MEMORANDUM

1. THE FACTS

(i) on 14th March 2018, the shareholders Elliott International LP, Elliott Associates LP and The Liverpool Limited Partnership (the "**Requesting Shareholders**") requested the TIM Board of Directors (the "**Request**") to supplement the agenda of the Telecom Italia S.p.A. ("**TIM**") Shareholders' Meeting, already called for 24th April 2018 (the "**Shareholders' Meeting**");

(ii) on 22nd March 2018, the TIM Board of Directors acknowledged Mr. Giuseppe Recchi's resignation effective immediately. In the context of the same Board of Directors' meeting, further 7 directors (the Chairman Arnaud de Puyfontaine and the board members Camilla Antonini, Frédéric Crépin, Felicité Herzog, Marella Moretti, Hervé Philippe, Anna Jones) resigned – with effect as of 24th April 2018, *before* the Shareholders' Meeting having taken place – so that, 8 out of the 15 members of the Board of Directors were resigning;

(iii) in the context of the meeting held on 22nd March 2018, pursuant to article 9.10 of the Bylaws, the Board of Directors called, for 4th May 2018, an additional shareholders' meeting to renew the administrative body and, therefore, did not supplement the Shareholders' Meeting agenda;

(iv) on 23rd March 2018, the Requesting Shareholders requested the TIM Board of Statutory Auditors (the "**BSA**") to proceed, in place of the Board of Directors, to supplement the agenda of the Shareholders' Meeting, by filing, however, a request different from the original (see point (v) below);

(v) on 27th March 2018, the BSA, accepting the Requesting Shareholders' requests, decided, pursuant to article 126-*bis*, subsection 5, TUF, to supplement the agenda in the following terms: "*(i) revocation of directors (as necessary, according to the timing of the resignations offered and accepted during the board meeting of 22 March 2018, pursuant to article 2385, subsection 1, of the Italian Civil Code) and (ii) appointment of six Directors, that is Fulvio Conti, Massimo Ferrari, Paola Giannotti De Ponti, Luigi Gubitosi, Dante Roscini and Rocco Sabelli, to replace Arnaud Roy de Puyfontaine, Hervé Philippe, Frédéric Crépin, Giuseppe Recchi, Félicité Herzog and Anna Jones, who have ceased to hold office.*" (the "**Resolution**").

2. UNLAWFULNESS OF THE RESOLUTION: SUMMARY OF THE CONCLUSIONS

The Resolution turns out unlawful and not valid for several reasons, the main of which are summarised herein below.

2.1 Lack of "inactivity" by TIM Board of Directors: lack of the requirements set out in art. 126-*bis* TUF.

First of all, the Resolution is unlawful and not valid since the requirements set out in art. 126-*bis* TUF for the intervention of the BSA have not occurred.

In fact, the law provides that the Board of Statutory Auditors is allowed to replace the Board of Directors in deciding to supplement the agenda of a shareholders meeting only in the event of

"**inactivity**" by the administrative body as to the requests for supplement of the agenda submitted by the shareholders. The "inactivity" occurs in case of failure of the Board of Directors in making a **decision**. It does not occur, instead, when the Board of Directors makes a duly motivated decision, but the Board of Statutory Auditors **dissents** with respect to the merits of such decision, as it has occurred with regard to the Resolution.

It is well-known – as the BSA has acknowledged – that the Board of Directors may decide **not** to supplement the shareholders' meeting agenda upon requests to insert in the agenda resolutions "*illegal, impossible or useless*" (see BSA's request dated 30th March 2018, p. 3). And this is exactly what has occurred in this case. TIM Board of Directors has made (and motivated) a **decision** upon Elliott's requests. In fact, having acknowledged that the majority of its members had resigned and, as a consequence thereof, the entire Board of Directors had to be reappointed, the Board has decided not to supplement the Shareholders' Meeting agenda and to call for 4th May 2018 an *ad hoc* shareholders' meeting in order to appoint the new TIM Board of Directors, in compliance with the provisions of law and the TIM Bylaws.

In light of the foregoing, it may be deducted that:

(i) the Board of Directors has not been inactive, but has made a specific and justified decision on this matter (although different in the merits from the one that the BSA has shown to consider correct). The absence of inactivity makes the Resolution unlawful considering that it has been adopted lacking the requirements provided by art. 126-*bis* TUF;

(ii) the BSA has adopted a resolution exceeding its powers, not occurring the requirements provided by art. 126-*bis* TUF.

2.2 Supplement of the Request after the deadline set forth in art. 126-*bis* TUF.

Secondly, the Resolution is unlawful and not valid as it is based on a **late request to supplement** the Shareholders' Meeting agenda which is also **not the same as** the original Request to supplement the agenda.

Elliott's (second) request (accepted by the BSA) was submitted on 23rd March 2018, that is toi say **after the mandatory deadline provided by law** (*i.e.* 10 days from the date of publication of the notice of call of the Shareholders' Meeting pursuant to art. 126-*bis*, subsection 1, TUF, which took place on 10th March 2018).

2.3 Breach of clause 9.10 of the Bylaws (c.d. *simul stabunt simul cadent*)

2.3.1. A further and even more relevant cause of invalidity of the Resolution is that, if such Resolution is applied, it may consent the appointment of the Board of Directors by the Shareholders' Meeting **not in compliance with the provision of art. 9.10 of the TIM Bylaws**, pursuant to which "*whenever the **majority** of the members of the Board of Directors cease for **any cause or reason**, the **remaining** Directors are deemed as **resigning** and **their** termination is effective when the Board of Directors has been renewed by Shareholders' Meeting appointment*".

2.3.2. This clause, known as *simul stabunt simul cadent*, is pacifically deemed valid and lawful

(see art. 2386, subsection 4, of the Italian Civil Code) and, as provided in the issuer's Bylaws, it requires the application of a special regime (largely set forth by the very law) for the specific case of appointment of the entire Board of Directors (and not of a part of it) once the majority of the directors ceases.

It may be useful to remind that had TIM Bylaws not provided for such a clause, in case of resignations of the **majority** of the members of the Board of Directors, the resigning directors would still remain in office, by means of s.c. *prorogatio,* until the shareholders' meeting which shall be however called for the replacement of the **resigning directors only**, as set forth in art. 2386, subsection 2, of the Italian Civil Code.

In this scenario, the non-resigning directors would not be "affected" by the termination of the majority of the directors, but they would be confirmed in office without any further resolution.

Ultimately, if clause 9.10 of the Bylaws was not provided, the resignations of the majority of TIM Board of Directors would not require the appointment of a **new** board, but only the **replacement** of the resigning directors.

The scenario is radically different if the Bylaws contains – as in this case – a clause *simul stabunt simul cadent*: that is a clause which provides that "*as a consequence of the cessation of office of certain directors the entire board ceases to function*" (see art. 2386, subsection 4, of the Italian Civil Code).

This, as mentioned, is TIM's case, since in the Bylaws an express *simul stabunt simul cadent* clause is provided: this is a "contractual" clause (having force of law between the TIM shareholders and prevailing upon any other provision, with the only exception of those provisions of law which are mandatory and cannot be opted out), by virtue of which, in case of termination of office "*for any cause or reason*" (therefore, **including resignations, but also revocation**), of the majority of the directors, the remaining "*are deemed as resigning and their termination is effective when the Board of Directors has been renewed by Shareholders' Meeting appointment*".

In this hypothesis, art. 2386, subsection 4, of the Italian Civil Code imposes – by derogating to the ordinary regime which would instead be applicable would there not be a *simul stabunt simul cadent* clause – that if the whole Board of Directors ceases, the same Board of Directors (and not the Board of Statutory Auditors) has to call (even "*urgently*") the shareholders' meeting for the "*appointment of **the new board***". For the appointment, as already said, of the entire board and not of a part of it.

In other words (and for reasons which are obvious) ([1]) if the majority of the directors

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[1] The *simul stabunt simul cadent* clause, applied to the termination of the majority of the members of the board of directors, avoids the risk that, over time, the composition of the Board of Directors may substantially change with respect to its original configuration without certain principles (slate voting system), applied in the original election of the body, being able to operate. For the record, this is exactly what may happen in case the Resolution by the BSA applies.

cease for any reasons, the Board of Directors must (not simply may) call the shareholders' meeting not for a partial reconstitution of such corporate body, but for the whole appointment.

And this is exactly what happened in this specific case.

2.3.3. The BSA claims that it is necessary to proceed to a coordinate interpretation of art. 2385 [(2)] and art. 2386 [(3)] of the Italian Civil Code, as well as of clause 9.10 of the Bylaws. On this basis, the BSA states the existence "*of positions expressed both in case law (Milan Court) and in authoritative scientific doctrine and notarial rules, suitable to support, in light of the coordinated reading of articles 2385 and 2386 of the Italian Civil Code, as well as clause 9.10 of TIM's Bylaws, the conclusion that Directors Arnaud Roy de Puyfontaine, Hervé Philippe, Frédéric Crépin, Félicité Herzog, Anna Jones, Ms Camilla Antonini and Marella Moretti remain in office even after the date of 24 April 2018 (the date their respective resignations provides to become effective)*".

The assumption is that, pursuant to art. 2385, subsection 1, of the Italian Civil Code, the resignation by the directors constituting the majority of the board of directors takes effect "*from the time when the majority of the board of directors has been reappointed as a result of the acceptance of the new directors*" and, therefore, the resignations expressed by the majority of the members of the Board of Directors during the Board of Directors'

[(2)] Pursuant to art. 2385 of the Italian Civil Code: *"[1] A director who resigns his office shall give written notice thereof to the board of directors and the chairman of the board of statutory auditors. The resignation is effective immediately if a majority of the board of directors remains in office or, if that is not the case, from the time when the majority of the board of directors has been reappointed as a result of the acceptance of the new directors.*

[2] The cessation of directors due to their term's expiry is effective as from reappointment of board of directors.

[3] The cessation of directors from office for any reason must be recorded in the Business Register within thirty days by the board of statutory auditors."

[(3)] Pursuant to art. 2386 of the Italian Civil Code: *"[1] If, in the course of the financial year, a vacancy occurs of one or more directors, the other directors will provide for their replacement by resolution approved by the board of statutory auditors provided that the directors appointed by the shareholders' meeting always constitute a majority of directors. The directors thus appointed will remain in office until the next shareholders' meeting.*

[2] If vacancies of the majority of the directors appointed by the shareholders' meeting occur, the directors remaining in office must call a shareholders' meeting to fill the vacancies.

[3] Unless otherwise provided for by the articles of associations or the shareholders' meeting, the term of office for directors appointed in accordance with the previous paragraph expires at the same time as the term of those in office at the time of their appointment.

[4] If specific provisions of the article of association specifies that as a consequence of the cessation of office of certain directors the entire board ceases to function, the shareholders' meeting for the appointment of the new board will be urgently convened by the directors remaining in office; the article of association may, however, provide for the application in such a case of the provisions of the following paragraph.

[5] If a vacancy of the sole director or of all directors occurs, a shareholders' meeting for the replacement of the director or of the entire board must promptly be called by the board of statutory auditors, which can transact ordinary business in the interim."

meeting on 22nd March 2018, should not be effective from 24th April 2018, but only once the reconstitution of the Board of Directors takes place.

The BSA also states that, as a consequence of these resignations, the entire administrative body would be resigning. The conclusion as to the resignation of the entire Board (as a consequence of the *simul stabunt simul cadent* provision)is stated several times by the BSA, that points out that "*on 24 April 2018 the majority of the members of the Board of Directors will resign*" and that "*therefore, the **entire** management body of TIM should be understood as having resigned*". Moreover the BSA also pointed out that "*consequently, in that scenario **all** the directors (…) will be deemed to have resigned, but will remain in office until the Board of Directors is reconstituted*.".

Despite such (unchallengeable) statement, the BSA has decided that the request to appoint (only) 6 members of the Board (the appointment of a number of directors lower than the resigning members) "*appears to be neither useless nor impossible (as well as obviously not unlawful)*".

2.3.4. Actually, the assumption and the decision cannot be shared for many reasons.

First, it is important to clarify that there are no judicial rulings nor notarial recommendations to support the conclusions reached by the BSA. In fact, neither the Court of Milan's ruling dated 10th June 2008 (Rel. Ciampi, Est. Fiecconi) nor the notary recommendation no. H.C.9, to which the BSA seems to make reference, support the assumption that the provision of art. 2385 of the Italian Civil Code be considered mandatory and therefore cannot be opted out. Both these sources, far from stating such a principle, are rather aimed at identifying the applicable regime – that is the *prorogatio* – in the event a *simul stabunt simul cadent* clause (such as the one submitted to the Court's examination in the aforementioned ruling which is **different from the clause set out in TIM Bylaws**) does not clarify the moment in which the resigning directors and the non-resigning directors (that is to say those whose resignations are triggered by the fact that the majority of the directors have resigned) cease to be in office.

2.3.5. The clause 9.10 of the Bylaws provides that the majority of the members of the Board of Directors might cease to be in office "***for any cause or reason***" (therefore even in case of resignation). The clause also provides that, in such a case, only the remaining directors (*i.e.* the residual minority of the members of the Board) are deemed as "resigning" and only with reference to such remaining directors the termination is effective when the Board of Directors has been renewed. The rule established by art. 9.10 of the Bylaws is clearly an alternative to the one provided for by art. 2385 of the Italian Civil Code, as it provides that only the termination of the remaining directors (*i.e.* the minority of the members of the Board) is suspended until the acceptance of the new directors has occurred. Indeed, the majority of the members of the Board is to be considered definitively ceased. In other words, pursuant to art. 9.10 of the Bylaws, on 24th April 2018:

(i) directors Arnaud de Puyfontaine, Camilla Antonini, Frédéric Crépin, Felicité Herzog, Marella Moretti, Hervé Philippe, Anna Jones shall be deemed as definitively ceased;

(ii) the remaining directors Ferruccio Borsani, Lucia Calvosa, Francesca Cornelli, Dario Frigerio, Danilo Vivarelli shall be deemed as having resigned. However the latter, and only the latter, will remain in office until the whole board of directors is renewed during the shareholders meeting on 4th May 2018.

Therefore, it is confirmed that the Resolution is unlawful, considering that it aims at removing (and replacing) directors who:

(i) have resigned with definitive effect from 24th April 2018 and they will cease their office on the same date;

(ii) are not included among the *remaining* directors that will have to be considered as having resigned on 24th April 2018 and will definitively cease with effect from 4th May 2018 (*i.e.* by means of s.c. *prorogatio*) pursuant to the clause *simul stabunt simul cadent*;

(iii) on 24th April 2018 shall not be considered in office, not even by means of s.c. *prorogatio* considering that *prorogatio* will only involve the remaining directors (Ferruccio Borsani, Lucia Calvosa, Francesca Cornelli, Dario Frigerio, Danilo Vivarelli).

Moreover, the decision of Milan's Court referred to by the BSA indeed stated that the Bylaws shall prevail and that art. 2385 of the Italian Civil Code applies only if the Bylaws does not contain specific rules.

The resignation offered in the context of the Board meeting held on 22nd March 2018 will all be effective before the Shareholders' Meeting convened for 24th April 2018 and, therefore, it would be impossible and unlawful to revoke the directors that have already and effectively resigned and definitively ceased from office.

And in addition to that, the whole Board of Directors, and not only part of it, has to be renewed and by means of the slate voting system and not by the majority vote.

2.3.6. Even if it were true – which, as said, it is not – that the provision set forth in art. 2385 of the Italian Civil Code prevails (as expression of a mandatory principle of public order) upon the statutory clause, the conclusion could not be, however, the one taken in the Resolution by the BSA.

As a matter of fact, it would be true, as the BSA states, that the **entire** Board of Directors would be resigning with the consequent obligation for the corporate bodies (including the Board of Statutory Auditors) to ensure that the shareholders' meeting be *urgently* called to guarantee, without any delay, the appointment of the entire Board of Directors (and not of a part of it). In this case, the law and, precisely, art. 2386, subsection 4, of the Italian Civil Code which requires, if a *simul stabunt simul cadent* clause is provided, to urgently call a shareholders' meeting for the **appointment of the entire Board of Directors**.

This obligation – that, obviously, prevails and includes, making useless, if not even illegal, opposite operations and initiatives – cannot be subject to exceptions and, in

particular, cannot be ignored by way of partial or opportunistic reappointment of the management body. In the presence of the clear provision of art. 2386, subsection 4, of the Italian Civil Code (and of the coordinating interpretation, to use an expression used by the BSA, with art. 9.10 of TIM Bylaws), no partial appointment is possible, nor lawful. Even more so in light of the fact that, in this way, the slate voting system, provided (by art. 147-*ter* TUF and by art. 9 of the TIM Bylaws) for the appointment of the Board of Directors, would be bypassed in favour of the majority vote.

There is the further paradox, that the clause *simul stabunt simul cadent* evidently intends to avoid, that TIM (it is not clear for how long) would have a Board of Directors mainly made of directors that have not been appointed through the slate voting system: that is to say not elected by the system mandated by law and chosen by the company's shareholders (except for extraordinary cases) to appoint their representatives and, especially, that TUF mandates for listed company in order to assure a proportional representation of shareholders..

Basically, the unlawfulness of Resolution of the BSA is further confirmed considering that partial removal of the Board of Directors and the simultaneous replacement of the removed directors does breach the right of shareholders to choose the members of the Board according to the voting list system. This unlawfulness appears even more evident (leaving aside the fact that, in the present case, the directors that should be removed have been designated by the majority shareholder) if we think about the case in which the shareholders deprived of right to designate and vote directors through the slate voting system were minority shareholders. It is evident that BSA's thesis (*simul stabunt simul cadent* clause would not be applicable and, therefore, the possibility to remove and partially replace directors through majority votes as to individual names would apply) would impact negatively upon minority shareholders as as the directors involved would be designated by such shareholders (do consider, for example, a board of 11 members in which 4 directors designated by the minority resign together with other 2 member: if we admit that in this case it is allowed to replace those who resign through majority votes on individual names without applying the voting list system, it is clear that – in the renewed configuration – there would not be space for directors designated by minorities).

From another perspective and independently from what we have just noted, it should be pointed out that Elliott, as shareholder, has requested jointly the revocation of certain members of the Board of Directors and the simultaneous replacement of such members with others and, surely, it would be impossible to intervene on Elliott's request in a "surgical" way to save only a part of it.

Finally, it must be wondered if, in a situation similar to this one, the revocation of 6 directors, that have already irrevocably resigned, out of 15, may be considered useful or if this is one of the situations that the Court of Milan used to qualify as expressions of a (unjustifiable) spirit of *chicane* (given that these directors are all designated by the same shareholder with whom the Requesting Shareholder has in place a significant *querelle*).

2.3.7. For the reasons set out above, the Resolution adopted by the BSA leads to the breach of the provisions of law and Bylaws related to the appointment of the TIM administrative

body.

3. LEGITIMACY OF TIM BOARD OF DIRECTORS' RESOLUTION APPROVED ON 22ND MARCH 2018

In order to avoid such a breach, therefore, the Board of Directors' Meeting held on 22nd March 2018 **duly and lawfully** considered **not to accept** the Elliott's requests to supplement the Shareholders' Meeting agenda, since such requests were related to resolutions on an unlawful and, anyway, impossible, item.

In fact, the Shareholders' Meeting:

(i) could not replace 6 directors out of 15 by way of a selective and "here and there" appointment considering also that directors who should be removed will have already definitively resigned and, therefore, **irreversibly ceased** on 24th April 2018; and

(ii) nevertheless, given that in such a case the replacement should be voted, according to the TIM Bylaws, by **the majority** (see art. 9.8) and not by applying the slate voting system, it would be in breach of a fundamental principle set out by the law and in the TIM Bylaws, with serious detriment to all the shareholders and the market.

As a consequence, the TIM Board of Directors has duly and legitimately resolved upon the call, for the purposes of the full renewal of the administrative body, of an *ad hoc* Shareholders' Meeting (for 4th May 2018), in which the election shall take place on the basis of lists of candidates in accordance to the Bylaws.