vehicles. The Commission notes, however, that the publicly available evidence does not indicate that the participations of CDP-linked vehicles or other public entities in CLS infrastructure give rise to additional horizontal overlaps or portfolio effects of a nature that would create serious doubts in terms of compatibility with the common market. The Commission has taken this element into account in its overall assessment and finds that it does not alter the conclusion set out below.

(112) In view of the above, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to non-coordinated horizontal effects in the Italian market for international CLS services.

6.2.4.2. CLS backhaul connectivity services

(113) The Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market as a result of non-coordinated horizontal effects in the market for the supply of CLS backhaul connectivity services in Italy, for the following reasons. ([84])

(114) *First*, the Commission considers that the Parties' combined market shares on the market for the provision of CLS backhaul connectivity services are not significant. The Commission notes that in the market for the provision of CLS backhaul connectivity services in Italy, the Parties' combined market shares of [20-30]% meets the presumption of compatibility with the internal market set out

([79]) Replies to the Commission's first questionnaire to market participants, question D.3.
([80]) Replies to the Commission's first questionnaire to market participants, questions D.1, D.2.
([81]) Replies to the Commission's second questionnaire to market participants, questions C.1-2, C.2.
([82]) https://www.terna.it/en/investors/main-shareholders
([83]) Infratel is a wholly-owned subsidiary of Invitalia S.p.A., which itself is controlled by the MEF (Invitalia's sole shareholder is the MEF). https://www.infratelitalia.it/chi-siamo
([84]) The Commission considers that the reasons outlined below, and in particular the existence of several large providers for CLS backhaul connectivity services with different geographic footprints and business models are such that the Transaction is not making coordinated horizontal effects more likely. Thus, the Commission considers that the Transaction is unlikely to give rise to coordinated effects in the market for the supply of CLS backhaul connectivity services in Italy.

in paragraph 18 of the Horizontal Merger Guidelines.

(115) *Second*, the Commission notes that there will remain several viable alternative providers of CLS backhaul connectivity services in Italy post-Transaction that will pose a sufficient competitive constraint on the merged entity.

(116) In the first place, the market investigation confirms that the majority of respondents who expressed a view consider multiple backhaul operators capable of serving their needs, with a significant share indicating six or more such operators. ([85])

(117) In the second place, the Complainant itself acknowledges in its response to the Commission's questionnaire that all operators with their own terrestrial network infrastructure are in principle able to provide backhaul services between CLS facilities and data centres, provided they are able to obtain physical access to the relevant CLS. ([86]) In Italy, operators with network infrastructure capable of providing such services include EXA, Fastweb, Open Fiber, FiberCop, Retelit and Sparkle. In addition, several submarine cable operators resell backhaul connectivity sourced from terrestrial network operators alongside their submarine cable capacity, including Telecom Egypt, Center3, ZOI and others. For these reasons, six or more operators are potentially active in the backhaul market in general terms. ([87])

(118) In view of the above, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to non-coordinated horizontal effects in the Italian market for CLS backhaul connectivity services.

6.2.5. Conclusion

(119) In view of the above, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to non-coordinated horizontal effects for (i) international CLS services in Italy and (ii) CLS backhaul connectivity services in Italy.

6.3. Vertical link between the Italian market for international CLS services (upstream) and the Italian market for CLS backhaul connectivity services (downstream)

6.3.1. Legal framework

(120) According to the Non-Horizontal Merger Guidelines, unilateral effects may significantly impede effective competition as a result of a vertical merger that gives rise to foreclosure. Foreclosure occurs where actual or potential competitors' access to supplies or markets is eliminated or hampered as a result of the merger, thereby reducing those companies' ability and/or incentive to compete. ([88]) Such foreclosure may discourage entry or expansion of competitors or encourage their exit. ([89])

(121) The Non-Horizontal Merger Guidelines distinguish between two forms of foreclosure, input foreclosure and customer foreclosure. Input foreclosure occurs

([85]) Replies to the Commission's second questionnaire to market participants, question C.1.
([86]) Replies to the Commission's second questionnaire to market participants, question C.1.-2.
([87]) Replies to the Commission's second questionnaire to market participants, question C.1-2.
([88]) Non-Horizontal Merger Guidelines, paragraph 1.
([89]) Non-Horizontal Merger Guidelines, paragraph 29.

where the merger is likely to raise the costs of downstream competitors by restricting their access to an important input. ([90])

(122) Foreclosure does not necessarily have to lead to a full exclusion of downstream or upstream competitors. It may also take more subtle forms of partial foreclosure, making the access for competitors more difficult or the conditions of supply less favourable than they would have been absent the merger. It may include an increase of prices for downstream competitors and/or the degradation of the quality of the input supplied. In its assessment, the Commission may consider alternative or complementary possible strategies. ([91])

(123) In assessing the likelihood of an anticompetitive foreclosure scenario, the Commission examines: first, whether the merged entity would have, post-merger, the ability to foreclose access to inputs (or customers); second, whether the merged entity would have the incentive to do so; and third, whether a foreclosure strategy would have a significant detrimental effect on competition. ([92]) In practice, these factors are often examined together since they are closely intertwined.

6.3.2. The Notifying Parties' views

(124) The Notifying Parties submit that neither Retelit nor Sparkle enjoy market power in any plausible CLS-related market. They submit that access conditions to CLS and to associated CLS backhaul infrastructure are typically governed by long-term contractual arrangements, often within submarine cable consortia, [Terms of the parties' agreements with consortia]. ([93])

(125) The Notifying Parties also submit that they lack incentives to foreclose competitors. According to the Notifying Parties, both Retelit and Sparkle depend on third-party demand, including from competing carriers and CLS backhaul connectivity services providers, to recover significant sunk investments and to ensure efficient utilisation of their infrastructure. [consequences of any foreclosure strategy]. ([94])

(126) As regards downstream effects, the Notifying Parties submit that customers typically multi-home and rely on multiple routes and providers for redundancy and resilience. According to the Notifying Parties, several alternative international carriers, cable systems and CLS backhaul connectivity providers remain active and able to constrain the merged entity post-Transaction. ([95])

(127) In relation to the Sparkle CLS that are currently "open" ([96]) (and that the Complaint submits that the merged entity could "close" ([97])), the Notifying Parties submit that, firstly, other operators are present in each of them. ([98])

([90]) Non-Horizontal Merger Guidelines, paragraph 31.
([91]) Non-Horizontal Merger Guidelines, paragraph 33.
([92]) Non-Horizontal Merger Guidelines, paragraph 32.
([93]) Response to RFI 5, page 9. Form CO, paragraphs 708, 721-724 (section headed 'Contractual arrangements governing access').
([94]) Form CO, paragraphs 693, 697, 701, 705 (sections headed 'No vertical concerns' and 'No plausible impact on third-party B2B providers') and Response to RFI 5, pages 9-10
([95]) Form CO, paragraphs 913, 914, 915 and Response to RFI 5, pages 1-2
([96]) As explained above, an open CLS provides a carrier-neutral environment that allows third parties to connect the submarine landed cable to alternative backhaul networks or data centres.
([97]) As explained above, a closed CLS is operated and maintained typically by a member of a submarine cable consortium and designed to only host the backhaul connectivity services of the CLS operator.
([98]) At Genoa Lagaccio, […]. Form CO, Table 4 at page 98, 99 and Notifying Parties' response to RFI 5, pages 5, 6, Table 2.

Secondly, [terms of Landing Party Agreements]. ([99]) Thirdly, [structure of the Transaction and rights]. ([100])

(128) Finally, both Retelit's and Sparkle's new CLS are designed as "open" CLS allowing other operators to interconnect and provide CLS backhaul connectivity services. ([101])

6.3.3. Position taken in the Complaint

(129) The Complainant submits that the Transaction entails a high risk of foreclosure of the merging parties' rivals in the offer of CLS backhauling services for the following reasons.

(130) *First*, there would be insurmountable economic and technical barriers to invest in the creation of a CLS, meaning that players interested in using similar infrastructures to provide services to their customers need to seek access from the undertakings operating the CLS. ([102])

(131) *Second*, the merged entity would control the overwhelming majority of the CLS hubs and the main source of competitive pressure on Retelit (i.e., Sparkle) would be eliminated. In particular, the merged entity could change Sparkle's current 'open model', ([103]) leading to an increase in prices for end-users or even a reduction of alternatives, as many current or prospective competitors might leave the market. ([104])

(132) Accordingly, the Commission considers that the Complainant has raised an input foreclosure concern whereby rival providers of CLS backhaul connectivity services (the downstream market) would have a degraded or restricted access to the merged entity's upstream CLS activities. The following Section 6.3.4 will elaborate on this plausible theory of harm.

6.3.4. Commission's assessment

(133) In order to address the concerns expressed in the Complaint, the Commission will first present some preliminary remarks on the plausible scope of any merger-specific foreclosure theory of harm (Section 6.3.4.1). Then the Commission will assess (i) whether the merged entity would have the ability to foreclose access to inputs ([105]) such as CLS (Section 6.3.4.2) and (ii) whether the merged entity

([99]) Form CO, paragraph 684 and Notifying Parties' response to RFI 5, page 11.
([100]) Form CO, paragraph 780 and Notifying Parties' response to RFI 5, pages 10-11.
([101]) Form CO, paragraph 691 and Notifying Parties' response to RFI 5, page 9.
([102]) Complaint, page 6.
([103]) Sparkle has currently adopted an 'open access' model for some of its infrastructure, namely Genova Lagaccio and Palermo (Sicily Hub) (Form CO, Table 4 at pages 96, 98, 99 and Notifying Parties' response to RFI 5, pages 4, 5, Table 2). However, there is no regulatory framework guaranteeing access for the event that the infrastructure operator refuses to grant access or imposes unfavourable conditions. Complaint, page 6.
([104]) Complaint, page 8.
([105]) As outlined in Table 5 above, the Parties' combined market shares in the downstream market for CLS backhaul connectivity services are below [30-40]% under any plausible geographic market definition. As such, the Commission considers that in light of the several alternative providers of downstream CLS backhaul connectivity services representing more than [70-80]% of the total market size, the Commission considers that a customer foreclosure theory of harm in this regard is unlikely. As such, the Commission considers that the Transaction is unlikely to give rise to serious doubts as to its compatibility with the internal market as a result of a customer foreclosure strategy as a result of the vertical link between the upstream market for international CLS in Italy and the downstream market for the provision of CLS backhaul connectivity services in Italy.

would have the incentive to do so (Section 6.3.4.3).

6.3.4.1. Plausible scope of any foreclosure theory of harm resulting from the Transaction

(134) The Commission notes that the theory of harm, especially as articulated in the Complaint, is subject to a number of caveats.

(135) *First*, the Commission notes that any plausible foreclosure theory of harm would affect providers of CLS backhaul connectivity services between an open CLS and a data centre. Indeed, the Commission notes that a closed CLS is operated and maintained typically by a member of a submarine cable consortium and designed to only host the backhaul connectivity of the CLS operator. In those CLS, multiple backhaul connections are either structurally impossible to achieve, or otherwise not currently in existence. As such, no third-party provider of CLS backhaul connectivity services could be foreclosed.

(136) *Second*, the Commission notes that all CLS currently operated by Retelit are closed, except for the recent CLS in Savona. ([106]) The Commission notes that, as explained by the Notifying Parties, access to the capacity to the cable landing at Retelit's new CLS in Savona, including for CLS backhaul connectivity services, is granted only by […]. ([107]) As such, since access to Retelit's CLS for backhaul connectivity services is structurally impossible to achieve, not currently in existence (for the closed CLS) or otherwise not managed by Retelit itself (for the CLS in Savona), the Commission considers that third party providers of CLS backhaul connectivity services from Retelit's CLS cannot be foreclosed as a consequence of the Transaction.

(137) *Third*, regarding a hypothetical foreclosure theory of harm on future CLS, the Commission notes that, should the merged entity in the future decide to only deploy closed CLS, those CLS would require new CLS backhaul connectivity services, whose deployment costs would only be borne by CLS backhaul connectivity services providers when a new CLS backhaul connection would be needed. In other words, if an upcoming CLS is closed, third party CLS backhaul connectivity services providers would not invest in a new CLS backhaul connection. Accordingly, no plausible foreclosure theory of harm can occur regarding the deployment of future CLS.

(138) In light of the above, the only CLS currently operated by Sparkle, and which are open by design, are the CLS in Palermo ([108]) and the CLS in Genoa. ([109]) The rest of this Section therefore only focuses on these two CLS, in which a plausible foreclosure theory of harm can be articulated. ([110])

6.3.4.2. Ability to foreclose

(139) The Commission considers that the merged entity would not have the ability to

([106]) Form CO, Table 4.
([107]) Form CO, Table 4 and Notifying Parties' response to RFI 10, question 2.
([108]) In Palermo, CLS backhaul connectivity is offered by […] (Form CO, Table 4).
([109]) In Genoa, CLS backhaul connectivity is offered by […] (Form CO, Table 4 and Notifying Parties' response to RFI 9, paragraph 32).
([110]) The Commission notes that prior to the Transaction, Retelit and Sparkle are both vertically integrated with activities in the CLS market (upstream) and CLS backhaul connectivity services (downstream). Specifically, regarding the Palermo and Genoa CLS, the Notifying Parties submit that Sparkle already provides CLS backhaul connectivity services (Form CO, Table 4). As such, the Commission considers that any foreclosure concern expressed by the Complainant is unlikely to be linked to the Transaction.

foreclose access to inputs such as CLS for the following reasons.

(140) *First*, the Commission notes that there are various alternative providers of CLS to whom CLS backhaul services providers could start offering CLS backhaul services. For instance, the Notifying Parties have identified the following providers of international CLS in Italy: EXA Infrastructure (with […] CLS and a market share of [20-30]%), Terna (with […] CLS and a market share of [10-20]%) and Equinix, IslaLink, Melita, Open Hub Med, Telecom Egypt, Vodafone and Wind (each with [„„] CLS and a respective market share of [5-10]%). In addition, as explained in paragraph (110) above, barriers to CLS entry, while not negligible, are not of a nature that would entrench the merged entity's position so as to give rise to serious doubts as to its compatibility with the internal market over the relevant time horizon.

(141) *Second*, the Commission notes that prior to the completion of the fixed network divestment by TIM in 2024, ([111]) Sparkle was vertically integrated to TIM's fixed network assets. In this regard, the Commission notes that none of the respondents to the Commission's market investigation who expressed a view have experienced, or have been formally notified of, any modification or non-renewal of access terms (including pricing, capacity, or service quality) at an Italian CLS operated by Sparkle, Retelit or any other operator. ([112]) In this regard, the Commission considers that while Sparkle was vertically integrated with TIM, it did not engage in any access degradation to its CLS, thus evidencing that in the past, vertically integrated players did not engage in foreclosure.

(142) *Third*, the Commission considers that redress mechanisms from degraded or rejected access to a CLS exist.

(143) The Notifying Parties recall that Legislative Decree No. 33/2016, which implements Directive 2014/61/EU, ([113]) provides, *inter alia*, a framework governing access to physical infrastructure, which is defined as "*all elements of a network intended to host other elements of a network without themselves becoming active elements of the network, such as pipes, pylons, ducts, inspection chambers, manholes, cabinets, buildings or access to buildings, antenna installations, towers and poles.*" ([114])

(144) Within this framework, operators are required to meet reasonable requests for access to their physical infrastructure for the purpose of deploying elements of high-speed electronic communications networks, under fair, transparent and non-discriminatory conditions, subject to certain limitations (such as lack of capacity or technical constraints). In case of refusal or failure to reach an agreement, the harmed undertaking may, pursuant to Article 9 of Legislative Decree No. 33/2016, refer the matter to the Italian electronic communications regulator, which is empowered to adopt a binding decision, including with regard to the terms and conditions of access. ([115])

(145) *Fourth*, the Commission considers that customers would be able to engage in counterstrategies (including switching demand to CLS outside Italy or exercising

([111]) See Commission decision of 30 May 2024 in Case M.11386 - KKR / NETCO.
([112]) Replies to Commission's second questionnaire to market participants, question D.3.
([113]) Directive 2014/61/EU of the European Parliament and of the Council of 15 May 2014 on measures to reduce the cost of deploying high-speed electronic communications networks, OJ L 155, 23.5.2014, pages 1-14.
([114]) Notifying Parties' response to RFI 9, paragraph 16.
([115]) Notifying Parties' response to RFI 9, paragraph 17.

buyer power) should Sparkle start engaging in total or partial foreclosure of CLS backhaul operators, thus likely depriving the merged entity to engage in foreclosure of CLS backhaul providers by no longer providing access at a CLS.

(146) In the first place, the Commission notes that all market participants who expressed a view in the Commission's market investigation consider that if third party providers of backhauling services from the CLS were to be restricted from offering CLS backhauling services, there would be a negative impact on the connectivity capacity of the merged entity's CLS. ([116]) As explained by one backhaul provider, "*First, reducing the number of operators able to provide terrestrial connectivity from the landing point to data centers and network hubs would limit the range of technical solutions available to customers. Second, reduced competition among backhaul providers would likely result in higher prices for terrestrial connectivity from the landing point. Finally, higher costs and reduced flexibility in accessing terrestrial connectivity could make it more difficult for operators to integrate submarine cable capacity into their wider networks, potentially affecting the overall attractiveness of certain connectivity routes*." ([117])

(147) In the second place, the Commission notes that a majority of market participants who expressed a view in the Commission's market investigation consider that for the connectivity routes most relevant to their business, CLS located outside Italy (for example in France, Spain or Greece) could totally or partially be an alternative to Italian CLS. ([118])

(148) In the third place, the Commission notes that all market participants who expressed a view in the Commission's market investigation consider that large end-customers (such as hyperscalers ([119])) can totally or partially push CLS providers to have an open CLS approach, thus ensuring that third party backhaul providers can interconnect. ([120]) Hyperscalers play an increasingly important role in the management of CLS in Italy by becoming landing parties at a number of CLS in Italy. ([121]) The Commission's market investigation further confirmed this point, with one backhaul operator explaining that "*In recent years, some large customers have also chosen to develop or control their own landing infrastructure in order to secure greater certainty regarding access conditions and operational flexibility. This is consistent with the fact that hyperscalers have become among the main investors in new submarine cable systems and therefore have strong incentives to ensure direct control over key elements of the connectivity infrastructure, including landing facilities. This trend reflects the strategic importance of landing facilities within the broader connectivity ecosystem*." ([122])

([116]) Replies to Commission's second questionnaire to market participants, question D.7.

([117]) A backhaul provider's response to Commission's second questionnaire to market participants, question D.7.1.

([118]) Replies to Commission's second questionnaire to market participants, question D.6. As explained in Section 6.3.4.1 above, the Commission recalls that any plausible foreclosure strategy which may arise from the Transaction could only be achieved over existing CLS. As such, the Commission considers that any regulatory permits or authorisation which may be required for the construction of new CLS would not be relevant to the assessment undertaken in this section.

([119]) Hyperscalers are large cloud service providers such as Amazon, Microsoft and Google (Form CO, paragraph 608).

([120]) Replies to Commission's second questionnaire to market participants, question D.8.

([121]) In this regard, the Commission notes that access to the capacity to the IEX cable landing at Retelit's new CLS in Savona is granted only by […] (see Form CO, Table 4).

([122]) A backhaul provider's response to Commission's second questionnaire to market participants, question D.8.1.

Another backhaul provider further explains that: "*Significant demand generated by large customers, such as OTTs, already drives — and will increasingly drive in the future — the availability of third-party providers offering backhaul services*." ([123]) Another market participant explains that hyperscalers "*bring in volumes which can drive up the usage of the CLS and hence, CLS owners can be forced into changing their behavior and providing open access CLSs*." ([124])

(149) *Fifth*, the Commission notes that the decision to operate a CLS under an open or a closed model is not necessarily in the hands of the CLS's operator only.

(150) In the first place, the Notifying Parties explain that the decision to operate a CLS under an open or closed model is rarely discretionary, because it is intrinsically linked to the infrastructure itself. ([125]) In this regard, the Notifying Parties further explain that this Decision is determined by factors such as: the submarine cable system's purpose, the intended handoff granularity, by geographic and engineering considerations and the commercial return on investment. ([126])

(151) In the second place, the Commission notes that modern submarine cables which land at open CLS have a higher number of fibre pairs as well as a higher delivery speed. ([127]) For instance, one market participant explained that: "*Modern submarine cable systems are typically designed with a large number of fiber pairs, compared to the legacy systems, and significant available capacity, serving multiple owners and customers. In this context, allowing third-party backhaul access can increase the attractiveness of the cable for potential customers, as it enables competition among terrestrial connectivity providers and provides customers with market-based options for extending their submarine capacity to data centers and network hubs. This can support capacity sales and improve long-term utilization of the cable*." ([128])

(152) For the reasons set out above, the Commission concludes that the merged entity is unlikely to have the ability to foreclose providers of CLS backhaul connectivity services from accessing the CLS.

6.3.4.3. Incentive to foreclose

(153) The Commission considers that the merged entity would not have the incentive to foreclose access to inputs such as CLS for the following reasons.

(154) *First*, the Commission notes that prior to the completion of the fixed network divestment by TIM in 2024, ([129]) Sparkle was vertically integrated into TIM's fixed network assets. The Commission notes that none of the respondents to the Commission's market investigation who expressed a view have experienced, or have been formally notified of, any modification or non-renewal of access terms (including pricing, capacity, or service quality) at an Italian CLS operated by Sparkle, Retelit or any other operator. ([130]) In this regard, the Commission

([123]) A backhaul provider's response to Commission's second questionnaire to market participants, question D.8.1.
([124]) A market participant's response to Commission's second questionnaire to market participants, question D.8.1.
([125]) Form CO, paragraph 396.
([126]) Form CO, paragraph 396.
([127]) Form CO, paragraphs 389-390.
([128]) A backhaul provider's response to Commission's first questionnaire to market participants, question D.4.
([129]) See Commission decision of 30 May 2024 in Case M.11386 – KKR / NETCO.
([130]) Replies to Commission's second questionnaire to market participants, question D.3.

considers that while Sparkle was vertically integrated with TIM, it did not engage in any access degradation to its CLS, evidencing that in the past, vertically integrated players did not engage in foreclosure.

(155) *Second*, the Commission considers that converting an open CLS into a closed facility, or otherwise deteriorating pre-existing hosting agreements enabling third party CLS backhaul connectivity services providers to interconnect with a given submarine cable at a CLS, would likely generate losses to the merged entity, for the following reasons.

(156) In the first place, while the market investigation has provided inconclusive statistical results on whether an open CLS can be converted into a close CLS, market participants have explained that the possibility of closing third party CLS backhaul connectivity services at a currently open CLS is limited by a number of factors. ([131]) In particular, market participants explained the following:

(a) "*whether an open Cable Landing Station can be converted into a closed CLS depends on contractual commitments to third parties, regulatory or access obligations, consortium agreements, and governance arrangements, as well as technical and operational considerations*;" ([132])

(b) "*the only variable to consider is the contract term of the existing customer colocations and services. once the services expire, the owner can refuse to renew them and turn the CLS into a closed one, asking the customers to remove their equipment (if present)*;" ([133])

(c) "*It depends primarily on the contractual obligations already established with third parties. Converting an open Cable Landing Station (CLS) into a closed facility is not a matter of technical feasibility; rather, it involves legal and operational considerations. Existing agreements, regulatory compliance, and potential liabilities must be carefully assessed before terminating non-discriminatory access*;" ([134])

(157) In the second place, the Notifying Parties explain that when a backhaul operator requires additional connectivity capacity, the colocation fee paid by the backhaul operator increases. ([135]) By foreclosing rival providers of backhaul connectivity services, the merged entity would forego those additional revenues resulting from a reduced need in overall connectivity capacity at the CLS.

(158) *Third*, the Commission considers that any hypothetical gains from engaging in a total or partial foreclosure strategy are unlikely to generate benefits matching the likely losses for the following reasons.

(159) In the first place, the Commission considers that it is unlikely that both Notifying Parties would equally benefit from a foreclosure strategy. On the one hand, it is unlikely that Retelit would agree to the Palermo and Genoa CLS to be exclusively backhauled by Sparkle, as Retelit would lose its original investment in CLS backhaul connectivity and be deprived of [70-80]% of its backhaul connectivity profits, which would need to be shared with MEF (in line with the shareholding

([131]) Replies to Commission's first questionnaire to market participants, question D.8 and D.8.1.

([132]) A market participant's response to Commission's first questionnaire to market participants, question D.8.1.

([133]) A backhaul connectivity services provider's response to Commission's first questionnaire to market participants, question D.8.1.

([134]) A market participant's response to Commission's first questionnaire to market participants, question D.8.1.

([135]) Notifying Parties' response to RFI 9, paragraph 20.

of MEF and Retelit in Sparkle). On the other hand, it appears equally unlikely that MEF would agree for Retelit to exclusively backhaul the Palermo and Genoa CLS as Sparkle would forego the hosting revenues generated by third party CLS backhaul connectivity services providers, the benefits of which would only accrue to Retelit, to the detriment of MEF.

(160) In the second place, the Commission considers that any agreement whereby the Palermo and Genoa CLS would only be backhauled by Sparkle and Retelit would have a detrimental effect on connectivity at those CLS, thus affecting the rationale of the Transaction. Indeed, all market participants who expressed a view in the Commission's market investigation consider that if third party providers of backhauling services from the CLS would be restricted from offering backhauling services, there would be a negative impact on the connectivity capacity of the merged entity's CLS. ([136]) As explained by one backhaul provider, "*First, reducing the number of operators able to provide terrestrial connectivity from the landing point to data centers and network hubs would limit the range of technical solutions available to customers. Second, reduced competition among backhaul providers would likely result in higher prices for terrestrial connectivity from the landing point. Finally, higher costs and reduced flexibility in accessing terrestrial connectivity could make it more difficult for operators to integrate submarine cable capacity into their wider networks, potentially affecting the overall attractiveness of certain connectivity routes*." ([137])

(161) For the reasons set out above, the Commission concludes that the merged entity is unlikely to have the incentive to foreclose providers of CLS backhaul connectivity services from accessing the CLS.

6.3.5. Conclusion

(162) In view of the above, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to potential foreclosure resulting from the vertical link between the Italian market for international CLS services (upstream) and the Italian market for CLS backhaul connectivity services (downstream).

7. CONCLUSION

(163) 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)
Teresa RIBERA
Executive Vice-President

([136]) Replies to Commission's second questionnaire to market participants, question D.7.
([137]) A backhaul provider's response to Commission's second questionnaire to market participants, question D.7.1.