

INFORMATION REQUIRED BY CONSOB PURSUANT TO ART. 114 CLF

The request

Reference is made to the issue of the qualification of the relationship that exists between reference shareholder Vivendi S.A. and TIM, and to the analysis carried out by the Company's control and administration bodies.

On this point, having been informed of the conclusions reached by the Board of Statutory Auditors, and the further investigations being undertaken by the Board of Directors, Consob, with its request Ref. 0035756/17 of 21 March 2017, before the Board Meeting of 23 March, asked that the following material be disclosed to the public within three days of the board resolution on the issue:

- a summary of the arguments considered by the Board of Statutory Auditors, with reference to the need to qualify Vivendi as the controlling shareholder for the purposes of the regulations on transactions with related parties;
- the related arguments considered by the Board of Directors.

The Board of Statutory Auditors' considerations

After having been informed of the outcome of the assessment made by the control body, the Board asked for the external opinions and investigatory findings that supported their conclusions, and received:

- the minutes of the meeting during which the Board of Statutory Auditors decided (by majority vote) that there was control;
- two notes by a Statutory Auditor of which one (the longest) was in actual fact only prepared after said decision.

The Board of Statutory Auditors also deemed it advisable to obtain the support of an independent consultant of its choice, identified in Studio Galbiati, Sacchi e Associati; however, the consultant was of the opinion that any circumstance of control was to be excluded.

Distancing itself from the aforementioned opinion, after having expressly excluded control pursuant to art. 2359 of the Italian Civil Code and art. 93 of the CLF (the Consolidated Law on Finance: legislative decree no. 58/1998), the analysis of the Board of Directors regarded Consob Resolution 17221 of 12 March 2010 and, in particular, Annex 1, § 2, letter d), as the Board interpreted it in light of the combined provisions of IAS 24 and IFRS 10. The Board of Statutory Auditors decided it could discern, from the texts of these regulations, a notion of control that would also embrace the “power to direct/influence/condition, on a stable basis, the exercise of the voting rights of the majority of the directors” regarding “significant resolutions”, and therefore retraced events, activities and resolutions of the Board of Directors of Tim from 2015 onwards to verify the concrete recurrence of such a notion of control.

After its review, the Board of Statutory Auditors observed that, with some minor exceptions, in the various circumstances the Board of Directors had “always resolved in favour of the position proposed, or openly and forcefully supported by the directors from Vivendi”, and decided that such a convergence of opinions on the positions expressed by the Directors appointed by Vivendi had to be considered enough to be able to ascertain that control of TIM by Vivendi did exist for the purposes of the regulation on transactions with related parties.

The Board of Directors' considerations

In view of the investigations undertaken by the Board of Statutory Auditors, the Company appointed as advisors the legal firms Marchetti and Portale Purpura, which provided two separate independent legal opinions, subsequently supplemented in light of the additional material subsequently made available by the Board of Statutory Auditors.

The consultants appointed by the Company (who in fact agreed with the approach sustained also by the independent consultant appointed, independently, by the Board of Statutory Auditors) observed that the notion of control and its possible declinations, are identified and reconstructable based on the reference regulations, and that the interpretation developed by the Board of Statutory Auditors is not to be found in either the

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regulation on transactions with related parties or in the IFRS international accounting standards referenced, which postulate that control is “the power to determine the financial and operating policies of an entity in order to obtain benefits from its activities”. Said power - which differs from mere “notable influence”, which it is uncontested that Vivendi has over TIM - must necessarily derive from the possession of rights, and must be capable of being exercised unilaterally by the shareholder, without the necessary concurrence of others.

This circumstance does not occur in the case of the Board of Directors of TIM.

The opinions also specify that the simple observation of a convergence of votes is irrelevant for the notion of control, as is any possible effective capacity of individual members of the administrative body to express positions that, on each occasion, receive the free consent of others. All the opinions received make the point that the positions expressed by individual Directors cannot be considered to be the mere effect of the exercise of other people's powers of direction and control, even more so in the context of a Board of Directors, most of whose members were appointed before the entry of Vivendi into the share capital and the vast majority of whom are in any event independent Directors.

The above in disregard of considerations of the merit regarding the de facto basis of the internal dynamics of the Board of Directors, assumed with reference to the Board of Statutory Auditors, whose reconstruction, as carried out by the aforementioned body, the Board of Directors did not agree with.

The considerations summarised above have been shared with the members of the Board of Directors in specific informal meetings, during which the Company's consultants provided clarifications and responses to queries, to enable the Directors to act in a fully informed manner.

The Board of Directors' conclusions

After an initial postponement to allow everyone to review the extensive documentation available, the Board of Directors considered on 23 March that it had elements enough to be able to make its own conclusive determination on the issue, and did so, focussing on the “factual reconstruction” developed by the Board of Statutory Auditors.

In particular, all the directors (including the independent director appointed by Vivendi, and in the absence of Baroness Kingsmill) excluded any kind of “subjection” with regard to the positions expressed by the non-independent directors nominated by Vivendi, confirming that they had taken their decisions with full and unfettered independence of judgement, without limitations of any kind other than the objective interest of the company and all its stakeholders, on which every choice made by the Board is based. As a result, all the members of the Board of Directors were of the view that it should not proceed to reclassify the relationship between Vivendi and TIM from one of “notable influence” (which is unquestionably acknowledged) to one of “control”, in line with the conclusions reached in all the independent legal opinions produced (including that issued by the independent professional appointed by the Board of Statutory Auditors).

For completeness, it should be noted that Ms. Calvosa and Ms. Cornelli, although they agreed with the aforementioned conclusion reached by the Board of Directors, did not feel that they could participate in the voting as they were bringing a proposal to strengthen, on a strictly voluntary basis, the safeguards on transactions in which Vivendi was involved. On this point the Chairman of the Board of Directors referred to the numerous safeguards on transactions with related parties (and in any case Vivendi is classified as such), not least the ordinary recourse made to selective tender procedures that could ensure competition between the counterparties and transparency in the choice of the best offer, which all principal suppliers must participate in, and evidenced the need to structure the proposal operationally, so as to be able to bring it to the Board for review, assigning the appropriate further investigation of the issue to the Control and Risk Committee.

The Vice Chairman and Directors Philippe and Roussel, who declared that they had an interest in the subject, and made a declaration to this effect pursuant to art. 2391 of the Italian Civil Code, abstained from voting.

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