EUROPEAN COMMISSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

To the notifying party

Subject: **Case M.8842 – Tele2 / Com Hem Holdings**
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004[1] and Article 57 of the Agreement on the European Economic Area[2]

Dear Sir or Madam,

(1) On 3 September 2018, the European Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004[3] by which Tele2 AB (Sweden) ("**Tele2**" or the "Notifying Party"), controlled by Kinnevik AB ("**Kinnevik**"), intends to acquire sole control of Com Hem Holding AB (Sweden) ("**Com Hem**") by way of a statutory merger (the "Transaction")[4]. Tele2 and Com Hem are collectively referred to as the "**Parties**".

1. THE PARTIES AND THE TRANSACTION

(2) **Tele2** is a Swedish telecommunications provider mainly offering mobile telecommunications services (voice and data), and to a lesser extent fixed telephony services, fixed internet access services, as well as data communication services and related services, in several European countries. In Sweden, Tele2

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

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

3 OJ L 24, 29.1.2004, p. 1 (the "Merger Regulation").

4 Publication in the Official Journal of the European Union No C 321, 11.9.2018, p. 5.

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operates as a mobile network operator ("MNO") and also operates a fixed backbone network, partly owned and partly leased, which is connected to Tele2's mobile networks. Tele2 operates in Sweden through its subsidiary Tele2 Sverige AB. Tele2 is listed on Nasdaq Stockholm.

(3) Tele2 is *de facto* controlled by Kinnevik which holds about 47.9% of its voting rights, representing between 67 and 70% of the votes at Tele2's general meetings in 2014-2017. Kinnevik is a Swedish investment company listed on Nasdaq Stockholm. Kinnevik has equity interests in various companies active inter alia in the sectors of telecommunications, e-commerce, entertainment and financial services.

(4) Currently the main shareholders of Kinnevik are Verdere S.a.r.l ("Verdere"), which holds 7% of Kinnevik's share capital and 30% of the voting rights, and Camshaft S.a.r.l. ("Camshaft"), which holds 2.4% of Kinnevik's share capital and 10% of the voting rights. […].[5]

(5) Verdere and Camshaft also hold 1.9% of the share capital in Modern Times Group MTG AB ("MTG"), which, including its subsidiary Viasat AB ("Viasat"), is primarily active in Sweden as a retail TV services distributor, programme company and producer of TV content.[6] This participation does not give Verdere and Camshaft any specific right or power over MTG's commercial strategy other than standard shareholder rights. Verdere and/or Camshaft (and/or Kinnevik) neither have any affiliated member in the MTG board of directors or in the nomination committee appointing the directors nor any specific right to be represented in the board and/or in the nomination committee. Therefore, Verdere and Camshaft have no relevant influence over MTG and this participation will thus not be further considered in this Decision.

(6) **Com Hem** offers broadband, TV, mobile and telephony services to Swedish households and companies. In the provision of retail TV services, Com Hem's subscriber base consists of approximately 50% of Sweden's households. Com Hem is listed on Nasdaq Stockholm. Kinnevik is the largest shareholder in Com Hem, with a share participation of 19%. However, no shareholder has sole or joint control over Com Hem.

(7) On 9 January 2018, Tele2 and Com Hem entered into a merger agreement and a joint merger plan. The Parties have agreed to combine their business operations through a statutory merger in accordance with Swedish Law. The Transaction will

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5 For the purposes of the competitive assessment in the present case, the question whether Verdere and Camshaft control Kinnevik can be left open given that the outcome of the competitive assessment will not change whether or not they control it. For the purposes of the case at hand, the Commission has therefore undertaken the competitive assessment of the Transaction as if, with their combined 40% of voting rights, Verdere and Camshaft exercise *de facto* control over Kinnevik.

6 This situation is the result of Kinnevik's decision to distribute all of the shares that it held in MTG to its shareholders. For completeness, it is mentioned that Kinnevik previously had a minority shareholding in MTG. However, following a reclassification of Kinnevik's MTG class A shares into MTG class B shares on 1 August 2018, and a distribution of Kinnevik's MTG class B shares to Kinnevik's shareholders on 14 August 2018, Kinnevik does not own any shares in MTG. See: https://www kinnevik.com/media--contact/press-releases/2018/8/2208838-Kinneviks-Board-of-Directors-has-set-the-record-date-for-the-distribution-of-Kinneviks-shares-in-MTG. MTG's shareholding structure is currently widely dispersed and MTG is not controlled by any of its shareholders. See: https://www mtg.com/the-share/#ownership.

be implemented by Tele2 absorbing Com Hem. Post-Transaction, Tele2 will remain listed on Nasdaq Stockholm and *de facto* controlled by Kinnevik.

(8) The Transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

2. EU DIMENSION

(9) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million[7] (Tele2: EUR […] ; Com Hem: EUR 740.6 million; in 2017). Each of them has an EU-wide turnover in excess of EUR 250 million (Tele2: EUR […]; Com Hem 740.6 million; in 2017), but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The notified operation therefore has an EU dimension. [8]

3. RELEVANT MARKETS

(10) In Sweden, the Parties' activities mainly overlap in the areas of: (i) retail supply of fixed internet access services; (ii) retail supply of mobile telecommunications services; and (iii) retail supply of multiple play services. Moreover, Tele2 and/or Com Hem are active in Sweden in the areas of (iv) retail supply of fixed telephony services (Tele2 and Com Hem) and (v) retail supply of TV services (Com Hem).

(11) In addition, Tele2 and/or Com Hem are present in the areas of: (i) wholesale access and call origination on mobile networks (Tele2); (ii) wholesale mobile call termination services (Tele2); (iii) wholesale fixed call termination services (Tele2 and Com Hem), and (iv) wholesale international roaming services (Tele2). Those services are vertically linked to (i) retail supply of mobile telecommunications services and (ii) retail supply of fixed telephony services.

3.1. Retail supply of fixed telephony services

(12) Fixed telephony services comprise the provision of connection services at a fixed location or access to the public telephone network, for the purpose of making and/or receiving calls and related services. Both Tele2 and Com Hem offer fixed telephony services at retail level in Sweden.

3.1.1. Product market definition

(13) The Notifying Party submits that the market for retail fixed telephony services constitutes one single market without the need to distinguish between type of call (local, national and international) or type of technology (traditional fixed lines or VoIP).

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

8 See paragraph 74, Form CO.

(14) In previous decisions[9], the Commission considered whether a distinction between local/national and international calls as well as between residential and non-residential customers should be drawn on the basis of the distinctions in the Commission Recommendation 2003/311/EC but ultimately left the exact product market definition open.

(15) More recently, the Commission also considered that managed Voice over Internet Protocol ("VoIP") services and traditional telephony are interchangeable and therefore belong to the same market.[10] In *Liberty Global/Ziggo*[11] the Commission left the exact market definition open (and in particular whether there is a separate market for residential and non-residential customers, as well as whether VoIP and traditional fixed telephony belong to the same market) while in *Liberty Global/BASE*[12] and in *Vodafone/Liberty Global/Dutch JV*[13] the Commission considered that an overall retail market for fixed telephony services exists.

(16) The market investigation in the present case has not provided any indication that the Commission should depart from its previous findings.

(17) In any event, the Commission considers that for the purposes of this Decision, the exact scope of the product market definition, and specifically, whether fixed line and VoIP telephony services belong to the same product market, and whether there is a separate market for residential and non-residential customers, can be left open as the Transaction does not raise serious doubts as to its compatibility with the internal market under any possible market definition.

3.1.2. Geographic market definition

(18) The Notifying Party submits that, in line with the previous approaches taken by the Commission, the relevant geographic scope of the market is national.

(19) In its previous decisions, the Commission concluded that the retail market for the provision of fixed telephony services was national in scope.[14] The market investigation in the present case has not provided any indication that the Commission should depart from its previous findings.[15]

(20) Therefore the Commission considers that the relevant market for the retail provision of fixed telephony services is national in scope.

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9 Commission decision of 7 September 2005 in Case M.3914 – Tele2/Versatel, paragraph 10; Commission decision of 29 June 2010 in Case M.5532 – Carphone Warehouse/Tiscali UK, paragraphs 35 and 39; Commission decision of 9 January 2010 in Case M.5730 – Telefónica/Hansenet Telekommunikation, paragraphs 16 and 17.

10 Commission decision of 20 September 2013 in Case M.6990 - Vodafone/Kabel Deutschland, paragraph 131.

11 Commission decision of 10 October 2014 in Case M.7000 Liberty Global/Ziggo, recital 125.

12 Commission decision of 4 February 2016 in case M.7637 Liberty Global/BASE Belgium, recital 69.

13 Commission decision of 3 August 2016 in case M.7978 – *Vodafone/Liberty Global/Dutch JV*, paragraph 26.

14 See Commission decision of 10 October 2014 in Case M.7000 *Liberty Global/Ziggo*, recital 127; Commission decision of 19 May 2015 in Case M.7421 *Orange/Jazztel*, recital 37. Commission decision of 3 August 2016 in case M.7978 – *Vodafone/Liberty Global/Dutch JV*, paragraph 29.

15 See replies to Q1 – mobile operators of 4 September 2018, question 18. See also Q2 – fixed operators of 4 September 2018, question 18.

3.2. Retail supply of fixed internet services

(21) Fixed internet access services at the retail level consist of the provision of a fixed telecommunications link enabling customers to access the internet. Both Tele2 and Com Hem offer fixed internet access services at retail level in Sweden.

3.2.1. Product market definition

(22) The Notifying Party submits that the relevant product market is the overall market for the retail provision of fixed internet access services, without further segmentations. In particular, the Notifying Party considers that a distinction by customer type is not needed and that the market for the retail supply of fixed internet access services should include both residential and small business customers, as well as large business customers and public authorities. The Notifying Party further considers that there the market should not be further segmented on the basis of the different type of distribution mode (such as fibre, cable xDSL). Finally, the Notifying Party does not consider that a combined fixed and mobile internet retail market exists in Sweden today since, despite significant advances in mobile broadband connectivity, consumers do not view mobile and fixed internet as direct substitutes.

(23) In recent cases, the Commission considered but ultimately left open possible segmentations according to (i) product type (distinguishing narrowband, broadband, and dedicated access), and (ii) distribution mode (distinguishing xDSL, fibre, cable, and mobile broadband), and has acknowledged that the retail market for fixed internet access services should not be divided according to download speed or technology.[16] The Commission has also considered distinguishing between residential and small business customers, on the one hand, and larger business and public authorities, on the other hand.[17]

(24) With regard to a possible segmentation of the market for the retail provision of fixed internet services according to customer type or according to distribution technology (i.e. DSL, cable or fibre), on the one side, mobile and fixed operators provided mixed results on whether this distinction is necessary.[18] On the other side, with regard to a possible segmentation by customer type, business customers highlighted the difference between the provision of fixed internet access services targeted at private and at business customers.[19]

(25) With regards to a potential segmentation in multiple dwelling units ("MDUs") such as housing associations or apartment buildings, and single dwelling units ("SDUs") such as individual households, the market investigation provided mixed results on whether the market for retail fixed internet access services should be

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16 See Commission decision of 29 June 2010 in Case M.5532 – *Carphone Warehouse/Tiscali UK*, recitals 7-21; Case M.6990 *Vodafone/Kabel Deutschland*, recital s192-194. Commission decision of 3 August 2016 in case M.7978 – *Vodafone/Liberty Global/Dutch JV*, paragraph 38.

17 See Commission decision of 19 May 2015 in case M.7421 *Orange/*Jazztel, recital 42; Commission decision of 10 October 2014 in case M.7000 *Liberty Global/Ziggo*, recital 132; Commission decision of 7 October 2016 in case M.8131 *Tele2 Sverige/TDC Sverige*, recital 32.

18 See replies to Q1 – mobile operators of 4 September 2018, question 12. See also Q2 – fixed operators of 4 September 2018, question 12.

19 See replies to Q3 – business customers of 4 September 2018, question C.A.4.

split by MDU and SDU.[20] While most of the respondents did not express a view, one respondent indicated that fixed internet services delivered over fiber based access networks and cable-TV-networks to SDUs, and fixed internet services delivered over fiber based access networks and cable-TV-networks to MDUs constitute separate product markets.

(26) In any event, the Commission considers that for the purposes of this Decision, the exact scope of the product market definition can be left open as the Transaction does not raise serious doubts as to its compatibility with the internal market under any possible market definition.

3.2.2. Geographic market definition

(27) The Notifying Parties submit that, in line with the previous approaches taken by the Commission and the Swedish Post and Telecom Authority (*Post- och telestyrelsen* – PTS), the relevant geographic scope of the market is national.

(28) In its previous decisions, the Commission concluded that the retail market for the provision of fixed internet services was national in scope.[21] The market investigation in the present case has not provided any indication that the Commission should depart from its previous findings.[22] Therefore the Commission considers that the relevant market for the retail provision of fixed internet services is national in scope.

3.3. Retail supply of TV services

(29) In the market for the retail provision of TV services, the suppliers of linear and non-linear (mainly Video-On-Demand, "VOD") TV services serve end customers who wish to purchase such services. The TV services supplied by TV distributors to end users consist of: (i) packages of linear TV channels (which they have either acquired or produced themselves); and (ii) content aggregated in non-linear services, such as Video on Demand ("VOD"), Subscription VOD ("SVOD"), Transaction VOD ("TVOD") and Pay Per View ("PPV"). TV content can be delivered to end users through a number of technical means including cable, satellite and IPTV[23]. So-called over-the-top ("OTT")[24] players deliver channels and content in both a linear and non-linear fashion through the use of the internet.

(30) Com Hem (but not Tele2) offers retail TV services in Sweden to end consumers.

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20 See replies to Q1 – mobile operators of 4 September 2018, question 13. See also Q2 – fixed operators of 4 September 2018, question 13.

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

22 See replies to Q1 – mobile operators of 4 September 2018, question 18. See also Q2 – fixed operators of 4 September 2018, question 18. See replies to Q3 – business customers of 4 September 2018, question C.B.2.

23 IPTV is the abbreviation for Internet Protocol TV; it is a system through which television services are delivered using the Internet protocol over a packet-switched network such as the internet, instead of being delivered through traditional terrestrial, satellite signal and cable television formats.

24 Over-the-top (OTT) is any application or service that provides a product over the Internet and bypasses traditional distribution. Applications and services that are provided as 'over-the-top' are most typically related to media and communication.

3.3.1. Product market definition

(31) The Notifying Party submits that it is not relevant to delineate the market for the retail provision of TV services based on the segmentation analysed by the Commission in its previous decisions[25], namely: (i) the type of technology used; (ii) the nature of TV services provided in terms of Pay TV and Free-To-Air ("FTA") TV services; and, (iii) the nature of TV services provided in terms of linear and non-linear services.

(32) According to the Notifying Party, a potential distinction in the Swedish TV market would be between MDUs and SDUs. This distinction has been considered in past decisions of the Swedish Competition Authority ("SCA") in this industry.[26] In SDUs the end customer typically chooses its own TV distributor and pays directly for its subscription. In MDUs, on the other hand, it is common to have a collective agreement between the landlord / housing association and a single TV distributor. In such a setup the landlord / housing association chooses the TV distributor and pays for a basic TV package (this cost is covered through a portion of the monthly management fees paid by apartment owners to the housing association).

(33) In its previous decisions the Commission has considered the retail provision of FTA TV and Pay TV services as separate markets but ultimately left open the product market definition [27]. The Commission also considered whether retail TV can be segmented further according to: (ii) linear vs non-linear -TV services[28]; (iii) according to distribution technologies (e.g. cable, OTT, satellite, IPTV or terrestrial)[29]; and (iv) premium Pay-TV vs basic Pay-TV services[30] but, has left open the market definition with regard to each of these potential sub-segments.

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25 Commission decision of 21 December 2010 in case *M.5932 News Corp/BskyB*; Commission decision of 22 September 2006 in case *M.4353 Permira/All3Media Group*; Commission decision of 15 April 2013 in case *M.6880 Liberty Global/Virgin Media*; Commission decision of 24 February 2015 in case *M.7194 Liberty Global/Corelio/W&W/De Vijver Media*.

26 See e.g., SCA decision of 21 September 2016, Dnr 411/2016, Com Hem /Boxer, recitals 50-52.

27 Commission decisions of 18 July 2007 in case M.4504 *SFR/Télé 2 France*, recital 40, and of 25 June 2008 in case M.5121 *News Corp / Premiere*, recital 20. See also, Commission decision of 7 April 2017 in case M.8354 – *Fox / Sky*, paragraph 97; Commission decision of 3 August 2016 in case M.7978 – *Vodafone/Liberty Global/Dutch JV*, paragraph 56; Commission decisions of 24 February 2015 in case M.7194 *Liberty Global / Corelio / W&W / De Vijver Medi*a, recital 119-120, of 25 June 2008 in case M.5121 *News Corp/Premiere,* recitals 15 and 21, and of 10 October 2014 in case M.7000 *Liberty Global/Ziggo*, recital 108).

28 Commission decision of 6 February 2018 in case M.8665 – *Discovery / Scripps*, paragraph 33; Commission decision of 7 April 2017 in case M.8354 – *Fox / Sky*, paragraph 98 and 99*;* Commission decision of 3 August 2016 in case M.7978 – *Vodafone/Liberty Global/Dutch JV*, paragraph 58; Commission decision of 24 February 2015 in case M.7194 *Liberty Global / Corelio / W&W / De Vijver Media*, recital 124. Commission decision of 25 June 2008 in case M.5121 *News Corp/Premiere*, recital 21. Commission decision of 10 October 2014 in case M.7000 *Liberty Global/Ziggo*, recitals 109–110.

29 Commission decision of 6 February 2018 in case M.8665 – *Discovery / Scripps*, paragraph 33; Commission decision of 7 April 2017 in case M.8354 – *Fox / Sky*, paragraph 100*;* Commission decision of 3 August 2016 in case M.7978 – *Vodafone/Liberty Global/Dutch JV*, paragraph 62; Commission decision of 24 February 2015 in case M.7194 *Liberty Global / Corelio / W&W / De Vijver Media*, recital 127. Commission decision of 25 June 2008 in case M.5121 *News Corp/Premiere*, recital 22; Commission decision of 21 December 2010 in case M.5932 *News Corp/BskyB*, recital 105. Commission decision of 10 October 2014 in case M.7000 *Liberty Global/Ziggo*, recital 113.

(34) The Commission has also previously considered whether retail TV services to SDUs and MDUs form part of the same product market but ultimately left it open.[31]

(35) Most of the respondents to the market investigation indicated that the market for the provision of retail TV services in Sweden should not be segmented into (i) FTA and Pay-TV services; (ii) linear and non-linear services, or by (iii) distribution technologies.[32]

(36) With regards to a potential segmentation in SDU and MDU, most of the respondents to the market investigation consider that the market for retail supply of TV services should not be split by MDU and SDU since similar content is distributed through the different technologies and there are not significant pricing differences.[33]

(37) In any event, given the fact that the assessment of the Transaction would remain the same whether (i) FTA services and Pay TV services, (ii) linear Pay TV services and non-linear Pay TV services, (iii) different distribution technologies, and (iv) SDUs and MDUs are considered to belong to the same product market or to give rise to separate markets, the exact scope of the relevant market for TV services can be left open in this regard.

(38) In any event, the Commission considers that for the purposes of this Decision the exact product market definition can be left open as the Transaction does not raise serious doubts as to its compatibility with the internal market under any possible market definition.

3.3.2. Geographic market definition

(39) The Commission has in the past considered that the geographic scope of the market for the retail provision of TV services could be national since providers of retail TV services compete on a nationwide basis or limited to the coverage area of each cable operator.[34]

(40) The Notifying Party considers that the question whether the scope of the market for the retail provision of TV services should be either national, since TV

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30 Commission decision of 24 February 2015 in case M.7194 *Liberty Global / Corelio / W&W / De Vijver Media*, recital 119.

31 Commission decision of 20 September 2013 in case M.6990 – *Vodafone/Kabel Deutschland*, paragraphs 92-96.

32 See replies to Q1 – mobile operators of 4 September 2018, question 20. See also Q2 – fixed operators of 4 September 2018, question 20.

33 See replies to Q1 – mobile operators of 4 September 2018, question 21. See also Q2 – fixed operators of 4 September 2018, question 21.

34 Commission decision of 26 February 2007 in case M.4521 LGI/Telenet, recital 25; Commission decision of 24 February 2015 in case M.7194 Liberty Global/Corelio/W&W/De Vijver Media, recital 139. Commission decision of 25 June 2008 in Case M.5121 - *News Corp/Premiere*, recital 24; Commission decision of 25 January 2010 in Case M.5734 - *Liberty Global Europe/Unitymedia*, recitals 40 and 43; Commission decision of 21 December 2010 in Case M.5932 - *NewsCorp/BSkyB*, recital 109; Commission decision of 21 December 2011 in Case M.6369 - *HBO/Ziggo/HBO Nederland*, recital 42; Commission decision of 15 April 2013 in Case M.6880 - *Liberty Global/Virgin Media*, recital 54; Case M.7000 – *Liberty Global/Ziggo*, recital 118.

distributors compete on a nationwide basis, or limited to the coverage area of each cable operator, could be left open.

(41) Most of the respondents to the market investigation consider that the market for the retail provision of TV services is national in scope.[35]

(42) In any event, the Commission considers that the exact geographic market definition can be left open in this case as the Transaction does not raise serious doubts as to its compatibility with the internal market under any possible market definition.

3.4. Retail supply of mobile telecommunications services

(43) Mobile telecommunications services to end customers (also referred to as "retail mobile services") include services for national and international voice calls, SMS (including MMS and other messages), mobile internet with data services, access to content via the mobile network and retail international roaming services.[36] Both Parties provide mobile telecommunication services at retail level to end-customers in Sweden.[37]

3.4.1. Product market definition

(44) The Notifying Party submits that, in line with previous Commission decisions, the relevant product market is the overall retail market for mobile telecommunications services. It considers that it is not necessary for the Commission to further segment this market by reference to type of customer (business or private), service type (national or international calls, internet data services, voice and text services), type of tariff (post-paid or pre-paid) or type of network technology.

(45) In previous cases concerning retail mobile telecommunications services, the Commission has considered that there is an overall retail market for mobile telecommunications services constituting a separate market from retail fixed telecommunication services.[38] The Commission did not further segment the overall retail mobile market based on the type of service (voice calls, SMS, MMS, mobile Internet data services), or the type of network technology. The Commission considered possible segments of the overall retail market for mobile telecommunication services between pre-paid or post-paid services and private customers or business customers, concluding that these did not constitute separate product markets but represent rather market segments within an overall retail market.[39]

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35 See replies to Q1 – mobile operators of 4 September 2018, question 22. See also Q2 – fixed operators of 4 September 2018, question 22.

36 See Commission decision of 10 October 2014 in Case M.7000 – *Liberty Global/Ziggo*, recital 137.

37 At present, Tele2 is active in this market as an MNO and Com Hem as an MVNO.

38 Commission decision of 11 May 2016 in case M.7612 – *Hutchison 3G UK/Telefónica UK*, recital 252; Commission decision of 10 October 2014 in Case M.7000 – *Liberty Global/Ziggo*, recital 141 and Commission decision of 2 July 2014 in case No M.7018 – *Telefónica Deutschland/E-Plus*, recital 64.

39 Commission decision of 1 September 2016 in case M.7758 – Hutchison 3G Italy / Wind / JV, recital ; Commission decision of 3 August 2016 in case M.7978 – *Vodafone/Liberty Global/Dutch JV*, paragraph 74; Commission decision of 11 May 2016 in case M.7612 – *Hutchison 3G UK/Telefónica*

(46) Most respondents to the market investigation in the present case agreed with the Commission's previous product market definition and considered that the retail market for mobile telecommunications services should be defined as an overall market, without further segmentations.[40]

(47) In any event, for the purpose of this Decision, the exact product market definition in relation to the provision of retail mobile telecommunications services can be left open as the Transaction does not raise serious doubts as to its compatibility with the internal market under any possible market definition.

3.4.2. Geographic market definition

(48) The Notifying Party submits that, in line with the Commission's previous decisions,[41] the market for mobile telecommunications services to end customers is national in scope and therefore corresponds to the territory of Sweden.

(49) The market investigation in the present case has not provided any indications that the Commission should depart from its previous findings.[42] In light of the above, the Commission considers that the retail market for mobile telecommunications services is national in scope.

3.5. Retail supply of multiple play services

(50) The term "multiple play" relates to offers comprising two or more of the following services provided to retail consumers: mobile telecommunication services, fixed telephony, fixed internet access and TV services. Multiple play comprising two, three or four of these services is referred to as dual play ("2P"), triple play ("3P") and quadruple play ("4P") respectively.

(51) Three of the four services referenced in paragraph (50) above, namely fixed telephony, TV services and fixed internet access, are fixed services as they are provided over a fixed network such as cable, copper or fibre infrastructure. Multiple play comprising any combination of two or more of these fixed services without a mobile component is referred to as "fixed multiple play". Multiple play comprising one or more of these fixed services in combination with a mobile component (including either voice or data, or both together) is referred to as

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UK, recitals 255, 261, 270, 279, 287; Commission decision of 2 July 2014 in case M.7018 – *Telefónica Deutschland/E-Plus*, recitals 31 to 55; Commission decision of 10 October 2014 in Case M.7000 – *Liberty Global/Ziggo*, recital 141; Commission decision of 28 May 2014 in case M.6992 – *Hutchison 3G UK/Telefónica Ireland*, recital 141; Commission decision of 12 December 2012 in case M.6497 – *Hutchison 3G Austria/Orange Austria*, recital 58.

40 See Replies to Q1 – mobile operators of 4 September 2018, questions 10 and 11.

41 Commission decision of 1 September 2016 in case M.7758 – Hutchison 3G Italy / Wind / JV, recital 166; Commission decision of 3 August 2016 in case M.7978 – *Vodafone/Liberty Global/Dutch JV*, paragraph 76; Commission decision of 11 may 2016 in case M.7612 – *Hutchison 3G UK/Telefónica UK*, recitals 293; Commission decision of 10 October 2014 in Case M.7000 – *Liberty Global/Ziggo*, recital 143; Commission decision of 2 July 2014 in case No M.7018 – *Telefónica Deutschland/E-Plus*, recital 74; Commission decision in case M.6497 – *Hutchison 3G Austria/Orange Austria*, recital 73; Commission decision in case No M.5650 – *T Mobile/Orange UK*, paragraphs 25 and 26 and Commission decision of 28 May 2014 in case No M.6992 – *Hutchison 3G UK/Telefónica Ireland*, recital 164.

42 See replies to Q1 – mobile operators of 4 September 2018, question 18. See also Q2 – fixed operators of 4 September 2018, question 18. See replies to Q3 – business customers of 4 September 2018, question B.B.1.

"fixed-mobile multiple play" or “fixed-mobile convergence” (“FMC”). Fixed-mobile multiple play may involve a single mobile subscription (SIM card) or more than one mobile subscription combined with the fixed services.

(52) Both Tele2 and Com Hem offer fixed multiple play bundles, Com Hem to a greater extent than Tele2. None of the Parties offers fixed-mobile multiple play services.

3.5.1. Product market definition

(53) The Notifying Party submits that multiple play markets are not relevant in Sweden, due mainly to their limited scope, and that the competitive assessment of the Transaction should be carried out separately in each individual market (fixed telephony, fixed internet, TV services and mobile services).

(54) In previous cases the Commission has considered but ultimately left open the question as to whether there exist one or more multiple play markets which are distinct from each of the underlying individual telecommunication services.[43]

(55) In previous cases the Commission has also noted that due to different services, delivered over different infrastructures (fixed for dual play and triple play or fixed and mobile for quadruple play), that are included in the different multiple play bundles, instead of one possible market for multiple play, there could be several candidate multiple play markets: a market for fixed bundles (dual play and triple play) and another separate market for FMC bundles. The possibility for several mobile subscriptions to be included in a quadruple play bundle further complicates the picture.[44]

(56) In Sweden, the uptake of multiple play services remains relatively modest. In 2017, the total number of bundled telecommunication subscriptions amounted to roughly 1.9 million compared to a total of approximately 14.4 million mobile telecommunication services subscriptions, 3.9 million fixed broadband subscriptions and 5.3 million television subscriptions.[45]

(57) The most common multiple play service in Sweden is the 2P combination of television and fixed internet services (approximately 551 700 subscriptions in 2017). There is a marked ongoing decline in the number of subscriptions of multiple play bundles with a fixed telephony component in tune with the decline of overall standalone fixed telephony subscriptions.[46] Moreover, in Sweden, fixed-mobile multiple play bundles are not widespread. In 2017, mobile subscriptions sold in a 4P bundle represented less than 1% of all mobile subscriptions.

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43 Commission decision of 3 August 2016 in case M.7978 – *Vodafone / Liberty Global / Dutch JV*, recital 108; Commission decision of 4 February 2016 in case M.7637 – *Liberty Global / BASE Belgium*, recital 96; Commission decision of 19 May 2015 in case M.7421 – *Orange / Jazztel*, recitals 86 and 91.

44 Commission decision of 3 August 2016 in case M.7978 – *Vodafone / Liberty Global / Dutch JV*, recital 107.

45 See Annex 7 of Form CO.

46 See Table 9, Annex 7 of Form CO.

(58) As regards the popularity of the different types of multiple play bundles, the very large majority of such bundles is dual play or triple play, whereas quadruple play represents less than 10% of all multiple play subscriptions.

Table 1: Number of multiple play subscribers in Sweden in 2017

	Total	As a % of all fixed internet subscribers	As a % of all multiple play subscribers[47]
Single play/fixed internet	2,352 K	60.8%	-
Dual play: Internet - fixed phone	353 K	9.1%	23.3%
Dual play: Internet - TV	552 K	14.3%	36.4%
Triple play: Fixed phone/internet/TV	470 K	12.2%	31.0%
Quadruple play: Fixed phone/internet/TV/mobile	140 K	3.6%	9.2%

Source: Form CO, Annex 7.

(59) The market investigation in the case at hand provided no clear evidence as to the substitutability between multiple play services on the one hand and combinations of standalone services on the other hand.[48]

(60) In any event, the Commission considers that, for the purposes of this Decision, the question as to whether there exist one or more multiple play markets which are distinct from each of the underlying individual telecommunications services can be left open, as the Transaction does not raise serious doubts as to its compatibility with the internal market under any possible market definition.

3.5.2. Geographic market definition

(61) The Notifying Party submits that the relevant geographic scope of a possible retail market for multiple play services would be national.

(62) In previous decisions, the Commission considered that the geographic scope of any possible retail market for multiple play services would be national since the components of the multiple play offers are offered individually at national level and the bundling of the services would not change the geographic scope of the components. It nevertheless ultimately left the question of the exact geographic delineation of the possible retail market for multiple play services open.[49]

47 Excluding the number of standalone fixed internet subscribers.

48 See Replies to questionnaire Q1– mobile operators of 4 September 2018, questions 14-16 and Q2 – fixed operators of 4 September 2018, questions 14-16.

49 Commission decision of 3 August 2016 in case M.7978 – Vodafone / Liberty Global / Dutch JV, paragraph 112; Commission decision of 19 May 2015 in Case M.7421 - Orange/Jazztel, recitals 89-90; Commission decision of 10 October 2014 in Case M.7000 - *Liberty Global/Ziggo*, recitals 152-153; Commission decision of 20 September 2013 in Case M.6990 - *Vodafone/Kabel Deutschland*, paragraphs 263-265; Commission decision of 16 June 2011 in Case M.5900 - *LGI/KBW*, paragraphs 183-186.

(63) Most respondents to the market investigation of the case at hand considered that a possible market for multiple play (irrespective of what type of multiple play bundles are included in such possible market) would be national in scope.[50]

(64) Therefore, for the purposes of this Decision, the Commission considers that the geographic scope of any possible retail market for multiple play services in Sweden would be national.

3.6. Wholesale access and call origination on mobile networks

(65) MNOs provide wholesale access and call origination services which enable operators without their own network, namely MVNOs and Service Providers, to have access to one or more of the MNOs networks in order to provide retail mobile services to end customers "Full" or "thick" MVNOs maintain their own core infrastructure and use MNOs only for access to a radio network. By contrast, "light" or "thin" MVNOs do not have their own infrastructure and rely entirely on the infrastructure of an MNO.[51] As far as the Parties are concerned, only Tele2 is active on this market in Sweden. Three more providers in Sweden offer wholesale access and call origination on mobile networks, namely, Telia, Telenor and Tre.

3.6.1. Product market definition

(66) In line with previous Commission decisions, the Notifying Party submits that there is an overall market for wholesale access and call origination services.

(67) In previous cases,[52] the Commission defined a wholesale market for access and call origination on public mobile networks. The services provided by MNOs to non-MNOs were considered as key elements required for non-MNOs to be able to provide retail mobile communication services. Since both services were considered to be generally supplied together they were seen to be part of a single market. The market investigation in the present case has not provided any reasons to depart from this approach.

(68) In view of the above, the Commission concludes that there is a distinct wholesale market for access and call origination on public mobile telephone networks.

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50 See replies to Q1 – mobile operators of 4 September 2018, question 18. See also Q2 – fixed operators of 4 September 2018, question 18.

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

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

3.6.2. Geographic market definition

(69) In line with previous Commission decisions, the Notifying Party submits that the relevant geographic scope of the market for wholesale access and call origination on mobile networks is national, i.e. limited to the territory of Sweden.

(70) In previous cases, the Commission considered the wholesale market for access and call origination to be national in scope due to regulatory barriers stemming from the fact that licenses granted to MNOs are generally national in scope.[53] The market investigation in the present case has not provided any reasons to depart from this approach.

(71) Based on the above, the Commission concludes the wholesale market for access and call origination on public mobile networks to be national in scope, that is to say limited to the territory of Sweden.

3.7. Wholesale market for call termination on mobile networks

(72) Call termination services are provided when calls originate from one network and terminate on another network. Call termination thus allows users of different networks to communicate with one another. Call termination is a wholesale service provided by various network operators to one another on the basis of interconnection agreements, upstream of the provision of communication services to end customers.[54] Call termination services could be provided either on mobile or fixed networks.

(73) Tele2 is active on the wholesale market for call termination on mobile networks in Sweden.

3.7.1. Product market definition

(74) The Notifying Party submits that each individual network constitutes a separate wholesale market for call termination on mobile networks, in line with previous Commission decisions.

(75) In previous cases, the Commission concluded that each individual mobile network constitutes a separate product market.[55] More specifically, the Commission considered that there is no substitute for call termination on each individual network since the operator transmitting the outgoing call can reach the intended recipient only through the operator of the network to which the recipient

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

54 See Commission decision of 2 July 2014 in case M.7018 – *Telefónica Deutschland/E-Plus*, recital 84; Commission decision of 12 December 2012 in case M.6497 - *Hutchison 3G Austria/Orange Austria*, paragraph 68; Commission decision of 1 March 2010 in case M.5650 - *TMobile/Orange*, paragraph 36.

55 See Commission decision of 3 July 2012 in case M.6584 – *Vodafone/Cable & Wireless*, recital 47; Commission decision of 3 July 2012 in case M.5650 – *T-Mobile/Orange UK*, recitals 36, 37; See also Commission decision M.1493 – *Telia / Telenor*, M.2803 *Telia / Sonera* and M.3806 – *Télefonica / Cesky*. See also Revised Commission Recommendation of 17 December 2007 referring to wholesale voice call termination on individual mobile networks.

is connected. Each individual network therefore constitutes a separate market for termination. This applies both to fixed networks and to mobile networks.[56]

(76) In view of the above, the Commission concludes that each individual mobile network constitutes a separate wholesale market for call termination. More specifically for the purposes of this case, the Commission concludes that the relevant market is the wholesale market for call termination on the mobile network of Tele2.

3.7.2. Geographic market definition

(77) The Notifying Party submits that wholesale market for call termination should correspond to the dimensions of the operator's network and therefore be considered as national in scope.

(78) In line with its previous decisions[57], the Commission considers the market to be national in scope. The information available to the Commission does not provide any indication that it would be warranted for the present case to depart from the previous practice for defining the geographic market. For the purposes of this Decision, the Commission therefore concludes that the wholesale markets for call termination on mobile networks are national.

3.8. Wholesale international roaming services

(79) In order for a provider of retail mobile services to be able to provide its end customers with telecommunication services outside their home countries, it must enter into agreements with providers of wholesale international roaming services which are primarily active in other national markets. Only Tele2 is active on this market, both in Sweden and in the Netherlands.

(80) Roaming agreements can be concluded with a preferred foreign operator which offers tailor-made service conditions, as can be seen in particular in the creation of international roaming alliances.

3.8.1. Product market definition

(81) The Notifying Party submits that the Commission has defined a separate wholesale market for international roaming services comprising both terminating calls and originating calls.[58]

(82) In the case at hand, the Commission retains its previous product market definition of a separate wholesale market for international roaming comprising both terminating calls and originating calls.

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56 See Commission decision of 3 July 2012 in case M.5650 – *T-Mobile/Orange UK*, recitals 36, 37.

57 See Commission decision of 3 July 2012 in case M.6584 – *Vodafone/Cable & Wireless*, recital 48; Commission decision of 3 July 2012 in case M.5650 – *T-Mobile/Orange UK*, recital 39.

58 See Commission decision of 2 July 2014 in Case M.7018 - *Telefónica Deutschland/E-Plus*, recital 97; Commission decision of 20 September 2013 in Case M.6990 *Vodafone/Kabel Deutschland*, recital 249; Commission decision of 3 July 2012 in case M.5650 *T-Mobile/Orange*, paragraph 34; Commission decision of 12 December 2012 in case No. M.6497 *Hutchison 3G Austria/Orange Austria*, paragraph 67; Commission decision of 4 February 2016 in Case M.7637 *Liberty Global/Base Belgium*, recital 119.

3.8.2. Geographic market definition

(83) In line with previous Commission decisions[59] the Notifying Party submits that the wholesale market for international roaming services is national in scope, i.e. Sweden, for the case at hand. This is due to the fact that wholesale international agreements can only be concluded with companies which have an operating licence in the relevant country and the licences to provide mobile services are restricted to a national territory.

(84) In line with its past decisions[60], the Commission retains its previous geographic market definition and considers that the wholesale market for international roaming services is national in scope.

3.9. Wholesale call termination services on fixed networks

(85) As explained in paragraph (72) above, call termination is the wholesale service provided by network operators that allows users of different networks to communicate with each other.

(86) The market for wholesale termination of calls on fixed networks is therefore vertically related to the retail markets for fixed and mobile telephony services.

(87) Both Tele2 and Com Hem are active in the provision of wholesale call termination services on fixed networks in Sweden.

3.9.1. Product market definition

(88) In line with previous Commission decisions[61], the Notifying Party submits that the relevant product market is the wholesale market for call termination on each individual fixed network.

(89) In previous decisions the Commission considered an overall wholesale market for call termination on each individual fixed network, without it being necessary to consider further possible segmentations of the market.[62]

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59 See Commission decision of 3 July 2012 in case M.5650 *T-Mobile/Orange*, paragraph 35; Commission decision of 12 December 2012 in case M.6497 *Hutchison 3G Austria/Orange Austria*, paragraph 78-79; Commission decision of 2 July 2014 in case M.7018 *Telefónica Deutschland/E-Plus*, recital 100; and Commission decision of 4 February 2016 in case M.7637 *Liberty Global/Base Belgium*, recital 122.

60 See Commission decision of 3 July 2012 in case M.5650 *T-Mobile/Orange*, paragraph 35; Commission decision of 12 December 2012 in case M.6497 *Hutchison 3G Austria/Orange Austria*, paragraph 78-79; Commission decision of 2 July 2014 in case M.7018 *Telefónica Deutschland/E-Plus*, recital 100; and Commission decision of 4 February 2016 in case M.7637 *Liberty Global/Base Belgium*, paragraph 122; Commission decision of 20 September 2013 in case M.6990 *Vodafone/Kabel Deutschland*, recital 252.

61 See Commission decision of 3 August 2016 in case M.7978 – *Vodafone / Liberty Global / Dutch JV;* Commission decision of 27 November 2007 in case M.4947 - *Vodafone/Tele2 Italy/Tele2 Spain*, recital 13; Commission decision of 1 March 2010 in case M.5650 - *T-Mobile/Orange*, recital 37; Commission decision of 3 July 2012 in case M.6584 - *Vodafone/Cable & Wireless*, recital 23; and Commission decision of 20 September 2013 in case M.6990 - *Vodafone/Kabel Deutschland*, recital 117.

62 See Commission decision of 3 August 2016 in case M.7978 – *Vodafone / Liberty Global / Dutch JV;* Commission decision of 4 February 2016 in case M.7637 - *Liberty Global/BASE Belgium*, recital 126;

(90) For the purposes of the present Decision, the Commission retains its previous product market definition and considers that the relevant product market is the overall wholesale market for call termination on the fixed network of Tele2 and the wholesale market for call termination on the fixed network to which Com Hem has access.

3.9.2. Geographic market definition

(91) The Notifying Party considers the geographic scope of the wholesale market for call termination on fixed networks to be national. This is primarily due to regulatory barriers as the geographical scope of licenses is in principle limited to areas which do not extend beyond the borders of a Member State.

(92) In line with previous decisions the Commission considers the geographic scope of the wholesale market for call termination on a fixed network to be national.[63]

4. COMPETITIVE ASSESSMENT

4.1. Analytical framework

(93) Under Article 2(2) and (3) of the Merger Regulation, the Commission must assess whether a proposed concentration would significantly impede effective competition in the internal market or in a substantial part of it, in particular through the creation or strengthening of a dominant position.

(94) In this respect, a merger may entail horizontal and/or non-horizontal effects. Horizontal effects are those deriving from a concentration where the undertakings concerned are actual or potential competitors of each other in one or more of the relevant markets concerned. Non-horizontal effects are those deriving from a concentration where the undertakings concerned are active in different relevant markets.

(95) As regards non-horizontal mergers, two broad types of such mergers can be distinguished: vertical mergers and conglomerate mergers.[64] Vertical mergers involve companies operating at different levels of the supply chain.[65] Conglomerate mergers are mergers between firms that are in a relationship which is neither horizontal (as competitors in the same relevant market) nor vertical (as suppliers or customers).[66]

Commission decision of 3 July 2012 in case M.6584 - *Vodafone/Cable & Wireless*, recital 23; Commission decision of 1 March 2010 in case M.5650 - *T-Mobile/Orange*, recital 37.

63 See Commission decision of 3 August 2016 in case M.7978 – *Vodafone / Liberty Global / Dutch JV;* Commission decision of 20 September 2013 in case M.6990 - *Vodafone/Kabel Deutschland*, recital 121; Commission decision of 4 February 2016 in case M.7637 - *Liberty Global/BASE Belgium*, recital 128; Commission decision of 3 July 2012 in case M.6584 - *Vodafone/Cable & Wireless*, recital 24; Commission decision of 1 March 2010 in case M.5650 - *T-Mobile/Orange*, recital 38; Commission decision of 27 November 2007 in case M.4947 - *Vodafone/Tele2 Italy/Tele2 Spain*, recital 16.

64 Non-Horizontal Merger Guidelines, recital 3.

65 Non-Horizontal Merger Guidelines, recital 4.

66 Non-Horizontal Merger Guidelines, recital 5.

(96) A case where a merger entails both horizontal and non-horizontal effects may for instance be when the merging firms are not only in a vertical or conglomerate relationship, but are also actual or potential competitors of each other in one or more of the relevant markets concerned. In such a case, the Commission will appraise horizontal, vertical and/or conglomerate effects in accordance with the guidance set out in the relevant notices.[67]

(97) The Commission appraises horizontal effects in accordance with the guidance set out in the relevant notice, that is to say the Horizontal Merger Guidelines.[68] Additionally, the Commission appraises non-horizontal effects in accordance with the guidance set out in the relevant notice, that is to say the Non-Horizontal Merger Guidelines.[69]

4.1.1. Horizontal effects

(98) The Horizontal Merger Guidelines distinguish between two main ways in which mergers between actual or potential competitors on the same relevant market may significantly impede effective competition, namely non-coordinated and coordinated effects.

(99) As regards horizontal non-coordinated effects, under the substantive test set out in Article 2(2) and (3) of the Merger Regulation, also mergers that do not lead to the creation or the strengthening of the dominant position of a single firm may be incompatible with the internal market. Indeed, the Merger Regulation recognises that in oligopolistic markets, it is all the more necessary to maintain effective competition.[70] This is in view of the more significant consequences that mergers may have on such markets. For this reason, the Merger Regulation provides that "*under certain circumstances, concentrations involving the elimination of important competitive constraints that the merging parties had exerted upon each other, as well as a reduction of competitive pressure on the remaining competitors, may, even in the absence of a likelihood of coordination between the members of the oligopoly, result in a significant impediment to effective competition*".[71]

(100) The Horizontal Merger Guidelines list a number of factors which may influence whether or not significant horizontal non-coordinated effects are likely to result from a merger, such as the large market shares of the merging firms, the fact that the merging firms are close competitors, the limited possibilities for customers to switch suppliers, or the fact that the merger would eliminate an important competitive force. That list of factors applies equally regardless of whether a merger would create or strengthen a dominant position, or would otherwise

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67 Non-Horizontal Merger Guidelines, recital 7.

68 Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings ("Horizontal Merger Guidelines"), OJ C 31, 05.02.2004.

69 Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings ("Non-Horizontal Merger Guidelines"), OJ C 265, 18.10.2008.

70 Merger Regulation, recital 25.

71 Merger Regulation, recital 25. Similar wording is also found in paragraph 25 of the Horizontal Merger Guidelines. See also Commission decision of 2 July 2014 in case No M.7018 – *Telefónica Deutschland/E-Plus*, recital 113; Commission decision of 28 May 2014 in case No M.6992 – *Hutchison 3G UK/Telefónica Ireland*, recital 179; Commission decision of 12 December 2012 in case No M.6497 – *Hutchison 3G Austria/Orange Austria*, recital 88.

significantly impede effective competition due to non-coordinated effects. Furthermore, not all of these factors need to be present to make significant non-coordinated effects likely and it is not an exhaustive list.[72] Finally, the Horizontal Merger Guidelines describe a number of factors, which could counteract the harmful effects of a merger on competition, including the likelihood of buyer power, entry and efficiencies.

(101) A merger in a concentrated market may also significantly impede effective competition due to horizontal coordinated effects where, through the creation or the strengthening of a collective dominant position, it increases the likelihood that firms are able to coordinate their behaviour and raise prices, even without entering into an agreement or resorting to a concerted practice within the meaning of Article 101 TFEU. A merger may also make coordination easier, more stable or more effective for firms that were already coordinating before the merger, either by making the coordination more robust or by permitting firms to coordinate on even higher prices.[73]

(102) To assess whether a merger gives rise to horizontal coordinated effects, the Commission should examine, first, whether it would be possible to reach terms of coordination and, second, whether the coordination would be likely to be sustainable.[74]

4.1.2. Vertical effects

(103) A merger is said to result in foreclosure where actual or potential rivals' access to supplies or markets is hampered or eliminated as a result of the merger, thereby reducing these companies' ability and/or incentive to compete.[75] Such foreclosure may discourage entry or expansion of rivals or encourage their exit. Such foreclosure is regarded as anti-competitive where the merged entity — and, possibly, some of its competitors as well — are as a result able to profitably increase the price charged to consumers.[76]

(104) Two forms of vertical foreclosure can be distinguished. The first is where the merger is likely to raise the costs of downstream rivals by restricting their access to an important input (input foreclosure). The second is where the merger is likely to result in foreclosure of upstream rivals by restricting their access to a sufficiently large customer base (customer foreclosure).

4.1.3. Conglomerate effects

(105) In the majority of circumstances, conglomerate mergers do not lead to any competition problems but in certain specific cases there may be harm to competition.[77] The main concern in the context of conglomerate effects is that of foreclosure. [78] Conglomerate mergers may allow the merged entity to combine

72 Horizontal Merger Guidelines, paragraph 26.
73 Horizontal Merger Guidelines, paragraph 39.
74 Horizontal Merger Guidelines, paragraph 42.
75 Non-horizontal Merger Guidelines, paragraph 29.
76 Non-horizontal Merger Guidelines, paragraph 29.
77 Non-horizontal Merger Guidelines, paragraph 92.
78 Non-horizontal Merger Guidelines, paragraph 93.

products in related markets and this may confer on the merged entity the ability and incentive to leverage a strong market position from one market to another by means of tying or bundling, or other exclusionary practices. [79]

(106) In assessing the likelihood of conglomerate effects, the Commission examines, first, whether the merged firm would have the ability to foreclose its rivals, second, whether it would have the economic incentive to do so and, third, whether a foreclosure strategy would have a significant detrimental effect on competition, thus causing harm to consumers. In practice, these factors are often examined together as they are closely intertwined. [80]

4.2. Identification of affected markets

(107) Table 2 below illustrates the retail markets in Sweden that are horizontally affected as a result of the Transaction.

Table 2: Horizontally affected markets (market shares for 2017 by number of subscribers).

RETAIL	Tele2	Com Hem	Combined	Horizontally Affected
Fixed internet access	[0-5]%	[20-30]%	[20-30]%	☑
Multiple-play bundles[81]	[0-5]%	[20-30]%	[20-30]%	☑
Mobile services	[20-30]%	[0-5]%	[20-30]%	☑

Source: Form CO, Annex 7.

(108) As regards the market shares listed in the table above for fixed internet access, the Commission notes that these market shares reflect the total number of subscribers in Sweden that purchase each of these services either on a standalone basis or in a combination with other fixed or mobile telecommunication services.

(109) Table 3 below illustrates the markets that are vertically affected as a result of the Transaction.[82]

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79 Non-horizontal Merger Guidelines, paragraph 93.

80 Non-horizontal Merger Guidelines, paragraph 94.

81 Multiple play bundles refer to bundles comprising 2P, 3P and 4P bundles.

82 A company submitted that the Transaction could have an impact also in the market for the acquisition of TV content, considering that Com Hem is a relevant distributor of TV content and Tele2, with its telecom subscribers' base, could rapidly become a substantial acquirer of TV content. Therefore, according to that company, the Transaction could lead to a significant strengthening of the merged entity's purchasing power of TV content in Sweden and remove a potential new entrant in this market. Similarly, another company has expressed some concerns related to the increasing concentration in the audio-visual distribution market, claiming that in the long run the Transaction can lead to a situation where the end customer is locked in to one distributor for all its telecommunication services that are also bundled with content services, such as TV-content. Therefore, according to that company, it could become more difficult for other content providers to offer their content to end customers and negotiate with platforms such as Tele2/Com Hem. In essence, the company considers that the Transaction by reducing the number of operators, would lead to an increase in the buyer power of operators towards licence suppliers. In this respect, the Commission notes that in order to deliver TV services Com Hem enters into agreements with broadcasters, who package the content produced by production companies into channels. Com Hem then combines these channels into channel packages which in turn are sold to the end customers. Therefore, Com Hem is not directly active in the market for the acquisition of audiovisual/TV content, but exclusively in the market for the acquisition of TV channels. In any case, Tele2 is neither active in the acquisition of TV channels or TV content in Sweden nor it has any plan

Table 3: Vertically affected markets (market shares for 2017 by number of subscribers).

Upstream market	Downstream market
Wholesale international roaming Tele2 is active in Sweden and the Netherlands	**Retail mobile telecommunications services** Tele2: [20-30]%; Com Hem: [0-5]%
Wholesale market for call termination on fixed networks Tele2: 100%; Com Hem: 100%	**Retail fixed telephony services** Tele2: [5-10]%; Com Hem: [10-20]%
	Retail mobile telecommunications services Tele2: [20-30]%; Com Hem: [0-5]%
Wholesale market for call termination on mobile networks Tele2: 100%	**Retail fixed telephony services** Tele2: [5-10]%; Com Hem: [10-20]%
	Retail mobile telecommunications services Tele2: [20-30]%; Com Hem: [0-5]%

Source: Form CO, Annex 7.

(110) As regards the wholesale market for call termination on fixed networks, given that fixed network operators have a 100% market share on fixed call termination services on their own network, Com Hem has a 100% market share on fixed call termination services on its own network and Tele2 has a 100% market share on fixed call termination services on the fixed network to which it has access. As the Parties are active on separate markets for fixed call termination services over their respective networks, there is no horizontal overlap between their respective activities in these markets. However, the Transaction gives rise to vertically affected markets since Com Hem is a customer of Tele2 and Tele2 is a customer of Com Hem with regard to wholesale call termination services on fixed networks on their respective fixed telephony networks.

(111) However, in Sweden the market for wholesale call termination on fixed networks is regulated ex-ante by the PTS. In its latest decisions on call termination on fixed networks, PTS imposed price caps and non-discrimination obligations on both Tele2 and Com Hem ensuring that their call termination services are provided on a fair basis.[83]

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to enter the market for the acquisition of TV channels or TV content in Sweden (see Tele2 Responses to RFI 15, 21.09.2018). In any event, there are no elements suggesting that the merged entity would have additional market power with respect to TV content/channel providers as a result of the Transaction.

[83] See PTS decisions of 20 February 2017, Dnr: 17–1106 (Tele2, http://www.pts.se/globalassets/startpage/dokument/legala-dokument/beslut/2017/telefoni/smp-slutbeslut/beslut-fast-samtalsterminering-tele2-17-1106-20-feb-2017.pdf) and Dnr: 17–1113 (Com Hem,http://www.pts.se/globalassets/startpage/dokument/legala-dokument/beslut/2017/telefoni/smp-slutbeslut/beslut-fast-samtalsterminering-com-hem-17-1113-20-feb-2017.pdf), Beslut om analys av marknadenför fast samtalsterminering (marknad 1) enligt 8 kap. 5 och 6 §§ (2003:389) om elektronisk kommunikation, page 48 and page 48 respectively.

(112) Therefore, the Commission considers that the Transaction does not give rise to serious doubts as to the compatibility with the internal market as regards the wholesale markets for call termination on Com Hem's and Tele2's fixed networks and this market will, therefore, no longer be discussed in this Decision.

(113) As regards the wholesale market for mobile call termination services, since each MNO's network constitutes a separate market for the provision of wholesale call termination, there is no horizontal overlap between the Parties' activities on this market, as only Tele2 is active on a its own separate mobile network with a 100% market share over its network. However, the Transaction gives rise to vertically affected markets since Com Hem is a customer of Tele2 with regard to wholesale call termination services on mobile networks in its capacity as provider of fixed telephony and mobile telecommunications services.

(114) However, in Sweden the market for wholesale call termination on mobile networks is regulated ex-ante by the PTS. In its latest decision on call termination on mobile networks, PTS imposed price caps and non-discrimination obligations on both Tele2 ensuring that its call termination services are provided on a fair basis.[84]

(115) Therefore, the Commission considers that the Transaction does not give rise to serious doubts as to the compatibility with the internal market as regards the wholesale market for mobile call termination services, on Tele2's mobile network. Therefore, this market will no longer be discussed in this Decision.

(116) As regards the market for wholesale international roaming, the Commission notes that this market is subject to sector-specific EU regulation, which prevents mobile operators from refusing access to their network and from charging excessive termination fees.[85] Under the Roaming Regulation, MNOs must meet all reasonable requests for wholesale roaming access[86] and MNOs are bound by the price cap imposed by the Roaming Regulation on the wholesale prices that MNOs can charge to their roaming customers. Key obligations under the regulation include an obligation to meet all reasonable access requests, an obligation to publish a reference offer, caps on wholesale and retail charges (for calls, SMS messages and data services), and transparency and information requirements. The Roaming Regulation therefore effectively prevents MNOs from refusing access to their respective network and from charging excessive termination fees.

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84 See PTS decision of 13 September 2016, Dnr: 16–9404, Analys av marknaden för mobil samtalsterminering (marknad 2) enligt 8 kap. 5 och 6 §§ (2003:389) om elektronisk kommunikation, page 67, http://www.pts.se/globalassets/startpage/dokument/legala-dokument/beslut/2016/telefoni/mkd2-slutbeslut/slutlig_beslut-mobil-samtalsterminering-tele2270878_tmp.pdf.

85 Regulation (EU) No 531/2012 of the European Parliament and of the Council of 13 June 2012 on roaming on public mobile communications networks within the Union (OJ L 172, 30.6.2012, pp. 10–35 (the "roaming Regulation"); amended by Regulation (EU) No 2015/2120 of the European Parliament and the Council of 25 November 2015 laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services and Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union, OJ L 310, 26.11.2015, p. 1–18.

86 Article 3 Regulation (EU) No 531/2012 and Article 7 Regulation (EU) No 2015/2120.

(117) In light of the fact that after the Transaction the merged entity's wholesale roaming activities will continue to be subject to ex-ante EU regulation, the Commission considers that the vertical relationship between the Parties' activities created by the Transaction does not raise serious doubts as to its compatibility with the internal market as regards the market for wholesale international roaming. Thus, this market will not be further examined in this Decision.

(118) The Transaction would give rise to a vertical link between the Parties activities in the market for wholesale access and call origination on mobile networks, where Tele2 is active, and the retail mobile telecommunications market where both Parties are active. However, this market is not vertically affected. Tele2 had a market share of [0-5]% by subscriptions and [0-5]% by revenues in 2017 in the market for wholesale access and call origination on mobile networks. Com Hem had a market share of [0-5]% in 2017 in the retail mobile telecommunications market in Sweden (bringing the Parties' combined market shares to [20-30]% in terms of subscriptions). Moreover, nothing in the Commission's file indicates that the merged entity's incentive to offer wholesale access services would be significantly different to the one of Tele2, absent the Transaction. For the above reasons, the Commission will not further discuss this vertical link in the present Decision.

4.3. Market shares in the Swedish telecommunications and TV sectors

(119) The following table provides an overview of the market shares of the Parties and of their main competitors in the telecommunications and TV markets in Sweden:

Table 4: Market shares by subscribers in the retail telecommunications and TV markets/segments in Sweden (2017) by number of subscribers

	Mobile Total	Mobile Private	Mobile Business	Fixed Telephony	Fixed Internet Access	Retail TV
Tele2	[20-30]	[20-30]	[20-30]	[5-10]	[0-5]	-
Com Hem	[0-5]	-	[0-5]	[10-20]	[20-30]	[50-60]
Combined	[20-30]	[20-30]	[20-30]	[10-20]	[20-30]	[50-60]
Increment	[0-5]	-	[0-5]	**[5-10]**	[0-5]	-
Telia	[30-40]	[30-40]	[40-50]	[50-60]	[30-40]	[10-20]
Telenor	[10-20]	[10-20]	[20-30]	[5-10]	[10-20]	[10-20]
Tre	[10-20]	[10-20]	[5-10]	-	-	-
Bredband2	N/A	N/A	N/A	N/A	[5-10]	-
Bahnhof	N/A	N/A	N/A	N/A	[5-10]	
Viasat	-	-	-	[0-5]	[0-5]	[5-10]

Source: Form CO, Annex 7.

(120) The Parties face competition in the retail fixed, mobile and multiple play telecommunications and TV markets in Sweden from the following operators: Telia, Telenor, Tre, Bredband2, Bahnhof, Viasat.

(121) In the retail mobile market in Sweden, there are four MNOs: Telia, Telenor, Tele2 and Tre. Telia is the former incumbent in Sweden and the Swedish state still holds around [30-40]% of its shares. Telia is the leader in fixed telephony, broadband, and mobile services in Sweden. Under the brand Skanova, Telia provides infrastructure services, such as unrefined copper and fibre-based capacity products. Telenor is the third largest provider of mobile and fixed

services to the consumer market in Sweden. Telenor Sweden provides voice and data services to both businesses and consumers, through a range of wireless, fixed and broadband technologies. Tre is the fourth largest MNO offering mobile telephony and mobile broadband to both businesses and consumers in Sweden.

(122) In the retail fixed internet market, the other main players are Bahnhof and Bredband2. Bahnhof was one of the country's first independent internet service providers ("ISP"). Bredband2 is an internet access provider that provides its services based on optical fibre technology. Both companies offer fixed broadband services to private and business customers and mobile services to business customers.

(123) Viasat operates a satellite Pay TV platform in Sweden and is part of the MTG group, primarily active as a retail TV distributor. Viasat is also active in the retail provision of fixed broadband services through open fibre networks.

(124) With respect to multiple play offers, at present Telia and Telenor are the main players, offering different bundles including all services. In particular they offer all types of fixed-only bundles and have recently launched quadruple play offers (including mobile services).

4.4. Assessment of horizontal effects

4.4.1. Retail market for the provision of mobile telecommunications services

4.4.1.1. Notifying Party's view

(125) The Notifying Party submits that the Transaction would not give rise to any competitive concerns in relation to the retail market for mobile telecommunications services in Sweden for the following reasons. First, the increment brought about by the Transaction is minimal (less than [0-5]%). Second, Com Hem does not have a meaningful standalone presence on this market given that it sells mobile services only to business customers. Third, as suggested by diversion ratios, Com Hem is not a close competitor of Tele2. Fourth, the merged entity will face post-transaction strong competitive pressure from the other MNOs in the market.

4.4.1.2. Commission's assessment

(126) The Parties and their main competitors' market shares by number of subscribers and by value for the overall retail mobile market for the possible segmentation into private customers and business customers are illustrated in Table 5 and Table 6 below. As shown below the increment brought about by the Transaction would be less than 1% under any of these possible market segmentations.[87] Such a low increment indicates that the Transaction is unlikely to affect the structure of the market.

[87] Tele2 and Com Hem's respective market positions would not significantly differ for any other relevant segmentations discussed in Section 3.4. (see Annex 7, Form CO).

Table 5: Market shares for the retail provision of mobile services in 2017 in Sweden by number of subscribers

	All mobile		Private		Business	
	Subs	%	Subs	%	Subs	%
Tele2	[…]	[20-30]%	[…]	[20-30]%	[…]	[20-30]%
Com Hem	[…]	[0-5]%	[…]	-	[…]	[0-5]%
Combined	[…]	[20-30]**%**	[…]	[20-30]**%**	[…]	[20-30]**%**
Telia	[…]	[30-40]%	[…]	[30-40]%	[…]	[40-50] %
Telenor	[…]	[10-20]%	[…]	[10-20]%	[…]	[20-30] %
Tre	[…]	[10-20]%	[…]	[10-20] %	[…]	[5-10]%
Others	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Total	[…]	100.0%	[…]	100.0 %	[…]	100.0 %

Source: Form CO, Annex 7.

Table 6: Market shares for the retail provision of mobile services in 2017 in Sweden by value (SEK millions)

	All mobile		Private		Business	
	SEK	%	SEK	%	SEK	%
Tele2	[…]	[20-30]%	[…]	[20-30]%	[…]	[10-20]%
Com Hem	[…]	[0-5]%	[…]	-	[…]	[0-5]%
Combined	[…]	[20-30]**%**	[…]	[20-30]**%**	[…]	[20-30]**%**
Telia	[…]	[30-40]%	[…]	[30-40]%	[…]	[40-50] %
Telenor	[…]	[10-20] %	[…]	[20-30]%	[…]	[20-30]%
Tre	[…]	[10-20]%	[…]	[10-20]%	[…]	[5-10]%
Others	[…]	[0-5]%	[…]	[0-5]%	[…]	[5-10]%
Total	[…]	**100.0 %**	[…]	**100.0%**	[…]	**100.0 %**

Source: Form CO, Annex 7.

(127) In the provision of retail mobile services, the overlap between the Parties appears to be marginal. In the overall retail mobile telecommunications market, Tele2 has a share of [20-30]% in terms of volume and [20-30]% in terms of value. Com Hem is only active as an MVNO in mobile B2B services, and provides such services to less than […] customers representing a share of [0-5]% in volume and value. Post-Transaction, the merged entity will remain the second largest player with a market share of [20-30]% in terms of volume and [20-30]% in terms of value. Telia will remain the leading operator with a market share of [30-40]% in terms of volume and [30-40]% in terms of value. The above figures would not differ significantly in the segment of mobile telecommunications services for business customers, where Com Hem's activities are confined.

(128) The results of the market investigation confirm that Tele2 and Com Hem are not close competitors for the provision of retail mobile services in Sweden with Tele2 mainly competing with the other MNOs while Com Hem is mainly active as an MVNO targeting business customers.[88] Moreover, most of the respondents to the market investigation do not consider Com Hem as a particularly aggressive

[88] See replies to Q1 – mobile operators of 4 September 2018, question 26. See also Q2 – fixed operators of 4 September 2018, question 26.

operator in the provision of retail mobile services.[89] In particular, business customers do not consider Com Hem as a viable competitor to the four MNOs in Sweden.[90] Finally, most of the respondents to the market investigation consider that the Transaction would not have a significant impact on the market for the provision of retail mobile telecommunications services in Sweden.[91]

(129) Finally, with reference to potential coordinated effects, the Commission notes that post-Transaction the market structure in the retail mobile market would remain unchanged with the only exception related to the limited increment of Tele2's position in the business segment brought by Com Hem's position. The market leader Telia will have a market share significantly higher compared to the one of the merged entity and the other two main players Telenor and Tre would remain in the market with a significant market share, respectively [10-20]% and [10-20]% by subscribers. As a result, the Transaction would not bring about any significant changes (either by increasing market symmetry or by removing a potential disruptive player), which would facilitate coordination.

4.4.1.3. Conclusion

(130) In light of the above, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market as regards the retail market for mobile telecommunications services in Sweden.

4.4.2. Retail market for the provision of fixed internet access services

4.4.2.1. Notifying Party's view

(131) The Notifying Party submits that the Transaction would not give rise to any competitive concerns in relation to the retail market for fixed internet access services in Sweden for the following reasons. First the increment brought about by the Transaction is not significant (approximately [0-5]% in terms of subscribers). Second, the Parties do not consider themselves to be close competitors and maintain that the internet offerings of Com Hem and Tele2 are largely complementary. Third, several alternative operators would remain active in the market after the Transaction.

4.4.2.2. Commission's assessment

(132) The Parties and their main competitors' market shares by number of subscribers and by value for the overall retail fixed internet access market as well as for the possible segmentation into private customers and business customers are illustrated in Table 7 and Table 8 below. As shown below the combined market share of the merged entity would be around or slightly above 20% under any

89 See replies to Q1 – mobile operators of 4 September 2018, question 27. See also Q2 – fixed operators of 4 September 2018, question 27.

90 See replies to Q3 – business customers of 4 September 2018, question B.C.1.

91 See replies to Q1 – mobile operators of 4 September 2018, question 83.2. See also Q2 – fixed operators of 4 September 2018, question 85.2. See replies to Q3 – business customers of 4 September 2018, question E.2.

possible market segmentation. [92] Such a limited market share alone indicates that the Transaction is unlikely to substantially affect the structure of the market.[93]

Table 7: Market shares for the retail provision of fixed internet access services in 2017 in Sweden by number of subscribers, thousands

	All		Private		Business	
	Subs	%	Subs	%	Subs	%
Tele2	[…]	[0-5]	[…]	[0-5]	[…]	[5-10]
Com Hem	[…]	[20-30]	[…]	[20-30]	[…]	[10-20]
Combined	[…]	[20-30]	[…]	[20-30]	[…]	[20-30]
Telia	[…]	[30-40]	[…]	[30-40]	[…]	[40-50]
Telenor	[…]	[10-20]	[…]	[10-20]	[…]	[5-10]
Bahnhof	[…]	[5-10]	[…]	[5-10]	[…]	[5-10]
Bredband 2	[…]	[5-10]	[…]	[5-10]	[…]	[0-5]
A3	[…]	[0-5]	[…]	[0-5]	[…]	[0-5]
Others	[…]	[5-10]	[…]	[5-10]	[…]	[10-20]
Total	[…]	**100.0**	[…]	**100.0**	[…]	**100.0**

Source: Form CO, Annex 7.

Table 8: Market shares for the retail provision of fixed internet access services in 2017 in Sweden by value (SEK millions)

	All		Private		Business	
	SEK	%	SEK	%	SEK	%
Tele2	[…]	[0-5]	[…]	[0-5]	[…]	[10-20]
Com Hem	[…]	[10-20]	[…]	[20-30]	[…]	[5-10]
Combined	[…]	[20-30]	[…]	[20-30]	[…]	[10-20]
Telia	[…]	[30-40]	[…]	[40-50]	[…]	[20-30]
Telenor	[…]	[10-20]	[…]	[10-20]	[…]	[10-20]
Bahnhof	[…]	[5-10]	[…]	[5-10]	[…]	[5-10]
A3	[…]	[0-5]	[…]	[0-5]	[…]	[0-5]
Bredband 2	[…]	[0-5]	[…]	[0-5]	[…]	[5-10]
Others	[…]	[10-20]	[…]	[5-10]	[…]	[20-30]
Total	[…]	**100.0**	[…]	**100.0**	[…]	**100.0**

Source: Form CO, Annex 7.

(133) In the provision of retail of fixed Internet access services, Com Hem has a market share of [20-30]% in volume and [10-20]% in value. Tele2 has a market share of [0-5]% in volume and [0-5[% in value. The merged entity will have a combined market share of [20-30]% by volume and [20-30]% by value. Post-Transaction, Telia will remain the leading provider with a share of [30-40]% by volume and [30-40]% by value, while Telenor will remain the third largest operator with a [10-20]% share by volume and [10-20]% by value. In the fixed Internet access services market, the other main players are A3, Bahnhof and Bredband2, that offer fixed internet access services to private and business customers. The combined market share of those players is of approximately [10-20] both by subscriptions and by value.

92 Tele2 and Com Hem's respective market positions would not significantly differ for any other relevant segmentations discussed in Section 3.2. (see Annex 7, Form CO).

93 Horizontal Merger Guidelines, paragraph 18.

(134) The market shares figures would not differ significantly in the possible narrower market for the provision of fixed internet services to private and business customers. With respect to the segment of broadband services to private customers, the merged entity's share would be [20-30]% by volume and [20-30]% by value, with the increment from Tele2 amounting to [0-5]% and [0-5]% respectively. With respect to the segment of broadband services to business customers, the merged entity's share would be around [20-30]% by volume and [10-20]% by value. Telia will remain the clear leader with market shares above 30% in all segments while Telenor will be the third largest operator in the market, with a share by subscribers of [10-20]% in the private segment and of [5-10]% in the business one.

(135) Moreover, with regards to the competitive dynamics on the fixed internet market in Sweden, the Commission notes that according to the majority of respondents to the market investigation the level of price competition in the retail market for fixed internet services in Sweden (on the overall market as well as on the residential and business segments of it) is either high or very high pre-Transaction.[94]

(136) The results of the market investigation also indicate that Tele2 and Com Hem are not close competitors for the provision of fixed internet access services in Sweden with Telia being the closest competitor to both Tele2 and Com Hem.[95] In particular, business customers consider Telia and Telenor's offering as closest competitor to Tele2 in terms of parameters such as brand and network quality in Sweden.[96] Finally, most of the respondents to the market investigation consider that the Transaction would not have a significant impact on the market for the provision of retail fixed internet access services in Sweden.[97]

4.4.2.3. Conclusion

(137) In light of the above, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market as regards the retail market for internet access services in Sweden.

4.4.3. Retail market for the provision of multiple play services

4.4.3.1. Notifying Party's view

(138) The Notifying Party submits that the Transaction would not give rise to any competitive concerns in relation to the retail market for the provision of multiple

94 See replies to Q1 – mobile operators of 4 September 2018, question 40. See also Q2 – fixed operators of 4 September 2018, question 40.

95 See replies to Q1 – mobile operators of 4 September 2018, question 41. See also Q2 – fixed operators of 4 September 2018, question 41.

96 See replies to Q3 – business customers of 4 September 2018, question C.C.1.

97 See replies to Q1 – mobile operators of 4 September 2018, question 83.2. See also Q2 – fixed operators of 4 September 2018, question 85.2. See replies to Q3 – business customers of 4 September 2018, question E.2. A fixed internet operator expressed some concerns on the future availability of dark fibre and on the incentive of Tele2, following the Transaction, to offer its dark fibre to operators competing with the merged entity. However, Tele2 holds less than [0-5]% in the segment of dark fibre and Com Hem is not active in it. Moreover, several suppliers of wholesale network services would remain available in the market, in particular: Telia (through Skanova), Trafikverket and Svenska Kraftnät, Vattenfall AB, Teracom and IP-Only Network AB.

play services in Sweden since the Parties offer different multiple play services and the Transaction would only result in a moderate share and a minor overlap. Moreover, the Notifying Party submits that neither Tele2 nor Com Hem standalone would be in a position to effectively enter the FMC segment of this market.

4.4.3.2. Commission's assessment

(139) Assuming an overall market including all subscriptions of all types of multiple play services, in 2017 Com Hem had a market share of [20-30]% and Tele2 just [0-5]%. Com Hem's multiple play services are exclusively fixed multiple play services. Tele2 has only a limited number of 2P fixed multiple play subscribers. As mentioned above, none of the Parties offers fixed-mobile multiple play services.

(140) The Commission notes that the only technically affected market arising from the Transaction is the potential overall market of all types of multiple play services where the combined subscriptions-based 2017 market share of the merged entity would be [20-30]% but with an increment of only [0-5]%.

Table 9. Market shares for the retail provision of all types of multiple play services in Sweden between 2014 and 2017 by number of subscribers

Company	Subscriptions ('000s)				Subscriptions (%)			
	2014	2015	2016	2017	2014	2015	2016	2017
Tele2	[…]	[…]	[…]	[…]	[5-10]%	[0-5]%	[0-5]%	[0-5]%
Com Hem	[…]	[…]	[…]	[…]	[20-30]%	[20-30]%	[30-40]%	[20-30]%
Combined	[…]	[…]	[…]	[…]	[30-40]**%**	[30-40]**%**	[30-40]**%**	[20-30]%
Telia	[…]	[…]	[…]	[…]	[40-50]%	[40-50]%	[40-50]%	[50-60]%
Telenor	[…]	[…]	[…]	[…]	[20-30]%	[10-20]%	[10-20]%	[10-20]%
Tre	[…]	[…]	[…]	[…]	0.0%	0.0%	0.0%	0.0%
Others	[…]	[…]	[…]	[…]	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Total	[…]	[…]	[…]	[…]	**100.0%**	**100.0%**	**100.0%**	**100.0%**

Source: Form CO, Annex 7.

(141) In this potential market the merged entity would be the second largest market player, well behind the market leader Telia that held [50-60]% of the market in 2017.[98] In any event, as mentioned, the increment brought about by Tele2's presence in this market is minor.

(142) The only other potential multiple play market where the Parties' activities overlap would be the 2P market consisting of fixed telephony and fixed broadband. However this would not be an affected market since the Parties' combined market shares would remain below 20%.

(143) Moreover, and in light of the complementary nature of the Parties' respective network, Tele2 being a predominantly mobile player whereas Com Hem is a

98 The market share data are markedly different between 2016 and 2017. The reason for this discrepancy is a change in the data gathering process conducted by The Swedish Post and Telecom Authority (PTS), the main source of data in these markets in Sweden, by applying a broader definition of what constitutes multiple play services in 2017. In any event, the Commission's assessment would be the same even if one were to consider the 2016 instead of the 2017 market shares.

predominantly fixed player, the Commission has also considered the likelihood of each Party, absent the Transaction, becoming a significant player in the FMC segment[99] and the effect the Transaction might have on this potential competition between the Parties.

(144) In this respect, the Commission firstly notes that the FMC multiple play segment is nascent in Sweden and has come into existence in earnest only recently through the launch of quadruple play offers from Telia and Telenor. The total number of such subscriptions amounted to just 140 000 at the end of 2017. The Commission has examined, through the review of internal documents, the Parties' respective FMC capabilities and ambitions in the standalone scenario absent the Transaction.

(145) Com Hem has tried to secure an MVNO agreement with a view to couple their fixed services with a mobile component for a number of years. The Commission has reviewed the conditions and parameters set out in Com Hem's latest request for quote as well as the conditions in the single offer received by […] and has concluded that, […].[100]

(146) […]. In conclusion, absent the Transaction, Tele2's capabilities to offer a FMC product remain uncertain.

(147) Moreover, Tele2's internal documents include […][101] […][102] […]. The Commission considers this as at least an indication that the Transaction may increase competition in the FMC segment compared to the situation that would likely materialize absent the Transaction.

(148) With reference to potential coordinated effects, the Commission notes that post-Transaction the market structure in the multiple play markets, and possible sub-segments, will remain highly asymmetric. In an overall market including all subscriptions of all types of multiple play services, the market leader Telia will have a market share roughly twice that of the merged entity and roughly four times that of the third largest actor, Telenor. With particular regard to fixed-mobile multiple play services, if anything, the entry of a third player on this market would be likely to make any potential coordination more difficult compared to the situation absent the Transaction.

(149) Finally, it is also worth noting that, although Tre does not currently supply multiple play services it would still enjoy a significant presence in the retail mobile telecommunications services markets and thanks to the presence of open fibre networks and third party fixed network operators in Sweden it could

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99 Com Hem by securing an MVNO contract with one of the MNOs active in the market and Tele2 either through organic growth by taking advantage of the open fibre networks that are prevalent in Sweden or, for example, through the acquisition of a smaller fixed network operator such as Bahnhof or Bredband2, or by reaching a wholesale access agreement with such operators.

100 Between 2015 and 2017, the average mobile data consumption per subscription in Sweden has increased by approximately 120% from 1881 Mbyte/subscription to 4137 Mbyte/subscription (source: PTS, http://statistik.pts.se/svensk-telekommarknad/tabeller/mobila-samtals-och-datatjaenster/tabell-15-mobila-datatjaenster/). Similarly, the average mobile data consumption in Sweden for all private Tele2 customers has increased by […]% between January 2017 and August 2018 (see Reply to Question 4 of RFI 11).

101 See Tele2 Annex 5.4(i).5, p.128 and p.134 of the Form CO.

102 See RFI 11. Tele2 Annex 5.4(ii).54 and Tele2 Annex 5.4(ii).42.

potentially enter the multiple play markets based on wholesale fixed network access or partner with remaining fixed operators and could disrupt any possible coordination.

4.4.3.3. Conclusion

(150) In light of the above, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market as regards any of the potential retail markets for multiple play services in Sweden.

4.5. Assessment of conglomerate effects

(151) Tele2's services in the market(s) for retail mobile telecommunications services and Com Hem's services in the markets for fixed telecommunications and TV services are complementary or at least closely related. Accordingly, the Commission has examined whether the Transaction would give rise to conglomerate effects by foreclosing competitors in the retail market for mobile telecommunications services, the retail market for fixed telephony services, the retail market for internet access services, the retail market for TV services and/or a potential market for multiple-play bundles.

(152) According to the Commission's Guidelines on the assessment of Non-horizontal Merger Guidelines,[103] conglomerate effects require (a) the ability to foreclose, (b) the incentives to foreclose and (c) the likelihood that a foreclosure strategy would have a significant detrimental effect on competition and harm consumers. In order to be taken into account, any conglomerate effect must be merger specific. In other words, the conglomerate effect must result from Tele2's acquisition of Com Hem.

4.5.1. Notifying Party's view

(153) The Notifying Party submits that the Transaction would not result in anti-competitive foreclosure of standalone service providers.

(154) First, the Notifying Party points to the Non-horizontal Merger Guidelines in which the Commission recognizes that conglomerate mergers do not normally lead to competition problems and can produce significant procompetitive benefits.

(155) Secondly, the development of FMC services in Sweden is at a nascent stage. The number of fixed mobile bundles is still very limited and significant demand for standalone services will remain. With specific regard to fixed Internet and TV, standalone subscriptions constitute the majority of subscriptions (more than 50% for broadband and around 75%, for TV). Consequently, even if the Transaction would increase FMC uptake in Sweden, it would not result in anti-competitive foreclosure of standalone service providers.

(156) Furthermore, the Parties' combined shares in mobile services and fixed broadband services range between approximately 15–30%, i.e. at levels that do not confer significant market power. Consequently, according to the Notifying Party the combined entity will lack the market power to unduly leverage its

[103] Non-horizontal Merger Guidelines, paragraph 91 onwards.

position from mobile services into fixed services or from fixed broadband services into mobile services.

(157) With specific regard to TV services, where the combined entity will hold approx. [50-60]% of TV subscriptions, the Notifying Party submits that this high market share does not result in market power in light of the recent developments and in particular the build-out of fibre:

- The rapid build out of fibre allows a majority of customers to subscribe to Pay TV services through IPTV from Com Hem, Telia, Telenor and Viasat. Since the overbuild between the fibre network and coax network is already in excess of 80% and likely to be higher with respect to MDUs, the threat from IPTV is real. The number of Pay TV subscriptions via fibre-based IPTV has nearly doubled from 2014 to 2017 and in this segment Com Hem holds only a [10-20]% share;

- The build out of fibre is transforming the competitive dynamics by allowing a greater choice of service providers. This has in turn resulted in high competitive pressure even from smaller market participants in the Pay TV market. Hence, the combined entity will lack any market power to leverage its position in Pay TV services into other services by raising standalone TV prices. Moreover, increasing competition from OTT services further constrains the pricing of all Pay TV distributors as it allows customers to completely bypass traditional Pay TV distributors' services, in particular for Premium TV.

(158) The Notifying Party further submits that the Swedish telecommunications market is characterized by low switching costs for both fixed and mobile services.

(159) With regard to the mobile segment, the Notifying Party submits that Sweden boasts a larger share of corporate paid mobile subscriptions compared to other European countries (almost one in four in 2016). Corporate customers would in principle not be potential FMC customers and therefore mobile only providers will have continued opportunities to compete for customers even if FMC were to pick up in the Swedish market.

(160) With respect to the FMC-addressable mobile segment, i.e. post-paid subscriptions for private customers, this would account for approx. half of the Swedish market and consequently there would be ample room for a mobile only player. Furthermore, also in this segment customers are currently purchasing mobile separate from fixed and many customers are expected to continuously prefer standalone services.

(161) The Notifying Party concludes that the Transaction is likely to increase rollout of FMC services in Sweden, and that this will benefit consumers. However, there is nothing to suggest that standalone suppliers of fixed and mobile services would risk being marginalised following the Transaction.

4.5.2. Commission's assessment

(162) The Commission has assessed the likely impact of the Transaction on the merged entity's ability and incentive to engage in practices related to multiple play bundles which would likely result in anticompetitive foreclosure of competitors in

the retail market for mobile telecommunications services, in the retail market for fixed telephony services, in the retail market for internet access services, in the retail market for TV services and/or in a potential market for multiple-play bundles with mobile and fixed components.

(163) Some respondents to the market investigation have expressed concerns with respect to the possibility for the merged entity to foreclose standalone operators by offering multiple play bundles. According to these respondents, the combination of Tele2 and Com Hem would allow the merged entity to offer FMC services on terms which others would find challenging to match. One respondent considers that the merged entity would be able to enter into exclusivity arrangements with TV channel/content providers, which would seriously weaken the competitors' ability to compete in Sweden.

(164) Another company submitted that the Transaction will give Tele2 access to an extensive fixed infrastructure network in Sweden covering more than 50% of the Swedish households via Com Hem's cable/fibre footprint and its DTT platform Boxer.[104] Tele2's stated rationale for the merger would be to create a leading integrated operator in Sweden by leveraging Com Hem's strong presence in residential fixed-line and cross-selling services to the respective customer bases. The merged entity will have the ability and the incentive (i) to offer fixed-mobile bundles in which the mobile component is discounted and subsidised by the fixed component, thus inciting customers to migrate to converged fixed/mobile offerings, and (ii), even where there is no formal bundling, to cross-sell its mobile offerings to Com Hem's fixed line customers. The merged entity's strategy could be particularly successful for MDU customers, because they would be locked-in by virtue of long term contracts.

(165) The Commission has assessed whether the merged entity would have the ability and incentive to use its market power in one market to foreclose competitors in another market by bundling products after the Transaction.

4.5.3. Ability to foreclose

(166) In order to have the ability to foreclose rivals, the merged entity must have a significant degree of market power in at least one of the markets concerned. That is, at least one of the Parties' products must be viewed by many customers as particularly important and there must be few relevant alternatives for that product.[105]

(167) With respect to the market for retail mobile telecommunications services in Sweden, the merged entity's market share will be below 30%. Moreover, there are at least two significant competitors with a comparable market position (Telia and Telenor) and a third MNO with a 15% market share. The Commission is therefore of the view that based on its position in the market for retail mobile telecommunications services in Sweden, it is unlikely that after the Transaction the merged entity will have the ability to leverage its position in the market for retail mobile telecommunications services into the retail market for fixed telephony services, the retail market for internet access services, the retail market

104 Submission of 30.7.2018, ID313.

105 Non-horizontal Merger Guidelines, paragraph 99.

for TV and/or in a potential market for multiple-play bundles with mobile and fixed components.

(168) Similarly, the merged entity's estimated market shares will not exceed 30% neither in the retail market for fixed telephony services nor in the retail market for internet access services.

(169) The only potential market where Com Hem has a sizable market share is the market for retail supply of TV services, where it had a market share of [50-60]% in terms of subscriptions in 2017.[106] However, in terms of revenues Com Hem's market share is more limited, at [30-40]% in 2016.[107]

(170) In this regards, first it appears that customers in Sweden have relevant alternatives in the TV market: Telia and Telenor have both a market share in TV subscriptions higher than 15%. MTG/Viasat has to be considered as well, taking into account (i) its market share of [5-10]% in subscriptions and [10-20]% in revenues, and (ii) the fact that it is an integrated TV player active both as TV (satellite) retail distributor and as TV channels provider.

(171) Moreover, Com Hem's market share is declining (it was [50-60]% in 2015 and [50-60]% in 2016). This is partially due to the fact that Com Hem distributes its TV services mainly through Digital Terrestrial Television – DTT, that is declining, and through its coax network, that is submitted to the increasing competitive pressure of IPTV via fibre, where Com Hem's presence is more limited, with a [10-20]% market share (Telia is by far the leader with [50-60]% and Telenor has [10-20]%). In this last respect, in 2017, about 70% of Swedish households had access to fibre (75% in urban areas).[108] According to Com Hem's estimation, more than […] of its coax network is already overbuilt by fibre.[109] Total subscriptions for IPTV via fibre passed from 596 000 in 2014 (11.4% of the market) to more than one million in 2017 (19.5% of the market).

(172) The situation does not change substantially focusing on the MDU segment. In this respect, Com Hem's market share, although slightly higher, is declining (from [50 - 60]% in 2014 to [50 - 60]% in 2017, first half), confronted with the rise of IPTV via fibre: 377 000 total subscriptions in 2014 (13% of the total market), 520 000 in 2017 first half (17.2% of the market). Com Hem has a limited share in IPTV for MDU customers ([10 - 20]%), Telia again having a much higher share of [60 - 70]% . As for the alleged advantage enjoyed by Com Hem because of the long-term contracts concluded with MDU customers, actually about […] of Com Hem MDU subscribers are not bound by any binding period and may terminate their contracts with […] notice. As for the remaining […], […]. [110]

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106 The Notifying Party maintains that this share overestimates its position due to double counting, as it includes both analogue and digital subscriptions, whereas especially in MDU there can be overlaps. The adjusted market share would be 48.1% (Form CO, annex 7).

107 Form CO, annex 7. Except where otherwise specified, the market data mentioned in the following paragraphs are from annex 7 of the Form CO.

108 Data from PTS, mobiltäcknings- och bredbandskartläggning 2017, p. 27 and from the Final Report *Broadband Coverage in Europe 2017*, a study prepared for the European Commission, available at: https://ec.europa.eu/digital-single-market/en/news/study-broadband-coverage-europe-2017.

109 Tele2 submission of 12 September 2018, page 5.

110 Tele2 submission of 12 September 2018, page 5.

(173) Furthermore, the Commission notes that the Swedish FMC market is still at an early stage and most subscriptions in all services are still sold standalone: notably in 2017, according to PTS data, only 25% of TV subscriptions were sold bundled with one or more other telecommunications services. Only (i) 2% of mobile subscriptions, (ii) 8% of broadband subscriptions and (iii) 27% of fixed telephony subscriptions were sold in a bundle including TV services.[111] Although, as pointed out by some respondents to the market investigation[112], the Transaction may somewhat speed up the uptake of fixed-mobile bundles and notably of bundles including TV, it appears that providers of standalone services (or of bundled services excluding TV) would still have a sizeable share of the market at their disposal. It is in particular worth noting that currently the number of mobile subscriptions sold in bundle with TV services is marginal[113].

(174) As mentioned above, mobile services are mainly sold stand-alone in Sweden. Even if the merged entity were to start offering fixed-mobile bundles at discounted prices compared to the price of the standalone components, the possible increase in fixed-mobile bundles in the next years does not seem to allow a radical and rapid change of this situation to such an extent as to marginalise providers of standalone services (or of bundled services excluding TV) reducing their ability and incentive to compete. Moreover, this is all the more true when considering the limited interaction between mobile services and TV services. In this respect one participant to the market investigation pointed to the upcoming developments of the mobile communication services and the increasing possibility to use mobile handsets for digital connectivity as well as for voice and messaging.[114] Moreover, bundles including TV services are less relevant for business consumers, who represent a considerable portion of the mobile market in Sweden. In light of that, also in a scenario of increasing relevance of FMC offers in Sweden, it is unlikely that mobile-only operators would be marginalised.

(175) Finally, with respect to the alleged ability of the merged entity to enter into exclusivity arrangements with TV channel/content providers, which would weaken the competitors' ability to compete in Sweden, at present Tele2 is not active in the TV sector and as a consequence the Transaction would not directly increase the presence of the merged entity in the markets for the acquisition of TV content and/or for the acquisition of TV channels. Moreover, considering the limited interaction between mobile telecommunications and TV services in Sweden, it is unlikely that any possible development of FMC offers would substantially increase the market power of the merged entity as to obtain exclusive arrangements with the most important TV rights holders/channel providers.

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111 PTS statistics portal, comparison of multiple play subscriptions (Table 30) with subscriptions for fixed call services (table 6), subscriptions for mobile services (Table 11), subscriptions for fixed broadband (Table 23), subscriptions for TV services (Table 28): http://statistik.pts.se/en/the-swedish-telecommunications-market/tables/.

112 See replies to Q1 – mobile operators of 4 September 2018, questions 35 and 35.1.

113 Most respondents to the market investigation have confirmed that in order to compete effectively on the Swedish market for retail supply of mobile telecommunications services it is not indispensable to offer any additional services (with only two respondents arguing that this could change in the next 2-3 years) (See replies to Q1 – mobile operators of 4 September 2018, questions 35 and 35.1).

114 Replies to Q1 – mobile operators of 4 September 2018, question 35.1.

(176) Based on the above, considering the competitive scenario and the current development of the FMC in Sweden, the Commission considers that customers in Sweden will have relevant alternatives in the TV market and multiple play products including TV services could be easily substituted by the stand-alone components. Therefore, the merged entity will not have the ability to foreclose competitors in the adjacent markets.

4.5.4. Incentive to foreclose

(177) The Commission has also assessed whether the merged entity will have an incentive to engage in bundling of retail supply of mobile telecommunications services and fixed telecommunications, fixed Internet access and TV services, to foreclose rivals from effectively competing for customers who purchase both fixed and mobile services.

(178) After the Transaction, the merged entity might consider introducing a price-discrimination strategy consisting of somewhat increasing the price of the standalone fixed products and/or to lower the price of fixed-mobile bundles.[115] As a result of such a price discrimination strategy, customers who buy fixed and mobile products separately could incur an increase in their total cost of ownership while customers who opt into the bundle could be better-off.

(179) As regards the potential increase in the price of standalone fixed products, the Commission considers that the incentive to do so for the merged entity would be mitigated by the existence of alternative fixed offers by Telia, Telenor and other relevant fixed operators (see table 4 at paragraph (119)). Moreover, it is doubtful that this strategy could be viable, considering that most subscriptions in all services, including fixed ones, are still sold standalone.

(180) As regards the sale of bundles at a discount, the Commission considers this to be in the interest of consumers and unlikely to lead to the marginalisation of mobile-only players who will continue to compete to sell mobile services to customers who purchase both fixed and mobile services (as well as to customers who purchase exclusively mobile services). In this respect, the vast majority of consumers in Sweden still subscribes separately to fixed and mobile products.[116] The incentives are further mitigated by the fact that the merged entity will have a fixed cable infrastructure that covers only about 60% of the Swedish households and hence cannot rely on this infrastructure to offer fixed and mobile bundles in all parts of Sweden.

4.5.5. Effects on competition

(181) The Commission has also assessed the effects of a possible foreclosure strategy on competition, and thus on consumers.

(182) As for the possible impact on mobile-only operators, it has already been mentioned that only relatively few customers currently use fixed-mobile bundles.

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[115] Commission decision of 3 August 2016 in case M.7978 – *Vodafone/Liberty Global/Dutch JV*, recital 625.

[116] In light of this the Commission also considers that the merged entity will have no incentive to engage in pure bundling, that is, to exclusively offer fixed-mobile bundles.

In particular, in 2017 fixed/mobile subscriptions represented less than 4% of the total mobile subscriptions.[117] This implies that a significant demand for mobile-only products will remain on the market, also in case of a discount strategy by the merged entity and an increasing development of FMC offers, in light of the elements mentioned above, at paragraphs (173) and (180).

(183) The Transaction might accelerate the trend towards fixed-mobile convergence in Sweden. By combining a strong fixed offer with a strong mobile offer, the Transaction could somewhat speed up the uptake of FMC offers. However, the Commission considers that even where customers would be converted more rapidly into fixed-mobile bundles, this does not in itself undermine the ability of mobile-only competitors to effectively compete for customers. Finally, it is also worth noting that, as discussed in paragraph (149) above, mobile-only operators could potentially enter the multiple play markets based on wholesale fixed network access or partner with remaining fixed operators.

(184) In addition, the Commission considers that the Transaction generates a third, fully integrated player owning both a fixed and a mobile network. According to the Parties' internal documents, a major rationale of the Transaction would be to increase the Parties' ability to market fixed-mobile bundles by combining Tele2's mobile assets with Com Hem's fixed assets. As a result, the Commission considers that the Transaction has the potential to stimulate the Notifying Parties' ability to compete in fixed-mobile bundles with Telia and Telenor.

4.5.6. Conclusion on conglomerate effects

(185) Based on the above considerations, the Commission is of the view that the Transaction does not give rise to serious doubts as to its compatibility with the internal market in relation to anti-competitive conglomerate effects.

5. CONCLUSION

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

For the Commission

(Signed)
Margrethe VESTAGER
Member of the Commission

[117] PTS statistics portal, comparison of multiple play subscriptions (Table 30) with subscriptions for mobile services (Table 11): http://statistik.pts.se/en/the-swedish-telecommunications-market/tables/.