FiberCop, European Commission objections and rejection of wholesale price lists

In its Statement of Objections released on 19 October 2026, the European Commission informed that KKR, a leading private equity firm and prominent player in the Telco market, had provided inaccurate or misleading information during the antitrust review of the acquisition of NetCo - TIM's business unit which involves its primary fixed network infrastructure, FiberCop's secondary network, and the related wholesale activities - with particular regard to the wholesale access agreements for the secondary network infrastructure. KKR, however, rejected the Commission's preliminary allegations and confirmed that it will present its observations as part of the ongoing proceedings.

During the investigation launched in April 2024, and in response to concerns expressed by several market operators regarding the continuity and certainty of wholesale access conditions, KKR had represented the Commission, replying the request for informations provided for in Article 11(2) of Regulation (EC) No. 139/2004, that the long-term agreements, already in force with retail operators, would remain unchanged and that any amendment to their contractual terms would require the mutual consent of the parties. On the basis, *inter alia*, of those representations, the Commission issued a decision of clearence of the transaction on 30 May 2024 without imposing any conditions. Following the completion of the transaction, however, certain operators complained unilateral changes of the economic conditions applied by FiberCop, with specific reference to the increase of the prices of wholesale broadband access services, in certain cases particularly significant.

Against this background, on 24 July 2025 the Commission opened a formal investigation and, approximately fifteen months later, considered that KKR may have been, at least, negligent in its response to the request for information submitted in the context of Case M.11386. This procedural development is of particular significance from a competition law perspective, given that any finding that the information provided was

inaccurate or misleading could expose the undertaking concerned to fines of up to 1% of its total aggregate turnover.

Moreover, the most significative implications of such a finding could be felt in the electronic communications market, especially if the Commission were to revoke, pursuant to Article 6(3) of Regulation (EC) No. 139/2004, its assessment of the compatibility of the transaction with the internal market, openining a new assessment of the regulatory framework, enshrined in the AGCom's Market Analysis published in March 2026 (Resolution No. 58/26/CONS).

The matter arises at a particularly sensitive time for the wholesale access market. Since April 2026, FiberCop has faced sustained opposition from major retail operators, including Fastweb + Vodafone, Wind Tre, Iliad, Sky Italia and TIM itself, over the terms and conditions governing access to its network, while AGCom's validation of those arrangements continues to appear far from imminent.

Following an initial rejection during the summer, and more than six months after the assessment process, AGCom announced by press release on 23 October 2026 that the revised proposal most recently submitted by FiberCop still failed to address the concerns previously identified and, therefore, could not, at this stage, be approved.

As AGCom itself clarified, responsibility for proposing new economic and technical supply conditions now falls once again on the wholesale operator, which will be required to further revise its economic and technical terms of supply so as to ensure compliance with the fairness and reasonableness standards set out in the 2026 Market Analysis.

KKR and FiberCop now face a particularly delicate phase. On the one hand, they will need to address the Commission's concerns regarding the accuracy of the information previously provided in the context of the merger review. On the other, they are required to develop new access conditions that are not discriminatory and conducive to competition, capable of addressing the concerns raised by both regulatory authorities and market operators, while fostering market openness and innovation for the benefit of end users.

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