

**SHORT NOTE****I.*****Background: composition of the board in office***

**I.1** The shareholders' meeting of Telecom Italia S.p.A. ("Telecom") on 4 May 2017, at the time of appointing the Board of Directors has determined the number of directors to be 15.

**I.2**, The Board of Directors of Telecom is still today composed of 15 members, 14 of which were appointed by the shareholders' meeting and one (the chief executive officer Amos Genish) was co-opted to replace the previous chief executive officer, Flavio Cattaneo, who had resigned in July 2017.

**I.3** Of the 14 directors appointed by the shareholders' meeting, 9 were chosen from the majority slate presented by the shareholder Vivendi (Arnaud Roy de Puyfontaine, Hervé Philippe, Frédéric Crépin, Giuseppe Recchi, Félicité Herzog, Carola Antonini, Anna Jones, Marella Moretti and Franco Bernabè - the "**Vivendi Directors**") and 5 from the minority slate presented by institutional funds (the "**Fund Directors**").

**II.**

**Background: the request for inclusion of an additional item  
on the agenda of the Telecom shareholders' meeting on 24**

**April 2018 formulated by Elliott**

On 14 March, the Elliott funds formulated a request for the supplementation of the agenda of the Shareholders' Meeting, pursuant to and for the purposes of article 126bis of the CLF, requesting that the following issues also be put to the vote at the shareholders' meeting (the "**Supplementation**") : (i) "*the revocation of the mandates of 6 Directors, in the persons of Arnaud Roy de Puyfontaine, Philippe Hervé, Frédéric Crépin, Giuseppe Recchi, Félicité Herzog and Anna Jones;*"; and (ii) "*the appointment of 6 Directors, in the persons of Fulvio Conti, Massimo Ferrari, Paola Giannotti De Ponti, Luigi Gubitosi, Dante Roscini and Rocco Sabelli, to replace the directors whose mandates have been revoked pursuant to the preceding agenda item*";

**III.**

**Background: the press release of Telecom at the end of the  
meeting of the Board of Directors on 22 March 2018.**

**II.1** In a press release on 22 March 2018, Telecom informed the market that the Company's Board of Directors at its meeting on the same date to examine, *inter alia*, the additional item:

(a) "*acknowledged the resignation of the Executive Deputy Chairman, Giuseppe Recchi, with effect from today [i.e., from 22 March 2018; editor's note]*";

(b) had also taken note that "during the meeting each of the following members of the Board [Arnaud de Puyfontaine, Camilla Antonini, Frédéric Crépin, Félicité Herzog, Marella Moretti and Hervé Philippe; editor's note] had resigned, with effect from 24 April 2018, before the holding of the ordinary Shareholders' Meeting of the Company called for this date [and that] a similar communication was sent today to the company by Director Anna Jones"; and, finally,

(c) "having acknowledged that from 24 April 2018 (effective date of resignation) the conditions set out in Article 9.10 of the TIM Bylaws are met (according to which "whenever the majority of the members of the Board of Directors for any reason resigns, the remaining Directors are deemed to have resigned and the termination takes effect from the moment the Board of Directors was re-established by the Shareholders' meeting"), [has] decided by a majority to call on 4 May 2018 ... an Ordinary Shareholders' Meeting to proceed with the full renewal of the Board of Directors".

**III.2** In relation to the above, the Board of Directors has - wrongly as will be seen - decided to not "supplement the agenda of the Shareholders' Meeting called for 24 April 2018 (relating to the removal and replacement of Directors de Puyfontaine, Crépin, Herzog, Jones, Philippe and Recchi, **who on that date would all have resigned or ceased to hold office**) [my emphasis added].

IV.

***The provisions of article 2385, subsection 1, of the  
Italian Civil Code***

**IV.1** The reconstruction of the effects of the resignation of the 7 Vivendi Directors (other than Recchi) contained in the press release issued by Telecom on 22 March 2018 appears to be **incorrect in law**. Since, in fact, the 7 Directors who have resigned declared that they had **all** "resigned with effect from 24 April 2018, before the holding of the ordinary Shareholders' Meeting of the Company called for this date", their resignation, contrary to what was stated in the press release, **would not lead, on that date, to them ceasing to**<sup>1</sup> hold the office of Director currently held.

**IV.2** In fact, article 2385, subsection 1, of the Italian Civil Code unequivocally establishes that "*the resignation [from the office of director] has immediate effect if the majority of the members of the Board of Directors remain in office or, otherwise, it is effective from the moment the majority of the Board is reconstituted following the acceptance of the new directors*". Now, taking account of Mr Recchi's resignation, which has already occurred, if the resignations of the other 7 Directors appointed by Vivendi (which, as said, were tendered with effect from 24 April

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<sup>1</sup> While Mr Recchi actually ceased to hold office with effect from 22 March of this year, as unlike the others he submitted his resignation with immediate effect, with the consequence that his resignation had full and immediate effect pursuant to article 2385, subsection 1, of the Italian Civil Code.

2018, one minute before the opening of the ordinary Shareholders' Meeting), were to become effective and at the same time binding on that date, they would inevitably lead to the resignation from office of the **majority of the Board** (Recchi plus 7 = 8 out of 15).

Therefore the provisions of article 2385, subsection 1, of the Italian Civil Code apply in this case, which "suspend" the effects of the resignation and will defer the applicability "to the time in which the majority of the board was reconstituted following the acceptance of the new directors".

**IV.3** Contrary to the reconstruction set out in the Telecom press release, therefore, Directors Arnaud de Puyfontaine, Camilla Antonini, Frédéric Crépin, Félicité Herzog, Marella Moretti, Hervé Philippe and Anna Jones, having resigned on 24 April 2018 (one minute before the opening of the Shareholders' Meeting), **shall not cease** to hold office on that date and time, but, in accordance with the provisions of article 2385, subsection 1, of the Italian Civil Code, only on the date and at the time a new board is established (and therefore, if things go as Vivendi instrumentally - but to no avail - intended, as of 4 May 2018, which is the date on which the Board of Directors has convened the shareholders' meeting to re-establish the board).

**IV.4** Elliott is therefore fully entitled to request that the Board of Statutory Auditors orders the inclusion on behalf of the Board of Directors, which unduly failed in this obligation, by exercising the supplementary function

envisioned in article 126bis, subsection 5, of the CFL.

For the above reasons, in fact, the Directors Arnaud de Puyfontaine, Frédéric Crépin, Félicité Herzog, Hervé Philippe and Anna Jones, whose revocation and replacement Elliott has requested by a vote of the shareholders at the Shareholders' Meeting of 24 April 2018, will continue to be in office at the opening of this shareholders' meeting, although they have resigned, and may therefore be revoked and replaced, where this is the desire of the majority of shareholders at the meeting.

**v.**

***Coordination with clause 9.10 of the Telecom Bylaws***

**v.1** The content and the scope of application of clause 9.10 of the Telecom Bylaws have nothing to do with the foregoing and do not therefore in any way preclude the right of Elliott to submit the supplement to the shareholders' meeting vote. The clause operates in fact **differently** from that of article 2385, subsection 1, of the Italian Civil Code.

**v.2** The clause solely provides that where a majority of the members of the Board of Directors resigns, the remaining Directors shall be deemed to have done the same and (figuratively) resigned. In a physiological hypothesis in which a majority of directors resign at the same time and with immediate effect, the combined provisions of article 2385, subsection 1, of the Italian Civil Code and article

9.10 of the Telecom Bylaws shall ensure that:

- (a) the board should call a shareholders' meeting for the appointment of a new board;
- (b) the directors who have resigned in any case remain in office until the shareholders' meeting, together with those directors that, while not having resigned of their own volition, shall retire from office, on the basis of a *fiction iuris* resignation, from the time the board has been reconstituted by persons appointed by the Shareholders' Meeting.

**v.3** Given this due premise on the level of general coordination between the law and the statutory provision, the application of clause 9.10 to the resignation of the 7 Vivendi Directors requires it to be read consistent with the peculiarities of the case in question.

**v.3** Unlike a scope of physiological application of a *simul stabunt, simul cadent* clause the 7 Vivendi directors, in fact, had resigned not with immediate effect nor, as frequently happens, with effect from the date of the Shareholders' Meeting called to reconstitute the board (which, in the case in point, had been called for 4 May 2018, where the resignations were however tendered in respect to a specific moment of 24 April 2018, namely, a minute before the opening of the ordinary Shareholders' Meeting to meet on that date). The reasons for this decision are incumbent upon the Directors and there is no reason to examine the matter further (at least herein), but it is evident that **the choice followed on from the mistaken**

**conviction that it was thereby possible to escape the shareholders' vote for removal.**

However, due to the "suspension pursuant to Law" in terms of the effectiveness of the resignation from office (pursuant to art. 2385, subsection two, of the Italian Civil Code), the ordinary Shareholders' Meeting of Telecom of 24 April 2018 nonetheless remains entitled to vote on the removal and replacement of directors who, albeit having already resigned, have not yet ceased to hold office.

**V.4** Where, as urged by Elliott, the vote of the ordinary Shareholders' Meeting of Telecom really does lead to a revocation of six Vivendi directors and the appointment of 6 new directors to replace them, **a majority of directors will be appointed by the Shareholders' Meeting** (6 new directors elected by the Shareholders' Meeting of 24 April 2018 and the five Fund Directors). At that moment, the resignations of 2 Vivendi Directors for which Elliott had not asked for removal would also become effective (Antonini and Moretti) and the board would therefore be composed of: (i) 6 board members "freshly appointed" by the Shareholders' Meeting, (ii) five Fund Directors, and (iii) Amos Genish if the Shareholders' Meeting votes in favour of his appointment in accordance with the relative point that remains on the agenda (as set out in the report of the Board of Directors available on the website from yesterday [http://www.telecomitalia.com/content/dam/telecomitalia/it/archivio/documenti/Investitori/AGM e assemblee/2018/Relazioni e proposte del CdA ITA%20FINALE.pdf](http://www.telecomitalia.com/content/dam/telecomitalia/it/archivio/documenti/Investitori/AGM_e_assemblee/2018/Relazioni_e_proposte_del_CdA_ITA%20FINALE.pdf)), being fully entitled to also co-opt two new directors to arrive at the

number of 15 as determined by the Shareholders' Meeting of 2017.

**V.5** The process described above is fully compliant with both the text of the bylaws and the general principles that govern the formation and retention of corporate bodies. This is a path which, **through appointment by the Shareholders' Meeting**, would reconstitute a majority in the board elected by the shareholders and therefore would solve the conditions that make the clause invocable (termination of the majority of the members of the Board of Directors) **before the majority of the Directors had actually ceased to hold office.**

## VI.

### **In short**

**VI.1** The block and concerted resignations of the 7 Vivendi Directors did not in any way exceed the "*request by Elliott to supplement the agenda for the shareholders' meeting*" as erroneously argued in the Telecom press release on 22 March 2018. Our customer therefore expects the Board of Statutory Auditors, in exercising the power of advocacy attributed to it by article 126-bis of the CLF, to supplement, without delay, the agenda on behalf of the Board of Directors.

**VI.2** Where the shareholders' meeting of 24 April 2018 accepts the proposals by Elliott, the Board of Directors of Telecom will be legitimately reconstituted for all effects

and purposes, without clause 9.10 of the Bylaws having any residual application. Although this is our firm conviction on this point, I would like to point out to the Board of Statutory Auditors that the matter of the effects of clause 9.10 on a board reconstituted at the shareholders' meeting of 24 April is in any case a **separate and subsequent** issue with respect to the obligation to order the supplementation and to allow all the shareholders to express their opinion on it.

Milan, 24 March 2018  
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Sent via certified electronic mail