

ENGLISH COURTESY TRANSLATION

To:

Mediaset S.p.A.

Viale Europa 46

20093 Cologno Monzese (MI)

Italia

Attn:

Board of Directors of Mediaset S.p.A.

and Board of Statutory Auditors of Mediaset S.p.A.

Sent by certified email to the following address:

direzione.affarisocietari@mediaset.postecert.it

with a copy to

Commissione Nazionale per le Società e la Borsa

Attn:

DIVISIONE INFORMAZIONE EMITTENTI, Ufficio Vigilanza Informazione Emittenti;

DIVISIONE CORPORATE GOVERNANCE, Ufficio Controlli Societari e Tutela dei Diritti dei Soci e

Ufficio OPA e Assetti Proprietari; and

DIVISIONE MERCATI, Ufficio Informazione Mercati

Sent by certified email to the following address:

consob@pec.consob.it

Paris, December 20, 2019

Re: Explanatory report of the Board of Directors of Mediaset S.p.A. on the resolution proposal pursuant to Articles 2377, paragraph 8, and 2502, paragraph 2, of the Civil Code, drawn up according to Article 125-ter of the TUF, published on December 5, 2019 in view of the shareholders' meeting of January 10, 2020 ("Mediaset's Explanatory Report")

Dear Sirs and Mesdames,

Vivendi S.A. ("Vivendi") writes this letter as a shareholder of Mediaset S.p.A. ("Mediaset") – having invested in Mediaset over € 1.2 billion over the past 3 years – in order to clarify certain aspects of the events occurred in recent months, which, according to Vivendi, were not represented correctly and completely in Mediaset's Explanatory Report.

In particular, Mediaset's Explanatory Report ⁽¹⁾ does not provide investors and the market with adequate information on:

⁽¹⁾ Available on Mediaset website at the following link:

[https://www.mediaset.it/gruppomediaset/bin/89.\\$split/ENG%20BoD%20explanatory%20report.pdf](https://www.mediaset.it/gruppomediaset/bin/89.$split/ENG%20BoD%20explanatory%20report.pdf).

- A. the litigation proceedings pending between Vivendi and the companies of the Mediaset group, with reference to (i) Vivendi’s complaints concerning the proposed cross-border merger of Mediaset and Mediaset España Comunicación, S.A. (“Mediaset España”) with and into Mediaset Investment N.V., a company incorporated in the Netherlands and wholly controlled by Mediaset which, upon completion of the merger, will be renamed MFE – MEDIAFOREUROPE N.V. (“MFE” and the “Merger”), and (ii) the proposed amendments to MFE’s corporate governance presented by Vivendi in the course of the proceedings pending before the Court of Milan, in line with international best practices;
- B. the problems, also of a procedural nature, raised by the proposals put forward by the Boards of Directors of the companies involved in the Merger, aimed at amending or replacing the previous shareholders’ resolutions that were invalidly adopted on September 4, 2019 by Mediaset and Mediaset España, without complying with all the formalities required for the approval of a cross-border merger; and
- C. what is the interest pursued by Mediaset’s Board of Directors in insisting on the adoption by MFE of a corporate governance structure that clearly only benefits Fininvest S.p.A. (“Fininvest”).

* * *

A. The criticisms on the Merger raised by Vivendi in the context of the ongoing litigation

Section II of Mediaset’s Explanatory Report provides an extensive description regarding both some of Vivendi’s criticisms on the Merger and the ongoing litigation pending between the parties in Italy, Spain and the Netherlands. However, Mediaset’s Explanatory Report does not mention:

- the reasons why Vivendi considers that the provisions of MFE’s by-laws are detrimental not only to its own position (and that of all other minority shareholders), but also to Mediaset’s and MFE’s corporate interest; and
- the proposals put forward by Vivendi in the context of the litigation pending before the Court of Milan, aimed at aligning the Merger with MFE’s corporate interest, while also protecting the interests of all the company’s shareholders.

A.1 The reasons why Vivendi considers that the current MFE’s by-laws proposal does not pursue any legitimate corporate interest and make the entire Merger transaction abusive and detrimental to Mediaset

Since the Merger was presented to the market on June 7, 2019, Mediaset has stated the following:

“From a strategic, operational and industrial perspective, the transaction is aimed at creating a pan-European media and entertainment group, with a leading position in its local markets and greater scale to compete and potential to expand further in specific countries across Europe. Combined sustainable capital structure and strong cash flow generation profile provide MFE - MEDIAFOREUROPE with the

required firepower to play a pivotal role in the context of a possible future consolidation scenario in the European video media industry” (2).

Nonetheless, as also noted by leading international analysts, the Merger does not allow *per se* the creation of a larger “*pan-European media and entertainment group*”, as it only represents a mere internal reorganization of the existing group, which, following the transaction, will continue to operate in exactly the same markets in which it currently operates, maintaining in particular two separate operating entities in Italy and Spain in the *Free-TV* industry. As stated by HSBC, one of the leading international investment banks:

“Here we believe the proposed deal offers no more clarity and makes none of the businesses in either Italy or Spain any stronger than they are right now. We view it as merely a first step in more change required” (3).

In light of the limited changes that the Merger would produce in the structure of the existing group, without increasing its scale to other countries where the group does not currently operate, various analysts (4) questioned MFE’s ability to achieve the “[f]oreseen cost efficiencies and savings between 100-110 million euros by 2023, net present value of around 800 million euros” (5) claimed by Mediaset, or in any case showed skepticism about the fact that such efficiencies cannot be obtained without the Merger (6).

Thus, the most important aspect of the Merger concerns MFE’s actual ability to act “*as an aggregating pole of national companies*” (7) outside Mediaset group’s current perimeter, such as, for instance, ProSiebenSat.1 Media (“*ProSiebenSat*”), a company in which Mediaset and Mediaset España, jointly, currently hold 15.1% of the share capital.

In this regard, Mediaset claims that “*MFE’s domiciliation in the Netherlands [...] responds to the specific need to find a neutral and appropriate ground for the realisation of future, expected, integrations of several national media companies*” (8).

Unlike Mediaset, Vivendi believes that it is possible to create large successful “*pan-European*” groups without necessarily reincorporating outside of Italy.

(2) See the joint press release by Mediaset and Mediaset España dated June 7, 2019, available on Mediaset website at the following link:

https://www.mediaset.it/corporate/salastampa/2019/comunicatostampa_9697_en.shtml.

(3) See HSBC’s report titled “*Mediaset & Mediaset España – Hold: Progress, but none the wiser*” (p. 1), published on September 26, 2019, regarding the Merger.

(4) See, for instance, the reports released in relation to the Merger by (i) Bank of America Merrill Lynch, titled “*Mediaset – Consolidation not the solution*” and dated September 5, 2019, (ii) Societé Générale, titled “*Prosiebensat1 Media – What could P7S1 be worth to Mediaset?*” and dated June 17, 2019, and (iii) Goldman Sachs, titled “*Europe Media: Broadcasting: Mediaset and Mediaset Espana announce merger; assessing potential implications*” and dated June 10, 2019.

(5) See the joint press release by Mediaset and Mediaset España dated June 7, 2019, available on Mediaset website at the following link:

https://www.mediaset.it/corporate/salastampa/2019/comunicatostampa_9697_en.shtml.

(6) See, for instance, the report released in relation to the Merger by Banca IMI on June 10, 2019, titled “*Mediaset – Merging Italian and Spanish Activities in MFE*”, p. 4: “*we are not convinced that these synergies could not be unlocked even before the merger*”.

(7) See Mediaset’s Explanatory Report, available on Mediaset website at the following link: [https://www.mediaset.it/gruppomediaset/bin/89.\\$split/ENG%20BoD%20explanatory%20report.pdf](https://www.mediaset.it/gruppomediaset/bin/89.$split/ENG%20BoD%20explanatory%20report.pdf), p. 10.

(8) See Mediaset’s Explanatory Report, available on Mediaset website at the following link: [https://www.mediaset.it/gruppomediaset/bin/89.\\$split/ENG%20BoD%20explanatory%20report.pdf](https://www.mediaset.it/gruppomediaset/bin/89.$split/ENG%20BoD%20explanatory%20report.pdf), p. 11.

Nevertheless, Vivendi's opposition to the Merger does not stem from the decision to reincorporate the Mediaset group in another European country. Conversely, Vivendi's opposition stems from the decision to adopt a shareholding and corporate governance structure that is completely atypical and, indeed, unprecedented in the Netherlands, seriously affecting the rights of minority shareholders and, by doing so, damaging MFE itself, as it makes it impossible or at least more difficult to negotiate possible business combinations with other European media companies.

Moreover, reading the statements of the managers of the main possible partner companies for MFE, it does not appear that MFE project aroused great interest or enthusiasm in them; more specifically:

- according to statements recently made by ProSiebenSat's CEO, a company in which the Mediaset group is the largest shareholder (having invested in it around € 500 million ⁽⁹⁾), "*ProSieben [...] sees little to be gained from cross-border integration*" between the Mediaset group and ProSiebenSat ⁽¹⁰⁾; and
- the CEO of TF1 S.A. also expressed its skepticisms, with regard to possible scenarios of consolidation among operators in the industry. During a presentation to financial analysts, he stated that "*for the time being, we don't see any major reason to believe in major consolidation on the European field*" ⁽¹¹⁾.

In order to have any chance of success, MFE should thus try to convince the shareholders of possible partner companies of the benefits they would gain from a business combination with MFE – not only in terms of profitability of their stake, but also in terms of shareholders' rights recognized to them – by adopting a corporate governance in line with international best practices.

Conversely, however, the by-laws that will be adopted by MFE at the end of the Merger are as different as it can possibly be imagined from a model that protects shareholders, even significant shareholders, different from the current controlling shareholder. In this regard, it is enough to recall that even ISS, the most authoritative and followed international proxy advisor, recommended that Mediaset shareholders should vote against the Merger at the shareholders' meeting of September 4, 2019, in light of the fact that:

"the merger plan raises significant concerns in terms of governance. Overall, the incorporation in the Netherlands would decrease minority shareholder rights, all the more in view of the absorbing company's bylaws" ⁽¹²⁾.

Specifically, the corporate governance structure envisaged for MFE in the context of the Merger, even after the proposed deletion of blatantly arbitrary and discriminatory clauses,

⁽⁹⁾ See the articles published by Il Giornale on May 30, 2019 (titled "*Mediaset compra il 9% di ProSieben*" – i.e., "*Mediaset buys 9% of ProSieben*"), and by Reuters on November 11, 2019 (titled "*Italy's Mediaset hikes stake in ProSieben in pan-Europe TV drive*").

⁽¹⁰⁾ See the article published by Reuters on December 2, 2019, titled "*Bosses of Mediaset and ProSieben hold 'constructive' talks – sources*". See also the articles published by Reuters on November 14, 2019 (titled "*ProSieben says merger with Mediaset wouldn't work*") and IlSole24Ore on December 3, 2019 (titled "*Mediaset-ProSiebensat, summit a Milano*" – i.e., "*Mediaset-ProSiebensat, meeting in Milan*").

⁽¹¹⁾ See the transcript TF1 S.A.'s conference call with financial analysts regarding the results of the first half of 2019, p. 12.

⁽¹²⁾ See the report published by ISS on August 19, 2019 in relation to Mediaset's shareholders' meeting of September 4, 2019, p. 14.

entails a serious deterioration of minority shareholders' rights with regard to the following aspects:

- (a) *special voting shares*: MFE will adopt an extremely aggressive “loyalty share” system – unprecedented in Europe – which will immediately (*i.e.*, 30 days after the effectiveness of the Merger) grant 2 additional voting rights per share to certain shareholders and up to 9 additional voting rights after further 5 years. This shareholding structure was harshly criticized, among others, by ISS ⁽¹³⁾ and Eurizon Capital (a leading Italian asset manager) ⁽¹⁴⁾, and is in open contrast with the voting policies adopted by the main international institutional investors ⁽¹⁵⁾.

Therefore, we fully agree with the observations of Prof. Alessandro Penati, who pointed out precisely that the “*new governance based on multiple voting rights (up to 10 times after [5] years), which locks down Fininvest’s control regardless of the stake held, is not appreciated by investors; but, this governance would be an obstacle also in any future mergers, because it would leave Fininvest (and those who control Fininvest) always in control even after the merger*” ⁽¹⁶⁾.

- (b) *composition of the Board of Directors*: under the proposed MFE’s by-laws, minority shareholders will be deprived of the power to appoint representatives in the Board of Directors, unlike what is currently provided for both by Italian law, pursuant to Article 147-ter of Italian Legislative Decree No. 58 of February 24, 1998 (“TUF”), and by Mediaset’s by-laws ⁽¹⁷⁾.

It should also be noted that the procedure for the election of the Board of Directors set forth in MFE’s by-laws, together with the characteristics of the special voting shares, were also criticized by the current 3 Mediaset directors appointed by minority investors

⁽¹³⁾ See the report published by ISS on August 19, 2019 in relation to Mediaset’s shareholders’ meeting of September 4, 2019.

⁽¹⁴⁾ See Annex B to the minutes of Mediaset’s extraordinary shareholders’ meeting of September 4, 2019, p. 41.

⁽¹⁵⁾ See, for instance: BlackRock’s 2019 Proxy voting guidelines for European, Middle Eastern, and African securities, available at <https://www.blackrock.com/corporate/literature/fact-sheet/blk-responsible-investment-guidelines-emea.pdf>, p. 22 (“*BlackRock supports the “one share – one vote – one dividend” principle, and will encourage companies to adopt it. Hence, BlackRock will support by-law amendments that introduce adoption of one share – one vote for registered shareholders*”); Fidelity’s 2019 Proxy Voting Guidelines, https://www.fidelity.com/bin-public/060_www_fidelity_com/documents/Full-Proxy-Voting-Guidelines-for-Fidelity-Funds-Advised-by-FMRCo-and-SelectCo.pdf, p. 10 (“*Fidelity generally will support proposals to recapitalize multi-class share structures into structures that provide equal voting rights for all shareholders, and generally will oppose proposals to introduce or increase classes of stock with differential voting rights*”).

⁽¹⁶⁾ See the article published by La Repubblica - Affari e Finanza on September 30, 2019, titled “*Vittoria di Pirro per Mediaset – Mediaset: Media for Europe è una vittoria di Pirro*” (*i.e.*, “*Pyrrhic victory for Mediaset – Mediaset: Media for Europa is a Pyrrhic victory*”). In Italian: “*nuova governance basata sul voto multiplo (fino a 10 volte dopo [5] anni), che blinda il controllo di Fininvest a prescindere dalla quota detenuta, non piace agli investitori; ma sarebbe un ostacolo anche in eventuali future fusioni, perché lascerebbe Fininvest (e i suoi vertici) sempre al comando anche dopo la fusione*”.

⁽¹⁷⁾ Specifically, Mediaset’s by-laws allow minority shareholders to appoint 2 or 3 directors, depending on the number of members of the Board. See Article 17, paragraph 16, of Mediaset’s by-laws (available on Mediaset website at the following link: [https://www.mediaset.it/gruppomediaset/bin/48.\\$split/2019%20Statuto%20Mediaset_ENG.pdf](https://www.mediaset.it/gruppomediaset/bin/48.$split/2019%20Statuto%20Mediaset_ENG.pdf)).

(Giulio Gallazzi, Raffaele Cappiello and Costanza Esclapon De Villeneuve), who voted against the Merger precisely for this reason ⁽¹⁸⁾;

- (c) *resolutions of the Board of Directors*: under the proposed MFE's by-laws, independent directors have no influence over the company's most important resolutions;
- (d) *extraordinary shareholders' resolutions*: under the proposed MFE's by-laws, a simple majority of the votes cast is sufficient to approve amendments to the by-laws and to limit or exclude pre-emptive rights in capital increases. Thanks to the special voting shares, starting from 30 days after the Merger effective date, Fininvest will thus have the certainty of being able to approve any extraordinary transaction and any amendment to MFE's by-laws, even if all minority shareholders vote against the resolution.

These problems relating to the corporate governance structure envisaged for MFE have been highlighted by Vivendi since the outset, together with the by-law provisions that are blatantly devised "*ad personam*" against Vivendi. However, while Mediaset is now trying to remedy the problem of these "anti-Vivendi" clauses by calling the shareholders' meeting of January 10, 2020, nothing is foreseen with reference to the aforementioned corporate governance issues, that affect all minority shareholders.

A.2 Vivendi's amendment proposals to MFE's governance

Unlike what the Board of Directors represented in Mediaset's Explanatory Report, in the context of the ongoing litigation concerning the Merger, Vivendi did not only criticize the transaction, highlighting its abusiveness, but also formulated a balanced proposal, which is in the interest of all minority shareholders and the companies involved in the Merger, in order to improve MFE's corporate governance structure (the "Alternative Proposal", **Annex A**). Vivendi also declared its willingness to support with its vote a new merger plan implementing the Alternative Proposal.

Specifically, the Alternative Proposal, as filed on December 6, 2019 in the context of the proceedings pending before the Court of Milan, proposes to intervene on the most problematic aspects of MFE's corporate governance structure (highlighted in paragraph A.1 above) as follows:

- A. *special voting shares*: the Alternative Proposal provides for only one additional vote to be granted to long-term shareholders.

The structure illustrated in the Alternative Proposal would allow, on the one hand, Fininvest to maintain its percentage of voting rights substantially unchanged as compared to the current situation in Mediaset (equal to about 45% ⁽¹⁹⁾ of total voting

⁽¹⁸⁾ See the additional information for shareholders published by Mediaset on August 21, 2019, where it is recalled that "[t]he rule requiring three directors to state the reasons for their disagreement originates from MFE's Special Voting Mechanism and rules governing the appointment of the Board of Directors", available on Mediaset website at the following link: [https://www.mediaset.it/gruppomediaset/bin/98.\\$split/Informazioni%20aggiuntive%20per%20gli%20azionisti%20ENG.pdf](https://www.mediaset.it/gruppomediaset/bin/98.$split/Informazioni%20aggiuntive%20per%20gli%20azionisti%20ENG.pdf).

⁽¹⁹⁾ This percentage considers the number of Mediaset and Mediaset España shares in relation to which withdrawal rights were exercised, and the requests for allocation of Special Voting Shares A received by the two companies by August 26, 2019, as reported in the press release dated August 28, 2019 available on Mediaset website at the following link: [http://www.mediaset.it/gruppomediaset/bin/32.\\$split/Press%20Release.pdf](http://www.mediaset.it/gruppomediaset/bin/32.$split/Press%20Release.pdf).

rights), and, on the other hand, to adopt a shareholding structure that, although not compliant with the principle “one share-one vote”, at least would be in line with (i) market practice in all countries that expressly regulate increased voting systems (*i.e.*, Italy, France and Belgium), and (ii) the special voting share structure adopted by three of the four Dutch companies referred to by Mediaset in its disclosures to the market (*i.e.*, FCA, CNH Industrial and Ferrari).

- B. *composition of the Board of Directors*: the Alternative Proposal proposes to introduce in the by-laws a mechanism that allows minority shareholders to designate two representatives in the Board of Directors, in order to ensure greater independence of the Board vis-à-vis the majority shareholder, Fininvest. Furthermore, the first Board of Directors in office shall be required to include 3 truly independent directors ⁽²⁰⁾.
- C. *resolutions of the Board of Directors*: in order to enhance independent judgment by the Board of Directors in the adoption of certain resolutions of particular importance for MFE, the Alternative Proposal envisages that the approval of certain matters falling within the authority of the Board of Directors requires the favorable vote of the majority of independent directors ⁽²¹⁾;
- D. *extraordinary shareholders’ resolutions*: in line with market practice in numerous European countries (such as Italy, France and Germany), the Alternative Proposal proposes that certain shareholders’ resolutions that may significantly affect the value of the shareholding and the administrative rights of minority shareholders, require the approval by a qualified majority of two thirds of the votes cast ⁽²²⁾.

Vivendi’s position is therefore that Mediaset’s Board of Directors should adopt a new merger plan, containing new MFE’s by-laws that are more respectful of the interests of all minority shareholders and do not represent an obstacle to the creation of a larger “*pan-European*” group in the media sector.

B. The unlawfulness of the procedures that the Mediaset group companies have declared will be followed to approve the Merger

Vivendi did not request the integration of the agenda of Mediaset’s shareholders’ meeting convened for January 10, 2020, pursuant to Article 126-*bis* of the TUF, proposing to adopt amendments to MFE’s by-laws in line with the Alternative Proposal, because it believes (also on the basis of authoritative legal opinions already provided to Mediaset) that the procedure followed in Italy, Spain and the Netherlands to amend the Merger plan is irreparably unlawful.

B.1 The procedure followed by Mediaset in Italy

⁽²⁰⁾ These “independent” directors could be the current directors of Mediaset appointed from the minority slate or other directors appreciated by institutional investors (*e.g.*, by receiving the support of Assogestioni – the Italian asset managers association).

⁽²¹⁾ Specifically: merger and demerger plans; amendments to the by-laws; liquidation of the company; amendments to the terms and conditions of special voting shares; appointment of independent directors; removal and suspension from office of independent directors; transfer of all or substantially all the company’s assets to a third-party company.

⁽²²⁾ Specifically, these resolutions include: (a) the issue of ordinary shares with the exclusion of pre-emptive rights, in whole or in part, or to be underwritten in kind; and (b) the approval of shareholders’ resolutions regarding: (i) merger and demerger plans, (ii) amendments to the by-laws, (iii) liquidation of the company, or (iv) amendments to the terms and conditions of special voting shares.

By calling the extraordinary shareholders' meeting of January 10, 2020, Mediaset declared its intention to adopt a resolution pursuant to the following articles of the Civil Code:

- Article 2377, paragraph 8, which makes possible the replacement of an invalid resolution “*with another one taken in accordance with the law and the by-laws*”; and
- Article 2502, paragraph 2, which allows the shareholders' meeting called to approve a merger to make changes to the merger plan, but only on condition that these changes do not affect “*the rights of shareholders or third parties*”.

However, in the present case, on the one hand the Board of Directors proposes to make certain amendments to MFE's by-laws that affect the rights of shareholders in breach of Article 2502, paragraph 2, of the Civil Code, and, on the other hand, withdrawal rights are not even granted to shareholders who do not approve the resolution aimed at replacing the previous invalid resolution of September 4, 2019. Mediaset shareholders are thus called by Mediaset's Board of Directors to approve a resolution which is contrary to the law and would replace another invalid resolution.

The proposed resolution is also devised so as to only emphasize the partial and selective amendments to MFE's by-laws, without letting the market and shareholders understand that, through the vote of January 10, 2020, shareholders are requested to reaffirm the corporate governance structure approved on September 4, 2019 and, in particular, the abnormal special voting share system. Hence, Mediaset is trying to show as “favorable” to minority shareholders a resolution that actually aims at crystallizing abusive by-law provisions that are detrimental to their interests.

B.2 The procedures followed by Mediaset España in Spain and MFE in the Netherlands

Even if it were possible and legitimate for Mediaset to amend the Merger plan while the Merger process is ongoing, this would require the approval of similar amendments by the shareholders' meetings of the other two companies participating in the Merger, namely Mediaset España in Spain and MFE in the Netherlands.

Nonetheless, in these countries there are legal provisions that expressly deny the possibility of amending the merger plan without restarting the process from the beginning. This is clearly explained in two legal opinions rendered respectively (i) by the Notary Alvarez Royo-Villanova, with reference to Spanish law (**Annex B**), and (ii) by Prof. Willems, with reference to Dutch law (**Annex C**), which were provided to Mediaset on December 6, 2019.

Additionally, and even more importantly than these procedural defects, the proposed amendments to MFE's by-laws, to be approved or rejected on January 10, would not allow to overcome all the substantive issues analyzed in paragraph A.1 above.

In any event, Mediaset España's shareholders' resolutions of September 4, 2019 remain stayed as a result of the interim measures granted by the Order of the Commercial Court No. 2 of Madrid ⁽²³⁾.

⁽²³⁾ See the order of the Commercial Court No. 2 of Madrid dated October 10, 2019 in the proceedings pending between Vivendi and Mediaset España; the ruling is available at the following link: <https://www.boe.es/borme/dias/2019/12/20/pdfs/BORME-A-2019-243-28.pdf>.

B.3 The exclusion from voting of Simon Fiduciaria S.p.A. and the proceedings pending before the Court of Justice of the European Union

Mediaset's shareholders' meeting of September 4, 2019 approved the Merger thanks to the exclusion – decisive for the outcome of the vote – of Simon Fiduciaria S.p.A. (“SimonFid”), which holds 19.19% of the share capital in accordance with the compliance measures set forth in AgCom resolution No. 178/17/CONS of April 18, 2017.

This is not the place to discuss the reasons why SimonFid was unlawfully excluded from voting by Mediaset's Board of Directors in the mere interest of Fininvest.

We only recall that in Case C-719/18 before the Court of Justice of the European Union, after the considerations of the European Commission of June 17, 2019, on December 18, 2019 the Advocate General of the Court found the provisions of the TUSMAR invoked by Mediaset to justify the exclusion of SimonFid from vote to be contrary to European Union law ⁽²⁴⁾.

Mediaset immediately announced to the market that, according to its point of view, “*nothing has changed regarding the assessment of the illegality of the conduct of Vivendi in relation to the company's acquisition of 29.94% of the share capital of Mediaset*” ⁽²⁵⁾, thereby implicitly reaffirming its willingness to continue to (unlawfully) exclude SimonFid from participating and/or voting at Mediaset's shareholders' meetings.

This reaction can perhaps be explained considering Fininvest's interest in completing the Merger as soon as possible – albeit by means of “stretches” from a substantial and procedural standpoint – so as to deprive minority shareholders of the administrative rights currently recognized by Mediaset's by-laws and Italian law. However, the same “opportunistic” considerations certainly cannot guide the actions of Mediaset and its directors who, on the contrary, have the duty to only pursue Mediaset's interests and to the benefit of all shareholders (including minority shareholders) and other stakeholders.

In these circumstances, if Mediaset's Board of Directors insisted in excluding SimonFid from voting at the next shareholders' meeting and the ruling of the Court of Justice (expected in early 2020) were in line with the conclusions of the Advocate General (as usually occurs), Mediaset's directors (and statutory auditors who do not exercise their prerogatives) would expose the company to further litigation, also assuming serious responsibility.

C. Mediaset's corporate interest and the explanations that need to be given to its shareholders

In light of the above considerations, the question arises – and we deem that a response should be given to all shareholders of Mediaset and Mediaset España – as to what is the corporate interest pursued by Mediaset's Board of Directors, or at least by the directors appointed from the slate of candidates presented by Fininvest, in insisting on the approval of a Merger that provides for a corporate governance structure of MFE that:

⁽²⁴⁾ See the press release of the Court of Justice of the European Union, available at the following link: <https://curia.europa.eu/jcms/upload/docs/application/pdf/2019-12/cp190158en.pdf>.

⁽²⁵⁾ See Mediaset's press release of December 18, 2019, available at the following link: [https://www.mediaset.it/gruppomediaset/bin/53.\\$split/Press%20Release.pdf](https://www.mediaset.it/gruppomediaset/bin/53.$split/Press%20Release.pdf).

- is completely atypical, and would indeed be unprecedented even in the legal system chosen by the Board of Directors, precisely because of the “flexibility” of its rules on corporate governance;
- was openly criticized by ISS, various institutional shareholders and authoritative experts in the field;
- determined a vote against in the Board of Directors’ meeting by the 3 directors appointed by minority shareholders, even though they stated that they appreciated the “*industrial strategy*” of the transaction;
- was deemed abusive by the Commercial Court of Madrid, which stated that the “*new by-law regime [...] is very unbalanced in favor of Fininvest*”;
- for the same reasons already mentioned above (Section A.1), would represent a very serious obstacle to possible business combinations with other European companies that operate in the entertainment and media industry; and
- requires ongoing amendments to the Merger plan approved by Mediaset’s Board of Directors on June 7, 2019, which would entail a “stretch” from a legal point of view in all the countries involved in the Merger.

It has to be noted that this would occur in spite of a formal invitation by Vivendi to follow a different path that, by providing for the adoption of a corporate governance structure that is less unbalanced towards the controlling shareholder and more in line with the interests of all other shareholders of the companies involved in the Merger, would enjoy a broad support at the shareholders’ meetings and would therefore be reasonably approved in a timely and definite manner, in full compliance with the rules applicable in the various jurisdictions involved.

D. Conclusions

In light of the above, we kindly request that this letter be made available without delay to Mediaset’s shareholders by publishing it on the issuer’s website, and we kindly invite the Board of Statutory Auditors, pursuant to and for the purposes of Art. 2408 of the Civil Code, to investigate the facts reported in this letter with reference, in particular, to the fairness and compliance with law of:

- i. the decision-making process followed by the Board of Directors – with respect, among others, to the disclosure and fair assessment of the self-interests of certain directors in accordance with Art. 2391 of the Civil Code, and to the compliance with the rules set out in Art. 2497-*ter* of the Civil Code – in approving: (a) the Merger plan announced to the market on 7 June 7, 2019; (b) the exclusion of SimonFid from participating and voting at the shareholders’ meeting of September 4, 2019; (c) the proposal to amend the Merger plan, to be voted on at the shareholders’ meeting of January 10, 2020; and (d) the possible exclusion of SimonFid from participating and/or voting at the shareholders’ meeting of January 10, 2020; and
- ii. the procedure that (A) Mediaset intends to follow in Italy to amend the Merger plan approved by the Board of Directors on June 7, 2019, pursuant to Articles 2377, paragraph 8, and 2502, paragraph 2, of the Civil Code, without granting withdrawal rights to shareholders who do not approve the resolution voted at the shareholders’

meeting called for January 10, 2020, and (B) Mediaset España and MFE will adopt, respectively, in Spain and the Netherlands, to amend accordingly the Merger plan initially approved by their respective Boards of Directors in June 2019.

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Sincerely,

Vivendi S.A.