Official Journal
of the European Union

EN
C series

C/2026/2652

22.5.2026

COMMISSION DECISION

of 24 September 2024

finding that, with the binding commitments, the foreign subsidies in the concentration do not distort the internal market

(Case FS.100011 – e&/PPF Telecom Group)

(C/2026/2652)

(notified under document C(2024) 6745)

(Only the English text is authentic)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, ([1])

Having regard to Regulation (EU) 2022/2560 of the European Parliament and of the Council of 14 December 2022 on foreign subsidies distorting the internal market, ([2]) and in particular Articles 11(3), 11(4), 25(3)(a) and 25(3)(b) thereof,

Having regard to the Commission's decision of 10 June 2024 to initiate an in-depth investigation pursuant to Article 10(3)(a) FSR (the 'Opening Decision'),

Having given the undertakings concerned the opportunity to make known their views on the objections raised by the Commission in the Opening Decision,

After consulting the Foreign Subsidies Advisory Committee,

Whereas:

1. INTRODUCTION

(1) On 26 April 2024, the European Commission (the 'Commission') received the notification of a proposed concentration pursuant to Article 21 FSR, by which Emirates Telecommunications Group Company P.J.S.C. (United Arab Emirates or 'UAE') ('e&' or the 'Notifying Party') will acquire sole control over PPF Telecom Group B.V. ('PPF' or the 'Target' and, together with the Notifying Party, the 'Parties') (the 'Transaction'). The Transaction will be carried out through the purchase of shares.

2. THE PARTIES

(2) e& is a telecommunications operator headquartered and based in Abu Dhabi (one of the seven emirates constituting the UAE as a federation), incorporated under Federal Law No. (1) of 1991 regarding the Emirates Telecommunications Group Company (the 'e& Law'). e& is controlled and majority-owned by the Emirates Investment Authority (the 'EIA'), which is the UAE sovereign fund, controlled and fully owned by the Federal Government of the UAE. ([3]) Pursuant further to the e& Law and e&'s articles of association, the EIA has been designated as a

([1]) OJ C 115, 9.8.2008, p. 47, ELI: http://data.europa.eu/eli/treaty/tfeu_2012/oj.

([2]) OJ L 330, 23.12.2022, p. 1, Regulation (EU) 2022/2560 of the European Parliament and of the Council of 14 December 2022 on foreign subsidies distorting the internal market (the 'FSR'), ELI: http://data.europa.eu/eli/reg/2022/2560/oj. All links in this Decision were last accessed on 28 and 29 August 2024.

([3]) Form FS-CO paragraph 6: '*In accordance with Federal Law No. 267/10 for 2009 and with effect from 1 January 2008, the Federal Government of the UAE transferred its 60% holding in e& to the EIA. […], all shareholders other than EIA have a non-controlling, minority interest and no influence over e& beyond the voting rights attached to their ordinary shares, such voting rights being widely dispersed among the numerous shareholders.*' In addition to holding a majority stake, the EIA is entitled (under articles 22 to 24 of e&'s articles of association) to nominate 7 of the 11 board members of e& and to appoint the chairman and vice-chairman of the board.

'Special Shareholder' and its consent is necessary in certain matters. ([4]) As such, and as confirmed by the Notifying Party itself, ([5]) e& and the EIA form part of the same undertaking.

(3) PPF Group N.V. (the 'Seller') is an international investment group that was founded in Czechia in 1991. It manages operations in 25 countries across Europe, North America, and Asia with telecommunications, media, financial services, e-commerce, real estate, mechanical engineering and biotechnology as its core lines of business.

(4) The Target is the telecommunications business of the Seller (except for the Czech telecommunications business, which will be carved out), which consists of telecommunications operations in Hungary, Bulgaria, Serbia, and Slovakia. The Target includes the Seller's (retail) telecommunications operations (Yettel in Bulgaria, Hungary and Serbia, and O2 in Slovakia) as well as the network infrastructure business (held through three subsidiaries regrouped under the name 'CETIN' in Bulgaria, Hungary and Serbia; ([6]) and 'O2 Slovakia Networks' in Slovakia). In total, the Target serves more than 10 million customers with combined revenues of EUR 1.8 billion in 2022.

3. **THE TRANSACTION**

(5) Pursuant to a share sale and purchase agreement dated 1 August 2023 (the 'SPA'), e& will directly acquire 50% plus one shares in the Target. As a result of the Transaction, the Target will issue preferred shares to e& that track the profits of the CETIN entities and ensure that e& receives a 50% plus one share economic interest in the CETIN business, the remaining being allocated to GIC Private Limited ('GIC') (30%) and the Seller (20%). Among other conditions precedent, the closing of the Transaction is conditional on e& and the Seller having agreed upon a shareholders' agreement (the 'Shareholders' Agreement'), to be entered into at closing, which will set out e&'s and the Seller's governance rights in the Target post-closing. e& and the Seller have prepared a draft Shareholders' Agreement in a substantially agreed form, to be entered into at closing, which provides that […] (*). The Shareholders' Agreement will therefore ensure that e& has sole control over the Target.

(6) In view of recital (5), e& will acquire sole control of the Target within the meaning of Article 20(1)(b) FSR.

(7) The consideration for the Transaction is EUR 2.15 billion, plus earn-out and claw-back payments of EUR 350 million and EUR 75 million respectively, subject to the meeting or failing of certain financial targets.

(8) In addition, e& and the Seller entered into certain agreements which aim to secure that the Seller will retain a non-controlling minority shareholding in the Target, for a period allowing e& to benefit from their experience and market knowledge. It has been agreed that that period will have a five-year duration and is subject to the exercise of a put option (the 'Put Option') for the Seller and a corresponding call option for e& (the 'Call Option').

([4]) The Special Shareholder's consent is required, for example, in matters related to e&'s shares and ownership, such as share capital increases, share listings, or mergers, to e&'s business, such as any '*substantial alteration of e&'s activity*', to e&'s financing, for instance through external financing exceeding a certain limit, as well as to e&'s term and liquidation. (See notably e& Law, articles 11 and 12, and e&'s articles of association, amongst others articles 1, 4, 5, 14, 18, 55 and 70).

([5]) See the Response to RFI 13 dated 5 August 2024, paragraph 43, where e& clarifies that it responded to question regarding the EIA (questions 6-15) on the basis that e& and the EIA form part of the same undertaking.

([6]) In particular, CETIN networks infrastructure in Bulgaria, Hungary and Serbia: CETIN Bulgaria EAD, CETIN d.o.o. Beograd – Novi Beograd, CETIN Hungary Zrt., together 'CETIN'.

(*) Confidential information.

4. NOTIFICATION THRESHOLDS

(9) Based on the information provided by the Parties:

(1) the Target is established in the Union, where it generates an aggregate turnover of EUR 1.8 billion, which is above the EUR 500 million threshold laid down in Article 20(3)(a) FSR; ([7]) and

(2) e& and the Target were granted combined aggregate foreign financial contributions ('FFCs') within the meaning of Article 3 FSR of more than EUR 50 million from third countries in the three years preceding the conclusion of the SPA.

(10) The Transaction thus exceeds the notification thresholds set out in Article 20(3) FSR.

5. PROCEDURE

(11) On 23 May 2024, the Commission sent e& a request for information ('RFI') pursuant to Article 13(2) FSR (the 'Request for information'), requiring that e& provide the requested information by 27 May 2024. On 28 May 2024, the Commission had still not received the requested information. Given that such information was necessary for its assessment, the Commission suspended the time limits referred to in Article 24(1) FSR from 27 May 2024 until either the receipt of the requested information, or the moment when the Commission informed the Notifying Party or any other persons involved, that the information requested was no longer necessary.

(12) On 29 May 2024, the Notifying Party provided its response to the RFI. After having assessed the completeness of the requested information, the Commission informed the Notifying Party that the suspension of the time limits referred to in Article 24(1) FSR could be deemed to have expired, pursuant to Article 23(3) of Commission Implementing Regulation (EU) 2023/1441 (the 'Implementing Regulation'). ([8]) Therefore, the time limits referred to in Article 24(1) FSR resumed as of 30 May 2024.

(13) On 4 June 2024 and 11 June 2024, the Commission held calls with five competitors of the Target.

(14) On 10 June 2024 the Commission adopted the Opening Decision.

(15) On 17 and 18 June 2024, the Commission sent RFIs, pursuant to Article 13(3) FSR, to 14 undertakings operating in the telecommunications industry and the three national regulatory authorities of the EU jurisdictions in which the Target is active. ([9])

(16) From 18 June 2024 until 21 June 2024, the Commission received responses to those RFIs from 11 telecommunications operators, including the main competitors of the Target in the internal market. ([10]) The three national regulatory authorities provided their response to that RFI in the period between 20 June 2024 and 24 June 2024. ([11])

(17) On 28 June 2024, the Notifying Party requested, pursuant to Article 24(4) FSR, to extend the time limits referred to in Article 24(1) FSR by 20 working days. The Commission took note of this request and updated the deadline of the in-depth investigation accordingly.

(18) On 16 July 2024, the Notifying Party submitted observations on the Opening Decision (the 'Observations on the Opening Decision'). In those observations the Notifying Party '*waive[d] its right under Article 42(1) and 42(4) FSR to require the Commission to inform it of the grounds on which it intends to adopt its decision, to submit observations and to request access to the file of the Commission*'.

([7]) Turnover calculated in accordance with Article 22 FSR.

([8]) OJ L 177, 12.07.2023, p. 1, Commission Implementing Regulation (EU) 2023/1441 of 10 July 2023 on detailed arrangements for the conduct of proceedings by the Commission pursuant to Regulation (EU) 2022/2560 of the European Parliament and of the Council on foreign subsidies distorting the internal market, ELI: http://data.europa.eu/eli/reg_impl/2023/1441/oj.

([9]) See the updated information provided as the Response to RFI 9 dated 14 June 2024.

([10]) ID384-1, ID402-2, ID843, ID404-1, ID407-1, ID425-1, ID428-2, ID430-2, ID433-3, ID440-1, ID667-1 and ID442-1 (including a complementary submission).

([11]) ID485-1, ID482-1 and ID417-1.

(19) On the same day, the Notifying Party submitted commitments pursuant to Article 7(2) FSR, together with an explanatory memorandum setting out the reasons according to which, in their view, those commitments were appropriate to fully and effectively eliminate the Commission's concerns. Pursuant to Article 24 FSR this had the effect of extending the time limit referred to in Article 24(1) FSR to 4 December 2024.

(20) On 17 July 2024, the Commission sent RFIs (the 'Market Test') to 12 third parties operating in the telecommunications industry, pursuant to Article 13(3) FSR. In the period between 22 July 2024 and 1 August 2024, the Commission received 11 responses. ([12])

(21) On 29 July 2024, the Commission services provided the Notifying Party with a summary of the outcome of the Market Test.

(22) On 24 June and on 30 July 2024, the Parties and the Commission held state of play meetings.

(23) On 5 August 2024, the Commission, pursuant to Article 13(3) FSR, sent RFIs to five banks active in the UAE.

(24) On 16 August 2024, the five contacted banks provided an initial response to that RFI, followed by additional submissions on 20 August 2024.

(25) On 19 August 2024, the Notifying Party submitted a signed version of the commitments.

(26) On 29 August 2024, the Commission sent a RFI to the Telecommunications And Digital Government Regulatory Authority, pursuant to Article 13(3) FSR. The TDRA provided its response on 2 September 2024.

(27) On 30 August 2024, the Commission sent an email to the Notifying Party to inform it of its intention to rely on facts available to take a decision. On 2 September 2024, the Notifying Party provided its response.

(28) On 6 September 2024, the Commission submitted the draft decision to the Advisory Committee for its advisory opinion, pursuant to Article 48(2) FSR.

(29) On 20 September 2024, a meeting of the Advisory Committee was convened to discuss the draft decision submitted by the Commission. The Advisory Committee met and gave a positive opinion on the draft decision.

6. **PRINCIPLES OF ASSESSMENT**

(30) According to Article 3(1) FSR, a foreign subsidy shall be deemed to exist where the following cumulative conditions are met. First, a financial contribution must have been provided, directly or indirectly, by a third country (attributability). Second, the financial contribution must confer a benefit on an undertaking engaging in an economic activity in the internal market (benefit). An undertaking acquiring control of or merging with an undertaking established in the Union is considered to be engaging in an economic activity in the internal market. ([13]) Third, the benefit must be limited to one or more undertakings or industries (specificity).

(31) As set out in Article 3(2) FSR, financial contributions include, *inter alia*, (a) the transfer of funds or liabilities; (b) the foregoing of revenue that is otherwise due; and (c) the provision of goods or services or the purchase of goods or services.

(32) Furthermore, pursuant to Article 3(2) FSR, second subparagraph, FFCs include financial contributions from a foreign public entity whose actions can be attributed to the third country, '*taking into account elements such as the characteristics of the entity and the legal and economic environment prevailing in the State in which the entity operates, including the government's role in the economy*', and private entities '*whose actions can be attributed to the third country, taking into account all relevant circumstances*'.

([12]) ID638-2, ID641-2, ID646-1, ID689-1, ID662-1, ID653-1, ID666-1, ID644-1, ID664-1, ID645-1 and ID647-1.
([13]) FSR, Article 1(2).

(33) Pursuant to recital (13) FSR, a financial contribution '*should be considered to confer a benefit on an undertaking if it could not have been obtained under normal market conditions. The existence of a benefit should be determined on the basis of comparative benchmarks, such as the investment practice of private investors, financing rates obtainable on the market, a comparable tax treatment, or the adequate remuneration for a given good or service. If no directly comparable benchmarks are available, existing benchmarks could be adjusted or alternative benchmarks could be established based on generally accepted assessment methods*.'

(34) Pursuant to recital (14) FSR, the '*specificity of the foreign subsidy could be established by law or in fact*'.

(35) In relation to the distortion of the internal market, Article 4(1) FSR provides that a foreign subsidy is distortive if it is '*liable to improve the competitive position of an undertaking in the internal market*' and if, in doing so, it '*actually or potentially negatively affects competition in the internal market*'. This is determined in an overall assessment relying on indicators, including but not limited to: the nature and the amount of the foreign subsidy; the situation of the undertaking, including its size and the markets or sectors concerned; the level and evolution of economic activity of the undertaking on the internal market; and the purpose and conditions attached to the foreign subsidy as well as its use on the internal market. ([14])

(36) Each indicator taken separately is not necessarily decisive, and the indicators are not cumulative, meaning that – in the same way that other relevant indicators may be considered on a case-by-case basis – not all the examples of relevant indicators listed in Article 4(1) FSR need to be considered or established to prove that a foreign subsidy distorts the internal market in a particular case. Indeed, pursuant to recital (19) FSR: '*[w]hen using the indicators to determine the existence of a distortion in the internal market, the Commission could take into account various elements such as the size of the foreign subsidy in absolute terms or in relation to the size of the market or to the value of the investment. For instance, a concentration, in the context of which a foreign subsidy covers a substantial part of the purchase price of the target, is likely to be distortive. […] Furthermore, the characteristics of the market, and in particular the competitive conditions on the market, such as barriers to entry, should be taken into account. […]*'. ([15])

(37) Article 5(1) FSR exhaustively lists certain categories of foreign subsidies most likely to distort the internal market, which include '*a foreign subsidy directly facilitating a concentration*' as well as '*a foreign subsidy in the form of an unlimited guarantee for the debts or liabilities of the undertaking, namely without any limitation as to the amount or the duration of such guarantee*'. In line with recital (20) FSR, in relation to the categories of foreign subsidies most likely to distort the internal market, '*it is not necessary for the Commission to perform a detailed assessment based on indicators*'.

(38) According to Article 5(2) FSR, the undertaking under investigation shall be granted the opportunity to provide relevant information as to whether a foreign subsidy falling under such category of foreign subsidies most likely to distort the internal market does not distort the internal market in the specific circumstances of the case.

(39) In relation to notified concentrations specifically, according to Article 19 FSR, '*[w]hen assessing whether a foreign subsidy in a concentration distorts the internal market within the meaning of Article 4 or 5, that assessment shall be limited to the concentration concerned*' and '*[o]nly foreign subsidies granted in the three years prior to the conclusion of the agreement, the announcement of the public bid, or the acquisition of a controlling interest shall be considered in the assessment*'.

(40) According to Article 11(3) FSR, '*[w]here the Commission, pursuant to Articles 4 to 6, finds that a foreign subsidy distorts the internal market and the undertaking under investigation offers commitments which the Commission deems appropriate and sufficient to fully and effectively remedy the distortion, it may adopt an implementing act in the form of a decision in order to make those commitments binding on the undertaking ("decision with commitments"). […] That implementing act shall be adopted in accordance with the advisory procedure referred to in Article 48(2)*'.

([14]) FSR, Article 4(1)(a) to (e).
([15]) See also FSR, recitals (34) and (35).

(41) Pursuant to Article 7(2) FSR, the Commission may accept commitments offered by the undertaking under investigation where such commitments fully and effectively remedy the distortion in the internal market. Furthermore, '*[w]hen accepting such commitments, the Commission shall make them binding on the undertaking under investigation in a decision with commitments in accordance with Article 11(3).*' According to Article 7(3) FSR, these commitments shall be proportionate and fully and effectively remedy the distortion actually or potentially caused by the foreign subsidy in the internal market.

(42) According to Article 7(5) FSR, '*[t]he Commission shall, where appropriate, impose reporting and transparency requirements, including periodic reporting regarding the implementation of the commitments*'.

(43) In addition, pursuant to Article 11(4) FSR, the Commission shall adopt an implementing act in the form of a no objection decision when '*the preliminary assessment as set out in its decision to initiate the in-depth investigation is not confirmed*' or when '*a distortion in the internal market is outweighed by positive effects within the meaning of Article 6*'.

(44) According to Article 6(1) FSR, the Commission '*may, on the basis of information received, balance the negative effects of a foreign subsidy in terms of distortion in the internal market, according to Articles 4 and 5 against the positive effects on the development of the relevant subsidised economic activity on the internal market, while considering other positive effects of the foreign subsidy such as the broader positive effects in relation to the relevant policy objectives, in particular those of the Union*'. According to recital (21) FSR, the policy objectives can include '*a high level of environmental protection and social standards, and the promotion of research and development*'. In respect of subsidies that are considered most likely to distort the internal market pursuant to Article 5(1) FSR, '*positive effects are less likely to outweigh the negative ones*'.

(45) Pursuant to Article 6(2) FSR, the outcome of the balancing test shall be taken into account by the Commission '*when deciding whether to […] accept commitments*' as well as the nature and level of those commitments. According to recital (21) FSR, if the positive effects prevail, the Commission can conclude not to impose redressive measures. In case the negative effects prevail, the balancing test can help establish the suitable nature and level of the commitments.

(46) Finally, pursuant to recital (9) FSR, the FSR '*should be applied and interpreted in light of the relevant Union legislation, including that relating to State aid, mergers and public procurement*'.

7. **EXISTENCE OF FOREIGN SUBSIDIES IN THE TRANSACTION**

(47) In its Opening Decision, the Commission found preliminary indications of foreign subsidies granted to e&, in the form of a term loan granted to e& on […] November 2022 by a consortium of banks comprised mainly of UAE-controlled banks, an unlimited guarantee from the UAE government, e&'s licence for the provision of telecommunications services in the UAE, and UAE regulated telecommunications prices. The Commission also found that there were preliminary indications of foreign subsidies granted to the EIA in the form of direct grants from the UAE Ministry of Finance, loans and repayable advances by the UAE Ministry of Finance, a revolving credit facility loan by a consortium of UAE banks (including UAE-controlled banks) and an unlimited guarantee from the UAE government.

(48) In Sections 7.1 to 7.5, the Commission sets out its final assessment pursuant to Article 11 FSR of whether, following the in-depth investigation, the preliminary assessment regarding the existence of foreign subsidies in the Transaction, as set out in the Opening Decision, is confirmed.

7.1. **The Term Loan**

(49) The Notifying Party submitted in its notification that the Transaction will be financed with a term loan, which was granted on […] November 2022 by a syndicate of five banks ([UAE State-controlled bank 1], [UAE State-controlled bank 2], [UAE State- controlled bank 3], [UAE State-controlled bank 4], and [private lender]) with a maturity of [0-5] years (the 'Term Loan'). The Notifying Party submitted that, whilst the Term Loan was set up for [purpose of the loan], e& intended to use it to finance the Transaction. ([16])

(50) In the Opening Decision, the Commission found sufficient indications that the Term Loan qualifies as a foreign subsidy within the meaning of Article 3 FSR that falls within the scope of Article 19 FSR, and in particular that it conferred a benefit on e&, to warrant opening an in-depth investigation pursuant to Article 10(3) FSR.

7.1.1. *Benefit*

(51) The Term Loan is structured as:

(1) a USD [100-500] million […] (or EUR [100-500] million ([17])), provided by [private lender] and remunerated at Term SOFR ([18]) + [0.5-1]%,

(2) an AED [10-20] billion […] (or EUR [0-5] billion ([19])), provided by the syndicate and remunerated at EIBOR ([20]) + [0-0.5]% – in this respect, [private lender] [UAE State-controlled bank 1], [UAE State-controlled bank 2], and [UAE State-controlled bank 3]'s commitments represent AED [5-10] billion each, and

(3) an AED [0-5] billion […] tranche ([21]) (or EUR [500-1,000] million) provided by [UAE State-controlled bank 4] and remunerated at EIBOR + [0-0.5]%.

(52) In its notification, e& submitted that the Term Loan was on market terms, notably as a result of [private lender]'s involvement both in the USD and AED tranches, where the actions of [private lender] are not attributable to a third country.

(53) Moreover, e& submitted a supporting analysis performed by an economist firm. ([22]) The analysis relies on the existence of [private lender]'s involvement and states that (i) the USD tranche is necessarily on market terms, since it is provided by [private lender], and (ii) the AED conventional tranche and AED Islamic tranche should also be on market terms, in particular because the difference in margin between the AED and USD tranches is consistent with the difference in the yields of bonds traded in the market and issued in AED and USD. ([23])

([16]) Form FS-CO, paragraph 35.
([17]) USD/EUR conversion based on the average of 2022 of EUR 1 = USD 1.0530.
([18]) SOFR is the Secured Overnight Financing Rate, a benchmark interest rate for dollar-denominated derivatives and loans.
([19]) AED/EUR conversions based on the average of 2022 of EUR 1 = AED 3.8561.
([20]) EIBOR is the Emirates Interbank Offered Rate, which is the reference benchmark interest rate, stated in UAE dirham ('AED'), for lending between banks within the UAE market.
([21]) [UAE State-controlled bank 4] is an Islamic bank active in Islamic finance which carries out all its contracts, operations and transactions in accordance with Sharia principles.
([22]) Annex FS.CO.22.
([23]) The Commission notes that referring to the yields of corporate bonds in order to benchmark the remuneration of a loan is an established State aid practice. In particular, according to point 111 of the Commission Notice on the notion of State aid (see footnote 101): *'In the absence of specific market information on a given debt transaction, the debt instrument's compliance with market conditions may be established on the basis of a comparison with comparable market transactions. In the case of loans […], information on the financing costs of the undertaking may, for example, be obtained […] from yields on bonds issued by the undertaking […]. Comparable market transactions may also be […] bonds issued be a sample of comparator companies.'*

(54) The Commission considered in its Opening Decision that [private lender]'s commitment, which consists in the full USD tranche of USD [100-500] million and the AED conventional tranche for AED [500-1,000] million, is significantly inferior to the other lenders' commitments. As such, private investment only represents approximately [5-10]% of the total investment. The Commission thus preliminarily found that private investment was insufficient to assume that the risks and rewards assumed by [UAE State-controlled bank 1], [UAE State-controlled bank 2], [UAE State-controlled bank 3], and [UAE State-controlled bank 4] are on par with private investors participating in the same loan. In addition, the Commission found that the Notifying Party's analysis suffered from shortcomings, since it did not appropriately benchmark the Term Loan against comparable transactions, such as financial instruments of the same maturity and seniority and in the same currency. ([24])

(55) In its Observations on the Opening Decision, the Notifying Party submitted that the Commission has failed to show that it has '*sufficient indications*', as required by Articles 10(3) and 25(2) FSR, that the Term Loan confers a benefit on the Notifying Party and that considering [private lender]'s participation in the lending consortium as not satisfying well-established State aid practice and jurisprudence constitutes a departure from the Commission's decisional practice and settled case-law. ([25])

(56) In particular, the Notifying Party recalled that [private lender] contributed nearly [0.5-1] billion euros, an amount that, according to State aid practice, could in their view not be characterised as '*symbolic*' or '*marginal*'. ([26]) In addition, the Notifying Party explained that the participation of other lenders does not impact the credit risk assessment which a lender such as [private lender] undertakes prior to entering into a loan agreement, considering that the commitments are independent from each other. Therefore, the participation of UAE State-owned banks in the Term Loan should not have caused [private lender] to accept a higher level of risk.

(57) The Commission has assessed, based on the available evidence, whether the conditions offered by [UAE State-controlled bank 1], [UAE State-controlled bank 2], [UAE State-controlled bank 3], and [UAE State-controlled bank 4] in their commitments in the Term Loan, provide a benefit to e& compared to the conditions that would be offered to e& by private investors, taking into account all relevant circumstances. ([27])

(58) The Commission recognises that the Term Loan appears to have been granted to e& without there being any difficulties for e& to obtain liquidity. In particular, e& was not in financial difficulty at the time, and enjoyed a high credit rating (at AA- per S&P Global Ratings ('S&P')) ([28]) that made it attractive to investors. e& also raised financing from other sources in close temporal proximity to the Term Loan, including in the form of issuance of publicly traded bonds and loans contracted with private banks, illustrating the company's access to liquidity on the markets outside the financing by UAE state-owned banks. ([29]) In that context, the participation of State-owned banks in the Term Loan is unlikely to have affected the assessment of e&'s credit risk by [private lender], as that risk is already viewed by the market as being particularly low, notably in relation with the existence of an unlimited guarantee to e& (see recitals (100), and (123) to (125)).

(59) However, despite the absolute value of [private lender]'s private investment, the relative value of that investment compared to the investment of banks whose actions are likely attributable to the UAE ([30]) does not – on its own – allow the Commission to conclude that the contributions of those State-owned banks are consistent with private investment.

([24]) Opening Decision, paragraphs 39 and 40.

([25]) Observations on the Opening Decision, pp. 2-3. The Notifying Party notably refers to the Judgement of 12 December 2000, *Alitalia v Commission*, T-296/97, EU:T:2000:289, paragraphs 80 and 81 ('*A capital contribution from public funds must […] be regarded as satisfying the private investor test […] if, inter alia, it was made at the same time as a significant capital contribution on the part of a private investor made in comparable circumstances*').

([26]) See RFI 11 dated 26 July 2024, Question 11.

([27]) In this respect, the existence of other foreign subsidies to e&, such as the e& Unlimited Guarantee, would also be taken into account by private investors.

([28]) See Annex FS-CO.50.

([29]) Form FS-CO, Table 6 and Response to RFI 10 dated 3 July 2024, Question 5.

([30]) See Section 7.5.3.

(60) In its notification, e& submitted that it was not able to perform a proper benchmarking analysis of the AED tranche, because it has no '*access to the terms and conditions of comparable loans provided to third-party undertakings*'. ([31]) On the basis of an analysis of the market of bonds issued in AED, the Commission considers that, indeed, the limited number of such financial instruments issued in this currency renders it difficult to perform an alternative benchmarking analysis on the basis of publicly available information. The Commission notes that, as of 29 August 2024, the number of corporate bonds (including matured bonds) in AED issued since 2010 for which data was available on Bloomberg was below 50, ([32]) among which only one corporate bond was issued in the six-months period around the date of the granting of the Term Loan. ([33]) This bond, ([34]) issued by [UAE State-controlled bank 2] on [H2 2022], is similar in its terms to another bond issued by [UAE State-controlled bank 2] in [H2 2023], ([35]) for which the Notifying Party explained that the differences between the Term Loan and the bond could be explained by the fact that (i) the financing of a bank through the issuance of bonds and the financing of a company such as e& through the granting of loans differ significantly in their nature; and (ii) [UAE State-controlled bank 2] has a credit rating of A+, a notch lower than e&'s credit rating. ([36]) In addition, the Notifying Party submitted that, in the specific case of the bond issued in [H2 2023], the effective interest rate of the AED tranches of the Term Loan was significantly above the interest rate of the [UAE State-controlled bank 2] bond. In the case of the bond issued in [H2 2022], the [5-10]% yield is within the range of the effective interest rate of the AED tranches of the Term Loan at the moment of its granting, which amounted to [1-5]%-[5-10]%. ([37]) This comparison – with the only bond issued by [UAE State-controlled bank 2] in [H2 2023], in the six-month period around the granting of the Term Loan – while having its limitations, and thus not being conclusive on its own, supports the Notifying Party's claim that the Term Loan was provided on market terms.

(61) In addition, the Commission notes that it was not able to perform a benchmarking analysis on the basis of yields to maturity ([38]) of corporate bonds in AED as of [same day as the Term Loan] November 2022 due to a lack of data on liquid publicly traded corporate bonds in AED. ([39]) The Commission nevertheless notes that the yields to maturity of the two UAE government bonds ([40]) were at [1-5]% and [1-5]%, and therefore lower than the lower limit of the effective interest rate of the AED tranches. This benchmarking would therefore also support the Notifying Party's claim that the Term Loan was provided on market terms.

(62) The Commission also notes that, in the absence of similar companies with the same credit rating active in the UAE (see recital (100)), a benchmarking analysis on the basis of similar loans granted by private banks in AED would have not been possible, considering that such similar loans do not exist.

(63) Furthermore, upon request, e& submitted further evidence that on [H2 2023] it had entered into a loan for an amount of AED [100-500] million with [UAE State- controlled bank 3], and [private lenders]. The Notifying Party submits, in the context of that loan, that the two private lenders ([private lenders]) account for [60-70%] of the full lending commitments, so that the investment of [UAE State-controlled bank 3] can be considered as *pari passu* with a private investment. As a consequence, the conditions of that loan are on market terms.

(64) The Notifying Party submits that that loan is comparable to the Term Loan in that it is (i) established in the same currency and (ii) has the same maturity ([1-5] years). That loan is also subject to the same EIBOR + [25-60] bps interest rate as the Term Loan, for its AED tranche. In that respect, according to the Notifying Party, the loan can serve as a comparator in order to verify whether the Term Loan is on market terms.

([31]) Form FS-CO, paragraph 188.
([32]) Source: Bloomberg.
([33]) From […] August 2022 to […] February 2023.
([34]) [identification number of the bond issuance].
([35]) [identification number of the bond issuance].
([36]) Form FS-CO, section 3.5.4.3 and response to Pre-notification RFI 5 dated 5 February 2024, Question 4.
([37]) The effective interest rate of the Term Loan is presented as a range since the loan has features that make the computation of the effective interest rate dependent on the draw schedules of the committed funds. The range is based on alternative possible scenarios as described in Annex A of Annex FS-CO.22.
([38]) Yield to maturity is the internal rate of return of an investment in a bond if the investor holds the bond until maturity, with all payments made as scheduled and reinvested at the same time.
([39]) On the basis of data available on Bloomberg, accessed on 29 August 2024.
([40]) [identification number of the bond issuance].

(65) The Commission finds that in addition to the two loans being of the same maturity, currency and interest rates, both loans are unsecured and thus of the same seniority. While the amount of that loan, AED [100-500] million, is largely inferior to the amount of UAE State-owned banks' commitments under the Term Loan, so that it is not entirely comparable to the Term Loan, that loan is still an indication that the conditions of the AED tranches of the Term Loan can be considered consistent with those private investors would have offered for loans of lower amounts where the majority of the commitments are not provided by UAE State-owned banks.

(66) As regards the USD tranche, e& submitted a benchmarking analysis on the basis of the yield to maturity as of [same day as the Term Loan] November 2022 of the corporate bonds in USD issued by entities with an AA- credit rating. ([41]) This analysis shows that the effective interest rate of the USD tranche of the Term Loan ([1-5]%-[5-10]%) ([42]) was consistent with, and even above the large majority of yields to maturity of bonds issued by entities with the same credit rating as e&. e& also noted that the Term Loan is in line with the market price of the bond issued by e& in [H1 2014] with a yield to maturity as of [same day as the Term Loan] November 2022 of [5-10]%, and therefore close to the lower bound of the effective rate of the Term Loan.

(67) The Commission notes that it was not possible to perform a benchmarking analysis that would be limited to the bonds issued by companies active in the same sector and with the same credit rating as e& other than e&, due to the absence of public information regarding such bonds on the market, and also considering that none of e&'s peers in the telecommunication sector enjoys a credit rating as high as that of e& (see recital (100)).

(68) In addition to the Notifying Party's observations, the Commission notes that, among the corporate bonds in USD with a AA- credit rating issued in the three months before the date of the granting of the Term Loan, the average nominal yield was of [1-5]% ([43]), and that more than 80% of these bonds were issued with a nominal yield below [1-5]%, which is the lower bound of the effective rate of the Term Loan. ([44])

(69) Therefore, the Commission finds, taking into account the evidence available (the conditions of the participation of [private lender] in the Term Loan, the analysis provided by the Notifying Party regarding a comparison of the terms of the AED and the USD tranches of the Term Loan, as well as the comparability of the conditions of the e& loan of [H2 2023], and available information regarding at least partially comparable transactions), that evidence indicates that the Term Loan does not, in itself, confer a benefit on e&.

(70) The Commission, finally, takes note of the fact that, even though the Term Loan – identified as a potential foreign subsidy in the Opening Decision – became publicly available information and was further identified in the RFIs to the Target's competitors, the Commission has not received any information from third parties, in which they would question the market conformity of the Term Loans. ([45])

(71) Therefore, based on the information in the Commission's file, the Commission finds on the balance of evidence that its preliminary assessment in the Opening Decision that the Term Loan confers a benefit to e& is not confirmed.

(72) This finding does not exclude the possibility that the conditions of the Term Loan reflect the existence of other foreign subsidies enjoyed by e&, in particular the existence of an unlimited guarantee to e&, which was likely taken into account by the banks granting the Term Loan in their analysis of inherent risk, as it would have been for any other financing provided to e&, as will be established in the Section 7.2.

([41]) Form FS-CO, section 3.5.4.2 and Figure 9. The analysis was based on bonds with less than 10 years of remaining life as of [same day as the Term Loan] November 2022, excluding banks and financial institutions, majority-state-owned companies, and excluding bonds without information on yield to maturity.

([42]) See footnote 37 of this Decision, and Annex B of Annex FS-CO.22.

([43]) [identification number of the bond issuance]

([44]) Source: Bloomberg.

([45]) Responses to the Commission's RFIs dated 17 June 2024 (see footnote 10).

(73) Given that the Commission finds that the existence of a benefit to e& resulting from the Term Loan is not confirmed, there is no need to consider the other conditions for the existence of a foreign subsidy within the meaning of Article 3 FSR.

7.1.2. *Conclusion*

(74) On the basis of the elements in Section 7.1, the Commission finds, pursuant to Article 11(4) FSR and following the in-depth investigation, that the preliminary assessment that the Term Loan constitutes a foreign subsidy, as set out in the Opening Decision, is not confirmed.

7.2. **Existence of specific insolvency rules, qualifying as an unlimited guarantee**

(75) In the Opening Decision, the Commission found sufficient indications that the combination of (i) the inapplicability of ordinary bankruptcy proceedings otherwise applicable in the UAE, constituting an unlimited guarantee, with (ii) its materialisation in the likely beneficial terms of the Term Loan in the three years prior to the conclusion of the SPA, qualifies as a foreign subsidy within the meaning of Article 3 FSR falling within the scope of Article 19 FSR to warrant opening an in-depth investigation pursuant to Article 10(3) FSR. ([46])

(76) In its Observations on the Opening Decision, the Notifying Party submitted that (i) the Opening Decision wrongly stated that UAE Bankruptcy Law does not apply to e&, where e& can only opt out of these provisions; (ii) the indications were not sufficient to establish the existence of a guarantee, in particular when there is no legal obligation for the UAE State to guarantee the debts of e& and, contrary to established State aid case law, where credit rating agencies do not take implicit support into account, (iii) there are situations in the past in which UAE State-controlled companies have been subject to liquidation proceedings. ([47])

7.2.1. *Existence of an unlimited guarantee*

(77) Federal Decree-Law No. 9 of 2016 (the '2016 Bankruptcy Law') establishes the legal framework for the financial restructuring of companies in the UAE, including procedures for preventive composition and bankruptcy. In particular, Article 132 of the 2016 Bankruptcy Law establishes the procedure for the *'liquidation of the debtor's properties towards any claims owed by the debtor*' and Articles 135 to 138 establish the procedure for the settlement of the creditor's claims.

(78) Article 2 of the 2016 Bankruptcy Law provides that it applies, inter alia, to *'the companies that are not established according to the Commercial Companies Law and wholly or partially owned by the federal or local government and whose establishing legislations, memoranda of association or articles of association provide for their submission to the provisions of this Decree Law*'.

(79) e& is partially owned by the federal government. Indeed, the Notifying Party submits that e& is controlled and majority-owned by the EIA, which is the UAE sovereign fund, controlled and fully owned by the Federal Government of the UAE (see recital (2)). As a result, like any other UAE State-controlled company, the Notifying Party submits that e& is only subject to the Commercial Companies Law to the extent that specific provisions in its constitutive documents do not provide otherwise. ([48]) However, e&'s articles of association explicitly exclude the application of several provisions of the Commercial Companies Law. ([49])

(80) Additionally, e& is a company '*wholly or partly owned by the federal or local government*' within the meaning of the 2016 Bankruptcy Law.

([46]) Opening Decision, paragraphs 46 to 71.
([47]) Observations on the Opening Decision, pp. 3-5.
([48]) Form FS-CO, paragraph 337 and footnote 183.
([49]) See Article 79 of e&'s articles of association.

(81) As a result, e& is excluded from the scope of the 2016 Bankruptcy Law, unless it elects to be subject to it through its constitutive documents. The constitutive documents of e&, being its articles of association, do not make such an election.

(82) The Notifying Party submitted that '*the legal position of whether e& is subject to the [2016] UAE Bankruptcy Law is not entirely free from doubt*'. ([50]) However, the Notifying Party did not bring forward elements that contradict the Commission's finding that e& is subject to different insolvency rules than those generally applicable to UAE companies.

(83) In practice, e& is therefore entitled under the 2016 Bankruptcy Law to be subject to insolvency rules that are derogatory to those applicable to ordinary commercial companies in the UAE. e&'s shareholders therefore possess the ability to unilaterally decide to what extent e& is subject to ordinary bankruptcy law.

(84) Moreover, the Commission finds that the insolvency rules to which e& is currently, actually, subject deviate from those applicable to other commercial companies in the UAE, as detailed in recitals (85) to (91).

(85) The 2016 Bankruptcy Law provides for two main procedures to which a debtor that faces financial difficulties may resort. In the first place, a possibility open to debtors who '*must not have stopped paying his outstanding debts for a period of more than (30) thirty consecutive working days*' to reach a settlement with their creditors, under the supervision of the competent court. ([51]) In the second place, a bankruptcy procedure, addressed to debtors who have ceased repayment of their debts '*for more than (30) consecutive business days*'. ([52]) Under the bankruptcy procedure, eligible debtors can explore the possibility to restructure their debts, subject to preparation of a '*restructuring scheme*' (or plan) which needs to be approved by the competent court and certain creditors. ([53]) If the restructuring of debts is unsuccessful, the competent court will declare the debtor bankrupt, leading to liquidation of the debtor's assets. ([54]) The application for bankruptcy procedure must be filed by debtors as long as they are deemed insolvent, and may also be filed by creditors or the public prosecution, should this serve the public interest. ([55])

(86) By contrast, the Notifying Party summarises the insolvency rules applicable to e&, which are governed by its articles of association, as follows:

(1) e& shall be dissolved, inter alia, ([56]) '*in the event of the loss of all or most of its funds such that it cannot invest the remaining funds in a worthy way*'; ([57])

(2) The EIA, which owns 60% of e&, enjoys a veto over the voluntary liquidation or filing for bankruptcy of e&; ([58])

(3) In the event of dissolution, the general assembly of e& (controlled by the EIA) determines the method of liquidation; ([59])

(4) If e&'s funds are not sufficient to pay all of its debts, the liquidator shall fulfil such debts proportionately; ([60])

([50]) Form FS-CO, paragraph 340.
([51]) Annex FS-CO.42. So-called '*protective conciliation procedures*', regulated in Articles (5) ff. of the 2016 Bankruptcy Law.
([52]) Section 4 of the 2016 Bankruptcy Law.
([53]) Articles 106 – 108 the 2016 Bankruptcy Law.
([54]) See for instance to this effect, Article 65 providing for the occasions on which the Court may terminate the preventive composition procedures and convert them into procedures of declaration of bankruptcy of the debtor; or Article 109 on the disapproval of the restructuring scheme by the Court.
([55]) Articles 68-69, Article 72.
([56]) Liquidation is also foreseen in case of expiration of the duration fixed for the Company, expiration of its establishment purpose or by Special Resolution of the General Assembly.
([57]) Article 70(3) of e&'s articles of association.
([58]) Article 55(1) and (9) of e&'s articles of association.
([59]) Article 72 of e&'s articles of association.
([60]) Article 76 of e&'s articles of association.

(5) In addition, e&'s articles of association provide that the EIA enjoys rights as a '*special shareholder*': it is entitled to take over e&'s board of directors and oversee the liquidation; ([61]) it also enjoys a right of preference to purchase e&'s assets. ([62])

(87) The latter rights are also complemented in specific provisions of the Federal Law No (1) of 1991 (as amended, the 'e& Law') that constituted e&; those provisions grant the EIA special rights in relation to e&'s telecommunications assets. Under Article 11 of the e& Law, in particular:

(1) in the event of liquidation, bankruptcy or insolvency, the EIA enjoys the right to operate the telecommunications network of e& for a period of up to 24 months; and

(2) the EIA also enjoys a right of preference to purchase e&'s telecommunications assets.

(88) The provisions applicable to e& thus diverge from the ordinary position of UAE commercial companies under the 2016 Bankruptcy Law in several ways.

(89) First, the provisions applicable to e& provide for a narrower definition of insolvency events, which are limited in its articles of association to '*the loss of all or most of its funds such that it cannot invest the remaining funds in a worthy way*', compared to the 2016 Bankruptcy Law ([63]) under which a debtor will be subject to bankruptcy proceedings upon '*cessation of payment*'. As such, the insolvency rules applicable to e& allow it to continue its operations beyond such an event.

(90) Second, the EIA has, as sole '*special shareholder*', the right to veto the application of bankruptcy proceedings, so that e& can also avoid insolvency proceedings potentially indefinitely.

(91) Finally, if e& does enter into insolvency proceedings, the EIA will have the right to determine and conduct the bankruptcy proceedings as it sees fit, which may lead to the insolvency proceedings being more favourable to e&'s activities than if those insolvency proceedings were run under judicial supervision.

(92) Such deviations from ordinary bankruptcy proceedings, resulting in more favourable bankruptcy conditions, should *a priori* be liable to create, in e&'s creditors, expectations that their claims will not be satisfied in the event of insolvency, negatively affecting e&'s credit rating.

(93) However, those expectations would be reversed if e&'s exemption from the 2016 Bankruptcy Law, and the insolvency rules applicable to it, in fact support a conclusion that e& is unlikely to default on its debts.

(94) In the context of State aid rules, the Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees (the 'Guarantee Notice'), ([64]) states in section 1.2: '*The Commission also regards as aid in the form of a guarantee the more favourable funding terms obtained by enterprises whose legal form rules out bankruptcy or other insolvency procedures*'. In light of the body of rules regarding public guarantees under State aid, the inapplicability of bankruptcy of insolvency procedures may thus equate the existence of a State guarantee.

(95) In the case at hand, certain particular circumstances are liable to support a conclusion that e& is unlikely to default on its debts.

(96) First, other insolvency provisions applicable to e& highlight that, in the event of insolvency of e&, the EIA would not only determine and conduct the bankruptcy proceedings, but it would also enjoy a right of preference in the purchase of e&'s assets and the right to operate the telecommunications network of e& for a period of up to 24 months.

([61]) Article 72 of e&'s articles of association.
([62]) Article 74 of e&'s articles of association.
([63]) Article 6: '*1. The debtor, exclusively, may apply to the court for bankruptcy protection if he is facing financial difficulties that require his assistance to reach settlements with his creditors. […]*'.
([64]) Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees OJ C 155, 20.6.2008, p. 10.

(97) Such circumstances indicate that the telecommunications network of e& constitutes a critical asset and that, in the event of insolvency, there would be improved expectations that the UAE government, through the EIA, will seek to ensure the continuity of e&. The conclusion reached in this respect is also reflected in the rating agencies' analysis. ([65])

(98) In the event of insolvency, the UAE authorities, through the EIA, are expected to provide additional liquidity to e&. Such support may materialise in various forms (equity, loans, or other forms) enabling e& to meet its debts. In turn, this support will in practice ensure that creditors face a higher chance of seeing their claims satisfied than if e& were an ordinary UAE company subject to ordinary bankruptcy law.

(99) Second, these expectations are particularly reinforced by the fact that, as the Commission will demonstrate in Section 7.5, the EIA itself also benefits from an unlimited guarantee from the UAE government. In that context, the combination of that unlimited guarantee to the EIA, with the derogatory insolvency rules applicable to e&, as well as the fact that the EIA enjoys a veto over any insolvency proceedings of e&, creates expectations that the EIA will assist e& in the event of financial difficulties.

(100) There is evidence that creditors of e& have high expectations that their debts will be satisfied. In fact, e& enjoys (i) the best credit rating by S&P on the market in AED-denominated corporate bonds, at AA-, ([66]) and (ii) the best credit rating of its peers. Indeed, e& also enjoys a higher credit rating than European and US-based telecommunications operators. ([67]) Rating agencies explicitly point to a high likelihood of public support of the company in the UAE. ([68]) Public support is also reflected in e&'s credit rating. ([69])

(101) The Commission also notes that the common terms of the Term Loan ([70]) contain as Clause 7.2 a change of control provision pursuant to which, in the case of a change of control, which will affect UAE ownership, and a decrease of e&'s credit rating more than [1-3] notches below its current rating, [certain terms] would be renegotiated (or on certain occasions [certain conditions may be triggered]). ([71]) This is confirmed in the responses to the Commission's RFIs addressed to the banks participating in the Term Loan. ([72]) These circumstances confirm that creditors explicitly take public support from the UAE to e& into account, and that a change in the UAE's ownership share (which would result in e& being subject to the 2016 Bankruptcy Law) is anticipated to affect the company's rating.

([65]) e& S&P credit rating report of 10 June 2023: '*Government Influence […] we consider that there is a high likelihood of extraordinary government support from the UAE federal government, based on our assessment of e&'s: Important role for the UAE government as a provider of key communications infrastructure and a flagship national company*'. Submitted as Annex FS-CO.77 to response to RFI 10 dated 3 July 2024.

([66]) The only other company that has as good a rating is [UAE State-controlled bank 3], one of the banks involved in the Term Loan.

([67]) In comparison, the S&P credit rating for some of the main European and US-based telecommunications operators are AT&T (US), BBB; Verizon (US), BBB+; T-Mobile (Germany), BBB+; Deutsche Telekom (Germany), BBB+; Orange (France), BBB+; Vodafone (United Kingdom), BBB. See also Table 1.

([68]) The credit rating agencies S&P and Fitch notably mention the '*high likelihood of extraordinary government support*' (https://www.reuters.com/article/idUSWLA9593/) and that '*Etisalat [(e&)]'s rating reflects the strength of the company's links with the Emirate*' (https://www.fitchratings.com/research/corporate-finance/fitch-affirms-etisalat-at-a-outlook-stable-26-11-2019).

([69]) According to the S&P credit rating report of 28 June 2023, '*The rating could come under pressure if the credit standing of the UAE, e&'s controlling shareholder, weakens. […] We see limited rating upside in the next 24 months, with "AA-" the highest possible rating for e& because of its link with the government.*' The S&P credit rating report of 28 May 2010, by which the credit rating of e& was raised to AA-, states '*the rating action is driven by [S&P's] reassessment of [e&'s] standalone credit profile, which [S&P] now assesses at A+ […] as well as [S&P's] opinion that there is a "high" likelihood that the government of the UAE would provide timely and sufficient extraordinary support to Etisalat in the event of financial need.*' This illustrates the uptick in e&'s credit rating from UAE public support.

([70]) Annex FS-CO.11.

([71]) See Responses to Commission's RFIs 14 dated 5 August 2024.

([72]) See Responses to Commission's RFIs 14 dated 5 August 2024.

(102) Therefore, the Commission considers that in the circumstances at hand, the inapplicability of the 2016 Bankruptcy Law to e&, departing from the ordinary law, ([73]) equates the existence of a State guarantee in favour of e&. Since this guarantee is not limited in amount or time, the Commission finds that it constitutes an unlimited State guarantee (the 'e& Unlimited Guarantee').

(103) The Notifying Party submits that the exemption from the UAE bankruptcy law cannot be construed as a guarantee of public intervention in case of default of the company, as there are no UAE laws or regulations which require the UAE government to provide any guarantee or bail-out support in the event of insolvency of a publicly owned entity, and that, '*absent any legal obligation, State ownership and possible (but inherently uncertain) political support alone do not suffice to constitute a benefit within the meaning of FSR or EU State aid law. The Notifying Party submits that, contrary to State aid cases, e& is in a different factual and legal position, where rating agencies do not acknowledge the existence of any implied state guarantee in favour of e&.*' ([74])

(104) In this regard, the Commission finds that the existence of an explicit provision is not necessary for the finding of an unlimited guarantee, where the factual and legal circumstances at hand demonstrate that such a guarantee exists. The Commission has established above in Section 7.2 that such is the case.

(105) In addition, the Commission has shown in recital (99), that, contrary to the Notifying Party's assertion, rating agencies do take into account the existence of a strong likelihood of State intervention in the event of insolvency of e&.

(106) In any event, the Commission notes that the financial intervention of EU Member States, in the context of insolvency proceedings, is constrained by the EU State aid framework. Such is not the case in the UAE, which are generally not restricted in their capacity to provide financial assistance to companies in difficulty. In turn, combined with the other features described in this section, this is rationally likely to be reflected in increased expectations of creditors of greater potential support by the UAE compared to support which could have been obtained from an EU Member State.

(107) Yet the Commission agrees that it cannot simply assume the existence of an unlimited guarantee solely based on public ownership. Rather, the Commission considers a body of evidence demonstrating the existence of a third country guarantee. In this Decision, the Commission does not simply rely, contrary to the Notifying Party's assertion, on '*the existence of State ownership and possible (but uncertain) political support*', but takes into account the legal regime applicable to e& in the event of insolvency, in combination with the specific rights enjoyed by the UAE government (through the EIA) in respect of e&'s assets, as well as other relevant circumstances, such as the role of the EIA, the credit rating of e& and how it reflects the expectations of creditors, which, in the Commission's view, all together reveal the existence of a third country guarantee.

(108) The Notifying Party also explains that the special regime applicable to e& is not meant to '*rescue e& from bankruptcy or liquidation, but rather to ensure the undisrupted provision of telecommunications services in the UAE in the event that e& were to become insolvent.*' The Notifying Party points to the existence of similar regimes in the United Kingdom for companies active in critical infrastructure. Similar provisions also exist under State aid rules (in the Rescue and Restructuring Guidelines ([75])) as regards the continuous provision of public services by undertakings in difficulty. ([76])

([73]) Conclusion drawn in the light of the principles underlying the reasoning followed by the Commission in decision 2010/605/EU giving rise to the judgment of the Court of 3 April 2014 in case C-559/12 P, *France v Commission*, EU:C:2014:217, and decision 2012/26/EU giving rise to the judgment of the Court of 19 September 2018 in case C-438/16 P, *France and IFP Énergies nouvelles v Commission*, EU:C:2018:737.

([74]) Observations on the Opening Decision, section 2.

([75]) OJ C 249, 31.7.2014, p. 1, Communication from the Commission — Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty.

([76]) Response to Pre-notification RFI 5 dated 5 February 2024, question 5.

(109) In this regard, the Commission finds that whilst the provisions pertaining to the EIA's right of preference to purchase critical assets of e& may be justified by the need to preserve that continuity of service, the limitations put on the application of bankruptcy proceedings to e&, both in its scope and in the capacity of the EIA to exercise a veto over such proceedings, go beyond that purpose, as they not only preserve State control and ownership over those critical assets, but also safeguard the existence of e& as a whole.

(110) The Notifying Party, finally, suggests that there are '*examples of the UAE not stepping in to provide financial support to state-owned entities in the past*'. In this respect, the Notifying Party points to the case of two UAE State-owned companies: a debt restructuring of Dubai Group LLC in 2012, and the insolvency proceedings applied to Arabtec Holding PJSC in 2020. ([77])

(111) In respect of Dubai Group LLC, the Commission has not found any evidence of any State intervention to be necessary for Dubai Group LLC to be solvent, or indeed any evidence of Dubai Group LLC being insolvent in the first place. ([78]) This case therefore does not illustrate whether the UAE provides support to companies in difficulty.

(112) In respect of Arabtec Holding PJSC, the Commission finds that, precisely because Arabtec Holding PJSC was subject to an ordinary UAE bankruptcy proceeding, its situation is not comparable to that of e&, in which the deviations identified to 2016 Bankruptcy Law are indicative of a State guarantee. Further to that, Arabtec Holding PJSC is, according to the Notifying Party, '*a leading construction company*', so that it is unclear whether its activities are critical to the UAE and its situation comparable to e&.

(113) Finally, the likelihood that the State would intervene in the case of financial difficulties for e&, in particular in creditors' expectations, is illustrated by such an intervention to the benefit of Dubai World, a large investor owned by the emirate of Dubai. Indeed, when Dubai World faced financial difficulties in 2009, the Government of the Emirate of Abu Dhabi eventually decided to provide such financial support to Dubai World. ([79])

(114) The Commission further observes that the concern raised in Section 7.2.1 as regards the inapplicability of UAE insolvency rules and the resulting market perception of the presence of State support on a continuous basis to e&, have been confirmed by submissions of some of the Target's competitors in the internal market. ([80])

(115) Based on the elements in Section 7.2.1, the Commission finds that e& benefits from an unlimited State guarantee, resulting from the deviations of its articles of association from ordinary bankruptcy law.

7.2.2. *Qualification as a financial contribution*

(116) The e& Unlimited Guarantee is liable to guarantee loans of e& and thus constitutes, amongst others, a loan guarantee that is explicitly listed as a financial contribution within the meaning of Article 3(2)(a) FSR.

(117) In addition, the e& Unlimited Guarantee creates a serious and concrete risk of imposing an additional burden on the UAE in the future, and thus constitutes a financial contribution.

([77]) Observations on the Opening Decision, section 2.

([78]) https://gulfnews.com/business/dubai-out-to-prove-everybody-wrong-as-debt-repayments-loom-1.982139.

([79]) See, for instance, The Guardian, 14 December 2009, '*Dubai receives a $10bn bailout from Abu Dhabi*', available at: https://www.theguardian.com/world/2009/dec/14/dubai-10bn-dollar-payout.

([80]) Responses to Commission's requests dated 17 June 2024 and 17 July 2024 (see footnotes 10 and 12). According to a large telecommunications operator: '*[w]e agree that the exemption of the Notifying Party from UAE Bankruptcy Law is a major issue which is incompatible with EU and Member State laws and inconsistent with European competition policy and standards*' […]; '*The competition concerns in this case are based on the ownership structure behind the Notifying Party and the access to the financial resources of the EIA*' (ID666-1). Another operator observed that e&'s '*major strength is the solid financial backing of the state of UAE, which helps them, overcome operational obstacles*' (ID840).

(118) The Commission therefore finds that the e& Unlimited Guarantee constitutes a financial contribution within the meaning of Article 3 FSR.

7.2.3. *Attributability to a third country*

(119) The Commission considers that the e& Unlimited Guarantee, which stems from the particular insolvency rules applicable to e&, results from provisions of UAE legislation that allow e& not to be subject to the ordinary insolvency rules applicable to UAE companies.

(120) Therefore, the Commission considers that the e& Unlimited Guarantee is provided by the UAE, a third country within the meaning of Article 3 FSR.

(121) In addition, the Commission notes that in the particular circumstances of this case, the decision to use that faculty provided in law not to subject e& to the ordinary bankruptcy rules, is also attributable to the UAE. Indeed, an amendment of the articles of association can be decided at the general shareholders meeting, which is controlled by the EIA and where the EIA also enjoys a veto over any amendment. ([81])

(122) The Commission notes that the EIA is a public authority established by law, subordinated to the UAE Cabinet. ([82]) It is the '*exclusive entity responsible for investing and reinvesting the funds allocated by the Cabinet*', and is empowered to formulate and coordinate the State's investment policies and to represent the Federal Government in investment projects and investment funds. ([83]) Its employees are also public servants. ([84]) The EIA thus qualifies as a '*public authority*' under Article 3(2), second indent (a) FSR.

7.2.4. *Benefit*

(123) The existence of the e& Unlimited Guarantee in itself can be considered as conferring a benefit to the Notifying Party, given the improved expectations of e&'s creditors that their financial claims will be honoured. As a result, the existence of the e& Unlimited Guarantee is liable to improve the conditions of both commercial and financial transactions into which e& enters, and also to allow e& easier access to such transactions. The existence of such a benefit could be presumed as soon as the e& Unlimited Guarantee is established. ([85])

(124) In addition, the Commission finds that the e& Unlimited Guarantee is liable to have influenced e&'s credit rating and thus strengthened e&'s position in the contracting and issuing of various loans, bonds and other debt instruments prior to the Transaction, including of its financing conditions under the Term Loan.

(125) There is concrete evidence that this is the case, since, as highlighted in recital (101), the existence of the e& Unlimited Guarantee has influenced the conditions of the Term Loan. In addition, the Notifying Party has submitted a list of loans, bonds and other debt instruments contracted in the three years prior to the Transaction, ([86]) for an estimated total of EUR [10-20] billion, ([87]) the conditions of which are liable to have been influenced by the existence of the e& Unlimited Guarantee.

([81]) Article 54 of e&'s articles of association. The amendment would take place through a '*special resolution*', meaning that the EIA also enjoys a veto on the modification under Article 55 of e&'s articles of association.

([82]) Federal-Decree law of 2007 establishing the EIA, (Annex FS-CO.31), amended by Decree by Federal Law No. 13 of 2009 (Annex FS-CO.32) and Decree by Federal Law No. 11 of 2018 (Annex FS-CO.33), article 2.

([83]) Id., article 4.

([84]) Id., article 21.

([85]) Conclusions drawn, by analogy, in light of the principles underlying the reasoning of the Judgment of 3 April 2014, *French Republic v. European Commission*, Case C-559/12, EU:C:2014:217: '*To prove the advantage obtained by such a guarantee to the recipient undertaking, it is sufficient for the Commission to establish the mere existence of that guarantee, without having to show the actual effects produced by it from the time that it is granted*'.

([86]) Annex FS.CO-74.

([87]) Conversion based on exchange rate of 1 January 2024.

(126) At the same time, e& does not pay a fee for the e& Unlimited Guarantee. The contracting of any guarantee on the market is normally compensated with a fee that remunerates the guarantor for the risks that it takes on. In the absence of such a fee, the e& Unlimited Guarantee confers a benefit to e&.

(127) In particular, even if e& were, at a certain point in time, *'unlikely to face any financial difficulties that would make bankruptcy a concrete risk*', the Commission notes that the risk taken on by the UAE in guaranteeing the obligations of e& exists. Indeed, a third country taking on joint liability for an undertaking's debts always creates a risk of intervention.

(128) Additionally, the e& Unlimited Guarantee being unlimited both in its time and value, it sets no limits on the transactions into which e& can engage or the risks it can take on, and is not limited to the carrying out of a certain project or for a certain duration. The scope of that guarantee thus expands every time e& contracts a new obligation that is covered by that e& Unlimited Guarantee. As a result, the risks taken on by the third country are also not limited.

(129) In this context, there are no circumstances in which an appropriate guarantee fee could be determined or paid by the undertaking. While the granting of a guarantee must normally reflect the risk that is being transferred, from an *ex ante* perspective, and thus requires a minimum ability to form an expectation of what future events are being covered and what risk they entail, this is not achievable in the case of an unlimited guarantee. ([88]) The unlimited nature of the guarantee means that it covers liabilities that were not even conceivable at the time it was first established. As such, e&'s ability to expand unilaterally the scope of the guarantee without limit implies that there is no possibility, at any point in time, for that guarantee and its remuneration to reflect any reasonable assessment of risk. Conversely, it is unlikely that a private market operator would rationally provide such a guarantee to e& at all.

(130) In that context, the e& Unlimited Guarantee, which is unlimited, and not remunerated with any fee, has not been obtained by e& under normal market conditions.

(131) Therefore, the Commission considers that the e& Unlimited Guarantee confers a benefit on the Notifying Party within the meaning of Article 3 FSR.

7.2.5. *Limitation to certain undertakings or industries*

(132) The availability of an unlimited guarantee is limited to companies that are *'wholly or partly owned by the UAE's federal or local government*' (see recital (78)), whereas other companies in the UAE are subject to compulsory liquidation and winding-up procedures foreseen by the 2016 Bankruptcy Law. As such, the e& Unlimited Guarantee is limited in law to certain undertakings within the meaning of Article 3 FSR.

(133) In addition, this possibility to subject e& to different insolvency rules has been actually used, as a result of the decision taken by the UAE, through the EIA, to adopt articles of association for e& that lay down rules that differ from the ordinary insolvency rules. Such articles of association are specific to e&, so that the e& Unlimited Guarantee is also limited in fact to certain undertakings within the meaning of Article 3 FSR.

(134) Therefore, the Commission concludes that the e& Unlimited Guarantee confers a benefit on the Notifying Party, which is limited, in law or in fact, to one or more undertakings or industries, within the meaning of Article 3 FSR.

([88]) See also the Guarantee Notice, paragraph 4.1.: *'When calculating the aid element in a guarantee, the Commission will devote special attention to the following elements: […] b) whether the extent of each guarantee can be properly measured when it is granted. This means that the guarantees must be linked to a specific financial transaction, for a fixed maximum amount and limited in time.'*

7.2.6. *Granting of the foreign subsidy in the three years prior to the conclusion of the agreement*

(135) According to Article 19 FSR, only foreign subsidies granted in the three years prior to the conclusion of the agreement shall be considered in the assessment of a concentration. According to recital (15) FSR, '*a foreign subsidy should be considered granted from the moment the beneficiary obtains an entitlement to receive the foreign subsidy. The actual disbursement of the foreign subsidy is not a necessary condition for a foreign subsidy to fall within the scope of this Regulation*.'

(136) In this respect, the Commission finds that the e& Unlimited Guarantee is a result of the particular rules set out in the articles of association of e&, that provide different rules than under the 2016 Bankruptcy Law. In that respect, under the 2016 Bankruptcy Law, e& had the option to voluntarily opt in to the application of that law. As such, the e& Unlimited Guarantee can be considered as systematically renewed and thus granted at each general assembly of the e& shareholders, so long as the articles of association of e& provide different rules than under the 2016 Bankruptcy Law.

(137) This is even more the case when the decision to maintain derogatory insolvency rules in the articles of association is a decision of e&'s shareholders, which is also attributable to the UAE (see Section 7.2.3), ([89]) so that the UAE, through the EIA, is taking a yearly decision to continue the e& Unlimited Guarantee.

(138) The Commission thus finds that the e& Unlimited Guarantee was granted in the three years preceding the signing of the SPA within the meaning of Article 19 FSR.

7.2.7. *Conclusion*

(139) On the basis of the elements in Section 7.2, the Commission finds that the inapplicability of ordinary bankruptcy proceedings otherwise applicable in the UAE constituting an unlimited guarantee qualifies as a foreign subsidy in the Transaction, granted in the three years prior to the conclusion of the SPA, within the meaning of Articles 3 and 19 FSR.

7.3. **e&'s licence for the provision of telecommunications services in the UAE**

(140) In the Opening Decision, the Commission found sufficient indications that the granting of a telecommunications licence in the UAE to e& may give rise to the foregoing of revenue that is otherwise due, in the form of a special right without adequate remuneration within the meaning of Article 3(2)(b) FSR to warrant opening an in-depth investigation pursuant to Article 10(3) FSR. ([90])

(141) In its Observations on the Opening Decision, the Notifying Party contested this preliminary finding, in particular on the ground that the Commission would not have shown that the licence was not provided under normal market conditions. ([91])

7.3.1. *Qualification as a financial contribution*

(142) Pursuant to Article 3(2)(b) of the FSR, a financial contribution can take the form of '*the foregoing of revenue that is otherwise due, such as […] the granting of special or exclusive rights without adequate remuneration*'. It is therefore necessary to establish, first, if special or exclusive rights have been granted to e&, and second, whether e& has paid an adequate remuneration for the obtaining of these rights.

([89]) In this respect, the Commission further observes that the shareholders of e&, including the EIA, decided on 17 March 2021, thus in the 3 years prior to the signing of the SPA, to amend e&'s articles of association to reflect certain UAE regulatory changes, but did not include any amendment in the insolvency rules, for instance to cater for the reform of the Bankruptcy Law (see Annex FS-CO.2).

([90]) Opening Decision, paragraph 86.

([91]) Observations on the Opening Decision, p. 5.

7.3.1.1. Existence of a special right

(143) '*Special or exclusive rights*' is a notion that is recognised in Article 106(1) TFEU, which provides that '*In the case of public undertakings and undertakings to which Member States grant special or exclusive rights, Member States shall neither enact nor maintain in force any measure contrary to the rules contained in the Treaties, in particular to those rules provided for in Article 18 and Articles 101 to 109*.' In the Union, the notion of special rights, in the context of telecommunications, is further defined by Commission Directive 2002/77/EC of 16 September 2002 on competition in the markets for electronic communications networks and services. Article 1(6) of Directive 2002/77/EC defines special rights as: '"*special rights" shall mean the rights that are granted by a Member State to a limited number of undertakings through any legislative, regulatory or administrative instrument which, within a given geographical area: (a) designates or limits to two or more the number of such undertakings authorised to provide an electronic communications service or undertake an electronic communications activity, otherwise than according to objective, proportional and non-discriminatory criteria […]*'. ([92]) This definition, especially the characterisation of the criteria, is grounded in the Union Courts' case-law. ([93])

(144) In view of the relationship between the FSR and EU State aid law, as recognised in recital (9) FSR, and the sector concerned, the Commission considers that it is warranted in this case to use the above definition and its criteria by analogy for the purposes of the FSR, as that regulation uses the same terms of '*special or exclusive rights*'.

(145) With respect to the national legal framework applicable in the UAE, Article 31 of the Federal Law by Decree No. 3 of 2003 regarding the Organisation of the Telecommunications Sector (the 'UAE Telecoms Law') prohibits conducting any '*Regulated Activity*' as defined by that law (which includes the operation of a public telecommunications network or the supply of telecommunications services to subscribers in the UAE) without a licence issued by the UAE Telecommunications and Digital Government Regulatory Authority ('TDRA'), unless a relevant exemption applies. Article 2 of Resolution No. (6) of 2008 issued by the TDRA provides that it is the entity responsible for the licensing of regulated activities. ([94])

(146) In this respect, e& was the sole licensed telecommunications operator until 2006. e&'s current licence was obtained in 2006 and is valid until 2025. ([95]) Another licence was granted by the TDRA to Emirates Integrated Telecommunications Company P.J.S.C. ('du'), which is also owned and controlled by the UAE Government through the EIA. Both companies provide telecommunications services under their respective licences. The licences granted to e& and du are not confined to any particular type of service or region within the UAE, as '*both of them are permitted to provide all relevant services in all regions of the UAE*'. ([96]) There is no other holder of a telecommunications licence in the UAE.

(147) The Commission finds that additional elements support UAE authorities' discretion to reserve the granting of a telecommunications licence in the UAE to a limited number of undertakings.

([92]) Similar to identical definitions can be found in Commission Directive 2006/111/EC of 16 November 2006 on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings, OJ L 318, 17.11.2006, p. 17, (ELI: http://data.europa.eu/eli/dir/2006/111/oj), and Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC, OJ L 94, 28.03.2014, p. 243, (ELI: http://data.europa.eu/eli/dir/2014/25/oj).

([93]) Judgment of 12 December 1996, *The Queen v Secretary of State for Trade and Industry*, ex parte *British Telecommunications*, C-302/94, paragraph 57.

([94]) A Regulated Activity is defined as: '*the operation of a Public Telecommunications Network or the provision of Telecommunications Services to subscribers*'. TDRA's Resolution No.(6) of 2008 Regarding the Licensing Framework, available at: https://tdra.gov.ae/-/media/About/LICENSING/AR/Resolution-6-Licencing-Framework--2008--EN.ashx.

([95]) Public Telecommunications Licence No. 1/2006, issued by the TDRA, available at: https://tdra.gov.ae/-/media/About/Licensees---Licenses/Licenses-English/Etisalat-En.ashx.

([96]) Form FS-CO, paragraph 316.

(148) The UAE telecommunication sector is considered as a sector with '*strategic impact*', and holders of UAE telecommunication licences must remain under domestic ownership with a minimum of 51% UAE shareholders, ([97]) which is reflected in e&'s constitutive documents. ([98]) This threshold also applies to the eligibility of a potential new entrant. ([99])

(149) Moreover, Article 26 of the UAE Telecoms Law provides that *'[t]he [EIA] shall assume […] responsibility for representing the Government as a shareholder in corporations and companies in the telecommunications sector and shall exercise the required powers, unless their articles of association state otherwise*'. In addition, Articles 28 and 34 provide that '*In all cases no License shall be issued to any entity unless such entity is a juridical entity established pursuant to a decision issued by the Board [of the TDRA]*', that *'The Board have the authority to grant or refuse a License to an applicant'*, and that *'The Board's decision in this regard shall be final and binding on the applicant and may not be challenged or appealed in any way whatsoever*'.

(150) Therefore, the Commission finds that the granting of a telecommunications licence in the UAE to e& qualifies as a special right within the meaning of Article 3(2)(b) FSR.

(151) The Commission notes that the Notifying Party does not contest that e& benefits from the special right, based on the licence issued by the TDRA.

7.3.1.2. Adequate remuneration

(152) According to the Union directive establishing the European Electronic Communications Code, the remuneration for a special or exclusive right can be considered '*adequate*', in the telecommunications context, when the corresponding *'fees are objectively justified, transparent, non-discriminatory and proportionate in relation to their intended purpose*'. ([100])

(153) Furthermore, points 53 and 54 of the Commission Notice on the notion of State aid clarify the following: ([101]) '*Granting access to a public domain or natural resources, or granting special or exclusive rights without adequate remuneration in line with market rates, can constitute foregoing State revenues (as well as the granting of an advantage). In these cases, it needs to be established whether the State, in addition to its role of manager of the public assets in question, acts as a regulator that pursues policy objectives by making the selection process of the undertakings concerned subject to qualitative criteria (established ex ante in a transparent and non-discriminatory manner). When the State acts as a regulator, it can decide legitimately not to maximise the revenues which could otherwise have been achieved without falling under the scope of State aid rules, provided that all the operators concerned are treated in line with the principle of non-discrimination, and that there is an inherent link between achieving the regulatory purpose and the foregoing of revenue.*'

([97]) The WTO Trade Policy Review submitted as part of the Notification reports that a '*major amendment to the Commercial Companies Law was the abolishment of the general requirement for a UAE company to have 51% Emirati ownership, thus allowing foreign investors to establish without a local partner and own 100% of UAE companies in most economic sectors, except in certain activities deemed to have a "strategic impact".*' According to the WTO Trade Policy Review, as a result of the telecommunications sector having strategic impact, a minimum 51% UAE ownership for all UAE licencees continues to apply. See page 112 of the WTO Trade Policy Review.

([98]) Federal Decree Law No. (1) of 2021 amending some provisions of Federal Law No. (1) of 1991 regarding the Emirates Telecommunications Group Company, Article 7: *'It is not permissible to decrease the proportion of what is owned by the government (51%) of the Company's capital, unless the private shareholder decides otherwise. In all cases, it is not permissible for the ownership of non-citizens to exceed (49%) of the Company's capital*'. Annex FS-CO.35.

([99]) As indicated in Article (12), paragraph 1.3, of the TDRA's Licensing Regulations (which were revised in March 2023), save with the agreement of the Board of Directors of the TDRA, a company is not admitted to apply for a telecommunications licence in the UAE if its foreign shareholding exceeds 49%.

([100]) Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code, OJ L 321, 17.12.2018, p. 36, (ELI: http://data.europa.eu/eli/dir/2018/1972/oj), see Articles 13 and 42.

([101]) Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union, C/2016/2946 (OJ C 262, 19.7.2016, p. 1).

(154) The Notifying Party submits that e& is, like du, subject to an obligation to pay an annual '*federal royalty fee*' to the Ministry of Finance of the UAE federal government. The Notifying Party confirmed that the fees paid by e& (and du) '*under the federal royalty scheme are in consideration for the services they provide under their respective TDRA telecommunications licences, and are a levy linked to the financial performance of the respective licensees.*' ([102]) According to e&, the relevant legal framework ([103]) '*does not refer to any federal facilities or other assets in respect of which the royalty is payable*', and '*e& has always owned its own telecommunications infrastructure*'. ([104])

(155) e& further submits that the only federal facilities that it uses in the UAE consist of land owned by the State and rights of way over that land, which are granted to telecommunications operators '*at no cost*' pursuant to the UAE Telecoms Law, ([105]) a type of arrangement that also exists in the Union. ([106])

(156) The Commission will therefore assess the extent to which the Notifying Party's submissions are established and therefore whether the royalty fee serves at adequately remunerating the licence to provide telecommunications services.

(157) In light of the relevant provisions of the Commission Notice on the notion of State aid (see recital (153)), the Commission finds, by analogy, the following.

(158) First, when setting the annual federal royalty fee, the relevant authority is acting as a regulator, fulfilling the mandate conferred upon it by the UAE Government pursuant to the UAE legal framework (see recital (154)). The TDRA confirmed during the in-depth investigation this regulatory nature of the royalty fee, administered by the Ministry of Finance: '*The level of the federal royalty fee is set by decision of the UAE Cabinet […]. The royalty scheme is administered by the Ministry of Finance*'. ([107])

(159) Second, in its capacity as regulator, the UAE can decide legitimately not to maximise the revenues which could otherwise have been achieved. In paragraph 85 of the Opening Decision, the Commission preliminarily considered that the basis for the federal royalty fee includes elements unrelated to the special right that it is meant to remunerate, as it includes profits from non-regulated activities and certain foreign profits. ([108]) While this may be the case, the Commission notes that while these additional elements may not be linked to the services subject to the licence, they would not lead to the remuneration being too low. If anything, they would make the royalty fee higher than the level adequate for the services concerned by the special right. In particular, foreign profits are by definition not obtained on the basis of a licence to operate in the UAE.

(160) Third, the Commission notes that the royalty fee paid seems rather significant: since 2018, the royalty fee amounted to 30% of '*regulated profits*' ([109]) plus 15% of e&'s '*regulated turnover*'. ([110]) The resulting value of the annual federal royalty fee has ranged yearly between EUR 5.5 billion and EUR 5.8 billion.

([102]) Form FS-CO, paragraph 242.
([103]) UAE Cabinet Decision No. 320/15/23 of 9 December 2012 amending the Royalty Scheme in respect of a new royalty mechanism applicable to TDRA telecommunications licence holders.
([104]) Form FS-CO, paragraphs 238-239.
([105]) Article 52 of the Federal Law by Decree No. 3 of 2003 Regarding the Organisation of the Telecommunications Sector.
([106]) e& takes the example of Germany and Section 125 of its Law on Telecommunications (*Telekommunikationsgesetz*).
([107]) TDRA's response to RFI 19 dated 29 August 2024, questions 1-3.
([108]) Opening Decision, paragraph 85.
([109]) The Notifying Party submits that the terms '*regulated profit*' and '*regulated turnover*' stem from the guidelines received by telecommunication companies from the UAE Ministry of Finance regarding the federal royalty scheme. They are used as metrics to determine the amount of royalties payable by e& to the UAE Ministry of Finance. (Form FS-CO, reference (114)). In particular, '*regulated profit includes all profits generated from activities that are licensed by the Telecommunication and Digital Government Regulatory Authority ("TDRA") and any other activities which include a licensed component regardless of the weighting or materiality of the licensed component*'. Royalty Guidelines dated 3 November 2023 (Annex FS-CO.94).
([110]) Response to RFI 11 dated 26 July 2024, question 1.

(161) Fourth, as regards the concern expressed in paragraph 93 of the Opening Decision, where the Commission suspected that the insufficient remuneration of the licence could lead e& to achieving an excessive profitability, the in-depth investigation did not confirm that this is the case. The investigation revealed that when comparing e&'s profitability in other countries – which do not have a similar legal regime and e& does not benefit from a special right and therefore its telecommunications activities are not subject to the federal royalty fee – e&'s (net) profitability for its operations in the UAE alone, after deduction of the royalty fee (from the revenues), is close or even below its profitability in those other markets. In particular, over the period 2021-2023, the Earnings Before Interest and Taxes ('EBIT') margin ([111]) (adjusted for the cost of the federal royalty of e& for its activities in the UAE) was between [20-30]% and [20-30]%, compared to between [30-40]% and [30-40]% in Morocco, between [20-30]% and [20-30]% in Egypt, and between [20-30]% and [30-40]% in the rest of the world. ([112]) EBIT margin includes the costs related to amortisation and depreciation of fixed assets and/or intangible assets such as spectrum licences, which usually include the costs associated with telecommunications activities in most countries outside the UAE. ([113]) Therefore, EBIT appears as the most suitable metric to compare licence costs in countries where such costs are amortised and the UAE.

(162) Fifth, the Commission notes that, according the information provided, the remuneration seems to be in line with point 54 of the Commission Notice on the notion of State Aid: the royalty fee is determined in line with its regulatory purpose (since the fee is determined on the basis of the range of services offered under the licence) and does not discriminate between the operators concerned, as the calculation method for the federal royalty fee has been harmonised for e& and du since 2016. ([114])

(163) On the basis of the evidence available to it and for the purpose of this Decision, the Commission therefore cannot conclude to the requisite legal standard that the federal royalty does not constitute adequate remuneration for the special right conferred by the telecommunications licence.

(164) Given that the Commission finds that its preliminary assessment in the Opening Decision that the federal royalty fee does not constitute adequate remuneration is not confirmed, there is no need to consider the other conditions for the existence of a foreign subsidy within the meaning of Article 3 FSR.

7.3.2. *Conclusion*

(165) On the basis of the elements in Section 7.3, the Commission finds, pursuant to Article 11(4) FSR and following the in-depth investigation, that the preliminary assessment that the licence constitutes a foreign subsidy, as set out in the Opening Decision, is not confirmed.

7.4. **Regulated telecommunications prices in the UAE and UAE government contracts**

(166) In Section 4.4 of the Opening Decision, the Commission found sufficient indications that the regulated telecommunications prices in the UAE constitute a foreign subsidy within the meaning of Article 3 FSR that falls within the scope of Article 19 FSR, and in particular that they conferred a benefit for e& to warrant opening an in-depth investigation pursuant to Article 10(3) FSR. ([115]) The Commission preliminarily considered that there were no precise criteria for the TDRA to implement its price regulation policy, and that this policy may have allowed e& to obtain above-market prices.

([111]) Earnings Before Interest and Taxes ('EBIT') is the operating profit calculated as the revenue minus the cost of goods sold (gross profit), operating expenses such as wages and rents, and amortisation and depreciation of assets, and, as the name indicates, before deduction of interest and rates. The EBIT margin is the EBIT divided by turnover.

([112]) Annex FS-CO.109 and Annex FS-CO.110. There is one notable exception, […], where e&'s profitability (EBIT margin) is almost nil or even negative.

([113]) See as an illustration the Annual Financial Report of Deutsche Telekom for 2023 (https://report.telekom.com/annual-report-2023/_assets/downloads/entire-dtag-ar23.pdf, pages 182, 183 and 209).

([114]) There only remains a difference in the respective floors for the two telecommunications operators, which according to e& pursues regulatory objectives and was meant to ensure that du was able to enter the market, launch its operations and compete effectively with e& (see paragraph 256 of the Form FS-CO, and the Response to RFI 11 dated 26 July 2024, questions 1 and 2).

([115]) Opening Decision, paragraph 123.

(167) In its Observations on the Opening Decision, the Notifying Party contested this preliminary finding, in particular on the ground that the Commission would not have shown that the telecommunications prices were not under normal market conditions. ([116])

(168) According to the Notifying Party, the provision of telecommunications services in the UAE is supervised and regulated by the TDRA, in application of the Price Control Regulatory Policy and Procedure Version 1.0 dated 28 June 2017 ([117]) (the '*Price Control Policy*'). ([118])

(169) According to the Notifying Party, under the Price Control Policy, holders of a telecommunications licence must request prior approval for the pricing of any new service, for changing the prices of their services, ([119]) for promotions ([120]) and under certain circumstances for the withdrawal of a service. The TDRA may then approve, conditionally approve or deny the price control request, and, '*at its sole discretion, amend, revoke or suspend a prior approval or conditional approval*'. ([121]) In exercising that power, the TDRA determines whether a given price is competitive and fair on the basis of a number of factors and assumptions, including e&'s costs of providing the relevant goods or services, assumed customer usage and based on undertaken revenue cost analysis. ([122])

(170) As regards e&, the UAE Telecoms Law provides that the TDRA's board of directors, '*pursuant to the regulations issued by the Telecommunications Regulatory Authority, determines the charges for the services provided by [e&].*' ([123])

(171) According to the TDRA, such regulation is necessary due to the nature of the market, with the unusually high costs of establishing the required infrastructure and of ensuring the appropriate allocation of scarce resources. As stated, '*in an otherwise functional market, very little regulation is necessary to ensure appropriate consumer rights and fair competition as most markets will ensure such factors via a natural selection of the best/most competitive services/products*'. ([124])

7.4.1. *Benefit*

(172) Although they constitute foreign financial contributions, the Notifying Party did not report the transactions contracted with UAE federal and State government bodies in the three years preceding the signing of the SPA, as e& considered them to be contracted on market terms, and therefore to fall under the exception of point (c) of Table 1 of Annex I to the Implementing Regulation.

(173) In paragraphs 93 and 106 of the Opening Decision, the Commission preliminarily considered that telecommunications prices in the UAE, which result from the Price Control Policy, confer a benefit to e&, in that they would lead e& to charge prices to customers that could not have been obtained under normal market conditions, and that such a benefit would have notably materialised through the transactions contracted by e& with UAE government bodies. ([125])

(174) Pursuant to recital (13) FSR, a '*financial contribution should be considered to confer a benefit on an undertaking if it could not have been obtained under normal market conditions.*'

([116]) Observations on the Opening Decision, pp. 5-6.
([117]) Annex FS-CO.25.
([118]) Form FS-CO, paragraph 320.
([119]) See Article 1, 1.1.8 of the TDRA Price Control Policy, Annex FS-CO.25.
([120]) According to Article 9.1 of the Price Control Policy, a promotion refers to any specific price which is intended to be available to customers only for a limited duration of time (excluding public emergencies).
([121]) *Ibid.*, Articles 4-5.
([122]) *Ibid.* Article 3.1, and Response to RFI 10 dated 3 July 2024, Question 13.
([123]) UAE Telecoms Law, Article 21 to Article 80 (Final provisions), Annex FS-CO.39.
([124]) TDRA's website, available at https://tdra.gov.ae/About/tdra-sectors/telecommunication/regulatory-affairs-department/regulations-and-ruling#description.
([125]) Opening Decision, paragraphs 93 and 106.

(175) In its Observations on the Opening Decision, the Notifying Party notes that '*the [Opening] Decision insinuates that the normal market conditions which should be used as a reference framework would be those found in countries outside the UAE*' and views this analysis as '*inherently flawed*' by referring to '*the appropriate reference framework*' under '*settled State aid case-law*', which is the legal framework of the Member State at issue.

(176) The Commission notes that in order to establish the existence of a benefit, one needs to find an adequate benchmark. In this context, where prices are subject to revision by public authorities, one cannot easily assess whether they are comparable to the level that could be obtained under normal market conditions. The Commission's preliminary assessment revealed that the TDRA enjoys a wide discretion regarding the approval of the pricing policy of telecommunications operators. In response to questions by WTO members, ([126]) the TDRA explained that it '*uses a wide range of measures to consider the appropriateness of price requests*' including profitability analysis, cost estimates, international benchmarks and the assessment of consumer complaints. ([127])

(177) With respect to the Notifying Party's arguments that e& also undergoes constraints by competition from du, while the Commission observes that publicly available sources support its preliminary assessment of high prices for telecommunications services in the UAE, ([128]) the 2022 WTO Trade Policy Review ([129]) (the 'WTO report') found that '*prices for telecommunications services were very competitive in 2020*' in the UAE.

(178) According to the Notifying Party, this finding confirms the competitive constraints on e&. The Notifying Party also submits that it is constrained in its ability to price above the competitive level by thorough and conservative regulation by the TDRA, ([130]) and claims as evidence the fact that e&'s average revenue per user in the UAE declined by 7.1% from Q1 2022 to Q1 2024, in a period where the average Consumer Prices Index inflation was 3.7%. Over the same period, du's average revenue per user declined by only 2.2%. ([131])

(179) The TDRA confirmed during the in-depth investigation that it reviews the prices proposed by e& (and du) for regulated services: e& and du need '*to obtain approval from the TDRA every time they wish to offer a new or amended price for a service that is regulated by the TDRA*'. Indeed, in doing so and in line with the Price Control Policy, '*the TDRA will not approve a price that [i]s, or is likely to be, anti-competitive and which could restrict, distort or prevent competition in the short term or in the long term [or] [c]ould cause undue harm to consumer welfare*'. The TDRA concludes that: '*the TDRA aims to achieve prices in the market that: are competitive; have terms and conditions that are fair to consumers*' and therefore '*rarely approves price increases, based on the premise that in a competitive market, prices should fall over time rather than increase*'. ([132])

(180) Moreover, as detailed in Section 7.3.1.2, further assessment during the in-depth investigation has shown that e&'s profitability indicators in the UAE are not out of line with those in other geographies.

([126]) Trade Policy Review, UAE, Minutes of the Meeting (available at: https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/TPR/M423A1.pdf&Open=True) The document contains the advance written questions and additional questions by WTO Members, and replies provided by the UAE (page 14).

([127]) Opening Decision, paragraph 105.

([128]) '*Dubai ranks as most expensive city for mobile data*', where it reported inter alia, that '*The main reason for Dubai's high mobile data costs is the telecommunications players are state-owned enterprises and so it's not a free market economy like you find in the west...*' (available at: https://www.agbi.com/tech/2022/08/dubai-ranks-as-most-expensive-city-for-mobile-data/), '*UAE Telecommunications companies criticised for costly but poor services*', where a member of the Federal National Council reported that '*UAE telecommunications services are very expensive and most of the telecommunications operators' profits are from the UAE market, not from their operation abroad*'. (available at: https://gulfnews.com/uae/government/uae-telecom-companies-criticised-for-costly-but-poor-services-1.71975763), '*UAE mobile date costs 20% more than global average*', available at: https://www.edgemiddleeast.com/news/618708-uae-mobile-data-costs-20-more-than-global-average, '*Survey ranks UAE broadband packages most expensive in Middle East*'. Available at https://www.telecomreview.com/articles/reports-and-coverage/1848-survey-ranks-uae-broadband-packages-most-expensive-in-middle-east.

([129]) World Trade Organization: Trade Policy Review, Report by the Secretariat: United Arab Emirates WT/TPR/S/423. Annex FS-CO.40.

([130]) Form FS-CO, paragraphs 313 and 328.

([131]) Response to RFI 10 dated 3 July 2024.

([132]) TDRA's response to RFI 19 dated 29 August 2024, questions 4-6.

(181) As regards contracts with UAE public authorities and public companies, the TDRA's confirmation quoted in recital (179) that, in approving telecommunications prices, the TDRA aims to achieve competitive prices, also indicates that e& does not benefit from above-market prices being paid by UAE public authorities and companies. TDRA indicated that e& contracts with UAE public authorities and companies are concluded '*on terms similar to any other commercial contract for the provision of such services*.' ([133]) Therefore, given the evidence referred to in recitals (176) to (180) and the conclusion that the preliminary assessment in the Opening Decision that price regulation, in general, may confer a benefit on e& for the purposes of Article 3 FSR through above-market prices is not confirmed, the same conclusion applies with respect to prices for the contracts between e& and UAE public authorities and companies.

(182) Finally, no third parties reacted to the Opening Decision by providing any information that would show that the TDRA's interventions as regards the level of prices for telecommunications services in the UAE can be considered as leading to subsidisation of e&.

(183) On the basis of the evidence available to it and for the purpose of this Decision, the Commission therefore cannot conclude to the requisite legal standard that regulated prices in the UAE and UAE government contracts with e& confer a benefit to e& within the meaning of Article 3 FSR.

(184) Given that the Commission finds that its preliminary assessment in the Opening Decision that the regulated telecommunications prices in the UAE and UAE government contracts confer a benefit to e& is not confirmed, there is no need to consider the other conditions for the existence of a foreign subsidy within the meaning of Article 3 FSR.

7.4.2. *Conclusion*

(185) On the basis of the elements in Section 7.4, the Commission finds, pursuant to Article 11(4) FSR and following the in-depth investigation, that the preliminary assessment that the regulated telecommunications prices in the UAE and UAE government contracts with e& constitute foreign subsidies, as set out in the Opening Decision, is not confirmed.

7.5. **Foreign subsidies to the EIA**

(186) In the Opening Decision, ([134]) the Commission found sufficient indications that the EIA had received foreign subsidies within the meaning of Article 3 FSR that fall within the scope of Article 19 FSR, to warrant opening an in-depth investigation pursuant to Article 10(3) FSR. Those potential foreign subsidies consist notably in the FFCs that were reported by e& as having been received by the EIA during the three years prior to the conclusion of the SPA. ([135])

(187) Despite the Commission having addressed several RFIs under Article 13(2) FSR to the Notifying Party concerning the potential foreign subsidies to the EIA, the Notifying Party provided only limited information in this respect. The information provided is described and assessed in Sections 7.5.1, 7.5.2and 7.5.3.

(188) In more detail, the information provided in the Notifying Party's notification as regards the FFCs received by the EIA was limited, for each year from 2020 to 2023, to a high level description of the nature of the financial contribution ('*grant*', '*loan*', '*repayable advance*' or '*revolving credit facility*'), the identity of the grantor ('*UAE Ministry of Finance*' or '*consortium of UAE Banks*') and an estimated amount, given in the form of broad ranges ('*EUR 100-500 million*', '*EUR 500-1 000 million*' or '*more than EUR 1 000 million*'). ([136]) As such, the notification did not include any information as regards the specific amount, the remuneration, the duration or the terms and conditions of each

([133]) Form FS-CO, paragraph 262.
([134]) Opening Decision, paragraphs 127-140.
([135]) See Form FS-CO, Table 10.
([136]) Form FS-CO, Table 10. The Commission notes that these ranges are in line with those foreseen in Table 1 of Annex I of the Implementing Regulation.

individual FFC. Therefore, on 26 July 2024, the Commission sent the Notifying Party an RFI pursuant to Article 13(2) FSR ('RFI 11') requiring that e& provide the requested information by 31 July 2024. RFI 11 notably requested e& to submit detailed information for each individual FFC received by the EIA reported in its notification (questions 12 and 13). ([137]) On 31 July 2024, the Notifying Party provided its response to RFI 11, in which e& did not provide any information in addition to that already provided in its notification as regards the characteristics of these FFCs, such as their specific amount, remuneration, duration, terms and conditions. ([138])

(189) On 2 August 2024, the Commission sent the Notifying Party an RFI pursuant to Article 13(2) FSR ('RFI 12') requiring e& to provide the requested information by 5 August 2024. RFI 12 notably requested e& to provide the contact details of the appropriate person within the EIA and authorised external representatives of the EIA. ([139]) On 5 August 2024, the Notifying Party provided its response to RFI 12, in which e& did not provide any of the information requested as regards the EIA.

(190) On 5 August 2024, the Commission sent the Notifying Party another RFI pursuant to Article 13(2) FSR ('RFI 13') requiring e& to provide the requested information by 9 August 2024. RFI 13 notably reiterated the request contained in RFI 11 for e& to provide details on the FFCs received by the EIA reported in its notification (questions 10 to 12). ([140]) On 9 August 2024, the Notifying Party provided its response to RFI 13. Despite indicating that '*as e& and EIA form part of the same undertaking, e& has been authorised to provide responses to questions relating to both e& and EIA in this RFI*', ([141]) e& did not provide any information in addition to that already provided in its notification concerning the characteristics of the FFCs to the EIA, such as their specific amount, remuneration, duration terms and conditions, except for very limited information as regards the amount and date of the granting of the revolving credit facility loan provided by a consortium of UAE banks (see Section 7.5.3). ([142])

(191) In RFI 11, RFI 12 and RFI 13 the Commission pointed out to the Notifying Party that, pursuant to Article 16(1) FSR, '*a lack of cooperation*', including in case of incomplete information provided in response to the RFIs sent pursuant to Article 13(2) FSR, '*allows the Commission to take a decision on the basis of the facts available to it*'.

(192) Considering that, as confirmed by the Notifying Party, e& and the EIA form part of the same undertaking under investigation (see recitals (2) and (190)), and that this undertaking under investigation provided incomplete information under Article 13 FSR in the meaning of Article 16(1)(a) FSR, and failed to provide the necessary information to determine whether the financial contributions it received conferred a benefit on it in the meaning of Article 16(3) FSR, the Commission informed the Notifying Party on 30 August 2024 that, in the absence of the provision of the information requested in RFI 11 (questions 12 and 13) and RFI 13 (questions 10 to 12) on the FFCs received by the EIA or of credible and substantiated explanations justifying why it cannot provide that information by 3 September 2024, the Commission intended to rely on the facts available concerning the relevant FFCs to the EIA within the meaning of Article 16(1) FSR and to deem that the undertaking of which e& and the EIA form part has received a benefit from those FFCs, within the meaning of Article 16(3) FSR.

(193) e& confirmed on 2 September 2024 that the Notifying Party would not be able to provide the additional information requested, without providing credible and substantiated explanations for this inability. Therefore, the Commission assesses the existence of foreign subsidies in the FFCs that were reported by e& as received by the EIA in Sections 7.5.1, 7.5.2 and 7.5.3 on the basis of the facts available.

(194) In this regard, the Commission's ability to perform its duties is even further obstructed by the lack of publicly available financial data on the EIA (such as annual reports or credit ratings) to which it could otherwise resort to perform its assessment.

([137]) RFI 11 dated 26 July 2024, Questions 12 and 13.
([138]) Response to RFI 11 dated 26 July 2024, dated 26 July 2024, Questions 12 and 13.
([139]) RFI 12 dated 2 August 2024, Question 1.
([140]) RFI 13 dated 5 August 2024, Questions 10 to 12.
([141]) Response to RFI 13 dated 5 August 2024, question 17.
([142]) Response to RFI 13 dated 5 August 2024, questions 10 to 12.

(195) In the Opening Decision, the Commission also found sufficient indications that the EIA benefits from an unlimited guarantee from the UAE as a result of its exemption from the 2016 Bankruptcy Law, to warrant opening an in-depth investigation pursuant to Article 10(3) FSR.

7.5.1. *The grants to the EIA by the UAE Ministry of Finance*

(196) The Notifying Party submits that the EIA has received direct grants from the UAE Ministry of Finance of EUR 100-500 million on a yearly basis between 2020 and 2023, for a cumulated amount of EUR 300 to 1 500 million. ([143])

(197) The Commission finds that this financing takes the form of a transfer of funds or liabilities, within the meaning of Article 3(2)(a) FSR. Furthermore, as the financing was provided by the UAE Ministry of Finance, it can be considered as being attributable to the UAE.

(198) The attribution of grants to the EIA by the UAE constitutes free financing, which is liable, by its nature, to confer a benefit on the EIA, and to be individual measures which are thus limited to that undertaking.

(199) Moreover, considering that the Notifying Party failed to provide the necessary information for the Commission to assess the amount and conditions of these grants and consequently determine whether these financial contributions conferred a benefit on the EIA, and pursuant to Article 16(3) FSR (see recital (192)), the Commission considers that the EIA can be deemed to have obtained a benefit from the grants that it has received from the UAE Ministry of Finance between 2020 and 2023.

(200) Therefore, on the basis of the elements in Section 7.5.1, the Commission finds that the grants received by the EIA from the UAE Ministry of Finance from 2020 to 2023 qualify as foreign subsidies within the meaning of Article 3 FSR.

(201) These foreign subsidies have all been granted in the three years prior to the conclusion of the SPA.

7.5.2. *The loans and repayable advances to the EIA by the UAE Ministry of Finance*

(202) The Notifying Party submits that the EIA received loans and repayable advances provided by the UAE Ministry of Finance of more than EUR 1 000 million in 2021 and 2022 and between EUR 500 million and 1 000 million in 2020, for a cumulated amount of between EUR 2 500 million and more than EUR 3 billion. ([144])

(203) The Commission finds that this financing takes the form of a transfer of funds or liabilities, within the meaning of Article 3(2)(a) FSR. Furthermore, as the financing was provided by the UAE Ministry of Finance, it can be considered as being attributable to the UAE.

(204) Considering that the Notifying Party failed to provide the necessary information for the Commission to compare the terms of these loans and repayable advances with those obtained under normal market conditions – notably on the basis of the indicators cited in recital (13) FSR – and consequently determine whether these financial contributions conferred a benefit on the EIA, pursuant to Article 16(3) FSR (see recital (192)), the Commission considers that the EIA can be deemed to have obtained a benefit from the loans and repayable advances granted to it by the UAE Ministry of Finance.

(205) Therefore, on the basis of the elements in Section 7.5.2, the Commission finds that the loans and repayable advances received by the EIA from the UAE Ministry of Finance from 2020 to 2023 qualify as foreign subsidies within the meaning of Article 3 FSR.

([143]) Form FS-CO, Table 10.
([144]) Form FS-CO, Table 10.

(206) These foreign subsidies have all been granted in the three years prior to the conclusion of the SPA.

7.5.3. *The commitments from UAE banks in the revolving credit facility loan to the EIA*

(207) The EIA received, on [H1 2022], as amended and increased on [H1 2023], a USD [1-5] billion ([145]) (around EUR [1-5] billion) revolving credit facility loan (the 'RCF') provided by a consortium composed, in part, of UAE banks.

(208) The consortium of banks included: [UAE State-controlled bank 1], [UAE State- controlled bank 2], [UAE State-controlled bank 3]; [and private lenders]. ([146])

(209) In the Opening Decision, the Commission, although it referred to the RCF, did not engage into any further analysis as regards its qualification as a foreign subsidy. However, certain of the banks forming the consortium (namely [UAE State- controlled bank 1], [UAE State-controlled bank 2] and [UAE State-controlled bank 3]) were also involved in the Term Loan (see recital (49)), for which the Commission found that there were indications that the Term Loan could be attributed to the UAE. ([147])

(210) In its Observations on the Opening Decision, the Notifying Party challenged the attributability of the Term Loan to the UAE as a presumption assumed on the '*mere basis*' that the UAE banks are State-controlled or on the fact that the banking sector '*may be viewed as "particularly strategic" by the UAE government*'. ([148])

(211) In particular, the Notifying Party submitted that the approach of the Opening Decision was not in line with the CJEU's case law under Article 107 TFEU, which the Notifying Party considers should mirror the test under the FSR. The Notifying Party submitted that the CJEU observed in *Stardust Marine* ([149]) that imputability cannot automatically be presumed on the mere basis that the entity in question is State-controlled. ([150]) It thus concluded that the Opening Decision failed to meet the standard set by *Stardust Marine* for a measure to be considered as imputable to a State, since the '*key question is whether the public authority/ies in question "must be regarded as having been involved, in one way or another, in the adoption of [here: the Term Loan]"*'. ([151]) According to the Notifying Party, the same conclusion applies with regard to the RCF received by the EIA. ([152])

(212) The Notifying Party also explained that the same conclusion follows from the precedents on the meaning of public body in international trade law. In particular, the Notifying Party submitted that, in *Hot-Rolled Flat Products from China*, ([153]) the Commission referred to the relevant case-law noting that '*the applicable test to establish that a State-owned undertaking is a public body*' is whether it is an entity '*vested with authority to exercise governmental functions*', ([154]) with State majority ownership on its own being insufficient to establish that the entity is a public body.

(213) In order to assess the attributability of the commitments of [UAE State-controlled bank 1], [UAE State-controlled bank 2] and [UAE State-controlled bank 3] to the UAE, the Commission addresses those observations in Section 7.5.3.

([145]) Response to RFI 13 dated 5 August 2024, question 12.
([146]) Response to RFI 13 dated 5 August 2024, question 12.
([147]) Opening Decision, paragraphs 31-35.
([148]) Observations on the Opening Decision, pages 1-2.
([149]) Judgment of the Court of 16 May 2002, *French Republic v Commission*, C-482/99, EU:C:2002:294 ('*Stardust Marine*').
([150]) Observations on the Opening Decision, pages 1-2 (with reference to the Form FS-CO (paragraph 300)).
([151]) Id..
([152]) Id., footnote 12.
([153]) *Hot-Rolled Flat Products from China*, Definitive measures, OJ L 146, 9.6.2017, p. 17, paragraph 84 (referring to WT/DS379/AB/R (US — Anti-Dumping and Countervailing Duties on Certain Products from China), Appellate Body Report of 11 March 2011, DS 379, paragraph 318), ELI: http://data.europa.eu/eli/reg_impl/2017/969/oj.
([154]) US - Anti-Dumping and Countervailing Duties (China) - WT/DS379/AB/R, para. 317 - AB-2010-3 - Report of the Appellate Body of 11 March 2011.

(214) Article 3 FSR specifies that financial contributions granted by a third country should include those provided by, amongst others, '*(b) a foreign public entity whose actions can be attributed to the third country, taking into account elements such as the characteristics of the entity and the legal and economic environment prevailing in the State in which the entity operates, including the government's role in the economy*.'

(215) The Commission must therefore demonstrate, based on the facts and evidence of each case, that, overall, the actions of that foreign public entity '*can be attributed to the third country*', taking into account all relevant circumstances, including the '*characteristics of the entity*', the '*legal and economic environment*' in the relevant State, as well as '*the government's role in the economy*', which can be mirrored in the capacity of the State to exert influence over the decisions of the respective entities.

(216) Whilst such standard may coincide with that applicable under WTO rules concerning the imputability to '*government*' or a '*public body*', the relevant provisions are worded differently. The Commission recalls that pursuant to Article 3 FSR, not only financial contributions provided by '*(a) the central government and public authorities at all other levels*', but also those provided by '*(b) a foreign public entity whose actions can be attributed to the third country, taking into account elements such as the characteristics of the entity and the legal and economic environment prevailing in the State in which the entity operates, including the government's role in the economy*' and '*(c) a private entity whose actions can be attributed to the third country, taking into account all relevant circumstances*' are considered to be provided by a third country. In contrast, Article 1.1(a)(1) of the SCM Agreement merely refers to a financial contribution by a government or any public body within the territory of a Member.

(217) Moreover, the Commission notes that the appropriateness of the WTO Appellate Body jurisprudence on the definition of '*public body*' has been questioned by the European Union, alongside Japan and the United States, in 2020. In a joint statement, the representatives of the European Union, the United States and Japan stated that '*[t]o determine that an entity is a public body, it is not necessary to find that the entity "possesses, exercises or is vested with governmental authority"*' and that the '*interpretation of "public body" by the WTO Appellate Body […] undermines the effectiveness of WTO subsidy rules*'. ([155])

(218) These differences notwithstanding, the Commission disagrees with the Notifying Party that its assessment in the Opening Decision does not follow the logic underpinning the *Stardust Marine* judgment, which on the contrary allows imputability to also be demonstrated on the basis that it is unlikely in the specific circumstances of the case that the State was not involved in the relevant measure, as is the case here for the following reasons.

(219) In the in-depth investigation, the Commission addressed RFIs to the Notifying Party and to [UAE State-controlled bank 1], [UAE State-controlled bank 2] and [UAE State-controlled bank 3], to assess whether the actions of those banks can be attributed to the UAE, and, to do so, whether the UAE public authorities were involved, in one way or another, in the provision of the RCF by the banks, including where the facts show that it is unlikely that they were not involved. ([156]) The Commission considered in particular the ownership structure of those companies, the fact that the government representatives have a seat in the supervisory board and their role on that board, whether the decision-making processes of the entity enable the government to exercise particular influence, and the government's role in the UAE banking sector, as well as the compass of the RCF. On the basis of the elements collected – confirmed by the responses received – and as detailed in recitals (220) to (231), the Commission confirms the findings in the Opening Decision with respect to the attributability of the commitments of [UAE State-controlled bank 1], [UAE State-controlled bank 2] and [UAE State-controlled bank 3] under the RCF.

([155]) Joint Statement of the Trilateral Meeting of the Trade Ministers of Japan, the United States and the European Union, 14 January 2020 (https://ustr.gov/about-us/policy-offices/press-office/press-releases/2020/january/joint-statement-trilateral-meeting-trade-ministers-japan-united-states-and-european-union).

([156]) RFI 10 dated 3 July 2024.

(220) First, the ownership structure of those banks indicates that they are controlled by the UAE, given that all three banks are majority-owned by UAE public authorities (including, in the case of [UAE State-controlled bank 3], […]). In particular:

(a) [50-100]% of [UAE State-controlled bank 1] is owned by […], which is a UAE ([…]) State-owned […] company, whereas another [0-50]% of [UAE State-controlled bank 1]'s shares are held by other government entities, ([157])

(b) [UAE State-controlled bank 2] is indirectly [50-100%] owned by […], as [0-50]% is owned by […], which is a UAE ([…]) State-owned […] company ([158]) and [0-50]% owned by […], which is [a subsidiary] of the UAE ([…]) State-owned […] company, […]. ([159])

(c) [UAE State-controlled bank 3] is a UAE ([…]) State-owned bank, since [0-50]% of its share capital is owned by […] and [0-50]% by […].

(221) Second, a majority of and/or the most senior board members of each bank are persons holding prominent public offices in the UAE.

(1) The board of [UAE State-controlled bank 1] is composed of […] members, the most prominent of which holding links with the State. ([160])

(2) The board of [UAE State-controlled bank 2] is composed of […] members, the majority holding links with the State, including senior civil servants (such as […]). ([161])

(3) The board of [UAE State-controlled bank 3] is composed of […] members, the majority holding direct or indirect links with the government, or holding public offices (including senior civil servants, (such as […]). The Commission further observes that two of the board members hold positions in […]. ([162])

(222) In particular, all three chairmen of those banks hold prominent public offices, and all banks include other board members who have links to the UAE ruling families or serve UAE public authorities or UAE-controlled companies.

(223) The Commission, thus, observes that for the majority of the members comprising the boards of those banks, their interests are intertwined with the State. Those members, as discussed, include […] (and also a director on the board of EIA); […] and […] (who is also […] and serves on the board of the EIA). It is expected that decisions or actions of those persons are aligned with State interest or would not result in contradiction with Ministerial decisions or State directives.

([157]) The […] owns [50-100]% of […] and so the ultimate controlling party is […] (See […]). The Commission observes that […], as the majority shareholder, may appoint a number of board members that is proportionate to its shareholding. In addition, the provisions of [UAE State-controlled bank 1]'s articles of association are designed to provide […] with an influence in the composition of the board higher than what its proportion of [UAE State-controlled bank 1]'s shareholding would otherwise represent. To the extent that […] (acting through its subsidiary) opts to not use all of its votes to appoint its nominees, it may cast those votes in relation to the election of other candidates of the board. […] will have absolute discretion as to the identity of any individual it nominates. In addition, it may replace at any time its representatives to the board without the need to present that matter to the general assembly (Article […] of [UAE State-controlled bank 1]'s articles of association dated […], available at: […]).

([158]) […].

([159]) […].

([160]) The [UAE State-controlled bank 1] chairman, […] has also been a member of […]. Other board members include […], a member of […], and […], a […] in the [UAE sovereign wealth fund]. Additionally, the [UAE State-controlled bank 1] CEO serves on […].

([161]) As per the articles of association, [description of provisions pertaining to the management of UAE State-controlled bank 2]. In response to RFI 10 dated 3 July 2024, the Notifying Party provided information on its composition which include the following members: [description of board members]. The Board [description of the powers of the board of UAE State-controlled bank 2]. (Article […])."

([162]) Those include [description of board members] (response to RFI 10 dated 3 July 2024).

(224) This is even more so considering that among the board members of [UAE State- controlled bank 2] is […]. ([163]) At the same time, he serves as […] being thus confined to act under the provisions of the [EIA instructions]. In response to the Commission's request to provide further information on the RCF, the Notifying Party pointed, *inter alia*, to the fact that according to Article 13 of its establishment Act, '*all the funds and assets entrusted to be maintained, managed or invested by the EIA are deemed public funds owned by the UAE*'. In the same response, it was noted that the RCF has been made available '*for [purpose of the loan]*'. The EIA is, however, subject to the limitations on public debt and infrastructure project allocations, which may affect its ability to incur debt or liabilities for the Federal Government. ([164]) In this context it appears unlikely that the objectives of EIA were not taken into account in the approval of the RCF.

(225) In addition, in the case of [UAE State-controlled bank 2] and [UAE State-controlled bank 3], the [UAE regulatory authority] is involved in the approval of directors.

(226) Third, a review of the decision-making processes of those banks, in particular with respect to the appointment of senior management or the determination of the budget, highlights that the chairmen hold the casting vote in the event of a tie, holding thus a decisive influence on those subjects as well. ([165]) As a consequence, the board members with links to UAE public authorities have the capacity to exercise influence on those decision-making processes.

(227) Fourth, individuals within the senior management of the relevant banks also have links with the UAE public authorities or ruling families. ([166])

(228) Fifth, regarding the compass of the RCF, the RCF at stake is of an amount of USD [1-5] billion. Even though the Notifying Party has been unable to provide detailed information on the concrete amount of that facility and the extent of each bank's participation, it is unlikely that the participation of the UAE-controlled banks, which composed three of the six banks participating, is negligible.

(229) Finally, account needs to be taken of the finding in the Opening Decision, undisputed by the Notifying Party, that the banking sector is considered to be of strategic importance to the UAE. In the recent legislative change on foreign ownership, the banking sector thus remained among those in which the UAE wishes to retain the majority ownership.

(230) With respect to [private lenders], the Commission has found no evidence for the purpose of this Decision of any third country involvement in those entities.

(231) Based on the evidence presented in Section 7.5.3, the Commission finds that, at least, it is unlikely that the UAE public authorities were not involved in the provision of the RCF by the three UAE-controlled banks (with their respective commitments). Therefore, the Commission considers that the RCF, in respect of the commitments of the three UAE-controlled lending banks ([UAE State-controlled bank 1], [UAE State-controlled bank 2] and [UAE State-controlled bank 3]), was provided by a third country, within the meaning of Article 3 FSR.

(232) The Notifying Party submits that the RCF was provided on market terms. ([167]) However, despite several RFIs made by the Commission under Article 13(2) FSR, the Notifying Party did not provide details on the conditions of the revolving credit facility, beyond available information in the public domain (see recitals (187) to (191)). In particular, the Notifying Party did not provide details on the amount provided by each bank participating in the RCF, nor any information as regards the remuneration associated with (each part of) the RCF.

([163]) See Annex FS-CO.101, [description of relevant legal provisions].

([164]) Response to RFI 11 dated 26 July 2024.

([165]) The Notifying Party submits that as regards [UAE State-controlled bank 4], there is no publicly available information on the decision-making process relating to [UAE State-controlled bank 4]'s annual budget (Response to RFI 10 dated 3 July 2024).

([166]) In particular, the [UAE State-controlled bank 1] CEO serves on the board of […]. Several members of the [UAE State-controlled bank 2] management have links with UAE authorities. Several members of the [UAE State-controlled bank 3] management also serve in other UAE-controlled companies and the CEO serves on the board of […].

([167]) Response to RFI 13 dated 5 August 2024, paragraph 32.

(233) Considering that the Notifying Party failed to provide the necessary information for the Commission to confirm whether the contributions of [UAE State-controlled bank 1], [UAE State-controlled bank 2] and [UAE State-controlled bank 3], the UAE- controlled banks, were *pari passu* with the investments of [private lenders], or whether the conditions of the RCF were in line with normal market conditions, and consequently to determine whether this financial contribution conferred a benefit on the EIA, and pursuant to Article 16(3) FSR (see recital (192)), the Commission concludes that the financial contributions granted to the EIA by the UAE-controlled banks in the form of their commitments in the RCF can be deemed to confer a benefit on the EIA within the meaning of Article 3(1) FSR.

(234) Therefore, on the basis of the elements in Section 7.5.3, the Commission finds that, in respect of the commitments of the three UAE-controlled lending banks ([UAE State-controlled bank 1], [UAE State-controlled bank 2], [UAE State-controlled bank 3]), the RCF received by the EIA qualifies as a foreign subsidy within the meaning of Article 3 FSR.

(235) This foreign subsidy was granted between the beginning of 2022 and 1 August 2023, thus in the three years prior to the conclusion of the SPA and, therefore, falls within the temporal scope established by Article 19 FSR.

7.5.4. *The unlimited guarantee from the UAE to the EIA*

7.5.4.1. Existence of an unlimited guarantee

(236) By analogy with the reasoning laid down in Section 7.2, and for the reasons detailed 4in this Section7.5.4.1, the Commission finds that the EIA benefits from an unlimited guarantee from the UAE as a result of its exemption from the 2016 Bankruptcy Law.

(237) The EIA was established by Federal Decree Law No. 4 of 2007 ([168]) establishing the Emirates Investment Authority as an authority owned by the Government. It is designated as the only body in charge of '*investment and re-investment*' of the funds and assets allocated to it by the Government. ([169]) It is explicitly provided that *'[a]ll the funds and assets entrusted to be maintained, managed or invested by the Authority [the EIA] shall be deemed public funds owned by the UAE*' and the EIA is relieved of any fees, charges or taxes. ([170]) Pursuant to Article 27 of its establishment Act (as amended in 2009), ([171]) *'[t]he Authority shall not be dissolved or liquidated except, pursuant to a law, such law shall specify the manner pursuant to which the Investment Funds and assets maintained or owned by the Authority, will be dealt with*'. The specific details on the insolvency process for the EIA in the event of insolvency or financial difficulty would therefore be the object of a separate decree law which will cater for the disposal of its assets and funds. The Notifying Party confirms that, at present, no such law exists. ([172])

(238) The fact that the EIA is not subject to ordinary bankruptcy proceedings, or even liquidated unless specified in a specific law, indicates that the possibility of a bankruptcy of the EIA is highly remote and that the UAE are liable to cover the EIA's debts.

(239) Account can also be taken of the explicit qualification of EIA funds as public funds and the broad financial possibilities it is entrusted with in the attainment of its objectives. These circumstances highlight the fact that the EIA should not be considered as an ordinary commercial company, but rather as, according to the Notifying Party, an '*arm of the UAE government*', ([173]) whereby, in the event of insolvency, the UAE government would provide additional liquidity to the EIA to satisfy the claims of creditors. Such support may materialise in various forms (equity, loans, grants or other forms) enabling the EIA to fulfil its debts. In turn, this support will in practice ensure that creditors face a higher chance of seeing their claims satisfied than if the EIA were an ordinary UAE company subject to ordinary bankruptcy law.

([168]) Annex FS-CO.31, amended by Decree by Federal Law No. 13 of 2009 (Annex FS-CO.32) and Decree by Federal Law No. 11 of 2018 (Annex FS-CO.33).

([169]) In particular, *'the Authority shall be the only body in charge of the investment and re-investment of the Funds Allocated for Investment'*, as such being considered the total funds owned by the Government entrusted to that Authority to receive and manage for the purposes of investing the same and any proceeds thereof.

([170]) Article 13 of the 2007 UAE Decree submitted as Annex FS.CO.31.

([171]) Annex FS.CO.32.

([172]) Response to RFI 11 dated 26 July 2024, question 17.

([173]) Response to RFI 13 dated 5 August 2024, questions 10 to 14.

(240) Therefore, the Commission considers that in the circumstances at hand the inapplicability of the 2016 Bankruptcy Law to the EIA equates the existence of a guarantee in favour of the EIA. Since this guarantee is not limited in amount or time, the Commission finds that it constitutes an unlimited State guarantee (the 'EIA Unlimited Guarantee').

7.5.4.2. No additional distortive effect

(241) In the context of the review of the Transaction, the Commission finds that any distortive effects of the EIA Unlimited Guarantee would be identical to those caused by the e& Unlimited Guarantee. Those distortive effects are a result of the unlimited financial support assumed to be provided by the UAE government both to the EIA and to e& directly.

(242) In that context, and where the Commission has already established the existence of the e& Unlimited Guarantee from the UAE government, the EIA Unlimited Guarantee is not liable to cause, within the review of the Transaction, any additional distortion in the internal market than that caused by the e& Unlimited Guarantee.

(243) The Commission also notes that the commitments offered by the Notifying Party are also liable to remedy any distortive effects of the EIA Unlimited Guarantee, insofar as those commitments prevent the occurrence of any financing from the EIA to the activities of the combined entity in the internal market, and set limits on e&'s capacity to provide financing to the activities of the combined entity in the internal market so that such financing does not channel distortive foreign subsidies to the internal market. ([174])

(244) As such, it is not necessary for the Commission to conclude on whether the EIA Unlimited Guarantee constitutes a foreign subsidy in the Transaction within the meaning of Article 19 FSR.

7.5.5. *Existence of foreign subsidies to the EIA in the Transaction*

(245) In its Observations on the Opening Decision, the Notifying Party submits that the Commission does not provide any indication that the combined entity would post-Transaction have access to any of the foreign subsidies potentially granted to the EIA. ([175])

(246) The Notifying Party further submits, first, that there were no financial flows or commercial transactions between the EIA and e& in the three years prior to the date of the SPA (other than dividend payments by e&, and possibly ordinary business contracts for the provision of telecommunications services by e& at EIA's premises), ([176]) and, second, that *'the EIA is subject to the investment strategies and policies proposed by the UAE Public Debt Management Office and approved by the UAE Federal Cabinet, which may limit its discretion and flexibility in allocating funds.'* ([177])

(247) In Sections 7.5.1, 7.5.2 and 7.5.3, the Commission has found the existence of foreign subsidies to the EIA, consisting in the grants, loans and repayable advances from the UAE Ministry of Finance to the EIA, and the commitments of the UAE-controlled banks in the RCF to the EIA.

(248) In this respect, and in view of the lack of recent financial transactions between e& and the EIA, as indicated by the Notifying Party, the Commission does not consider that those foreign subsidies are liable to have improved the competitive position of e& in the acquisition process.

([174]) See Section 10.
([175]) Observations on the Opening Decision, p. 6.
([176]) Response to RFI 11 dated 26 July 2024, paragraph 83.
([177]) Response to RFI 11 dated 26 July 2024, paragraph 87.

(249) However, the Commission considers that those foreign subsidies are liable to improve the competitive position of the combined entity post-Transaction. In particular, the combined entity could request funding from the EIA that may be influenced by the existence of those foreign subsidies. In this respect, while there have not been recent financial transactions between the EIA and e&, the Notifying Party does concede that the *'EIA can also advance loans to companies it owns or in which it is a shareholder, which suggests that it can provide funding to e&'*. ([178])

(250) The Notifying Party also recognises that, aside from the limitations linked to the public policies and strategies to which the EIA is subject as described in recital (246), there is no UAE law providing specific guidelines or restrictions as regards the terms of financing or loans granted by the EIA to its subsidiaries, and therefore no specific limitation that would prevent the EIA from providing subsidised funding (funding that originates from foreign subsidies) to the combined entity. ([179])

(251) As such, and as also further established in Section 8.2.3, the Commission finds that the foreign subsidies identified in Sections 7.5.1, 7.5.2 and 7.5.3 to the EIA, the controlling parent of e&, constitute foreign subsidies in the Transaction within the meaning of Article 19 FSR, since they are liable to improve the competitive position of the combined entity post-Transaction.

7.5.6. *Conclusion*

(252) On the basis of the elements in Section 7.5, the Commission finds that the grants, loans and repayable advances provided by the UAE Ministry of Finance to the EIA, as well as the commitments of the UAE-controlled banks in the RCF to the EIA, each qualify as a foreign subsidy in the Transaction, granted in the three years prior to the conclusion of the SPA, within the meaning of Articles 3 and 19 FSR.

7.6. **Conclusion on the existence of foreign subsidies in the Transaction**

(253) Based on the elements in Section 7, the Commission finds that e& and its controlling parent the EIA have been granted in the three years prior to the conclusion of the SPA foreign subsidies in the Transaction from the UAE within the meaning of Articles 3 and 19 FSR. These foreign subsidies consist in the e& Unlimited Guarantee, and the grants, loans and repayable advances provided to the EIA by the UAE Ministry of Finance, as well as the commitments of the UAE-controlled banks in the RCF to the EIA.

8. **DISTORTION OF THE INTERNAL MARKET**

(254) In the Opening Decision, ([180]) the Commission found sufficient indications that the preliminarily identified foreign subsidies may distort the internal market to warrant opening an in-depth investigation.

(255) Article 4(1) FSR provides that a foreign subsidy is distortive if it is '*liable to improve the competitive position of an undertaking in the internal market*' and if, in doing so, it '*actually or potentially negatively affects competition in the internal market*'.

(256) The assessment as to whether a foreign subsidy *'is liable to improve the competitive position of an undertaking in the internal market'* embodies the need to establish a relationship between the foreign subsidy and activities of the undertaking in the internal market which are open to competition.

(257) The foreign subsidy must then, by improving the competitive position of an undertaking in the internal market, '*actually or potentially negatively affect competition in the internal market*'.

(258) In that respect, Article 4 FSR not only addresses distortions that are established with certainty, but also potential distortions that are liable to occur as a result of the foreign subsidies.

([178]) Response to RFI 11 dated 26 July 2024, paragraph 86.
([179]) Response to RFI 13 dated 5 August 2024, paragraph 24.
([180]) Opening Decision, paragraph 185.

(259) The effects on competition could be assessed in relation to any of the activities in which the beneficiary is, or will likely be, active in the internal market, be it investments (for instance acquisitions of other undertakings or assets), or the provision or purchase of any goods or services, as long as competition in respect of that activity in the internal market is, or may be, negatively affected by the foreign subsidy.

(260) In that context, the aim of the FSR is '*to effectively deal with distortions in the internal market caused by foreign subsidies in order to ensure a level playing field*'. ([181]) The notion of level playing field refers to the conditions in which undertakings compete with each other in the internal market based on merit. The level playing field is not respected when the chances of succeeding in the market are unduly altered, for instance, by support from a third country in favour of one or more market players.

(261) The finding of a distortion is determined in an overall assessment relying on indicators, including but not limited to: the nature and the amount of the foreign subsidy; the situation of the undertaking, including its size and the markets or sectors concerned; the level and evolution of economic activity of the undertaking on the internal market; and the purpose and conditions attached to the foreign subsidy as well as its use on the internal market. ([182])

(262) Each indicator taken separately is not necessarily decisive, and the indicators are not cumulative, meaning that – in the same way that other relevant indicators may be considered on a case-by-case basis – not all the examples of relevant indicators listed in Article 4(1) FSR need to be considered or established to evidence that a foreign subsidy distorts the internal market in a particular case. Indeed, pursuant to recital (19) FSR: '*[w]hen using the indicators to determine the existence of a distortion in the internal market, the Commission could take into account various elements such as the size of the foreign subsidy in absolute terms or in relation to the size of the market or to the value of the investment. For instance, a concentration, in the context of which a foreign subsidy covers a substantial part of the purchase price of the target, is likely to be distortive. […] Furthermore, the characteristics of the market, and in particular the competitive conditions on the market, such as barriers to entry, should be taken into account. […]*'. ([183])

(263) Pursuant to Article 19 FSR, the Commission's assessment of '*whether a foreign subsidy in a concentration distorts the internal market […] shall be limited to the concentration concerned*'.

(264) In notified concentrations, the Commission thus assesses whether foreign subsidies distort the internal market in the economic activities affected by the concentration, including (i) in the context of the acquisition process of the Target and (ii) in the activities of the combined entity in the internal market post-Transaction.

(265) The Commission highlights that its assessment of the existence of distortive foreign subsidies in a concentration within the meaning of Article 19 FSR is prospective – notably in relation to distortions in the activities of the combined entity post-Transaction – which needs to be taken into account in the standard of proof of the relevant distortion of the internal market.

(266) For the reasons set out below, the Commission finds that the foreign subsidies in the Transaction identified in Section 7 – namely, the e& Unlimited Guarantee and the grants, loans, repayable advances and the RCF to the EIA – do not distort the internal market in the acquisition process (Section 8.1). However, the Commission finds that these identified foreign subsidies distort the internal market in the activities of the combined entity post-Transaction within the meaning of Articles 4 and 5 FSR (Section 8.2).

([181]) FSR, recital (6).
([182]) FSR, Article 4(1)(a) to (e).
([183]) See also FSR, recitals (34) and (35).

8.1. **Distortion of the acquisition process**

8.1.1. *Foreign subsidies 'most likely to distort the internal market' and 'directly facilitating the concentration'*

(267) In the Opening Decision, ([184]) the Commission considered that some of the preliminarily identified foreign subsidies could be considered as '*most likely to distort the internal market*' under Article 5 FSR. In particular, in respect of the acquisition process, the Commission found that the e& Unlimited Guarantee (which itself fell under Article 5(1)(b) FSR), as well as the Term Loan could fall in the category of '*directly facilitating the concentration*' within the meaning of Article 5(1)(d) FSR. ([185])

(268) The Commission has found in this Decision that the Term Loan does not constitute a foreign subsidy (see Section 7.1).

(269) However, the Commission has found in this Decision that the e& Unlimited Guarantee constitutes a foreign subsidy (see Section 7.2). That e& Unlimited Guarantee is liable to improve the conditions at which e& raised financing for the acquisition of the Target, and in particular the Term Loan, which the Notifying Party submits will be used to finance the Transaction. ([186]) The e& Unlimited Guarantee thus could constitute a foreign subsidy '*directly facilitating the concentration*' under the meaning of Article 5(1)(d) FSR.

(270) In this respect, the Commission recalls that, pursuant to Article 5(2) FSR, it nevertheless remains possible for the Notifying Party to provide relevant information as to whether a foreign subsidy falling under Article 5(1) FSR does not distort the internal market in the specific circumstances of the case at hand.

(271) In that context, as is assessed in Section 8.1.3, the Commission finds that the foreign subsidies identified, regardless of whether they can be considered to fall under Article 5(1)(d) FSR, have not led to a distortion of the acquisition process. There is therefore, for the purpose of this Decision, no need to reach a definitive view on whether any of the identified foreign subsidies fall in the category of a foreign subsidy directly facilitating a concentration within the meaning of Article 5(1)(d) FSR.

8.1.2. *Improvement of e&'s competitive position*

(272) The Commission found in its Opening Decision sufficient indications that some of the foreign subsidies preliminarily identified, and in particular the Term Loan, the e& Unlimited Guarantee, the licence and the regulated telecommunications prices in the UAE and UAE government contracts, had improved e&'s competitive position in the acquisition process to warrant opening an in-depth investigation pursuant to Article 10(3) FSR, as a result of both the nature of those subsidies and of their potential amount. ([187])

(273) The Notifying Party submitted that these foreign subsidies do not improve its competitive position in relation to the acquisition process. In particular, ([188]) the Notifying Party submitted that the Term Loan is not necessary for the Transaction to take place, since e& *'would have been in the same competitive and financial position even if it had decided not to use funding under the [Term Loan] to finance the Transaction at all'*. ([189]) The Notifying Party submitted that e& had effectively considered other financing options, including its own cash on hand, which originates from e&'s own business activities, and only took the final decision [after the Transaction agreements had been signed]. As such, the Term Loan was not necessary for the Transaction.

([184]) Opening Decision, paragraph 144.
([185]) Opening Decision paragraphs 154-159.
([186]) Form FS-CO, paragraph 179.
([187]) Opening Decision, paragraph 168.
([188]) The Notifying Party also submits arguments related to (i) the valuation of the Target and (ii) the absence of a market for the concentration for lack of '*rival acquirers*', which relate to the actual or potential negative effects on competition and are further discussed in Section 8.1.3.
([189]) Form FS-CO, paragraph 402.

(274) The Commission found in Sections 7.1, 7.3 and 7.4 that it could not conclude to the requisite legal standard that the Term Loan and the regulated telecommunications prices conferred a benefit on e&, and that the federal royalty fee for e&'s telecommunications licence did not constitute adequate remuneration, and therefore that its preliminary assessment in the Opening Decision that these measures may constitute foreign subsidies was not confirmed. Additionally, the Commission has found in Section 7.5 that, while the EIA had received foreign subsidies, those foreign subsidies are not liable to have played a role in the acquisition process (see Section **7.5**).

(275) As such, the e& Unlimited Guarantee is the only identified foreign subsidy that is liable to have improved the competitive position of e& in the acquisition process.

(276) Since the Commission finds in Section 8.1.3 that the identified foreign subsidies did not lead to actual or potential negative effects on competition in relation to the acquisition process, it is not necessary to reach a final position on whether those foreign subsidies improved e&'s competitive position.

8.1.3. *Actual or potential negative effect on competition in the internal market*

(277) The Notifying Party submits that any foreign subsidies would not have actual or potential negative effects on competition in the acquisition process. In particular, the Notifying Party submits that the Transaction did not occur in the context of a structured bidding process, and that the Target and its shareholders did not approach and were not approached by any other potential acquirors, in particular because the Seller intended to establish a commercial partnership specifically with e& and that, '*although the overall consideration (naturally) played a significant role in the Seller's decision-making process, it did not play a decisive one*'. Additionally, the Notifying Party submits that the Transaction consideration was determined independently of the Term Loan and solely considered the Target's valuation (based on its enterprise value and comparable transactions), so that the Transaction would have taken place at the same conditions absent any foreign subsidies. ([190])

(278) In order to consider whether the foreign subsidies identified have led to negative actual or potential effects on competition in the acquisition process, the Commission must consider the extent to which the outcome of that acquisition process has been altered by the foreign subsidies.

(279) This can be the case, for instance, where the foreign subsidies have allowed an acquirer to outbid competitors.

(280) This can also be the case where the foreign subsidies have led the acquirer to deter other potential acquirers from submitting an offer, for instance by making an offer above market value.

(281) The Commission must also consider whether the acquirer would have been able to finance the acquisition absent any foreign subsidies. This aspect is separate from the question of whether the foreign subsidies improved the competitive position of the acquirer, for instance by improving the conditions at which the acquirer is carrying out the acquisition. Rather, this aspect considers whether those foreign subsidies allow the acquirer to carry out an acquisition that would not have been possible in a level playing field, in this context an acquisition that would not have been possible at all, or the perimeter of which would have been different.

(282) In this respect, first, during the in-depth investigation, the Commission did not identify any other parties who were potentially interested in the Transaction, nor did any third party submit comments on the Opening Decision in this respect. The Commission's RFIs to the Target's competitors, seeking their views on the Transaction, confirmed their absence of interest in acquiring the Target. ([191])

([190]) Form FS-CO, paragraph 374 (with reference to paragraph 98).

([191]) Responses of telecommunications operators and national telecommunications regulators in Bulgaria, Hungary and Slovakia to the Commission's RFIs of 17 and 18 June 2024 (see footnotes 10 and 11). The national telecommunications regulators, on their end, noted that they have no knowledge on a potential interest of other operators to acquire the Target.

(283) Second, the Commission finds that the Notifying Party's submissions show that the valuation does not depart from other comparable transactions in the same industry. ([192]) In addition, in their responses to the Commission's questions seeking their views on the Transaction, the Target's competitors did not point to any overpayment for the Target. ([193]) As a result, the Commission finds that there are no elements that indicate that the Notifying Party did not pay a market price for the Target, thus deterring potential competitors.

(284) Finally, the Commission has reviewed, in the in-depth investigation, whether the foreign subsidies identified as having potentially played a role in the acquisition process, namely the e& Unlimited Guarantee, were necessary for the Transaction to occur. In this respect, the Commission finds that the information submitted by the Notifying Party confirms that e& could have performed the Transaction absent the e& Unlimited Guarantee. The Commission took notably into account the fact that e&'s cash position, as a result of the normal conduct of its business activities at the time of the signing of the agreement, was several times the consideration for the Transaction. ([194])

(285) As such, whilst the e& Unlimited Guarantee may have improved e&'s competitive position in the acquisition process, this did not lead to actual or potential negative effects on competition in that process.

8.1.4. *Conclusion*

(286) Based on the elements in Section 8.1, the Commission finds that the identified foreign subsidies do not distort the acquisition process.

8.2. **Distortion in the activities of the combined entity post-concentration**

(287) In the Opening Decision, ([195]) the Commission found sufficient indications that the preliminarily identified foreign subsidies would distort the internal market in the activities of the combined entity post-Transaction to warrant opening an in-depth investigation.

(288) In particular, the Opening Decision preliminarily found that the existence of the e& Unlimited Guarantee was liable to improve the competitive position of the combined entity further to the concentration, by allowing that company to raise financing for its operations in the internal market at preferential conditions, or by resorting to financing already raised by e& with the support of the e& Unlimited Guarantee, for instance the Term Loan.

(289) The Opening Decision then found that the preliminarily identified foreign subsidies could allow the combined entity to perform further investments in the internal market, which are explicitly stated as part of the rationale for the Transaction, ([196]) and to improve its competitive position for its economic activities in the internal market in the telecommunications sector.

(290) The Commission stated that it would further examine in the in-depth investigation whether the foreign subsidies preliminarily identified are also liable to improve, through the concentration, the competitive position of the combined entity as a result of access to subsidised assets and services.

([192]) See, for instance, Form FS-CO, paragraph 106; Response to RFI 11 dated 26 July 2024, questions 6 and 7; Annex FS-CO.6, slide 6; Annex FS-CO.7, notably slide 85.

([193]) Responses of telecommunications operators and national telecommunications regulators in Bulgaria, Hungary and Slovakia to the Commission's RFIs of 17 and 18 June 2024 (see footnotes 10 and 11).

([194]) Response to RFI 18 dated 23 August 2024, question 3, and Annex FS-CO.112.

([195]) Opening Decision, paragraph 184.

([196]) See for instance Annex FS-CO.7 – […], which mentions as a '*strategic Rationale*' that […].

(291) In turn, the Opening Decision found that the preliminarily identified foreign subsidies in the Transaction were liable to actually or potentially negatively affect competition in the internal market, for example by allowing notably the combined entity to perform investments and acquisitions at preferential conditions.

(292) The Commission finds in this Decision that the foreign subsidies identified in Section 7 distort the internal market in the activities of the combined entity post-Transaction.

(293) The Commission describes below the activities of the combined entity which are likely to be affected by the identified foreign subsidies (Section 8.2.1), and examines how the foreign subsidies identified in Section 7, which include foreign subsidies '*most likely to distort the internal market*' within the meaning of Article 5 FSR (Section 8.2.2), are liable to improve the competitive position of the combined entity in the internal market in relation to those activities (Section 8.2.3), and in doing so lead to actual or potential negative effects on competition in the internal market (Section 8.2.4).

8.2.1. *The activities likely to be affected by the identified foreign subsidies*

(294) The FSR aims at ensuring a level playing field, so that undertakings operating certain activities do not obtain undue competitive advantages as a result of foreign subsidies.

(295) A concentration may extend the benefit of foreign subsidies to activities that were previously subject to competitive constraints, namely in this case the economic activities of the Target in the internal market prior to the concentration. Foreign subsidies are liable to free their beneficiary from market constraints in those economic activities in the internal market.

(296) It is, therefore, necessary to identify the economic activities in the internal market that could suffer harm from the fact that one of the operators would benefit from foreign subsidies. The activities for which the Commission assesses a distortion of the internal market should include all the activities in the internal market of the parties to the concentration that post-concentration may benefit from the identified foreign subsidies.

(297) From that perspective, it is necessary to consider the relevant characteristics of the economic activities in the internal market that the identified foreign subsidies are liable to affect.

(298) According to the Notifying Party, ([197]) within the internal market the Target is active in the provision of a number of telecommunications services (under the Yettel brand in Bulgaria and Hungary, and the O2 brand in Slovakia) as well as in the provision of telecommunications infrastructure services (under the CETIN brand in Bulgaria and Hungary, and the O2 brand in Slovakia) in Bulgaria, Hungary and Slovakia. However, an overwhelming share of the Target's revenues and cash flows is generated by the provision of retail mobile telecommunications services. ([198]) By contrast, the level of the Target's commercial activities in the internal market in the provision of other telecommunications services is limited, for which, based on the available information for instance for retail fixed services and for infrastructure services, it does not appear to be a large supplier. ([199]) Given the Target's limited activities in the provision of these other services in the internal market, the potential distortive effects from the foreign subsidies identified in Section 7 appear less likely to materialise – or likely to be less significant – in respect of these activities in comparison with effects regarding retail mobile telecommunications services (including related infrastructure and other investments). Consequently, in view of the limited likelihood of distortion with respect to these activities and given that, to the extent that such distortion would arise, the Commission does not have any indication that such distortion would be of a different nature to that identified with respect to the combined entity's retail telecommunications services, the Commission's analysis below focuses on the combined entity's retail telecommunications services.

([197]) Form FS-CO, pages 110 and 111.

([198]) Mobile services amounting to around [70-80]% of the Target's total turnover in the EU in 2023 (Form FS-CO, Table 15).

([199]) See the market shares provided in the Response to Pre-notification RFI 6 dated 17 April 2024, question 9, and updated in the Response to RFI 15 dated 7 August 2024.

(299) The geographic scope of the Target's activities in the internal market and the focus on the provision of retail mobile telecommunications services are illustrated in Figure 1, an excerpt from a presentation on the Transaction to e&'s Investment and Finance Committee ('IFC').

Figure 1 – e&'s view of the Target's activities (2022)

[…]

Source: Annex FS-CO.7, p. 30.

(300) As illustrated in Figure 2, Figure 3 and Figure 4, the information on the Target contained in the same internal document from e& on the Transaction shows that, where it is active in the internal market, the Target is one of three large operators in the provision of mobile telecommunications services, activities which are open to competition. These internal views are confirmed by the information directly provided by the Notifying Party ([200]) as well as by information from national telecommunications regulators ([201]) and from competitors. ([202])

Figure 2 – Commercial landscape in Bulgaria

[…]

Source: Annex FS-CO.7, p. 151.

Figure 3 – Shares in Hungary (retail mobile telecommunications services)

[…]

Source: Annex FS-CO.7, p. 158.

Figure 4 – Shares in Slovakia (retail mobile telecommunications services)

[…]

Source: Annex FS-CO.7, p. 180.

(301) Looking ahead, the Target explained in response to a Commission RFI that it *'is investing material amounts into the modernisation and further development of mobile networks*'. ([203]) This consists predominantly of [details on Target's plan as regards 5G network development]. In parallel, it invests in [details on Target's investments]. ([204]) These investments result in planned capital expenditure of over EUR [1-5] billion between 2024 and 2028 in the internal market. ([205])

([200]) See the market shares provided in the Response to Pre-notification RFI 6 dated 17 April 2024, question 9, and updated in the Response to RFI 15 dated 7 August 2024.

([201]) See the Annual report of the Bulgarian Communications Regulation Commission 2023 (https://crc.bg/files/Annual_Report_CRC_2023_EN.pdf), Figures 11 and 12; the Response of 24 June 2024 by the Hungarian telecommunications regulator Nemzeti Média- és Hírközlési Hatóság ('NMHH') to the Commission's RFI (ID443-1); the Slovakian Regulator's 2023 annual report (https://www.teleoff.gov.sk/files/en/authority/annual-report/2023_eng.pdf), Chart 2.

([202]) For instance: '*Yettel Bulgaria is active primarily in the market for mobile communications, while its main competitors Vivacom and A1 are active in both fixed and mobile markets. This helped Yettel to be more focused having higher mobile revenues and ARPUs in comparison with its competitors*' (Response from a competitor to the Commission's RFI dated 17 June 2024 – ID428-2).

([203]) Response to RFI 10 dated 3 July 2024, question 18.

([204]) Response to RFI 10 dated 3 July 2024, question 18.

([205]) Annex FS-CO.92 and Annex FS-CO.93, slides 8 and 16, partly updated in Annex FS-CO.99.

(302) For instance, according to the Hungarian regulator, '*in 2024, Yettel and CETIN signed a Joint Declaration with the Hungarian Government for the digital transformation of Hungary. Based on the declaration, (as a result of which the extra telecommunications tax [in] Hungary will be repealed from January 1, 2025) Yettel and CETIN undertake to implement a mobile network development investment of at least HUF 72 billion [approximately equivalent to EUR 183 million]* ([206]) *between 2024 and 2028, which will increase the nationwide 5G residential outdoor coverage to 99 percent by the end of 2028*'. ([207])

(303) The Notifying Party in its internal documents also expects the combined entity to participate in spectrum auctions scheduled for […]. ([208])

(304) In sum, the activities in the internal market likely to be affected by the identified foreign subsidies are those where the Target is mainly active – and thus, in all likelihood, also the combined entity post-Transaction – in particular its activities as a large retail mobile telecommunications service provider, where there is competition and for which it plans significant investments in the future.

8.2.2. *Foreign subsidies 'most likely to distort the internal market'*

(305) In the Opening Decision, ([209]) the Commission preliminarily considered that some of the preliminarily identified foreign subsidies could be considered as '*most likely to distort the internal market*' within the meaning of Article 5 FSR. In particular, the Commission found that the e& Unlimited Guarantee fell under Article 5(1)(b) FSR.

(306) The Commission has found in Section 7.2 that e& benefits from the e& Unlimited Guarantee from the UAE government.

(307) Unlimited guarantees are '*most likely to distort the internal market*' within the meaning of Article 5(1)(b) FSR. As set out in recital (20) FSR, for such subsidies the Commission does not need to perform a detailed assessment based on indicators.

(308) As a result of the Transaction, the Target and e& will become a financially integrated entity. As such, through this integration, the Target will have access to the unrestrained financing capacities of e&.

(309) This e& Unlimited Guarantee will allow the combined entity to raise future financing for its operations in the internal market at preferential conditions. Such financing could be raised by the legal entities operating these activities in the internal market directly. In that context, creditors are expected to take into account the existence of an unlimited guarantee from the UAE to the parent of the group, e&. ([210]) Such expectations would only be mitigated to the extent that there are restrictions put upon the granting of financing from e& to those legal entities.

(310) Such financing could also be raised by e&, and then be provided by e& to the activities in the internal market, for instance through equity injections or loans. In that respect, e& has already raised financing with the support of the e& Unlimited Guarantee on which e& could draw to finance its activities in the internal market.

(311) In view of their nature, unlimited guarantees have direct effects on the capacity of undertakings to raise financing at preferential conditions, as detailed in recitals (308) to (310). In addition, since unlimited guarantees are of an '*unlimited*' amount, they are liable to improve the competitive position of any undertaking, regardless of its size or presence on the internal market. Because unlimited guarantees are not restricted by a particular purpose or any conditions for their use, their distortive effects are also not restricted.

([206]) ECB exchange rate of 29 August 2024 (HUF 1 = EUR 0.002546).
([207]) NMHH response to Commission's RFI dated 18 June 2024 (ID443-1).
([208]) Annex FS-CO.7, pp. 155, 166 and 188.
([209]) Opening Decision, paragraph 147.
([210]) In practice, such creditors may ask e& to be jointly liable for any financing raised, so as to be able to reflect the group credit rating.

(312) The e& Unlimited Guarantee will thus allow the combined entity to benefit from better conditions than competitors to perform further investments in the internal market – critical for future performance in the relevant activities, as detailed in Section 8.2.1 – which are explicitly stated as part of the rationale for the Transaction, ([211]) and is liable, therefore, to improve its competitive position for its economic activities in the internal market in the telecommunications sector.

(313) This e& Unlimited Guarantee will, in doing so, actually or potentially negatively affect competition in the internal market, for example by allowing the combined entity to carry out investments in the internal market at preferential conditions.

(314) As such, the presence of an unlimited guarantee to the acquiring undertaking, to which the combined entity obtains access through the Transaction, is liable to distort the internal market.

(315) Nevertheless, pursuant to Article 5(2) FSR, it remains possible for the Notifying Party to provide relevant information as to whether a foreign subsidy falling under Article 5(1) FSR does not distort the internal market in the specific circumstances of the case at hand.

(316) In its notification, the Notifying Party submitted, first, that e& does not have the ability to distort competition in the internal market, as a result of provisions of the Shareholders' Agreement which (i) allow e& to provide financing to the Target '*only if external unsecured or secured financing is not available on reasonable terms*' or in '*emergency situations*', (ii) limit the capacity of e& to provide equity financing to the Target to situations of last resort, and (iii) provide that the Seller would have the right to participate in either of these two ways of financing ((i) and (ii)), so that e& is not able to unilaterally transfer foreign subsidies to the Target. ([212]) Second, the Notifying Party submitted that e& would have no incentive to do so, in view of the significant minority interest of the Seller, which means that such transfer would be disadvantageous to e& and a possible violation of applicable corporate governance rules, taking also into account the Put Option and Call Option mechanisms and the distribution policy agreed in the Shareholders' Agreement. ([213]) e& also submits that adverse UAE corporate tax impacts may materialise if transactions between e& and the Target are not conducted at arm's length. ([214])

(317) In its Observations on the Opening Decision, ([215]) the Notifying Party denied the existence of the e& Unlimited Guarantee, but did not put forward any further arguments as to why such an unlimited guarantee, if any, could not lead to any distortions of the internal market.

(318) The Commission finds that, contrary to the Notifying Party's submission, the Shareholders' Agreement does not exclude the possibility for e& to provide debt or equity financing to the Target. Rather, it only limits that possibility. Additionally, whilst the Seller will have the right to participate in such financing *pro rata*, it will not be compelled to do so. The Commission also does not agree that these mechanisms remove any incentive for e& to provide financing to the Target with the support of the e& Unlimited Guarantee, in particular when the viability of the Target is at stake.

(319) In addition, those mechanisms are, in any event, limited to the 5-year transition period during which e& and the Seller have joint ownership of the Target (see recital (8)). Upon exercise of either the Put Option or the Call Option, e& and the Target will function as a fully financially integrated entity, so that there will be no restrictions whatsoever on the possibility for e& to provide financing to the Target.

(320) Further, as detailed in Sections 8.2.3 and 8.2.4, even without relying on Article 5 FSR and under a detailed assessment pursuant to Article 4 FSR, there is concrete evidence that the e& Unlimited Guarantee will improve the competitive position of the combined entity post-Transaction, and in doing so will lead to actual or potential negative effects on competition in the internal market.

([211]) See, for instance, Annex FS-CO.7, p. 5, which mentions as a '*Strategic Rationale*' that […].
([212]) Form FS-CO, paragraphs 385 to 389, referring to sections 17 ('*Finance matters*'), 18 ('*Financial policies*') and 22 ('*Issue of equity securities*') of the Shareholders' Agreement.
([213]) Referring to clause 18.2 of the Shareholders' Agreement.
([214]) Form FS-CO, paragraphs 390 to 399.
([215]) Observations on the Opening Decision, pages 3-5.

8.2.3. *Improvement of the competitive position of the combined entity's economic activities in the internal market*

(321) In this Decision, the Commission has found that, in addition to the e& Unlimited Guarantee, the EIA is the recipient of significant foreign subsidies, in the form of grants, loans, repayable advances and the RCF to the EIA.

8.2.3.1. Access to subsidised financial capacity

(322) A consequence of the Transaction is the financial integration of e& and the Target. Through such integration, the combined entity will have access to e&'s subsidised financial capacity for its operations in the internal market. The availability of the e& Unlimited Guarantee and its combination with the other identified foreign subsidies to the EIA will likely provide the combined entity with preferential financing conditions for its operations in the internal market and make it more indifferent to risks.

(323) In relation to the e& Unlimited Guarantee, the Commission finds the following.

(324) Because of their nature, unlimited guarantees granted to a parent undertaking are liable to improve the competitive position of all the economic activities of that undertaking and its subsidiaries including, in the present case, the economic activities of the Target in the internal market that are acquired through the Transaction. In particular, the availability of the e& Unlimited Guarantee will likely enable the combined entity to raise future financing for its operations in the internal market at preferential conditions, notably due to the improved expectations of creditors as a result of the existence of that e& Unlimited Guarantee. As detailed in recitals (309) and (310), such financing can be raised by the entities of the group in the internal market directly, or can be raised by e& (including financing already raised with the support of the e& Unlimited Guarantee) and then transferred to the operations in the internal market by way of equity injections, debt instruments, or otherwise. As detailed in Section 7.2, the e& Unlimited Guarantee is unlimited in its amount and thus liable to significantly affect the conditions at which the combined entity raises financing in the future.

(325) In addition, in view of its characteristics, the e& Unlimited Guarantee is not subject to any conditions or purpose restricting its use, so that any financing raised by the combined entity, including for its operations in the internal market, is liable to benefit from the e& Unlimited Guarantee. This benefit can be direct, where the financing is raised by e& itself, or indirect, when it is raised by another group entity, as detailed in recitals (309) and (310).

(326) The improvement of the competitive position of the combined entity due to the e& Unlimited Guarantee in terms of financing can, in particular, be illustrated by the comparison of the respective credit ratings of e& ([216]) and the Target. As shown in Table 1, the ratings of e& are seven notches better than those of the Target. It is likely that post-Transaction the rating of the Target will get much better, and closer to that of e& thanks to the new identity of its controlling shareholder.

Table 1

Credit ratings of relevant telecommunications operators

Company	Fitch	Moody's	S&P	Scope Ratings
e&		Aa3	AA-	
Target	BBB-	Ba1	BB+	
Deutsche Telekom	BBB+	Baa1	BBB+	
Orange Group	BBB+	Baa1	BBB+	
Telenor		Baa1	A-	

([216]) The Commission notes in this respect that the EIA does not have an independent credit rating, but is likely to be rated at the sovereign UAE rating of AA- (Fitch Ratings). https://www.fitchratings.com/research/international-public-finance/sovereign-wealth-funds-ratings-are-driven-by-state-support-01-12-2020.

Company	Fitch	Moody's	S&P	Scope Ratings
Telia		Baa1	BBB+	
Telekom Austria	A-	A3	A-	
Swisscom		A1	A	
United Group *(owns Vivacom in Bulgaria)*		B2	B	
Vivacom Bulgaria *(see United Group)*	n/a			
Magyar Telekom				BBB+
4iG *(owns Vodafone Hungary)*				BB-

Source: *Response to RFI 11 dated 26 July 2024, question 18; Supplemental Submission N°5 of 12 August 2024; and Annex FS-CO.107.*

(327) While the Target explains that […]. ([217])

(328) This likely uplift in the Target's credit rating, due to the consolidation with e&, includes the effects of the e& Unlimited Guarantee, which are incorporated in e&'s credit rating as the Commission has shown in recital (100). ([218])

(329) In relation to the EIA Unlimited Guarantee, and as detailed in Section 7.5.4.2, the Commission finds that the EIA Unlimited Guarantee is liable to improve the competitive position of the combined entity in a similar manner as the e& Unlimited Guarantee. First, the legal entities operating the EU activities could, in the future, raise financing directly. In that context, creditors are expected to take into account the existence of an unlimited guarantee from the UAE to the ultimate parent, the EIA. ([219]) Such expectations would only be mitigated to the extent that there are restrictions put upon the granting of financing from the EIA to those legal entities. Second, such financing could also be raised by the EIA, and then be provided by the EIA to the activities in the internal market, for instance through equity injections or loans.

(330) In that context, both the e& Unlimited Guarantee and the EIA Unlimited Guarantee are liable to improve the expectations of creditors of the combined entity up to the same level of credit risk exposure, being the credit risk of the UAE itself. Indeed, the result of both the e& Unlimited Guarantee and the EIA Unlimited Guarantee is the financial support assumed to be provided by the UAE government both to the EIA and to e& directly.

(331) In relation to the other identified foreign subsidies, namely the grants, loans, repayable advances and the RCF to the EIA, the Commission finds the following.

(332) First, the combined entity will have access to the subsidised financial capacity of the EIA for its economic activities in the internal market. As e&'s majority and '*special shareholder*', the EIA has both the ability and the incentive to provide funding to e& in case of financial difficulties, in order to preserve the value of its portfolio company. The EIA even has a mandate of assisting and advising the board and senior management team of e&. ([220])

([217]) Supplemental Submission N°5 of 12 August 2024, question 4.
([218]) See also footnote 69.
([219]) In practice, such creditors may ask the EIA to be jointly liable for any financing raised, so as to be able to reflect the group credit rating.
([220]) See the EIA's 2021 Inaugural Report.

(333) Second, on the basis of the information in the Commission's possession, ([221]) an analysis of the characteristics of the foreign subsidies shows that there is a concrete risk that those foreign subsidies will be used to improve the competitive position of the economic activities of the combined entity in the internal market.

(334) Firstly, the amount of those subsidies (Article 4(1)(a) FSR) is significant.

(335) In particular, the Commission, relying on the aggregate information provided in the Notifying Party's notification, ([222]) understands that the foreign subsidies to the EIA amount to several billion euros.

(336) That amount is of a magnitude comparable or exceeding both the Target's annual turnover in the internal market (EUR [1-5] billion), and the total amount of its balance sheet (EUR [5-10] billion). It is thus significant, in relation to the situation of the undertaking and the level of its economic activity on the internal market (Article 4(1)(c) and (d) FSR). These foreign subsidies, in turn, could contribute significantly to the activities of the combined entity in the internal market. These amounts should in particular be viewed in the context of the Target's business plan for the coming years, and especially in comparison with the levels of CAPEX and investments anticipated by the Target. From 2023 to 2028, the cumulated CAPEX would amount to around EUR […] billion, as detailed in Section 8.2.1., which is significantly smaller than the aggregate amount of the foreign subsidies to the EIA.

(337) Secondly, those foreign subsidies are, by their nature, ([223]) liable to improve the competitive position of the combined entity. Indeed, these foreign subsidies result in additional liquidity to the EIA, which could then be provided to the combined entity (similar to the granting of cash). This is particularly the case for grants, which are available to the EIA indefinitely. In relation to the loans, repayable advances, and the RCF, these are also liable to temporarily improve the liquidity position of the EIA, even if they are ultimately repayable.

(338) Thirdly, the Commission did not, despite its RFIs, receive information as to whether those foreign subsidies were conditioned on any outcome either in terms of return or in terms of use. In this context, basing itself on the information available, the Commission considers that there is no indication that those foreign subsidies are subject to any conditions, purpose, or terms of use, ([224]) so that they can be effectively deployed by the combined entity for any operations, including operations in the internal market. The Commission has found that the only restrictions identified to the deploying of the EIA financing to the combined entity, concerning limitations linked to the public policies and strategies to which the EIA is subject, are not sufficient to eliminate the improvement of the combined entity's competitive position (recitals (249) and (250)), nor the restrictions concerning the provision of financing from e& to the Target (recitals (318) and (319)).

(339) For all these reasons, and in accordance with Article 4(1) FSR, the identified foreign subsidies are liable to improve the competitive position of the combined entity in its activities post-concentration, by allowing that combined entity access to the subsidised financial capacity of the acquiring undertaking.

8.2.3.2. Access to subsidised assets and services

(340) The Commission did not identify, in its in-depth investigation, any evidence that e& holds or benefits from subsidised assets or services that could be passed on to the combined entity after the Transaction.

([221]) The Commission recalls that the Notifying Party provided incomplete information within the meaning of Article 16(1) FSR, despite several RFIs under Article 13(2) as regards the specific characteristics (including amounts and conditions) of the foreign subsidies received by the EIA (see recitals (187) to (192)). In that context, the Commission may base itself on the facts available, in line with Article 16(1) FSR.

([222]) Form FS-CO, Table 10.

([223]) FSR, Article 4(1)(b).

([224]) FSR, Article 4(1)(e).

(341) In particular, the Commission did not identify any evidence that e& benefitted from foreign subsidies that helped it develop assets and services. Additionally, the Commission did not identify any evidence that e& would deploy, further to the Transaction, any critical assets or services to the combined entity.

(342) Competitors in the relevant markets also did not point to any specific concerns relating to the access by the combined entity to subsidised assets and services. ([225])

8.2.4. *Actual or potential negative effects on competition*

(343) For the reasons set out in Sections 8.2.4.1 and 8.2.4.2, the Commission finds that the foreign subsidies identified in Section 7 will lead to actual or potential negative effects on competition in the internal market, taking into account, in particular, the situation of the combined entity, including its size and the markets or sectors concerned (Article 4(1)(c) FSR), the level and evolution of economic activity of the combined entity on the internal market (Article 4(1)(d) FSR) and the use of the foreign subsidies on the internal market (Article 4(1)(e) FSR).

8.2.4.1. Importance of investments and therefore financing for the relevant activities

(344) As shown in Section 8.2.1, the Parties expect to have to undertake large investments to support their activities in the internal market in the provision of telecommunications services.

(345) This is consistent with the Commission's anticipations and industry expectations.

(346) The Commission's white paper on '*How to master Europe's digital infrastructure needs?*' (the 'White Paper') ([226]) explains that reaching the current Digital Decade ([227]) targets for Gigabit connectivity and 5G may require a total investment of up to EUR 148 billion in the EU, if fixed and mobile networks are deployed independently, and stand-alone 5G – offering European citizens and businesses the full capabilities that can be offered by 5G mobile networks – is deployed. Some further investments would be required (EUR 26-79 billion) to ensure full coverage of transport corridors including roads, railways and waterways. It notes that operators in the internal market are currently focussing on reusing existing sites for low and mid-band deployments. Future upgrades, for instance 6G or WiFi 6 will require network densification by a factor of 2-3 by the end of the 2020s at least in high-density demand areas.

(347) The report from the European Telecommunications Network Operators' Association ('ETNO') on the 'Future of Electronic Communications Networks in Europe' (the 'ETNO report') ([228]) similarly notes that European telecommunications operators currently face significant pressures: '*increasing investment and network upgrade needs, security challenges, and a fragmented and heavily regulated EU market*'.

(348) Telecommunications operators may need therefore not only to invest in their current offerings but also in their network coverage and technology, which is a key factor for their competitive position in the future.

([225]) Responses to Commission's RFI dated 17 June 2024 (see footnote 10).

([226]) Commission White Paper on 'How to master Europe's digital infrastructure needs?', 12 February 2024, COM(2024) 81 final (https://digital-strategy.ec.europa.eu/en/library/white-paper-how-master-europes-digital-infrastructure-needs), Section 2.3.1.

([227]) Digital Decade is a policy programme of the European Union and its Member States, with concrete targets and objectives for 2030, guiding Europe's digital transformation. More information is available at: https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/europe-fit-digital-age/europes-digital-decade-digital-targets-2030_en.

([228]) ETNO (European telecommunications network operators association) report on the 'Future of Electronic Communications Networks in Europe', 9 October 2023, available at: https://etno.eu/library/reports/116-future-of-electronic-communications-networks-in-europe.html.

(349) In this context, the Commission in its White Paper acknowledges the difficulties of a number of electronic communications operators to access finance and reach the level of investments necessary to deliver the current Digital Decade targets for Gigabit connectivity and 5G, and more generally to develop the modern digital networks necessary for the development and fruition of applications based on edge computing, AI, and IoT. The White Paper finds that the proportion of at least some of the electronic communications operators' net debt over their EBITDA has continued to grow. In addition, it notes that access to finance seems to have degraded with the recent rise in interest rates and widespread risk aversion. ([229])

(350) In that respect, indirect access to significant amounts of finance received by the EIA by way of foreign subsidies, or the ability to benefit from financing at better conditions than would be otherwise achievable by virtue of the e& Unlimited Guarantee to meet future investment needs is of paramount importance for the activities of the combined entity, as a majority of the Target's competitors responding to the Commission's RFIs have stressed. ([230])

8.2.4.2. Negative effects on competition

(351) As shown in Sections 8.2.1 and 8.2.4.1, in the internal market the Target is significantly active in the provision of telecommunications services, especially retail mobile services, a field open to competition where investment needs – and the corresponding access to finance – are important.

(352) It follows that to maintain a level playing field in the provision of telecommunications services in the internal market where the Target currently – and in all likelihood the combined entity post-Transaction – is active, a crucial consideration is access to finance based on the merits of each undertaking.

(353) The Transaction will however fundamentally alter the position of the Target in this respect. Indeed, the capacity of the combined entity to mobilise preferential financing in view of the foreign subsidies provided to e& and the EIA (as identified in Section 7), improving its competitive position, will lead to potential negative effects on competition in the internal market regarding the relevant activities, ([231]) where access to financing to fund critical investments is of paramount importance. ([232])

([229]) White Paper, Section 2.3.2.

([230]) Responses to Commission's RFI dated 17 June 2024 (see footnote 10). This was stressed by large telecommunications operators, noting, for instance, that '*the major industry stakeholders focus on the development of very high-capacity networks required for increased 5G connectivity and beyond, which shall involve investment costs for upgrading the existing networks as well as for deploying new infrastructure*' (ID428-2). Smaller operators shared similar concerns arising from the financial strength of e&, fearing that '*[s]maller operators would not survive the competition of the larger telecoms players, which would -in turn, impact negatively the market, along with investments in newer infrastructure & services*' (ID840).

([231]) As an illustration of the possible negative impact on competition of the fact that a firm has comparatively substantial financial resources, see T. Sire, 'The uneven playing field: How to deal with foreign subsidies when assessing mergers?', February 2022, *Concurrences* N° 1-2022, Article N° 105256, pp. 54-62 (available at: https://awards.concurrences.com/IMG/pdf/06.concurrences_1-2022_article-sire-3_2__published_.pdf?101461/c0ae7982a317075c1bcc639edf57d0c2face98d0f2d7b416b8151b74fa68a790), in particular paragraph 15 and the literature cited therein (for instance: M. Motta, 'Competition Policy: Theory and Practice': '*Exit, with or without bankruptcy, is not necessarily the most common outcome of such a predation […] the prey can stop expanding or modernizing rather than run the risk of going bankrupt*').
See also, for instance: Xavier Boutin, Giacinta Cestone, Chiara Fumagalli, Giovanni Pica, Nicolas Serrano-Velarde, 'The deep-pocket effect of internal capital markets', *Journal of Financial Economics*, 2013 (https://doi.org/10.1016/j.jfineco.2013.02.003); Calvino, F., C. Criscuolo and R. Verlhac, 'Declining business dynamism: Structural and policy determinants', *OECD Science, Technology and Industry Policy Papers*, No. 94, 2020, OECD Publishing, Paris, https://doi.org/10.1787/77b92072-en; Bravo-Biosca, A., C. Criscuolo and C. Menon, 'What Drives the Dynamics of Business Growth?', *OECD Science, Technology and Industry Policy Papers*, No. 1, 2013, OECD Publishing, Paris, https://doi.org/10.1787/5k486qtttq46-en.

([232]) The Commission notes for completeness that the evidence available to it in this case does not provide any indication that, without the Transaction, the Target would not have been able to make the investments needed for its activities in the internal market in the coming years. On the contrary, the Target had, pre-Transaction, significant investments plans (see recitals (301) to (303)). See, for instance, Annex FS-CO.7, pp. 27-28, the Response to RFI 10 dated 3 July 2024, question 17 (including Annex FS-CO.92 and Annex FS-CO.93), and the Response to RFI 11 dated 26 July 2024, question 5.

(354) Because the business of the combined entity will operate under the umbrella of the e& Unlimited Guarantee, its fear of financial losses and possible market exit will be strongly reduced. In that case, without the disciplinary effect of the market, the combined entity would have the ability and incentive to become more risk-seeking and expansionist as it will know that the downsides are manageable.

(355) This concern is illustrated by the fact that, in their responses to the Commission's questions seeking their views on the Transaction, several of the Target's competitors raised concerns regarding the financial integration of e& and PPF, in particular in view of the links of e& with the UAE government and the implied solid financial support and resulting competitive advantage. Regarding the impact of the Transaction, one respondent described e& as a '*financial[ly] strong shareholder with virtually unlimited financial resources*'. ([233]) Similarly, another telecommunications operator active in Bulgaria noted that '*major strength of [e&] is the solid financial backing of the state of UAE which helps them overcome operational obstacles as well.*' ([234])

(356) This is even more the case when the combined entity's competitors would be in a comparatively weaker financial position, thereby having access to more costly financing terms. ([235]) Based on the information available, the Commission observes that none of the combined entity's competitors benefits from an unlimited guarantee or a comparable financial situation. In fact, some operators appear to be in fragile financial conditions.

(357) Indeed, according to the Notifying Party, ([236]) among credit rating agencies and the broader financial community a net debt to EBITDAaL (earnings before interest, taxes, depreciation and amortisation, after lease) leverage ratio above 3.5x is generally considered the point at which an entity becomes sub-investment grade. The Notifying Party goes on to state that '*most listed telecommunications operators, such as Orange Group and Deutsche Telekom Group, as well as large other large players in central and eastern Europe maintain leverage in the 2X-3X range*'. However, as Table 2 shows, many of the Target's competitors suffer from important leverage ratios, namely at least United Group, 4iG and SWAN.

Table 2

Net debt to EBITDAaL ratios of certain European telecommunications groups

Operator	Net debt to EBITDAaL	Time period
e&	x 0.9	last 12 months to June 2024
PPF Telecom Group (incl. Czech operations)	x 2.2	last 12 months to June 2024
Deutsche Telekom	x 2.3	last 12 months to June 2024
Orange Group	x 1.9	last 12 months to June 2024
Swisscom	x 1.4	last 12 months to June 2024
Telekom Austria	x 0.3	last 12 months to June 2024
Telenor	x 2.1	last 12months to June 2024
Telia	x 1.8	last 12 months to June 2024

([233]) Response to Commission's RFI of 17 June 2024 (ID425-1).
([234]) Response to Commission's RFI of 17 June 2024 (ID840). See also the submission on 30 August 2024 from a telecommunications operator in the internal market (ID823-1).
([235]) See recital (349) and the respective credit rating of competitors in Table 1.
([236]) Response to Commission's RFI 11 dated 26 July 2024, question 18.

Operator	Net debt to EBITDAaL	Time period
United Group *(owns Vivacom in Bulgaria)*	x 4.6	last 12 months to March 2024
Magyar Telekom	x 1.0	last 12 months to June 2024
4iG (*owns Vodafone Hungary*)	x 4.1	last 12 months to March 2024
Orange Slovensko *(see Orange)*	x 0.8	last 12 months to December 2023
SWAN	x 3.8	last 12 months to December 2023

Source: *Response to RFI 11 dated 26 July 2024, question 18; Supplemental Submission N°5 of 12 August 2024; and Annex FS-CO.107.*

(358) The Notifying Party further notes that [comments on competitors' financial situation and strategy]. Such a strategy would create '*a high risk of financial distress at the outset of any economic downturn and/or underperformance of the business*'. ([237]) The Notifying Party argues that this is currently the case with […] '*where some investors lost confidence in its ability to repay part of its outstanding debt given the high leverage ratio*'. As a result, according to the Notifying Party, […] has [description of actions] and its debt is currently rated […] by both Moody's and S&P.

(359) These financial constraints on competitors would limit their ability to challenge any threat made by the combined entity post-Transaction, making the negative effects of the foreign subsidies on competition in the internal market more material.

(360) These negative effects are liable to occur notably in relation to capital expenditures, future investments, ([238]) and in the competitive process overall.

(361) First, with the benefit of access to the subsidised financial capacity of e&, the combined entity could distort the outcome of future spectrum auctions. ([239]) In its Long-Term Plan 2024-2028, ([240]) the Target acknowledges the '*[…]*', noting that […]. A large telecommunications operator confirmed the strong interest of the Target in '*all spectrum auctions*', where it has been very active, acquiring significant parts of frequencies, whereas '*the prices they were willing to pay have always been above median prices of other market players, both for spectrum as such and for specific positions within particular bands*'. ([241]) Having already embarked on a strategy by which it pays over the median price for spectrum and positions within particular bands, having access to e&'s subsidised financial capacity could render it even easier and more attractive for the Target to continue such approach and pay even higher prices for spectrum – which may not be justified in terms of normal returns. ([242]) If this were to materialise, it could result in a significant increase in the cost of conducting business going forward, which competitors may not be able to absorb and continue competing effectively, to the detriment of competition in the internal market.

(362) In this respect, responses from the Target's competitors to the Commission's RFIs regarding their views on the Transaction mentioned in particular a concrete impact of this subsidised financial capacity on auctions for spectrum and content licensing, and investments in the underlying infrastructure deployment, which are capital-driven. ([243]) One mobile network operator noted, for instance, that '*an entity that […] through owner structure has access to subsidies and government support […] it will gain a significant advantage*' in upcoming spectrum auctions. ([244])

([237]) Response to RFI 13 dated 5 August 2024, question 16.
([238]) See, for instance, Annex FS-CO.7, p. 5: '*Potential to acquire controlling stake in PPF's CME (media) businesses as a subsequent step following this transaction*'.
([239]) See notably Annex FS-CO.93, slides 7 and 8. See also recital (303).
([240]) Annex FS-CO.93, page 12.
([241]) Response to Commission's RFI of 17 June 2024 (ID425-1).
([242]) Similar situations could equally arise with respect to other large capital expenditures such as those referred to in recital (301).
([243]) Responses of telecommunications operators and national telecommunications regulators in Bulgaria, Hungary and Slovakia to Commission's RFIs of 17 and 18 June 2024 (see footnotes 10 and 11).
([244]) Response to Commission's RFI of 17 June 2024 (ID433-3).

(363) In a similar vein, the Parties could accelerate substantially the timing of other capital expenditures. ([245]) Given their comparative financial constraints, ([246]) such acceleration could likely not be duplicated by most or all of its competitors and the combined entity's access to the subsidised financial resources of e& would potentially distort the level playing field and thus result in negative effects to competition in the internal market.

(364) The Commission therefore considers that the financial strength of the combined entity – resulting from foreign subsidies – would potentially negatively affect competition on the internal market, in activities where a financial advantage can be a decisive factor.

(365) Second, when examining the rationale of the Transaction, the Notifying Party acknowledged […]. This is illustrated in Figure 5, an excerpt from the presentation of the Transaction to e&'s IFC.

Figure 5 – [deal rationale]

[…]

Source: Annex FS-CO.7, p. 44.

(366) Third, the foreign subsidies identified in Section 7 would potentially allow the combined entity to discipline competitors in their negotiations for wholesale services. For instance, […], the Notifying Party recommends […]. It adds that […]. ([247]) Access to e&'s subsidised financial capacity would make the implementation of such a strategy easier and thus more likely, to the detriment of the level playing field.

(367) More generally, the competitive advantage obtained through foreign subsidies is that the combined entity gains the ability to expand its activities in the internal market beyond what its own merits should result in. The subsidies can, for instance, cover the costs linked to an aggressive commercial policy, and the e& Unlimited Guarantee makes it credible that such behaviour could be sustained.

(368) In conclusion, the foreign subsidies identified in Section 7 would enable the combined entity to conduct strategies, notably in relation to capital expenditures, other investments and in the competitive process, which would potentially have negative effects on competition in the internal market. In particular, the e& Unlimited Guarantee would further incentivise the combined entity to undertake such strategies by insulating it from risk and enabling it to obtain financing at lower interest rates than would otherwise be the case, resulting in potential negative effects on competition in the internal market.

8.3. **Conclusion on the distortion of the internal market**

(369) Based on the elements in Section 8.2, the Commission finds that the foreign subsidies in the Transaction identified in Section 7 – namely the e& Unlimited Guarantee, and the grants, loans, repayable advances, and the RCF to the EIA – distort the internal market in the activities of the combined entity post-Transaction within the meaning of both Article 4 and Article 5 FSR.

9. **POSITIVE EFFECTS**

(370) According to Article 6 FSR, *'the Commission may, on the basis of information received, balance the negative effects of a foreign subsidy in terms of distortion in the internal market, according to Articles 4 and 5 against the positive effects on the development of the relevant subsidised economic activity on the internal market, while considering other positive effects of the foreign subsidy such as the broader positive effects in relation to the relevant policy objectives, in particular those of the Union.'* The Commission should then take into account this assessment *'when deciding whether to […] accept commitments, and the nature and level of those […] commitments'*.

([245]) See recital (301).
([246]) See recitals (356) to (359).
([247]) Annex FS-CO.7, slide 257.

(371) According to recital (21) FSR, '*Member States, as well as any natural or legal persons are able to submit information on the positive effects of a foreign subsidy, of which the Commission should take due account when carrying out the balancing test*.' In addition, '*the positive effects should relate to the development of the relevant subsidised economic activity on the internal market*' and '*the Commission should also examine broader positive effects in relation to the relevant policy objectives, in particular those of the Union. Those policy objectives can include, in particular, a high level of environmental protection and social standards, and the promotion of research and development*'.

(372) Further, '*[t]he Commission should weigh those positive effects against the negative effects of a foreign subsidy in terms of distortion in the internal market*' and '*in the case of categories of foreign subsidies that are deemed most likely to distort the internal market, positive effects are less likely to outweigh negative effects*'.

(373) The Notifying Party submitted in its notification that the Transaction will give rise to certain positive effects in the internal market, notably as a result of the synergies that e& intends to realise through the concentration, and which may improve the Target's services, in particular in respect of (i) customer value management and improved customer service, (ii) network optimisation, (iii) fraud detection, and (iv) improved roaming services. ([248])

(374) The Commission notes, first, that the foreign subsidies identified include an unlimited guarantee, which, under Article 5 FSR, is deemed '*most likely to distort the internal market*', so that positive effects are less likely to outweigh its negative effects under Article 6 FSR.

(375) Second, the Commission finds that the positive effects alleged by the Notifying Party are not related to any of the foreign subsidies in the Transaction identified by the Commission. Rather, those positive effects, if substantiated, are to be brought about by the Transaction itself, and the subsequent commercial integration between e& and the Target. The foreign subsidies identified are not necessary for those positive effects to occur, nor do they contribute to those positive effects in any way. In this respect, the Notifying Party did not bring forward any elements demonstrating that the foreign subsidies played a role in the occurrence of the positive effects.

(376) As such, the Commission does not consider that the elements alleged by the Notifying Party constitute positive effects of the foreign subsidies. In addition, the Commission has not received any other information pertaining to the existence of positive effects of the foreign subsidies.

(377) As a consequence, the Commission finds that there are no positive effects that should be balanced against the distortion identified, pursuant to Article 6 FSR, nor taken into account when deciding whether to accept commitments and the nature and level of those commitments.

(378) In any event, the Commission notes that:

(1) The commitments submitted by the Notifying Party are appropriate to remedy the full distortive effects of the foreign subsidies identified (see Section 10), without it being necessary to take into account how those distortive effects may be mitigated by the alleged positive effects;

(2) The commitments submitted by the Notifying Party do not prevent, nor have any influence on, the occurrence of the positive effects alleged by the Notifying Party. As a consequence, these commitments would also be suitable to preserve any of the positive effects alleged by the Notifying Party.

10. **PROPOSED COMMITMENTS**

(379) Where the Commission considers that foreign subsidies in a concentration distort the internal market, the parties may offer commitments to remedy such distortion and thereby gain clearance for their transaction. ([249])

([248]) Form FS-CO, Section 7.
([249]) FSR, Article 7.

(380) To remedy the distortions identified in Section 8.2, the Parties submitted commitments on 16 July 2024 (the 'Initial Commitments'). The Commission assessed these initial commitments notably on the basis of the outcome of the Market Test.

(381) On 19 August 2024, the Parties submitted modified commitments (the 'Final Commitments'). These Final Commitments are annexed to this Decision and form an integral part thereof.

10.1. **Analytical framework**

(382) According to Article 7(2) and 7(3) FSR, the Commission '*may accept commitments offered by the undertaking under investigation' and 'such commitments […] shall be proportionate and fully and effectively remedy the distortion actually or potentially caused by the foreign subsidy in the internal market*'. Article 7(2) FSR provides that '*[w]hen accepting such commitments, the Commission shall make them binding on the undertaking under investigation in a decision with commitments in accordance with Article 11(3). The undertaking's compliance with the commitments agreed upon shall, where appropriate, be monitored.*'

(383) The FSR provides a non-exhaustive list of possible commitments. ([250])

(384) It is for the notifying parties to the concentration to put forward commitments. The Commission is only entitled to accept commitments that it considers likely to fully and effectively remedy the distortion of the internal market. To do so, such commitments have to eliminate entirely the competition concerns raised by the Commission and, furthermore, such commitments have to be comprehensive and effective.

10.2. **The Initial Commitments**

10.2.1. *Description of the Initial Commitments*

(385) The Parties submitted their Initial Commitments on 16 July 2024, together with an explanatory memorandum setting out the reasons according to which, in their view, those commitments were appropriate to fully and effectively eliminate the Commission's concerns. The following description only reproduces the key points of the Initial Commitments.

(386) The Initial Commitments aim at ensuring that the Transaction does not create a conduit that would permit foreign subsidies to be channelled into the internal market in a way that distorts the internal market. Such channelling could occur though the provision of distortive financing of any kind from the EIA, e& or any other undertaking controlled by the EIA, to the Target or through the conclusion of transactions that would not be on market terms between the same undertakings.

(387) To that end, the key elements of the Initial Commitments are as follows:

(1) The articles of association of e& will be amended to no longer contain provisions which conflict with, disapply or override any provision of the UAE Bankruptcy Law (Section B, subsection II of the Initial Commitments). ([251])

(2) The Financing Commitment: e& or any other undertaking controlled by it will not provide any financing, whether debt or equity, to the EU businesses of the Target, except for:

(a) the financing of acquisitions of shares or assets of entities not active in the internal market (Section B, subsection III.1 of the Initial Commitments), and

([250]) FSR, Article 7(4)-7(6).

([251]) As of 1 May 2024, the 2016 Bankruptcy Law was repealed and replaced by the Financial Reorganisation and Bankruptcy Law promulgated by Federal Decree-Law No. 51 of 2023 (the '2023 Bankruptcy Law'). Article 3 of the 2023 Bankruptcy Law excludes from its scope '*[c]ompanies wholly or partially owned by the federal or local government, whose establishment legislation, memoranda of association, or bylaws stipulate that they are subject to special provisions that regulate their preventive settlement, restructuring, or bankruptcy proceedings to the contrary of this law*'. The amended regime, therefore, still enables entities owned by the government to unilaterally determine, through their constitutive documents, the extent to which they are subject to the Bankruptcy Law. The procedures of the 2023 Bankruptcy Law are similar to those of the 2016 Bankruptcy Law. The commitments, thus, apply taking into account the bankruptcy law in force in the UAE at the relevant time.

(b) when the EU businesses of the Target need emergency funding. Emergency funding is defined as an event of acute liquidity crisis, provided that (i) the net debt to EBITDAaL ratio of the Target is 3.5x or higher, and (ii) debt financing from third parties is not or would not reasonably be expected to be available (Section A, subsection I, definition of '*Emergency Funding*' of the Initial Commitments). This is subject to the review of the Commission's case team (see recital (388)) and to the payment of a remuneration which reflects the underlying creditworthiness of the Target at the time when the emergency funding is to be granted. The Target must repay emergency funding within 6 months of receiving the first instalment of such funding. (Section C, subsection I of the Initial Commitments, '*Reporting Procedure relating to the Commitments*').

(3) The EU businesses of the Target undertake not to accept any financing from the EIA or its affiliated undertakings, but for e& group.

(4) The EIA, e& or any other undertaking controlled by the EIA will not enter into any commercial transaction with the EU businesses of the Target which is not on market terms. Commercial transactions are defined as including inter alia the supply and provision of any goods or services and sales, acquisitions, licensing or leasing of any assets or rights. Transactions at arm's length will be presumed to be on market terms (Section B, subsection III.2 of the Initial Commitments).

(5) e& will inform the Commission of its acquisitions that are not notifiable concentrations under Article 20(3) FSR, including the acquisition of a minority share in undertakings with significant activities in the internal market (Section A, subsection I, definitions of '*Reportable Acquisition*' and '*Relevant Undertaking*', and Section C, subsection IV of the Initial Commitments).

(388) To ensure that these commitments will have their full effects, the Initial Commitments provide for the following monitoring and authorisation procedures (developed in section C of the Initial Commitments, subsection I for the financing and subsections II and III for the commercial transactions).

(1) e& will appoint a Monitoring Trustee, subject to the Commission's approval. They will be in charge of monitoring the compliance of the Parties with the Initial Commitments.

(2) As regards the Financing Commitment:

(a) For the emergency funding exception, based on information provided by the Notifying Party, the Monitoring Trustee will provide an opinion to the Commission on the compatibility of the financing with the Initial Commitments. If the Commission case team raises concerns in relation to emergency funding reported to it, the Notifying Party may not make emergency funding available to the Target unless it has made such changes to the terms of the emergency funding as the Commission case team may require, eliminating the case team's concerns.

(b) There were no specific provisions for the other possible financing flows.

(3) As regards the commercial transactions commitment, the monitoring and authorisation system differed according to the size of the transactions:

(a) For transactions below a threshold of EUR 4 million per year, the Notifying Party shall, within 30 UAE working days of the end of each year, send to the Monitoring Trustee a copy of all relevant transactions entered during the year, with a summary of key terms. If the Monitoring Trustee raised concerns and the Commission case team sees a risk of distortion of the internal market, it could require the Notifying Party to adopt measures or unwind the transactions.

(b) For any transaction above that threshold, the Notifying Party must inform the Monitoring Trustee prior to its implementation. Then the Monitoring Trustee shall inform the Commission whether it considers that the transaction in question is on market terms or not. If not and if the Commission case team considers that there is a risk of distortion of the internal market, it will issue an opinion including a description of measures that would be necessary to eliminate its concerns. The transaction cannot be implemented without implementing such measures.

(389) The Initial Commitments were undertaken for a 10-year period from the date of adoption of the Commission's decision pursuant to Article 11(3) FSR. The Commission could extend this period by up to five years. The Commission and the Notifying Party could agree on extending beyond 15 years.

10.2.2. *Results of the Market Test and assessment of the Initial Commitments*

(390) Upon receipt of the Initial Commitments, the Commission sent a non-confidential version thereof to the Target's main competitors in the internal market. The following summarises the feedback received from the 11 respondents ([252]) as well as the Commission's assessment of the Initial Commitments on the basis of this feedback and its own analysis.

(391) Overall, respondents considered that the Initial Commitments addressed the concerns raised by the Transaction. One respondent, however, contended that the Initial Commitments did not address distortions in the acquisition process. ([253]) Another respondent was of the opinion that the Transaction could trigger potential coordinated effects with another market player in one of the Member States. ([254])

(392) However, as developed in Section 8.1, the Commission finds that the Transaction does not give rise to distortions in the acquisition process. In addition, the Commission notes that coordinated effects as such should be examined under relevant antitrust and merger control rules at the Union or Member State levels, not the FSR, since their assessment requires many considerations unrelated to the existence of distortive foreign subsidies.

(393) As regards the Financing Commitment, some respondents considered that the term '*financing*' was not defined and unclear.

(394) Indeed, the Commission notes that the Initial Commitments did not provide a definition of '*financing*' and only mentioned between brackets that financing could take the form of debt or equity. Other forms of financing such as the provision of a guarantee would not appear to be covered. Moreover, the absence of a proper definition created uncertainty as to whether financing containing foreign subsidies could be provided to a third party who would then provide it to the EU businesses of the Target.

(395) As regards the provisions relating to the emergency funding exception to the Financing Commitment, the Commission considers it important to set both the criteria where the exception would apply and the Commission's control at the right level so that the exception would not result in the channelling of foreign subsidies from e& to the internal market. One respondent argued that the level of the ratio of debt to EBTIDAaL was at the right place ([255]) whereas another explained that it was too low. ([256])

(396) The Notifying Party's submissions show that some of the Target's competitors in the internal market had ratios above the threshold set out in the Initial Commitments. ([257]) For that reason, the Commission considers that the ratio proposed in the Initial Commitments may not have been a good proxy for acute financial difficulties. ([258])

(397) As regards the exception for non-EU funding, the Commission considers, also taking into account the responses received in the Market Test, that the Initial Commitments suffered from a lack of clarity in the definitions. Because the definitions did not allow for the EU businesses to be isolated fully from financial flows from other parts of the group and did not properly define '*financing*', the Initial Commitments allowed for circumvention of the prohibition of financing of the businesses of the Target in the internal market.

([252]) See the Responses to the Market Test (see footnote 12).
([253]) See the Responses to the Market Test (ID646-1).
([254]) See the Responses to the Market Test (ID645-1).
([255]) See the Responses to the Market Test (ID646-1).
([256]) See the Responses to the Market Test (ID645-1).
([257]) See Table 2.
([258]) See the Responses to RFIs 11 and 13, and the Notifying Party's Supplemental Submission N°5 of 12 August 2024.

(398) As regards the monitoring and authorisation system put in place by the Initial Commitments, a majority of respondents either found them to be satisfactory or did not raise concerns in this respect. ([259])

(399) As far as transactions are concerned, *ex ante* control would only apply to the larger ones (above EUR 4 million), but all transactions would be subject to a control. For the smaller ones, if a transaction were found *ex post* to have not been on market terms, it would be either modified or unwound (paragraph 34 of the Initial Commitments). The standards set out for determining whether a transaction is on market terms are workable and reasonable: while '*arm's length terms*' in the sense of the OECD guidelines ([260]) is used as a proxy for '*market terms*' (paragraph 12 of the Initial Commitments), paragraph 11 of the Initial Commitments read together with paragraph 12 allows one to consider even arm's length transactions to channel distortive foreign subsidies and thus not be on '*market terms*'. In addition, intervention by the Monitoring Trustee and the Commission is allowed once there is '*a risk of channelling any Foreign Subsidies into the internal market in a way that would distort competition within the meaning of Article 4 and (if applicable) Article 5 FSR*' (paragraphs 26 and 31 of the Initial Commitments).

(400) The Commission therefore considers that the monitoring mechanism is proportionate and efficient. First, all financing is prohibited while the exceptions are subjected to the combined intervention of the Monitoring Trustee and the Commission. Second, all transactions are submitted to a review, *ex ante* for the larger ones and *ex post* for the others. The Commission considers that the EUR 4 million threshold to distinguish *ex ante* and *ex post* review for transactions is reasonable for the industry. In particular, the Notifying Party explained that EUR 4 million is not appreciable in the telecommunications industry in the internal market. It represents a minute part of the EBITDA or operating expenses of market players (less than [0.1-0.5]% of the Target's EBITDA and less than [0.5-1]% of the Target's OPEX, and less than 2% of EBITDA or OPEX in general for the Target's main competitors). The Notifying Party also indicated that even transactions below that threshold are reported *ex post* and can then be reviewed. ([261]) In addition, none of the respondents to the Market Test raised any issue in relation to this threshold. ([262])

(401) However, some respondents pointed out that the system did not allow for Commission to disagree with a positive assessment on the part of the Monitoring Trustee on commercial transactions. ([263])

(402) Finally, the vast majority of respondents were satisfied with the 15-year duration of the Initial Commitments. ([264]) One respondent argued that the risks to the internal market would last as long as e& controls the Target. ([265])

(403) The Commission considers that the provision of the Initial Commitments that allows the Commission and the Notifying Party, at any point, to extend the duration of the commitments beyond 15 years would offer the required flexibility should the threat of distortion remain acute near the end of such period.

([259]) See the Responses to the Market Test (see footnote 12). One respondent, among those having raised concerns on the Transaction, noted that '*[o]ur understanding is that according to the Commitments in any case of such financing the Commission shall be informed in one form or another either for the funding itself or for an acquisition requiring these funds. This in our opinion gives the later the ability interference and either approve or disagree with any such funding or related acquisition. According to us this should be sufficient to ensure fair ground for competition and control of foreign funding*' (ID646-1).

([260]) OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (January 2022), available at: https://www.oecd-ilibrary.org/docserver/0e655865-en.pdf?expires=1724062419&id=id&accname=oid031827&checksum=F26E024D0C031B6E991CB8B020E18911.

([261]) See the explanations included in the draft commitments provided on 19 June 2024.

([262]) See the Responses to the Market Test (see footnote 12).

([263]) See the Responses to the Market Test (see footnote 12).

([264]) See the Responses to the Market Test (see footnote 12). As was observed, '*the suggested duration of the Commitment period of 10 years with option of prolonging it with 5 more years is sufficient and should not be subject to any adjustment. Based on overview of the market the "life" of such acquisitions usually last less than 15 years before another change of ownership thus the already proposed period seems reasonable and does not need adjustment*' (ID646-1). Another respondent similarly observed that '*[t]he Commitments should be in place for as long as necessary to fulfil the intended purpose. For now, we consider the proposed timeframes to be sufficient*' (ID644-1).

([265]) See the Responses to the Market Test (ID645-1).

10.3. **The Final Commitments**

(404) On 19 August 2024, the Parties submitted the Final Commitments, which they consider reflect and address the feedback the Commission provided at the State of Play meeting of 30 July 2024.

10.3.1. *Description of the Final Commitments*

(405) The main differences between the Final Commitments and the Initial Commitments are the following.

(406) First, the Final Commitments provide a clear delineation between (i) e&'s non-EU businesses (defined as '*Affiliated Undertakings*') and (ii) e&'s EU business (PPF Telecom Group's EU business post-closing). The latter is defined as the '*Target Group*', that includes its Bulgarian, Hungarian and Slovakian businesses together with any future business in the internal market that would belong to entities acquired in the future by PPF Telecom Group (the Target) or e&. This gives full effect to the undertaking not to allow any foreign subsidy to flow into the internal market (through paragraphs 7 and 10 of the Final Commitments) and therefore addresses the concerns described in recital (394).

(407) Second, the Final Commitments now include a definition of '*financing*': '*the provision of any financing (whether debt or equity) through any financial instrument (including derivative instruments) to any member of the Target Group, directly or indirectly, by the Notifying Party, its Affiliated Undertakings, the EIA or any EIA Affiliate, but not including any Relevant Transaction*'. It should be noted that the Relevant Transaction now covers the guaranteeing of '*any financial indebtedness of the Target Group*'. These adjustments therefore address the concerns described in recitals (393) and (394).

(408) Third, as regards the definition of acute financial difficulties and notably the ratio of debt to EBITDAaL, the Final Commitments specify explicitly that the Notifying Party needs to provide an '*explanation of why the Target is suffering an acute liquidity crisis*', and the illustrative debt to EBITDAaL ratio was increased from x3.5 to x4, which is above the ratios of the vast majority of the Target's competitors and, according to the Parties, suggests a difficult financial situation. ([266])

(409) Fourth, as regards the monitoring mechanism, the Final Commitments introduce the ability for the Commission to comment (in a timeframe of five working days) on emergency funding and reportable commercial transactions even where the Monitoring Trustee has not identified any concerns. This addresses the concerns set out in recital (401).

(410) Lastly, the Final Commitments also include a number of adjustments that make them more effective. For instance, they: no longer contain references to the Shareholders' Agreement to be concluded between the Notifying Party and the Seller at the time of closing, which made the content of the commitments uncertain; simplified the Relevant Transactions market terms/arm's length standard in paragraphs 10 and 11 of the Final Commitments by removing the indicative circumstances to find that a Relevant Transaction on arm's length terms in fact channels foreign subsidies distorting the internal market; and removed paragraphs that appeared to limit the Commission's *ex officio* review powers under the FSR.

(411) The Final Commitments do not provide for any change to the EIA Commitments. The Parties argued that this was not necessary given that changing e&'s articles of association would, in any case, be a breach of e&'s commitments.

10.3.2. *Assessment of the Final Commitments*

(412) As regards the e& Unlimited Guarantee, the Final Commitments (i) remove the provisions of e&'s articles of association that enable e& to benefit from an unlimited guarantee, (ii) prohibit e& to finance the EU businesses of the Target, subject to certain exceptions, and (iii) require that transactions between the EU businesses of the Target and e& and its affiliates can only take place on market terms.

([266]) Response to RFI 13 dated 5 August 2024, question 16.

(413) The exceptions described in paragraph 8 of the Final Commitments are structured to prevent any distortive effect in the internal market. The first exception, relating to acute liquidity crises, conditions such financing to the existence of such a liquidity crisis to be shown by the Notifying Party, and is subject to review by the Commission so as to ensure that this financing does not channel distortive foreign subsidies to the EU businesses of the Target. The second, relating to non-EU acquisitions, cannot lead to a channelling of foreign subsidies to the internal market after those acquisitions, since the EU businesses of the Target are also protected from such flows.

(414) In view of the fact that e& may provide financing to the EU businesses of the Target under these exceptions, so that a risk of channelling foreign subsidies remains, it is necessary to fully and effectively remove the identified distortions and thus that the Final Commitments also remove the provisions of e&'s articles of association that enable e& to benefit from an unlimited guarantee.

(415) It follows that the Final Commitments would not allow the Target to be insulated from risks in its market and investment behaviour in the internal market. If it were to find itself in financial jeopardy due to its reckless behaviour, it could expect only financial assistance which would not distort the internal market.

(416) As regards the distortions caused by the foreign subsidies to the EIA, the Final Commitments (i) prohibit any financing from the EIA to the EU businesses and (ii) require that transactions between the EU businesses of the Target and the EIA only take place on market terms. Such requirements ensure that the EIA cannot directly channel foreign subsidies to the EU businesses of the Target post Transaction.

(417) In addition, as a result of the restrictions put upon transactions between those EU businesses and e& and its affiliates, the EIA cannot channel those foreign subsidies to the EU businesses through e&.

(418) With respect to the EIA Unlimited Guarantee, in view of the fact that the EIA is prohibited from providing any financing to the EU businesses of the Target, the Commission finds that the Final Commitments fully and effectively remove any possible compounding distortive effects of the EIA Unlimited Guarantee on the e& Unlimited Guarantee. That is because (i) creditors of those EU businesses of the Target will not expect the EIA to step in in the event that those EU businesses have financial difficulties, so that the EIA Unlimited Guarantee will not improve the financing conditions of the Target, and (ii) any financing raised by the EIA with the help of the EIA Unlimited Guarantee cannot be provided to the EU businesses directly. Finally, the restrictions on the capacity of the EIA to provide financing to those EU businesses through e&, as described above in recitals (412) to (414), are appropriate to also address any possible compounding distortive effects of the EIA Unlimited Guarantee on the e& Unlimited Guarantee.

(419) Lastly, in the absence of any benchmark to determine an optimal period for the Final Commitments to apply, the Commission considers as reasonable a length of 10 years that could be extended by the Commission to 15 years or even longer if the Commission and the Notifying Party agree (paragraphs 59 to 61 of the Final Commitments). Such period has also been considered as sufficient by a majority of respondents in the Market Test, also with reference to the specific features of the relevant activities in the internal market (see recital (402)).

10.4. **Conclusion**

(420) For the reasons set out above in Section 10, the Commission considers that the Final Commitments are appropriate and fully and effectively remedy the distortions resulting from the foreign subsidies in the Transaction identified in Section 8. Therefore, the Transaction should be cleared on the condition of the realisation of the Final Commitments.

HAS ADOPTED THIS DECISION:

Article 1

The notified operation whereby Emirates Telecommunications Group Company P.J.S.C. acquires sole control of PPF Telecom Group B.V. within the meaning of Article 20(1)(b) FSR is hereby approved.

Article 2

Article 1 is subject to full compliance with the Final Commitments annexed to this Decision.

Article 3

This Decision is addressed to:

Emirates Telecommunications Group Company P.J.S.C.
e& Building, Intersection of Zayed The 1st Street and Sheikh Rashid Bin Saeed Al Maktoum Street
Abu Dhabi, United Arab Emirates

Done at Brussels, 24 September 2024.

For the Commission
Margrethe VESTAGER
Executive Vice-President

Case FS.100011 – Emirates Telecommunications Group / PPF Telecom Group

COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 11(3) of Regulation (EU) 2022/2560 of the European Parliament and of the Council of 14 December 2022 on foreign subsidies distorting the internal market (the "***FSR***"), Emirates Telecommunications Group Company P.J.S.C. (the "***Notifying Party***") and the Target hereby enter into the following Commitments (the "***Commitments***") vis-à-vis the European Commission (the "***Commission***") with a view to the Commission adopting a decision under Articles 11(3) and 25(3)(a) FSR in relation to the acquisition of 50% plus one share in, and sole control of, PPF Telecom Group B.V. (the "***Target***") by the Notifying Party (the "***Concentration***").

This text shall be interpreted in light of the Commission's decision pursuant to Article 11(3) FSR with respect to the Concentration (the "***Decision***"), in the general framework of European Union law, in particular in light of the FSR and Commission Implementing Regulation (EU) 2023/1441 of 10 July 2023 on detailed arrangements for the conduct of proceedings by the Commission pursuant to the FSR.

Section A. Definitions

1. For the purpose of the Commitments, "control" and "controlled" shall be interpreted pursuant to Articles 20(5) and 20(6) FSR, and the following terms shall have the following meaning:

Accounting Firm: an accounting firm of high repute, such as (but not limited to) Deloitte, EY, PwC and KPMG.

Affiliated Undertakings: undertakings controlled by the Notifying Party which are established outside the EU,

(a) Including:

(i) Following the Closing, Yettel d.o.o. Beograd, CETIN d.o.o. Beograd – Novi Beograd and their respective successors and assigns; and

(ii) Any other undertaking established outside the EU over which any member of the Target Group or the Notifying Party may, directly or indirectly, acquire control from time to time; but

(b) Excluding:

(i) The Target Group; and

(ii) EIA and the EIA Affiliates.

Arm's Length Terms: arm's length terms within the meaning of the OECD Transfer Pricing Guidelines.

CEO: the Chief Executive Officer of the Target.

Closing: the transfer of 50% plus one share in the Target by the Seller to the Notifying Party.

Commitment Period: the period beginning on the Effective Date and ending on the 10th anniversary of the Effective Date, or as extended by the Commission under paragraph 60.

Confidential Information: any business secrets, know-how, commercial information, or any other information of a proprietary nature that is not in the public domain.

Conflict of Interest: any conflict of interest that impairs the Monitoring Trustee's objectivity and independence in discharging its duties under the Commitments.

Delegation of Authority: the scope of authority to take certain corporate actions vested in the Target's senior management as determined by the Target's board of directors from time to time in accordance with the Target's articles of association and as agreed between the Notifying Party and the Seller.

e& AoA: the Articles of Association of the Notifying Party adopted on 17 March 2021, as may be amended from time to time.

e& Call Option: the call option that will be granted by the Seller to the Notifying Party, effective as of the Closing, over all of the shares held by the Seller and its permitted transferees in the Target.

EBITDA: earnings before interest, taxes, depreciation, and amortisation.

EBITDAaL: The Target's consolidated EBITDA for the relevant period derived as net profit plus income tax expense plus (if negative) or minus (if positive) Net Financial Result plus depreciation (which includes depreciation, amortisation and impairment of tangible assets, intangible assets and costs to obtain or fulfil the contract). EBITDAaL excludes the effect of accounting standard IFRS 16 (leases).

EF Submission: a submission pursuant to paragraph 14.

Effective Date: the date of adoption of the Decision.

EIA: the Emirates Investment Authority.

EIA Affiliate: an undertaking controlled by the EIA, other than the Notifying Party, its Affiliated Undertakings and the Target Group.

EIA Commitments: commitments in the form set out in **Schedule 1** to these Commitments.

Emergency Funding: Financing provided by the Notifying Party to the Target in the case of an acute liquidity crisis, provided that (i) the net debt to EBITDAaL ratio of the Target at the time of the provision of such Financing (calculated on the basis of the EBITDAaL for the 12-month period ending on the month-end of the last available monthly management accounts of the Target before the provision of such Financing) is 4x or higher, and (ii) in the reasonable opinion of the Monitoring Trustee, debt financing from third parties is not or would not be expected to be available on commercially reasonable terms, or obtainable on a timely basis.

FAR Analysis: functions, assets and risk analysis.

Financing: the provision of any financing (whether debt or equity) through any financial instrument (including derivative instruments) to any member of the Target Group, directly or indirectly, by the Notifying Party, its Affiliated Undertakings, the EIA or any EIA Affiliate, but not including any Relevant Transaction.

Foreign Subsidies: foreign subsidies within the meaning of Article 3(1) FSR received by the Notifying Party or any of its Affiliated Undertakings, the EIA or any EIA Affiliate.

IFRS: the International Financial Reporting Standards issued by the IFRS Foundation and the International Accounting Standards Board.

Monitoring Trustee: one or more natural or legal person(s) who is/are approved by the Commission and appointed by the Notifying Party, and who has/have the duty to carry out the functions specified in these Commitments.

Net Financial Result: interest income, interest expense, gains/losses on financial derivatives, realized and unrealized foreign exchange gains/losses and other financial income or expense (consistent with the historic consolidated reporting of the Target).

Non-EU Funding: the provision of Financing solely to enable the Target Group to acquire shares in an undertaking, or assets that, in each case, do not sell goods or supply services to any customer located in the EU other than (if applicable) the provision outside the EU of wholesale call termination services or wholesale international roaming services to one or more providers of telecommunications services located in the EU.

OECD Transfer Pricing Guidelines: the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2022, as may be amended from time to time.

PPF Put Option: the option that will be granted by the Notifying Party to the Seller, effective as of the Closing, to require the Notifying Party to purchase all of the shares held by the Seller and its permitted transferees in the Target.

Proposal: the Notifying Party's proposal of candidates to act as Monitoring Trustee.

Related Relevant Transactions: two or more Relevant Transactions which relate to the supply, procurement, sale, acquisition, transfer, licensing or lease (as the case may be) of the same or similar goods, services, assets, rights or other contract subject matter with an aggregate value in excess of the Reporting Threshold over the course of each Reporting Year.

Relevant Transaction: a transaction (other than any Emergency Funding, Non-EU Funding, Financing contemplated under paragraphs 7 and 8 or intragroup reorganisations which contain no elements of Financing and do not transfer, directly or indirectly, any liabilities of the Target Group to the Notifying Party, any of its Affiliated Undertakings, the EIA or any EIA Affiliate) under which the EIA or any EIA Affiliate, the Notifying Party or any of its Affiliated Undertakings have entered into a legally binding agreement to:

1. Supply to, or procure from, any member of the Target Group any goods or services;

2. Sell to, acquire from, license or lease to any member of the Target Group any assets or rights;

3. Guarantee any financial indebtedness of the Target Group; or

4. Effect any other commercial transaction with any member of the Target Group.

Relevant Undertaking: an undertaking that, in its most recent complete accounting year, generated turnover of EUR [100-200] million or more from the sale of goods or the supply of services to customers located in the EU, determined in accordance with Article 22 FSR or, in the event that the Notifying Party, its Affiliated Undertakings or the Target Group (as the case may be) do not have, and cannot reasonably obtain, access to the financial information of the Relevant Undertaking, estimated based on publicly available information.

Reportable Acquisition: an acquisition by the Notifying Party, any of its Affiliated Undertakings or the Target Group, which is not a notifiable concentration under Article 20(3) FSR, of:

1. 5% or more of the shares or voting rights of a Relevant Undertaking, which confers on the Notifying Party, any of its Affiliated Undertaking or the Target Group the right to nominate or appoint one or more persons to the Relevant Undertaking's board of directors or supervisory board;

2. 25% or more of the shares or voting rights of a Relevant Undertaking;

3. 50% or more of the shares or voting rights of a Relevant Undertaking; or

4. Control of a Relevant Undertaking.

The acquisition of shares and voting rights in the Target as a result of the exercise of the PPF Put Option or the e& Call Option does not constitute a Reportable Acquisition.

Reportable Relevant Transaction: a Relevant Transaction with a value at or above the Reporting Threshold, or series of Related Relevant Transactions with an aggregate value at or above the Reporting Threshold.

Reporting Threshold: a contract value of EUR 4 million (or equivalent) or more.

Reporting Year: the period between the Effective Date and 31 December 2024 and each subsequent financial year ending 31 December.

Seller: PPF Group N.V.

Target Group: as defined in Schedule 2 to these Commitments.

UAE: United Arab Emirates.

UAE Bankruptcy Law: UAE Federal Decree-Law No. 51 of 2023 promulgating the Financial Reorganisation and Bankruptcy Law, as may be amended from time to time.

UAE Working Day: means any day, excluding a Saturday or Sunday or public holiday in the United Arab Emirates, on which banks are open for general commercial business in Abu Dhabi.

Working Day: means working day within the meaning of the FSR.

2. Unless otherwise stated, references in these Commitments to paragraphs are references to paragraphs in these Commitments.

Section B. The Commitments

I. Purpose

3. The overall purpose of the Commitments and the EIA Commitment is to ensure that the Concentration does not create a conduit that would permit Foreign Subsidies (if any) to be channelled into the internal market in a way that distorts competition within the meaning of Article 4 and (if applicable) Article 5 FSR, where such distortion is not outweighed by positive effects within the meaning of Article 6 FSR. Such channelling could occur through the provision of Financing, other than as permitted by paragraph 8, by the Notifying Party, its Affiliated Undertakings, the EIA or an EIA Affiliate to the Target or any member of the Target Group, or through transactions entered into between the (i) Notifying Party, its Affiliated Undertaking and/or the EIA or an EIA Affiliate on the one hand, and (ii) any member of the Target Group on the other, which are not on market terms and thus confer a benefit on the Target Group which would actually or potentially negatively affect competition in the internal market within the meaning of Article 4 FSR and (if applicable) Article 5 FSR, with such negative effects not being outweighed by positive effects within the meaning of Article 6 FSR. Channelling Foreign Subsidies in such a manner shall constitute a breach of these Commitments and the EIA Commitments within the meaning of the FSR.

II. Commitment on the application of the UAE Bankruptcy Law to the Notifying Party

4. The Notifying Party commits that, as of the Effective Date and during the Commitment Period, the e& AoA contain no provisions which conflict with, dis-apply or override any provision of the UAE Bankruptcy Law.

5. The Notifying Party shall procure that the EIA shall submit the EIA Commitments, duly executed on behalf of the EIA, to the Commission case team on or prior to the Effective Date.

6. The Notifying Party shall (i) within 10 UAE Working Days of the date of a proposal having been sent to the Notifying Party's shareholders to amend the e& AoA in a way that could affect the application of the UAE Bankruptcy Law to the Notifying Party, send a copy of such proposal to the Monitoring Trustee (with a copy to the Commission case team); and (ii) within 10 UAE Working Days of a decision being taken by the Notifying Party's board of directors to amend the e& AoA in any way, send a copy of the amended e& AoA to the Monitoring Trustee (with a copy to the Commission case team).

III. Commitment on dealings between the Notifying Party and the Target Group

1. *Financing*

7. Except as permitted by paragraph 8, the Notifying Party shall not, and shall procure that its Affiliated Undertakings shall not, provide any Financing to any member of the Target Group.

8. The commitment in paragraph 7 shall not prevent the Notifying Party and its Affiliated Undertakings from providing to the Target Group:

(a) Emergency Funding in accordance with paragraph 19; or

(b) Non-EU Funding; or

(c) Financing in relation to:

(i) An acquisition by any member of the Target Group of an undertaking which does not require prior notification under Article 21(1) FSR, provided that the Notifying Party has notified the Commission of such acquisition and the terms of its financing within 15 UAE Working Days of the date upon which it entered into a legally binding agreement to proceed with such acquisition, and in any event prior to implementation thereof, without prejudice to the Commission's ability to commence an *ex officio* investigation under Articles 9, 10, and 11 FSR, or request prior notification under Article 21(5) FSR, in respect of such Financing or acquisition; or

(ii) An acquisition by any member of the Target Group of an undertaking which, subject to Article 24(2) FSR, requires prior notification under Article 21(1) FSR, provided that:

1. The 25-working-day period under Article 24(1)(a) FSR has expired without the Commission having taken a decision under Article 10(3) FSR; or

2. The acquisition has been approved by the Commission under Articles 25(3)(a) and 11(3) FSR, or Articles 25(3)(b) and 11(4) FSR; or

3. The Commission has granted a derogation under Article 24(3) FSR.

9. The Notifying Party and the Target commit that no member of the Target Group shall accept any Financing from the EIA or any EIA Affiliate.

2. *Relevant Transactions*

10. The Notifying Party and its Affiliated Undertakings shall not enter into any Relevant Transaction which is not on market terms with any member of the Target Group. The Notifying Party and the Target further commit that no member of the Target Group shall enter into any Relevant Transaction which is not on market terms with the EIA or any EIA Affiliate.

11. A Relevant Transaction which has been entered into on Arm's Length Terms shall be presumed to be on market terms within the meaning of paragraph 10 unless, in view of all relevant circumstances, the Relevant Transaction allows the Notifying Party, any of its Affiliated Undertakings, the EIA or any EIA Affiliate to, directly or indirectly, channel any Foreign Subsidies to the Target Group that would actually or potentially negatively affect competition in the internal market within the meaning of Article 4 and (if applicable) Article 5 FSR, provided that such negative effects are not outweighed by positive effects within the meaning of Article 6 FSR.

12. In order to substantiate that a Relevant Transaction is on Arm's Length Terms, the Notifying Party may, at its election, procure an opinion from an Accounting Firm showing that the Relevant Transaction is on Arm's Length Terms. This opinion shall contain, *inter alia*, in each case to the extent appropriate in light of the nature of the Relevant Transaction:

(a) A description of the Relevant Transaction, its value and its key terms;

(b) A FAR Analysis, if required, to analyse the functions performed, the assets employed and the risks assumed by the transacting entities;

(c) Actual and projected financial data of the parties to the Relevant Transaction in relation to the issues detailing the actual and expected turnover, costs and profits from the Relevant Transaction;

(d) A detailed description of (i) any reasonably comparable transaction between the Notifying Party (or any of its Affiliated Undertakings, or the EIA or any EIA Affiliate, as relevant) and a third party which is made on terms reasonably comparable to the Relevant Transaction; or, if the Notifying Party is unaware of any reasonably comparable transaction, (ii) any reasonably comparable transaction between third parties in a comparable legal and factual situation to that of the Notifying Party and its Affiliated Undertakings (or the EIA or any EIA Affiliate, as relevant), which is made on terms reasonably comparable to the Relevant Transaction;

(e) A benchmarking study or comparability analysis which identifies the arm's length range (market level) of prices or margin of comparable transactions in order to compare the prices or margin of the Relevant Transaction with that range;

(f) A description of the transfer pricing methodology used and why it is appropriate in view of the aim pursued by paragraph 10; and

(g) An analysis demonstrating how the application of the appropriate transfer pricing methodology to the Relevant Transaction satisfies the arm's length principle within the meaning of the OECD Transfer Pricing Guidelines.

13. For as long as the Seller owns any shares in the Target:

(a) The Notifying Party and its Affiliated Undertakings shall not enter into any Relevant Transaction which falls outside the scope of the Delegation of Authority, unless such Relevant Transaction complies with paragraph 10 and has been duly approved by the Target's board of directors with the affirmative vote of at least one director appointed by the Seller; and

(b) The Notifying Party shall procure that the Target's board of directors terminates any Relevant Transaction approved by the CEO pursuant to his or her Delegation of Authority if it is not on Arm's Length Terms.

Section C. Reporting procedure relating to the Commitments

I. Reporting procedure for Emergency Funding

14. The Notifying Party shall provide to the Monitoring Trustee (with a copy to the Commission case team) all relevant information relating to any Emergency Funding as soon as (i) it becomes aware that it is likely that Emergency Funding may be required, and/or (ii) it makes any concrete plan to make Emergency Funding available to the Target, whichever is earlier, including, to the extent available at the time of the EF Submission:

(a) A description of the circumstances which necessitate Emergency Funding, including an explanation of why the relevant funding amounts to Emergency Funding including why debt financing from third parties is not or would not be expected to be available on commercially reasonable terms, or obtainable on a timely basis;

(b) An explanation of why the Target is suffering an acute liquidity crisis and why the Target will almost certainly be condemned to going out of business or become insolvent in the short or medium term without Emergency Funding;

(c) A description and, if available, a copy of the terms of the Emergency Funding;

(d) A description of the Notifying Party's then-current sources of financing and whether any such sources of financing constitute, in the reasonable opinion of the Notifying Party, a foreign subsidy within the meaning of Article 3 and, if applicable, Article 5 FSR; and

(e) A description of how the Notifying Party intends to finance the Emergency Funding and whether any such sources of financing constitute, in the reasonable opinion of the Notifying Party, a foreign subsidy within the meaning of Article 3 and, if applicable, Article 5 FSR.

15. The Monitoring Trustee shall inform the Notifying Party within two Working Days of receipt of the EF Submission whether it considers it to be complete. If the Monitoring Trustee considers the EF Submission to be incomplete, the Notifying Party shall re-submit the EF Submission with such additional information or documents as may be reasonably requested by the Monitoring Trustee, as soon as reasonably practicable.

16. The Monitoring Trustee shall inform the Commission case team, the Notifying Party and the Target within five Working Days of receipt of the complete EF Submission whether:

(a) It reasonably considers that the relevant Emergency Funding does not give rise to a risk of channelling any Foreign Subsidies into the internal market in a way that would distort competition within the meaning of Article 4 and (if applicable) Article 5 FSR; or

(b) It reasonably considers that the relevant Emergency Funding may be wholly or partially financed through Foreign Subsidies and thus gives rise to a risk of channelling any

Foreign Subsidies into the internal market in a way that would distort competition within the meaning of Article 4 and (if applicable) Article 5 FSR.

The Monitoring Trustee shall provide reasons.

17. The Commission case team may, within five Working Days of receipt of the Monitoring Trustee's report under paragraph 16(a) and within 15 Working Days of receipt of the Monitoring Trustee's report under paragraph 16(b), issue an opinion addressed to the Monitoring Trustee, the Notifying Party and the Target, explaining whether, in the view of the Commission case team:

(a) The contemplated Emergency Funding may be wholly or partially financed through Foreign Subsidies and thus gives rise to a risk of channelling any Foreign Subsidies into the internal market in a way that would distort competition within the meaning of Article 4 and (if applicable) Article 5 FSR; and

(b) On the basis of information received from the Notifying Party or the Target, any such distortion is unlikely to be outweighed by positive effects within the meaning of Article 6 FSR.

18. The Notifying Party may propose amendments to the Emergency Funding to eliminate any concerns the Commission case team may have within the meaning of paragraph 17.

19. The Notifying Party shall not make Emergency Funding available to the Target unless:

(a) The Monitoring Trustee has informed the Commission case team, the Notifying Party and the Target that it considers the contemplated Emergency Funding to give rise to no concerns within the meaning of paragraph 16(a) and the Commission has not issued an opinion raising any concerns within the timeframe set out in paragraph 17; or

(b) The Monitoring Trustee has informed the Commission case team, the Notifying Party and the Target that it considers the contemplated Emergency Funding to give rise to concerns within the meaning of paragraph 16(b) but the Commission has not issued an opinion raising any concerns within the timeframe set out in paragraph 17; or

(c) If, following the report by the Monitoring Trustee under paragraphs 16(a) or 16(b), the Commission case team has subsequently issued an opinion under paragraph 17, the Notifying Party has amended the contemplated Emergency Funding pursuant to paragraph 18, and the Commission case team considers the relevant amendment(s) to eliminate its concerns within the meaning of paragraph 17 (duly considering the Notifying Party's views).

20. In consideration for the Emergency Funding, the Target shall pay to the Notifying Party an amount which reflects the underlying creditworthiness of the Target at the time at which the Emergency Funding is to be granted, discounting the temporary effects of its liquidity difficulties and the Emergency Funding.

21. The Target shall repay, and the Notifying Party shall procure that the Target shall repay, in each case to the extent permissible under applicable law, any Emergency Funding reported to the Commission case team under paragraph 14 within six months after disbursement of the first instalment of the Emergency Funding.

22. By way of derogation from paragraph 21, the Target shall not be obliged to repay the Emergency Funding if, prior to the end of the six-month period in paragraph 21, upon the Notifying Party's request, the Commission case team has waived, or granted a derogation from, the Notifying Party's and the Target's obligation under paragraph 21.

II. Reporting procedure for Reportable Relevant Transactions

23. The Notifying Party shall inform the Monitoring Trustee (with a copy to the Commission case team) of any proposed Reportable Relevant Transaction prior to its implementation, providing all relevant information in relation to the Reportable Relevant Transaction. This reporting obligation shall be without prejudice to Article 24(3) FSR (derogation request), which shall apply *mutatis mutandis*.

24. The Monitoring Trustee shall inform the Notifying Party within two Working Days of receipt of the submission under paragraph 23 whether it considers the submission to be complete. If the Monitoring Trustee considers the submission to be incomplete, the Notifying Party shall re-submit the submission under paragraph 23 with such additional information or documents as may be reasonably requested by the Monitoring Trustee, as soon as reasonably practicable.

25. The Monitoring Trustee shall inform the Commission case team, the Notifying Party and the Target within 10 Working Days of receipt of the complete submission under paragraph 23 whether:

(a) It reasonably considers that the Reportable Relevant Transaction is on market terms and thus does not give rise to a risk of channelling any Foreign Subsidies into the internal market in a way that would distort competition within the meaning of Article 4 and (if applicable) Article 5 FSR; or

(b) It reasonably considers that the Reportable Relevant Transaction may not be on market terms within the meaning of paragraph 10 and thus gives rise to a risk of channelling any Foreign Subsidies into the internal market in a way that would distort competition within the meaning of Article 4 and (if applicable) Article 5 FSR.

The Monitoring Trustee shall provide reasons.

26. The Commission case team may, within five Working Days of receipt of the Monitoring Trustee's report under paragraph 25(a) and within 20 Working Days of receipt of the Monitoring Trustee's report under paragraph 25(b), issue an opinion addressed to the Monitoring Trustee, the Notifying Party and the Target, explaining whether, in the view of the Commission case team:

(a) The Reportable Relevant Transaction may not be on market terms within the meaning of paragraph 10 and thus gives rise to a risk of channelling any Foreign Subsidies into the internal market in a way that would distort competition within the meaning of Article 4 and (if applicable) Article 5 FSR; and

(b) On the basis of information received from the Notifying Party or the Target, any such distortion is unlikely to be outweighed by positive effects within the meaning of Article 6 FSR.

27. The Notifying Party may propose measures to eliminate any concerns of the Commission case team under paragraph 26.

28. The Notifying Party, its Affiliated Undertakings and the Target Group shall not implement a Reportable Relevant Transaction unless:

(a) The Monitoring Trustee has informed the Commission case team, the Notifying Party and the Target that it considers the contemplated Reportable Relevant Transaction to give rise to no concerns within the meaning of paragraph 25(a) and the Commission has not issued an opinion within the timeframe set out in paragraph 26; or

(b) The Monitoring Trustee has informed the Commission case team, the Notifying Party and the Target that it considers the contemplated Reportable Relevant Transaction to give rise to concerns within the meaning of paragraph 25(b) but the Commission has not issued an opinion within the timeframe set out in paragraph 26; or

(c) If, following the report by the Monitoring Trustee under paragraphs 25(a) or 25(b), the Commission case team has subsequently issued an opinion under paragraph 26, the Notifying Party has implemented measures proposed pursuant to paragraph 27 which the Commission case team considers to eliminate its concerns within the meaning of paragraph 26 (duly considering the Notifying Party's views).

III. Annual notification of other Relevant Transactions

29. The Notifying Party shall, within 30 UAE Working Days of the end of each Reporting Year, send to the Monitoring Trustee (with a copy to the Commission case team) (i) a copy of all legally binding agreements entered into during the preceding Reporting Year requiring the Notifying Party or any of its Affiliated Undertakings, the EIA or any EIA Affiliate to proceed with a Relevant Transaction below the Reporting Threshold, (ii) a summary of the key terms of any such Relevant Transaction, and, if applicable, (iii) a copy of any opinion obtained in line with paragraph 12 in respect of such Relevant Transaction.

30. The Monitoring Trustee shall inform the Notifying Party within two Working Days of receipt of the submission under paragraph 29 whether it considers the submission to be complete. If the Monitoring Trustee considers the submission to be incomplete, the Notifying Party shall re-submit the submission under paragraph 29 with such additional information or documents as may be reasonably requested by the Monitoring Trustee as soon as reasonably practicable.

31. The Monitoring Trustee shall inform the Commission case team, the Notifying Party and the Target within 20 Working Days of receipt of a complete submission under paragraph 29 if it reasonably considers that any Relevant Transaction may not have been entered into on market terms within the meaning of paragraph 10 and thus gives rise to a risk of channelling any Foreign Subsidies into the internal market in a way that would distort competition within the meaning of Article 4 and (if applicable) Article 5 FSR. The Monitoring Trustee shall provide reasons.

32. The Commission case team may, within 20 Working Days of receipt of the Monitoring Trustee's report under paragraph 31, issue an opinion addressed to the Monitoring Trustee, the Notifying Party and the Target, explaining whether, in the view of the Commission case team:

(a) The Relevant Transaction may not have been entered into on market terms within the meaning of paragraph 10 and thus gives rise to a risk of channelling any Foreign Subsidies into the internal market in a way that would distort competition within the meaning of Article 4 and (if applicable) Article 5 FSR; and

(b) Any such distortion is unlikely to be outweighed by positive effects within the meaning of Article 6 FSR.

33. The Notifying Party may propose measures to eliminate any concerns of the Commission case team under paragraph 32.

34. Upon the direction of the Monitoring Trustee, the Notifying Party, its Affiliated Undertakings and/or the Target (as the case may be) shall implement any measures proposed under paragraph 33, provided that the Commission case team considers such measures to eliminate its concerns within the meaning of paragraph 32 (duly considering the Notifying Party's views), or alternatively unwind the Relevant Transaction, without delay.

IV. Reporting procedure for Reportable Acquisitions

35. During the Commitment Period, the Notifying Party shall, within 15 UAE Working Days of the date upon which it or any of its Affiliated Undertakings enters into a legally binding agreement pursuant to which the Notifying Party or any of its Affiliated Undertakings agrees to proceed with a Reportable Acquisition, and in any event prior to implementation of the Reportable Acquisition, send to the Monitoring Trustee (with a copy to the Commission case team) a copy of any such agreement and a summary description of (i) the transaction that is the subject of such agreement; and (ii) the business of the Relevant Undertaking that is the subject of the Reportable Acquisition.

36. The commitment in paragraph 35 shall not prevent the implementation of a public bid or a series of transactions in securities (including those convertible into other securities) admitted to trading on a market (such as a stock exchange), by which the Notifying Party or any of its Affiliated Undertakings acquires shares or voting rights or control of a Relevant Undertaking from one or more sellers, and which constitutes a Reportable Acquisition, provided that:

(a) The Reportable Acquisition is subsequently reported to the Monitoring Trustee (with a copy to the Commission case team) pursuant to paragraph 35 without delay; and

(b) The Notifying Party or its Affiliated Undertaking (as the case may be) exercises neither its board appointment rights nor the voting rights attached to the securities in question until it has reported the Reportable Acquisition to the Monitoring Trustee (with a copy to the Commission case team) pursuant to paragraph 35.

Section D. Monitoring Trustee

I. Appointment procedure

37. The Notifying Party shall appoint a Monitoring Trustee to carry out the functions in these Commitments for a Monitoring Trustee no later than on the date of Closing.

38. The Monitoring Trustee shall:

(a) At the time of appointment, be independent of the Notifying Party and its Affiliated Undertakings, the Seller, the Target and the EIA;

(b) Possess the necessary experience, competence and qualifications to carry out its mandate, for example have sufficient relevant experience as an auditor; and

(c) Neither have nor become exposed to a Conflict of Interest.

39. The Trustee shall be remunerated by the Notifying Party in a way that does not impede the independent and effective fulfilment of its mandate.

1. *Proposal by the Notifying Party*

40. No later than two weeks after the Effective Date, the Notifying Party shall submit the name or names of one or more natural or legal persons whom the Notifying Party proposes to appoint as the Monitoring Trustee to the Commission for approval.

41. The Proposal shall contain sufficient information for the Commission to verify that the person or persons proposed as Monitoring Trustee fulfil the requirements set out in paragraph 38 and shall include:

(a) The full terms of the proposed mandate, which shall include all provisions necessary to enable the Monitoring Trustee to fulfil its duties under these Commitments; and

(b) The outline of a work plan which describes how the Monitoring Trustee intends to carry out its duties under these Commitments.

2. *Approval or rejection by the Commission*

42. The Commission shall have the discretion to approve or reject the proposed Monitoring Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Monitoring Trustee to fulfil its obligations. If only one name is approved, the Notifying Party shall appoint or cause to be appointed the person or persons concerned as Monitoring Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, the Notifying Party shall be free to choose the Monitoring Trustee to be appointed from among the names approved. The Monitoring Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

3. *New proposal by the Notifying Party*

43. If all the proposed Trustees are rejected, the Notifying Party shall submit the names of at least two more natural or legal persons within one week of being informed of the rejection, in accordance with paragraphs 41 and 42.

4. *Monitoring Trustee nominated by the Commission*

44. If all further proposed Monitoring Trustees are rejected by the Commission, the Commission shall nominate a Monitoring Trustee, whom the Notifying Party shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

II. Duties and obligations of the Monitoring Trustee

45. The Monitoring Trustee shall assume its specified duties and obligations under paragraph 46 in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Monitoring Trustee or the Notifying Party, give any orders or instructions to the Monitoring Trustee in order to ensure compliance with the Commitments.

46. The Monitoring Trustee shall:

(a) Monitor the Notifying Party's compliance with the Commitments;

(b) Propose in its first report to the Commission a detailed work plan describing how it intends to monitor the Notifying Party's compliance with the Commitments;

(c) Provide to the Commission a written report, sending the Notifying Party a non-confidential copy at the same time, within 15 Working Days after the end of each six-month period so that the Commission can assess whether the Commitments are being complied with;

(d) If required, propose to the Notifying Party such measures as the Monitoring Trustee considers necessary to ensure the Notifying Party's compliance with the Commitments;

(e) Promptly report in writing to the Commission, sending the Notifying Party a non- confidential copy at the same time, if it concludes on reasonable grounds that the Notifying Party has failed to comply with the Commitments;

(f) Act as a contact point for questions from third parties about the nature and scope of the Commitments; and

(g) Assume all other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision.

47. The Monitoring Trustee shall respond to any request from the Notifying Party, its Affiliated Undertakings and the Commission promptly, and in any event within five Working Days of the date on which the relevant request was sent to the Monitoring Trustee.

III. Duties and obligations of the Notifying Party and its Affiliated Undertakings

48. The Notifying Party shall provide, and shall cause its Affiliated Undertakings and external advisors to provide, the Monitoring Trustee with all such co-operation, assistance and information as the Monitoring Trustee may reasonably require to perform its tasks. The Monitoring Trustee shall have full and complete access to any of the Notifying Party's or Target's books, records, documents, management or other personnel, facilities, sites and technical information reasonably necessary for fulfilling its duties under the Commitments. The Notifying Party and its Affiliated Undertakings shall provide the Monitoring Trustee upon request with copies of any documents as the Monitoring Trustee may reasonably require to perform its tasks.

49. The Notifying Party shall indemnify the Monitoring Trustee and its employees and agents (each an "***Indemnified Party***") and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to the Notifying Party for, any liabilities arising out of the performance of the Monitoring Trustee's duties under the Commitments, except to the extent that

such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Monitoring Trustee, its employees, agents or advisors.

50. In the event that the Monitoring Trustee has reasonable grounds to consider that any Relevant Transaction does not comply with paragraph 10, at the expense of the Notifying Party, the Monitoring Trustee may appoint an external advisor or expert for advice on the OECD Transfer Pricing Guidelines, the FSR and/or any other related matters, provided that any fees and other expenses incurred by the Monitoring Trustee in connection with such appointment are reasonable. The appointment of any such external advisor or expert shall be subject to the Notifying Party's approval (this approval not to be unreasonably withheld or delayed). Should the Notifying Party refuse to approve the external advisor or expert proposed by the Monitoring Trustee, the Commission may approve the appointment of such advisor or expert instead, after having heard the Notifying Party. Only the Monitoring Trustee shall be entitled to issue instructions to the external advisor or expert (as the case may be). Paragraph 49 shall apply *mutatis mutandis*.

51. The Notifying Party agrees that the Commission may share Confidential Information proprietary to the Notifying Party or its Affiliated Undertakings with the Monitoring Trustee. The Monitoring Trustee shall not disclose such information and the principles contained in Article 43(1) and (2) of the FSR apply *mutatis mutandis*.

52. The Notifying Party agrees that the contact details of the Monitoring Trustee shall be published on the website of the Commission's Directorate-General for Competition and they shall inform interested third parties of the identity and the tasks of the Monitoring Trustee.

53. During the Commitment Period, the Commission may request all information from the Notifying Party and its Affiliated Undertakings that is reasonably necessary to monitor the effective implementation of these Commitments.

IV. Replacement, discharge and re-appointment of the Monitoring Trustee

54. If the Monitoring Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Monitoring Trustee to a Conflict of Interest:

(a) The Commission may, after hearing the Monitoring Trustee and the Notifying Party, require the Notifying Party to replace the Monitoring Trustee; or

(b) The Notifying Party may, with the prior approval of the Commission, replace the Monitoring Trustee.

55. If the Monitoring Trustee is removed according to paragraph 54, the Monitoring Trustee may be required to continue in its function until a new Monitoring Trustee is in place to whom the Monitoring Trustee has effected a full hand-over of all relevant information. The new Monitoring Trustee shall be appointed in accordance with the procedure referred to in paragraphs 37 to 44.

56. Unless removed according to paragraph 54, the Monitoring Trustee shall cease to act as Monitoring Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Monitoring Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

Section E. The review clause

57. The Commission may extend the time periods foreseen in the Commitments in response to a request from the Notifying Party, or, in appropriate cases, on its own initiative. If the Notifying Party requests an extension of a time period, it shall submit a reasoned request to the Commission no later than five UAE Working Days before the expiry of that period, showing good cause.

58. The Commission may further, in response to a reasoned request from the Notifying Party showing good cause, waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments. This request shall be accompanied by a report from the Monitoring Trustee, who shall at the same time send a non-confidential copy of the report to the Notifying Party. Unless granted, the request shall not have the effect of suspending the application of the relevant commitment and, in particular, of suspending the expiry of any time period in which the relevant commitment has to be complied with.

Section F. Entry into force and Commitment Period

59. The Commitments shall take effect upon the Effective Date and shall remain in effect during the Commitment Period.

60. If, following a reasoned opinion, a copy of which must be sent to the Notifying Party no later than six months prior to the expiry of the Commitment Period, the Commission considers it necessary and proportionate to extend the Commitment Period in order to avoid distortion of competition in the internal market, it may extend the duration of the Commitment Period for an additional period not exceeding three years (the "***Additional Period***"). If, following a reasoned opinion, a copy of which must be sent to the Notifying Party no later than six months prior to the expiry of the Additional Period, the Commission considers it necessary and proportionate to extend the Additional Period in order to avoid distortion of competition in the internal market, it may extend the duration of the Additional Period for an additional period not exceeding two years.

61. The Commitment Period may further be extended at any time by the Commission with the agreement of the Notifying Party and the Target.

[Signature]

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e& Group Chief Legal and Compliance Officer

duly authorised for and on behalf of Emirates Telecommunications Group Company P.J.S.C.

[Signature]

Director

duly authorised for and on behalf of PPF Telecom Group B.V.

Schedule 1: The EIA Commitments

Case FS.100011 – Emirates Telecommunications Group / PPF Telecom Group

COMMITMENT TO THE EUROPEAN COMMISSION

Pursuant to Article 11(3) of Regulation (EU) 2022/2560 of the European Parliament and of the Council of 14 December 2022 on foreign subsidies distorting the internal market (the "***FSR***"), the Emirates Investment Authority (the "EIA") hereby enters into the following Commitments (the "***EIA Commitments***") vis-à-vis the European Commission (the "Commission") with a view to the Commission adopting a decision under Article 11(3) and 25(3)(a) FSR in relation to the acquisition of 50% plus one share in, and sole control of, PPF Telecom Group B.V. (the "***Target***") by Emirates Telecommunications Group Company P.J.S.C. (the "***Notifying Party***") (the "***Concentration***").

This text shall be interpreted in light of the Commission's decision pursuant to Article 11(3) FSR with respect to the Concentration (the "***Decision***"), in the general framework of European Union law, in particular in light of the FSR and Commission Implementing Regulation (EU) 2023/1441 of 10 July 2023 on detailed arrangements for the conduct of proceedings by the Commission pursuant to the FSR.

Section A. Definitions

1. For the purpose of the EIA Commitment, the following terms shall have the following meaning:

Closing: the transfer of 50% plus one share in the Target from the Seller to the Notifying Party

Commitment Period: the period beginning on the Effective Date and ending on the 10th anniversary of the Effective Date, or as extended by the Commission under paragraph 7 of the EIA Commitment.

e& AoA: the Articles of Association of the Notifying Party adopted on 17 March 2021, as may be amended from time to time.

Effective Date: the date of adoption of the Decision.

Relevant e& Interest: (i) one special share in the Notifying Party amounting to 60% or more of the Notifying Party's issued share capital or conferring 60% or more of the voting rights exercisable at the Notifying Party's shareholders' meetings; (ii) the right to exercise 75% or more of the votes exercisable at the Notifying Party's shareholders' meetings; or (iii) any other controlling interest in the Notifying Party within the meaning of Articles 20(5) and (6) FSR.

Relevant Transferee: a natural person or legal person other than EIA.

Seller: PPF Group N.V.

Special Provisions: Article 11 of UAE Federal Act No (1) of 1991 concerning the Emirates Communication Establishment (as amended), as may be amended from time to time.

UAE Bankruptcy Law: UAE Federal Decree-Law No. 51 of 2023 promulgating the Financial Reorganisation and Bankruptcy Law, as may be amended from time to time.

UAE Working Day: means any day (excluding a Saturday or Sunday or public holiday in the United Arab Emirates) on which banks are open for general commercial business in Abu Dhabi.

Section B. Commitments on the application of the UAE Bankruptcy Law to e&

2. Subject to paragraph 3 below, the EIA shall not, during the Commitment Period, propose or vote in favour of, any resolution by the Notifying Party's shareholders to amend the e& AoA in a way that would wholly or partially exempt the Notifying Party from the UAE Bankruptcy Law.

3. The commitment in paragraph 2 above shall not affect the EIA's rights under the Special Provisions.

4. During the Commitment Period, prior to selling or otherwise transferring a Relevant e& Interest to a Relevant Transferee, the EIA shall procure that the Relevant Transferee signs or executes and sends to the Commission case team, copying the EIA and the Notifying Party, commitments binding on the Relevant Transferee in substantially the same form as the commitments given by the EIA herein, and shall not implement the sale or transfer of the Relevant e& Interest unless the Relevant Transferee has signed such commitments.

Section C. The review clause

5. The Commission may, in response to a reasoned request from the Notifying Party or the EIA showing good cause, waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in the EIA Commitments. Unless granted, the request shall not have the effect of suspending the application of the relevant commitment and, in particular, of suspending the expiry of any time period in which the relevant commitment has to be complied with.

Section D. Entry into force and Commitment Period

6. The EIA Commitments shall take effect upon the Effective Date and shall remain in effect during the Commitment Period.

7. If, following a reasoned opinion, a copy of which must be sent to the Notifying Party no later than six months prior to the expiry of the Commitment Period, the Commission considers it necessary and proportionate to extend the Commitment Period in order to avoid distortion of competition in the internal market, it may extend the duration of the Commitment Period for an additional period not exceeding three years (the "Additional Period"). If, following a reasoned opinion, a copy of which must be sent to the Notifying Party no later than six months prior to the expiry of the Additional Period, the Commission considers it necessary and proportionate to extend the Additional Period in order to avoid distortion of competition in the internal market, it may extend the duration of the Additional Period for an additional period not exceeding two years.

8. The Commitment Period may be extended at any time by the Commission with the agreement of the EIA and the Notifying Party.

[*Name, Position*]

duly authorised for and on behalf of the Emirates Investment Authority

Schedule 2: The Target Group

The Target Group comprises the following legal persons, their respective successors and assigns, as well as any other undertaking established in the EU over which the Target may, directly or indirectly, acquire control from time to time.

Entity Name	Country of Incorporation
PPF Telecom Group B.V.	The Netherlands
TMT Hungary Infra B.V.	The Netherlands
TMT Hungary B.V.	The Netherlands
PPF TMT Bidco1 N.V.	The Netherlands
[The holding company for the Target's CETIN business, referred to as "***CETIN HoldCo***", currently in the process of being incorporated]	[The Netherlands]
Yettel Bulgaria EAD	Bulgaria
CETIN Bulgaria EAD	Bulgaria
Yettel Magyarország Zrt.	Hungary
Yettel Real Estate Hungary Zrt.	Hungary
CETIN Hungary Zrt.	Hungary
O2 Slovakia s.r.o.	Slovakia
O2 Business Services, a.s.	Slovakia
O2 Networks s.r.o.	Slovakia