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PUBLIC VERSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

To the notifying parties

Subject: **Case M.9559 – Telefónica/Prosegur/Prosegur Alarmas España**
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 15 January 2020**,** the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Telefónica EF S.A. ("TEF", Spain) and Prosegur Compañía de Seguridad, S.A. ("PCS", Spain) (together the "Notifying Parties") will acquire within the meaning of Article 3(1)(b) and 3(4) of the Merger Regulation joint control over Prosegur Alarmas España, S.L.U. ("Prosegur Alarmas" or the "JV", Spain) (together with TEF and PCS, the "Parties"). Prosegur Alarmas currently belongs to the group of PCS.[3]

(2) The concentration had already been notified to the Commission on 27 November 2019, but was subsequently withdrawn on 20 December 2019.

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 Publication in the Official Journal of the European Union No C 23, 23.01.2020, p. 14.

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1. THE PARTIES

(3) TEF is a global telecommunications operator and mobile network provider, operating under a number of brands, including Movistar, O2 and Vivo. TEF is a 100% publicly owned company listed on the Madrid, New York, Lima and Buenos Aires Stock Exchanges. In Spain, TEF mainly provides fixed and mobile telecommunication services, including machine-to-machine ("M2M") SIM cards. It is also marginally active in the provision of security systems. Through its subsidiary Telefónica Ingeniería de Seguridad S.A.U. ("TIS"), TEF sells "Vivo Smart Security", which is an alarm service mainly for small and medium-sized enterprises ("SMEs").

(4) PCS is a provider of security systems to business customers, whose operations are divided in three business lines, namely alarms, security, and cash. The alarms business line offers (i) the installation and maintenance services to residential and SME customers; (ii) alarm monitoring by alarm reception centres services; and, (iii) alarm response services through immediate intervention and key holding services. The security business line provides comprehensive security systems, based on a combination of manned guarding and technological and analytical capabilities. The cash business line provides a range of services from basic valuables logistics and cash management to added-value outsourced services from financial institutions, retail establishments, government agencies, central banks, mints, jewellers and others.

(5) Prosegur Alarmas is a provider of alarm installation services and connection to alarm reception centres for both residential and SME customers in Spain.

2. THE CONCENTRATION

(6) Pursuant to a Stock Purchase Agreement signed on 17 September 2019, TEF and PCS will each own 50% of the stock in Prosegur Alarmas.

(7) After the concentration, under the Shareholders Agreement signed on 17 September 2019, […]. The board will be responsible for the operational and financial strategy of the JV. A board meeting will only be validly constituted […]. Furthermore, key decisions of the board, including the approval of the annual budget and of the business plan, will require the vote of at least one board member appointed by TEF and one board member appointed by PCS. As a result, both TEF and PCS will effectively have a veto right over such key decisions. Prosegur Alarmas will therefore be jointly controlled by TEF and PCS within the meaning of Article 3(1)(b) of the Merger Regulation.[4]

(8) The JV has sufficient own staff, financial resources and dedicated management for its operation and for the management of its portfolio and business interests. Furthermore, the JV will continue to have a market presence, does not have significant sale or purchase relationships with its parents and is intended to operate on a lasting basis. Therefore, the JV is full functional.

4 Form CO, paragraph 53.

(9) Therefore, the Transaction consists of the acquisition of joint control by TEF and PCS over Prosegur Alarmas within the meaning of Article 3(1)(b) and 3(4) of the Merger Regulation.

3. UNION DIMENSION

(10) The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 000 million (TEF: EUR 48 693 million, PCS: 3 939.2 million).[5] Each of them has an EU-wide turnover in excess of EUR 250 million (TEF: EUR 26 816 million, PCS: 1 739.9 million), but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State.

(11) The Transaction therefore has an Union dimension pursuant to Article 1(2) of the Merger Regulation.

4. RELEVANT MARKETS

4.1. Introduction

(12) The Parties are both active in the market for security systems in Spain. PCS supplies the full spectrum of security systems to business customers. Prosegur Alarmas is active in the alarm installation and maintenance market as well as in the alarm monitoring and response market for both residential and SME customers whereas TEF, which is active through its subsidiary TIS, mainly supplies such services to SME customers.

(13) TEF's main business focus is the retail supply of several telecommunications and TV services in Spain.

4.2. Market for security systems

4.2.1. Product market definition

4.2.1.1. Commission precedents

(14) In prior decisions, the Commission made a distinction, within the market for security systems, between (i) manned guarding services; (ii) alarm installation and maintenance (i.e. electronic guarding equipment); and (iii) alarm monitoring and response.[6] Hereafter, segments (ii) and (iii) will be referred to as "alarm services".

(15) Prosegur Alarmas and TEF, via its subsidiary TIS, are active in the supply of alarm services[7], while they do not offer manned guarding services as PCS does. While Prosegur Alarms mainly supplies alarm services to residential and SME customers, TEF mainly supplies SME customers. Accordingly, the Transaction only concerns the markets for alarms services and not the wider market for security systems.

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

6 Commission decision of 2 August 2011 in case M.6292 – *Securitas/Niscayah Group*, paragraph 8.

7 TIS directly provides alarm installation and maintenance and provides its alarm monitoring and response through Ralset's alarm receiving centre.

(16) Alarm installation and maintenance services consist in the installation and maintenance of alarm systems such as management of access control, fire, gas and/or flood alarm systems or systems based on video surveillance and telecare services.[8]

(17) Alarm monitoring and response services consist in receiving electronic data in an alarm receiving centre ("ARC") connected to a site of a customers, and reacting to abnormal events detected by the alarm system of the site. The action to be taken by the provider of alarm monitoring services when an abnormal event is detected can either be (i) a phone call to the customer, to the police or another security company; or, (ii) an "outside response", which involves sending staff on-site.[9] In previous decisions, the Commission considered whether alarm monitoring and alarm response could belong to distinct market, but left the exact product market definition open.[10]

(18) The Commission has previously considered that alarm installation and maintenance and alarm monitoring and response could each be further divided into two sub-segments depending on the type of customers, i.e. residential and business customers, although it ultimately left the market definition open.[11]

4.2.1.2. The Notifying Parties' view

(19) The Notifying Parties submit that there is a single overall market including all security systems or, at least, including all alarms services, but that the relevant product market can be left open.[12] The Notifying Parties' view is based on a precedent from the Spanish National Competition Authority ("CNMC") where the CNMC retained a broader market definition covering all alarm services.[13]

(20) The Notifying Parties submit that so-called "Peace of Mind" solutions, which include electronic device-based security systems without connection to an ARC, should also be included into an overall market for security systems.[14] Notably, the Notifying Parties identify a high degree of demand-side and supply-side substitutability. As regards the demand side, the Notifying Parties consider that Peace of Mind solutions cover the same need, i.e., detecting any abnormal event on the customer's premise. The main difference is that Peace of Mind services are cheaper as customers "self-install" and "self-monitor" the solution with no technical support from professionals and as they have no connection to an ARC. However, they could always be upgraded to a professional alarm monitoring system at a later stage. As regards the supply side, the Notifying Parties submit that the underlying hardware and software for the supply of Peace of Mind solutions are very similar to

8 Commission decision of 2 August 2011 in case M.6292 – *Securitas/Niscayah Group*, paragraph 13.

9 Commission decision of 2 August 2011 in case M.6292 – *Securitas/Niscayah Group*, paragraph 9.

10 Commission decisions of 2 August 2011 in case M.6292 – *Securitas/Niscayah Group*, paragraph 10; of 9 November 2010 in case M.5993 – *Securitas/Reliance Security Services/Reliance Security Services Scotland*, paragraphs 15-17.

11 Commission decisions of 2 August 2011 in case M.6292 – *Securitas/Niscayah Group*, paragraph 15; of 31 January 2008 in case M.4986 – *EQT V/Securitas Direct*, paragraphs 12-14.

12 Form CO, paragraph 142.

13 CNMC decision of 15 October 2015 in case C/0697/15 – *Securitas Direct/Segur Control*, paragraphs 27-30 and 33.

14 Notifying Parties' reply to RFI 10 of 5 February 2020, question 12.

those necessary for professional monitoring, albeit rendering a certification of the installation impossible as the alarm system would not be connected to an ARC.[15]

4.2.1.3. The Commission's assessment

(21) The results of the market investigation conducted in the present case generally confirmed the market definition derived from the Commission's past decisional practice. A majority of respondents agree that the market for security systems can be segmented between (i) manned guarding services; (ii) alarm installation and maintenance (i.e. electronic guarding equipment); and (iii) alarm monitoring and response services.[16]

(22) However, the Commission also takes note of the evidence from the CNMC's precedent which followed the argument of the parties to that case that alarm installation and maintenance services are usually sold in conjunction with alarm monitoring and response services in Spain.[17] Moreover, according to the Notifying Parties, all the main players in the alarm systems market in Spain offer installation and maintenance services together with alarm monitoring and response services and it is difficult from a customer perspective to identify in those offers the possibility of acquiring one service separate from the other.[18]

(23) A majority of respondents to the market investigation further confirmed that the market for alarm services could be segmented by type of customers, i.e. distinguishing between residential and business customers.[19]

(24) Peace of Mind solutions have different product characteristics and functionalities compared to traditional alarm services. In particular, they require self-installation and self-monitoring by the customer with no technical support from professionals. One respondent to the market investigation stressed that they exert competitive pressure on alarm services, without reaching a conclusion as to whether these services constitute a separate product market distinct from the market for alarm services.[20] The Commission concludes that, for the purpose of this decision, Peace of Mind solutions do not form part of the market for security systems, even though they exert some competitive constraint on alarm services.

(25) With regard to the other above-mentioned segmentations, namely between (i) manned guarding services; (ii) alarm installation and maintenance (i.e. electronic guarding equipment); and (iii) alarm monitoring and response services and, for (ii) and (iii), a further potential sub-segmentation between residential and business customers, the Commission considers that, in any event, for the purposes of this decision, the exact product market definition with regard to the market for security

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15 The provision of professional alarm services is subject to country specific regulations and to an administrative authorization in Spain (Form CO, paragraphs 80-84).

16 Replies to questionnaire Q2 to alarm services providers, questions 4 and 4.1; Replies to questionnaire Q1 to telecommunications operators, questions 4 and 4.1.

17 CNMC decision of 15 October 2015 in case C/0697/15 – *Securitas Direct/Segur Control*, paragraphs 29 and 33.

18 Notifying Parties' reply to RFI 10 of 5 February 2020, question 12.

19 Replies to questionnaire Q2 to alarm services providers, questions 5 and 5.1; Replies to questionnaire Q1 to telecommunications operators, questions 5 and 5.1.

20 Replies to questionnaire Q1 to telecommunications operators, questions 2.1, 4.1 and 23.1.

systems can be left open, as the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement under any plausible product market definition.

4.2.2. Geographic market definition

4.2.2.1. Commission precedents

(26) In its previous decisions, the Commission concluded that the market for security systems, under any plausible segmentation, is national in scope due to the existence of specific national regulations and standards, language differences and national preferences derived from the reputation of each of the players at the national level.[21]

4.2.2.2. The Notifying Parties' view

(27) The Notifying Parties submit that, in accordance with the Commission's practice, the geographic market is national in scope.[22]

4.2.2.3. The Commission's assessment

(28) All respondents to the market investigation conducted in the present case supported the market definition derived from the Commission's past decisional practice.[23]

(29) For the purpose of this decision, the Commission concludes that the market for security systems, including any plausible segmentation thereof, is national in scope.

4.3. Telecommunication markets

4.3.1. Retail supply of mobile telecommunication services

(30) Mobile telecommunication services to end customers include services for national and international voice calls, SMS (including MMS and other messages), mobile internet with data services, and retail international roaming services.[24]

(31) A segment of the market for retail mobile telecommunications services includes machine-to-machine ("M2M") subscriptions. These allow machines, devices, appliances, etc., to connect wirelessly to the internet via mobile networks, or other technologies, permitting the transmission and receipt of data to a central server.[25] M2M services are received through specific data-only M2M (SIM) cards, used for communication between machines (for instance, between different devices of an alarm system) and are mainly supplied to business customers.

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21 Commission decisions of 2 August 2011 in case M.6292 – *Securitas/Niscayah Group*, paragraphs 16-18; of 9 November 2010 in case M.5993 – *Securitas/Relience Security Services/Reliance Security Services Scotland*, paragraph 24; of 31 January 2008 in case M.4986 – *EQT V/Securitas Direct*, paragraphs 16-18.

22 Form CO, paragraphs 161-162.

23 Replies to questionnaire Q2 to alarm services providers, questions 9 and 9.1.

24 Commission decisions of of 15 July 2019 in case M.9370 – *Telenor/DNA*, paragraph 38; of 30 May 2018 in case M.7000 – *Liberty Global/Ziggo*, paragraph 199.

25 Commission decision of 15 July 2019 in case M.9370 – *Telenor/DNA*, paragraph 38.

(32) TEF is active as mobile network operator ("MNO") in the supply of mobile telecommunication (and M2M services) in Spain whereas Prosegur Alarmas is not active in this market.

4.3.1.1. Product market definition

(A) Commission precedents

(33) The Commission has previously considered that there is an overall retail market for mobile telecommunication services constituting a separate market from retail fixed telecommunication services. In previous decisions, the Commission did not further segment the overall retail mobile market based on the type of service (e.g. voice calls, SMS, data services), or the type of network technology (e.g. 2G, 3G, 4G). 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 rather represent market segments within an overall retail market.[26]

(34) In previous decisions, the Commission concluded that there is a separate market for M2M services.[27]

(B) The Notifying Parties' view

(35) The Notifying Parties submit that there is a single overall market for the provision of retail mobile telecommunication services, including M2M services.[28]

(C) The Commission's assessment

(36) The results of the market investigation conducted in the present case generally supported the market definition derived from the Commission's past decisional practice.[29] Notably, the respondents highlighted several demand-side and supply-side substitutability issues. In particular, one respondent stressed that not all retail telecommunication services providers offer M2M services, the reverse being also true. Furthermore, remote monitoring and control as well as predictive maintenance are key features for M2M services that are not necessary for traditional telecommunication services.[30]

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26 Commission decisions of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets*, recital 67; of 30 May 2018 in case M.7000 – *Liberty Global/Ziggo*, paragraphs 201 and 207; of 1 September 2016 in case M.7758 – *Hutchison 3G Italy/Wind/JV*, recital 162; of 3 August 2016 in case M.7978 – *Vodafone/Liberty Global/Dutch JV*, paragraph 74; of 11 May 2016 in case M.7612 – *Hutchison 3G UK/Telefónica UK*, recitals 255, 261, 270, 279, 287; of 2 July 2014 in case M.7018 – *Telefónica Deutschland/E-Plus*, recitals 31 to 55; of 28 May 2014 in case M.6992 – *Hutchison 3G UK/Telefónica Ireland*, recital 141; of 12 December 2012 in case M.6497 – *Hutchison 3G Austria/Orange Austria*, recital 58.

27 Commission decisions of 15 July 2019 in case M.9370 – *Telenor/DNA*, paragraph 40-42; of 27 November 2018 in case M.8792 – *T-Mobile NL/Tele2 NL*, recital 224.

28 Form CO, paragraph 147.

29 Replies to questionnaire Q1 to telecommunications operators, questions 6 and 6.1; Replies to questionnaire Q3 to international telecommunications operators, questions 4 and 4.1.

30 Replies to questionnaire Q1 to telecommunications operators, questions 6 and 6.1.

(37) The Commission therefore concludes, for the purpose of this decision, that M2M services constitute a separate market. As for the remaining part of the market for the provision of retail mobile telecommunications services, 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 or the functioning of the EEA Agreement under any possible market definition.

4.3.1.2. Geographic market definition

(A) Commission precedents

(38) The Commission has found that the overall market for retail mobile telecommunication services (except M2M services) is national in scope.[31]

(39) As for M2M services, the Commission assessed whether the geographic market was national or regional (e.g. including the Nordic countries in a specific case), but ultimately left the geographic market definition open.[32]

(B) The Notifying Parties' view

(40) The Notifying Parties submit that the segment for M2M services is at least EEA-wide or global in scope as global M2M services are provided by all telecommunication companies, including international operators.[33]

(C) The Commission's assessment

(41) With regard to the overall market for retail mobile telecommunication services (excluding M2M services), the market investigation in this case did not provide any new elements justifying a departure from Commission's previous decisions.[34]

(42) As for the geographic scope of M2M services, the market investigation has yielded mixed results depending on the area of activity of the responding operator. The majority of operators active in Spain consider that a potential market for M2M services is national in scope[35], whereas suppliers of M2M services mainly active outside of Spain have considered the geographic market to be wider in scope.[36] However, the respondents that argued for a wider geographic scope referred to devices which cross borders (e.g., connected cars), for which a multi-national SIM card from a single connectivity provider would be required.[37] This is not the case for alarm devices, which are installed at a fixed location.

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31 Commission decisions of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets*, recital 70; of 15 July 2019 in case M.9370 – *Telenor/DNA*, paragraph 46; of 27 November 2018 – *T-Mobile NL/Tele2 NL*, paragraph 234, recital 234.

32 Commission decision of 15 July 2019 in case M.9370 – *Telenor/DNA*, paragraph 46.

33 Form CO, paragraph 169.

34 Replies to questionnaire Q1 to telecommunications operators, questions 6 and 6.1; Replies to questionnaire Q3 to international telecommunications operators, questions 5 and 5.1.

35 Replies to questionnaire Q1 to telecommunications operators, questions 12 and 12.1.

36 Replies to questionnaire Q3 to international telecommunications operators, questions 5 and 5.1.

37 Replies to questionnaire Q1 to telecommunications operators, questions 6 and 6.1; Replies to questionnaire Q2 to international telecommunications operators, questions 5 and 5.1.

(43) For the purpose of this decision, the Commission concludes that the market for retail mobile telecommunication services (excluding M2M services) is national in scope. As for the market for M2M services, the Commission considers that, for the purposes of this decision, the exact geographic market definition can be left open, as the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement under any plausible geographic market definition.

4.3.2. Retail supply of fixed telephony services

(44) Fixed telephony services to end customers comprise the provision of subscriptions enabling access to public telephone networks at a fixed location for the purpose of making and/or receiving calls and related services.[38]

(45) TEF is the incumbent provider of fixed telephony services in Spain whereas Prosegur Alarmas is not active in this market.

4.3.2.1. Product market definition

(46) In previous decisions, the Commission considered whether a distinction between local/national and international calls as well as between residential and non-residential customers should be drawn, based on the distinctions in the Commission Recommendation 2003/311/EC,[39] but ultimately left the exact product market definition open.[40]

(47) More recently, the Commission also considered that managed Voice over Internet Protocol ("VoIP") services[41] and traditional telephony are interchangeable and therefore belong to the same market. In recent decisions, the Commission considered that an overall retail market for fixed telephony services exists, which includes VoIP services.[42]

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38 Commission decisions of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets*, recital 33; of 15 July 2019 in case M.9370 – *Telenor/DNA*, paragraph 47; of 3 August 2016 in case M.7978 – *Vodafone/Liberty Global/Dutch JV*, paragraph 21; of 4 February 2016 in case M.7637 – *Liberty Global/BASE Belgium*, recital 69; of 20 September 2013 in case M.6990 – *Vodafone/Kabel Deutschland*, paragraph 131.

39 Commission Recommendation of 11 February 2003 on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communication networks and services (Text with EEA relevance) (notified under document number C(2003) 497), OJ L 114, 8.5.2003, p. 45–49.

40 Commission decisions of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets*, recital 40; of 15 July 2019 in case M.9370 – *Telenor/DNA*, paragraph 52; of 29 January 2010 in case M.5730 – *Telefónica/Hansenet Telekommunikation*, paragraphs 16-17; of 29 June 2009 in case M.5532 – *Carphone Warehouse/Tiscali UK*, paragraphs 35 and 39; of 7 September 2005 in case M.3914 – *Tele2/Versatel*, paragraph 10.

41 VoIP is a technology that allows users to make voice calls using a broadband internet connection instead of a regular (or analogue) phone line.

42 Commission decisions of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets*, recital 40; of 3 August 2016 in case M.7978 – *Vodafone/Liberty Global/Dutch JV*, paragraph 26; of 4 February 2016 in case M.7637 – *Liberty Global/BASE Belgium*, recital 69; of 20 September 2013 in case M.6990 – *Vodafone/Kabel Deutschland*, paragraph 131.

(48) The Notifying Parties agree with the Commission's past decisional practice in relation to the market for the retail supply of fixed telephony services.[43]

(49) The Commission considers that, for the purposes of this decision, the exact product market definition with regard to the market for the retail supply of fixed telephony services can be left open, as the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement under any plausible product market definition.

4.3.2.2. Geographic market definition

(50) In previous decisions, the Commission concluded that the retail market for the provision of fixed telephony services was national in scope.[44] This is due to the continuing importance of national regulation in the telecommunications sector, the supply of upstream wholesale services that work on a national basis, and the fact that the pricing policies of telecommunications providers are predominantly national.[45] In *Liberty Global/BASE Belgium* and *MEIF 6 Fiber/KCOM Group*, the Commission assessed the possibility for the scope of the market for the retail provision of fixed telephony services to be narrower than national.[46] More recently in *Vodafone/Certain Liberty Global Assets*, the Commission considered that the scope of the market for the retail provision of fixed telephony services was national.[47]

(51) The Notifying Parties agree with the Commission's past decisional practice in relation to the market for the retail supply of fixed telephony services.[48]

(52) The Commission considers that, for the purposes of this decision, the exact geographic market definition with regard to the market for the retail supply of fixed telephony services can be left open, as the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement under any plausible geographic market definition.

4.3.3. Retail supply of fixed internet access services

(53) Fixed internet access services at the retail level consist of the provision of a fixed telecommunications link enabling customers to access the internet through a fixed telecommunications connection.

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43 Notifying Parties' reply to RFI 11 of 13 February 2020, question 9.

44 Commission decisions of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets*, recital 46; of 15 July 2019 in case M.9370 – *Telenor/DNA*, paragraph 56; of 30 May 2018 in case M.7000 – *Liberty Global/Ziggo*, paragraph 150; of 3 August 2016 in case M.7978 – *Vodafone/Liberty Global/ Dutch JV*, paragraph 29; of 19 May 2015 in case M.7421 – *Orange/Jazztel*, recital 37.

45 Commission decisions of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets*, recitals 44-45; of 29 June 2009 in case M.5532 – *Carphone Warehouse/Tiscali UK*, paragraph 47; of 7 December 2006 in case M.4442 – *Carphone Warehouse Group plc/AOL UK*, paragraph 19; of 7 September 2005 in case M.3914 – *Tele2/Versatel*, paragraph 18.

46 Commission decisions of 18 October 2019 in case M.9433 – *MEIF 6 Fiber/KCOM Group*, paragraphs 24-25; of 4 February 2016 in case M.7637 – *Liberty Global/BASE Belgium*, recital 73; .

47 Commission decisions of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets*, recital 46.

48 Notifying Parties' reply to RFI 11 of 13 February 2020, question 9.

(54) TEF is the incumbent provider of fixed internet access services in Spain whereas Prosegur Alarmas is not active in this market.

4.3.3.1. Product market definition

(55) In previous cases, the Commission considered, but ultimately left open, possible segmentations within the supply of retail fixed internet access services according to (i) product type, distinguishing between narrowband, broadband and dedicated access; (ii) distribution mode, distinguishing between xDSL, fibre, cable (fixed-only) and internet provided through the mobile network infrastructure (fixed-wireless); and (iii) customer type, distinguishing between residential and small business customers on the one hand, and larger business customers and public authorities on the other.[49] At the same time, the Commission noted that the retail market for fixed internet access services should not be segmented according to download speed.[50]

(56) More recently, in *Vodafone/Certain Liberty Global Assets*, the Commission considered that the relevant product for the retail supply of fixed internet access services is the overall retail market for the provision of fixed internet access services, including all product types, distribution modes and speeds/bandwidths, to residential and small business customers, excluding the supply of fixed internet services provided through mobile network infrastructure.[51]

(57) The Notifying Parties submit that there is a single overall market for the retail provision of fixed internet access services, without further segmentations.[52]

(58) The Commission considers that, in any event, for the purposes of this decision, the exact product market definition with regard to the market for the retail supply of fixed internet access services can be left open, as the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement under any plausible product market definition.

4.3.3.2. Geographic market definition

(59) In previous decisions, the Commission concluded that the retail market for the provision of fixed internet services was national in scope.[53] In *Liberty Global/BASE Belgium* and *MEIF 6 Fiber/KCOM Group*, the Commission considered whether the

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49 Commission decisions of 18 October 2019 in case M.9433 – *MEIF 6 Fiber/KCOM Group*, paragraph 37; of 3 August 2016 in case M.7978 – *Vodafone/Liberty Global/Dutch JV*, paragraph 38; of 20 September 2013 in case M.6990 – *Vodafone/Kabel Deutschland*, paragraphs 192-194; of 29 June 2010 in case M.5532 – *Carphone Warehouse/Tiscali UK*, paragraphs 721.

50 Commission decisions of 18 October 2019 in case M.9433 – *MEIF 6 Fiber/KCOM Group*, paragraph 37; of 3 August 2016 in case M.7978 – *Vodafone/Liberty Global/Dutch JV*, paragraph 38; of 20 September 2013 in case M.6990 – *Vodafone/Kabel Deutschland*, paragraphs 192-194; of 29 June 2010 in case M.5532 – *Carphone Warehouse/Tiscali UK*, paragraphs 721.

51 Commission decision of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets*, recital 56.

52 Form CO, paragraph 153.

53 Commission decisions of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets*, recital 61; of 30 May 2018 in case M.7000 – *Liberty Global/Ziggo*, paragraph 169; of 3 August 2016 in case M.7978 – *Vodafone/Liberty Global/Dutch JV*, paragraph 40; of 20 September 2013 in case M.6990 – *Vodafone/Kabel Deutschland*, paragraph 197; of 29 June 2010 in case M.5532 – *Carphone Warehouse/Tiscali UK*, paragraph 47; of 29 January 2010 in case M.5730 – *Telefónica/Hansenet Telekommunikation*, paragraph 28.

geographic scope of the market should be defined on a national, regional basis or by reference to the footprint of the operators' networks, but ultimately left the question open.[54] More recently, in *Vodafone/Certain Liberty Global Assets*, the Commission considered the geographic scope of the retail market for the provision of fixed internet services was national in scope.[55]

(60) The Notifying Parties agree with the Commission's assessment and submit that the relevant market for the retail provision of fixed internet services is national in scope.[56]

(61) The Commission considers that, in any event, for the purposes of this decision, the exact geographic market definition with regard to the market for the retail supply of fixed internet access services can be left open, as the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement under any plausible geographic market definition.

4.3.4. Retail supply of TV services

(62) TV distributors either limit themselves to carrying TV channels and making them available to end users, or also act as channel aggregators, which "package" TV channels into "bouquet" retail offers. 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"), Transactional VOD ("TVOD") and Pay-Per-View ("PPV"). TV content can be delivered to end users through a number of technical platforms including terrestrial ("DTT"), cable, satellite and IPTV.[57] Over-The-Top ("OTT") players deliver channels and content in both a linear and non-linear fashion through the use of the internet.

(63) TEF is active in the retail supply of TV services in Spain whereas Prosegur Alarmas is not active in this market.

4.3.4.1. Product market definition

(64) In previous cases, the Commission distinguished two separate markets for the retail supply of television services: (i) Free-to-Air ("FTA") TV and (ii) pay-TV.[58] The

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54 Commission decisions of 4 February 2016 in case M.7637 – *Liberty Global/BASE Belgium*, recitals 62-64; of 18 October 2019 in case M.9433 – *MEIF 6 Fiber/KCOM Group*, paragraph 43.

55 Commission decision of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets*, recital 61.

56 Form CO, paragraph 171.

57 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.

58 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*, paragraph 20. In other cases this question has been left open (see for instance the Commission decisions of 5 September 2019 in case M.9416 – *Bolloré Group/M7 Group*, paragraph 51; of 15 July 2019 in case M.9370 – *Telenor/DNA*, paragraph 22; of 18 October 2019 in case M.9433 – *MEIF 6 Fiber/KCOM Group*, paragraph 53; of 30 May 2018 in case M.7000 – *Liberty Global/Ziggo*, paragraph 135; of 24 February 2015 in case M.7194 – *Liberty Global/Corelio/W&W/De Vijver Media*, recitals 119-120; of 25 June 2008 in case M.5121 – *News Corp/Premiere*, paragraphs 15 and 21).

Commission also considered whether pay-TV can be segmented further according to: (i) linear vs non-linear pay-TV services;[59] (ii) distribution technologies (e.g. cable, satellite, or terrestrial);[60] (ii) distribution technologies (e.g. cable, satellite, or terrestrial);[61] and (iii) premium vs basic pay-TV services.[62] In certain countries, due to the large penetration of pay-TV services and the fact that such services also carry the main FTA channels, the Commission has identified two separate product markets for: (i) basic pay-TV services (including FTA services) and (ii) premium pay-TV services. In previous cases, the Commission has left open the market definition with regard to each of these potential sub-segments.[63]

(65) The Notifying Parties submit that there is a single overall market for the retail provision of TV services.[64]

(66) The Commission considers that, in any event, for the purposes of this decision, the exact product market definition with regard to the market for the retail supply of TV services can be left open, as the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement under any plausible product market definition.

4.3.4.2. Geographic market definition

(67) The Commission has previously considered that the market for the retail provision of TV services is either national, or limited to the geographic coverage of a supplier's cable network.[65]

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59 Commission decisions of 5 September 2019 in case M.9416 – *Bolloré Group/M7 Group*, paragraph 51; of 15 July 2019 in case M.9370 – *Telenor/DNA*, paragraph 22; of 18 October 2019 in case M.9433 – *MEIF 6 Fiber/KCOM Group*, paragraph 53; of 30 May 2018 in case M.7000 – *Liberty Global/Ziggo*, paragraph 135; of 24 February 2015 in case M.7194 – *Liberty Global/Corelio/W&W/De Vijver Media*, recital 124; of 25 June 2008 in case M.5121 – *News Corp/Premiere*, paragraph 21.

60 Commission decisions of 5 September 2019 in case M.9416 – *Bolloré Group/M7 Group*, paragraph 51; of 15 July 2019 in case M.9370 – *Telenor/DNA*, paragraph 22; of 18 October 2019 in case M.9433 – *MEIF 6 Fiber/KCOM Group*, paragraph 53; of 30 May 2018 in case M.7000 – *Liberty Global/Ziggo*, paragraph 136; of 24 February 2015 in case M.7194 – *Liberty Global/Corelio/W&W/De Vijver Media*, recital 127; of 21 December 2010 in case M.5932 – *News Corp/BskyB*, paragraph 105; of 25 June 2008 in case M.5121 – *News Corp/Premiere*, paragraph 22.

61 Commission decisions of 5 September 2019 in case M.9416 – *Bolloré Group/M7 Group*, paragraph 51; of 15 July 2019 in case M.9370 – *Telenor/DNA*, paragraph 22; of 18 October 2019 in case M.9433 – *MEIF 6 Fiber/KCOM Group*, paragraph 53; of 30 May 2018 in case M.7000 – *Liberty Global/Ziggo*, paragraph 136; of 24 February 2015 in case M.7194 – *Liberty Global/Corelio/W&W/De Vijver Media*, recital 127; of 21 December 2010 in case M.5932 – *News Corp/BskyB*, paragraph 105; of 25 June 2008 in case M.5121 – *News Corp/Premiere*, paragraph 22.

62 Commission decisions of 5 September 2019 in case M.9416 – *Bolloré Group/M7 Group*, paragraph 51; of 15 July 2019 in case M.9370 – *Telenor/DNA*, paragraph 22; of 18 October 2019 in case M.9433 – *MEIF 6 Fiber/KCOM Group*, paragraph 53; of 24 February 2015 in case M.7194 – *Liberty Global/Corelio/W&W/De Vijver Media*, recital 119.

63 Commission decisions of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets*, recital 83; of 5 September 2019 in case M.9416 – Bolloré Group/M7 Group, paragraph 51; of 15 July 2019 in case M.9370 – *Telenor/DNA*, paragraph 22; of 15 June 2018 in case M.8861 – *Comcast/Sky*, paragraphs 57-59; of 7 April 2017 in case M.8354 – *Fox/Sky*, paragraph 101.

64 Notifying Parties' reply to RFI 11 of 13 February 2020, question 10.

65 Commission decisions of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets*, recital 88; of 5 September 2019 in case M.9416 – *Bolloré Group/M7 Group*, paragraph 55; of 24 February 2015 in case M.7194 – *Liberty Global/Corelio/W&W/De Vijver Media*.

(68) The Notifying Parties have not objected to the Commission's past decisional practice in relation to the market for the retail supply of TV services.[66]

(69) The Commission considers that, in any event, for the purposes of this decision, the exact geographic market definition with regard to the market for the retail supply of TV services can be left open, as the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement under any plausible geographic market definition.

4.3.5. Retail supply of multiple play services

(70) The term "multiple play" relates to offers comprising two or more of the following services provided to retail consumers: fixed telephony, fixed internet access, TV and mobile telecommunications 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.

(71) TEF is a supplier of multiple play services in Spain whereas Prosegur Alarmas is not active in this market.

4.3.5.1. Product market definition

(A) Commission precedents

(72) In previous decisions, the Commission considered, but ultimately left open, the existence of distinct markets for the supply of multiple play offerings that comprise a bundle of two or more telecommunication (fixed internet access, fixed telephony, mobile) and TV services.[67] In its previous analysis of this market,[68] the Commission examined the factors associated with the rise in popularity of multiple play offers. In particular, customers choose multiple play bundles mainly because of the lower price, additional benefits and convenience of having one supplier/point of contact. From the supply-side, operators offer bundled services as a tool to increase customer loyalty and reduce customer churn.

(B) The Notifying Parties' view

(73) The Notifying Parties consider that it is unlikely that there is a separate retail market for the provision of multiple play services due to potential demand-side

66 Notifying Parties' reply to RFI 11 of 13 February 2020, question 10.

67 Commission decisions of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets*, recital 161; of 30 May 2018 in case M.7000 – *Liberty Global/Ziggo*, paragraph 230; of 4 February 2016 in case M.7637 – *Liberty Global/BASE Belgium*, recital 96; of 19 May 2015 in case M.7421 *Orange/Jazztel*, recitals 86 and 91; of 20 September 2013 in case M.6990 – *Vodafone/Kabel Deutschland*, paragraph 261; of 3 July 2012 in case M.6584 – *Vodafone/Cable & Wireless*, paragraphs 102-104; of 16 June 2011 in case M.5900 – *LGI/KBW*, paragraphs 183-186; of 25 January 2010 in case M.5734 – *Liberty Global Europe/Unitymedia*, paragraphs 43-48.

68 See, for example, Commission decisions of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets*, recital 153; of 3 August 2016 in case M.7978 – *Vodafone/Liberty Global/Dutch JV*, paragraph 93.

substitutability between multi-play offerings and their separate component services.[69]

(C) The Commission's assessment

(74) The results of the market investigation conducted in the present case generally supported the possibility of a potential separate market for the retail supply of multiple play services. In particular, most respondents considered that quadruple play ("4P") offerings that comprise fixed internet access, fixed telephony, mobile and TV services have a high penetration in the Spanish residential market.[70]

(75) The Commission considers that, in any event, for the purposes of this decision, the exact product market definition with regard to the market for the retail supply of multiple play services can be left open, as the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement under any plausible product market definition.

4.3.5.2. Geographic market definition

(A) Commission precedents

(76) 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 left the exact geographic delineation of the possible multiple play market open.[71] However, in recent decisions, the Commission noted that bundles display their competitive effects on a national basis.[72]

(B) The Notifying Parties' view

(77) The Notifying Parties agree that a possible market for the retail provision of multiple play services is national in scope.[73]

(C) The Commission's assessment

(78) The market investigation in this case did not provide any new elements justifying a departure from the Commission's previous decisions.[74]

(79) The Commission considers that, for the purposes of this decision, the exact geographic market definition with regard to the market for the retail supply of multiple play services can be left open, as the Transaction does not raise serious

69 Form CO, paragraph 160.

70 Replies to questionnaire Q1 to telecommunications operators, questions 7 and 7.1.

71 Commission decisions of 18 October 2019 in case M.9433 – *MEIF 6 Fiber/KCOM Group*, paragraph 70; of 19 May 2015 in case M.7421 – *Orange/Jazztel*, recitals 89-90; of 20 September 2013 in case M.6990 – *Vodafone/Kabel Deutschland*, paragraphs 263-265; of 16 June 2011 in case M.5900 – *LGI/KBW*, paragraphs 183-186.

72 Commission decisions of 30 May 2018 in case M.7000 – *Liberty Global/Ziggo*, paragraph 232 of 18 July 2019 in case M.8864 – *Vodafone/Certain Liberty Global Assets*, recital 165.

73 Form CO, paragraph 173.

74 Replies to questionnaire Q1 to telecommunications operators, questions 7 and 7.1.

doubts as to its compatibility with the internal market or the functioning of the EEA Agreement under any plausible geographic market definition.

5. COMPETITIVE ASSESSMENT

5.1. Analytical framework

(80) Under Article 2(2) and Article 2(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.

(81) 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.

(82) As regards non-horizontal mergers, two broad types of such mergers can be distinguished: vertical mergers and conglomerate mergers.[75] Vertical mergers involve companies operating at different levels of the supply chain.[76] 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).[77]

(83) The Commission appraises horizontal effects in accordance with the guidance set out in the relevant notice, that is to say the Horizontal Merger Guidelines.[78] 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.

5.2. Affected markets

(84) The Transaction results in a limited horizontal overlap between the Parties' activities in the provision of security systems, more precisely in the provision of (i) alarm installation and maintenance services and (ii) alarm monitoring and response services to all, residential and business, customers in Spain. However, a horizontally affected market could only arise in the potential segment for alarm services for business customers. In this segment, the Parties had a combined market share of [20-30]% by value in Spain in 2018 (PCS [10-20]%, Prosegur Alarmas [5-10]% and TEF [0-5]%[79]). However, in light of TEF's *de minimis* presence in this segment, the

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75 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, paragraph 3.

76 Non-Horizontal Merger Guidelines, paragraph 4.

77 Non-Horizontal Merger Guidelines, paragraph 5.

78 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.

79 TEF's exact market share is [0-5]%.

increment of the Herfindahl-Hirschman Index ("HHI") of below 150 (i.e., 0.1) and the fact that sufficient credible competitors would remain (in particular Securitas Direct and Tyco with market shares of 34.9% and 23.1%, respectively), the Commission considers that the concentration does not raise serious doubts as to its compatibility with the common market in the potential segment for alarm services for business customers. As for the market for alarm services and the plausible segmentation for residential customers, in light of TEF's *de minimis* presence in the supply of alarm services, amounting to a market share of [0-5]%, and the Parties' combined market share of below 20%, there is no horizontally affected market. Therefore, the horizontal overlaps between the Parties will not be considered further.

(85) Moreover, TEF supplies M2M services, which are used as input for the provision of alarm services. Therefore, the Transaction gives rise to vertically affected markets in relation to TEF's activities in the upstream market for the supply of M2M services and Prosegur Alarmas' activities in the downstream market for the supply of alarm services (i.e., (i) alarm installation and maintenance services and (ii) alarm monitoring and response services to all, residential and business customers) in Spain.[80]

(86) The Transaction further results in a potential conglomerate relationship in relation to the potential bundling of TEF's and Prosegur Alarmas' services in the markets for telecommunication and TV services (i.e., (i) mobile telecommunication services, (ii) fixed telephony services, (iii) fixed internet access services, (iv) TV services and (v) multiple play services) and alarm services (i.e., (i) alarm installation and maintenance services and (ii) alarm monitoring and response services), which can be considered to be closely related markets for residential and SME customers[81], in Spain.

5.3. Market shares

(87) According to the Non-Horizontal Merger Guidelines, market shares provide useful first indications of the market structure and of the competitive importance of both the merging parties and their competitors.[82,83]

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80 Alarm services providers also purchase other telecommunication services, such as fixed telephony, mobile telecommunication and business connectivity. However, these do not give rise to meaningful vertical relationships. First, these concern standard telecommunication services, similar to those purchased by any other business customer. Second, among telecommunication services, M2M services are by far the most relevant cost category (Form CO, Annex 1.1, section 2.2., page 8). Third, alarm services providers responding to the market investigation have not identified any telecommunication services, other than M2M services, as important input to the provision of alarm services (Replies to questionnaire Q2 to alarm services providers, questions 3.1 and 13.3).

81 The potential bundling of telecommunication and alarm services for larger business customers was not identified as plausible scenario based on the market investigation and available evidence on industry trends. Moreover, Prosegur Alarmas and TEF are not active in the supply of alarm services to business customers and hence, in any case, there would be no Transaction-specific change in relation to business customers.

82 Non-Horizontal Merger Guidelines, paragraph 24.

83 The presented market shares for all markets cover the last three business years, i.e., 2016, 2017 and 2018, for which complete market share information is available. Market share information for the full year 2019 is not yet available.

5.3.1. *Markets for security systems*

(88) Table 1 sets out the Parties' and their main competitors' market shares in the overall market for alarm services in Spain by sales volume (i.e. number of connections) and sales value for the years 2016, 2017 and 2018.[84]

Table 1: Market shares for alarm services (Spain, 2016-2018)

	Volume			Value		
	2016 (in %)	**2017 (in %)**	**2018 (in %)**	**2016 (in %)**	**2017 (in %)**	**2018 (in %)**
TEF	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]
Prosegur Alarmas	[5-10]	[5-10]	[10-20]	[5-10]	[5-10]	[5-10]
PCS	[0-5]	[0-5]	[0-5]	[5-10]	[5-10]	[5-10]
Combined	**[10-20]**	**[10-20]**	**[10-20]**	**[10-20]**	**[10-20]**	**[10-20]**
Securitas Direct	[50-60]	[50-60]	[50-60]	[30-40]	[30-40]	[40-50]
Tyco	[0-5]	[0-5]	[5-10]	[5-10]	[10-20]	[10-20]
Ralset	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]
Centracontrol 24	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]
Others	[30-40]	[20-30]	[20-30]	[40-50]	[30-40]	[20-30]
Total	**100**	**100**	**100**	**100**	**100**	**100**

Source: Notifying Parties' reply to RFI 10 of 5 February 2020, question 14, Tables 7-9.

(89) Table 2 sets out the Parties' and their main competitors' market shares in the provision of alarm systems to residential customers in Spain by sales volume (i.e. number of connections) and sales value for the years 2016, 2017 and 2018.

Table 2: Market shares for alarm services to residential customers (Spain, 2016-2018)

	Volume			Value		
	2016 (in %)	**2017 (in %)**	**2018 (in %)**	**2016 (in %)**	**2017 (in %)**	**2018 (in %)**
TEF	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]
Prosegur Alarmas	[10-20]	[10-20]	[10-20]	[5-10]	[5-10]	[5-10]
Combined	**[10-20]**	**[10-20]**	**[10-20]**	**[5-10]**	**[5-10]**	**[5-10]**
Securitas Direct	[50-60]	[50-60]	[60-70]	[30-40]	[40-50]	[40-50]
Tyco	[0-5]	[0-5]	[0-5]	[5-10]	[10-20]	[10-20]
Ralset	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]
Centracontrol 24	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]
Others	[20-30]	[20-30]	[10-20]	[40-50]	[40-50]	[30-40]
Total	**100**	**100**	**100**	**100**	**100**	**100**

Source: Notifying Parties' reply to RFI 10 of 5 February 2020, question 14, Tables 10-12.

84 The market shares presented in Tables 1-3 are based on the report "Sistemas de seguridad (Febrero 2019)" by DBK, the Parties' best estimates and the Parties' actual sales volumes and values. The depicted market shares focus on the market for alarm services. Given that volume data only refers to the number of connections to an ARC, the information on volume remains identical as the number of connections to ARC does not vary between the overall market for alarm systems, the market for alarm installation and maintenance and the market for alarm monitoring and response. Market shares by value for the markets for alarm installation and maintenance as well as alarm monitoring and response services are not significantly different from the depicted market shares, but seem less reliable because they rely on additional assumptions. The JV's market share in an overall market for security systems is lower compared to the depicted market shares, as the JV is not active outside of alarm services.

(90) Based on Table 1 and Table 2, Prosegur Alarmas is the second (by volume) or third (by value) largest supplier of alarm services in Spain. It had a market share of [10-20]%/[10-20]% in volume terms and [5-10]%/[5-10]% in value terms for all/residential customers in 2018.

(91) TEF, through its subsidiary TIS, had only *de minimis* activities as a supplier of alarm services with a market share of [0-5]% in 2018, both by volume and by value in both possible markets. PCS had a value market share of [5-10]% in the provision of alarm services, but a volume market share of only [0-5]%. PCS is not active in the supply of alarm services to residential customers.

(92) Securitas Direct is the clear market leader with a market share of 56.2%/62.6% in volume terms and 40.3%/44.9% in value terms for all/residential customers in 2018. Tyco is the third (by volume) or second (by value) largest supplier of alarm services for all/residential customers in Spain. It had a market share of about 5% in volume terms and 10-20% in value terms in 2018.

(93) The rest of the market is fairly fragmented. The next largest competitors are Ralset and Centracontrol 24. A significant share of the markets for both all and residential customers is served by competitors with negligible market share.

(94) Table 3 sets out the Parties' and their main competitors' market shares in the provision of alarm systems to business customers in Spain by sales volume (i.e. number of connections) and sales value for the years 2016, 2017 and 2018.[85]

Table 3: Market shares for alarm services to business customers (Spain, 2016-2018)

	Volume			Value		
	2016 (in %)	**2017 (in %)**	**2018 (in %)**	**2016 (in %)**	**2017 (in %)**	**2018 (in %)**
TEF	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]
Prosegur Alarmas	[5-10]	[5-10]	[5-10]	[5-10]	[5-10]	[5-10]
PCS	[0-5]	[0-5]	[0-5]	[10-20]	[10-20]	[10-20]
Combined	**[10-20]**	**[10-20]**	**[10-20]**	**[20-30]**	**[20-30]**	**[20-30]**
Securitas Direct	[40-50]	[40-50]	[40-50]	[30-40]	[30-40]	[30-40]
Tyco	[5-10]	[5-10]	[5-10]	[5-10]	[10-20]	[20-30]
Ralset	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]
Centracontrol 24	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]
Others	[40-50]	[30-40]	[30-40]	[40-50]	[20-30]	[10-20]
Total	**100**	**100**	**100**	**100**	**100**	**100**

Source: Notifying Parties' reply to RFI 10 of 5 February 2020, question 14, Tables 13-15.

(95) With regard to the provision of alarm services to business customers, Prosegur Alarmas is the second (by volume) or fourth (by value) largest supplier of alarm services in Spain. It had a market share of [5-10]% in volume terms and [5-10]% in value terms in 2018. The Notifying Parties explain that Prosegur Alarmas' value market share is lower than its volume market share since the company mostly focuses on SME customers while other competitors offer relevant services to the

[85] The market shares for business customers include the provision of alarm services to SME customers, for which no separate market shares are available.

business segment, where higher prices apply for the provision of much more customized and higher value added services.

(96) PCS had a value market share of [10-20]%, but a volume market share of only [0-5]%. TEF, through its subsidiary TIS, again had only *de minimis* activities as a supplier of alarm services to business customers with a market share of [0-5]% in 2018, both by volume and by value.

(97) Securitas Direct is the clear market leader with a market share of [40-50]% by volume and [30-40]% by value in 2018. Tyco had a market share of [5-10]% by volume and [20-30]% by value in 2018.

5.3.2. Telecommunication markets

5.3.2.1. Retail supply of M2M services

(98) Table 4 sets out TEF's and its main competitors' market share in the market for the retail supply of M2M services in Spain by sales volume (i.e. number of subscribers) for the years 2016, 2017 and 2018.[86]

Table 4: Market shares for M2M services (Spain, 2016-2018)

Volume	2016 (in %)	2017 (in %)	2018 (in %)
TEF	**[40-50]**	**[40-50]**	**[30-40]**
Orange	[20-30]	[30-40]	[30-40]
Vodafone	[20-30]	[20-30]	[20-30]
Total	**100**	**100**	**100**

Source: Form CO, Tables 37-39.

(99) TEF is the leading supplier of M2M services in Spain. In 2018, TEF had a market share of [30-40]% in Spain, while Orange and Vodafone had market shares of [30-40]% and [20-30]%, respectively. TEF's market shares have decreased in the past three years from [40-50]% to [30-40]%. Orange has increased its market share from [20-30]% to [30-40]%. Likewise, Vodafone has increased its market share from [20-30]% to [20-30]%.

5.3.2.2. Retail supply of mobile telecommunication services

(100) Table 5 below sets out TEF's and its main competitors' market shares in the market for the retail supply of mobile telecommunication services to residential customers (excluding M2M services) in Spain by sales volume (i.e. number of subscribers) for the years 2016, 2017 and 2018.[87-88]

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86 The market shares are based on a CNMC report and on operators' key performance indicators. The Notifying Parties only provided market share estimates for the largest telecommunication operators, i.e., TEF, Orange and Vodafone, but were not able to accurately estimate Másmóvil's and Euskaltel's market shares. The market shares also do not include international operators which are active in the provision of M2M services in Spain, according to the Notifying Parties, but do not report their data to the CNMC. Market shares in value terms are not available. On a market broader than national, TEF would be likely to have lower market shares. For instance, on an EEA-wide market, as argued for by the Notifying Parties, TEF has a market share of below 5%.

87 In sections 5.3.2.2. to 5.3.2.6., the Commission has focussed on the presentation of market shares for residential customers, the type of customer for which the assessment of possible conglomerate effects is

Table 5: Market shares for mobile telecommunication services to residential customers (Spain, 2016-2018)

Volume	Pre-paid			Post-paid		
	2016 (in %)	2017 (in %)	2018 (in %)	2016 (in %)	2017 (in %)	2018 (in %)
TEF	**[10-20]**	**[10-20]**	**[10-20]**	**[20-30]**	**[20-30]**	**[30-40]**
Orange	[20-30]	[20-30]	[20-30]	[30-40]	[30-40]	[20-30]
Vodafone	[20-30]	[20-30]	[10-20]	[20-30]	[20-30]	[20-30]
Másmóvil	[0-5]	[5-10]	[10-20]	[0-5]	[10-20]	[10-20]
Yoigo	[5-10]	-	-	[5-10]	-	-
Others	[20-30]	[20-30]	[20-30]	[5-10]	[0-5]	[5-10]
Total	**100**	**100**	**100**	**100**	**100**	**100**

Source: Notifying Parties' reply to RFI 12 of 14 February 2020, question 2b. As of 2017, Másmóvil includes the market share of Yoigo, which was acquired by Másmóvil in 2018.

(101) TEF is the leading supplier of post-paid mobile telecommunication services to residential customers in Spain. In 2018, TEF had a market share of [30-40]%, while Orange and Vodafone had market shares of [20-30]% and [20-30]% respectively. The fourth largest supplier, Másmóvil, had a market share of [10-20]%. The rest of the market is fairly fragmented.

(102) TEF's market shares by volume for post-paid mobile telecommunication services have increased from [20-30]% in 2016 to [30-40]% in 2018. In the same period, the market shares of Orange and Vodafone have slightly decreased while Másmóvil has significantly increased its market share from [0-5]% in 2016 to [10-20]% in 2018.

(103) TEF is the fourth largest supplier of pre-paid mobile telecommunication services to residential customers in Spain. In 2018, TEF had a market share of [10-20]%, while Orange and Vodafone lead the market with market shares of [20-30]% and [10-20]% respectively. The third largest supplier, Másmóvil, had a market share of [10-20]%. The rest of the market is fairly fragmented.

(104) TEF's market shares by sales volume for pre-paid mobile telecommunication services have decreased from [10-20]% in 2016 to [10-20]% in 2018. In the same period, the market shares of Orange and Vodafone have slightly decreased while Másmóvil has significantly increased its market share from [0-5]% in 2016 to [10-20]% in 2018.

relevant (see footnote 81). As regards SME customers, the Commission considers that the structure of supply is likely to be similar as for residential customers, as residential and SME customers have similar needs and require similar services. SME-specific market shares are not available (Notifying Parties' reply to RFI 13 of 18 February 2020, question 2).

88 The market shares are based on a CNMC report and on TEF's internal information. In line with the market definition, the provided market shares for the retail mobile telecommunication market exclude M2M SIM cards. The depicted market shares distinguish between the pre-paid and post-paid segment as a potential bundling strategy is likely to focus on post-paid customers. TEF is active across Spain and there is no indication that its market share would be significantly higher in any specific region (Notifying Parties' reply to RFI 12 of 14 February 2020, question 2a).

5.3.2.3. Retail supply of fixed telephony services

(105) Table 6 below sets out TEF's and its main competitors' market shares in the market for the retail supply of fixed telephony services to residential customers in Spain by sales volume (i.e. number of subscribers) for the years 2016, 2017 and 2018.[89]

Table 6: Market share for fixed telephony services to residential customers (Spain, 2016-2018)

Volume	2016 (in %)	2017 (in %)	2018 (in %)
TEF	**[40-50]**	**[40-50]**	**[40-50]**
Orange	[20-30]	[20-30]	[20-30]
Vodafone	[20-30]	[20-30]	[20-30]
Másmóvil	[0-5]	[0-5]	[5-10]
Euskaltel	[0-5]	[0-5]	[0-5]
TeleCable	[0-5]	[0-5]	-
Others	[0-5]	[0-5]	[0-5]
Total	**100**	**100**	**100**

Source: Notifying Parties' response to RFI 10 of 5 February 2020, question 9, Tables 14, 16 and 18. As of 2018, Euskaltel includes the market share of TeleCable, which was acquired by Euskaltel in 2018.

(106) TEF is the leading supplier of retail fixed telephony services to residential customers in Spain. In 2018, TEF had a market share of [40-50]% by volume, while Orange and Vodafone had market shares of [20-30]% and [20-30]%, respectively. Smaller or local suppliers such as Másmóvil and Euskaltel have market shares of [5-10]% and [0-5]%, respectively.

(107) The market shares of TEF, Orange and Vodafone have slightly decreased in the past three years, while Másmóvil has managed to enter the market and reach a market share of [5-10]%.

5.3.2.4. Retail supply of fixed internet access services

(108) Table 7 below sets out TEF's and its main competitors' market shares in the market for the retail supply of fixed internet access services to residential customers in Spain by sales volume (i.e. number of subscribers) for the years 2016, 2017 and 2018.[90]

89 The market shares are based on a CNMC report. Market shares in value terms are not available. TEF is active across Spain and there is no indication that its market share would be significantly higher in any specific region (Notifying Parties' reply to RFI 12 of 14 February 2020, question 2a).

90 The market shares are based on a CNMC report. Market shares in value terms are not available. TEF is active across Spain and there is no indication that its market share would be significantly higher in any specific region (Notifying Parties' reply to RFI 12 of 14 February 2020, question 2a).

Table 7: Market share for fixed internet access services to residential customers (Spain, 2016-2018)

Volume	2016 (in %)	2017 (in %)	2018 (in %)
TEF	**[30-40]**	**[30-40]**	**[30-40]**
Orange	[30-40]	[30-40]	[20-30]
Vodafone	[20-30]	[20-30]	[20-30]
Másmóvil	[0-5]	[0-5]	[5-10]
Euskaltel	[0-5]	[0-5]	[0-5]
Procono	[0-5]	[0-5]	[0-5]
TeleCable	[0-5]	[0-5]	-
Others	[0-5]	[0-5]	[0-5]
Total	**100**	**100**	**100**

Source: Notifying Parties' reply to RFI 13 of 18 February 2020, question 1. As of 2018, Euskaltel includes the market share of TeleCable which was acquired by Euskaltel in 2018.

(109) TEF is the leading supplier of retail fixed internet access services to residential customers in Spain. In 2018, TEF had a market share of [30-40]% by volume, while Orange and Vodafone had market shares of [20-30]% and [20-30]%, respectively. The rest of the market is fairly fragmented. The next largest competitors are Másmóvil and Euskaltel.

(110) The market shares of TEF, Orange and Vodafone have decreased in the past three years. In the same time, Másmóvil entered the market and gained a market share of [5-10]%.

5.3.2.5. Retail supply of TV services

(111) Table 8 sets out TEF's and its main competitors' market shares in the overall market for the retail supply of TV services in Spain both by sales volume (i.e. number of subscribers) and sales values for the years 2016, 2017 and 2018.[91]

Table 8: Market shares for TV services (Spain, 2016-2018)

	Volume			Value		
	2016 (in %)	2017 (in %)	2018 (in %)	2016 (in %)	2017 (in %)	2018 (in %)
TEF	**[50-60]**	**[50-60]**	**[50-60]**	**[80-90]**	**[70-80]**	**[70-80]**
Vodafone	[20-30]	[20-30]	[10-20]	[5-10]	[10-20]	[5-10]
Orange	[5-10]	[5-10]	10.0	[0-5]	[0-5]	[5-10]
Euskaltel	[0-5]	[0-5]	[5-10]	[0-5]	[0-5]	[0-5]
TeleCable	[0-5]	[0-5]	-	[0-5]	[0-5]	-
Others	[5-10]	[5-10]	[5-10]	[0-5]	[0-5]	[0-5]
Total	**100**	**100**	**100**	**100**	**100**	**100**

Source: Notifying Parties' reply to RFI 10 of 5 February 2020, question 8, Tables 5-7. As of 2018, Euskaltel includes the market share of TeleCable which was acquired by Euskaltel in 2018.

[91] The market shares are based on a CNMC report. TEF was not able to provide any more detailed market shares reflecting the possible segments of the market for the supply of TV services. TEF is active across Spain and there is no indication that its market share would be significantly higher in any specific region (Notifying Parties' reply to RFI 12 of 14 February 2020, question 2a).

(112) TEF, who acquired the premium pay-TV operator DTS in 2015, is the leading supplier of retail TV services in Spain. In 2018, TEF had a market share of [50-60]% (by volume) or [70-80]% (by value), while Orange and Vodafone had market shares of [10-20]% (by volume) or [5-10]% (by value) and [10-20]% (by volume) or [5-10]% (by value), respectively. The rest of the market is fairly fragmented. The next largest competitor is Euskaltel. The market shares of TEF have stayed constant by volume in the past three years, but decreased by value from [80-70]% to [70-80]%.

(113) TEF was not able to provide a detailed set of market shares for the possible segments of the market for retail TV services. TEF estimates that it has a higher market share in the premium segment than in the basic one.[92]

5.3.2.6. Retail supply of multiple play services

(114) With regard to multiple play bundles, TEF commercialises the following bundles:

(a) 2P bundles: fixed telephony and fixed internet access;

(b) 3P bundles: fixed telephony, fixed internet access and mobile telephony;

(c) 4P bundles: fixed telephony, fixed internet access, mobile telephony and TV.[93]

(115) Table 9 below sets out TEF's and its main competitors' market shares in the market for the retail supply of 2P and 3P bundles in Spain by sales volume (i.e. number of subscribers) for the years 2016, 2017 and 2018.[94]

Table 9: Market shares for 2P and 3P bundles (Spain, 2016-2018)

Volume	2P			3P		
	2016 (in %)	2017 (in %)	2018 (in %)	2016 (in %)	2017 (in %)	2018 (in %)
TEF	**[20-30]**	**[20-30]**	**[20-30]**	**[20-30]**	**[10-20]**	**[10-20]**
Vodafone	[10-20]	[10-20]	[10-20]	[20-30]	[20-30]	[20-30]
Orange	[10-20]	[10-20]	[10-20]	[40-50]	[40-50]	[40-50]
Másmóvil	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[10-20]
Euskaltel	[5-10]	[5-10]	[0-5]	-	-	-
Cable Norte	-	-	-	[0-5]	[0-5]	[0-5]
Others[95]	[30-40]	[30-40]	[40-50]	-	-	-
Total	**100**	**100**	**100**	**100**	**100**	**100**

Source: Form CO, Tables 44-46; Notifying Parties reply to RFI 11 of 13 February 2020, question 2.

92 Notifying Parties' reply to RFI 12 of 14 February 2020, question 2c.

93 Notifying Parties' reply to RFI 11 of 13 February 2020, question 2.

94 The market shares are based on a DM report and on TEF's internal data. They are calculated on the basis of total subscribers as of the last quarter of each year. Market shares in value terms are not available. TEF is active across Spain and there is no indication that its market share would be significantly higher in any specific region (Notifying Parties' reply to RFI 12 of 14 February 2020, question 2a).

95 The "Others" category includes several local operators such as Procono or Adamo. Taking these operators together, their market share is relatively high because the main operators tend to focus on the 3P and 4P bundles and therefore have a lower market share in the 2P market (Notifying Parties' reply to RFI 13 of 18 February 2020, question 4).

(116) TEF is the leading supplier of 2P multiple play services and the third largest supplier of 3P multiple play services in Spain. In 2018, it had a market share of [50-60]% for 4P multiple play services and a market share of [10-20]% for 3P multiple play services.

(117) In the possible market for 3P multiple play services, Orange had a market share of [40-50]% in 2018, followed by Vodafone with a market share of [20-30]%. TEF's market share in the past three years has decreased from [20-30]% to [10-20]%, while Másmóvil has managed to enter the market and gain a market share of [10-20]%.

(118) Table 10 sets out TEF's and its main competitors' market shares in the market for the retail supply of 4P bundles in Spain both by sales volume (i.e. number of subscribers) for the years 2016, 2017 and 2018.[96]

Table 10: Market shares for 4P bundles (Spain, 2016-2018)

Volume	4P		
	2016 (in %)	2017 (in %)	2018 (in %)
TEF	**[50-60]**	**[50-60]**	**[50-60]**
Vodafone	[20-30]	[20-30]	[20-30]
Orange	[10-20]	[10-20]	[10-20]
Cable Norte	[5-10]	[5-10]	[5-10]
Másmóvil	[0-5]	[0-5]	[0-5]
Total	**100**	**100**	**100**

Source: Form CO, Tables 44-46.

(119) TEF is the leading supplier of 4P multiple play services in Spain. In 2018, it had a market share of [50-60]%.

(120) In the possible market for 4P multiple play services, in 2018, Vodafone and Orange had market shares of [20-30]% and [10-20]%, respectively. TEF's market share increased in the past three years from [50-60]% to [50-60]%, while Vodafone's market share decreased from [20-30]% to [20-30]% and Orange's market share remained constant. Másmóvil has entered the market, but it has only gained a market share of [0-5]% so far.

5.4. Vertical effects

5.4.1. Legal framework

(121) According to the Non-Horizontal Merger Guidelines, a vertical merger may significantly impede effective competition as a result of non-coordinated effects if such merger gives rise to foreclosure.

(122) The Non-Horizontal Merger Guidelines distinguish between two forms of foreclosure. Input foreclosure occurs where the merger is likely to raise the costs of downstream competitors by restricting their access to an important input. Customer

[96] The market shares are based on a DM report and on TEF's internal data They are calculated on the basis of total subscribers as of the last quarter of each year. TEF is active across Spain and there is no indication that its market share would be significantly higher in any specific region (Notifying Parties' reply to RFI 12 of 14 February 2020, question 2a).

foreclosure occurs where the merger is likely to foreclose upstream competitors by restricting their access to a sufficient customer base.

(123) In assessing the likelihood of an anticompetitive foreclosure scenario, the Commission examines, first, whether the merged entity would have, post-merger, the ability to substantially foreclose access to inputs or customers, second, whether it would have the incentive to do so, and third, whether a foreclosure strategy would have a significant detrimental effect on competition.[97]

(124) As regards ability to foreclose, under the Non-Horizontal Merger Guidelines, input foreclosure may lead to competition problems if the upstream input is important for the downstream product.[98] For input foreclosure to be a concern, a vertically integrated merged entity must have a significant degree of market power in the upstream market. It is only in those circumstances that the merged entity can be expected to have significant influence on the conditions of competition in the upstream market and thus, possibly, on prices and supply conditions in the downstream market.[99]

(125) With respect to incentives to foreclose, paragraph 40 of the Non-Horizontal Merger Guidelines states that the incentive of the merged entity to foreclose depends on the degree to which foreclosure would be profitable. The vertically integrated firm will take into account how its supply of inputs to competitors downstream will affect not only the profits of its upstream division, but also of its downstream division. Essentially, the merged entity faces a trade-off between the profit lost in the upstream market due to a reduction of input sales to (actual or potential) rivals and the profit gain, in the short or longer term, from expanding sales downstream or, as the case may be, being able to raise prices for consumers.[100] Additionally, paragraph 42 of the Non-Horizontal Merger Guidelines indicates that "[t]he incentive for the integrated firm to raise rivals' costs further depends on the extent to which downstream demand is likely to be diverted away from foreclosed rivals and the share of that diverted demand that the downstream division of the integrated firm can capture".

(126) As regards the effects of input foreclosure, the Non-Horizontal Merger Guidelines explain that such conduct raises competition concerns when it leads to increased prices on the downstream market. First, anticompetitive foreclosure may occur when a vertical merger allows the merging parties to increase the costs of downstream rivals in the market thereby leading to upward pressure on their sales prices. Second, effective competition may be significantly impeded by raising barriers to entry to potential competitors.[101] The Non-Horizontal Merger Guidelines further state that if there remain sufficient credible downstream competitors whose costs are not likely to be raised, for example because they are themselves vertically integrated or they are capable of switching to adequate alternative inputs, competition from those firms

97 Non-Horizontal Merger Guidelines, paragraph 32.
98 Non-Horizontal Merger Guidelines, paragraph 34.
99 Non-Horizontal Merger Guidelines, paragraph 35.
100 Non-Horizontal Merger Guidelines, paragraph 40.
101 Non-Horizontal Merger Guidelines, paragraphs 47-49.

may constitute a sufficient constraint on the merged entity and therefore prevent output prices from rising above pre-merger levels.[102]

(127) For customer foreclosure to be a concern, a vertical merger must involve a company which is an important customer with a significant degree of market power in the downstream market. If, on the contrary, there is a sufficiently large customer base, at present or in the future, that is likely to turn to independent suppliers, the Commission is unlikely to raise competition concerns on that ground.[103]

5.4.2. Assessment of potential input foreclosure

(128) This section assesses the risk of input foreclosure with regard to M2M services as M2M services are used as input in the provision of alarm services, i.e., concerning the possible markets for (i) alarm installation and maintenance and (ii) alarm monitoring and response services for all, residential and business customers in Spain.[104] The possible segmentations by type of alarm service and type of customer do not have any impact on the competitive assessment and therefore the assessment focusses on the downstream market for the provision of alarm services to all customers.

5.4.2.1. The Notifying Parties' views

(129) The Notifying Parties submit that TEF will not have the ability or the incentive to restrict access to M2M services or to raise prices to downstream competitors of Prosegur Alarmas post-Transaction.[105]

As regards ability

(130) First, the Notifying Parties submit that M2M services do not constitute an important input for the provision of alarm services. They note that M2M services are a pure commodity in the context of the provision of alarm services. Accordingly, there is no specific technology or differentiation among different telecommunication providers. M2M services would only represent about [0-5]% of the total cost of Prosegur Alarmas' products and services. Moreover, the Notifying Parties argue that M2M services are mainly used as backup line, while the end customer's fixed internet access connection would usually be used as primary source of connectivity. Nevertheless, the Notifying Parties acknowledge that it is advisable for alarm services providers to have more than one M2M services provider in order to ensure universal geographic coverage.[106]

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102 Non-Horizontal Merger Guidelines, paragraph 50.

103 Non-Horizontal Merger Guidelines, paragraph 61.

104 The assessment focusses on input foreclosure. Customer foreclosure can be excluded, considering that the telecommunication services acquired by Prosegur Alarmas represent […] share of the total revenues of TEF's rival telecommunications providers. In particular, according to the Notifying Parties, Prosegur Alarmas' expenditure in telecommunication services (including M2M services as one service) represents less than [0-5]% of the total joint revenues of TEF's rivals (Form CO, Annex 1.1, section 2.3, page 19). Therefore, TEF's rivals would not face any appreciable competitive disadvantage if the JV started acquiring services exclusively from TEF.

105 Form CO, paragraphs 188-207.

106 Form CO, Annex 1.1, section 2.2.1, pages 9-12.

(131) Second, the Notifying Parties submit that TEF would not have a significant degree of market power in the upstream market. On the one hand, the Notifying Parties point out that TEF's market share in the provision of M2M services in Spain has decreased from [40-50]% in 2016 to [30-40]% in 2018 while TEF's main competitors, Orange and Vodafone, were able to increase their market shares. On the other hand, they explain that TEF would continue to face substantial competition from international operators (e.g. AT&T, SFR, TIM, Telenor, T-Mobile), that provide M2M services in Spain based on roaming agreements and which would be credible alternative suppliers for alarm services providers.[107]

As regards incentives

(132) The Notifying Parties emphasise that TEF would never jeopardise its position in the telecommunication market, which is its core business, in favour of Prosegur Alarmas' presence in alarm services. In 2018, TEF has more than […] subscribers to its Movistar Fusión multiple play product alone whereas Prosegur Alarmas has only […] subscribers to its alarm services.[108]

(133) Moreover, Prosegur Alarmas would have a moderate market share of about [10-20]% in the downstream market for the provision of alarm services, which would limit the base of sales on which the JV could potentially enjoy increased margins following a foreclosure strategy.[109]

As regards effects

(134) The Notifying Parties argue that even if TEF tried to foreclose competing suppliers of alarm services, TEF would not be able to generate a competitive disadvantage to competitors given the low share that M2M services represent of the total costs for alarm services providers and the existence of credible alternative suppliers of M2M services.[110]

5.4.2.2. The Commission's assessment

(135) For the reasons set out below, the Commission considers that TEF will not have the ability and incentive to foreclose non-integrated competitors by engaging in input foreclosure, e.g. by stopping the supply of M2M services to the JV's rivals or to provide M2M services at less favourable terms and conditions than pre-Transaction. Furthermore, even if TEF tried to engage in input foreclosure, such a strategy would not have a significantly detrimental effect on competition.

As regards ability

(136) The Commission considers that TEF is unlikely to have the ability to engage in an input foreclosure strategy.

(137) As explained by the Notifying Parties, alarm services can and are often provided based on the fixed telecommunication service contracted by the end customer. In this

[107] Form CO, Annex 1.1, section 2.2.1, pages 12-15.
[108] Form CO, Annex 1.1, section 2.2.2, pages 15-18.
[109] Form CO, Annex 1.1, table 8, page 23.
[110] Form CO, Annex 1.1, section 2.2.3, pages 18-19.

case, there is no wholesale relationship between the telecommunication operators and alarm services providers, as the alarm systems use the fixed internet access already installed at the client's property.[111]

(138) However, all alarm services providers responding to the market investigation confirmed that they also use M2M services in their alarm systems.[112] While many alarm services providers use M2M services as primary source of connectivity, others employ M2M services only as a back-up line. There are mixed views as to whether a M2M connection is essential for the provision of alarm services, but the majority of respondents are of the view that a M2M connection, either as primary or back-up solution, is very important for the provision of alarm services. One respondent explains that M2M services deliver an essential component of its services, allowing for access control, alarm triggering, SOS requests and general communication with the ARC.[113] Therefore, the Commission considers that it cannot be excluded that M2M services constitute an important input without which alarm services could not effectively be sold on the market.

(139) For input foreclosure to be a concern, the Parties must have a significant degree of market power and a significant influence on the conditions of competition in the upstream market. TEF is the market leader in the provision of M2M services with a share of [30-40]% in 2018, followed by Orange and Vodafone with market shares of [30-40] and [20-30]%, respectively.[114] The three Spanish MNOs are the main providers of M2M services in an overall concentrated market. Each of the MNOs active on this market is likely to have some degree of market power but not a significant degree of market power in light of the existence of at least two alternative suppliers with strong positions.

(140) Moreover, the results of the market investigation provided further elements to support the view that TEF is unlikely have to a significant degree of market power in the upstream market, both in general and specifically with regard to providers of alarm services.

(141) First, respondents to the market investigation indicated that there are several credible alternative suppliers of M2M services for alarm services providers in Spain.[115] Respondents mentioned Orange and Vodafone but also referred to Másmóvil and Euskaltel, for which the Notifying Parties have not provided market share estimates. Therefore, there are at least three main competitors and two smaller competitors active on the Spanish market for M2M services.

(142) Second, some alarm services providers indicated that international telecommunication operators and/or resellers offering M2M services in Spain based on roaming agreements can be considered as credible alternative suppliers.[116] While the provision of M2M services by non-Spanish operators is not considered to be part

111 Form CO, paragraph 17.

112 Replies to questionnaire Q2 to alarm services providers, question 13.

113 Replies to questionnaire Q2 to alarm services providers, questions 13.1-13.5; non-confidential submission of a competitor of Prosegur Alarmas of 13 February 2020, page 2.

114 Form CO, table 39.

115 Replies to questionnaire Q1 to telecommunications operators, question 16; Replies to questionnaire Q2 to alarm services providers, question 16.

116 Replies to questionnaire Q2 to alarm services providers, questions 10 and 10.1.

of the relevant market (as explained in section 4.3.1.2), the results of the market investigation suggest that non-Spanish operators and/or resellers represent a certain competitive constraint for some alarm services providers. Nevertheless, other alarm services providers indicated that non-Spanish operators are not competitive in terms of price and service.[117]

(143) Third, respondents to the market investigation explained that alarm services providers do not have any special requirements in terms of price, quality or coverage. One Spanish MNO explained: "*M2M services provided to security services providers are similar to M2M services offered to other customers, they do not have specific requirements in terms of price, quality or coverage. Services are based on mobile voice, data or SMS services to connect the alarm systems of end customers*."[118]

(144) Fourth, the results of the market investigation confirmed that there are generally no spots or wider geographic areas in Spain where TEF is the only viable operator with sufficient network coverage.[119] This is also in line with the results of Umlaut's 2019 study on data service network coverage for the main Spanish mobile telecommunication providers, in urban and non-urban areas.[120] The results of this study show that the level of coverage is close to 100% for all providers. This is further corroborated by the fact that not all alarm services providers responding to the market investigation currently purchase M2M cards from TEF. Some rely exclusively on TEF's competitors, such as Vodafone and Orange, which shows that TEF is dispensable.[121]

(145) In case mobile connectivity of one or several MNOs should be poor or unstable in a very specific location of the alarm device, respondents explain that alarm services providers can still ensure connectivity by relying either on roaming agreements between different MNOs or on a fixed internet access connection.[122]

(146) In the course of the market investigation, only one alarm services provider submitted a significantly different view and considered that TEF's M2M services are an essential input which is not replicable by other suppliers in certain areas of Spain.[123] This complainant itself acknowledges that "*all these three telecoms operators [TEF, Vodafone, Orange] can grant coverage in more than 99% of Spain*"[124], however, it submits that the strength of the signal can vary between operators which could have an impact of the reliability of the alarm system. These concerns are inconsistent with the majority view expressed by other alarm services providers which explain that

117 Replies to questionnaire Q2 to alarm services providers, questions 10 and 10.1.

118 Replies to questionnaire Q1 to telecommunications operators, question 13.1; Replies to questionnaire Q2 to alarm services providers, question 13.1.

119 Replies to questionnaire Q1 to telecommunications operators, question 16.3; Replies to questionnaire Q2 to alarm services providers, question 13.1.

120 Umlaut, 2019, El análisis de las redes de telefonía móvil en España en 2019. This study is based on 1 600 million observations obtained from 154 000 users between April and September 2019.

121 Replies to questionnaire Q2 to alarm services providers, question 15.1.

122 Replies to questionnaire Q1 to telecommunications operators, question 11; Replies to questionnaire Q2 to alarm services providers, question 13.2.

123 Replies to questionnaire Q2 to alarm services providers, questions 13-16.3.

124 Replies to questionnaire Q2 to alarm services providers, question 16.1.

there are numerous alternative suppliers of M2M services with a sufficient level of service.

(147) Finally, as explained by the Notifying Parties, M2M services represent about […] of the total cost of Prosegur Alarmas' products and services.[125] Hence, any partial foreclosure strategy consisting in increasing the price of TEF's M2M services would not result in a significant increase in rival alarm services providers' costs. The market investigation did not provide any elements contesting the Notifying Parties' argument that M2M services do not constitute an important cost factor for alarm services providers.[126]

(148) In light of the explanations given in paragraphs (136) to (147), and in particular given the existence of alternative credible suppliers of M2M services, which are able to satisfy the requirements of alarm services providers in terms of price, quality and coverage, the Commission considers that TEF would not have the ability to foreclose its downstream rivals with regard to M2M services.

As regards incentives

(149) The Commission considers that TEF is unlikely to have an incentive to engage in an input foreclosure strategy.

(150) First, the Commission notes that TEF's main business focus are telecommunications rather than alarm services. Therefore, unless clearly profitable, it is unlikely that TEF would risk reputational damage by foreclosing its telecommunication customers from its M2M services.

(151) Second, the Notifying Parties' submission evidences that a potential foreclosure strategy would not be profitable. If TEF stopped supplying Prosegur Alarmas' main rivals, which are large corporate clients for TEF, this would lead to a certain and immediate loss of annual revenues which ranged between EUR […] and […] over the last four years.[127] It is unlikely that this loss would be compensated by any potential gain of customers or revenues in the alarms business, which is an ancillary activity for TEF and where TEF only has a 50% shareholding in the JV. Such gain in terms of additional clients and revenues in the alarms business due to the input foreclosure strategy is particularly unlikely considering that alarm services providers have equally credible alternative suppliers to TEF.[128]

(152) Third, a partial foreclosure strategy consisting in increasing the price of TEF's M2M services, would equally not be profitable. Considering that M2M services represent a very low proportion of alarm services providers' costs ([…]), such a strategy would

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125 Form CO, paragraph 191.

126 Replies to questionnaire Q2 to alarm services providers, question 13.

127 Form CO, Annex 1.1, Table 5, page 16.

128 The numerical analysis carried out by the Notifying Parties shows that the JV would need to obtain nearly […] as a result of the potential foreclosure strategy in order to compensate the loss of revenues from M2M services that TEF currently provides to Prosegur Alarmas' rival alarm operators (Form CO, Annex 1.1, Table 6, page 18). The analysis does not take into account that the JV may also be able to benefit from higher price levels downstream as a result from the lessening of competition. However, in any case, a foreclosure strategy is unlikely to be profitable also when taking this effect into account.

not significantly raise downstream rivals' costs and hence would not divert a significant share of customers from rival alarm services providers to TEF.

(153) Finally, the vast majority of respondents to the market investigation, both telecommunication and alarm services providers, indicated that TEF would not have the incentive to foreclose downstream competitors with regard to the provision of M2M services, i.e. to stop supplying M2M services or to provide M2M services at less favourable terms and conditions than today.[129]

(154) The Commission therefore concludes that TEF is unlikely to have the incentive to foreclose competing alarm services providers from its M2M services in Spain.

As regards effects

(155) Regardless of whether TEF has either the ability or the incentive to foreclose competing downstream rivals with regard to the supply of M2M services, such strategy would be unlikely to have any material impact on competition.

(156) First, if TEF decided to increase the price of M2M services, as explained in paragraph (147), this would not significantly raise rivals' costs and would hence not lead to increased prices in the downstream market.

(157) Second, if TEF decided to discontinue the supply or reduce the quality of its M2M services, alarm services providers could switch to alternative telecommunication operators. As explained in paragraphs (139) to (146), there are sufficient alternative suppliers of M2M services active on the Spanish market.

(158) Switching M2M services provider for new end users is costless for alarm services providers. There are some costs associated to switching M2M services provider for the existing customer base. In particular, alarm operators would have to replace the SIM card installed in the alarm equipment located in the end user's premises. According to internal estimates of Prosegur Alarmas, the costs of replacing the SIM card of an existing customer ranges between EUR […] and EUR […], comparable to […].[130]

(159) However, switching costs can be mitigated. First, most alarm services providers multi-source M2M services and hence would not have to replace all of their M2M cards. For instance, Prosegur Alarmas' main provider is [COMPANY], with […]% of its installed SIM cards, followed by [COMPANY] with […]% and [COMPANY] with […]%. Based on the number of its supplied SIM cards, TEF estimates that it represents less than […]% of the installed SIM cards in Securitas Direct's and Tyco's alarm systems and even less for other competitors. Second, the main cost associated to SIM cards replacement is the cost of the personnel who visits the end user's premises. The cost of switching can be reduced to EUR […], according to Prosegur Alarmas, if the SIM card is replaced during the alarm equipment maintenance operations that alarm operators need to carry out on an annual basis.[131]

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[129] Replies to questionnaire Q1 to telecommunications operators, question 15; Replies to questionnaire Q2 to alarm services providers, question 15.

[130] Form CO, Annex 1.1, section 2.2.1.3, pages 11-12.

[131] Form CO, Annex 1.1, section 2.2.1.3, pages 11-12.

5.4.2.3. Conclusion

(160) In light of the above considerations and based on the results of the market investigation, the Commission considers the Transaction does not give rise to serious doubts as to its compatibility with the internal market as a result of any input foreclosure strategy by the Parties with regard to M2M services.

5.5. Conglomerate effects

5.5.1. Legal framework

(161) According to the Non-Horizontal Merger Guidelines, in most circumstances, conglomerate mergers do not lead to competition problems.[132]

(162) However, foreclosure effects may arise when the combination of products in related markets may confer on the merged entity the ability and incentive to leverage a strong market position from one market to another closely related market by means of tying or bundling or other exclusionary practices. The Non-Horizontal Merger Guidelines distinguish between bundling, which usually refers to the way products are offered and priced by the merged entity[133] and tying, usually referring to situations where customers that purchase one good (the tying good) are required to also purchase another good from the producer (the tied good).

(163) Tying and bundling as such are common practices that often have no anticompetitive consequences. Nevertheless, in certain circumstances, these practices may lead to a reduction in actual or potential rivals' ability or incentive to compete. Foreclosure may also take more subtle forms, such as the degradation of the quality of the standalone product.[134] This may reduce the competitive pressure on the merged entity allowing it to increase prices.[135]

(164) In assessing the likelihood of such a scenario, the Commission examines, first, whether the merged firm would have the ability to foreclose its rivals,[136] second, whether it would have the economic incentive to do so[137] and, third, whether a foreclosure strategy would have a significant detrimental effect on competition, thus causing harm to consumers.[138] In practice, these factors are often examined together as they are closely intertwined.

(165) In order to be able to foreclose competitors, the merged entity must have a significant degree of market power, which does not necessarily amount to dominance, in one of the markets concerned. The effects of bundling or tying can only be expected to be substantial when at least one of the merging parties' products is viewed by many customers as particularly important and there are few relevant

132 Non-Horizontal Merger Guidelines, paragraph 92.

133 Within bundling practices, the distinction is also made between pure bundling and mixed bundling. In the case of pure bundling the products are only sold jointly in fixed proportions. With mixed bundling the products are also available separately, but the sum of the stand-alone prices is higher than the bundled price.

134 Non-Horizontal Merger Guidelines, paragraph 33.

135 Non-Horizontal Merger Guidelines, paragraph 93.

136 Non-Horizontal Merger Guidelines, paragraphs 95 to 104.

137 Non-Horizontal Merger Guidelines, paragraphs 105 to 110.

138 Non-Horizontal Merger Guidelines, paragraphs 111 to 118.

alternatives for that product.[139] Further, for foreclosure to be a potential concern, it must be the case that there is a large common pool of customers, which is more likely to be the case when the products are complementary.[140] Finally, bundling is less likely to lead to foreclosure if rival firms are able to deploy effective and timely counter-strategies, such as single-product companies combining their offers.[141]

(166) The incentive to foreclose rivals through bundling or tying depends on the degree to which this strategy is profitable.[142] Bundling and tying may entail losses or foregone revenues for the merged entity.[143] However, they may also allow the merged entity to increase profits by gaining market power in the tied goods market, protecting market power in the tying good market, or a combination of the two.[144]

(167) It is only when a sufficiently large fraction of market output is affected by foreclosure resulting from the concentration that the concentration may significantly impede effective competition. If there remain effective single-product players in either market, competition is unlikely to deteriorate following a conglomerate concentration.[145] The effect on competition needs to be assessed in light of countervailing factors such as the presence of countervailing buyer power or the likelihood that entry would maintain effective competition in the upstream or downstream markets.[146]

5.5.2. Assessment of potential conglomerate effects

(168) There are a number of recent examples of alliances between telecommunication operators and alarm services providers, as well as examples of telecommunication operators developing security solutions, both in Spain and worldwide. Some of them offer bundles of telecommunication and alarm services to residential and SME customers.[147] In light of this development, TEF's telecommunication offering can be seen as complementary to the alarm services supplied by Prosegur Alarmas, because some end customers may procure fixed telephony, fixed internet access, mobile, TV and alarm services from one and the same provider.

(169) This section therefore examines whether, given the conglomerate relationship identified above, the Transaction could lead to the foreclosure of alarm services providers that compete with Prosegur Alarmas, and/or the foreclosure of suppliers of telecommunication and TV services that compete with TEF, as a result of a bundling or tying strategy by the Parties.

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139 Non-Horizontal Merger Guidelines, paragraph 99.

140 Non-Horizontal Merger Guidelines, paragraph 100.

141 Non-Horizontal Merger Guidelines, paragraph 103.

142 Non-Horizontal Merger Guidelines, paragraph 105.

143 Non-Horizontal Merger Guidelines, paragraph 106.

144 Non-Horizontal Merger Guidelines, paragraph 108.

145 Non-Horizontal Merger Guidelines, paragraph 113.

146 Non-Horizontal Merger Guidelines, paragraph 114.

147 Similarly to multiple play telecommunication bundles, the benefits may accrue irrespective of whether customers have a single contract or separate contracts with the same provider or commercial partners for these services.

5.5.2.1. The Notifying Parties' views

(170) The Notifying Parties submit that the Parties will not have the ability or the incentive to adopt a bundling strategy aimed at foreclosing rivals post-Transaction.

As regards ability

(171) First, the Notifying Parties emphasise that the CNMC found TEF to have significant market power in the supply of fixed internet access (broadband) services. TEF is therefore subject to special rules including the replicability test (further discussed in paragraphs (187) to (193)). Should TEF bundle its fixed internet access services and the JV's services, the replicability obligation would also apply in relation to alarm services and TEF would be required to guarantee the replicability of that offer in terms of price.[148]

(172) Second, according to the Notifying Parties, alarm services have very specific features and requirements which are well differentiated from telecommunication services. Therefore, it would not make sense from a commercial point of view to bundle these products.[149] This would also be evidenced by TEF's past […] a bundled product in cooperation with Securitas Direct, which was sold between 2015 and 2018, […].[150]

(173) Third, the Notifying Parties submit that they do not have a significant degree of market power neither with respect to multiple play services nor in any plausible market definition related to alarm services, the latter being dominated by Securitas Direct, which has a market share of at least over [40-50]%.[151]

(174) Fourth, according to the Notifying Parties, competitors have effective counter-strategies available. Telecoms operators have started to developed their own security systems and/or have alliances with alarm services providers.[152] Besides such alliances, alarm services providers can find partners in other sectors, e.g. banks or insurance companies, to facilitate the commercialisation of their services.[153]

As regards incentives

(175) The Notifying Parties emphasise again that TEF would never jeopardize its position in the telecommunication market, which is its core business, in favour of Prosegur Alarmas' presence in alarm services.[154]

As regards effects

(176) The Notifying Parties argue that even if TEF adopted a bundling strategy aimed at foreclosing rivals post-Transaction, the replicability test would prevent TEF from

148 Form CO, paragraphs 216-221; Notifying Parties' reply to RFI 10 of 5 February 2020, question 2; Notifying Parties' reply to RFI 11 of 13 February 2020, question 5.
149 Form CO, paragraph 222.
150 Form CO, paragraph 204.
151 Form CO, paragraph 223.
152 Form CO, Annex 1.1, Table 13, pages 27-28.
153 Form CO, paragraph 223.
154 Form CO, paragraphs 226-227 and Form CO, Annex 1.1, section 3.3, pages 28-31.

launching a non-replicable offer and hence there would be no material effect on the market.[155]

5.5.2.2. The Commission's assessment

(177) The Commission carries out two assessments in relation to possible conglomerate effects between:

(a) The provision of telecommunication and TV services, i.e., concerning the markets for (i) mobile telecommunication services, (ii) fixed telephony services, (iii) fixed internet access services, (iv) TV services and (v) multiple play services for residential and SME customers in Spain; and

(b) The provision of alarm services, i.e., concerning the possible markets for (i) alarm installation and maintenance and (ii) alarm monitoring and response services for residential and SME customers in Spain.

(178) The first assessment consists in determining whether the Transaction would likely confer on the Parties the ability and incentive to leverage TEF's strong market position in the telecommunication markets into the alarm services markets, and whether this would have a significant detrimental effect on competition in the alarm services markets, thus causing harm to customers.

(179) The second assessment consists in determining whether the Transaction would likely confer on the Parties the ability and incentive to leverage Prosegur Alarmas' market position in the alarm services markets into any possible telecommunication markets, and whether this would have a significant detrimental effect on competition in the telecommunication markets, thus causing harm to customers.

(180) In relation to both assessments, the Commission focusses its analysis on the Parties' ability and incentive to engage in a mixed bundling strategy, i.e. incentivising the joint purchase of the Parties' own products by offering higher prices for the standalone products as compared to the price of the bundle of telecommunication and alarm services. In contrast, the Commission excludes from the outset the possibility that the Parties would have the incentive to engage in pure bundling or tying practices. Considering the relatively low penetration of alarm services in Spain and the existence of alternatives to TEF's telecommunication services and Prosegur Alarmas' alarm services, such strategy would have a significant cost in terms of loss of customers and revenues in TEF's core telecommunication business. Indeed, less than […]% of Spanish households currently use alarm services.[156] On the one hand, TEF, whose main business focus are telecommunication services, would never tie its services to the purchase of alarm services, which have a lower penetration. On the other hand, in order for the tying of alarm services to be profitable, the majority of telecommunication customers, which have not shown to effectively value or need alarm services in the past, would have to start purchasing alarm services.[157] Therefore, the Commission considers that it is highly unlikely that TEF would agree

155 Notifying Parties' reply to RFI 10 of 5 February 2020, question 2.

156 Form CO, paragraph 310.

157 The numerical analysis carried out by the Notifying Parties shows that a pure bundling strategy is profitable for TEF only when the majority of customers ([…]%) who are not interested in alarm services accept the bundle deal (Form CO, Annex 1.1, Table 14, page 30).

to such strategy. Finally, the concerns expressed in the market investigation also related to a possible mixed bundling strategy and not to pure bundling or tying strategies.[158]

(A) Leveraging the position of TEF in the telecommunication markets into the alarm services market where Prosegur Alarmas is active

(181) The Commission considers that the Parties will not have the ability to foreclose non-integrated alarm services providers. Even if the Parties engaged in a strategy to foreclose rivals through mixed bundling, such strategy would not have a significant detrimental effect on competition.

As regards ability

(182) As preliminary remark, the Commission does not agree with the Notifying Parties' argument that it would not be possible from a technical and commercial point of view to bundle telecommunication and alarm services (see paragraph (172)). As explained in paragraphs (205) to (206), there is a nascent trend towards the bundling of telecommunication and alarm and/or Peace of Mind services.

(183) As Table 11 summarises, TEF has a strong market position in several telecommunication and TV markets.

Table 11: Overview of TEF's position in the telecommunication markets (Spain, 2018)

Markets	Subscribers (in 000)	Volume market share (in %)	Value market share (in %)
Mobile (pre-paid)	[…]	[10-20]	-
Mobile (post-paid)	[…]	[30-40]	-
Fixed telephony	[…]	[40-50]	-
Fixed internet access	[…]	[30-40]	-
TV	[…]	[50-60]	[70-80]
Multiple play: 2P	[…]	[20-30]	-
Multiple play: 3P	[…]	[10-20]	-
Multiple play: 4P	[…]	[50-60]	-

Source: Section 5.3.2.

(184) TEF is the incumbent telecommunications operator in Spain. In 2018, it had a market share of about [30-40]% in several telecommunication markets. Its market share in the supply of TV services, following TEF's acquisition of DTS in 2015, was even higher, at about [60-70]% in volume terms and about [80-90]% in value terms.[159] While TEF's market share in the supply of 2P and 3P bundles was [20-30]% and [10-20]%, respectively, TEF had a high market share over [50-60]% with regard to the supply of 4P bundles, i.e. including mobile, fixed telephony, fixed internet access and TV services. As described in section 5.3.2, Orange and Vodafone are TEF's main competitors in each of these markets followed by Másmóvil and

158 Replies to questionnaire Q1 to telecommunications operators, question 18.2.

159 TEF is currently subject to commitments in relation to pay-TV markets imposed in case C/0612/14 TELEFÓNICA/DTS. According to the CNMC's decision, the commitments will be in force for, at least, an initial period of five years (i.e., until April 2020). Following this period, the CNMC will assess the situation of the market and whether to maintain them for three additional years. Accordingly, the Commission will not take such commitments into account as it remains uncertain whether the CNMC will prolong their duration.

Euskaltel. The market share information suggests that TEF may have a significant degree of market power in several telecommunications and TV markets.

(185) On this basis, several respondents to the market investigation submitted that TEF would be able to leverage its strong market position in several telecommunication and TV markets into the market for alarm services.[160] These respondents feared that TEF would, by offering a discounted bundled product consisting of telecommunication and alarm services, foreclose standalone providers of alarm services.

(186) The Commission considers that TEF would not be able to leverage its strong market position in the telecommunication markets into the market for alarm services.

(187) Importantly, TEF's ability to provide discounted bundled products is constrained by the applicable regulation. In the context of ex-ante regulation in the telecommunication sector, the CNMC identified TEF as an operator with significant market power in 2016.[161] Consequently, TEF is subject to specific obligations, including, amongst others, to guarantee that its conduct does not distort competition and infringe article 102 TFEU and to ensure replicability of TEF's retail broadband offer in terms of price. The objective of the replicability test is to assess the possibility of an alternative operator to replicate the retail offer of the incumbent operator. In March 2018, the CNMC approved a detailed methodology for turning the replicability obligation into a concrete test, the economic replicability test ("ERT"), where all the relevant revenues and costs incurred in the broadband bundle provision are identified, as well as other relevant information needed for the margin calculation, the customer life period or the identification of the flagship broadband bundles.[162]

(188) Before explaining the functioning of the ERT, it is important to note that the ERT applies to any components bundled with TEF's broadband product. This obligation would also apply in relation to alarm services as long as the alarm services are sold in a package with TEF's broadband product. In this case, TEF would be compelled to consider the additional costs referred to this service in a manner comparable to other additional components in the past.[163]

(189) In practice, the ERT covers the majority of TEF's fixed telecommunication and TV sales. In fact, besides TEF's […] subscribers of standalone fixed telephony services and […] subscribers of standalone TV services, its remaining subscribers purchase 2P ([…]), 3P ([…]) or 4P ([…]) bundled products, which always contain a broadband component.[164] In addition, TEF has […] subscribers of standalone mobile services. However, due to its product characteristics, the mobile component is less prone to be bundled with alarm services, which are more closely related to fixed telecommunication services. This was also confirmed by the market investigation. Respondents expect TEF to bundle Prosegur Alarmas' alarm services with TEF's

[160] Replies to questionnaire Q2 to alarm services providers, questions 17 and 17.1; non-confidential submission of a competitor of Prosegur Alarmas of 13 February 2020, page 2.

[161] Resolución de 24 de febrero de 2016. The resolution also defined the relevant markets (i.e., the markets for wholesale local access and wholesale broadband access) and the way they should be assessed.

[162] Notifying Parties' reply to RFI 10 of 5 February 2020, question 2.

[163] Notifying Parties' reply to RFI 10 of 5 February 2020, question 2.

[164] Notifying Parties' reply to RFI 10 of 5 February 2020, question 7

existing bundles, in particular its 4P bundle consisting of fixed telephony, fixed internet access, TV and mobile services, but not with its standalone mobile telecommunication services.[165] As for TEF's TV services, as mentioned, TEF has […] standalone TV subscribers.

(190) As for the functioning of the ERT, the CNMC regularly arranges TEF's fibre-based products by number of customers (from highest number of customers to lowest) until reaching 80% of TEF's fibre customer base.[166] All of TEF's current flagship products are 4P bundles.[167] The margin of each of these flagship products is calculated as the Net Present Value ("NPV") of all revenues generated and costs incurred in the provision of the flagship bundle during the customer life period with a discount rate equivalent to the last WACC[168] approved by CNMC. If the NPV of the flagship bundle is greater or equal to zero, the flagship bundle is held to be replicable by an alternative operator, otherwise wholesale network access service ("NEBA") charges must be reduced in order to restore the economic replicability of the flagship bundle.[169]

(191) For this analysis, the following cost categories are included: commercial costs, broadband (wholesale regulated) costs and internal network costs. In addition, depending on the product bundle, the following costs for the provision of additional components are included: fixed telephony costs (network access and traffic), mobile communication costs (voice, SMS and data), audio-visual costs (content rights and production) and any additional component costs. The last category includes any other components of the bundle such as software, online content (e.g., music, books, games) and any other value added services (e.g., parental control, antivirus, cloud storage or, in the future, alarm services). The value of the additional components is calculated according to the acquisition costs incurred by TEF.[170]

(192) The ERT ensures that any product which is offered in a bundle with a broadband product is replicable from TEF's various wholesale products so that (i) each of the telecoms element in the bundle has an associated wholesale product that is technically and economically replicable; and (ii) the bundle's overall margin (i.e., including telecoms elements and non-telecoms elements) is always positive.[171] In this context, the replicability test ensures that the associated cost of the "non-telecoms elements" is covered by the bundle revenues. As a result of the methodology implemented for this replicability test, TEF would sacrifice its NEBA wholesale revenues if any of its offers were not replicable.

(193) The CNMC applies the test to TEF's commercial offers at least every 6 months. This means that, in the hypothetical event that TEF launched a non-replicable offer, the

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165 Replies to questionnaire Q1 to telecommunications operators, question 18.2.

166 These flagship products are those most commonly contracted by TEF's customers (https://blog.cnmc.es/2019/05/03/test-de-replicabilidad-y-productos-emblematicos-de-que-estamos-hablando/). In addition, the CNMC has the ability to identify a product as "flagship" because of its characteristics or the high impact on the market, even if the product does not meet the 80% rule (for example, a new attractive product or a product that is disruptive in the market).

167 Notifying Parties' reply to RFI 12 of 14 February 2020, question 1.

168 WACC stands for weighted average cost of capital.

169 Notifying Parties' reply to RFI 10 of 5 February 2020, question 3, Annex 1, section 2, pages 3-5.

170 Notifying Parties' response to RFI 10 of 5 February 2020, question 2.

171 Notifying Parties' response to RFI 10 of 5 February 2020, question 2b.

CNMC could intervene within a short timeframe by lowering the price of NEBA in order to make the offer replicable. If the mixed bundling strategy were the result of adding the alarm service to an existing significant commercial offer, then, TEF would have the obligation to notify the offer to the CNMC before launching it to the market. In this case, the test would be applied ex ante, which means that the offer could be launched only if it is replicable.[172]

(194) Based on the latest results of the ERT from the first half of 2019, the average monthly discount that TEF could apply to its flagship products would be approximately […], […], as illustrated in Table 12.

Table 12: Monthly average discounts under ERT

Type of 4P bundle	Subscribers (in 000)	Monthly margin
F+1 600	[…]	[…]
F+1 100	[…]	[…]
Fusión +2 600	[…]	[…]
Fusión series 100	[…]	[…]
Fusión series 600	[…]	[…]
Fusión 0 100	[…]	[…]
Fusión +4 600	[…]	[…]

Source: Notifying Parties' reply to RFI 12 of 14 February 2020, question 1.

(195) In comparison to alarm services' average revenue per user […], the Commission considers that the level of the highest possible discounts under the ERT are moderate, […]. Otherwise, the upper limits on possible discounts ensure that that both bundled and standalone offers of competing alarm services suppliers will remain equally attractive post-Transaction. In any case, TEF is unlikely to invest its full margin on discounts regarding the alarm component. The JV's business plan foresees much smaller discounts (see paragraph (208)).

(196) The Commission considers that the replicability test ensures that TEF will not be able to leverage its market position in telecommunication services to make a non-replicable bundle to the detriment of alarm services providers. Any alarm operator as efficient as TEF's supplier (i.e., Prosegur Alarmas) can build a convergent product by partnering with a telecoms operator, replicating the price of TEF's product and, if they so wish, supporting it over TEF's own wholesale telecoms services. Moreover, an alarm operator, as efficient as Prosegur Alarmas, who does not package its service with telecoms services will be able to compete to reach almost the entire customer base of the market, since it is guaranteed that the price of TEF's bundle will necessarily cover the alternative alarm supplier's costs (as explained in paragraphs (190) to (192)) and the possible discounts are mostly moderate. In addition, it is important to note that there is a sufficient number of stand-alone telecommunication operators active on the Spanish market so that consumers would effectively be able to continue to mix-and-match telecommunication and alarm services and alarm services providers would be able to find partner, if they wished to team up.

(197) While TEF is the main telecommunication service provider in Spain, there are other relevant alternative providers, whose products are interchangeable with TEF's products. As set out in section 5.3.2, Orange and Vodafone both have market shares in the range of 20-30% in the supply of fixed telephony, fixed internet access

[172] Notifying Parties' response to RFI 10 of 5 February 2020, question 3, Annex 1, section 2, page 4.

services and mobile telecommunication services. In the supply of TV services, they both have market shares in the range of 10-20%. While Orange is the market leader with respect to the supply of 3P bundles (about 50% market share), Vodafone and Orange are respectively the second (20-30%) and third largest (10-20%) suppliers of 4P bundles after TEF with a market share of about 50%. Moreover, TEF's market share in the various telecommunication and TV markets has been decreasing over the last three years and has further decreased in the first three quarters of 2019.[173] In the same period, Másmóvil has increased its market share from a *de minimis* position to [5-10]% in the supply of fixed telephony and [5-10]% in the supply of fixed internet access services in 2018 (and further to [5-10]% in the first three quarters of 2019).

(198) Finally, it is important to mention that competing alarm services providers have effective counterstrategies available, such as entering into similar co-operations or proposing different kinds of bundles, if the offering of a bundled product became an important competitive advantage. Competitors are already employing such strategies today. For instance, Tyco, the third largest provider of alarm services in Spain (and second largest in terms of sales values), has entered into a commercial partnership with Orange (for more details see Table 13 below).

(199) In addition to alliances with telecommunication operators, alarm services providers have other alternatives to replicate any competitive advantage that the proposed JV may achieve thanks to a potential bundled offer. In particular, alarm operators could use companies from other sectors (for example, the financial sector) in order to increase their distribution channels and effectively compete. In fact, in June 2018, Securitas Direct made a commercial alliance with CaixaBank by virtue of which the financial entity distributes through its 4 743 distribution points of sales the alarm systems developed by Securitas Direct with advantageous financial conditions. According to the Notifying Parties, the number of distribution points owned by CaixaBank is significantly higher than the number of TEF's distribution points ([…]). In addition, Securitas Direct has a commercial agreement with one of the main insurance companies in Spain, Mapfre, by virtue of which Mapfre distributes Securitas Direct's alarm services.[174]

(200) Hence, competing alarm services providers have already started entering into partnerships and they can continue to team up, with telecommunication operators or other partners, if the provision of a bundled product should become an important competitive advantage.

As regards incentives

(201) The Commission distinguishes between TEF's incentive to engage in a mixed bundling strategy offering a (i) non-replicable bundled product and (ii) a replicable bundled offer.

(202) With regard to a non-replicable offer, the Commission considers that it is highly unlikely that TEF would have incentives to launch a non-replicable offer to the market, considering that any significant commercial offer by TEF is subject to a

[173] Form CO, Annex 1.1, Table 10, pages 24-25.

[174] Form CO, Annex 1.1, section 3.2.3, pages 26-28.

replicability test and that if any of TEF's offers does not pass the test this would automatically lead to a significant loss in terms of reduction of TEF's wholesale NEBA prices and revenues.

(203) With regard to a replicable bundled product, the Commission considers that TEF has not only the technical ability to offer such a product but that it is likely to have the incentive to offer it.

(204) First, mixed bundling strategies do not generally involve substantial costs in terms of customer losses and thus companies will have the incentive to undertake them to the extent that products are sufficiently related and have a relevant common customer base.

(205) Second, the recent industry trend for co-operations between telecommunication and alarm services providers confirm that these products can be successfully bundled, are sufficiently related and have a relevant common customer base. In Spain, Orange and Tyco have entered into a commercial agreement. In addition, several Spanish telecommunication service providers, such as Vodafone, Euskaltel and R, have developed Peace of Mind solutions. Even if the latter are not considered to be part of the same product market as professional alarm services (as explained in section 4.2.1.3), bundles of telecommunication and Peace of Mind solution exert some competitive pressure on professional alarm services and more importantly point towards the same industry trend.

(206) Similar developments can be found in other European countries. Examples include the alarm and/or Peace of Mind solutions offered by SFR and Orange in France, British Telecom in the UK, and TIM in Italy. In particular, "Sicuritalia Protection 24" was developed by TIM and the alarm services provider Sicuritalia. There are further examples on a worldwide level, such as alarm services offered by AT&T in the US.

Table 13: Summary of alarm services provided by telecommunication providers in Europe

Country	Alarm service	Operator	Name of the product	Commercial offer
Spain	Alarm monitoring and response	Orange and Tyco	Alarma de Orange	Discount of EUR 260 in the first year if Orange's fibre and mobile services are also purchased
	Peace of Mind	Vodafone	V-home safety starter	No mobile internet consumption for accessing the service platform if Vodafone's mobile internet is also purchased
		Euskaltel	Euskaltel Life	No service fee if Euskaltel's broadband or TV, and mobile service are also purchased
		R	3Ollos R	
France	Peace of Mind	SFR	Pack Alarme Vidéo (Premium Pack Conecté)	
		Orange	Maison Protégéé	
Italy	Alarm monitoring and response	TIM and Sicuritalia	Sicuritalia Protection 24	
	Peace of Mind	TIM	TIM security	Only available for customers that have their home line (ADSL or fibre) with TIM
		Vodafone	V-home safety starter	No mobile internet consumption for accessing the service platform if Vodafone's mobile internet is also purchased
UK	Alarm monitoring and response, and Peace of Mind	BT	BT Redcare	

Source: Form CO, Annex 1.1, Table 13, pages 27-28.

(207) According to the Notifying Parties, in some of these cases, special commercial offers, such as discounts, are offered to customers who buy telecommunication services together with the alarm system and/or Peace of Mind solution.

(208) Therefore, the Commission considers that TEF may have the incentive, like some of the operators mentioned above, to offer monetary discounts or other kinds of advantages which depend on the purchase of the purchase of both telecommunication and alarm services. Indeed, the JV's business plan foresees discounts of EUR […] to […] on the monthly subscription price (EUR […] in 2020, EUR […] in 2021, EUR […] in 2022, EUR […] in 2023 and EUR […] in 2024), however, the discounts are not explicitly marked as bundle discounts.[175]

(209) Third, the Notifying Parties' own analysis confirmed that a mixed bundling strategy would be profitable for TEF. According to the Notifying Parties' results, a mixed bundling strategy would generate annual profits of around EUR […] for TEF. The Notifying Parties emphasise that the estimated profits from the mixed bundling strategy are rather insignificant as compared to the total profits obtained by TEF in

[175] Form CO, Annex 3.1.4.2; Notifying Parties' reply to RFI 11 of 13 February 2020, question 4.

its telecommunications and pay-TV business. In particular, they would represent only [0-5]% of TEF's overall profits in the Spanish telecommunication market in 2018. Nevertheless, this result further corroborates the likelihood of a mixed bundling strategy.

(210) Therefore, the Commission concludes that TEF is likely to have the incentive to engage in a mixed bundling strategy with regard to a replicable product bundle.

As regards effects

(211) The Commission considers that TEF will neither have the ability nor the incentive to offer a non-replicable product bundle. However, the Commission considers that TEF will have both the ability and incentive to offer a replicable bundled product.

(212) The Commission considers that, in any event, any potential mixed bundling strategy would be unlikely to result in a significant reduction of sales prospects by standalone rivals in the market leading to a reduction in rivals' ability or incentive to compete.

(213) First, the bundling of telecommunication and alarm services is a nascent industry trend which has a minimal market penetration at this stage. In the foreseeable future, it is unlikely that such bundles will divert a significant share of customers of standalone alarm services providers.

(214) Second, this is confirmed by the Notifying Parties' estimates regarding the JV's future market position. […]. Indeed, alarm services' household penetration of [0-10]% is currently below that of other developed countries (e.g. UK ([0-10]%), France ([10-20]%), Canada ([15-25]%) and the US ([20-30]%)). Importantly, the Notifying Parties assume that the residual market size for competitors will equally increase.

Table 14: Parties' best estimates of the JV's market share and market size in 2020-2024

	2020	2021	2022	2023	2024
JV's sales volumes	[…]	[…]	[…]	[…]	[…]
JV's market share	[…]	[…]	[…]	[…]	[…]
Market size	[…]	[…]	[…]	[…]	[…]
Residual market size	[…]	[…]	[…]	[…]	[…]
Market penetration	[…]	[…]	[…]	[…]	[…]

Source: Notifying Parties' reply to RFI 10 of 5 February 2020, question 1.

(B) Leveraging the position of Prosegur Alarmas in alarm services into the telecommunication markets where TEF is active

As regards ability

(215) The Commission considers that Prosegur Alarmas does not have a sufficient degree of market power to leverage its position in the supply of alarm services into the markets for telecommunication services.

(216) As set out in section 5.3.1, Prosegur Alarmas has a market share of only about [10-20]% in volume terms and [5-10]% in value terms in the market for alarm services in

Spain, with slighter higher shares for residential than for business customers.[176] There are numerous alternatives to the alarm services provided by the proposed JV that are equally or even more preferred by end customers. Securitas Direct is the clear market leader, with a market share of [50-60]% in terms of volume and [40-50]% in terms of value. Other competitors include Tyco, Ralset and Centracontrol 24.

(217) In addition, Securitas Direct's strong market positon is also confirmed by […]:[177]

(a) […]

(b) […]

(218) Most importantly, from the point of view of telecommunication providers, the customer overlap with alarm services is low. As explained in paragraph (214), the penetration level of alarm services in Spain stands at […] of Spanish households.

(219) Table 15 shows the share of TEF and other telecommunication service providers' customers who (i) have an alarm with Prosegur Alarmas, (ii) have an alarm with other alarm operator and (iii) do not have any alarm. […].

Table 15: Distribution of telecommunication and alarm services customers

	Prosegur Alarmas	Other alarm providers	No alarm system
TEF	[…]	[…]	[…]
Other telco operators	[…]	[…]	[…]

Source: Form CO, Annex 1.1, Table 12, page 26. Estimation based on TEF' internal data and best estimates.

(220) Therefore, from the point of view of telecommunication operators, a mixed bundling strategy would affect a relatively low proportion of telecommunication customers.

(221) In addition, as set out in paragraphs (187) to (197), any possible bundle would be subject to the replicability test.

(222) Moreover, as explained in paragraphs (198) to (200), telecommunication operators have effective counter-strategies available as can be seen by the activities of both of TEF's main competitors. Orange has a commercial partnership with Tyco, the third largest provider of alarm services in Spain (and second largest in terms of sales values), while Vodafone offers a Peace of Mind solution, which exerts some competitive pressure on traditional alarm systems.

As regards incentives

(223) As explained in paragraphs (201) to (210), the Commission concludes that TEF is likely to have the incentive to engage in a mixed bundling strategy with regard to a replicable product bundle.

(224) In addition, the Commission notes that the churn rate of TEF's bundled telecommunications and pay-TV customers ([10-20]%) was significantly higher than

[176] As explained in footnote 84, the market shares do not vary significantly between the provision of alarm installation and maintenance and the provision of alarm monitoring and response services.

[177] […].

of Prosegur Alarmas' customers ([5-10]%) in 2018.[178] This could provide an additional incentive for TEF to bundle its telecommunication and TV services with alarm services.

As regards effects

(225) The Commission considers that TEF will neither have the ability nor the incentive to offer a non-replicable product bundle. However, the Commission considers that TEF will have both the ability and incentive to offer a replicable bundled product.

(226) The Commission considers that a mixed bundling strategy would be unlikely to result in a significant reduction of sales prospects by standalone rivals in the market leading to a reduction in rivals' ability or incentive to compete.

(227) In particular with regard to competing telecommunication operators, the vast majority of their customers, currently more than […], do not purchase any alarm services. Even if the Parties would manage to attract additional customers, as estimated in Table 14, there remains a sufficiently large fraction of the market that is unaffected.

5.5.3. Assessment of possible leakage/misuse of information

5.5.3.1. Potential concern

(228) One respondent to the market investigation explained that TEF currently has access to different types of confidential and commercially sensitive information: (i) confidential end customer data; (ii) information derived from the provision of corporate telecommunication services to alarm services providers; and (iii) commercially sensitive or confidential data shared in the framework of commercial and R&D cooperation projects. The respondent expressed concerns that, following the Transaction, TEF could misuse this information, in particular by sharing it with Prosegur Alarmas, giving it an anti-competitive advantage in the alarm services market.[179]

(229) In particular, the respondent pointed to the following strategies TEF could deploy. First, TEF already today has access to a significant amount of personal data of its own customers of telecommunication services. On the one hand, it could pass this data on to Prosegur Alarmas, allowing it to develop new products and services tailored to meet each customer's specific needs. On the other hand, TEF could use this data to identify the customers of alarm services providers competing with Prosegur Alarmas and target them with advertising or promotional campaigns to make them switch to the security systems provided by Prosegur Alarmas.[180]

(230) Second, the respondent claimed that because TEF currently provides corporate telecommunication services to alarm services providers, it has access to their corporate communications with alarm service customers (even if these are not themselves TEF customers). TEF could use this information to target the end

[178] Notifying Parties' reply to RFI 10 of 5 February 2020, question 3, Annex 1, section 3.1.2, pages 9-11.
[179] Replies to questionnaire Q2 to alarm services providers, question 24.
[180] Non-confidential submission of a competitor of Prosegur Alarmas of 13 February 2020, page 2.

customers with advertising or promotional campaigns to make them switch to the security systems provided by Prosegur Alarmas.[181]

(231) Finally, the respondent has been involved in different commercial and R&D cooperation projects with TEF and has shared commercially sensitive information and internal know-how with it in this context. While this information was covered by confidentiality and non-disclosure obligations, the respondent fears that post-Transaction, TEF would share this information with Prosegur Alarmas in order to strengthen their position in and exclude competitors from the market for alarm systems.[182]

(232) In this context, the Commission has assessed the potential concern that TEF would misuse, and in particular pass on to Prosegur Alarmas personal data of end customers or commercially sensitive information of competing alarm operators, which Prosegur Alarmas could use to favour its own position on the alarm services market.

5.5.3.2. Commission's assessment

(233) The Commission notes that different considerations apply to personal data of end-customers and to commercially sensitive or confidential information of alarm operators.

(234) Regarding personal data of end-customers of telecommunication services, the Commission considers that the Parties would not have the ability to misuse this information, for the following reasons. First, if the final customer of security systems is not a TEF customer, but TEF provides the alarm operator with an M2M card, TEF is unable, from a technical point of view, to identify the customers of competing alarm services providers. Second, if the end customer purchases telecommunication services from TEF, but the alarm service it uses contains a M2M card provided by a different telecommunications provider, TEF would be technically unable to identify whether the customer has an alarm service and who the provider of such a service is. Finally, there are cases in which TEF provides both the telecommunication services of the end customer and the M2M card used by the alarm operator. In these cases, while under certain circumstances TEF might be able to technically identify and approach customers of competing suppliers, it would not have the legal ability to use the data for purposes that are not compatible with the original purpose for which the data was collected. This is because TEF has to comply with the Regulation (EU) 2016/679[183], which requires it to process data in a lawful and transparent manner and prevents TEF from using the personal data for other purposes that are not compatible with the original purpose the data was collected for.

(235) Regarding personal data of end-customers of alarm services, the Commission notes that while TEF provides the corporate telecommunication services to the alarm services providers, it does not collect the communication data between them and their customers.[184] Moreover, the Commission notes that, according to the Notifying

[181] Non-confidential submission of a competitor of Prosegur Alarmas of 13 February 2020, page 3.

[182] Replies to questionnaire Q2 to alarm services providers, question 24.

[183] OJ L 119, 4.5.2016, p. 1 (the "General Data Protection Regulation" or "GDPR").

[184] Notifying Parties' reply to RFI 11 of 13 February 2020, question 8.d.

Parties, TEF has no means to know who the specific end customers of alarm services providers are. Therefore, the Commission considers that TEF would not have the ability to misuse the communication data between alarm services providers and their customers in order to favour Prosegur Alarmas.

(236) As for confidential and/or commercially sensitive information that TEF has received from competing alarm services providers in the context of cooperation projects, the Commission notes that such information was protected by confidentiality and/or non-disclosure agreements between TEF and the alarm services providers.[185] These agreements prevent TEF from disclosing the information to third parties, during and even after the termination of the specific cooperation project.[186] The Commission also notes that both PCS and Prosegur Alarmas will remain third parties post-Transaction. In particular, Prosegur Alarmas will remain a separate legal entity, in which TEF will only own 50% of the shares. The Commission therefore considers that the information TEF received from competing alarm services providers is sufficiently protected, and that TEF does not have the ability to share any confidential and/or commercially sensitive information with Prosegur Alarmas in order to strengthen their position in and exclude competitors from the market for alarm systems.

(237) The Commission therefore considers that TEF would not have the ability to leak or misuse personal data of end customers or confidential and/or commercially sensitive information of competing alarm operators in order to favour Prosegur Alarmas on the market for alarm services.

5.5.4. Conclusion

(238) In light of the above considerations and based on the results of the market investigation, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the vertical, conglomerate and other effects resulting from the relationship between the markets for the supply of security systems and the markets for the supply of telecommunication services.

185 Notifying Parties' reply to RFI 12 of 17 February 2020, question 3.b and annexes 1-4.

186 Notifying Parties' reply to RFI 12 of 17 February 2020, question 3.b and annexes 2-4.

6. CONCLUSION

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

For the Commission

(Signed)
Margrethe VESTAGER
Executive Vice-President