**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C. 20554**

***Applications filed to Transfer Control of Cablevision Systems Corporation to Altice N.V., WC Docket No. 15-257***

# Reply of MFRConsulting To Joint Reply Comments of Altice N.V. And Cablevision Systems Corporation

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## 1. Summary

MFRConsulting (MFR) respectfully submits this reply to the Joint Reply Comments of Altice N.V. and Cablevision Systems Corporation ("Joint Reply") filed on December 22,2015[1]. This reply does not represent an exhaustive response and leaves the door open for further expanded Comments as new information is developed or is made publicly available. However the following conclusions can be drawn based on the evidence presented to date in this Docket and the current state of knowledge about

[1] http://apps.fcc.gov/ecfs/document/view?id=60001390059 (Joint Reply)
[2] http://apps.fcc.gov/ecfs/document/view?id=60001351918 (CWA))

the markets, technologies, and competition - a broadband duopoly - in the areas where Cablevision holds operational franchises:

- Altice has fallen far short of providing plausible let alone convincing evidence to support its expansive claims of the transaction-specific benefits that will be generated by bringing its "magic sauce" of *"global expertise and resources"* and experiences in non-U.S. markets to improve the performance and competitiveness of Cablevision in the New York Metro area;
- Altice's rebuttals of opponents and criticisms of its claims and forecasts of the future of an Altice-controlled Cablevision are either: (i) Arbitrary i.e. presented in the form of unsubstantiated assertions that they are invalid, or (ii) Non-existent, i.e. several key findings of opponents are ignored and not contested, or (iii) Dependent on a confusing interpretation of Altice's own claims of forecast cost savings and an unwarranted assumption about the context in which opponents use the word *annual* in discussing forecast cost savings;
- There would be substantial risks to the future of an Altice-controlled Cablevision and to the public interest as a consequence of the sizable additional debt that Cablevision would have to service post–acquisition, combined with the imposition of Altice's well documented verifiable pattern of anti-competitive and other ultimately customer-hostile business practices upon Cablevision, its employees and suppliers such as it has pursued with its non-U.S. properties, as well as its tactics for circumventing pro-competitive conditions it has agreed to with a regulator;
- The ability to influence the course of an Altice-controlled Cablevision to serve the public interest would be inhibited by the extreme concentration of power in one individual inherent in its corporate structure that was recently (August 2015) cemented by the transfer of Altice's corporate domicile to the Netherlands.

## 2. Overview

The Joint Reply purports to rebut and discredit opposition to the acquisition of Cablevision by Altice (the Transaction). The widest and most thorough opposition to this Transaction has been forthcoming from the Communications Workers of America (CWA)[2], whose members include employees of Cablevision, and MFRConsulting[3], an independent management and telecommunications consultancy with many years of experience in the U.S., Europe, Latin America, Asia, and the Middle East and Africa[4]. In addition Zoom Telephonics[5] and Cogent

[2] http://apps.fcc.gov/ecfs/document/view?id=60001351918 (CWA))
[3] http://apps.fcc.gov/ecfs/document/view?id=60001351844 (MFR)
[4] It is striking that in several important respects the key findings of CWA and MFRConsulting concur and reinforce each other, although they were developed independently without any communication prior to their publication.
[5] http://apps.fcc.gov/ecfs/document/view?id=60001352056 (Zoom Petition)

Communications[6] have submitted filings that addressed specific concerns and issues raised by the Transaction related to cable modem and leasing practices and interconnection respectively.

The Joint Reply's rebuttal of opposition to the Transaction:

(i) Arbitrarily dismisses the validity of the opponents' analyses;
(ii) Ignores and offers no response (the silent treatment) to several of the opponents' key findings identifying and delineating the risks and extent of harmful consequences inherent in an Altice-controlled Cablevision;
(iii) Presents a confused and confusing analysis of a key financial claim made by Altice regarding the impact of the Transaction on Cablevision's costs in order to discredit opponents' arguments that the size of forecast cost reductions will lead to significant declines in its service, stating that their allegations of the impact of these cost savings "are simply false". The analysis points out that these cost reductions will be phased in over and will only reach their full extent after several years. However the slower these cost savings are implemented the harder it will be for Cablevision to generate the cash flow needed to service the additional debt it will assume post-transaction. The findings of opponents about the harmful consequences of the deep cost reductions projected by Altice are not critically dependent on and made no assumptions about how rapidly they would be fully implemented, and hence their characterization as "simply false" is unfounded;
(iv) Reiterates the value of Altice's "global expertise and resources" and paints a glowing picture of the performance of its non-U.S. properties using benchmarking of their investments and other financial parameters against Cablevision. These statements and data are provided as evidence of the benefits Altice can bring to Cablevision's performance and competitiveness, while simultaneously overlooking the latter's very different environment that makes straightforward comparisons of this kind unreliable or meaningless without substantial further analysis, as well as paying no attention to the substantial contradictory evidence provided by opponents about the adverse impact of Altice's actions on its non-U.S. customers, employees, and suppliers.

The Joint Reply does not constitute an even minimally credible rebuttal of the analyses and findings of opponents to the Transaction.

The Joint Reply reiterates claims that Altice's acquisition of Cablevision will benefit the public interest thanks to its "global resources and expertise" that will "enhance Cablevision's ability to compete." But, as in Altice's original application[7], no substantive information or plausible explanation is provided as to whether or how

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[6] http://apps.fcc.gov/ecfs/document/view?id=60001352125 (Cogent Comments)
[7] Joint Application, http://apps.fcc.gov/ecfs/document/view?id=60001329304

this global strength can or will be applied to Cablevision. Unless concrete examples of credible benefits that Altice can deliver are delineated its language attributing to itself qualities such as "global expertise" is merely generic corporate propaganda and puffery. Moreover the Joint Reply is notably silent on opponents' observations about the U.S.-based expertise and resources in CableLabs (to which Cablevision has contributed) that has assisted the global development of the cable industry[8]. In the cable sector the flow of expertise has been greater from the U.S. to the rest of the world rather than from the countries where Altice operates to the U.S.

The Joint Reply and Altice's original Application invoke international benchmarking, using in particular the metric of a cable operator's investment as a percentage of its current revenues, in order to depict a rosy future of increased Transaction-specific investment for Cablevision from which its customers will benefit. This simplistic benchmarking pays no heed to the many factors that influence the actual and desirable level of investment by an operator at any point in time. Among other factors the level of an operator's investment as a proportion of its current revenues depends strongly on the current state of its installed networks and the level of penetration and growth potential within the market in which it is operating. The raw comparison across different operators' investments during a particular period of time as a percentage of their respective current revenues is not probative unless accompanied by plausible explanations of the differences reported that address the question of whether or not they can be attributed to legitimate causes that have nothing to do with whether one or more of the operators is underinvesting, and could or should do more. Altice has not addressed this issue either in its original Application or in the Joint Reply.

Furthermore the Joint Reply is silent on and does not even acknowledge the opponents' analysis of the implications of Altice's one-person, internally unchallengeable control on its likely actions and behavior in the duopoly broadband market (Verizon's FiOS is the other member of this duopoly[9]) in about 70% of the locations covered by Cablevision's franchise areas. In the remaining 30% of these locations Cablevision is for now effectively a monopoly supplier of broadband access services. This circumstance alone distinguishes Cablevision from the more competitive markets in Altice's other areas of operation, most importantly France, where in contrast to the U.S. customers can more easily switch to an alternative broadband provider.

The risks to an operator of pursuing anti-competitive policies and actions that are hostile to the interests of customers are substantially lower for an Altice-controlled Cablevision than they are for Altice's non-U.S. properties such as Numéricable-SFR in France. Hence evidence such as opponents of the Transaction have presented of Altice's inimical behavior towards the public interest and competition in the French

[8] MFR ibid. at p. 7

[9] In a few areas in Connecticut Frontier Communications (which took over AT&T's telephone properties in that state) is the other member of the local duopoly.

market should give rise to intensified concerns about its consequences in the U.S. where competitive forces limiting the incentives for, reducing the risks of and hence restraining such behavior are noticeably weaker.

The Joint Reply argues furthermore that several concerns expressed by the Transactions' opponents, including those of Cogent Communications about interconnection and Zoom Telephonics about customer premises equipment[10] as well as the issue of Cablevision's future supplier relationships if controlled by Altice fall outside the purview of what the Federal Communications Commission (FCC) should or can legitimately include in reviewing an application such as the proposed Transaction. Altice's attitude is asymmetric and self-serving. On one hand it argues that a significant transaction-specific benefit of an Altice-controlled Cablevision will be achieved thanks to its alleged ability to achieve significant cost savings by reducing the prices it pays its suppliers. But on the other hand the FCC should not consider any other aspects of Altice's relationships with its suppliers or their consequences in its review of the Transaction. Conveniently for Altice's purposes the topic of the prices paid to suppliers is a legitimate (and according to Altice's claims a favorable) factor to take account of, but everything else about buyer-supplier relationships (which might be unfavorable to Altice's cause) falls outside the Commission's purview in the context of its review of the Transaction.

More broadly Altice is arguing that questions of the impact of a transaction on an issue of public policy fall outside the scope of review of a proposed transaction and should not be taken into account in determining its outcome. Rather these questions should only be considered in the context of "a forum for consideration of certain policy objectives." This position if adopted would mean that any individual proposed transaction would be evaluated and adjudicated independently of whether or not its consequences might violate established policy, because it is allegedly only proper to consider or reconsider the policy itself in a much more extensive forum. Under these conditions the very notion of an established or durable policy objective would become nugatory since it would in practice become vulnerable to revision and hence possibly rejection or reversal (or reinstatement) every time an individual corporate transaction is presented for review. A more reasonable and logical position than the one adopted by Altice is that public policy issues are relevant in a review of a transaction if an established policy may be violated or the fulfillment of its goals put at risk as a foreseeable consequence of the specific transaction. In this situation either the transaction should be rejected or

[10] Zoom Telephonics has submitted a reply to the Joint Reply - http://apps.fcc.gov/ecfs/document/view?id=60001392048 - repudiating Altice's arguments that Cablevision's practices with respect to cable modem leasing are not matters that the FCC should be considering in reviewing the Transaction, and reaffirming that the FCC has the authority to direct Altice to unbundle modem leasing from broadband or Internet access service under the public interest standard. Zoom also points out that the FCC has found that there is no effective competition in the high-speed broadband market, a market factor also emphasized in this reply and in MFR that will have a critical influence on the foreseeable behavior of an Altice-controlled Cablevision (Zoom Opposition).

enforceable conditions for its approval imposed to ensure that the policy at risk is respected post-transaction.

In short the Joint Reply:

- Does not invalidate any of the key findings and legitimate concerns about the harmful impact on the public interest of approving the Transaction, that it either dismisses arbitrarily and/or ignores;
- Provides further grounds for rejecting key financial claims of the positive consequences of the Transaction as advanced by Altice;
- Reinforces concerns about Transaction-specific risks associated with the tension between the need to cut costs substantially to generate sufficient cash flow to service the post-Transaction debt and the adverse impact of cost cutting beyond some level on service quality and customers' experiences;
- Offers no substantive evidence of Altice's presumably superior "global expertise and resources" and their application to enhance the performance and competitiveness of Cablevision, and no explanation of why the metrics it uses in benchmarking its non-U.S. properties against Cablevision justify its claims of the potential for and value of substantial Transaction-specific improvements in Cablevision's performance should it be acquired by Altice;
- Requires the FCC to accept Altice's restrictive and self-serving definition of what falls within the scope of its responsibility and authority, not what is delineated within the Communications Act;
- Requests that the Transaction be approved because Altice:
    - Affirms that it will be beneficial without providing substantive evidence in support, and
    - States that critical opinions and findings by other parties with considerable knowledge and expertise related to the Transaction, even if they are based on substantial independently verifiable evidence, are unsubstantiated wherever they contradict Altice's own claims and/or identify sizable gaps in the justification of these claims and raise considerable doubts as to their plausibility.

## 3. Mischaracterization of Opposition to the Transaction

Opponents of the Transaction are dismissed and disparaged on the grounds that their representations rely variously merely on "hearsay", "speculation" and "surmise" and are "unsubstantiated". The Joint Reply also presents MFRConsulting's work, confusing cause and effect, as a consequence of the author's "dislike" of the transaction as if that were the motivation for this work and not the outcome of its evidence-based analysis.

The CWA's opposition is denigrated in the Joint Reply as being designed to "advance its own **narrow** interests."[11] The use of the word "narrow" to call into question the motivation and hence significance of the CWA's opposition to the Transaction is particularly ironic, if not cynical, in light of the one-person or sole decider corporate structure of Altice[12] that arguably narrows its interest in the acquisition of Cablevision to that of one individual.

Apart from the possibility ignored by Altice that an interest may be "narrow" but nevertheless still consistent with the public interest, this choice of language about the CWA reinforces concerns about Altice's attitude towards its employees that, based on evidence from Altice's behavior outside the U.S., does not bode well for the environment that employees would face in an Altice-controlled Cablevision. The Joint Reply gives no explanation of whether and if so how the interests of Cablevision's employees, represented by the CWA, are hostile to rather than fully consistent with and supportive of the public interest in this situation. The success of Cablevision depends to a significant extent on the capabilities, motivations, and dedication of its employees in fulfilling the tasks for which they are responsible, and the effectiveness of their diverse and multiple contributions to the quality of the services and care that its customers experience. The concerns of Cablevision's employees are not "narrow" in the context of the future of Cablevision. Employees are properly concerned about whether and how the culture and work environment of this company may change with a substantial potentially adverse impact on themselves, suppliers and customers if acquired by Altice.

The Joint Reply's characterizations of the opponents of the Transaction just cited ignore the ample verifiable documented and other evidence they have presented as the basis of and justification for their findings. This evidence includes among other sources published documents and statements from Altice itself as well as from representatives of people directly involved in Altice's properties outside the U.S. In addition corroborating reports of Altice's actions and behavior are cited from the well-known business publications of the *Wall Street Journal* (U.S.) and *Les Echos* (France). These reports demonstrate a persistent pattern of Altice's operational priorities enforced within a top down, autocratic or even dictatorial culture and mindset that drive decisions with consequences that are inimical to the public interest. The reports refer to events that can be independently verified such as suppliers' litigation against a major property of Altice[13]. The statement in the Joint Reply that opponents "also make false and unsubstantiated allegations regarding Altice's supplier payment and accounting practices" is false, not the allegations themselves.

[11] Emphasis added
[12] MFR ibid. Section 6 "Implications of Altice's Autocratic Governance"
[13] MFR ibid. Section 5.3 Contractors and Suppliers - additional evidence of Altice's anti-competitive behavior is presented later in these Comments, including in particular references and actions of the French Competition Authority (Autorité de la Concurrence) concerning Altice.

## 4. The Tension between Cost Savings and Quality

The Joint Reply is not content to dismiss opponents as relying on "hearsay" etc., but also makes the claim that their allegations about Altice's projected cost savings "are simply false." These allegations arose from a projection of cost savings presented by Altice itself when the Transaction was announced in mid-September, 2015, as reproduced here:

SOURCES OF SYNERGIES AND EFFICIENCIES ACROSS THE ENTIRE COST STRUCTURE

| | Description | % of total | |
|---|---|---|---|
| Customer operations | ▪ Further improvement of customer experience<br>▪ Reduction of operational complexity<br>▪ Upgrade of legacy systems | ~15% | $900m |
| Network & operations | ▪ Implementation of best-practices<br>▪ Modernization of network reduces operating expenses<br>▪ Simplification of processes with IT improvement | ~35% | |
| Sales & Marketing | ▪ Channel mix optimization with enhanced use of technology<br>▪ Back-office systems upgrading | ~5% | |
| G&A | ▪ Elimination of duplication in functions<br>▪ Elimination of "public company" type costs | ~15% | |
| Other | ▪ Business optimization across other businesses and Suddenlink | ~15% | |
| Capex | ▪ Procurement improvements<br>▪ IT systems upgrades and streamlining<br>▪ Engineering best practice transfers (no volume cuts) | ~15% | $150m |

*Source: Altice Presentation: Acquisition of Cablevision,* [http://altice.net/wp-content/uploads/2015/09/20150917-Cablevision-IR-Presentation.pdf](http://altice.net/wp-content/uploads/2015/09/20150917-Cablevision-IR-Presentation.pdf)

The cost savings forecast by Altice in this document are identified as reductions in operating expenses that are incurred every year, and as increased efficiencies in capital expenditures (capex) that will generate more "bang for the buck", thanks for example to procurement improvements, that may be the result of negotiating lower prices and/or different payment terms with and/or consolidating suppliers, etc. In this scenario Cablevision would be able to invest less to achieve the same outcome, or to invest the same amount to achieve a better outcome in terms of network performance and/or coverage. Increased efficiencies in capex like operational costs savings should be an ongoing or recurring benefit once they are implemented successfully. The perspective of opponents of the Transaction on the forecast of annual cost savings presented by Altice is confirmed by the skeptical opinions about their plausibility expressed by leading U.S. cable executives[14].

The Joint Reply contains the following statement: *"The projected $900 million in cost savings will not be realized immediately or annually. Rather, this is the amount Altice expects to realize over an approximately three- to five-year period."* The language in this statement indicates that Altice expects to achieve annual cost savings of $900 million three to five years after the Transaction is consummated, with presumably smaller amounts being saved in each year during this period.

There is no justification for Altice to characterize and actually emphasize opponents' use of the word *annual* in the context of operating costs as leading them to make allegations that "are simply false." Opponents made no assumptions about how rapidly the savings might or would be realized, nor did the chart from Altice's presentation. Opponents simply argued that Altice's forecast cost savings called for annual amounts that once achieved would represent a deep reduction in Cablevision's current level of operating expenses (opex) per customer that it would be implausible to expect would not have harmful consequences. The risk or threat to Cablevision's operating performance, services and customers' experiences from cost reductions of up to 40% of current non-content opex per customer may intensify more or less rapidly, but the final result will be the same. Moreover the Joint Reply neglects to point out that the more slowly cost reductions are implemented the lower Cablevision's cash flow will be in the years during which they are being progressively implemented.

The Joint Reply also cites a pertinent Moody's report (Moody's Investors Service, *Moody's assigns B1 to Neptune Finco Corp. (Altice/Cablevision acquisition financing)*, Moody's (Sept. 24, 2015) [15], that provides estimates of the cost savings it believes Altice can achieve at Cablevision and how rapidly they can or should be implemented. However the Joint Reply omits to mention the cautionary notes contained in this Moody's rating document that are consistent with the concerns and risks identified by opponents of the Transaction, namely:

*"However, if the cost cuts drive too fast a pace of organizational change and **headcount reduction**[16], this could result in disruptions to Cablevision's service quality and lead to market share erosion,"* and

*"Execution risk will dominate Cablevision's credit profile as Altice balances the pace of cost cuts and service quality. Management has articulated longer term cost reduction targets to the equity market which far exceed $450 million in savings promised to*

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[14] "Malone: Altice Synergies May Be Hard to Achieve," http://www.multichannel.com/news/cable-operators/malone-altice-synergies-may-be-hard-achieve/395289 (Altice Synergies)
[15] https://www.moodys.com/research/Moodysassigns-B1-to-Neptune-Finco-Corp-AlticeCablevision-acquisition-financing--PR_335284
[16] Emphasis added

*bondholders. Moody's views this more aggressive target as a longer term, aspirational goal and does not anticipate the benefits above $450 million to occur within the ratings horizon (i.e. two to three years). A material acceleration of these additional cuts would likely add more execution risk than Neptune's B1 rating can accommodate."*

In addition Moody's declares, *"Cablevision competes head to head with Verizon's FiOS service in about half of its urban footprint. Moody's views FiOS as a competitive product offer that could attract subscribers at a higher rate if Cablevision stumbles operationally. However, Cablevision's industry leading penetration rates point to solid operating performance. Notwithstanding the maturity of the core video product, the relative stability of the subscription business provides steady cash flow, and the high quality of Cablevision's network positions it well to achieve growth in its residential and commercial businesses despite the aforementioned competition."*

Moody's view of Cablevision does not support the idea, implicit in Altice's proclamations of the value it can bring to Cablevision, that there is substantial scope for Transaction-specific improvement. Rather it confirms opponents' view that any potential, and moreover until now unsubstantiated, benefits that Altice's control might bring will be outweighed by the additional risks of harm inherent in Cablevision's increased debt post-acquisition.

The Joint Reply also contains the statement that "Initially, the majority of savings that Altice expects to realize will have nothing to do with areas that bear directly on the customer experience." It goes on to say, "Indeed, shortly after the Transaction closes, Altice will be examining the existing business from a fresh perspective and focusing on costs related to overhead, general and administrative expenses, procurement, and special projects that can be eliminated without adverse consequences to service or consumers.'' Two questions arise with respect to these statements:

A. Is there any basis other than the direct application in the calculations of cost savings achievable at Cablevision of Altice's experiences in percentage terms of cost reductions in its non-U.S. properties despite the very different market and operating environment of Cablevision, given that apparently Altice has not yet carried out a Cablevision-specific examination of the business it proposes to acquire?
B. How is the statement that Altice will not initially address costs that have a direct bearing on customer experiences consistent with its plan to include procurement practices in its initial examination, given that a substantial proportion of Cablevision's procurements involve customer premises equipment?

## 5. Misuse of Benchmarking

The Joint Reply doubles down on Altice's glowing picture of the results it has achieved in this company's other properties outside the U.S., ignoring the very different circumstances in these markets compared to Cablevision's. Examples of the differences in Cablevisions' circumstances compared to Altice's non-U.S. operators have been pointed out by leading U.S. cable executives[17].

Typically operators invest more as a percentage of revenues under at least two conditions, namely when they are: (a) Growing rapidly from a relatively small customer base and have to invest heavily ahead of the increase in revenues they are hoping for and targeting, and (b) Investing in major network upgrades and new technology to remain competitive but market conditions (current penetration for example) are such that any increase in revenues attributable to these investments is hard to achieve or at least may be delayed relative to the investment cycle. In contrast investments as a percentage of revenues can be lower at least for a time once major network upgrades or expansions near completion and operators can enjoy and successfully maintain large customer bases with a propensity and ability to deliver higher revenues per customer as these customers are attracted to additional services.

In other words the proportion of its revenues that an operator devotes to investment is not necessarily or intrinsically a figure of merit or demerit. It may be cause for concern and provide opportunities for improvement if the operator fails to keep up with technological improvements and capacity and coverage demands and/or the quality of its services lags behind that of competitors. Investment may also be an area that provides opportunities for improvement in terms of outcomes (network performance, coverage, and operating costs) if the operator is inefficient in its use of capital, which however is not a finding that can be gleaned from simply looking at the amounts of capital it is investing either in absolute terms or as a percentage of revenues.  So far Altice has not provided information that is sufficient to judge whether Cablevision should be investing more or investing more efficiently.

## 6. Silence is not Rebuttal

The Joint Reply is notably silent on significant points raised by opponents of the Transaction including in particular the implications of the one-person unchallengeable corporate decision-making structure of Altice – and its reinforcement the month before the Cablevision acquisition was announced by the transfer of its corporate domicile to the Netherlands - and the well-documented reports of the attitudes and mindset and priorities of this individual who according to his own statement is the sole decider in Altice[18]. At least as important as what the

[17] Altice Synergies, ibid.

[18] MFR ibid. at p.5

Joint Reply does say is what it does not say, a tendency that has also been noted by Zoom Telephonics[19].

The Joint Reply also ignores and hence does not contest the point that the U.S. cable industry has been the leading source of key developments for cable operators worldwide rather than the reverse. Altice's case that Cablevision will benefit from the "global expertise" it can apply to improve Cablevision would be more credible if the expertise in question had to do with high speed passenger train service where manifestly Europeans (and Asians) have considerably greater and more impressive operating experience than the U.S.

## 7. Additional Evidence of Altice's Hostility to the Public Interest

The Joint Reply asserts on multiple occasions that various allegations of opponents to the Transaction are "unsubstantiated" or based on "hearsay' or "speculation." These assertions manage to overlook the citations to documents from Altice itself, other sources intimately involved in Altice's non-U.S. properties, as well as reports from reputable publications in the U.S. and Europe that substantiate the contents and support the findings of the opponents. Moreover there is additional evidence that confirms the arbitrary or unfounded nature of these assertions in the Joint Reply, and demonstrates that the propagation of unsubstantiated claims and findings is a practice employed by Altice, not by opponents of the Transaction.

Examples of this additional evidence include in particular (there may be others that would be uncovered by further research) comments and actions of the French Competition Authority (Autorité de la Concurrence) concerning Altice. The most recent development is a decision by the Autorité in early October 2015 to open ex officio proceedings triggered by a complaint by another French operator Bouygues Telecom. The basis of this complaint is the allegation that since the takeover of SFR by Numéricable in late 2014 the combined entity has been failing to honor the commitments it made as a condition for approval of this acquisition, specifically not to hinder the deployment and operation of optical fiber networks deployed within the framework of the agreements that SFR had reached with other operators.[20]

This is not the only occasion in which the Autorité has expressed or responded to concerns about anti-competitive practices of Altice. In early 2015 it dealt with another commitment made by Altice to secure approval of its acquisition of SFR, the number two mobile operator in France. This commitment involved the divestiture of Outremer Telecom's mobile telephony business activities (marketed under the Only brand) in La Réunion and Mayotte (French territories in the Indian Ocean). Within the framework of this commitment, Numéricable committed to maintain the financial viability, market value and competitiveness of the mobile telephony

[19] Zoom Opposition, ibid.
[20] Press release (English version):
http://www.autoritedelaconcurrence.fr/user/standard.php?id_rub=607&id_article=2645

concerns of Outremer Telecom (Only) until the divestiture. However in the event Outremer Telecom increased its prices, raising the risk that customers would leave and the market value and competitiveness of Outremer Telecom would decrease. The Autorité then decided to open ex officio proceedings to review the compatibility of this decision with the commitments. As result the price increases were withdrawn[21]. The publication *Les Echos* commented on this sequence of events as follows[22] (original in French with an unofficial English translation by the author immediately below):

*"Dans les affaires, il veut toujours aller plus loin. Alors il pousse et teste son interlocuteur en permanence comme un enfant teste l'autorité de ses parents », raconte quelqu'un qui l'a côtoyé. L'Autorité de la concurrence en sait quelque chose, qui l'a obligé à vendre le réseau mobile d'Outremer Telecom, après le rachat de SFR, sa position étant devenue trop forte dans l'océan Indien. Rusé, l'homme d'affaires s'amuse à augmenter les tarifs de l'opérateur à céder pour que les clients quittent le navire. Bruno Lasserre, le grand manitou de l'Autorité, brandit l'arme atomique en menaçant de retirer à Numericable l'autorisation de racheter SFR. Cette fois-ci, Drahi fait marche arrière."*

"'In business he[23] always wants to go further. So he constantly pushes and tests his negotiating partner as a child tests the authority of his parents,' relates someone who has worked with him. The Competition Authority, that obliged him to sell the mobile network of Outremer Telecom, after the purchase of SFR, its position having become too strong in the Indian Ocean, knows something about this. The wily businessman amused himself by increasing the tariffs of the operator to be divested so that its customers would abandon ship. Bruno Lasserre, the big shot of the Authority brandished the nuclear option of threatening to revoke Numericable's authorization to acquire SFR. This time Drahi reversed course."

The issues of Altice's adherence to commitments it made to secure approval of the acquisition of SFR (the number two mobile operator in France) were also reported in the widely respected French newspaper of record Le Monde[24]. The report in Le Monde refers in addition to a third intervention by the Autorité concerning whether Numéricable and SFR had begun working directly with each other on implementing their merger before receiving its go-ahead to do so.

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[21] Press release (English version): http://www.autoritedelaconcurrence.fr/user/standard.php?id_rub=607&id_article=2490

[22] http://www.lesechos.fr/week-end/business-story/enquetes/021369915638-dans-la-tete-de-patrick-drahi-1161244.php

[23] Patrick Drahi, the sole decider in Altice

[24] http://www.lemonde.fr/economie/article/2015/10/12/numericable-sfr-vise-par-l-autorite-de-la-concurrence_4787458_3234.html (in French: "The Competition Authority opens a third inquiry into Numéricable-SFR.")

The history of Altice's behavior with respect to commitments it made to secure approval of a major acquisition in France (approved by the Autorité at the end of October, 2014) and the attitude it has demonstrated towards a major Competition Authority do not inspire confidence or trust in its post-transaction motivation to fulfill any conditions it may agree to in order to win approval of the acquisition of Cablevision. Moreover they illustrate the kinds of tactics Altice may employ to frustrate the best of intentions implicit in any such commitments and its willingness to move swiftly to do so immediately after – and even before – a transaction is approved.

## 8. Conclusion

Altice's case for approval of the Transaction rests upon an unquestioning acceptance of its claims and assertions to the exclusion of all dissenting opinions and contradictory evidence. Acceptance of Altice's representations also has to overlook its failure to address several basic questions and non-trivial concerns raised by opponents, but so far ignored, about their validity. Furthermore, although given ample opportunity, Altice has failed to respond to trenchant criticisms of the plausibility of its unsubstantiated claims about the benefits inherent in its multinational presence ("global expertise and resources") and its management experience with acquisitions that can allegedly be transferred to Cablevision and its customers in the New York Metro area.

Approval of the Transaction requires rejection of any opinions disagreeing with Altice and of the substantial evidence and analyses that have been presented which both contradict Altice's glowing depiction of its achievements in its non-U.S. properties and identify its pattern of anti-competitive actions and behavior that are harmful to customers and employees and abusive towards suppliers. Translated to the environment of Cablevision Altice's business practices would be harmful to its customers, employees, suppliers, and the public interest in securing and maintaining access to universally available and affordable high quality broadband services.

Moreover approval of Altice's positions has to find that its silence on the implications of its one-person, internally unchallengeable sole decider corporate structure is justified. Approval would constitute an implicit acceptance or confirmation of the principle that it is admissible to put the control of a substantial proportion of economically and socially vital broadband infrastructure operating under publicly awarded franchises and dependent on access to public resources into the hands of one individual.

An industry-wide issue with broad and long lasting consequences highlighted by the Transaction is whether the structure and governance of the cable industry - the major providers of broadband access services in the U.S. - should be allowed to become an oligarchy. The outcome will determine whether effective competition in the high-speed broadband market in the U.S. can be established and sustained or competition will in practice be limited by the behavior (depending on location) of oligarchic monopolies or duopolies for most U.S. consumers.

Altice has not met the standard of demonstrating that it can and will deliver Transaction-specific benefits through its proposed acquisition of Cablevision simply by stating that it will apply its self-evaluated expertise and capabilities to achieve them, without providing convincing evidence that it can do so in the specific circumstances of this cable operator in the New York Metro area. Furthermore the credibility of Altice's claims and assertions is undermined by its cavalier dismissal as unsubstantiated and speculative, and relevant only to a narrow interest, of the risks of harm that have been identified and the substantial contradictory evidence to the rosy scenarios it has presented of its current properties and a future Altice-controlled Cablevision. Altice's offhand attitude towards the facts is also evident in its refusal even to acknowledge let alone rebut several of the serious reasons for rejecting the Transaction that its opponents have uncovered while arguing that others are irrelevant to its review and outside the purview of the FCC for this purpose.

Altice should be requested to produce convincing verifiable evidence and data that is so far lacking in the record, to support the claims it makes about the Transaction-specific financial and other benefits it will bring to improve Cablevision's performance and competitiveness. Examples of this evidence (not an exhaustive list) might include:

- Due diligence of Cablevision that clarifies and justifies the extent, sources, and nature of the cost savings that can be achieved and as far as is reasonable their timing and expected contribution to Cablevision's cash flow;
- Comparison of the outcomes of the investments that a stand-alone Cablevision will be able to and should make with the investments that Altice commits to in terms of the coverage and performance of Cablevision's networks over time[25];
- Identification of specific examples of the transfer or application of Altice's "global expertise and resources" to the improvement of Cablevision – for instance whether Altice now has, or can and intends to put in place global or at least multinational procurement agreements with suppliers to achieve lower prices for the equipment and services that it procures (corollary questions are whether Cablevision today pays over the odds for the equipment it procures compared to other U.S. cable operators and whether Altice believes it can negotiate better prices and other more favorable

[25] Cablevision introduced DOCSIS 3.0 (Data Over Cable Service Interface Specifications standard for cable modems) speeds several years ago and is capable of upgrading its networks on its own - http://www.dslreports.com/shownews/Cablevision-Quietly-Tinkers-With-Gigabit-Speeds-in-New-Jersey-135607

conditions with its suppliers than those which for example Comcast and Time Warner Cable have established)[26];

- Convincing fact-based rebuttals of opponents' findings and the risks of harm they have identified based on the corporate culture, structure and solo governance (i.e. lack of internal checks and balances) evidenced by Altice outside the U.S. and the substantial evidence already included in the record of Altice's anti-competitive patterns of behavior and actions.

[26] Cablevision or even Cablevision combined with Suddenlink have much weaker relative buying power in the U.S. market compared to Altice's properties in France or Portugal.