



**PUBLIC VERSION**

***CASE M.9064-TELIA COMPANY/  
BONNIER BROADCASTING  
HOLDING***

(Only the English text is authentic)

**MERGER PROCEDURE  
REGULATION (EC) 139/2004**

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Article 8(2) Regulation (EC) 139/2004

Date: 12/11/2019

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EUROPEAN  
COMMISSION

Brussels, 12.11.2019  
C(2019) 7985 final

**COMMISSION DECISION**

**of 12.11.2019**

**declaring a concentration to be compatible with the internal market and the EEA  
agreement**

**(Case M.9064 – Telia Company / Bonnier Broadcasting Holding)**

(Only the English text is authentic)

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## COMMISSION DECISION

of 12.11.2019

**declaring a concentration to be compatible with the internal market and the EEA agreement**

**(Case M.9064 – Telia Company / Bonnier Broadcasting Holding)**

(Only the English text is authentic)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to the Agreement on the European Economic Area, and in particular Article 57 thereof,

Having regard to Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings<sup>1</sup>, and in particular Article 8(2) thereof,

Having regard to the Commission's decision of 10 May 2019 to initiate proceedings in this case,

Having regard to the opinion of the Advisory Committee on Concentrations<sup>2</sup>,

Having regard to the final report of the Hearing Officer in this case,

Whereas:

### 1. INTRODUCTION

- (1) On 15 March 2019, the Commission received notification of a proposed concentration pursuant to Article 4 of Regulation (EC) No 139/2004 ("the Merger Regulation") by which Telia Company AB ("Telia", or "Notifying Party"), Sweden would acquire within the meaning of Article 3(1)(b) of the Merger Regulation sole control of the whole of Bonnier Broadcasting Holding AB ("Bonnier Broadcasting"), Sweden (the "Transaction"). The concentration would take place by way of purchase of shares<sup>3</sup>. Telia and Bonnier Broadcasting are hereinafter collectively referred to as the "Parties" and each individually as a "Party".
- (2) This Decision is structured as follows. Section 2 describes the Parties. Section 3 explains why the Transaction constitutes a concentration and the relationships between the Swedish State and each of Telia and SVT. Section 4 explains why the concentration brought about by the Transaction has a Union dimension. Section 5 describes the procedure followed in this case. Section 6 describes the investigation undertaken by the Commission into the Transaction. Section 7 defines the relevant product and geographic markets. Section 8 sets out the Commission's assessment of

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<sup>1</sup> OJ L 24, 29.1.2004, p. 1. With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this Decision.

<sup>2</sup> Opinion of the Advisory Committee on Concentrations of 24 October 2019.

<sup>3</sup> OJ C 107, 21.3.2019, p. 11.

whether the Transaction is likely to significantly impede effective competition. Section 9 sets out the Commission's assessment of the efficiencies claims of the Notifying Party. Section 10 contains the Commission's assessment of the commitments. Section 11 contains the Commission's conclusions.

## **2. THE PARTIES**

- (3) **Telia** is a Swedish telecommunication operator and the parent company of the Telia group, which has approximately 20 000 employees. The Telia group provides mobile and fixed telecommunications services as well as broadband and television services in Denmark, Estonia, Finland, Lithuania, Norway and Sweden. It provides mobile telecommunications services in Latvia<sup>4</sup> and wholesale network access (carrier services) worldwide. Telia is a publicly listed company. Telia's largest shareholder is the Swedish state.
- (4) **Bonnier Broadcasting** is a Swedish based media company with approximately [...] employees engaged primarily in the television ("TV") broadcasting business, in Sweden and Finland, but also to a more limited extent in Denmark and Norway. Bonnier Broadcasting's activities are conducted through the subsidiaries TV4 AB, C More Entertainment AB, and MTV Oy. Furthermore, Bonnier Broadcasting owns the captive Finnish production company Mediahub. Finally, Bonnier Broadcasting also produces news and other journalism content in Sweden and Finland. Bonnier Broadcasting is a wholly owned subsidiary of Bonnier Euro Holding AB. Bonnier Euro Holding AB is a wholly owned subsidiary of Bonnier AB and ultimately controlled by Albert Bonnier AB.

## **3. THE OPERATION AND THE CONCENTRATION**

### **3.1. As to whether the Transaction constitutes a concentration**

- (5) On 20 July 2018, Telia and Bonnier Euro Holding AB (a wholly owned subsidiary of Bonnier AB) entered into a share purchase agreement under which Bonnier Euro Holding AB (and indirectly Bonnier AB) has agreed to sell and transfer all of the shares in Bonnier Broadcasting to Telia. Following the Transaction, Telia will own 100% of the shares in Bonnier Broadcasting.
- (6) Therefore, the Transaction consists of the acquisition of sole control by Telia over Bonnier Broadcasting within the meaning of Article 3(1)(b) of the Merger Regulation.

### **3.2. As to whether Telia and Sveriges Television AB are economic units with an independent power of decision**

#### *3.2.1. Introduction*

- (7) Certain market participants have argued that the Swedish state controls both Telia and the public service broadcaster Sveriges Television AB ("SVT")<sup>5</sup> and that, as a result, the Swedish state could influence the programming decisions of both Telia and SVT. Those claims are based on the fact that the Swedish state, which owns

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<sup>4</sup> Through associated companies, the Telia group provides fixed and mobile broadband telecommunications services and television services in Latvia, and mobile telecommunications services in Turkey.

<sup>5</sup> See, for example, the agreed non-confidential minutes of a call with Tele2, 7 November 2018 (ID001504).

38.4% (37.3% at the time of notification of the Transaction) of the shares in Telia, is Telia's largest shareholder.<sup>6</sup> It is also argued that the Swedish state owns SVT.<sup>7</sup>

- (8) In the Form CO ("initial submission") and in its written comments on the Decision pursuant to Article 6(1)(c) of the Merger Regulation ("Article 6(1)(c) Decision") on 24 May 2019 (the "Response to the Article 6(1)(c) Decision"), the Notifying Party submits that no legal or natural person, including its largest shareholder the Swedish state, has *de jure* or *de facto* control over Telia. In any event, according to the Notifying Party, the Swedish state does not control any (other) undertaking active within any relevant market related to the Transaction, including the public broadcaster SVT.<sup>8</sup> The Notifying Party further submits that even if the Swedish state were regarded as the owner of both Telia and SVT, they constitute two separate economic units without any legal or practical possibilities of coordination and have to be assessed as separate entities.
- (9) In order to analyse these claims, pursuant to Articles 3(1) and 5(4) of the Merger Regulation, read in conjunction with Recital 22 of that Regulation and the Consolidated Jurisdictional Notice<sup>9</sup>, the Commission has assessed whether Telia and SVT have a power of decision independent from the Swedish state. In addition, the Commission has assessed whether the Swedish state is able to coordinate the commercial conduct of Telia and SVT. In principle, the outcome of that assessment might indeed affect the scope of the substantive assessment of the Transaction.
- (10) In determining whether an undertaking could be considered as having an independent power of decision regardless of the fact that the state owns it or is a majority shareholder, it is relevant to assess whether the undertaking sets its business plan, budget and strategy by itself, in its own commercial interests and independently from the state. The lack of interlocking directorships between undertakings and the existence of adequate safeguards ensuring that commercially sensitive information is not shared between such undertakings are two relevant factors that may be taken into account in the assessment of whether the state can, directly or indirectly, impose or facilitate coordination between any of the other undertakings owned by the same state entity, but are not exhaustive.<sup>10</sup>
- (11) In its analysis, and in line with precedents,<sup>11</sup> the Commission has focused on Telia's and SVT's ability to adopt decisions independently from the Swedish state to decide

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<sup>6</sup> In response to RFI 26, question 4, the Notifying Party has clarified that (in addition to the 37.3% shareholding of the Swedish State in Telia), the Swedish State does not own or control any of Telia's 30 largest shareholders (having a shareholding interest of 0.3% or more, as of 31 March 2019). However, the Swedish National Pension Funds (AP Funds) have a limited shareholding in Telia. As of 31 March 2019, the first AP Fund (AP1) had a 0.5% shareholding interest in Telia and the third AP Fund (AP3) had a 0.6% shareholding interest. The AP Funds are independent government authorities that manage the funds in the Swedish income pension system. Given the very small shareholding of the AP Funds and the fact that the Commission considers that the Swedish State controls Telia *de facto* already through its direct ownership, the 1.1% shareholding held by the AP Funds does not materially affect the outcome of the Commission's assessment (ID01135).

<sup>7</sup> Agreed non-confidential minutes of a call with Tele2, 7 November 2018 (ID001504)

<sup>8</sup> According to the Notifying Party, the State does control Teracom, which operates on the infrastructure layer of the TV value chain and hence, on a different market than Telia and Bonnier Broadcasting. Form CO paragraph 33 and Telia's response to the Commission's RFI 23, question 2 (ID000987).

<sup>9</sup> Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings. OJ C 95, 16.4.2008, p. 1.

<sup>10</sup> Commission decision of 12 November 2009 in case M.5549 – *EDF/Segebel*, paragraph 93.

<sup>11</sup> See, for example, Commission decision of 10 March 2016 in case M.7850 – *EDF/CGH/NNB Group of companies*, paragraph 30; Commission decision of 12 November 2009 in case M.5549 – *EDF/Segebel*,

on their own strategy, business plan and budget, and the possibility for the Swedish state to coordinate the commercial conduct of Telia and SVT.

### 3.2.2. *Relationship between the Swedish state and Telia*

- (12) The Commission has assessed whether the Swedish state's 38.4% (37.3% at the time of notification of the Transaction) ownership in Telia<sup>12</sup> allows it to decide on Telia's strategy, business plan and budget.
- (13) Article 3(2) of the Merger Regulation provides that control is constituted by rights, contracts or any other means which confer the possibility of exercising decisive influence on an undertaking. According to the Consolidated Jurisdictional Notice<sup>13</sup> sole control is normally acquired on a legal basis where an undertaking acquires a majority of the voting rights of a company, or, in the case of a minority shareholding, in situations where specific rights are attached to this shareholding.<sup>14</sup> A minority shareholder may also be deemed to have sole control on a *de facto* basis, in particular where the shareholder is highly likely to achieve a majority at the shareholders' meetings, given the level of its shareholding and the evidence resulting from the presence of shareholders in the shareholders' meetings in previous years.<sup>15</sup> Moreover, according to the Consolidated Jurisdictional Notice, the Commission may assess the position of other shareholders and their role<sup>16</sup> taking into account criteria such as whether the remaining shares are widely dispersed, whether other important shareholders have structural, economic or family links with the large minority shareholder or whether other shareholders have a strategic or a purely financial interest in the target company. Where, on the basis of its shareholding, the historic voting pattern at the shareholders' meeting and the position of other shareholders, a minority shareholder is likely to have a stable majority of the votes at the shareholders' meeting, then that large minority shareholder is taken to have sole control.
- (14) In its initial submission and in its Response to the Article 6(1)(c) Decision, the Notifying Party submits that the Swedish state does not have *de jure* control over Telia given: (i) the minority shareholding interest of the Swedish state; (ii) the absence of any shareholders' agreement granting the Swedish state the right to veto

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<sup>12</sup> paragraph 92; Commission decision of 6 December 2017 in case M.8687 – *Prisko/OKD Nastupnicka*, paragraphs 11-27.

<sup>13</sup> In reply to RFI 26, question 4, the Notifying Party has clarified that (in addition to the 37.3% shareholding of the Swedish State in Telia), the Swedish State does not own or control any of Telia's 30 largest shareholders (having a shareholding interest of 0.3% or more, as of 31 March 2019). However, the Swedish National Pension Funds (AP Funds) have a limited shareholding in Telia. As of 31 March 2019, the first AP Fund (AP1) had a 0.5% shareholding interest in Telia and the third AP Fund (AP3) had a 0.6% shareholding interest. The AP Funds are independent government authorities that manage the funds in the Swedish income pension system. Given the very small shareholding of the AP Funds and the fact that the Commission considers that the Swedish State controls Telia *de facto* already through its direct ownership of 37.3%, the 1.1% shareholding held by the AP Funds does not materially affect the outcome of the Commission's assessment and will therefore not be considered further (ID01335).

<sup>14</sup> Consolidated Jurisdictional Notice, paragraphs 56, 57 and 58.

<sup>15</sup> Such specific rights can be preferential shares to which special rights are attached enabling the minority shareholder to determine the strategic commercial behaviour of the target company, or the right for a minority shareholder to manage the activities of the company and to determine its business policy on the basis of the organisational structure (for example, as a general partner in a limited partnership which often does not even have a shareholding).

<sup>16</sup> Consolidated Jurisdictional Notice, paragraph 59.

<sup>16</sup> Consolidated Jurisdictional Notice, paragraphs 56, 57 and 58.

- strategic decisions; (iii) the lack of any representative of the Swedish state on Telia's board; (iv) the lack of any specific rights attached to the Swedish state's shareholding; (v) the absence of a particular organisational structure granting the Swedish state the right to manage activities of Telia and to determine its business policy; and, (vi) the absence of a situation of negative sole control.
- (15) The Notifying Party also considers in its initial submission and in its Response to the Article 6(1)(c) Decision that the Swedish state does not have *de facto* control over Telia given that: (i) despite having had the majority of voting rights at Telia's shareholders' meetings, the Swedish state does not have a representative on Telia's board of directors, which is the body that takes the strategic decisions, such as the removal of the CEO of Telia; (ii) the Swedish state only has one representative on the five-person nominating committee that manages the recruitment to the board of Telia; (iii) the Swedish state has not set out any economic goals or assignment goals for Telia; and, (iv) the Swedish state does not have the power to reappoint the board of directors at Telia, which is a decision that can only be taken through a decision at a shareholders' meeting.<sup>17</sup>
- (16) The Commission has investigated the Notifying Party's claims and considers that the Swedish state does not appear to have *de jure* control over Telia for the following reasons. First, the Swedish state does not hold the majority of the voting rights in Telia but has a 38.4% (37.3% at the time of notification of the Transaction) shareholding. There is no shareholders' agreement granting the Swedish state (solely or jointly) a veto over strategic decisions in Telia.<sup>18</sup> Second, the Swedish state does not have any special rights, such as preferential shares, attached to its shareholding in Telia. Third, there is no particular organisational structure granting sole control to the Swedish state.<sup>19</sup> Fourth, given the Swedish state's minority shareholding there does not appear to be a situation of negative sole control.
- (17) As to the question whether the Swedish state has *de facto* control over Telia, the Commission considers that Telia does not appear to have autonomy from the Swedish state in deciding on its own strategy, business plan and budget for the reasons set out in recitals (18) to (29).
- (18) First, during Telia's shareholders' meetings in the period 2014 to 2018 the Swedish state, acting through the Ministry of Enterprise and Innovation, held a majority of the total participating shares and votes.<sup>20</sup> Based on the current shareholding, the Swedish state is therefore likely to achieve a majority at Telia's shareholders' meetings in the coming years.
- (19) The members of Telia's board of directors<sup>21</sup> are elected by the shareholders at the Annual General Meeting ("AGM") and for all elections that take place at an AGM (for example, election of board members and auditors), the candidate that receives the most votes is elected.<sup>22</sup> The Swedish state's shareholding therefore allows it to elect and reappoint the members of Telia's board of directors<sup>23</sup>, which is the body

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<sup>17</sup> Form CO, paragraphs 51-55.

<sup>18</sup> Form CO, paragraph 40.

<sup>19</sup> Form CO, paragraph 45.

<sup>20</sup> Form CO, paragraph 76.

<sup>21</sup> Except three board members which are employee representatives appointed by the trade unions.

<sup>22</sup> Form CO, paragraph 66.

<sup>23</sup> After notification of the Transaction, Telia announced on 20 October 2019 that the Swedish state as the largest shareholder in Telia, had requested the board of Telia to call for an extra general meeting to appoint a new chair of the board: <https://www.teliacompany.com/en/news/press-releases/2019/10/telia->

that takes the strategic decisions in Telia, and thus confers upon it the power to exercise decisive influence on the commercial policy of Telia.<sup>24</sup>

- (20) The Notifying Party submits that, should the Swedish state attempt to take control over the board of directors by appointing its “own” representatives, the private shareholders (representing 62.7% of the shares and votes at the time of notification of the Transaction) would likely unite to create a majority at the shareholders’ meeting to oppose such an attempt.<sup>25</sup>
- (21) However, the Commission considers that any wide-ranging coalition against the vote of the Swedish state is unlikely for the reasons set out in recitals (22) to (25).
- (22) In the first place, the remaining shares in Telia are widely dispersed. The shareholdings of all 472 489 holders of the 4 209 540 375 shares in Telia<sup>26</sup> in order of magnitude are shown below:
- Swedish state: 38.4% ;
  - Blackrock: 3.0% ;
  - Vanguard: 1.8% ;
  - Swedbank Robur Funds: 1.7% ;
  - Telia: 1.4% ;
  - AMF Insurance and Funds: 0.9% ;
  - Mondrian Investment Partners Ltd: 0.9% ;
  - AFA Insurance: 0.9% ;
  - Other shareholders: 48.8%.
- (23) Therefore, the second largest shareholder of Telia is Blackrock, which has a 3.0% shareholding. The remaining shares are widely dispersed, with the third largest shareholder, Vanguard, having a shareholding of 1.8%.
- (24) In the second place, Telia’s largest shareholders are major international and Swedish investors, including Blackrock, Vanguard, Swedbank Robur Funds and AMF Insurance and Funds, which suggests that these shareholders have a purely financial interest in Telia.
- (25) In the third place, shareholders holding 0.9% or more (Blackrock; Vanguard; Swedbank Robur Funds; Telia; AMF Insurance and Funds; Mondrian Investment Partners Ltd; AFA Insurance) represent only 12.8% of shares.

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[companys-nomination-committee-proposes-lars-johan-jarnheimer-to-be-appointed-chair-of-the-board/](https://www.telia.com/en/investors/share-related-information/shareholdings/)  
(consulted on 21 October 2019). The Commission considers this as evidence of how the Swedish state, through its minority shareholding in Telia, is able to determine the composition of the board of directors.

<sup>24</sup> See in this regard Consolidated Jurisdictional Notice, paragraph 69.

<sup>25</sup> Form CO, paragraph 80.

<sup>26</sup> Shareholding as of 30 September 2019 as published on <https://www.teliacompany.com/en/investors/share-related-information/shareholdings/> consulted on 21 October 2019.

- (26) Therefore, the Commission considers that, contrary to the Notifying Party's claim, if the Swedish state decided to appoint its representatives to the board of directors, the remaining shareholders would be unlikely to manage to form a majority capable of opposing the Swedish state's decisions. In any event, there is no evidence in the file that there has been any such wide-ranging coalition in the past. The Notifying Party has put forward examples of shareholders' voting patterns in previous Telia AGMs.<sup>27</sup> The examples provided refer to only two proposals that were voted upon by Telia's AGM during the past ten years where: (i) other minority shareholders together representing between 9.9% and 10.9% (in the period 2016-2018) of the shares represented at those meetings voted in a manner different to that of the Swedish state<sup>28</sup>; and (ii) approximately 25% of the shares (in 2009) and 15 large shareholders (in 2010) made a reservation against a Swedish state's proposal.<sup>29</sup> That in itself is not sufficient to reach a finding that there exists a strong commonality of interests amongst minority shareholders that would lead to the *de facto* forming of a coalition. In particular, in this case the veto powers that minority shareholders have over certain resolutions at Telia's general meetings, seem<sup>30</sup> not to go beyond the veto rights normally accorded to minority shareholders to protect their investment in Telia.<sup>31</sup> Therefore, the examples relied on cannot be considered as conclusive evidence of the existence of any wide-ranging coalition of Telia's other shareholders.
- (27) Second, for the same reason, the Commission cannot agree with the Notifying Party's argument that the Swedish state has not set out any economic goals or assignment goals for Telia. Given that the Swedish state's shareholding allows it to elect the members of Telia's board of directors, which is the body that takes the strategic decisions in Telia, the Commission considers that the Swedish state has the possibility to exercise decisive influence on the commercial policy of Telia.
- (28) Third, as to the argument that the Swedish state only has one representative on Telia's nominating committee, the Commission notes that the nomination committee is a preparatory body for the shareholders' meetings, with the task to prepare proposals for the AGM in respect of, among others, elections (including members of the board of directors), fees to the board of directors and the auditor.<sup>32</sup> The nomination committee only nominates candidate board members, while it is the AGM which appoints the board of directors through an election.<sup>33</sup> Furthermore, the AGM is not limited by the proposals of the nomination committee.<sup>34</sup> In addition, if the Swedish state, acting through its representative in the nomination committee,

<sup>27</sup> Telia's response to the Commission's RFI 23, question 1 (ID000987).

<sup>28</sup> The proposals were for hedging arrangements for a long-term incentive program for senior executives. In 2016 and 2017, these proposals were only rejected because minority shareholders representing just over 10% of the shares represented at the meeting (10.9% in 2016 and 10.2% in 2017), were able to block a proposal requiring a majority of 90% (see Telia's response to the Commission's RFI 23, question 1, (ID000987)). In 2018, 9.9% of the shares represented at the meeting were voted differently than the Swedish State's with respect to the same proposal.

<sup>29</sup> In 2009 and 2010, despite reservations by other shareholders, the AGM resolved to approve the proposal for Principles of remuneration policy for the Executive Management presented by the Swedish State (see Telia's response to the Commission's RFI 23 [Annex 4, item 15, last paragraph and Annex 5, item 15, paragraph 4], (ID000987)).

<sup>30</sup> Telia's response to the Commission's RFI 33, question 1a (ID01475). These resolutions include, for example, amending the articles of association; issuing new shares, warrants and convertible instruments; and, squeezing out the minority shareholders.

<sup>31</sup> Consolidated Jurisdictional Notice, paragraph 66.

<sup>32</sup> Form CO, paragraph 67.

<sup>33</sup> Form CO, paragraph 70.

<sup>34</sup> Form CO, paragraph 67.

seeks to nominate state representatives for election to the board of directors and if such proposal fails to reach unanimity in the nomination committee, the proposal can be presented as an individual proposal by the Swedish state's nomination committee representative.<sup>35</sup> The Commission concludes on this basis that a failure to reach unanimity in the nomination committee is not an impediment to proposing a board member to the AGM.

- (29) In this case the Commission has also considered whether there are other elements ensuring that Telia has a power of decision independent from that of the Swedish state, in spite of the fact that the Swedish state's stake in Telia allows it to elect and reappoint the members of the board. In this regard, the Notifying Party has stated that under Telia's decision-making structure there is no special reconciliation with the Swedish state, that Telia is a public company and that the Swedish government has indicated that it opposes the Transaction.<sup>36</sup> For this reason, the Commission has examined whether any safeguards exist that would prevent the Swedish state from exercising its ability to exercise decisive influence over Telia's activities. However, the Commission has not identified any evidence in the file of the existence of any holding arrangements, special provisions or other safeguards that ensure that the commercial activities of Telia are handled independently from the Swedish state.
- (30) Based on the arguments set out above, the Commission, in the Article 6(1)(c) Decision, reached the preliminary conclusion that Telia does not have an independent power of decision from the Swedish state.
- (31) In its Response to the Article 6(1)(c) Decision, the Notifying Party additionally submits that, as a publicly listed company, Telia is subject to capital market regulations requiring its board members to be independent of both its owners and its senior management. However, the Commission notes that even if board members are required to be independent from the owners and senior management, the Swedish state nevertheless has the power to elect and reappoint the members of Telia's board of directors, the body that takes the strategic decisions in Telia, which confers upon it the power to exercise decisive influence on the commercial policy of Telia.
- (32) In any event, it is not necessary for the Commission to reach a definitive conclusion on the independence of Telia from the Swedish state as the Swedish state does not control any (other) undertaking active within any relevant market concerned by the Transaction. In particular, as explained in section 3.2.3, the Commission concludes that the public broadcaster SVT has an independent power of decision from the Swedish state. That finding was not contested by the Notifying Party in the Response to the Article 6(1)(c) Decision.

### 3.2.3. *Relationship between the Swedish state and SVT*

- (33) In this case, since the Commission concludes that Telia does not have an independent power of decision from the Swedish state, it is necessary to investigate whether SVT, another undertaking active on the same markets where the merged entity will operate, has an independent power of decision from the Swedish state.<sup>37</sup>
- (34) During the investigation, market participants raised the concern that the merger would lead to a significant concentration among wholesale suppliers of TV channels leading to competition being eliminated between the merged entity and SVT since it

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<sup>35</sup> Form CO, paragraph 72.

<sup>36</sup> Form CO, Annex 16, page 10.

<sup>37</sup> Recital 22 of the preamble to the Merger Regulation.

is claimed<sup>38</sup> that both Telia and SVT are controlled by the Swedish state. An additional concern raised by market participants is that competition between the merged entity and SVT for the acquisition of broadcasting rights for audio-visual (“AV”) content will be adversely affected.<sup>39</sup>

- (35) The Notifying Party submits in its initial submission that the Swedish state cannot be considered to exercise decisive influence on SVT. According to the Notifying Party, the following mechanisms ensure independence between SVT and the Swedish state: (i) the fact that SVT is not owned by the Swedish state but by the foundation *Förvaltningsstiftelsen för Sveriges Radio AB, Sveriges Television AB och Sveriges Utbildningsradio AB* (the “Foundation”) which, as all other foundations under Swedish law, does not have any owners or owner (and is therefore not owned by the Swedish state); (ii) the structure of the Foundation’s board (including the process for the appointment of its members and the limitations on who can become a board member); (iii) the Foundation’s financing; (iv) the Foundation’s limited influence over SVT as its powers as owner of SVT are restricted; (v) the process for appointment of SVT’s board members and their limited influence over its core activities; (vi) the system through which SVT is financed; and, (vii) the provisions of the Swedish Fundamental Law on Freedom of Expression preventing the Swedish state from imposing obligations on SVT’s content.<sup>40</sup> In any event, the Notifying Party considers that even if the Swedish state were regarded as the owner of both Telia and SVT, Telia and SVT would have to be assessed as separate entities as they do not belong to the same economic unit because, as far as SVT is concerned, (i) there are mechanisms ensuring SVT’s independence in relation to the Swedish state with regard to decisions concerning commercial activity; (ii) there are no formal and informal links between Telia and SVT, as there are no overlapping board assignments or senior positions between individuals and the Swedish state’s ownership role in Telia is pursued by the Ministry of Enterprise and Innovation, while SVT is owned by the Foundation; and (iii) the State has never intervened to coordinate the actions of Telia and SVT.
- (36) The Commission considers that for the reasons set out in recitals (37) to (44) SVT likely has an independent power of decision from the Swedish state.
- (37) In this case, the Swedish state does not own either SVT or SVT’s owner, the Foundation. There is therefore no formal link of ownership between the Swedish state and SVT. SVT is owned by the Foundation, which was established by a decision adopted by the *Riksdag* (Swedish parliament) in accordance with a Swedish government proposal in 1997. The Foundation is, however, not owned by any person or undertaking in accordance with Swedish Law.<sup>41</sup> According to SVT, the Foundation “*was created to promote the independence of public service radio and television*”.<sup>42</sup> When the Foundation was created a specific sum of capital was dedicated to the Foundation. The Foundation exercises sole control over that capital and the Foundation’s administration is funded exclusively by the returns from that capital.<sup>43</sup>

<sup>38</sup> For example by Tele2. See the agreed non-confidential minutes of a call with Tele2, 7 November 2018 (ID001504).

<sup>39</sup> See the agreed non-confidential minutes of a call with Tele2, 7 November 2018 (ID001504).

<sup>40</sup> Form CO, paragraph 33 and Form CO, Annex 16, page 8.

<sup>41</sup> Under the Swedish Foundation Act (Stiftelselagen), see Form CO, Annex 16, page 2.

<sup>42</sup> See SVT’s response to the Commission’s RFI 25, question 1a (ID01061).

<sup>43</sup> Form CO, annex 16, page 5.

- (38) Since there is no formal link of ownership between the Swedish state and SVT, the Commission has assessed whether there exists an indirect link between the Swedish state and SVT, through the appointment of the board of the Foundation. The Swedish state appoints the members of the board of the Foundation, acting through the Swedish government, namely the Ministry of Culture.<sup>44</sup> In turn, the board of the Foundation appoints the board of SVT. However, there are certain restrictions on who can be a member of the board of the Foundation.<sup>45</sup> In addition, the members of the board of the Foundation are nominated for relatively long periods of time: the chairperson has a term of office of four years, while the twelve ordinary members have eight-year terms. Furthermore, neither the Swedish state nor any public authority have a direct role in the nomination and selection process of the board of SVT and the management of SVT.
- (39) The aim of the Foundation is to own and manage the shares in its subsidiaries, *inter alia* SVT, and to exercise the tasks which that entails. Accordingly, one of the Foundation's main tasks is the appointment of the board of directors of SVT, and the boards of the two other subsidiaries wholly owned by the Foundation. The board of the Foundation meets with the board of SVT once a year in order to inform itself about SVT's work and development.<sup>46</sup>
- (40) The board of directors of SVT is composed of one chairperson, six ordinary directors, two employee representatives and two deputy employee representatives.<sup>47</sup> The board of the Foundation appoints the board of directors of SVT (not including the employee representatives<sup>48</sup>) at SVT's annual shareholders' meeting.<sup>49</sup>

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<sup>44</sup> The board of the Foundation is composed of a chairperson appointed by the Government (for a 4-year term) and 12 ordinary members nominated by Parliament and appointed by the Government (for an 8-year term). The Ministry of Culture is in charge of appointing the Foundation's board members (see Telia's response to the Commission's RFI 23, question 3a (ID000987)). For the appointment of the chairperson, the Government is to base its appointment on criteria of competence, integrity and suitability for the role (Form CO, Annex 16, p. 5 and SVT's response to the Commission's RFI 25, question 1a (ID01061)). Appointment of new members occurs only every fourth year, the year after a general election in Sweden. At that time, only the chairperson's and six of the ordinary member's seats are up for reappointment. After another four year period, the other six ordinary members' (and the chairperson's) seats are up for reappointment. This means that the chairperson has four-year terms while the ordinary members have eight-year terms and that the members of the board are not all replaced at the same time.

The nomination process is as follows. The Parliament lists the candidates that may be appointed. The Government then reviews the nominees and appoints the board members by decision.

Since 2007 all the political parties represented in Parliament have a representative on the Board of the Foundation ([www.forvaltningsstiftelsen.se/om-stiftelsen](http://www.forvaltningsstiftelsen.se/om-stiftelsen)).

<sup>45</sup> Ministers of the Government, employees of the Government Offices and directors and employees of the Broadcasters are all precluded from serving as members of the Foundation's board. Since 1 January 2019 members of Parliament are precluded from serving as members of the board (see to Form CO, annex 16, page 5).

<sup>46</sup> SVT's response to the Commission's RFI 25, question 1a (ID01061).

<sup>47</sup> The CEO of SVT was originally also a member of the board of directors of SVT (see Annex 16 to Form CO, p. 13). However, as from 8 April 2019 the CEO is no longer a member of the board (see SVT's response to the Commission's RFI 25, question 2b (ID01061)).

The Notifying Party uses the term "CEO" and "managing director" interchangeably, while SVT refers to the position of "Director General". For the purpose of this Decision, the Commission uses the term "CEO".

<sup>48</sup> Employee representatives are appointed in accordance with the Swedish Act (1987:1245) on board representation for employees. They are appointed by the local employee organisations that are bound by collective agreements with SVT. Therefore, the Swedish State, the board of the Foundation, the board of SVT or any public authority do not, directly or indirectly, have any role in the nomination of the

- (41) The tasks of SVT's board of directors<sup>50</sup> include taking the following decisions<sup>51</sup>: appointing and dismissing the CEO, laying down strategies, long-term goals and operational plans for SVT, the overall orientation of the programming activities based on the company's broadcasting licence, financial planning and major investments. However, the board does not have any influence over the production or purchasing of content or SVT's other ongoing activities. In addition, while the board decides which part of the budget should be allocated to programme making, it does not decide how the budget should be allocated between different genres or programmes.<sup>52</sup>
- (42) SVT's CEO is appointed and can be dismissed by the directors of the board.<sup>53</sup> The CEO is in charge of coordinating SVT's operations and is assisted by the management group.
- (43) SVT's management group consists of ten individuals (including the CEO).<sup>54</sup> The CEO is responsible for appointing the remaining members of the management group, including the publishers.<sup>55</sup> Neither the Swedish state nor any public authority has any role in the nomination and selection process.<sup>56</sup> There is no fixed duration for membership of the management group, including the CEO.<sup>57</sup>
- (44) The role of the management group is to take the decisions concerning the range of programmes and activities of SVT. According to SVT, this includes setting the content strategy, deciding on the content plan for the upcoming years. It is during this process that almost all of SVT's content is defined and ordered.<sup>58</sup> The Swedish

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employee representatives (see the Parties' response to the Commission's RFI 33, question 2d (ID01475))

<sup>49</sup> Members of the Foundation's board are not allowed to also be directors of SVT (Form CO, Annex 16, page 6).

<sup>50</sup> SVT's board obtains a quorum when more than half of the directors are present. Decisions are taken by simple majority of attending directors. In case of an even number of votes, the chairperson has the casting vote. If not all directors are present at the meeting, the directors voting in favour of a resolution must constitute more than one third of the total number of the board's directors (i.e. including also non-attending directors) (see the Parties' response to the Commission's RFI 33, question 2a (ID01475)). In case of an even number of votes, the chairperson has the casting vote.

<sup>51</sup> According to the Notifying Party, the board decides on company goals, long-term plans, general priorities and budget (see Form CO, Annex 16, p. 6 and p. 13 and 14). However, the Notifying Party also notes that SVT does not have a "business plan" in the sense generally seen in commercial companies, although SVT of course sets out goals for its activities and has a budget covering, for example, major investments. The board at SVT (See Telia's response to the Commission's RFI 23, question 5 (ID000987)) takes such decisions.

<sup>52</sup> SVT's response to the Commission's RFI 25, question 3c (ID01061).

<sup>53</sup> Under the Swedish Companies Act (2005:551) the board of directors appoints and dismisses the CEO (see Telia's response to the Commission's RFI 23, question 4b (i) (ID000987)). Employee representatives have the same voting rights as other board members in relation to the appointment and dismissal of the CEO of SVT (see the Parties' response to the Commission's RFI 33, question 2c (ID01475)).

<sup>54</sup> Telia's response to the Commission's RFI 23, question 4a (ID000987). See also SVT's response to the Commission's RFI 25, question 3a (ID01061).

<sup>55</sup> Telia's response to the Commission's RFI 23, question 4b (i) (ID000987). According to the Swedish Act of Freedom of Expression, a part of the Constitution, it is the responsible publisher that takes the final decision on the contents of programs before broadcasting, see Telia's response to the Commission's RFI 23, question 4c (ID000987).

<sup>56</sup> SVT's response to the Commission's RFI 25, question 3b (iii) (ID001061).

<sup>57</sup> Telia's response to the Commission's RFI 23, question 4b (ii) (ID000987).

<sup>58</sup> SVT's response to the Commission's RFI 25, question 3c (ID001061).

state, the Foundation and the board of SVT have no powers in relation to the decisions taken by the management group.<sup>59</sup>

(45) The findings set out in recitals (37) to (44) above, which the Commission set out as preliminary conclusion in the Article (6)(1)(c) Decision, were not contested by the Notifying Party in the Response to the Article 6(1)(c) Decision.

(46) Based on the above, the Commission considers for the purposes of this Decision that there are sufficient elements likely conferring on SVT an independent power of decision from the Swedish state.

**3.2.4. *As to whether the Swedish state is able to coordinate the commercial conduct of SVT and Telia***

(47) The Commission considers that coordination between the commercial conduct of Telia and that of SVT could not be imposed or facilitated by the Swedish state, for the reasons set out in recitals (48) to (53).

(48) In accordance with the provisions of the current Swedish Radio and TV Act<sup>60</sup>, the Swedish government grants the broadcasting permit (“the Charter”) for SVT. The Swedish Radio and TV Act contains an exhaustive list of the conditions that can be attached to the Charter.<sup>61</sup> The current Radio and TV Act and the Charter do not allow the Swedish state to interfere in the nature of the programmes broadcast by SVT.<sup>62</sup> The Charter provides that the activities of SVT must be independent from the Swedish state and various economic, political and other interests in society.<sup>63</sup> The Charter’s conditions that relate to content<sup>64</sup> include an obligation on SVT to broadcast a “varied programming”. Specifically with regard to news activities, the Charter provides that SVT must ensure diversity in news selection, analysis and commentary. The current Charter is valid until the end of 2019. It is currently under review so it is technically possible that the Swedish government might adapt those conditions for the next period.<sup>65</sup> Under the current Radio and TV Act, the Swedish government could theoretically lift the obligation for SVT to broadcast a “varied programming” thus giving more flexibility to SVT to focus on specific programming, but the Swedish government could not, in the Charter, dictate which programming SVT should focus on. Furthermore, since the list of conditions set out in the Radio and TV Act is exhaustive, the Swedish government cannot impose a negative obligation on SVT to not focus on certain programming. The Charter that is set to enter into force in 2020 will be adopted by the Swedish government in December 2019 and will cover the period 2020–2029. Ahead of the review, the Swedish parliament’s public service committee issued a report from the Parliamentary Commission of Inquiry (SOU 2018:50). The report includes the committee’s proposal as to how the public service mandate should be formulated, including that its remit continues to be broadly formulated as regards content and no changes from the current conditions on varied programming are proposed in this

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<sup>59</sup> SVT’s response to the Commission’s RFI 25, question 3d (ID001061).

<sup>60</sup> Radio- och tv-lag (2010:696) (the “Radio and TV Act”).

<sup>61</sup> Radio and TV Act, chapter 4, sections 8-11.

<sup>62</sup> Form CO, Annex 16, pages 18 and 19.

<sup>63</sup> The Charter, paragraph 1.

<sup>64</sup> The Charter, paragraphs 6–12.

<sup>65</sup> However, according to the Notifying Party no substantial changes have been made in the past to the Charters that were in force in the periods 2007-2009 and 2010-2013 (see the Parties’ response to the Commission’s RFI 33, question 3 (ID01475)).

respect. Therefore, the committee does not propose that SVT's content should be narrower in the future.

- (49) There are constitutional safeguards in place preventing public authorities and public bodies' from examining the content of the public broadcasters.<sup>66</sup> The Foundation has no legal ground to examine the content broadcast by SVT and to follow-up on whether SVT has fulfilled its public service tasks. The Swedish Broadcasting Commission, an independent review committee, is the only body that follows up whether SVT has exercised its broadcasting rights in accordance with the conditions set out in the Charter.<sup>67</sup> Their examination looks into whether or not the conditions of the Charter have been met, thus safeguarding varied programming, diversity in news selection etc. However, the examination does not relate to how the conditions have been met.<sup>68</sup> The examination therefore does not concern the content or specific programmes.<sup>69</sup> This provides a safeguard for ensuring that the content broadcast by SVT is not subject to examination by any public body.
- (50) As to SVT's funding conditions, as of 1 January 2019, as part of the adoption of the new Public Service Act<sup>70</sup> Sweden has introduced a public service fee that all taxable persons above 18 years of age with a taxable income will pay (instead of a TV licence that was to be paid by whoever had a TV). The tax authority collects this public service fee from everyone. The fee is run via accounts controlled by the Legal, Financial and Administrative Services Agency (*Kammarkollegiet*), an agency under the Justice Ministry. The public service broadcaster SVT is therefore not financed through the state budget.<sup>71</sup> Decisions on the allocation of funding are taken by the Swedish government in accordance with a "guideline decision" taken by the Swedish parliament. The funding allocation decision will run in parallel to the Charter term of 8 years. The funds are earmarked to be only used for the financing of public service broadcasting (SVT being one of the three public service companies being financed). The extent to which the Swedish state is able to intervene and influence the amount of funds transferred to SVT during the 8-year funding period therefore appears to be very limited. The provisions that relate to SVT's news activities under the current funding conditions (valid until the end of 2019) provide an additional safeguard against possible coordination between Telia and SVT, through the Swedish state. The Commission further notes that one of the stated reasons why it was necessary to adopt the new Public Service Act was to improve further the independence of public service in Sweden.<sup>72</sup> Ahead of the new Charter that will be adopted by the Swedish government in December 2019 for the period 2020–2029, the Swedish parliament's public service committee issued a report from the Parliamentary Commission of Inquiry (SOU 2018:50). The report includes the committee's proposal for how the

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<sup>66</sup> The Fundamental Law on Freedom of Expression (a part of the Swedish Constitution) provides limitations on the form of examination of the content of radio and TV-content that can be carried out by public bodies and public authorities.

<sup>67</sup> The Swedish Broadcasting Commission also examines whether the Funding conditions and any other decision issued by the Government in accordance with the Radio and TV Act have been met. (Regulation with instructions for the Swedish Press, Radio and Television Authority (Förordningen med instruktion för Myndigheten för press, radio och tv, paragraph 20)).

<sup>68</sup> The Swedish Broadcasting Commission website <https://www.mprt.se/en/complaints/the-swedish-broadcasting-commission/> (11-04-2019). See also SOU 2018:50, p. 245.

<sup>69</sup> SOU 2018:50, p. 245.

<sup>70</sup> Law on the Financing of Radio and Television in the Public Service (Lag om finansiering av radio och tv i allmänhetens tjänst (2018:1893)).

<sup>71</sup> Form CO, Annex 16, page 7.

<sup>72</sup> See: <https://www.government.se/articles/2018/11/new-financing-of-public-service-adopted/>.

public service mandate should be formulated. The committee does not foresee any material changes to SVT's funding conditions in the future.

- (51) In addition, there are legal constraints that prevent the Swedish state and other public authorities from interfering in the production of content of SVT. In particular, regulatory provisions set out in the Fundamental Law on Freedom of Expression and the Radio and TV Act further prohibit interference in the production of content.<sup>73</sup>
- (52) Furthermore, none of the members of the board of the Foundation or of SVT are members of the board of Telia and *vice versa*.
- (53) Finally, the Commission considers that the board members of Telia are bound by regulation as well as governance principles applicable to listed companies relating to confidentiality as regards commercially sensitive information. The board of Telia is thus legally restricted from sharing such information with the owner.<sup>74</sup>
- (54) The findings set out in recitals (48) to (53), which the Commission set out as preliminary conclusions in the Article (6)(1)(c) Decision, were not contested by the Notifying Party in the Response to the Article 6(1)(c) Decision.
- (55) The Commission therefore considers for the purposes of this Decision that the commercial activities of Telia and SVT cannot be coordinated through the intervention of the Swedish state.

### 3.2.5. Conclusion

- (56) On the basis of the above, the Commission considers that, for the purposes of this Decision, SVT should be considered to constitute an economic unit with independent power of decision. In the competitive assessment, Telia and SVT should therefore be considered as independent from one another.

## 4. UNION DIMENSION

- (57) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million<sup>75</sup> (Telia: EUR [...] million; Bonnier Broadcasting: EUR [...] million; combined: EUR [...] million; in 2017). Each of them has a Union-wide turnover in excess of EUR 250 million (Telia: EUR [...] million; Bonnier Broadcasting: EUR [...] million; in 2017), but they do not achieve more than two-thirds of their aggregate Union-wide turnover within one and the same Member State.
- (58) The Transaction therefore has a Union dimension pursuant to Article 1(2) of the Merger Regulation.

## 5. PROCEDURE

- (59) The Transaction was notified to the Commission on 15 March 2019.
- (60) After a preliminary examination of the notification and based on the first phase ("Phase I") market investigation, the Commission raised serious doubts as to the compatibility of the Transaction with the internal market and adopted a decision to

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<sup>73</sup> These include the prohibition on censorship meaning that no authority or other public body may preview the content of programmes as well as a provision that the broadcaster decides independently on the content of programmes, see annex 16, page. 16.

<sup>74</sup> See Telia's response to the Commission's RFI 26, question 6 (ID01135).

<sup>75</sup> Turnover calculated in accordance with Article 5 of the Merger Regulation.

initiate proceedings ("Phase II") pursuant to Article 6(1)(c) of the Merger Regulation on 10 May 2019.

- (61) The Parties submitted their written comments on the Article 6(1)(c) Decision on 24 May 2019.
- (62) On 29 May 2019, a state of play meeting took place between the Parties and the Commission.
- (63) On 4 June 2019, the Commission adopted a decision pursuant to Article 11(3) of the Merger Regulation, addressed to Telia, following Telia's failure to provide complete information in response to a request for information ("RFI") from the Commission (the "Telia Article 11(3) Decision"). On the same day, the Commission adopted a second decision pursuant to Article 11(3) of the Merger Regulation, addressed to Bonnier Broadcasting following Bonnier Broadcasting's failure to provide complete information in response to a RFI from the Commission (the "Bonnier Broadcasting Article 11(3) Decision"). Both the Telia Article 11(3) Decision and the Bonnier Broadcasting Article 11(3) Decision compelled their addressees to submit a complete response to the RFIs originally sent by the Commission and suspended the time limits referred to in the first subparagraph of Article 10(3) of the Merger Regulation until the receipt of complete and correct information required by the two decisions. Telia complied with the Telia Article 11(3) Decision on 4 July 2019 and Bonnier Broadcasting complied with the Bonnier Broadcasting Article 11(3) Decision on 4 July 2019. Thus, the suspension of the time limits expired at the end of 4 July 2019.
- (64) On 4 July 2019, the Notifying Party requested an extension of the time period for the Commission's investigation by 20 working days under the second subparagraph of Article 10(3) of the Merger Regulation.
- (65) On 12 August 2019, the Notifying Party submitted commitments pursuant to Article 8(2) of the Merger Regulation in order to address the competition concerns identified by the Commission. On 13 August 2019, the Commission launched a market test of the commitments submitted by the Notifying Party on 12 August 2019.
- (66) The Commission gave the Parties detailed feedback on the outcome of the market test during calls on 28 August 2019, 30 August 2019 and 2 September 2019.
- (67) On 2 September 2019, the Notifying Party submitted revised commitments pursuant to Article 8(2) of the Merger Regulation.
- (68) The Advisory Committee discussed a draft of this Decision on 24 October 2019 and issued a favourable opinion.

## **6. THE COMMISSION'S INVESTIGATION**

- (69) This Decision contains the Commission's findings on the basis of the investigation it carried out: prior to the notification of the Transaction; in the first phase; and in the second phase of the investigation.
- (70) Prior to the notification of the Transaction, the Commission sent thirteen RFIs to the Parties, responses to which were included in the notification.
- (71) During the Phase I investigation, the Commission sent thirteen RFIs to the Parties, as well as 8 RFIs and 12 questionnaires to TV distributors, TV broadcasters, right holders, consumers and housing associations in Sweden, Finland, Norway and Denmark. The Commission also conducted multiple interviews with market participants, such as large TV distributors and broadcasters, as well as with the

national competition authorities, namely the Swedish and Finnish competition authorities.

- (72) During the Phase II investigation, the Commission sent 35 RFIs to the Parties, as well as 14 RFIs and 7 questionnaires in addition to numerous requests for information and data to TV distributors, TV broadcasters, advertisers, and Open City networks in Sweden and Finland. The Commission also had technical meetings with the Parties, and meetings and/or calls with certain market participants, such as large TV distributors and new OTT service providers. The Commission had further contacts with the national competition authorities and national regulators in Finland and Sweden. The Commission also reviewed internal documents submitted by the Parties in response to RFIs from the Commission. In total, the Parties have provided more than 770 000 documents to the Commission (Telia around 290 000 and Bonnier Broadcasting around 480 000).

## 7. RELEVANT MARKETS

### 7.1. Markets concerned by the Transaction

- (73) The Transaction relates to all the levels of the AV value chain (the structure of which is presented at section 7.2), namely: (i) the production of AV content; (ii) the licensing of broadcasting rights for AV content (together at section 7.3); (iii) the wholesale supply of TV channels (section 7.4); and (iv) the retail supply of AV services (section 7.5). In addition, the Transaction relates to: (v) the retail supply of fixed telephony services (section 7.6), (vi) the retail supply of fixed internet access services (section 7.7); (vii) the retail supply of mobile telecommunications services (section 7.8); (viii) the retail supply of multiple play services (section 7.9); and (ix) the sale of advertising space on AV services (section 7.10).
- (74) For each of these types of products, the remainder of this section provides an overview of the Parties' activities. Sections 7.3 – 7.10 then examine the product and geographic market definition for each level of the AV value chain and the other markets where the Parties are active. Section 7.11 concludes.

#### 7.1.1. *Production of AV content*

- (75) Upstream of the value chain is the production of new AV content. AV production companies produce AV content either (a) for internal use on their own AV services if they are vertically integrated in the wholesale supply of TV channels and/or in the retail provision of AV services (that is to say, "captive AV production"), or (b) for supply to third-party customers (that is to say, "non-captive AV production"). Third-party customers are typically: (i) TV broadcasters, which then incorporate the AV content into linear TV channels, that is to say, services provided for simultaneous viewing of programmes on the basis of a programme schedule,<sup>76</sup> and ancillary services, that is to say, services that TV broadcasters add to their TV channels in order to enhance the viewer experience (such as Catch-Up TV and Start-Over);<sup>77</sup> or (ii) retail providers of AV services, which then retail the AV content to end users.

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<sup>76</sup> Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services ("Audiovisual Media Services Directive"), Article 1 (e).

<sup>77</sup> Recital 70 of the present Decision.

- (76) Wholesale or retail providers who seek AV content for their TV channels or AV services generally have a choice between a number of sourcing models, which can be broadly categorised as follows: (a) acquiring broadcasting rights from AV production companies for pre-produced AV content (sometimes referred to as ‘off-the-shelf’ or ‘tape sales’); (b) obtaining AV content produced on an ‘ad hoc’ basis (that is to say tailor-made).
- (77) The supply-side of the market for the production of AV content thus comprises AV production companies, while the demand-side comprises third parties that commission the production of AV content or hire AV production services, typically TV broadcasters or retail providers of AV services.
- (78) As regards the supply-side of the market, neither Party is active as a supplier to third parties. In particular, AV content produced by TV4 AB in Sweden, and Mediahub in Finland, which are part of Bonnier Broadcasting, is fully captive.<sup>78</sup>
- (79) As regards the demand-side of the market: (a) Bonnier Broadcasting commissions AV content in Sweden and Finland from various external production companies and format owners;<sup>79</sup> (b) Telia is not active in Sweden and has been active in Finland only since August 2018, as it has commissioned production of content related to the Finnish ice hockey league (“Liiga”).<sup>80</sup>

#### 7.1.2. *Licensing of broadcasting rights for AV content*

- (80) This part of the AV value chain concerns the licensing of broadcasting rights for pre-existing AV content – that is to say AV content that has been previously produced and is subsequently made available ‘off-the-shelf’ by the rights holder – and broadcasting rights for sports events.
- (81) The broadcasting rights for pre-produced AV content can belong to one or more of the following: (i) the holder of the rights to the AV format, (ii) the production company that produced the AV content, or (iii) the company that commissioned the production of the AV content. In addition, the broadcasting rights can belong to (iv) a third-party, to which they were licensed by the original owner, along with a right to sub-license.
- (82) All of these categories of rights owners, which constitute the supply-side of the market, license broadcasting rights to content aggregators, which constitute the demand-side of the market, namely: (a) TV broadcasters; or (b) retail providers of AV services.
- (83) As regards the supply-side of the market: (a) Bonnier Broadcasting occasionally licenses rights to external buyers in Sweden, Finland and Denmark (for example, when unable to fully exploit the acquired content licence or upon request of a foreign TV broadcaster).<sup>81</sup> In Norway, besides the occasional licensing of broadcasting rights for TV shows primarily produced for the Swedish audience, Bonnier Broadcasting has entered into [Identity of the sub-licensee and scope of the sub-licensing agreement]. [...];<sup>82</sup> (b) Telia sub-licenses broadcasting rights for certain *Liiga* ice

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<sup>78</sup> Form CO, paragraphs 211-212, 215-216, 224-225.

<sup>79</sup> Form CO, paragraphs 213, 217, 224 and 225.

<sup>80</sup> Form CO, paragraphs 214, 218, 220, 224 and 225.

<sup>81</sup> Form CO, paragraphs 258, 266 and 285. In Finland, Bonnier Broadcasting out-licenses dubbed audio.

<sup>82</sup> Form CO, paragraphs 289-297.

hockey games in Finland [Terms and conditions in Telia Company's licensing agreement].<sup>83</sup>

- (84) As regards the demand-side of the market: (a) in Sweden, Bonnier Broadcasting acquires broadcasting rights for specific AV content (sports events, films or TV shows) for purposes of incorporating them into its TV channels or streaming services.<sup>84</sup> In Finland, Bonnier Broadcasting has acquired the rights to broadcast the FIA Formula One World Championship ("Formula 1") for the 2019-2021 seasons, as well as some foreign AV content for purposes of incorporating them into its TV channels or streaming services.<sup>85</sup> In Denmark, Bonnier Broadcasting acquires broadcasting rights for some Danish-language scripted AV content for purposes of including it in its streaming services.<sup>86</sup> In addition, the broadcasting rights for international AV content that Bonnier Broadcasting acquires for its Swedish and/or Finnish activities normally also cover Denmark and Norway,<sup>87</sup> (b) Telia is only active in Finland where it acquired the rights to broadcast *Liiga* ice hockey games for six seasons, from the season 2018/2019 to the season 2023/2024, [Content of Telia Company's agreements].<sup>88</sup>

#### 7.1.3. *Wholesale supply of TV channels*

- (85) TV broadcasters use the AV content and broadcasting rights for AV content that they have acquired or produced in-house in order to package it into TV channels. TV channels are linear services, broadcast to end users either on a free-to-air ("FTA") basis or on a pay TV basis. TV channels are wholesaled by TV broadcasters to retail providers of AV services.
- (86) The viewer experience is evolving and shifting from traditional linear viewing to non-linear viewing. The development of new forms of AV consumption as a result of new technology has made it possible to distinguish between rights for conventional ('linear') TV and those for 'non-linear' AV services (see section 7.1.4).
- (87) In the specific context of linear television, viewers must watch TV content at the established time it is broadcast, and on the channel on which it is presented, according to the specific schedule defined by the broadcaster, with no possibility to interact with it or change the time.
- (88) In addition, ancillary services to TV channels ("ancillary services") have gradually been integrated in traditional TV channels to enhance the viewer experience. Such services allow a more enriched viewing experience by enabling the viewer to interact with TV programming and choose the time and manner of watching content according to tailored needs and demands. TV broadcasters thus can offer viewers a vast array of functions and services as part of the experience of the TV channels. For instance, Catch-Up TV is a service that makes the content of a channel available for a certain period to the viewer, who can choose when to view it.

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<sup>83</sup> Form CO, paragraphs 259, 267, 271, 286 and 298.

<sup>84</sup> Form CO, paragraphs 260, 262-263.

<sup>85</sup> Form CO, paragraphs 273 and 274.

<sup>86</sup> Form CO, paragraph 287.

<sup>87</sup> Form CO, paragraphs 287 and 299.

<sup>88</sup> Form CO, paragraph 265, 279, 282, 288 and 300.

- (89) The main ancillary services, which could be both linear and non-linear, are currently the following:
- Personal Video Recorder (“PVR”), which allows viewers to record selected contents that are offered on the TV channels, and made available to viewers on an on-demand basis;
  - Network Personal Video Recorder (“NPVR”), which allows viewers to record selected contents that are offered on the TV channels, and made available to viewers on an on-demand basis on a platform owned or operated by a TV distributor;
  - Catch-Up TV, which allows viewers to access selected contents that are offered on the TV channels on an on-demand basis for a limited period of time following their first linear transmission;
  - TV Everywhere (“TVE”), which allows viewers to watch the TV channels on multiple devices, such as tablets and smartphones;
  - Start-Over, which allows viewers to restart a program on the TV channel at any time during its linear broadcast exhibition;
  - Dual Entry, which allows end users to view concurrent content (in an application or site that is made available to them) which, irrespective of whether the content is transmitted in a linear fashion, is offered as part of the retail subscription.
- (90) As regards the supply-side of the market: (a) Bonnier Broadcasting wholesales TV channels in Sweden through TV4 AB (“TV4”) and C More, and in Finland through MTV and C More.<sup>89</sup> In Denmark, Bonnier Broadcasting wholesales a limited number of C More TV channels, namely C More film and series TV channels.<sup>90</sup> In Norway, Bonnier Broadcasting is currently not active as a supplier to retailers, as it has sublicensed C More film and series TV channels to the Norwegian broadcaster TV2,<sup>91</sup> (b) Telia is not active.<sup>92</sup>
- (91) As regards the demand-side of the market: (a) Bonnier Broadcasting is not active;<sup>93</sup> (b) Telia provides retail AV services to end customers in Sweden, Finland, Denmark, as well as Norway, since the acquisition of the Norwegian operator GET AS (“GET”) in 2018.<sup>94</sup>

#### 7.1.4. *Retail supply of AV services*

- (92) Retail providers of AV services offer packages of linear AV services and/or non-linear AV services to end customers.
- (93) As explained in section 7.1.3, linear services are services that broadcast scheduled programs, conventionally over the air or through satellite/cable, not streamed to a specific user. Nearly all broadcast television services count as linear services.

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<sup>89</sup> Form CO, paragraphs 368 and 372.

<sup>90</sup> Form CO, paragraph 376 and table 13.

<sup>91</sup> Form CO, paragraph 290-397 and 380.

<sup>92</sup> Form CO, paragraphs 369, 373, 377 and 380.

<sup>93</sup> Form CO, paragraphs 370, 374, 378 and 381.

<sup>94</sup> Form CO, paragraphs 371, 375, 379 and 382.

- (94) Non-linear services, or video-on-demand (“VOD”) services, are services provided for the viewing of programmes at the moment chosen by the user and at the user’s individual request on the basis of a catalogue of programmes selected by the service provider.<sup>95</sup> Non-linear services can be further differentiated into the following types:
- Advertising Video On Demand (“AVOD”), which consists of on-demand access to a catalogue of films, series, sports and other AV content free of charge to consumers and funded by advertising;
  - Subscription Video On Demand (“SVOD”), which consists of on-demand access to a catalogue of films, series, sports and other AV content for a subscription fee;
  - Transactional Video-On-Demand (“TVOD”), which consists of purchase and/or rental of AV content on an “a la carte” basis (meaning that the end-customer pays for individual AV content that can be viewed at any time);
  - Pay-per-view (“PPV”), which designates a service whereby the end user makes a payment to watch a single title that is being broadcast at a specific time, which is the same for all viewers.
- (95) The above described linear and non-linear pay AV services can be augmented with ancillary services, such as Catch-Up TV, PVR, TVE, Start-Over or Dual Entry.
- (96) To provide their linear and non-linear services to end-customers, retail providers of AV services use (i) traditional networks, such as cable, xDSL and fibre, internet protocol television, “IPTV”, satellite and, to a lesser extent, digital terrestrial TV (“DTT”), and/or (ii) the “Over-The-Top” (“OTT”) distribution technology, which allows AV content to be delivered through the use of the open internet. AV services that are supplied via the OTT distribution technology are hereinafter referred to as “OTT-based AV services” or as “OTT services”. In some cases, OTT services are sold to end customers on a standalone basis, that is to say without being associated with a subscription for non-OTT based AV retail services or for retail telecommunications services (hereinafter, “standalone OTT services”).
- (97) TV distributors, such as Telia, are a sub-set of retail suppliers of AV services, who usually act as TV channel aggregators, i.e. they license TV channels and ancillary services from different broadcasters and make them available to end users as a package(s). The AV services supplied by TV distributors to end users consist of: (i) packages of linear TV channels (which they have either acquired or created themselves); and (ii) content aggregated in non-linear services, such as VOD, SVOD, TVOD and PPV. TV content can be delivered to end users through a number of technical means including cable, satellite and IPTV.
- (98) OTT players are a sub-set of retail suppliers of AV services, who deliver TV channels and AV content in both a linear and non-linear fashion through the use of the internet. The main global OTT players, such as Netflix and Amazon, deliver content exclusively in a non-linear fashion. Local OTT players, such as Bonnier Broadcasting and NENT offer to their customers non-linear AV content but also the possibility to watch their TV channels linearly through the use of the internet. In order to provider OTT services, OTT players acquire OTT rights for channels and ancillary services from broadcasters, and OTT rights for AV content from suppliers of AV content or of broadcasting rights for AV content. OTT players that, similarly

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<sup>95</sup> Audiovisual Media Services Directive, Article 1 (g).

- to TV distributors, act as TV channels aggregators are hereinafter referred as "OTT channels aggregators"
- (99) Operator OTT services are a sub-set of OTT services enabling a company, usually providers of telecommunications services, to grant OTT access to their subscribers, even to those who do not have traditional TV subscriptions, as long as they are existing customers of other services (for example, as subscriber of fixed internet or mobile services). In order to provide Operator OTT services, OTT players acquire Operator OTT rights.
- (100) OTT services that are purchased on a standalone basis without any other service are hereinafter referred as "standalone OTT services". In order to provide standalone OTT services, OTT players acquire standalone OTT rights.
- (101) TV distributors also deliver TV channels and AV content in both a linear and non-linear fashion through the use of the open internet as an ancillary service to the main cable, satellite or IPTV subscription, namely TVE. TVE enables end customers to watch the TV channels or AV content linked to their cable, satellite or IPTV subscription through the open internet, on multiple devices, such as tablets and smartphones. In order to provider TVE services, TV distributors acquire TVE rights from broadcasters.
- (102) Therefore, while both TVE and OTT are services delivered over the open internet, TVE is an ancillary service to the traditional subscription to retail AV services (i.e. cable, satellite, DTT, DTH or IPTV AV service), while OTT service could also be purchased on a standalone basis without any other service (i.e. standalone OTT service).
- (103) In the retail provision of AV services to end users, (a) Bonnier Broadcasting provides standalone OTT services in Sweden (AVOD service "TV4 Play" and SVOD service "C More") and Finland (AVOD service "MTV" and SVOD service "C More").<sup>96</sup> In Denmark and Norway, Bonnier Broadcasting provides OTT services through C More;<sup>97</sup> (b) Telia provides AV services in Sweden through IPTV, cable and OTT<sup>98</sup> as well as an ancillary service via TVE service.<sup>99</sup> In Finland, Telia provides AV services through IPTV, cable, as well as a standalone OTT service (streaming service "Telia TV" and related TVOD services).<sup>100</sup> In Denmark, Telia provides AV services though IPTV by using the fixed network of national incumbent TDC, as well as an ancillary OTT service ("Telia TV").<sup>101</sup> In Norway, following the acquisition of GET in 2018, Telia provides AV services through cable and IPTV, as well as an ancillary service via OTT.<sup>102</sup>

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<sup>96</sup> Form CO, paragraphs 441 and 443. C More OTT services offer also access to Bonnier Broadcasting's FTA and basic pay TV channels in Finland and Sweden.

<sup>97</sup> Form CO, paragraphs 445 and 447.

<sup>98</sup> In Sweden Telia offers the "Telia Play" app as a standalone services to customers having a mobile or fixed broadband subscription with Telia.

<sup>99</sup> Form CO, paragraph 440.

<sup>100</sup> Form CO, paragraph 442.

<sup>101</sup> Form CO, paragraph 444.

<sup>102</sup> Form CO, paragraph 446.

- 7.1.5. *Retail supply of fixed telephony, fixed internet, mobile telecommunications and multiple play services*
- (104) Fixed telephony services comprise the provision of connection services at a fixed location or access to the public telephone network, for the purpose of making and/or receiving calls and related services.
- (105) Fixed internet access services at the retail level consist of the provision of a fixed telecommunications link enabling end customers to access the internet.
- (106) Mobile telecommunications services to end customers (also referred to as "retail mobile services") include services for national and international voice calls, SMS (including MMS and other messages), mobile internet with data services, access to content via the mobile network and retail international roaming services.
- (107) The term "multiple play" relates to offers comprising two or more of the following services provided to retail consumers: mobile telecommunication services, fixed telephony, fixed internet access and TV services. Multiple play comprising two, three or four of these services is referred to as dual play ("2P"), triple play ("3P") and quadruple play ("4P") respectively.
- (108) Three of the four services mentioned above, namely fixed telephony, TV services and fixed internet access, are "fixed" services as they are provided over a fixed network such as cable, copper or fibre infrastructure. Multiple play comprising any combination of two or more of these fixed services without a mobile component is referred to as "fixed multiple play". Multiple play comprising one or more of these fixed services in combination with a mobile component (including either voice or data, or both together) is referred to as "fixed-mobile multiple play" or "fixed-mobile convergence" ("FMC"). Fixed-mobile multiple play may involve a single mobile subscription (SIM card) or more than one mobile subscription combined with the fixed services.
- (109) In the retail provision of mobile, fixed telephony and fixed internet access and multiple play telecommunications services to end users: (a) Telia provides retail fixed telephony, retail fixed internet access, retail mobile telecommunications and retail multiple play services<sup>103</sup> in Sweden, Finland, Norway and Denmark; (b) Bonnier Broadcasting is not active.

7.1.6. *Sale of advertising space on AV services*

- (110) TV broadcasters sell advertising space on their TV channels and on their OTT services. The sale of advertising space is an important source of revenues for FTA channels, while pay TV channels in general rely more on fees from retail providers of AV services or from end users.
- (111) As regards the supply-side of the market: (a) Bonnier Broadcasting sells advertising space in Sweden - on its TV4 TV channels and AVOD service, on some of its C More TV channels, and on certain online media properties (e.g., websites) -, and in Finland - on its MTV TV channels and AVOD service, on some of its C More TV channels, and on certain online media properties;<sup>104</sup> (b) Telia has entered into

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<sup>103</sup> Telia also provides multiple play packages including both fixed internet access and TV services. See: <https://www.telia.se/privat/bredband/bredband-och-tv/bredband-och-tv>.

<sup>104</sup> Form CO, paragraphs 508-509, 513-515, 519 and 522.

advertisement and sponsorship agreements in Finland in connection with the broadcasting of *Liiga* ice hockey games.<sup>105</sup>

- (112) As regards the demand-side of the market: (a) Bonnier Broadcasting purchases advertising space on different media channels, such as online and TV in Sweden, Finland and Denmark. These purchases are mainly captive (i.e., purchases made on its own media properties, such as space on Bonnier Broadcasting's TV channels);<sup>106</sup> (b) Telia purchases advertising space in different media channels in Sweden, Finland and Denmark.<sup>107</sup>

## 7.2. Structure of the AV value chain

- (113) In previous cases, the Commission set out the different levels of the TV value chain as follows: (i) the (upstream) markets for the production and the licensing of AV content, (ii) the (intermediate) market for the wholesale supply of TV channels, and (iii) the (downstream) market for the retail supply of TV services.<sup>108</sup> The market investigation confirmed that this three-layer classification remains accurate with regard to AV content. Some market respondents note that companies active in the downstream market for the retail supply of TV services also acquire AV content directly (i.e., without the intermediation of companies active in the market for the wholesale supply of TV channels) from companies active in the upstream market for the production and the licensing of AV content.<sup>109</sup>

## 7.3. Production and licensing of broadcasting rights for AV content

- (114) In previous decisions,<sup>110</sup> the Commission has concluded that there are separate markets for: (i) production of commissioned TV content; and (ii) licensing of broadcasting rights for pre-produced TV content, which constitute alternative ways through which TV broadcasters and retail providers of AV services may source AV content.
- (115) For the purpose of the market definition and for the sake of simplicity given that the Transaction raises similar issues in both markets, in the following section the Commission analyses the two separate markets for the production and the licensing of AV content together.

### 7.3.1. Product market definition

#### 7.3.1.1. Previous Commission decisions

- (116) With regard to the production of TV content, the Commission has found the product market for the production of TV content to be limited to non-captive TV production,

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<sup>105</sup> Form CO, paragraphs 510, 516, 519 and 522.

<sup>106</sup> Bonnier Broadcasting estimates that its external media purchases in Sweden 2018 amounted to below EUR [...]. The largest share of these media investments were in online media (search, social media, display and video). Form CO, paragraphs 511, 517, 520 and 522.

<sup>107</sup> Form CO, paragraphs 512, 518, 521 and 522.

<sup>108</sup> Commission decision of 6 February 2018 in case M.8665 - Discovery/Scripps, paragraph 12.

<sup>109</sup> Responses to questionnaires Q2, Q5, Q7 and Q9 to TV broadcasters in Finland, Sweden, Denmark and Norway, to questionnaires Q1, Q4, Q6 and Q8 to TV distributors in Finland, Sweden, Denmark and Norway, and to questionnaire Q3 to sport rights holders in Finland, and to questionnaire Q12 to AV rights holders in Sweden, question C.1.

<sup>110</sup> Commission decisions of 6 November 2018 in case M.8785 – Disney/Fox, paragraph 70; of 7 April 2017 in case M.8354 – Fox/Sky, paragraph 62; of 24 February 2015 in case M.7194 – Liberty Global/Corelio/W&W/De Vijver Media, recital 60.

thereby excluding captive TV production (TV content produced by TV broadcasters for use on their own channels), as this TV content is not offered on the market.<sup>111</sup>

- (117) With regard to the market for the licensing of broadcasting rights for pre-produced TV content, the Commission has considered that this market may be subdivided by content type, in particular: (i) films, (ii) sports,<sup>112</sup> and (iii) other TV content; and potential sub-segments within these content types, but ultimately left the market definition open.<sup>113</sup> The Commission has also considered further sub-dividing the market for the licensing of broadcasting rights for TV content by exhibition window: (i) SVOD, (ii) TVOD, (iii) PPV, (iv) first pay TV window, (v) second pay TV window, and (vi) FTA.<sup>114</sup>

#### 7.3.1.2. Notifying Party's view

- (118) In its initial submission, the Notifying Party considers that it is not necessary to take a firm view on whether, on the one hand, the production and supply of TV content and, on the other hand the licensing of broadcasting rights for pre-produced TV content constitute separate product market since the Transaction cannot be deemed to lead to a significant impediment to effective competition in either case.<sup>115</sup>
- (119) With regard to the production of TV content, the Notifying Party submits that it would be neither appropriate, nor necessary to subdivide the market into different segments, as the Transaction would not give rise to any overlaps or affected markets under any market segmentation.<sup>116</sup>
- (120) With regard to the licensing of broadcasting rights for pre-produced TV content, the Notifying Party submits that it would be neither appropriate, nor necessary to subdivide the market into different segments, as the Transaction would (i) not give rise to any overlaps between the Parties on the licensing side or acquisition side of the market in Sweden and Denmark, and (ii) give rise to minor overlaps on the licensing side and the acquisition side of the market in Finland.<sup>117</sup>

#### 7.3.1.3. Commission's assessment

- (121) The information gathered during the Phase I market investigation<sup>118</sup> did not give reason to depart from the distinction between the market for the production of AV

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<sup>111</sup> Commission decisions of 22 September 2006 in case M.4353 - Permira/All3Media Group, recitals 11-12; of 9 October 2014 in case M.7360 - 21st Century Fox/Apollo/JV, recital 36; of 20 June 2016 in case M.7865 – Lov Group/De Agostini/JV, recital 18.

<sup>112</sup> As regards sports, the Commission has also previously considered a distinction between football and other sports and further distinctions within football, for example, between regular football events and football events that are played more intermittently (Commission decision of 18 January 2007 in case M.4519 - Lagardère/Sportfive, recital 10).

<sup>113</sup> Commission decisions of 7 April 2017 in case M.8354 - Fox Sky, paragraph 68; of 21 December 2011 in case M.6369 - HBO/Ziggo/HBO Nederland, recital 21; of 24 February 2015 in case M.7194 - Liberty Global/Corelio/W&W/De Vijver Media, recital 69.

<sup>114</sup> Commission decisions of 7 April 2017 in case M.8354 - Fox/Sky, paragraph 67; of 24 February 2015 in case M.7194 - Liberty Global/Corelio/W&W/De Vijver Media, recital 69.

<sup>115</sup> Form CO, paragraph 209.

<sup>116</sup> Form CO, paragraph 231.

<sup>117</sup> Form CO, paragraph 316.

<sup>118</sup> With regard to market definition, given that market participants were asked the same set of questions for Finland, Sweden, Denmark and Norway, respondents active across the Nordics may have given several times the same responses to some questions. Therefore, for the purposes of analysing the results of the market investigation, the Commission set the following calculation rule: for each question, identical responses of a same respondent are counted once.

content on the one hand, and the market for the licensing of broadcasting rights for pre-produced AV content on the other hand.<sup>119</sup>

- (122) With regard to the market for the licensing of broadcasting rights for AV content, a majority of the respondents considered that the product market could be further segmented on the basis of the type of content. The results of the Phase I market investigation, however, showed that a further segmentation on the basis of the type of exhibition windows would not necessarily be relevant, given that such a segmentation at this level of the value chain is becoming increasingly blurred due to the uptake of non-linear services.<sup>120</sup>
- (123) In the Article 6(1)(c) Decision, the Commission reached the preliminary conclusion that the production of AV content on the one hand and the licensing of broadcasting rights for TV content on the other hand were two separate product markets, and that, in any event, the question whether the market for the licensing of broadcasting rights for AV content could be further segmented depending on the type of AV content or exhibition window could be left open, as the effects of the Transaction were unlikely to differ irrespective of the scope of the product market.
- (124) In its Response to the Article 6(1)(c) Decision, the Notifying Party did not contest the preliminary assessment of the Commission. No further elements emerged during the Phase II investigation.
- (125) In light of the foregoing, the Commission does not depart from its previous assessment, and concludes, for the purpose of this Decision, that (i) the production of AV content and the licensing of broadcasting rights for AV content constitute two separate product markets, and (ii) the question whether the market for the licensing of broadcasting rights for AV content can be further segmented depending on the type of AV content or exhibition window can be left open, as this would not change the outcome of the competitive assessment in the present case.

### 7.3.2. *Geographic market definition*

#### 7.3.2.1. Previous Commission decisions

- (126) The Commission has previously considered the geographic markets for both the production of TV content and the licensing of broadcasting rights for TV content to be national in scope or encompassing a linguistically homogeneous area.<sup>121</sup>

#### 7.3.2.2. Notifying Party's view

- (127) In its initial submission, the Notifying Party submits that the exact definition of the geographic markets for the production of TV content and the licensing of broadcasting rights for TV content can be left open, as the Transaction would not raise competitive concerns under any alternative market definition.<sup>122</sup>

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<sup>119</sup> Responses to questionnaire Q3 to sports rights holders in Finland, questions C.1, C.1.1, C.3, C.3.1, and to questionnaire Q12 to rights holders in Sweden, questions C.1, C.1.1, C.2 and C.2.1.

<sup>120</sup> Responses to questionnaire Q3 to sports rights holders in Finland, questions C.3 and C.3.1, and to questionnaire Q12 to rights holders in Sweden, questions C.2, C.2.1, C.4 and C.4.1.

<sup>121</sup> Commission decisions of 7 April 2017 in case M.8861 - Comcast/Sky, recital 74; of 21 December 2010 in case M.5932 - News Corp/BSkyB, recitals 73–75; of 15 April 2013 in case M.6880 - Liberty Global/Virgin Media, recital 24; of 24 February 2015 in case M.7194 - Liberty Global/Corelio/W&W/De Vijver Media, recitals 73–76.

<sup>122</sup> Form CO, paragraphs 243 and 324.

### 7.3.2.3. Commission's assessment

- (128) According to a majority of respondents to the Phase I market investigation, the geographic scope of agreements for the licensing of broadcasting rights for AV content is either national, by linguistic area, or regional, that is to say, encompassing the Nordic region.<sup>123</sup>
- (129) In the Article 6(1)(c) Decision, the Commission reached the preliminary conclusion that, in any event, the exact geographic market definition for the production of TV content and the licensing of broadcasting rights for AV content could be left open, as the effects of the Transaction were unlikely to differ depending on the geographic scope of the market.
- (130) In its Response to the Article 6(1)(c) Decision, the Notifying Party did not contest the preliminary assessment of the Commission. No further elements emerged during the Phase II investigation.
- (131) In light of the foregoing, the Commission does not depart from its previous assessment, and concludes, for the purpose of this Decision, that the geographic markets for the production of AV content and the licensing of broadcasting rights for AV content are either national, by linguistic area, or regional, that is to say, encompassing the Nordic region, but that the exact geographic market definition can be left open, as this would not change the outcome of the competitive assessment in the present case.

## 7.4. Wholesale supply of TV channels

- (132) As explained in Section 7.1.3 above, TV broadcasters package the AV content and broadcasting rights for AV content that they have acquired or produced in-house into linear TV channels, which are supplied to retail providers of AV content, and then broadcast to end users either on a FTA basis or on a pay TV basis. Ancillary services have gradually been associated to TV channels in order to complement the TV offering and enhance the viewer experience of traditional linear channels.
- (133) The wholesale supply of TV channels is an intermediate layer between (i) the upstream production and licensing of content, and (ii) the downstream retail provision of AV services to end customers.

### 7.4.1. Product market definition

#### 7.4.1.1. Previous Commission decisions

- (134) In previous decisions, the Commission identified a wholesale market for the supply of TV channels. Within that market, in certain decisions, the Commission has further identified two separate product markets for: (i) FTA TV channels, and (ii) pay TV channels.<sup>124</sup> The Commission has further stated that within the pay TV channels market, there could be different segments for: (i) basic pay TV channels, and

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<sup>123</sup> Responses to questionnaire Q3 to sports rights holders in Finland and to question Q12 to rights holders in Sweden, question D.1.

<sup>124</sup> Commission decision of 20 September 2013 in case M.6990 – Vodafone/Kabel Deutschland, paragraph 41 (identifying separate markets); Commission decision of 30 May 2018 in case M.7000 Liberty Global/Ziggo, paragraph 111 (leaving open the question as to whether FTA and Pay TV belong to separate markets, because of peculiarities of the Dutch TV market); Commission decision of 7 April 2017 in case M.8354 – Fox / Sky, paragraph 85 (leaving open the question whether the market for the wholesale supply of TV channels should be further segmented among FTA, basic pay TV and premium pay TV).

- (ii) premium pay TV channels,<sup>125</sup> for which end customers pay a premium in addition to their basic subscription fee.
- (135) In its decision of 24 February 2015 in case M.7194 – *Liberty Global/Corelio/W&W/De Vijver Media*, the Commission has concluded that at the level of the wholesale supply of TV channels there were two separate product markets, one consisting of the wholesale supply of premium pay TV channels and one consisting of the wholesale supply of basic pay TV/FTA channels. Given that (i) FTA channels were mostly supplied together with basic pay TV channels and (ii) the competitive assessment would remain the same even if FTA channels were regarded as belonging to a separate product market from that of basic pay TV, the Commission has considered that it was not necessary to make a distinction between FTA and basic pay TV channels on the market for wholesale supply of TV channels in that case.<sup>126</sup>
- (136) In that case, the Commission also considered that there was no need to draw a distinction between linear TV channels and their ancillary services, which are licensed by TV broadcasters to TV distributors along with, or in addition to, those linear TV channels.<sup>127</sup>
- (137) In addition, in previous decisions, the Commission also examined a number of other potential segmentations, including: (i) genre or thematic content (such as films, sports, news, youth, and others)<sup>128</sup>; and (ii) the different means of infrastructure used for the delivery to the viewer (cable, satellite, terrestrial TV and IPTV).<sup>129</sup> It has ultimately left the market definition open in all these regards.

#### 7.4.1.2. Notifying Party's view

- (138) Both in its initial submission and in its Response to the Article 6(1)(c) Decision, the Notifying Party considers that there is no need to make any segmentation on the market for wholesale supply of TV channels.<sup>130</sup>
- (139) In particular, the Notifying Party considers in its initial submission that it is not relevant to segment (i) the market for wholesale supply of TV channels between FTA TV channels and pay TV channels, (ii) the market for wholesale supply of pay TV channels between basic pay TV channels and premium pay TV channels, (iii) the market for wholesale supply of premium pay TV channels between premium pay TV sports channels and premium pay TV film channels, and (iv) the market for wholesale supply of TV channels between general interest TV channels and thematic

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<sup>125</sup> Commission decisions of 6 November 2018 in case M.8785 – Disney/Fox, recital 77; of 15 June 2018 in case M.8861 – Comcast/Sky, recital 50; of 6 February 2018 in case M.8665 - Discovery/Scripps, recitals 19- 20; of 7 April 2017 in case M.8354 - Fox/Sky, recitals 80- 81.

<sup>126</sup> Commission decision of 24 February 2015 in case M.7194 - Liberty Global/Corelio/W&W/De Vijver Media, recitals 90 and 91.

<sup>127</sup> Commission decision of 24 February 2015 in case M.7194 - Liberty Global/Corelio/W&W/De Vijver Media, recital 94.

<sup>128</sup> Commission decisions of of 7 April 2017 in case M.8354 – Fox/Sky, recital 82-83; of 24 February 2015 in case M.7194 - Liberty Global/Corelio/W&W/De Vijver Media, recital 92; of 2 April 2003 in case M.2876 - NewsCorp/Telepiù, 2 April 2003, recital 76; of 18 July 2007 in case M.4504 - SFR/Télé 2 France, recitals 41-42; of 26 August 2008 in case M.5121 - News Corp/Premiere, recital 35; of 21 December 2010 in case M.5932 - News Corp/BskyB, recital 81; of 10 October 2014 in case M.7000 - Liberty Global/Ziggo, recital 89.

<sup>129</sup> Commission decisions of 24 February 2015 in case M.7194 - Liberty Global/Corelio/W&W/De Vijver Media, recital 98; of 18 July 2007 in case M.4504 - SFR/Télé 2 France, recital 44; of 26 August 2008 in case M.5121 - News Corp/Premiere, recital 22.

<sup>130</sup> Form CO, paragraphs 413 to 415, and Response to the 6(1)(c) Decision, paragraph 12.

TV channels.<sup>131</sup> In addition, the Notifying Party considers that it is not necessary to segment the market for wholesale supply of TV channels (i) according to the type of infrastructure used for their transmission, or (ii) between linear and ancillary non-linear services.

- (140) Ultimately, the Notifying Party submits that the question whether the wholesale market for the supply of TV channels must be further segmented can be left open.<sup>132</sup>

#### 7.4.1.3. Commission's assessment

- (141) A majority of respondents to the Phase I market investigation across the four relevant geographies indicated that the segmentation between **FTA** and **pay** TV channels continues to be appropriate.<sup>133</sup>
- (142) However, a number of well-substantiated responses to the Phase I market investigation suggested that this segmentation is not clear-cut for the following reasons.
- (143) First, from a supply-side perspective, some respondents indicated that, in the countries at stake, it might be relevant to consider FTA and pay TV channels together. In that respect, some respondents which are active across the Nordics (NENT, The Walt Disney Company, HBO Nordic) stressed that broadcasters of pay TV channels and broadcasters of FTA TV channels often compete for the same content and ultimately compete for the same viewer base.<sup>134</sup> While not considering that there exists distinct product markets for wholesale supply of FTA and pay TV channels, NENT further noted that if one were to segment the market for wholesale supply of TV channels, a distinction should be made between non-commercial FTA TV channels on the one hand, and commercial FTA TV channels and pay TV channels on the other hand, as the business model of non-commercial FTA TV channels differs significantly from the business model of commercial FTA TV channels or pay TV channels.
- (144) Second, the Swedish retail provider Tele2 and the Finnish retail provider Elisa considered that it would be more accurate to segment the market for wholesale supply of TV channels between FTA and basic pay TV channels on the one hand, and premium pay TV channels on the other hand, notably given similarities between FTA and basic pay TV channels.<sup>135</sup> In that respect, Tele2 submitted that FTA and basic pay TV channels shared the following features: a broad offering, the prominence of advertising revenues (with regard to commercial FTA only), and the fact that all basic pay TV packages include the FTA channels.
- (145) Last, some market participants stressed the specificity of the Finnish market, where there is a minor offer of basic pay TV channels in view of the national legislative

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<sup>131</sup> Form CO, paragraphs 403 to 412.

<sup>132</sup> Form CO, paragraph 402.

<sup>133</sup> Responses to questionnaires Q2, Q5, Q7 and Q9 to TV broadcasters in Finland, Sweden, Denmark and Norway, and to questionnaires Q1, Q4, Q6 and Q8 to TV distributors in Finland, Sweden, Denmark and Norway, questions C.2 and C.2.1.

<sup>134</sup> HBO Nordic, The Walt Disney Company and NENT's responses to questionnaires Q2 (ID000795, ID001193, ID000786), Q5 (ID000792, ID001199, ID000752), Q7 (ID000758, ID001196, ID000764) and Q9 (ID000761, ID001202, ID000767) to TV broadcasters in Finland, Sweden, Denmark and Norway, question C.2.1, and NENT's response to questionnaires Q1 and Q4 to TV distributors in Finland and Sweden, question C.2.1 (ID001506 and ID000747).

<sup>135</sup> Tele2's response to questionnaire Q4 to TV distributors in Sweden (ID000634), and of Elisa to questionnaire Q1 to TV distributors in Finland, questions C.2.3 and C.2.3.1 (ID001084).

- framework, which prevents housing companies from collecting basic TV fees from households.<sup>136</sup>
- (146) The results of the Phase I market investigation were also mixed as to whether a distinction should be made between (i) **basic pay** TV channels, and (ii) **premium pay** TV channels, for which end customers pay a premium in addition to their basic subscription fee.<sup>137</sup>
- (147) Some respondents to the Phase I market investigation considered this distinction to be blurred, given notably that several retail providers are introducing point based optional packages, where subscribers may use points to select between a range of channels and services that include both basic and premium pay TV channels.<sup>138</sup> However, most respondents stressed the premium nature of the pay TV channels that offer such valuable content that end-customers are willing to pay more to view it. This held in particular true with regard to premium pay TV sports channels.<sup>139</sup> In that respect, for instance, Sanoma considered that “*In Finland premium sports is still a big, if not the biggest driver of consumer paid TV content*”.
- (148) The results of the Phase I market investigation indicated that the wholesale supply of pay TV channels could be further sub-divided according to **genre** (e.g. **films, sports, youth, general entertainment, news**).<sup>140</sup> Indeed, most respondents stressed that distributors would seek to offer a variety of genres to end-customers. Channels of different genres would thus be complementary. In this respect, one respondent considered that “*a pay-TV package with a wide appeal within a household should contain genres that appeal to men (e.g. sports, which are considerably more expensive to acquire than the other channels), women (e.g. films) and kids (e.g. youth, entertainment)*”.<sup>141</sup> In particular, some retail providers of AV services stressed the specific place of sports channels within their retail offers.<sup>142</sup>
- (149) In that respect, the Finnish retail provider DNA considered that “*especially premium sports channels are to be distinguished as a separate market from other thematic pay-TV channels due to the audience not being willing to switch to premium sports to any other genre*”.<sup>143</sup> DNA also evidenced this distinction by stressing (i) the fact that premium sports are broadcast live, and (ii) the significant price difference between premium sports channels and other pay TV channels. In addition, another Finnish retail provider, Elisa, stated that “[a] retail distributor cannot substitute or supply as an alternative particularly premium sports, such as Formula 1 and national ice hockey league (Liiga), with any other genre of content or even with a lesser sports

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<sup>136</sup> Responses to questionnaire Q2 to TV broadcasters in Finland, question C.2.1.

<sup>137</sup> Responses to questionnaires Q2, Q5, Q7 and Q9 to TV broadcasters in Finland, Sweden, Denmark and Norway, and to questionnaires Q1, Q4, Q6 and Q8 to TV distributors in Finland, Sweden, Denmark and Norway, questions C.2, C.2.1 and C.2.2.

<sup>138</sup> TV2’s response to questionnaire Q9 to TV broadcasters in Norway C.2.1 (ID00972).

<sup>139</sup> Responses to questionnaires Q2, Q5, Q7 and Q9 to TV broadcasters in Finland, Sweden, Denmark and Norway, and to questionnaires Q1, Q4, Q6 and Q8 to TV distributors in Finland, Sweden, Denmark and Norway, questions C.2 to C.3.1.

<sup>140</sup> Responses to questionnaires Q2, Q5, Q7 and Q9 to TV broadcasters in Finland, Sweden, Denmark and Norway, and to questionnaires Q1, Q4, Q6 and Q8 to TV distributors in Finland, Sweden, Denmark and Norway, questions C.3 to C.3.1.

<sup>141</sup> Digita’s response to questionnaire Q1 to TV distributors in Finland, question C.3.1 (ID00780).

<sup>142</sup> Responses to questionnaires Q2, Q5, Q7 and Q9 to TV broadcasters in Finland, Sweden, Denmark and Norway, and to questionnaires Q1, Q4, Q6 and Q8 to TV distributors in Finland, Sweden, Denmark and Norway, questions C.3 and C.3.1.

<sup>143</sup> DNA’s response to questionnaire Q1 to TV distributors in Finland, question C.3.1.

*content*" and that "[t]here is also a clear difference in the customers willingness to pay for content between different genre".<sup>144</sup>

- (150) With regard to a possible segmentation of TV channels depending on the type of infrastructure used for their transmission, the results of the Phase I market investigation did not provide reasons to conclude that different means of infrastructure used for the delivery to the viewer (cable, satellite, terrestrial TV and IPTV) could constitute different product markets.
- (151) With regard to a possible distinction between linear TV channels and their **ancillary non-linear services**, the results of the Phase I market investigation did not provide reasons to depart from the Commission's previous approach.<sup>145</sup>
- (152) In the Article 6(1)(c) Decision, the Commission reached the preliminary conclusion that the relevant product markets were, irrespective of whether a segmentation by type of transmission infrastructure would be relevant, as follows:
- the market for wholesale supply of FTA and basic pay TV channels, including their ancillary services. The question whether this product market can be further segmented between FTA and basic pay TV channels or by genre could be left open, as the Transaction would raise serious doubts as to its compatibility with the internal market regardless of the precise product market definition;
  - the market for wholesale supply of premium pay TV sports channels, including their ancillary services or any packages of premium pay TV channels including sports TV channels. The Commission stated that the question whether premium pay TV sports channels and premium pay TV non-sports channels are part of the same product market would be further investigated in Phase II.
- (153) In its Response to the Article 6(1)(c) Decision, the Notifying Party maintained that in any case there is no need to make any segmentation of the market for wholesale supply of TV channels, and that this view seems to have gained significant support from the market during the Phase I market investigation.<sup>146</sup>
- (154) In Phase II, the Commission further investigated whether the wholesale supply of premium pay TV channels on the one hand, and the wholesale supply of non-premium pay TV channels, namely FTA and basic pay TV channels, on the other hand, form distinct product markets. The Commission also further investigated whether the wholesale supply of premium pay TV sports channels on the one hand, and the wholesale supply of premium pay TV non-sports channels on the other hand, are part of the same product market.
- (155) First, most of the respondents to the Phase II market investigation stated that end customers consider that certain pay TV channels offer such valuable content that they are willing to pay more to view them, namely premium pay TV channels, either through a specific subscription, or through the subscription of a more expensive package.<sup>147</sup> In particular, they considered that premium pay TV channels on the one

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<sup>144</sup> Elisa's response to questionnaire Q1 to TV distributors in Finland, question C.3.1.

<sup>145</sup> Responses to questionnaires Q2, Q5, Q7 and Q9 to TV broadcasters in Finland, Sweden, Denmark and Norway, questions C.8.3.

<sup>146</sup> Notifying Party's response to the Article 6(1)(c) Decision, paragraph 12.

<sup>147</sup> Responses to questionnaires Q13 and Q14 to retail providers of AV services in Sweden and Finland, question 25, and to questionnaires Q15 and Q16 to TV broadcasters in Sweden and Finland, question 23.

hand, and FTA and basic pay TV channels on the other hand, have different characteristics in terms of (i) quality and offer of content (for example, exclusive content or specific films and series, sports), (ii) costs for retail providers of AV services (for example, carriage fees), and (iii) intended retail prices and positioning in retail offers,<sup>148</sup> which would make them complementary products at wholesale level. In that respect, Tele2 stated that “*for a distributor, it is necessary to be able to offer a comprehensive basic pay TV as well as premium pay TV offering in order to cater to customer demand*”.<sup>149</sup>

- (156) In particular, Tele2, which considered in Phase I that it would be more accurate to segment the market for wholesale supply of TV channels between FTA and basic pay TV channels on the one hand, and premium pay TV channels on the other hand, stressed that “*Premium pay TV and basic pay TV differs widely from each other*”, and added: “*The two main differential factors are content and business model. Basic pay TV offers, in general, older content compared to Premium pay TV's new series and live sports event. The main Swedish basic pay TV channels also are the main providers of locally produced content. The business model for Basic pay TV is primarily based on advertisement revenue and cost per channel, compared to Premium pay TV which often is based on a revenue share model per subscriber. The more exclusive the content gets, the higher price we need to pay. And the more we pay the higher the price and positioning becomes toward customers.*”<sup>150</sup> Tele2 added: “[T]here is a reason content is divided into Basic and Premium, where basic represents lower quality and premium higher quality. That makes it more or less impossible to replace premium content with basic.”<sup>151</sup> In addition, Discovery also stated that premium pay and non-premium pay TV channels are very different in their offerings regarding quality, content and intended positioning at retail level.<sup>152</sup> Telenor noted that content providers always include clauses “*as to how specific channels or content should be packaged by the distributor – for example if a channel must be included in the basic package (usually a prerequisite for broad appeal channels), or can be sold as premium*”.<sup>153</sup> Last, Elisa submitted that “[c]ustomer preferences are most obviously shown with regard to premium content while the general content offered by FTA and basic pay-TV are more similar”.<sup>154</sup>
- (157) In light of the above, the Commission considers, for the purpose of this Decision, that premium pay TV channels and non-premium pay TV channels are distinct products.
- (158) Second, as regards Sweden, FTA and basic pay TV channels present similarities. In particular, in contrast with wholesale suppliers of premium TV channels, wholesale

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<sup>148</sup> Responses to questionnaires Q13 and Q14 to retail providers of AV services in Sweden and Finland, question 26, and to questionnaires Q15 and Q16 to TV broadcasters in Sweden and Finland, questions 24 and 25.

<sup>149</sup> Tele2's response to questionnaire Q13 to retail providers of AV services in Sweden, question 29.1 (ID02255).

<sup>150</sup> Tele2's response to questionnaire Q13 to retail providers of AV services in Sweden, question 26.1 (ID02255).

<sup>151</sup> Tele2's response to questionnaire Q13 to retail providers of AV services in Sweden, question 28.1 (ID02255).

<sup>152</sup> Discovery's response to questionnaire Q15 to TV broadcasters in Sweden, question 24.1 (ID02247).

<sup>153</sup> Telenor's response to questionnaire Q13 to retail providers of AV services in Sweden, question 26.1 (ID02816).

<sup>154</sup> Elisa's response to questionnaire Q14 to retail providers of AV services in Finland, question 26.1 (ID002036).

suppliers of both (i) commercial and non-commercial FTA, and (ii) basic pay TV channels, typically seek to achieve a broad distribution of their TV channels. Primarily advertisement-funded commercial FTA and basic pay TV channels seek to maximise their advertising revenues through broad reach, and non-commercial FTA TV channels need to comply with each obligation provided for by their public service remit. In addition, 7.2% of the households receive only FTA terrestrial signals<sup>155</sup>, and all basic pay TV packages include the Swedish FTA TV channels.<sup>156</sup> FTA TV channels have thus a limited standalone presence, and most customers receive them together with a basic pay TV channel subscription. Therefore, there are indications that FTA and basic pay TV channels are part of the same product market in Sweden. As regards Finland, there are no such indications, as (i) about half of the Finnish population watch TV at home via the terrestrial network,<sup>157</sup> and, (ii) as noted above, there is only a minor offer of basic pay TV channels.

- (159) In light of the above, the Commission considers that, for the purpose of this Decision, the question whether the wholesale supply of FTA TV channels and the wholesale supply of basic pay TV channels belong to the same product market can be left open, as this would not change the outcome of the competitive assessment in the present case.
- (160) Third, a majority of respondents to the Phase II market investigation considered that premium pay TV sports channels on the one hand, and premium pay TV non-sports channels on the other hand, have different characteristics in terms of (i) quality and offer of content (for example, exclusive content or specific films and series, sports), (ii) costs for retail providers of AV services, and (iii) intended retail prices and positioning in retail offers.<sup>158</sup> In that respect, Discovery indicated that sports and non-sports content “*vary significantly in terms of customer appeal and viewing*”.<sup>159</sup> SVT highlighted that TV broadcasters spend more money on the service provided by the premium sports channels.<sup>160</sup> Telenor stressed that “[p]remium sports are generally so expensive that only those very interested in them would buy them”.<sup>161</sup> Accordingly, DNA considered that premium sports content is not substitutable to other premium content<sup>162</sup> and stressed in that respect that if a TV channel “*offers premium sport content e.g. Liiga or Formula 1 on an exclusive basis, there are no substitute channels content wise*”.<sup>163</sup> Tele2 claimed that retail TV offerings would have to include both film and sports TV channels, as they would not be substitutable for customers.<sup>164</sup>

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<sup>155</sup> Bonnier Broadcasting’s internal email, subject: “RE: Annonsintäkt per distributionskälla”, 11 June 2018 (ID001776-37742).

<sup>156</sup> Tele2’s response to questionnaire Q4 - TV distributors in Sweden, question C.2.3.1 (ID000634).

<sup>157</sup> Form CO, paragraph 735.

<sup>158</sup> Responses to questionnaires Q13 and Q14 to retail providers of AV services in Sweden and Finland, question 30, and to questionnaires Q15 and Q16 to TV broadcasters in Sweden and Finland, questions 29 and 30.

<sup>159</sup> Discovery’s response to questionnaire Q16 to TV broadcasters in Finland, question 29.1 (ID002848).

<sup>160</sup> SVT’s response to questionnaire Q15 to TV broadcasters in Sweden, question 29.1 (ID002075).

<sup>161</sup> Telenor’s response to questionnaire Q13 to retail providers of AV services in Sweden, question 30.1 (ID002816).

<sup>162</sup> DNA’s response to questionnaire Q14 to retail providers of AV services in Finland, question 29.1 (ID001990).

<sup>163</sup> DNA’s response to questionnaire Q14 to retail providers of AV services in Finland, question 28.1 (ID01990).

<sup>164</sup> Tele2’s response to questionnaire Q13 to retail providers of AV services in Sweden, question 30.1 (ID002255).

- (161) In light of the above, the Commission concludes that there are indications that premium pay TV sports channels and premium pay TV non-sports channels could belong to distinct product markets. In any case, the question whether premium pay TV sports channels and premium pay TV non-sports channels are part of the same product market can be left open, as this would not change the outcome of the competitive assessment in this case.<sup>165</sup>
- (162) Fourth, the Commission considers that the market for wholesale supply of TV channels, and any other possible segmentation, should not be further segmented according to type of infrastructure used for the delivery to the viewer (such as cable, satellite, DTH, DTT and IPTV) since the competitive condition in the market for the wholesale supply of TV channels, and any possible segmentation, would be similar irrespective of the distribution technology and type of infrastructure used for the distribution of the TV channels. First, Bonnier Broadcasting has indicated that the market shares provided for each category of TV channels, serves as a proxy for the market shares for each category of TV channels per each separate distribution technology. Market shares are unlikely to differ materially between the various distribution technologies.<sup>166</sup> Second, broadcasters do not discriminate among TV distributors and provide their TV channels including ancillary services irrespective of type of infrastructure (cable, satellite, DTH, DTT and IPTV). In particular, most of the broadcasters indicate that they distribute their TV channels on all types of infrastructure.<sup>167</sup> Moreover, the Commission notes that Bonnier Broadcasting is supplying its TV channels to TV distributors irrespective of type of infrastructure.<sup>168</sup> However, the Commission notes that broadcasters may have different incentives in distributing their channels for specific distribution technologies. For example, broadcasters may have different incentive when there are active in the downstream market for the retail supply of AV service. In particular, Bonnier Broadcasting's incentives to distribute its TV channels via OTT in Sweden and Finland are presented respectively in sections 8.5.1.1 and 8.5.2.1. Finally, the Commission notes that also, from a demand-side perspective, as described in Section 7.5.1 below, the retail supply of pay AV services should not be further segmented according to **distribution forms**, given (i) the similarities of content and prices across distribution platforms, and (ii) that households typically have access to different combinations of distribution forms.
- (163) In light of the foregoing, the Commission concludes, for the purpose of this Decision, that the relevant markets for the wholesale supply of TV channels, are:
- the market for the wholesale supply of premium pay TV channels (including their ancillary services), covering all types of infrastructure. The question whether such market should be further segmented between premium pay TV

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<sup>165</sup> See Section 8 where it is concluded that the Transaction would not significantly impede effective competition as a result of input foreclosure of **premium pay TV non-sports** (that is films and series) channels in Sweden, Finland, Norway and Denmark. In addition, the commitments offered by Telia in the present case are capable of eliminating the competition concerns of input foreclosure of **premium pay TV sports** channels in Sweden and Finland. Therefore, no concern remains on the overall market for premium pay TV channels in Sweden, Finland, Norway and Denmark.

<sup>166</sup> Parties' response to the Commission's RFI 77.

<sup>167</sup> Responses to questionnaires Q2, Q5, Q7 and Q9 to TV broadcasters in Finland, Sweden, Denmark and Norway, questions B.1.1.

<sup>168</sup> Bonnier Broadcasting's agreements with TV distributors provided in response to Commission's RFI14, Annex 2 (ID00651).

- sports channels and premium pay TV non-sports channels can be left open, as this would not change the outcome of the competitive assessment in this case;
- the market for the wholesale supply of other TV channels, that is FTA and basic pay TV channels (including their ancillary services), covering all types of infrastructure. The question whether such market should be further segmented between (i) FTA and basic pay TV channels, or (ii) according to genre can be left open, as this would not change the outcome of the competitive assessment in this case.

#### 7.4.2. *Geographic market definition*

##### 7.4.2.1. Previous Commission decisions

- (164) The Commission has previously considered that the market for the wholesale supply of TV channels could be national,<sup>169</sup> sub-national<sup>170</sup> or potentially comprising a broader linguistically homogeneous area.<sup>171</sup>

##### 7.4.2.2. Notifying Party's view

- (165) In its initial submission, the Notifying Party considers that the exact definition of the geographic market for the wholesale supply of TV channels can be left open, as the Transaction would not raise competitive concerns under any alternative market definition. The Notifying Party submits, however, that the relevant geographic market can be assumed to be national for the purposes of its notification.<sup>172</sup>

##### 7.4.2.3. Commission's assessment

- (166) The results of the Phase I market investigation indicated that, despite being sometimes negotiated on a regional basis, that is to say, encompassing the Nordic region, the agreements between TV broadcasters and retail providers of AV services for the wholesale supply of TV channels are mainly negotiated on a national basis.<sup>173</sup>
- (167) In the Article 6(1)(c) Decision, the Commission reached the preliminary conclusion that the relevant geographic market for (i) the wholesale supply of FTA and basic pay TV channels, and (ii) the wholesale supply of premium pay TV sports channels or any packages of premium pay TV channels including sports TV channels are national.
- (168) In its Response to the Article 6(1)(c) Decision, the Notifying Party did not contest the preliminary assessment of the Commission. No further element emerged in the Phase II investigation

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<sup>169</sup> Commission decisions of 6 November 2018 in case M.8785 – Disney/Fox, recital 86; of 7 April 2017 in case M.8354 – Fox/Sky, recital 89; of 21 December 2011 in case M.6369 - HBO/Ziggo/HBO Nederland, recital 39; of 15 April 2013 in case M.6880 - Liberty Global/Virgin Media, recital 41; of 10 October 2014 in case M.7000 - Liberty Global/Ziggo, recital 98.

<sup>170</sup> Commission decisions of 7 April 2017 in case M.8354 – Fox/Sky, recital 89; of 24 February 2015 in case M.7194 - Liberty Global/Corelio/W&W/De Vijver Media, recital 108.

<sup>171</sup> Commission decisions of 7 April 2017 in case M.8354 – Fox/Sky, recital 89; of 21 December 2010 in case M.5932 - News Corp/BskyB, recitals 86–88; of 15 April 2013 in case M.6880 - Liberty Global/Virgin Media, recital 41.

<sup>172</sup> Form CO, paragraph 418.

<sup>173</sup> Responses to questionnaires Q2, Q5, Q7 and Q9 to TV broadcasters in Finland, Sweden, Denmark and Norway, and to questionnaires Q1, Q4, Q6 and Q8 to TV distributors in Finland, Sweden, Denmark and Norway, question D.1.

- (169) In light of the foregoing, the Commission does not depart from its previous assessment, and concludes, for the purpose of this Decision, that the relevant market for the wholesale supply of TV channels is national in scope.

## 7.5. Retail supply of AV services

- (170) As explained in Section 7.1.4 above, retail providers of AV services offer packages of linear AV services and/or non-linear AV services to end customers. Such linear and non-linear AV services can be augmented with ancillary services, such as Catch-Up TV, PVR, TVE, Start-Over or Dual Entry.
- (171) The retail supply of AV services is the layer in the AV value chain. Retail AV services can be delivered to end users through a number of technical means including cable, satellite and IPTV. OTT players deliver channels and content in both a linear and non-linear fashion through the use of the open internet.

### 7.5.1. *Product market definition*

#### 7.5.1.1. Previous Commission decisions

- (172) In previous decisions, the Commission considered the retail provision of FTA TV and pay TV services as separate markets, but ultimately left open the product market definition.<sup>174</sup> The Commission also considered whether pay TV could be segmented further according to: (i) linear vs non-linear pay TV services;<sup>175</sup> and (ii) premium vs basic pay TV services.<sup>176</sup> However, the Commission has left open the market definition with regard to each of these potential sub-segments.
- (173) In its decision of 18 July 2019 in case M.8864 - *Vodafone/Certain Liberty Global Assets*, the Commission considered that there were indications that a distinction exists between basic and premium TV services, given differences in both prices and types of content between the different types of TV channels included in basic and premium TV services. The Commission noted that FTA channels that are typically part of a basic TV package show content of general interest, including news, entertainment shows, talk shows, while pay TV channels offer dedicated content and are sold on top of the basic package for higher price. Pay TV typically offers more exclusive content, for instance recent movies (first exhibition window), live sports and thematic/niche content, and that premium TV services are hence seen as complementary to basic TV services, which was also corroborated by the fact that for

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<sup>174</sup> Commission decisions; of 6 November 2018 in case M.8785 - Disney/Fox, recital 98; of 8 October 2018 in case M.8842 – Tele2/ComHem, recital 37; of 30 May 2018 in case M.7000 – Liberty Global/Ziggo, recital 137; of 6 February 2018 in case M.8665 - Discovery/Scripps, recital 33; of 7 April 2017 in case M.8354 – Fox/Sky, recital 101; of 3 August 2016 in case M.7978 – Vodafone/Liberty Global/Dutch JV, recital 56; of 24 February 2015 in case M.7194 - Liberty Global/Corelio/W&W/De Vijver Media, recital 152.

<sup>175</sup> Commission decisions of 18 July 2019 in case M.8864 - Vodafone/certain Liberty Global assets, recitals 79 and 83; of 6 November 2018 in case M.8785 - Disney/Fox, recital 98; of 8 October 2018 in case M.8842 – Tele2/ComHem, recital 37; of 15 June 2018 in case M. 8861 - Comcast/Sky, recital 59; of 30 May 2018 in case M.7000 – Liberty Global/Ziggo, recital 137; of 6 February 2018 in case M.8665 - Discovery/Scripps, recital 32; of 7 April 2017 in case M.8354 – Fox/Sky, recitals 98 and 101; of 3 August 2016 in case M.7978 – Vodafone/Liberty Global/Dutch JV, recital 58; of 24 February 2015 in case M.7194 - Liberty Global/Corelio/W&W/De Vijver Media, recital 124.

<sup>176</sup> Commission decisions of 18 July 2019 in case M.8864 - Vodafone/certain Liberty Global assets, recitals 79 and 83; of 6 November 2018 in case M.8785 - Disney/Fox, recitals 94 and 98; of 15 June 2018 in case M. 8861 - Comcast/Sky, recital 59. of 30 May 2018 in case M.7000 – Liberty Global/Ziggo, recitals 135 and 137; of 6 February 2018 in case M.8665 - Discovery/Scripps, recital 33; of 7 April 2017 in case M.8354 - Fox/Sky, recitals 100-101; of 24 February 2015 in case M.7194 - Liberty Global/Corelio/W&W/De Vijver Media, recital 119.

several operators premium TV packages can only be purchased as add on to the basic TV subscription. However, the Commission also ultimately left open the market definition with regard to this potential sub-segment.

- (174) In addition, the Commission considered a possible segmentation of the market for the retail supply of AV services according to distribution technology (for example, cable, OTT, satellite, IPTV or terrestrial). In its decisions of 30 May 2018 in case M.7000 – *Liberty Global/Ziggo*, and of 21 December 2010 in case M.5932 - *News Corp/BskyB*,<sup>177</sup> the Commission considered that all the different distribution technologies were part of the same product market, while leaving the exact product market definition open in a number of other decisions.<sup>178</sup>
- (175) Retail suppliers of AV content can enter into either collective agreements (with landlords or housing cooperatives, the so-called “multiple dwelling units” (“MDUs”)) or individual agreements (with individual households, the so-called “single dwelling units” (“SDUs”)). In SDUs, the end customer typically chooses its own TV distributor and pays directly for its subscription. In MDUs it is common to have a collective agreement between the landlord / housing association and a single TV distributor / cable operator.
- (176) The Commission has also previously considered whether retail TV services to SDUs and MDUs form part of the same product market but ultimately left the market definition open.<sup>179</sup>

#### 7.5.1.2. Notifying Party’s view

- (177) In its initial submission, the Notifying Party considers that the Transaction should be assessed on the basis that there is a market for the retail supply of AV services, which encompasses all AV services (including linear and non-linear, FTA and pay TV, basic and premium), provided to all end customers (including collective agreements and individual agreements), delivered through all distribution technologies (including digital terrestrial, satellite, cable, SMATV<sup>180</sup>, IPTV, mobile technologies or internet more generally), including OTT.<sup>181</sup>
- (178) In particular, as regards distribution technologies, the Notifying Party noted that in a 2016 decision, the Swedish Competition Authority considered, but ultimately left open, an overall market for distribution of TV content through all types of different technologies.<sup>182</sup>

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<sup>177</sup> Commission decisions of 30 May 2018 in case M.7000 – *Liberty Global/Ziggo*, recital 137; of 21 December 2010 in case M.5932 - *News Corp/BskyB*, recital 105.

<sup>178</sup> Commission decisions of 18 July 2019 in case M.8864 - *Vodafone/certain Liberty Global assets*, recitals 80, 81 and 83; of 6 November 2018 in case M.8785 - *Disney/Fox*, recital 98; of 8 October 2018 in case M.8842 – *Tele2/ComHem*, recital 37; of 6 February 2018 in case M.8665 - *Discovery/Scripps*, recital 33; of 7 April 2017 in case M.8354 – *Fox/Sky*, recitals 99 and 101; of 3 August 2016 in case M.7978 – *Vodafone/Liberty Global/Dutch JV*, recital 62; of 24 February 2015 in case M.7194 - *Liberty Global/Corelio/W&W/De Vijver Media*, recital 127; of 25 June 2008 in case M.5121 - *News Corp/Premiere*, recital 22; of 18 July 2007 in case M.4504 - *SFR/Télé 2 France*, recital 46.

<sup>179</sup> Commission decisions of 6 November 2018 in case M.8785 - *Disney/Fox*, recital 98; of 8 October 2018 in case M.8842 – *Tele2/ComHem*, recital 37; of 20 September 2013 in case M.6990 – *Vodafone/Kabel Deutschland*, recitals 92-96.

<sup>180</sup> Satellite Master Antenna Television (“SMATV”) is a miniature cable network that manages a building or a limited residential area. The signals are received via the terrestrial network or satellite

<sup>181</sup> Form CO, paragraph 451.

<sup>182</sup> Form CO, paragraph 474.

- (179) The Notifying Party also noted that in a past decision, the Finnish Competition Authority considered whether retail sale of certain TV services constituted a separate relevant market, encompassing all distribution technologies. In that case, the Finnish Competition Authority noted that this was a possible option since the content offered in most of the TV channel packages was the same as in other packages. The market definition was in that case ultimately left open as the Finnish Competition Authority found it unnecessary to conclude on the exact product market definition.<sup>183</sup>
- (180) Eventually, the Notifying Party concluded that it could be left open whether different distribution technologies constitute separate relevant markets in this case.<sup>184</sup>
- (181) In its Response to the Article 6(1)(c) Decision, the Notifying Party, in contrast to its approach in the Form CO, claimed that there are fundamental differences between OTT and the other distribution technologies, that OTT is not a distribution form among others, but a transformative force that has started to dissolve the three-part layering (between content owners, broadcasters and distributors) of the value chain for TV content. In particular, the Notifying Party submits that OTT requires no TV distributor intermediary.<sup>185</sup>

#### 7.5.1.3. Commission's assessment

- (182) The results of the Phase I market investigation were mixed as regards the product market for the retail supply of AV services.
- (183) As regards a possible segmentation between **FTA and pay TV** services, some respondents considered that the retail supply of FTA TV channels and the retail supply of pay TV channels belong to distinct product markets due to significantly different pricing mechanisms. Other respondents stressed that both types of TV channels are consumed in a bundle and have the same viewer base, and therefore considered that they are part of the same product market at retail level.<sup>186</sup>
- (184) As regards a possible segmentation between **linear and non-linear pay AV services**, some respondents considered that the market for retail supply of pay AV services should be further segmented between linear services (TV channels and their ancillary services) and non-linear standalone services (for example, SVOD). In that respect, NENT, which is active throughout the Nordics, stressed that there are still clear differences between non-linear and linear pay AV services with regard to (i) content, as linear services offer a broad variety of programmes, while non-linear services have a narrower focus (for example, on films and series), and (ii) price, as non-linear subscriptions are typically lower priced than packages of traditional pay TV channels. Other respondents considered that linear and non-linear services are part of the same markets given consumers' behaviour, or the fact that they both compete for viewers' time and spending. Last, Telenor noted that for some consumers linear and non-linear pay services are substitutes and, for others, merely complements, and that the segment considering them as alternative is growing.<sup>187</sup>

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<sup>183</sup> Form CO, paragraph 475.

<sup>184</sup> Form CO, paragraph 476.

<sup>185</sup> Notifying Party's response to the Article 6(1)(c) Decision, paragraphs 25 and 26.

<sup>186</sup> Responses to questionnaires Q2, Q5, Q7 and Q9 to TV broadcasters in Finland, Sweden, Denmark and Norway, and to questionnaires Q1, Q4, Q6 and Q8 to TV distributors in Finland, Sweden, Denmark and Norway, questions C.4 and C.4.1.

<sup>187</sup> Responses to questionnaires Q2, Q5, Q7 and Q9 to TV broadcasters in Finland, Sweden, Denmark and Norway, and to questionnaires Q1, Q4, Q6 and Q8 to TV distributors in Finland, Sweden, Denmark and Norway, questions C.7 and C.7.1.

- (185) As regards a possible segmentation between **premium and basic pay AV services**, some respondents considered that the retail supply of pay TV services should be further segmented between basic and premium pay AV services, due to content, packaging and pricing. Other respondents considered that these are alternative products and, as such, part of the same product markets.<sup>188</sup>
- (186) As regards distribution technologies, most of the respondents to the Phase I market investigation considered that the market for retail supply of pay AV services should not be further segmented according to **distribution forms**, given (i) the similarities of content and prices across distribution platforms, and (ii) that households typically have access to different combinations of distribution forms.<sup>189</sup>
- (187) In contrast, with specific regard to Finland, Sanoma considers that the question is not clear-cut.<sup>190</sup> The Finnish broadcaster stressed that around 50% of the Finnish households, which are mainly located in urban areas, are connected to cable networks,<sup>191</sup> and submitted that OTT and/or IPTV services would be less accessible to them. There would be “*no real alternative for cable*”.<sup>192</sup> Sanoma added that Telia would have several local cable monopolies in Finland, that in such areas it would “[not] be possible to change the cable network operator irrespective of the consumer’s willingness to change”,<sup>193</sup> and that the merged entity “*could restrict distribution of [Sanoma]’s and other broadcasters content in Telia’s distribution channels*”.<sup>194</sup> Having carefully examined the results of the market investigation in Finland, the Commission notes that a vast majority of the Finnish market participants, either TV broadcasters (The Walt Disney Company, NENT, HBO Nordic, Discovery) or retail providers of AV services (NENT, Digita, DNA, Elisa and Telenor), considered that the market for retail supply of pay AV services should not be further segmented according to the distribution forms.<sup>195</sup> Moreover, the Commission notes no special conditions are applied to TV broadcasters to distribute their channels in the areas where Telia owns the cable network. In particular, Telia’s agreements with broadcasters in Finland [Terms and conditions in Telia Company’s distribution agreements].<sup>196</sup> Further, hereinafter in section 8.5.2.6, despite the merged entity having a market share in the Finnish market for the retail supply of AV services below 30%, the Commission will assess the risk of customer foreclosure strategies in Finland in the geographical areas of Finland where Telia owns the regional fixed network in order to take into account Telia’s higher market share in such areas.

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<sup>188</sup> Responses to questionnaires Q2, Q5, Q7 and Q9 to TV broadcasters in Finland, Sweden, Denmark and Norway, and to questionnaires Q1, Q4, Q6 and Q8 to TV distributors in Finland, Sweden, Denmark and Norway, questions C.5 and C.5.1.

<sup>189</sup> Responses to questionnaires Q2, Q5, Q7 and Q9 to TV broadcasters in Finland, Sweden, Denmark and Norway, and to questionnaires Q1, Q4, Q6 and Q8 to TV distributors in Finland, Sweden, Denmark and Norway, questions C.9, C.9.1, C.10 and C.10.1.

<sup>190</sup> Sanoma’s response to questionnaire Q2 to TV broadcasters in Finland, question C.9 (ID00621).

<sup>191</sup> Sanoma’s Memorandum related to the merger between Telia Company and Bonnier Broadcasting, dated 28 February 2019 (ID00320).

<sup>192</sup> Sanoma’s response to questionnaire Q2 to TV broadcasters in Finland, question C.10.1 (ID00621).

<sup>193</sup> Responses to the Phase II market test questionnaire, question L.1.1.

<sup>194</sup> Sanoma’s Memorandum related to the merger between Telia Company and Bonnier Broadcasting, dated 28 February 2019 (ID00320).

<sup>195</sup> Responses to questionnaire Q2 to TV broadcasters in Finland, and to questionnaires Q1 to TV distributors in Finland, questions C.9.

<sup>196</sup> The Notifying Party’s response to RFI 14, Annexes 3. In the agreement between Telia and [Terms and conditions in Telia Company’s distribution agreements]. Annex 3.34.

- (188) As regards a possible segmentation between **SDUs and MDUs**, some respondents considered that the retail supply of AV services to SDUs and the retail supply of AV services to MDUs belong to distinct product markets given (i) differences in terms of pricing, and (ii) that the distribution technologies available at retail level may differ according to the type of dwelling of end-customers. Other respondents noted that the same distributors provide AV services to SDUs and MDUs, although packages may differ.<sup>197</sup>
- (189) In the Article 6(1)(c) Decision, the Commission reached the preliminary conclusion that the relevant product market was, irrespective of the type of the distribution technology, the market for the retail supply of AV services. The question as to whether the retail supply of AV services should be further segmented between (i) FTA and pay TV, (ii) linear and non-linear services, (iii) premium and basic pay TV and (iv) MDUs and SDUs, could be left open, as the Transaction would raise serious doubts as to its compatibility with the internal market regardless of the precise product market definition.
- (190) In its Response to the Article 6(1)(c) Decision, the Notifying Party claimed that there are fundamental differences between OTT and the other distribution technologies.
- (191) In Phase II, the Commission further investigated whether the retail provision of AV services via OTT is part of the same product market as the retail provision of AV services via cable, DTH, IPTV and DTT, and in particular, whether an intermediate level for distribution, where TV distributors are active as aggregators of TV channels, is meaningful regarding linear services *via* OTT. In addition, the Commission investigated whether, from the perspective of end customers, SVOD services and linear services are distinct products.
- (192) First, a majority of respondents to the Phase II market investigation considered the retail supply of AV services **via OTT (such as the supply of aggregated TV channels via OTT)** as an alternative to the retail supply of AV services **via another technology** (that is to say, cable, IPTV, satellite or terrestrial), now or over a two to three-year horizon.<sup>198</sup> In particular, NENT voiced that the market for the retail supply of AV services should not be segmented according to distribution platform as (i) *“there are no substantial differences in terms of the content available and the TV packages offered across distribution platform”*, (ii) from the point of view of end customers, *“the underlying platform-technology used for distribution is not important”*, and (iii) pay TV services are priced and promoted similarly across distribution platforms. NENT concluded that *“OTT distribution is “just” another distribution platform for the traditional product”*.<sup>199</sup> In addition, Tele2 deemed on the basis of the Mediavision survey titled “Swedish TV market 2019/2020” that the consumption of AV services via OTT, which began as a complement, *“is increasingly becoming an alternative to traditional forms of AV distribution”*. The

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<sup>197</sup> Responses to questionnaires Q2 and Q5 to TV broadcasters in Finland and Sweden, and to questionnaires Q1, Q4 and Q6 to TV distributors in Finland, Sweden and Denmark, questions C.13 and C.13.1.

<sup>198</sup> Responses to questionnaire Q13 to retail providers of AV services in Sweden, questions 44 and 44.1, to questionnaire Q14 to retail providers of AV services in Finland, questions 43 and 43.1, and to questionnaires Q15 and Q16 to TV broadcasters in Sweden and Finland, questions 34 and 34.1.

<sup>199</sup> NENT’s response to questionnaires Q13 to retail providers of AV services in Sweden, question 44.1 (ID002270), to questionnaire Q14 to retail providers of AV services in Finland, question 43.1 (ID02304), and to questionnaires Q15 and Q16 to TV broadcasters in Sweden and Finland, question 34.1 (ID002294 and ID002320).

increase in online linear viewing would, at least in part, be driven by an increase in the number of TVE viewers.<sup>200</sup> Telenor submitted that “[c]onsumers demand certain content, irrespective of platform/technology”, that OTT is an alternative to other distribution technologies to the extent that customers have a suitable broadband access, and that the future expansion of broadband coverage and the roll-out of 5G will further increase the importance of OTT as a distribution form over a two to three-year horizon.<sup>201</sup> Last, Elisa considered that “OTT services can increasingly be seen as alternatives to other AV services via another distribution technology”.<sup>202</sup>

- (193) In contrast, some respondents considered either that the retail supply of AV services *via* OTT and the retail supply of AV services *via* another technology would remain complementary products over a two to three-year horizon, or that the question is currently not straightforward. In that respect, DNA indicated that, despite being at the moment able to handle all non-linear TV consumption and most of the current linear pay TV viewing, broadband networks would not yet be able to handle the current FTA peak traffic or most likely even the basic load of FTA channels in case big television screens only are used. DNA stressed in that respect that end customers prefer to watch certain premium sports events in a linear fashion, in HD and on big screens, which would bring about a significant load on the network at peak times. Therefore, OTT should rather be seen, from the perspective of consumers, as a complement to other distribution technologies rather than as an alternative, even on a two to three-year horizon.<sup>203</sup> SVT and Discovery considered that the question is not clear-cut, with some end customers considering the retail supply of AV services via OTT and the retail supply of AV services via another technology as complements and some others, as substitutes. Discovery submitted that it depends on the demography amongst end customers.<sup>204</sup>
- (194) In addition, from a supply-side perspective, a majority of TV broadcasters considered that the role of TV distributors, that is the role of TV channel aggregators, continues to be relevant also when TV channels are distributed via OTT as alternative to distribution via traditional technologies, such as cable and IPTV.<sup>205</sup> In that respect, NENT noted that even if consumers can switch apps and choose whether to receive the content straight from TV broadcasters or TV distributors, “it would most likely be more expensive for the consumers if they had to use a number of different apps and subscriptions to access content”.<sup>206</sup> In addition, Discovery believed that even if TV broadcasters can serve consumers, and already do so, TV distributors “have a very important role to play [...] as a market aggregator for existing and new OTT services either via linear OTT agreements or non-linear OTT agreements as hard bundles or rev-share models”. Discovery noted that given that (i) there is an increasing number of apps in the Swedish market, and (ii) the Swedish households

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<sup>200</sup> Tele2’s response to questionnaire Q13 to retail providers of AV services in Sweden, question 44.1 (ID002255).

<sup>201</sup> Telenor’s response to questionnaire Q13 to retail providers of AV services in Sweden, question 44.1 (ID002816).

<sup>202</sup> Elisa’s response to questionnaire Q14 to retail providers of AV services in Finland, question 43.1 (ID002036).

<sup>203</sup> DNA’s response to questionnaire Q14 to retail providers of AV services in Finland, question 43.1 (ID001990).

<sup>204</sup> SVT’s and Discovery’s responses to questionnaire Q15 to TV broadcasters in Sweden, question 34.1 (ID002075 and ID002247).

<sup>205</sup> Responses to questionnaires Q15 and Q16 to TV broadcasters in Sweden and Finland, question 36.

<sup>206</sup> NENT’s response to questionnaires Q15 and Q16 to TV broadcasters in Sweden and Finland, question 36 (ID002294 and ID002320).

have on average 1.7 apps and a maximum of 4 apps, “*a sustainable business model with a broadcaster/content provider apps only*” would be unlikely.<sup>207</sup> Only Sanoma considered that there is no need for such intermediary.<sup>208</sup>

- (195) Therefore, the Commission concludes, for the purpose of this Decision, that all the different distribution technologies are part of the same product market.
- (196) Second, a majority of respondents to the Phase II market investigation consider that, from the perspective of end customers, **SVOD services (such as Netflix)** and **linear AV services** are currently essentially complementary products.<sup>209</sup> In that respect, Tele2 considered that “*most consumers view the offering by Netflix as a complement to other basic and premium pay TV offerings*”, and stressed that “[*t*]his complementarity is derived from differences in content and not in distribution form”.<sup>210</sup>
- (197) Some respondents consider that both products are to some extent substitutes. In that respect, NENT indicated that end customers are increasingly considering SVOD as an alternative to linear services, and that “[*a*]s a result, it cannot be ruled out that SVOD should be considered an alternative to traditional legacy TV within a couple of years”, especially since “*more content are available in SVOD and total viewing time per consumer cannot increase in perpetuity*”.<sup>211</sup> Sanoma claimed that the degree of substitutability between SVOD and linear services depends on demographics. For end customers below the age of 45/55, SVOD OTT would definitely be an alternative to linear TV.<sup>212</sup> DNA stated that “[*r*egarding movies and series especially, SVOD OTT services have become and will come alternative to more and more of the customers” and that “[*t*]he transition is a bit slower with sport content as the viewing focuses on live events as consumers tend to prefer other distribution technologies before OTT (due to capacity limitations) or use OTT only as a complement to other technologies”.<sup>213</sup>
- (198) In addition, the results of the Phase II market investigation show that some offerings which combine linear and non-linear AV services directly compete with linear offerings. In that respect, Tele2 indicated that SVOD services including the major Swedish channels (in a linear and VOD format) would be an alternative to Tele2’s retail offering.<sup>214</sup> Telenor stated that Bonnier Broadcasting’s AV services via OTT which includes both linear and non-linear content should be considered as alternative to the TV packages from traditional TV distributors.<sup>215</sup> The Commission further notes that in Sweden and Finland there is a trend of including linear channels in non-

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<sup>207</sup> Discovery’s response to questionnaire Q15 to TV broadcasters in Sweden, question 36 (ID002247).

<sup>208</sup> Sanoma’s response to questionnaire Q16 to TV broadcasters in Finland, question 36 (ID002063).

<sup>209</sup> Responses to questionnaire Q13 to retail providers of AV services in Sweden, questions 45 and 45.1, to questionnaire Q14 to retail providers of AV services in Finland, questions 44 and 44.1, and to questionnaires Q15 and Q16 to TV broadcasters in Sweden and Finland, questions 35 and 35.1.

<sup>210</sup> Tele2’s response to questionnaire Q13 to retail providers of AV services in Sweden, question 45.1 (ID002255).

<sup>211</sup> NENT’s response to questionnaire Q13 to retail providers of AV services in Sweden, question 45.1 (ID002270), and to questionnaire Q15 to TV broadcasters in Sweden, question 35.1 (ID002294).

<sup>212</sup> Sanoma’s response to questionnaire Q16 to TV broadcasters in Finland, question 35.1 (ID002063).

<sup>213</sup> DNA’s response to questionnaire Q14 to retail providers of AV services in Finland, question 44.1 (ID001990).

<sup>214</sup> Tele2’s response to questionnaire Q13 - retail providers of AV services in Sweden, question 45.1 (ID002255).

<sup>215</sup> Telenor’s response to questionnaire Q13 to retail providers of AV services in Sweden, question 44.1 (ID002816).

linear OTT services (for example SVOD services). Bonnier Broadcasting provide access to its linear channels through its SVOD service, C More. NENT distributes all its linear FTA and basic pay TV channels TV3, TV6, TV8 and TV10 through Viaplay in Sweden. Sanoma's four linear FTA channels (Nelonen, Jim, Liv and Hero) are currently available in its SVOD service, Ruutu+.<sup>216</sup>

- (199) In any event, the Commission concludes, for the purpose of this Decision, that the question whether the retail supply of non-linear pay AV services (such as SVOD services) and the retail supply of linear pay AV services belong to distinct product markets can be left open, as this would not change the outcome of the competitive assessment in the present case.
- (200) In light of the foregoing, the Commission concludes, for the purpose of this Decision, that the relevant market is the market for the retail supply of AV services, encompassing all distribution technologies. The question whether the retail supply of AV services should be further segmented between (i) FTA and pay AV services can be left open, as well as the question whether in turn pay AV services<sup>217</sup> should be segmented according to: (ii) linear and non-linear pay AV services, (iii) premium and basic pay AV services and (iv) AV services to MDUs and SDUs, as this would not change the outcome of the competitive assessment in this case.

#### 7.5.2. *Geographic market definition*

##### 7.5.2.1. Previous Commission decisions

- (201) The Commission has previously considered that the market for the retail provision of TV services is either national, or limited to the geographic coverage of a supplier's cable network.<sup>218</sup>

##### 7.5.2.2. Notifying Party's view

- (202) In its initial submission, the Notifying Party considers that the exact definition of the geographic market for the retail provision of AV channels can be left open, as the Transaction would not raise competitive concerns under any alternative market definition. The Notifying Party submits, however, that the relevant geographic market can be assumed to be national for the purposes of its notification.<sup>219</sup>

##### 7.5.2.3. Commission's assessment

- (203) The results of the Phase I market investigation indicated that retail providers of AV services mainly acquire licence rights to distribute AV services at national level.<sup>220</sup>
- (204) In the Article 6(1)(c) Decision, the Commission reached the preliminary conclusion that the relevant market for the retail supply of AV services was national in scope.
- (205) In its Response to the Article 6(1)(c) Decision, the Notifying Party did not contest the preliminary assessment of the Commission.

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<sup>216</sup> Notifying Parties' response to the Commission's RFI 74, questions 8 and 9 (ID003094).

<sup>217</sup> Note that the retail FTA suppliers are transmission companies, like Digita. The Parties are not active in the retail supply of FTA services.

<sup>218</sup> Commission decisions of 6 November 2019 in case M.8785 - Disney/Fox, recital 100; of 6 February 2018 in case M.8665 - Discovery/Scripps, recital 21; of 15 June 2018 in case M. 8861 - Comcast/Sky, recital 63; of 7 April 2017 in case M.8354 - Fox/Sky, recital 106; of 24 February 2015 in case M.7194 - Liberty Global/Corelio/W&W/De Vijver Media, recital 139.

<sup>219</sup> Form CO, paragraph 488.

<sup>220</sup> Responses to questionnaires Q1, Q4, Q6 and Q8 to TV distributors in Finland, Sweden, Denmark and Norway, question D.1.

- (206) The Commission notes that the retail AV services offerings and pricing conditions are homogeneous in each of the four geographies. Indeed, Telia's offering<sup>221</sup> and pricing<sup>222</sup> are [Telia Company's sales strategy].<sup>223</sup> In addition, as described in section 7.4, the main input consisting of TV channels are also acquired on a national basis.
- (207) In light of the foregoing, the Commission does not depart from its previous assessment, and concludes, for the purposes of this Decision, that the geographic market for the retail supply of AV services is national.

## 7.6. Retail supply of fixed telephony services

### 7.6.1. Product market definition

#### 7.6.1.1. Previous Commission decisions

- (208) In previous decisions<sup>224</sup>, the Commission considered whether a distinction between local/national and international calls as well as between residential and non-residential customers should be drawn on the basis of the distinctions in the Commission Recommendation 2003/311/EC but ultimately left the exact product market definition open.
- (209) More recently, the Commission also considered that managed Voice over Internet Protocol ("VoIP") services and traditional telephony are interchangeable and therefore belong to the same market.<sup>225</sup> In *Liberty Global/Ziggo*<sup>226</sup> the Commission left the exact market definition open (and in particular whether there is a separate market for residential and non-residential customers, as well as whether VoIP and traditional fixed telephony belong to the same market) while in *Liberty Global/BASE*<sup>227</sup> and in *Vodafone/Liberty Global/Dutch JV*<sup>228</sup> the Commission considered that an overall retail market for fixed telephony services exists.

#### 7.6.1.2. Notifying Party's view

- (210) In its initial submission, the Notifying Party has not provided any indication on whether a distinction between local/national and international calls, residential and non-residential customers, as well as VoIP and traditional telephony should be drawn in the present case.

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<sup>221</sup> Notifying Parties' response to the Commission's RFI 74, question 11d (ID03094).

<sup>222</sup> Notifying Parties' responses to the Commission's RFI 74, question 4 (ID03094), and to the Commission's RFI 80, question 2 (ID03259).

<sup>223</sup> For Sweden, please see: <https://www.comhem.se/tv>, <https://www.telenor.se/handla/tv/>, <https://www.viasat.se/utbud>. For Finland, please see: <https://kauppa4.dna.fi/TV/Kanavapaketit/c/kanavapaketit>, <https://elisa.fi/kaapeli-tv/kanavat/>. For Norway and Denmark, please see: Notifying Parties' response to the Commission's RFI 80, question 3 (ID03259).

<sup>224</sup> Commission decision of 7 September 2005 in Case M.3914 – Tele2/Versatel, paragraph 10; Commission decision of 29 June 2010 in Case M.5532 – Carphone Warehouse/Tiscali UK, paragraphs 35 and 39; Commission decision of 9 January 2010 in Case M.5730 – Telefónica/Hansenet Telekommunikation, paragraphs 16 and 17.

<sup>225</sup> Commission decision of 20 September 2013 in Case M.6990 - Vodafone/Kabel Deutschland, paragraph 131.

<sup>226</sup> Commission decision of 10 October 2014 in Case M.7000 Liberty Global/Ziggo, recital 125.

<sup>227</sup> Commission decision of 4 February 2016 in case M.7637 Liberty Global/BASE Belgium, recital 69.

<sup>228</sup> Commission decision of 3 August 2016 in case M.7978 – Vodafone/Liberty Global/Dutch JV, paragraph 26.

### 7.6.1.3. Commission's assessment

- (211) The market investigation in the present case has not provided any indication that a distinction between (i) local/national and international calls, (ii) residential and non-residential customers, and (iii) VoIP and traditional telephony should be drawn in the present case.
- (212) In any event, the Commission considers that for the purposes of this Decision, the exact scope of the product market definition, and specifically, whether fixed line and VoIP telephony services belong to the same product market, and whether there is a separate market for residential and non-residential customers, and for local/national and international calls, can be left open as this would not change the outcome of the competitive assessment in this case.

### 7.6.2. *Geographic market definition*

#### 7.6.2.1. Previous Commission decisions

- (213) In its previous decisions, the Commission concluded that the retail market for the provision of fixed telephony services was national in scope.<sup>229</sup>

#### 7.6.2.2. Notifying Party's view

- (214) In its initial submission, the Notifying Party has not provided any indication that the Commission should depart from its findings in previous cases.

#### 7.6.2.3. Commission's assessment

- (215) The market investigation in the present case has not provided any indication that the Commission should depart from its previous findings.
- (216) Therefore the Commission considers that the relevant market for the retail provision of fixed telephony services is national in scope.

## 7.7. **Retail supply of fixed internet access services**

### 7.7.1. *Product market definition*

#### 7.7.1.1. Previous Commission decisions

- (217) In recent cases, the Commission considered but ultimately left open possible segmentations according to (i) product type (distinguishing narrowband, broadband, and dedicated access), and (ii) distribution technology (distinguishing xDSL, fibre, cable). Moreover, the Commission acknowledged that the retail market for fixed internet access services should not be divided according to download speed.<sup>230</sup>
- (218) The Commission has also considered possible segmentations as to customer type, distinguishing between (i) residential and small business customers, on the one hand, and larger business and public authorities, on the other hand;<sup>231</sup> and (ii) MDUs such

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<sup>229</sup> See Commission decision of 8 October 2018 in Case M.7000 *Tele2/ComHem*, paragraph 28. Commission decision of 10 October 2014 in Case M.7000 *Liberty Global/Ziggo*, recital 127; Commission decision of 19 May 2015 in Case M.7421 *Orange/Jazztel*, recital 37. Commission decision of 3 August 2016 in case M.7978 – *Vodafone/Liberty Global/Dutch JV*, paragraph 29.

<sup>230</sup> Commission decision of 8 October 2018 in case M.8842 – *Tele2/Com Hem*, paragraph 26; of 3 August 2016 in case M.7978 – *Vodafone/Liberty Global/Dutch JV*, recital 38; of 20 September 2013 in case M.6990 - *Vodafone/Kabel Deutschland*, recital 194.

<sup>231</sup> Commission decision of 8 October 2018 in case M.8842 - *Tele2/Com Hem*, paragraph 26; Commission decisions of 19 May 2015 in case M.7421 - *Orange/Jazztel*, recital 42; of 10 October 2014 in case M.7000 - *Liberty Global/Ziggo*, recital 132; of 7 October 2016 in case M.8131 - *Tele2 Sverige/TDC Sverige*, recital 32.

as housing associations or apartment buildings, and SDUs such as individual households.<sup>232</sup>

#### 7.7.1.2. Notifying Party's view

- (219) In its initial submission, the Notifying Party submits that there is one overall product market for retail fixed internet access services, but ultimately considers that, for the purposes of the review of the Transaction, the exact market definition can be left open.<sup>233</sup>

#### 7.7.1.3. Commission's assessment

- (220) In Phase I, with regard to a possible segmentation of the market for the retail provision of fixed internet access services according to product and customer type or according to distribution technology (that is to say, xDSL, cable or fibre), the Commission considered that nothing in the Commission's file provided reason to depart from its approach in previous cases.
- (221) In the Article 6(1)(c) Decision, the Commission reached the preliminary conclusion that the exact scope of the product market definition could be left open, as the effects of the Transaction were unlikely to differ irrespective of the scope of the product market.
- (222) In its Response to the Article 6(1)(c) Decision, the Notifying Party did not contest the preliminary assessment of the Commission.
- (223) In light of the foregoing, the Commission does not depart from its previous assessment, and concludes, for the purposes of this Decision, that the exact scope of the product market definition in relation to the provision of retail fixed internet access services can be left open, as this would not change the outcome of the competitive assessment in this case.

### 7.7.2. *Geographic market definition*

#### 7.7.2.1. Previous Commission decisions

- (224) In its previous decisions, the Commission concluded that the retail market for the provision of fixed internet services was national in scope.<sup>234</sup>

#### 7.7.2.2. Notifying Party's view

- (225) In its initial submission, the Notifying Party agrees with the Commission's assessment in previous Commission decisions, but ultimately considers, for the purposes of the review of the Transaction, that the exact definition of the geographic market for fixed internet access services can be left open.<sup>235</sup>

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<sup>232</sup> Commission decisions of 19 May 2015 in case M.7421 - Orange/Jazztel, recital 42; of 10 October 2014 in case M.7000 - Liberty Global/Ziggo, recital 132; of 7 October 2016 in case M.8131 - Tele2 Sverige/TDC Sverige, recital 32.

<sup>233</sup> Form CO, paragraph 863.

<sup>234</sup> Commission decisions of 8 October 2018 in case M.8842 – Tele2/Com Hem; of 29 June 2010 in case M.5532 – Carphone Warehouse/Tiscali UK, recital 47; of 29 January 2010 in case M.5730 - Telefonica/Hansenet, recital 28; of 20 September 2013 in case M.6990 - Vodafone/Kabel Deutschland, recital 197; of 3 August 2016 in case M.7978 – Vodafone/Liberty Global/Dutch JV, recital 40.

<sup>235</sup> Form CO, paragraph 865.

### 7.7.2.3. Commission's assessment

- (226) The Phase I market investigation did not provide any indication that the Commission should depart from its findings in previous cases, according to which the geographic market should be national.
- (227) In the Article 6(1)(c) Decision, the Commission noted that with reference to Finland, the Finnish regulator (FICORA) in its last review of the broadband markets (FI/2018/2052-2053) found regional differences within the retail market for broadband services as regards prices, the number of competing operators and the distribution of market shares.
- (228) Nevertheless, in light of the results of the Phase I market investigation, the Commission reached the preliminary conclusion that the relevant market for the retail provision of fixed internet services was national in scope, and that it would further investigate whether regional differences are relevant in Sweden and Finland.
- (229) In its Response to the Article 6(1)(c) Decision, the Notifying Party did not contest the preliminary assessment of the Commission.
- (230) In Phase II, as announced in the Article 6(1)(c) Decision, the Commission further investigated whether regional differences are relevant in Sweden and Finland. In particular, the Commission examined in detail the findings of the Swedish and Finnish telecom regulatory authorities in the respective analysis of wholesale fibre local access provided at a fixed location and of wholesale central access provided at a fixed location for mass-market products, conducted under the EU regulatory framework for electronic communications networks and services.
- (231) In Sweden, in its draft review of the market analysis and the assessment of significant market power for wholesale fibre local access provided at a fixed location<sup>236</sup> conducted under the EU regulatory framework for electronic communications networks and services, the national telecom regulatory authority (Swedish Post and Telecom Authority (PTS)) considered that the retail market for broadband services delivered over fibre and cable TV networks to MDUs and the retail market for broadband services supplied over fibre and cable TV networks to SDUs form distinct product markets.
- (232) In the retail market for broadband services delivered over fibre and cable TV networks to MDUs, according to the Swedish regulator PTS, 139 operators were operating in December 2017. The largest operator was Tele2 with a market share of 36.3%, ahead of Telenor and Telia with respective market shares of 25.2% and 18.3%. All three applied to a large extent national pricing. As for the three next biggest operators, differentiated pricing was applied between different networks, reflecting cost differences applicable to different networks, rather than geographical differences in competition between service providers. PTS considered that with the largest operators being national players and these operators accounting for the largest share of sales overall suggests that competition takes place nationally. PTS concluded that there are not such differences in the competitive conditions in

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The market for wholesale local access provided at a fixed location has been placed on the list of markets which may have such characteristics as to justify *ex ante* regulation (as market 3a), established by the Commission in its Recommendation of 9 October 2014 on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services, 2014/710/EU (“Commission’s Recommendation 2014/710/EU”).

different parts of the country as to justify a further segmentation of the market into geographic sub-markets and giving rise to different regulatory needs.<sup>237</sup>

- (233) In the retail market for broadband services supplied over fibre and cable television networks to SDUs, according to PTS, 114 operators were operating in December 2017. The largest operator was Telia with a market share of 32.9%, ahead of Bahnhof, Tele2 and Telenor, with respective market shares of 14.1%, 12.0% and 10.6%. To a large extent, three of the four largest service providers used national pricing. The set of next largest operators had differentiated pricing similarly to the situation in the market for MDUs. This differentiation reflected cost differences applicable to different networks, rather than geographical differences in competition between service providers. The fact that the largest share of sales of broadband services over fibre and cable TV networks was done by operators active nationally suggest that competition occurs mostly at national level. Overall, PTS considered that there were not such differences in the competitive conditions in different parts of the country to justify a further segmentation of the geographic market into geographic sub-markets, and give rise to different regulatory needs.<sup>238</sup>
- (234) On the basis of the above, the Commission concludes that the relevant geographic market for the retail supply of fixed internet access services in Sweden is national.
- (235) In Finland, in its review of the market analysis and the assessment of significant market power for wholesale fibre local access provided at a fixed location and for wholesale central access provided at a fixed location for mass-market products,<sup>239</sup> of 15 March 2018, the national telecom regulatory authority considered that there were regional differences in the retail market for broadband services, in terms of market leaders, prices, number of competing operators and distribution of market shares.<sup>240</sup>
- (236) The map below illustrates the regional differences in competitive conditions in the retail market for broadband services by looking at the market share variation of the largest broadband operator in the different geographical areas at the end of 2015.<sup>241</sup>

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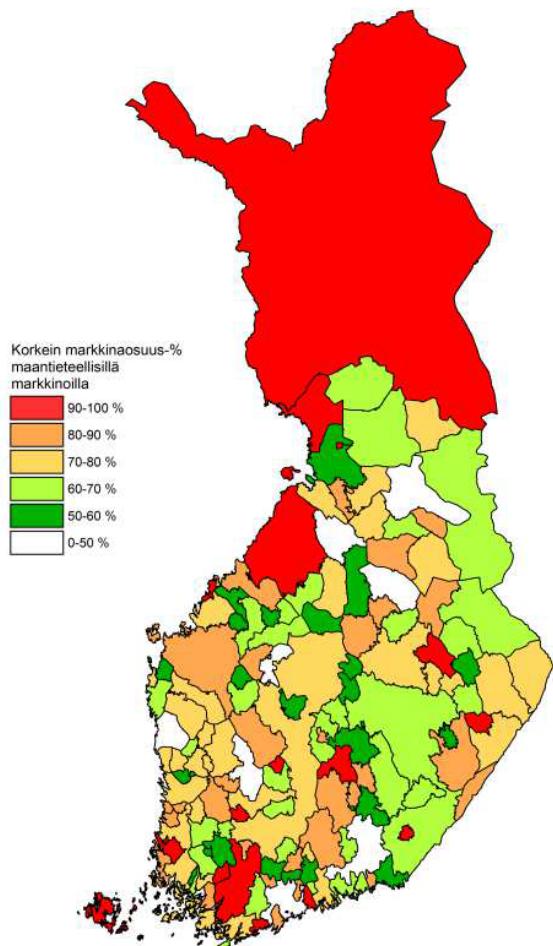
<sup>237</sup> PTS's Draft decision on the market for local access to fibre networks in accordance with Chapter 8. 5 and 6, the Electronic Communications Act (2003: 389) (translated from Swedish: "Utkast till beslut om marknaden för lokalt tillträde till fibernät enligt 8 kap. 5 och 6 §§, lagen (2003:389) om elektronisk kommunikation"), pages 80-82.

<sup>238</sup> PTS's Draft decision on the market for local access to fiber networks in accordance with Chapter 8. 5 and 6, the Electronic Communications Act (2003: 389) (translated from Swedish: "Utkast till beslut om marknaden för lokalt tillträde till fibernät enligt 8 kap. 5 och 6 §§, lagen (2003:389) om elektronisk kommunikation"), pages 82-84.

<sup>239</sup> The market for wholesale central access provided at a fixed location for mass-market products has also been placed on the list of markets which may have such characteristics as to justify ex ante regulation (as market 3b in Commission's Recommendation 2014/710/EU).

<sup>240</sup> TRAFICOM (formerly FICORA)'s Decision on significant market power in the local loop and bitstream markets, decision applicable to Telia (translated from Finnish: "Päätös huomattavasta markkinavoimasta tilaajayhteys- ja bitstream-markkinoilla", Yritys, jota päätös koskee Telia Finland, Oyj"), dated 15 March 2018, 19/961/2017, pages 47 and 48.

<sup>241</sup> The market areas of the map correspond to the wholesale market areas which were further defined at wholesale level in TRAFICOM's decision.



*Source: Traficom/FICORA*

- (237) Given that the competitive conditions in the retail market vary considerably depending on the geographical location, the Finnish telecom regulatory authority considered that the retail market for broadband services is regional. At the wholesale level, it defined 150 relevant geographic markets.
- (238) On the basis of the above, the Commission concludes that the relevant geographic market for the retail supply of fixed internet access services in Finland is regional.
- (239) In light of the foregoing, the Commission concludes, for the purpose of this Decision, that the relevant market for the provision of fixed internet services is national in Sweden, and regional in Finland.

## 7.8. Retail supply of mobile telecommunications services

### 7.8.1. Product market definition

#### 7.8.1.1. Previous Commission decisions

- (240) In previous cases concerning retail mobile telecommunications services, the Commission has considered that there is an overall retail market for mobile telecommunications services constituting a separate market from retail fixed telecommunication services.<sup>242</sup> The Commission did not further segment the overall

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<sup>242</sup> Commission decisions of 8 October 2018 in case M.8842 – Tele2/Com Hem, paragraph 10; of 11 May 2016 in case M.7612 – Hutchison 3G UK/Telefónica UK, recital 252; of 10 October 2014 in

retail mobile market based on the type of service (voice calls, SMS, MMS, mobile internet data services), or the type of network technology (for example, 2G/3G/4G). The Commission considered distinctions within the overall retail market for mobile telecommunication services between pre-paid or post-paid services and private customers or business customers, concluding that these did not constitute separate product markets but represent rather market segments within an overall retail market.<sup>243</sup>

#### 7.8.1.2. Notifying Party's view

- (241) In its initial submission, the Notifying Party submits that there is one overall product market for retail mobile telecommunications services, without further subdivision between different types of services (voice, SMS/MMS, mobile data, prepaid/post-paid), the network technology used (2G, 3G, 4G) or the type of customer (residential, or business).<sup>244</sup>

#### 7.8.1.3. Commission's assessment

- (242) In Phase I, nothing in the Commission's file indicated that the market for retail supply of mobile telecommunications services should be further segmented according to the type of services, the type of customers or the network technology used.
- (243) In the Article 6(1)(c) Decision, the Commission reached the preliminary conclusion that the exact product market definition in relation to the provision of retail mobile telecommunications services could be left open, as the effects of the Transaction were unlikely to differ irrespective of the scope of the product market.
- (244) In its Response to the Article 6(1)(c) Decision, the Notifying Party did not contest the preliminary assessment of the Commission.
- (245) In light of the foregoing, the Commission does not depart from its previous assessment, and concludes, for the purpose of this Decision, that the exact product market definition in relation to the provision of retail mobile telecommunications services can be left open, as this would not change the outcome of the overall assessment in this case.

### 7.8.2. *Geographic market definition*

#### 7.8.2.1. Previous Commission decisions

- (246) In its previous decisions, the Commission concluded that the retail market for the provision of mobile telecommunications services was national in scope.<sup>245</sup>

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<sup>243</sup> case M.7000 – Liberty Global/Ziggo, recital 141; of 2 July 2014 in case M.7018 – Telefónica Deutschland/E-Plus, recital 64.

Commission decisions of 8 October 2018 in case M.8842 – Tele2/Com Hem, paragraph 47; of 1 September 2016 in case M.7758 – Hutchison 3G Italy/Wind/JV, recitals 149 and 161; of 3 August 2016 in case M.7978 – Vodafone/Liberty Global/Dutch JV, paragraph 74; of 11 May 2016 in case M.7612 – Hutchison 3G UK/Telefónica UK, recitals 255, 261, 270, 279, 287; of 2 July 2014 in case M.7018 – Telefónica Deutschland/E-Plus, recitals 31 to 55; of 10 October 2014 in case M.7000 – Liberty Global/Ziggo, recital 141; of 28 May 2014 in case M.6992 – Hutchison 3G UK/Telefónica Ireland, recital 141; of 12 December 2012 in case M.6497 – Hutchison 3G Austria/Orange Austria, recital 58.

<sup>244</sup> Form CO, paragraph 886.

<sup>245</sup> Commission decisions of 8 October 2018 in case M.8842 – Tele2/Com Hem, paragraph 49; of 1 September 2016 in case M.7758 – Hutchison 3G Italy/Wind/JV, recital 166; of 3 August 2016 in case M.7978 – Vodafone/Liberty Global/Dutch JV, paragraph 76; of 11 May 2016 in case M.7612 –

#### 7.8.2.2. Notifying Party's view

- (247) In its initial submission, the Notifying Party agrees with the Commission's assessment in its previous decisions, but ultimately considers, for the purposes of the review of the Transaction, that the exact definition of the geographic market for mobile telecommunications services can be left open.<sup>246</sup>

#### 7.8.2.3. Commission's assessment

- (248) The Phase I market investigation in the present case did not provide any indication that the Commission should depart from its previous findings.
- (249) Therefore, in the Article 6(1)(c) Decision, the Commission reached the preliminary conclusion that the relevant market for the retail provision of mobile telecommunications services was national in scope.
- (250) In its Response to the Article 6(1)(c) Decision, the Notifying Party did not contest the preliminary assessment of the Commission.
- (251) In light of the foregoing, the Commission does not depart from its previous assessment, and concludes, for the purpose of this Decision, that the relevant market for the retail provision of mobile telecommunications services is national in scope.

### 7.9. Retail supply of multiple play services

#### 7.9.1. Product market definition

##### 7.9.1.1. Previous Commission decisions

- (252) In previous decisions, the Commission has considered but ultimately left open the question as to whether there exist one or more multiple play markets, which are distinct from each of the underlying individual telecommunication services.<sup>247</sup>
- (253) Moreover, in previous decisions, the Commission has noted that due to different services, delivered over different infrastructures (fixed for dual play and triple play or fixed and mobile for quadruple play), that are included in the different multiple play bundles, instead of one possible market for multiple play, there could be several possible multiple play markets: a market for fixed bundles (dual play, and triple play) and another separate market for FMC bundles. In its previous decisions, the Commission noted that the possibility for several mobile subscriptions to be included in a quadruple play bundle further complicates the picture.<sup>248</sup>

##### 7.9.1.2. Notifying Party's view

- (254) Both in its initial submission and in its Response to the Article 6(1)(c) Decision, the Notifying Party considers that there is not a separate relevant market for multiple

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Hutchison 3G UK/Telefónica UK, recital 293; of 10 October 2014 in case M.7000 – Liberty Global/Ziggo, recital 143; of 2 July 2014 in case M.7018 – Telefónica Deutschland/E-Plus, recital 74; in case M.6497 – Hutchison 3G Austria/Orange Austria, recital 73; in case M.5650 – T Mobile/Orange UK, recitals 25-26; of 28 May 2014 in case M.6992 – Hutchison 3G UK/Telefónica Ireland, recital 164.

<sup>246</sup> Form CO, paragraph 888.

<sup>247</sup> Commission decisions of 8 October 2018 in case M.8842 – Tele2/Com Hem, paragraph 60; of 3 August 2016 in case M.7978 – Vodafone/Liberty Global/Dutch JV, paragraph 108; of 4 February 2016 in case M.7637 – Liberty Global/BASE Belgium, recital 96; of 19 May 2015 in case M.7421 – Orange/Jazztel, recitals 86 and 91.

<sup>248</sup> Commission decisions of 8 October 2018 in case M.8842 – Tele2/Com Hem, paragraph 55; of 3 August 2016 in case M.7978 – Vodafone/Liberty Global/Dutch JV, paragraph 107.

play offerings but that, in any case, the question whether it is relevant to define a distinct market for multiple play services can be left open in the present case.<sup>249</sup>

#### 7.9.1.3. Commission's assessment

- (255) The Phase I market investigation in the case at hand provided no clear evidence as to the substitutability between multiple play services on the one hand and combinations of standalone services on the other hand.
- (256) In the Article 6(1)(c) Decision, the Commission reached the preliminary conclusion that the question as to whether there exist one or more multiple play markets which are distinct from each of the underlying individual telecommunications services could be left open, as the effects of the Transaction were unlikely to differ irrespective of the scope of the product market.
- (257) In its Response to the Article 6(1)(c) Decision, the Notifying Party claimed that it would not be relevant to define a separate market for multiple play services, since (i) such services would be substitutable with the standalone components of multiple play services, and (ii) [Telia Company's business strategy]. The Notifying Party added that in any case there was no need to deviate from the decisional practice of the Commission.<sup>250</sup>
- (258) In light of the foregoing, the Commission does not depart from its previous assessment, and concludes, for the purpose of this Decision, that the question as to whether there exist one or more multiple play markets which are distinct from each of the underlying individual telecommunications services can be left open, as this would not change the outcome of the competitive assessment in this case.

#### 7.9.2. *Geographic market definition*

##### 7.9.2.1. Previous Commission decisions

- (259) In previous decisions, the Commission considered that the geographic scope of any possible retail market for multiple play services would be national since the components of the multiple play offers are offered individually at a national level and the bundling of the services would not change the geographic scope of the components. It nevertheless ultimately left the question of the exact geographic delineation of the possible retail market for multiple play services open.<sup>251</sup>

##### 7.9.2.2. Notifying Party's view

- (260) In its initial submission, the Notifying Party did not provide its views on the geographic market for multiple play services.<sup>252</sup>

##### 7.9.2.3. Commission's assessment

- (261) The Phase I market investigation in the present case did not provide any indication that the Commission should depart from its findings in previous cases.

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<sup>249</sup> Form CO, paragraphs 451 and 481, and Notifying Party's Response to the Article 6(1)(c) Decision, paragraphs 18 and 19.

<sup>250</sup> Notifying Party's Response to the Article 6(1)(c) Decision, paragraphs 18 and 19.

<sup>251</sup> Commission decisions of 3 August 2016 in case M.7978 – Vodafone/Liberty Global/Dutch JV, paragraphs 112; of 19 May 2015 in case M.7421 - Orange/Jazztel, recitals 89-90; of 10 October 2014 in case M.7000 - Liberty Global/Ziggo, recitals 152-153; of 20 September 2013 in case M.6990 - Vodafone/Kabel Deutschland, paragraphs 263-265; of 16 June 2011 in case M.5900 - LGI/KBW, paragraphs 183-186.

<sup>252</sup> Form CO, paragraph 481.

- (262) Therefore, in the Article 6(1)(c) Decision, the Commission reached the preliminary conclusion that any possible market for the retail supply of multiple play services would be national in scope, but that in any event the exact geographic market definition in relation to the provision of retail multiple play services could be left open, as the effects of the Transaction were unlikely to differ irrespective of the scope of the geographic market.
- (263) In its Response to the Article 6(1)(c) Decision, the Notifying Party did not contest the preliminary assessment of the Commission.
- (264) In light of the foregoing, the Commission does not depart from its previous assessment, and concludes, for the purpose of this Decision, that any possible market for the retail supply of multiple play services would be national in scope, but that the exact geographic market definition can be left open, as any other segmentation depending on the bundling of the components<sup>253</sup>, would not change the outcome of the competitive assessment in this case.

## 7.10. Sale of advertising space on AV services

### 7.10.1. Product market definition

#### 7.10.1.1. Previous Commission decisions

- (265) The Commission has previously drawn a distinction between online and offline advertising, due to each channel's specificity and different pricing mechanisms.<sup>254</sup> The Commission has also previously considered that the sale of advertising space on TV was part of a separate product market, and not substitutable with the sale of advertising on other forms of media, but ultimately left the question open.<sup>255</sup>

#### 7.10.1.2. Notifying Party's view

- (266) Both in its initial submission and in its Response to the Article 6(1)(c) Decision, the Notifying Party submits that the market for the sale of advertising space should include all types of advertising channels (for example, print, online, TV, etc.) and should not be limited to TV only.<sup>256</sup>
- (267) However, the Notifying Party submits that if the market were to be confined to video advertising only, this product market should encompass not only the sale of advertising space on TV channels but also the sale of advertising space in other AV services, most notably AVOD services.<sup>257</sup>

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<sup>253</sup> Based on the Commission's assessment provided in Sections 7.5, 7.6, 7.7 and 7.8, the Commission considers that the relevant geographic market is national in Sweden. The Commission consider that the relevant geographic market is regional in Finland for any multiple play bundle including a fixed internet access component and national for all other type of bundles.

<sup>254</sup> Commission decision of 9 September 2014 in case M.7288 – Viacom/Channel 5 Broadcasting, paragraph 35.

<sup>255</sup> Commission decisions of 23 November 2018 in case M.8944 - Liberty Global/De Vijver Media and Liberty Global (SBS)/Mediahuis/JV, recital 65; of 24 February 2015 in case M.7194 - Liberty Global/Corelio/W&W/De Vijver Media, recitals 143-144; of 21 December 2010 in case M.5932 - NewsCorp/BSkyB, paragraph 262; of 14 June 2013 in case M. 6866 - Time Warner/CME, paragraph 62.

<sup>256</sup> Form CO, paragraph 527, and Notifying Party's Response to the Article 6(1)(c) Decision, paragraphs 13-17.

<sup>257</sup> Form CO, paragraph 527.

### 7.10.1.3.Commission's assessment

- (268) The results of the Phase I market investigation indicated that the segmentation between online and offline advertising remains valid, due to differences in terms of product characteristics, format and pricing.<sup>258</sup> In addition, for the same reasons, according to most respondents to the market investigation, the market for the sale of advertising space would still need to be segmented according to the media channel, that is newspapers, radio, TV and internet.
- (269) However, one respondent noted that, in light of new market developments such as the penetration of OTT services, a more accurate representation of the TV advertising market would include AVOD services.<sup>259</sup>
- (270) As regards the distinction between advertising space on FTA or pay TV channels, from a demand-side perspective, most TV distributors responding to the Phase I market investigation considered the purchase of advertising space on pay TV channels and the purchase of advertising space on FTA TV channels as complementary.<sup>260</sup> In particular, respondents noted that FTA channels have higher reach, in particular in Finland, and pay TV channels might provide a more precise targeting (for example, advertisers willing to reach a target group younger than 12 years old are more likely to buy advertising space on pay children TV channels). From a supply-side perspective, none of the respondents considered such segmentation as relevant.<sup>261</sup>
- (271) In the Article 6(1)(c) Decision, the Commission reached the preliminary conclusion that the questions whether (i) the market for the sale of space for advertisements in video format should be limited to the sale of advertising space on TV channels or instead should also encompass the sale of advertising space in other AV services, most notably AVOD services, and whether (ii) the market should be further segmented between TV advertising on FTA TV channels and TV advertising on pay TV channels could be left open, as the Transaction would raise serious doubts as to its compatibility with the internal market in Sweden and Finland regardless of the precise product market definition.
- (272) In its Response to the Article 6(1)(c) Decision, the Notifying Party claimed that the Commission did not substantiate the rejection of substitutability between advertising platforms, and in particular between online and offline platforms, as it solely relied on comments from TV distributors, which would not constitute a representative sample of the demand-side of the market. The Notifying Party adds that advertising customers are on a massive scale substituting offline advertising for online advertising and that the investments made by specific advertisers in TV advertising are significantly fluctuant over time, which would show that TV advertising does not constitute a separate market from a demand-side perspective.<sup>262</sup>
- (273) In its Phase II market investigation, the Commission sent questionnaires to a representative sample of purchasers of TV advertising space in Sweden and Finland to assess whether customers would consider substituting TV advertising space for

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<sup>258</sup> Responses to questionnaires Q1 and Q4 to TV distributors in Finland and Sweden, questions C.16 and C.16.1

<sup>259</sup> Responses to questionnaires Q1 and Q4 to TV distributors in Finland and Sweden, questions C.17 and C.17.1.

<sup>260</sup> Responses to questionnaires Q1 and Q4 to TV distributors in Finland and Sweden, questions C.18.

<sup>261</sup> Responses to questionnaires Q2 and Q5 to TV broadcasters in Finland and Sweden, questions C.16.

<sup>262</sup> Notifying Party's Response to the Article 6(1)(c) Decision, paragraphs 13-17.

advertising space on other media channels, including the internet (at least in other formats than video). Overall, advertisers indicate that advertising space on TV (and in particular on TV4 in Sweden and MTV3 in Finland) holds a unique position in their overall advertising strategy, and that other medias are considered as complements rather than substitute. This is because no media channels other than TV (and in particular TV4 in Sweden and MTV3 in Finland) allows reaching such a high proportion of the relevant target audience within a short timeframe with an impactful message.<sup>263</sup>

- (274) As regards the question whether the sale of advertising space in other AV services, most notably AVOD services should be included in the same relevant market, the Phase II market investigation did not allow to conclude on this question.
- (275) Similarly, as regards the question whether advertisers consider procuring advertising space on FTA channels as alternative or complement to procuring advertising space on pay TV channels, most respondents in Sweden and in Finland consider advertising space on pay TV channels as complement rather than substitute for advertising space on FTA channels and in particular for advertising space on TV4 in Sweden and on MTV3 in Finland.<sup>264</sup>
- (276) In light of the foregoing, the Commission does not depart from its previous assessment, and concludes, for the purpose of this Decision, that the sale of TV advertising space is not part of the same relevant product market as the sale of advertising space on other media channels, both in Sweden and in Finland. However, for the purpose of this Decision, the Commission leaves open the question whether the relevant market should be sub-segmented between sales of advertising space on FTA channels and on pay TV channels, and whether the sale of advertising space on AVOD services is part of the same market as the sale of advertising space on TV channels (together the sale of advertising space on TV channels and on AVOD services is hereafter referred to as “sale of advertising space in video format”), as this would not change the outcome of the competitive assessment in this case.

### 7.10.2. *Geographic market definition*

#### 7.10.2.1. Previous Commission decisions

- (277) The Commission has previously considered that the market for the sale of advertising space on TV channels is national in scope.<sup>265</sup>

#### 7.10.2.2. Notifying Party’s view

- (278) In its initial submission, the Notifying Party considers that the exact definition of the geographic market for the sale of TV advertising can be left open, as the Transaction would not raise competitive concerns under any alternative market definition. However, for the purposes of its notification in this case, the Notifying Party assumes that the relevant geographic market is national.<sup>266</sup>

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<sup>263</sup> Responses to questionnaires Q17 and Q18 to purchasers of advertising space in Sweden and in Finland, questions 5-6.

<sup>264</sup> Responses to questionnaires Q17 and Q18 to purchasers of advertising space in Sweden and in Finland, question 6.

<sup>265</sup> Commission decisions of 21 December 2010 in case M.5932 – News Corp/BskyB, paragraph 270; of 9 September 2014 in case M.7288 – Viacom/Channel 5 Broadcasting, paragraph 45; of 7 April 2017 in case M.8354 – Fox/Sky, paragraph 118; of 6 February 2018 in case M.8665 – Discovery/Scripps, paragraph 43.

<sup>266</sup> Form CO, paragraph 529.

#### 7.10.2.3.Commission's assessment

- (279) The information gathered during the Phase I market investigation indicated that TV channels and retail providers of AV services negotiate the sale of TV advertising space at national level.<sup>267</sup>
- (280) In the Article 6(1)(c) Decision, the Commission reached the preliminary conclusion that the geographic market for the sale of TV advertising space is national in scope.
- (281) In its Response to the Article 6(1)(c) Decision, the Notifying Party did not contest the preliminary assessment of the Commission.
- (282) In light of the foregoing, the Commission does not depart from its previous assessment, and concludes, for the purpose of this Decision, that the geographic scope of the market for the sale of TV advertising space, possibly including the sale of advertising space on AVOD services, is national.

### 7.11. Conclusion on market definition

- (283) In light of the elements referred to in sections 7.3 to 7.10, the Commission finds that, for the purpose of this Decision, the relevant markets can be defined as follows.
- (284) With regard to the production of AV content and licensing of broadcasting rights for AV content, the Commission finds that (i) the production of AV content and the licensing of broadcasting rights for AV content constitute two separate product markets, and (ii) the question whether the market for the licensing of broadcasting rights for AV content should be further segmented depending on the type of AV content or exhibition window can be left open, as this would not change the outcome of the competitive assessment in the present case. The geographic market is either national, by linguistic area, or regional, that is to say, encompassing the Nordic region, but for the same reason the question of the precise geographic scope of the market can be left open.
- (285) With regard to the wholesale supply of TV channels, the Commission considers that the relevant product markets are:
- the market for the wholesale supply of premium pay TV channels (including their ancillary services), covering all types of infrastructure. The question whether such market should be further segmented between premium pay TV sports channels and premium pay TV non-sports channels can be left open, as this would not change the outcome of the competitive assessment in this case;
  - the market for the wholesale supply of other TV channels, that is FTA and basic pay TV channels (including their ancillary services), covering all types of infrastructure. The question whether such market should be further segmented between (i) FTA and basic pay TV channels, or (ii) according to genre can be left open, as this would not change the outcome of the competitive assessment in this case. The geographic market is national.
- (286) With regard to the retail provision of AV services, the Commission finds that the relevant product market is the market for the retail supply of AV services, encompassing all distribution technologies. The question whether the retail supply of AV services should be further segmented between (i) FTA and pay AV services can be left open, as well as the question whether in turn pay AV should be segmented

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<sup>267</sup> Responses to questionnaires Q2 and Q5 to TV broadcasters in Finland and Sweden, question D.3; and to questionnaires Q1 and Q4 to TV distributors in Finland and Sweden, question D.2.

according to (ii) linear and non-linear pay AV services, (iii) premium and basic AV services, and (iv) AV services to MDUs and SDUs, as this would not change the outcome of the competitive assessment in this case. The geographic market is national.

- (287) With regard to the retail supply of fixed telephony services, the Commission finds that the relevant product market is the market for the retail supply of fixed telephony, and that it can be left open whether (i) fixed line and VoIP telephony services, (ii) residential and non-residential customers, and (iii) local/national and international calls belong to the same product market, as this would not change the outcome of the competitive assessment in this case. The geographic market is national.
- (288) With regard to the retail supply of fixed internet access services, the Commission considers possible segmentations according to product and customer type or according to distribution technology. However, the exact product market definition can be left open, as this would not change the outcome of the competitive assessment in this case. The geographic market for the retail provision of fixed internet services is national in Sweden, and regional in Finland.
- (289) With regard to the retail supply of mobile telecommunications services, the Commission considers that the relevant product markets should not be further segmented according to service or customer type, or the network technology used. However, the exact product market definition can be left open, as this would not change the outcome of the competitive assessment in this case. The geographic market is national.
- (290) With regard to the retail supply of multiple play services, the Commission finds that the question as to whether there exist one or more multiple play markets which are distinct from each of the underlying individual telecommunications services can be left open, as this would not change the outcome of the overall assessment in this case. Any possible market for the retail supply of multiple play services would be national in scope but the exact geographic market definition can be left open, as any other segmentation depending on the bundling of the components<sup>268</sup> would not change the outcome of the competitive assessment in this case.
- (291) With regard to the sale of advertising space, the Commission considers that the sale of TV advertising space is not part of the same relevant product market as the sale of advertising space on other media channels, both in Sweden and in Finland. However, it can be left open whether a distinction should be made between the sale of advertising space on FTA channels and on pay TV channels, and whether the sale of advertising space on AVOD services is part of the same market as the sale of advertising space on linear TV channels, as this would not change the outcome of the competitive assessment in this case. The geographic market is national.

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<sup>268</sup> Based on the Commission's assessment provided in Sections 7.5, 7.6, 7.7 and 7.8, the Commission considers that the relevant geographic market is national in Sweden. The Commission considers that the relevant geographic market is regional in Finland for any multiple play bundles including a fixed internet access component, and national for all other type of bundles.

## 8. COMPETITIVE ASSESSMENT

### 8.1. Identification of affected markets and other relationships created by the Transaction

- (292) The Transaction gives rise to the following horizontally affected markets:
- the market for the production of AV content in Finland, on the demand-side; and
  - the market for the licensing of broadcasting rights for AV content (demand-side) and the narrower market segments for the licensing of broadcasting rights for AV sports content (demand-side), the licensing of broadcasting rights for AV FTA content (demand-side), the licensing of broadcasting rights for AV pay content (demand-side) in Finland.
- (293) The Transaction also gives rise to limited horizontal overlaps in the market for the licensing of broadcasting rights for AV content (supply-side) and the narrower market segment for the licensing of broadcasting rights for AV sports content (supply-side) in Finland. In this respect, however, the Parties' activities do not give rise to affected markets under any possible market definition and their combined market shares are very limited.<sup>269</sup>
- (294) Moreover, the Transaction gives rise to horizontal overlaps in the market for the retail supply of AV services in Sweden, Finland and Denmark due to the combination of Telia's activities as retail supplier of AV services through IPTV, cable and OTT, and Bonnier Broadcasting's activities as supplier of retail OTT AV services. In this respect, however, the Parties' activities do not give rise to affected markets under any possible market definition.<sup>270</sup>

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<sup>269</sup> Discovery, in particular, indicated that the merged entity would have a reduced incentive to sub-liscence FTA Liiga rights to Discovery. See Non-Confidential version of the minutes of the call with Discovery of 4 April 2019 (ID01580). In this regard, the Commission further notes that, even if the merged entity would change its current licensing market practice, this would have a limited impact on competition for the following reasons. First, the combined market position of the Parties in the market for the licensing of broadcasting rights for AV content (supply-side) is limited with a market share of approximately [0-5]% (Bonnier Broadcasting: [0-5]%, Telia: [0-5]%). The Parties' market shares will not be higher than [0-5]% under any possible market definition. Second, Telia is active in such markets only as a sub-liscensor of broadcasting rights for the Liiga ice-hockey games. The Commission considers the relevance of such rights limited since (i) they constitute only [0-5]% of the market for the licensing of broadcasting rights for AV content and [0-5]% of the market for the licensing of broadcasting rights for sports AV content in Finland; (ii) the Finnish hockey league Liiga remains the owner of such rights. Third, several alternative licensors of broadcasting rights for AV content and sports AV content would remain active on the supply-side of the market including but not limited to major US companies, such as Disney and Universal for overall AV content and sports right holders such as F1 for Formula1 rights and UEFA for football rights. The above Commission's calculations are based on the Parties' reply to the Commission's RFI 79 (ID03245) and Form CO, Annex 7.

<sup>270</sup> In Sweden, the Parties' activities overlap in the market for the retail supply of AV services (Telia: [10-20]%, Bonnier Broadcasting: [...]%, Combined: [10-20]%), in the market for the retail supply of non-linear pay AV services (Telia: [0-5]%, Bonnier Broadcasting: [10-20]%, Combined: [10-20]%), in the market for the retail supply of SDU AV services (Telia: [5-10]%, Bonnier Broadcasting: [5-10]%, Combined: [10-20]%), in the market for the retail supply of premium pay AV services (Telia: CONFIDENTIAL%, Bonnier Broadcasting: CONFIDENTIAL%, Combined: CONFIDENTIAL%).

In Finland, the Parties' activities overlap in the market for the retail supply of AV services (Telia: [10-20]%, Bonnier Broadcasting: [...]%, Combined: [10-20]%), in the market for the retail supply of non-linear pay AV services (Telia: [0-5]%, Bonnier Broadcasting: [5-10]%, Combined: [10-20]%), in the market for the retail supply of SDU AV services (Telia: [5-10]%, Bonnier Broadcasting: [5-10]%, Combined: [10-20]%), in the market for the retail supply of premium pay AV

- (295) The Transaction also gives rise to vertically affected markets as a result of: (i) Bonnier Broadcasting's upstream activities as wholesale supplier of TV channels and the Parties' downstream activities as retail suppliers of AV services; (ii) Bonnier Broadcasting's upstream activities as supplier of advertising space in video format<sup>271</sup> and the Parties' downstream activities as retail suppliers of AV services, and Telia's downstream activities as supplier of retail fixed internet access services, retail mobile telecommunications services and multiple play services. Table 1 below lists the main markets that are vertically affected as a result of the Transaction.<sup>272</sup>

**Table 1: Vertically affected markets (market shares for 2018, by value<sup>273</sup>).**

<b>Upstream market</b>	<b>Downstream market</b>
<b>Wholesale supply of FTA/basic pay TV channels</b>  Bonnier Broadcasting:  Sweden: [30-40]% (by volume)  Finland: [20-30]% (by volume)	<b>Retail supply of AV services<sup>274</sup></b>  Telia and Bonnier Broadcasting:  Sweden: [10-20]% (excl. OTT) and [10-20]% (incl. OTT)  Finland: [10-20]% (excl. OTT) and [10-20]% (incl. OTT)

services (Telia: CONFIDENTIAL%, Bonnier Broadcasting: CONFIDENTIAL%, Combined: CONFIDENTIAL%).

In Norway, the Parties' activities overlap in the market for the retail supply of AV services (Telia: [10-20]%, Bonnier Broadcasting: [...]%, Combined: [10-20]%). In particular, in Norway Bonnier Broadcasting has approximately [...] subscribers therefore its position is limited under any possible market definition.

In Denmark, the Parties' activities overlap in the market for the retail supply of AV services (Telia: [0-5]%, Bonnier Broadcasting: [...]%, Combined: [0-5%]), in the market for the retail supply of non-linear pay AV services (Telia: [0-5]%, Bonnier Broadcasting: [0-5]%, Combined: [5-10%]). In particular, in Denmark Telia and Bonnier Broadcasting have respectively [...] and [...] subscribers therefore their position are limited under any possible market definition and the merger specific change brought by the Transaction is limited.

The Commission considers that Bonnier Broadcasting is not active on the markets for the retail supply of linear pay AV services and basic pay AV services, and any possible segmentation of such markets. First, Bonnier Broadcasting provides retail AV services through its OTT applications providing mainly access to non-linear AV content. Second, while Bonnier Broadcasting recently started to offer access to its linear FTA and Basic pay TV channels, those services are ancillary to the main non-linear AV content offered and are not comparable to the aggregation of linear TV channels offered by TV distributors in the market. The Commission will present in Section 8.5.1.1 and 8.5.2.1 the relevance of aggregation of linear channels, in particular for FTA and basic TV channels and Bonnier Broadcasting's plans to provide such services in the next years. The Commission further considers that Bonnier Broadcasting is not active on the markets for the retail supply of AV services to MDUs, and any possible segmentation relating to MDU. As explained in Section 7.5.1, the retail supply of AV services to MDUs refers to collective agreements with landlords or housing associations while SDU to individual agreements. Bonnier Broadcasting's OTT applications are acquired through individual subscriptions over the internet.

<sup>271</sup> In Finland, also Telia is active in the market for the sale of advertising space in video format on AV services. Telia acquired the broadcasting rights to the Finnish hockey league's top division, *Liiga*, in 2017. In connection with the games, Telia has entered into some advertisement/sponsorship agreements. Sponsorship messages are presented before each *Liiga* game starts and short clips are shown during the *Liiga* games.

<sup>272</sup> The market shares for all possible market segmentations of each of the markets for the wholesale supply of TV channels, retail supply of AV services and sale of advertising space on AV services are presented in Section 8.3.

<sup>273</sup> Unless otherwise specified.

<sup>274</sup> Including any possible market segment as presented in Section 7.5 above.

Upstream market	Downstream market
<b>Wholesale supply of premium pay TV channels</b>  Bonnier Broadcasting:  Sweden: [40-50]% (by value)  Finland: [40- 50]% (by value)  Denmark: [40-50]% (by value)	<b>Retail supply of AV services<sup>275</sup></b>  Telia and Bonnier Broadcasting:  Sweden: [10-20] % (excl. OTT) and [10-20]% (incl. OTT)  Finland: [10-20]% (excl. OTT) and [10-20]% (incl. OTT)  Denmark: [0-5]% (both excl. and incl. OTT)
<b>Wholesale supply of premium pay TV sport channels</b>  Bonnier Broadcasting:  Sweden: [40-50]%	<b>Retail supply of AV services<sup>276</sup></b>  Telia and Bonnier Broadcasting:  Sweden: [10-20]% (excl. OTT) and [10-20]% (incl. OTT)  Finland: [10-20]% (excl. OTT) and [10-20]% (incl. OTT)
<b>Wholesale supply of premium pay TV non-sport channels<sup>277</sup></b>  Bonnier Broadcasting:  Sweden: [40-50]%	<b>Retail supply of AV services<sup>278</sup></b>  Telia and Bonnier Broadcasting:  Sweden: [10-20]% (excl. OTT) and [10-20]% (incl. OTT)  Finland: [10-20]% (excl. OTT) and [10-20]% (incl. OTT)  Norway: [20-30]% (excl. OTT) and [10-20]% (incl. OTT)  Denmark: [0-5]% (both excl. and incl. OTT)

<sup>275</sup> Including any possible market segment as presented in Section 7.5 above.

<sup>276</sup> Including any possible market segment as presented in Section 7.5 above.

<sup>277</sup> In Sweden, Finland, Norway and Denmark, premium pay TV non-sports channels are all premium pay TV films and series channels (see Form CO, Schedule 1; in addition, C More Juniori has been considered as basic pay channel).

<sup>278</sup> Including any possible market segment as presented in Section 7.5 above.

<b>Upstream market</b>	<b>Downstream market</b>
<b>Sale of advertising space in video format<sup>279</sup></b>	<b>Retail supply of AV services<sup>280</sup></b>
Bonnier Broadcasting:  Sweden: [50-60]%	Telia and Bonnier Broadcasting:  Sweden: [10-20]% (excl. OTT) and [10-20]% (incl. OTT)
Telia and Bonnier Broadcasting:  Finland: [40-50]%	Finland: [10-20]% (excl. OTT) and [10-20]% (incl. OTT)
	<b>Retail supply of fixed internet access services<sup>281</sup></b>
	Telia:  Sweden: [30-40] <sup>282</sup>
	Finland: [20-30]% (by volume)
	<b>Retail supply of mobile telecommunications services</b>
	Telia:  Sweden: [30-40]%
	Finland: [30-40]%
	<b>Retail supply of multiple play services</b>
	Telia:  Sweden: [30-40]%
	Finland: [20-30]%

*Source: Form, CO, Annex 7, RFI 29.*

- (296) With reference to the vertical relationships between the Parties on the markets for the wholesale supply of FTA and basic pay channels and the retail supply of AV services, the Commission notes that FTA and basic pay TV channels are not sold to retail suppliers of AV services as inputs for the provision of (i) retail premium pay AV services or (ii) retail non-linear pay AV services in Sweden and Finland<sup>283</sup>.

<sup>279</sup> Including any possible market segment as presented in Section 7.10 above.

<sup>280</sup> Including any possible market segment as presented in Section 7.5 above.

<sup>281</sup> Including any possible market segment as presented in Section 7.6 above.

<sup>282</sup> Excluding M2M.

<sup>283</sup> In particular, Bonnier Broadcasting does not supply its FTA and basic pay TV channels to retail suppliers of AV services as inputs for the provision of (i) retail premium pay AV services or (ii) retail non-linear pay AV services in Sweden and Finland. Bonnier Broadcasting does provide rights to distribute its FTA and basic pay TV channels in a non-linear manner as ancillary to the linear distribution of its channels (e.g., typically NPVR rights are licensed as ancillary to linear FTA and basic

Therefore, the Commission considers that it is not relevant to consider the impact of the Transaction on market segments where FTA and basic pay TV channels are not acquired as an input since there is no merger specific change brought by the Transaction. The question as to whether the merged entity would have the ability to undertake a partial or total input or customer foreclosure strategy has therefore been undertaken in the potential markets for which FTA and basic pay TV channels are acquired, namely the markets for the retail supply of (i) AV services (ii) linear pay AV services, (iii) linear basic pay AV services (iv) all possible markets (i) to (iii) segmented into MDU and SDU.

- (297) With reference to the vertical relationships between the Parties on the markets for the wholesale supply of premium pay channels (irrespective of a segmentation in sports and non-sports) and the retail supply of AV services, the Commission notes that premium pay TV channels are not sold to retail suppliers of AV services as inputs for the provision of (i) retail basic pay AV services or (ii) retail non-linear pay AV services in Sweden and Finland<sup>284</sup>. Therefore, the Commission considers that it is not relevant to consider the impact of the Transaction on market segments where premium pay TV channels are not acquired as an input since there is no merger specific change brought by the Transaction. The question as to whether the merged entity would have the ability to undertake a partial or total input or customer foreclosure strategy has therefore been undertaken in the potential markets for which premium pay TV channels are acquired, namely the markets for the retail supply of (i) AV services (ii) linear pay AV services, (iii) linear premium pay AV services (iv) all possible markets (i) to (iii) segmented into MDU and SDU.
- (298) With reference to the vertical relationships between the Parties on the upstream market for the sale of advertising space in video format and the downstream markets for retail supply of AV services, the retail supply of retail fixed internet access services, retail mobile telecommunications services and multiple play services, the Commission notes that advertising space is sold to providers of retail AV services, retail supply of retail fixed internet access services, retail mobile telecommunications services and multiple play services, irrespective of any further segmentation. Therefore, the Commission considers that it is relevant to consider the impact of the Transaction on all possible downstream markets for which Bonnier Broadcasting's advertising space in video format is acquired as an input.<sup>285</sup>

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pay TV channels) and that ancillary form of distribution has been included in the Commission's assessment together with the primary linear distribution of the FTA and basic pay TV channels.

<sup>284</sup> In particular, Bonnier Broadcasting does not supply its premium pay TV channels to retail suppliers of AV services as inputs for the provision of (i) retail basic pay AV services or (ii) retail non-linear pay AV services in Sweden and Finland. Bonnier Broadcasting does provide rights to distribute its premium pay TV channels in a non-linear manner as ancillary to the linear distribution of its channels (e.g., typically NPVR rights are licensed as ancillary to linear FTA and basic pay TV channels) and that ancillary form of distribution has been included in the Commission's assessment together with the primary linear distribution of the premium pay TV channels.

<sup>285</sup> The Commission considers that there is no risk of customer foreclosure as a result of the vertical relationships between the Parties on the upstream market for the sale of advertising space in video format and the downstream markets for retail supply of AV services, the retail supply of retail fixed internet access services, retail mobile telecommunications services and multiple play services. First, the merged entity will not have the ability to foreclose rival TV broadcasters (such as Discovery) by not acquiring TV advertising from them. Telia is only one out of numerous customers purchasing advertising space from TV broadcasters in Sweden and Finland. As an example, out of Bonnier Broadcasting's total advertising revenues during 2017, Telia's advertising spend represented less than [0-5]%. Telia's total advertising expenditure in Sweden in 2017 on all of Discovery's TV channels was

- (299) Moreover, the Transaction gives rise to a conglomerate relationship since Bonnier Broadcasting is active in the retail supply of AV services, through OTT services in Sweden and Finland, and Telia is active in the markets for the retail supply of fixed internet access, mobile telecommunications services and multiple play services in Sweden and Finland, which are used to distribute OTT-based AV services to end customers.
- (300) Finally, some market participants have also indicated that the Transaction could be detrimental to effective competition in Finland and Sweden due to other relationships among the Parties' activities.
- (301) First, some market participants indicate that the merged entity's access to commercially sensitive information that Telia obtains from TV broadcasters and suppliers of TV advertising space and that Bonnier Broadcasting obtains from TV distributors or telecom providers could favour the merged entity's activities in the markets for the wholesale supply of TV channels, retail supply of AV services and sale of advertising space. The Commission notes that the sharing of commercially sensitive information or any other confidential information (such as metadata or consumer behavior relating to the service and content) among TV broadcasters, TV distributors, providers of telecommunications services and suppliers of TV advertising space is regulated, according to market practice, in the agreements among such parties.
- (302) Second, some market participants indicate that the combination of Telia and Bonnier Broadcasters' user data could favour the merged entity's activities in the markets for the wholesale supply of TV channels, retail supply of AV services and sale of advertising space. The Commission notes that, first, any user data generated from consumer behavior relating to the AV service and AV content has been assessed as commercially sensitive information as explained in the above recital. Second, the Transaction does not give rise to horizontal or vertical relationships in any hypothetical data market since Telia is not active in a data market and, according to the Notifying Party, [Telia Company's business strategy].<sup>286</sup>
- (303) Third, one market participant<sup>287</sup> indicated that the Transaction could have a detrimental impact on effective competition on the markets for production of AV content and licensing of broadcasting rights for AV content (demand-side) in Sweden due to (i) the potential combination of Telia and SVT activities, (ii) the increased bargaining power in the acquisition of AV content, (iii) potential customer foreclosure of third party AV content producers from accessing the merged entity<sup>288</sup>, (iv) bundling of AV content with retail telecommunications services. First, the Commission notes that in Section 3.2, it has analysed in detail whether Telia and SVT are separate economic entities and concluded that SVT should be considered to

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approximately EUR [...]. Second, the Transaction will not give the merged entity any incentives to cease purchasing advertising TV space from rival TV broadcasters. [Telia Company's advertising strategy]. Third, given the relative insignificance of the merged entity's advertising spend, it is unlikely that a customer foreclosure strategy could have any impact on effective competition.

<sup>286</sup> Notifying Parties' response to the Commission's RFI 66, question 12 (ID02776).

<sup>287</sup> Case M.9064 – Telia/ Bonnier Broadcasting, “meeting with the Commission, 8 April 2019”, NENT. Non-confidential version.

<sup>288</sup> Before the Transaction, Bonnier Broadcasting was acquiring AV content from third parties. One respondent in its submission indicates that the merged entity would not have the incentive to do so, post-Transaction by expanding its own productions and stop relying on third parties' AV content. See, Case M.9064 – Telia/ Bonnier Broadcasting, “meeting with the Commission, 8 April 2019”, NENT. Non-confidential version.

constitute an economic unit with independent power of decision. Therefore, the Transaction does not give rise to any horizontal overlap or vertical relationships resulting from SVT's activities. Second, with reference to the increased bargaining power on the markets for production of AV content and licensing of broadcasting rights for AV content (demand-side) in Sweden, the Commission notes that the Transaction does not give rise to any horizontal overlap since Telia is not active in such markets. Therefore, the concern set out above regarding the increase in the bargaining power is unwarranted due to the absence of any merger specific change brought by the Transaction. Third, with reference to potential customer foreclosure of third party suppliers of AV content from selling their AV content to the merged entity, the Commission notes that the Transaction does not give rise to any vertical relationship between the Parties in Sweden since Telia is not active neither on the demand nor the supply-side of the markets for production of AV content and licensing of broadcasting rights for AV content.<sup>289</sup> Therefore, the concern set out above regarding potential customer foreclosure is unwarranted due to the absence of any merger specific change brought by the Transaction. In particular, Bonnier Broadcasting was already competing absent the Transaction with other suppliers of AV content, including NENT, in the markets for the wholesale supply of TV channels, and any possible market segments, and for the retail supply of OTT AV services. The Commission, therefore considers that the merged entity would likely have similar incentive to acquire AV content from third parties as Bonnier Broadcasting did before the Transaction. Finally, any conglomerate relationship between Bonnier Broadcasting's AV content and Telia's telecommunications services is discussed in Section 8.5.1.7, which examines the conglomerate relationships between Bonnier Broadcasting's OTT services (through which Bonnier Broadcasting's AV content is distributed), and Telia's telecommunications services.

- (304) Fourth, one market participant<sup>290</sup> indicated that the Transaction could have a detrimental impact on effective competition on the markets for retail provision of telecommunications services in Sweden. Post-Transaction, the merged entity could deny access to Telia's fiber or mobile networks as a way of hurting Telia's competitors at retail telecom level. The Commission notes that the Transaction does not give rise to any horizontal or vertical relationships in relation to the markets for the wholesale and retail supply of mobile, fixed telephony and fixed internet access services, given that only Telia (and not Bonnier Broadcasting) is active on these markets. Moreover, the Commission notes that several other providers are active in the market for the wholesale supply of mobile telecommunications services in Sweden, namely Tele2, Telenor and Tre and that the market for the wholesale local access to fibre based and copper based networks is regulated and would likely continue being regulated.<sup>291</sup>
- (305) Fifth, some respondents indicate that the merged entity could terminate Bonnier Broadcasting's agreements with respectively Digita in Finland and Teracom in Sweden for the distribution of Bonnier Broadcasting's TV channels via DTT. The Commission notes that, first, any potential concern related to the supply of Bonnier

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<sup>289</sup> Form CO, paragraphs 212, 214, 259, 265.

<sup>290</sup> Case M.9064 – Telia/ Bonnier Broadcasting, “meeting with the Commission, 8 April 2019”, NENT. Non-confidential version.

<sup>291</sup> PTS initiates public consultation regarding the market analysis of the wholesale market 3a. See: <https://www.pts.se/en/news/internet/2018/pts-inleder-samrad-kring-marknaden-for-lokal-tilltrade/>

Broadcasting's input is assessed in sections 8.5.1.2, 8.5.1.3, 8.6.1.2 and 8.6.1.3. In addition, Telia has [Telia Company's business strategy].<sup>292</sup>

## 8.2. Analytical framework

- (306) Under Article 2(2) and (3) of the Merger Regulation, the Commission must assess whether a proposed concentration would significantly impede effective competition in the internal market or in a substantial part of it, in particular through the creation or strengthening of a dominant position.
- (307) In this respect, a merger may entail horizontal and/or non-horizontal (namely, vertical or conglomerate) effects. Horizontal effects are those deriving from a concentration where the undertakings concerned are actual or potential competitors of each other in one or more of the relevant markets concerned. Vertical effects are those deriving from a concentration where the undertakings concerned are active on different or multiple levels of the supply chain. Conglomerate effects are those deriving from a concentration where the undertakings concerned are in a relationship which is neither horizontal nor vertical, but are active on closely related markets. A concentration may involve all three types of effects. In such a case, the Commission will appraise horizontal and non-horizontal effects in accordance with the guidance set out in the relevant notices, that is to say the Horizontal Merger Guidelines<sup>293</sup> and the Non-Horizontal Merger Guidelines.<sup>294</sup>
- (308) In assessing the competitive effects of a merger, the Commission compares the competitive conditions that would result from the notified merger with the conditions that would have prevailed without the merger. In most cases the competitive conditions existing at the time of the merger constitute the relevant comparison for evaluating the effects of a merger. However, in some circumstances, the Commission may take into account future changes to the market that can reasonably be predicted.<sup>295</sup>

### 8.2.1. Horizontal non-coordinated effects

- (309) A merger giving rise to significant impediment of effective competition may do so as a result of the creation or strengthening of a dominant position in the relevant markets. Moreover, mergers in oligopolistic markets involving the elimination of important constraints that the parties previously exerted on each other, together with a reduction of competitive pressure on the remaining competitors, may also result in a significant impediment to effective competition, even in the absence of dominance.<sup>296</sup>
- (310) In fact, the Horizontal Merger Guidelines describe horizontal non-coordinated effects as follows: "*A merger may significantly impede effective competition in a market by removing important competitive constraints on one or more sellers who consequently have increased market power. The most direct effect of the merger will be the loss of competition between the merging firms. For example, if prior to the merger one of*

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<sup>292</sup> The Notifying Party's reply to the Commission's RFI 71, question 16 (ID03033). Telia also [Telia Company's business strategy]. See the Notifying Party's reply to the Commission's RF28, question 16 (ID01303).

<sup>293</sup> Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings ("Horizontal Merger Guidelines"), OJ C31, 5.2.2004, paragraph 5.

<sup>294</sup> Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings ("Non-Horizontal Merger Guidelines"), OJ C265, 18.10.2008.

<sup>295</sup> Horizontal Merger Guidelines, paragraph 9; Non-Horizontal Merger Guidelines, paragraph 20.

<sup>296</sup> Horizontal Merger Guidelines, paragraph 25.

*the merging firms had raised its price, it would have lost some sales to the other merging firm. The merger removes this particular constraint. Non-merging firms in the same market can also benefit from the reduction of competitive pressure that results from the merger, since the merging firms' price increase may switch some demand to the rival firms, which, in turn, may find it profitable to increase their prices. The reduction in these competitive constraints could lead to significant price increases in the relevant market.”<sup>297</sup>*

- (311) The Horizontal Merger Guidelines list a number of factors which may influence whether or not significant horizontal non-coordinated effects are likely to result from a merger, such as the large market shares of the merging firms, the fact that the merging firms are close competitors, the limited possibilities for customers to switch suppliers, or the fact that the merger would eliminate an important competitive force.<sup>298</sup> That list of factors applies equally regardless of whether a merger would create or strengthen a dominant position, or would otherwise significantly impede effective competition due to non-coordinated effects. Furthermore, not all of these factors need to be present to make significant non-coordinated effects likely and it is not an exhaustive list.<sup>299</sup>
- (312) Finally, the Horizontal Merger Guidelines describe a number of factors, which could counteract the harmful effects of the merger on competition, including the likelihood of buyer power, the entry of new competitors on the market, and efficiencies.

#### 8.2.2. *Vertical non-coordinated effects*

- (313) A merger between companies which operate at different levels of the supply chain may significantly impede effective competition if such merger gives rise to foreclosure.<sup>300</sup> Foreclosure occurs where actual or potential competitors' access to supplies or markets is hampered or eliminated as a result of the merger, thereby reducing those companies' ability and/or incentive to compete.<sup>301</sup> Such foreclosure may discourage entry or expansion of competitors or encourage their exit.<sup>302</sup>
- (314) The Non-Horizontal Merger Guidelines distinguish between two forms of foreclosure. Input foreclosure occurs where the merger is likely to raise the costs of downstream competitors by restricting their access to an important input. Customer foreclosure occurs where the merger is likely to foreclose upstream competitors by restricting their access to a sufficient customer base.<sup>303</sup>
- (315) Pursuant to the Non-Horizontal Merger Guidelines, input foreclosure arises where, post-merger, the new entity would be likely to restrict access to the products or services that it would have otherwise supplied absent the merger, thereby raising its downstream rivals' costs by making it harder for them to obtain supplies of the input under similar prices and conditions as absent the merger.<sup>304</sup>
- (316) For input foreclosure to be a concern, the merged entity should have a significant degree of market power in the upstream market. Only when the merged entity has such a significant degree of market power, can it be expected that it will significantly

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<sup>297</sup> Horizontal Merger Guidelines, paragraph 24.

<sup>298</sup> Horizontal Merger Guidelines, paragraphs 27 and following.

<sup>299</sup> Horizontal Merger Guidelines, paragraph 26.

<sup>300</sup> Non-Horizontal Merger Guidelines, paragraphs 17-18.

<sup>301</sup> Non-Horizontal Merger Guidelines, paragraph 18.

<sup>302</sup> Non-Horizontal Merger Guidelines, paragraph 29.

<sup>303</sup> Non-Horizontal Merger Guidelines, paragraph 30.

<sup>304</sup> Non-Horizontal Merger Guidelines, paragraph 31.

influence the conditions of competition in the upstream market and thus, possibly, the prices and supply conditions in the downstream market.<sup>305</sup>

- (317) In assessing the likelihood of an anticompetitive input foreclosure scenario, the Commission examines, first, whether the merged entity would have, post-merger, the ability to substantially foreclose access to inputs, second, whether it would have the incentive to do so, and third, whether a foreclosure strategy would have a significant detrimental effect on competition downstream.<sup>306</sup>
- (318) Pursuant to the Non-Horizontal Merger Guidelines, customer foreclosure may occur when a supplier integrates with an important customer in the downstream market and because of this downstream presence, the merged entity may foreclose access to a sufficient customer base to its actual or potential rivals in the upstream market (the input market) and reduce their ability or incentive to compete, which in turn, may raise downstream rivals' costs by making it harder for them to obtain supplies of the input under similar prices and conditions as absent the merger. This may allow the merged entity profitably to establish higher prices on the downstream market.<sup>307</sup>
- (319) For customer foreclosure to be a concern, a vertical merger must involve a company which is an important customer with a significant degree of market power in the downstream market. If, on the contrary, there is a sufficiently large customer base, at present or in the future, that is likely to turn to independent suppliers, the Commission is unlikely to raise competition concerns on that ground.<sup>308</sup>
- (320) In assessing the likelihood of an anticompetitive customer foreclosure scenario, the Commission examines, first, whether the merged entity would have the ability to foreclose access to downstream markets by reducing its purchases from its upstream rivals, second, whether it would have the incentive to reduce its purchases upstream, and third, whether a foreclosure strategy would have a significant detrimental effect on consumers in the downstream market.<sup>309</sup>

#### 8.2.3. *Conglomerate non-coordinated effects*

- (321) According to the Non-Horizontal Merger Guidelines, in most circumstances, conglomerate mergers will not lead to any competition problems.<sup>310</sup> However, foreclosure effects may arise when the combination of products in related markets may confer on the merged entity the ability and incentive to leverage a strong market position from one market to another closely related market by means of tying or bundling or other exclusionary practices. While tying and bundling have often no anticompetitive consequences, in certain circumstances such practices may lead to a reduction in actual or potential competitors' ability or incentive to compete. This may reduce the competitive pressure on the merged entity allowing it to increase prices.<sup>311</sup>
- (322) In assessing the likelihood of anticompetitive foreclosure effects, the Commission examines, first, whether the merged firm would have the ability to foreclose its actual or potential competitors, second, whether it would have the economic incentive to do so and, third, whether a foreclosure strategy would have a significant detrimental

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<sup>305</sup> Non-Horizontal Merger Guidelines, paragraph 35.

<sup>306</sup> Non-Horizontal Merger Guidelines, paragraph 32.

<sup>307</sup> Non-Horizontal Merger Guidelines, paragraph 58.

<sup>308</sup> Non-Horizontal Merger Guidelines, paragraph 61.

<sup>309</sup> Non-Horizontal Merger Guidelines, paragraph 59.

<sup>310</sup> Non-Horizontal Merger Guidelines, paragraph 92.

<sup>311</sup> Non-Horizontal Merger Guidelines, paragraphs 91 and 93.

effect on competition, thus causing harm to consumers. In practice, these factors are often examined together as they are closely intertwined.<sup>312</sup>

### 8.3. Market shares

#### 8.3.1. Sweden

##### 8.3.1.1. Wholesale supply of FTA and basic pay TV channels

(323) Table 2 below shows the market shares of the Parties and their main competitors in the market for the wholesale supply of FTA and basic pay TV channels including their ancillary services<sup>313</sup> in Sweden in 2018.

**Table 2: Market shares in 2018  
in the market for the wholesale supply of FTA and basic pay TV channels<sup>314315</sup>**

	FTA		FTA/basic pay		Basic pay	
	Volume (min)	Shares (%)	Volume (min)	Shares (%)	Value (mEUR)	Shares (%)
Telia	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]
Bonnier Broadcasting	[...]	[30-40]	[...]	[30-40]	[...]	[30-40]
<b>Combined</b>	<b>[...]</b>	<b>[30-40]</b>	<b>[...]</b>	<b>[30-40]</b>	<b>[...]</b>	<b>[30-40]</b>
MTG/NENT	[...]	[0-5]	[...]	[10-20]	[...]	[20-30]
Discovery	[...]	[0-5]	[...]	[10-20]	[...]	[20-30]
SVT	[...]	[50-60]	[...]	[30-40]	[...]	[0-5]
Others	[...]	[0-5]	[...]	[5-10]	[...]	[10-20]
<b>Total</b>	<b>[...]</b>	<b>100</b>	<b>[...]</b>	<b>100</b>	<b>[...]</b>	<b>100</b>

Source: Form, CO, Annex 7.

(324) On the markets for the wholesale supply of FTA, combined FTA/basic pay, and basic pay TV channels, Bonnier Broadcasting's market share in 2018 was respectively [30-40]% (by volume), [30-40]% (by volume) and [30-40]% (by value).

##### 8.3.1.2. Wholesale supply of premium pay TV channels

(325) Table 3 below shows the market shares of the Parties and their main competitors in the market for the wholesale supply of premium pay TV channels in Sweden in 2018.

<sup>312</sup> Non-Horizontal Merger Guidelines, paragraph 94.

<sup>313</sup> In the remainder of Section 8.3, reference to the wholesale supply of TV channels and any possible segmentation includes reference to the ancillary services, that is to say, services that TV broadcasters add to their TV channels in order to enhance the viewer experience (such as Catch-Up TV and Start-Over).

<sup>314</sup> The market share by value represent the Parties' best estimates of the revenues generated from the carriage fees paid by distributors to broadcasters (including both fixed carriage fees and fees based on individual subscriptions). For the wholesale supply of FTA TV channels or, any combination including FTA TV channels, market shares by volume are provided since market shares by value are not available.

<sup>315</sup> The volumes presented below represent daily viewing minutes per TV channel as measured by the survey firm MMS for Sweden.

**Table 3: Market shares in 2018  
in the market for the wholesale supply of premium pay TV channels<sup>316</sup>**

	Premium pay TV channels		Premium pay TV sport channels				Premium pay TV non-sport channels			
	Value (mEUR)	Shares (%)	Value (mEUR)	Shares (%)	Volume (min)	Shares (%)	Value (mEUR)	Shares (%)	Volume (min)	Shares (%)
Telia	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]
Bonnier Broadcasting	[...]	[40-50]	[...]	[40-50]	[...]	[40-50]	[...]	[40-50]	[...]	[50-60]
<b>Combined</b>	<b>[...]</b>	<b>[40-50]</b>	<b>[...]</b>	<b>[40-50]</b>	<b>[...]</b>	<b>[40-50]</b>	<b>[...]</b>	<b>[40-50]</b>	<b>[...]</b>	<b>[50-60]</b>
MTG/NENT	[...]	[50-60]	[...]	[50-60]	[...]	[50-60]	[...]	[50-60]	[...]	[40-50]
<b>Total</b>	<b>[...]</b>	<b>100</b>	<b>[...]</b>	<b>100</b>	<b>[...]</b>	<b>100</b>	<b>[...]</b>	<b>100</b>	<b>[...]</b>	<b>100</b>

*Source: Form, CO, Annex 7.*

- (326) On the overall market for the wholesale supply of premium pay TV channels, Bonnier Broadcasting had a market share of [40-50]% (by value) in 2018. When looking at the narrower product markets for the wholesale supply of sport premium pay TV channels and non-sports premium pay TV channels, Bonnier Broadcasting's market share was respectively [40-50]% and [40-50]% (by value).

#### 8.3.1.3. Retail supply of AV services

- (327) Table 4 below shows the market shares of the Parties and their main competitors in the market for the retail supply of AV services, including and excluding OTT services in Sweden in 2018.

<sup>316</sup> The volumes presented below represent daily viewing minutes per TV channel as measured by the survey firm MMS for Sweden.

**Table 4: Market shares in 2018  
in the market for the retail supply of AV services**

	Total market (excluding OTT services) <sup>317</sup>				Total market (including OTT services) <sup>318</sup>				OTT services <sup>319</sup>				Premium Pay AV services	
	Value (mEUR)	Shares (%)	Volume ('000)	Shares (%)	Value (mEUR)	Shares (%)	Volume ('000)	Shares (%)	Value (mEUR)	Shares (%)	Volume ('000)	Shares (%)	Volume ('000)	Shares (%)
Telia	[...]	[10-20]	[...]	[10-20]	[...]	[10-20]	[...]	[10-20]	[...]	[0-5]	[...]	[0-5]	CONF	CONF
Bonnier Broadcasting	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[...]	[5-10]	[...]	[10-20]	[...]	[10-20]	CONF	CONF
<b>Combined</b>	<b>[...]</b>	<b>[10-20]</b>	<b>[...]</b>	<b>[10-20]</b>	<b>[...]</b>	<b>[10-20]</b>	<b>[...]</b>	<b>[10-20]</b>	<b>[...]</b>	<b>[10-20]</b>	<b>[...]</b>	<b>[10-20]</b>	CONF	CONF
Tele2	[...]	[40-50]	[...]	[40-50]	[...]	[30-40]	[...]	[30-40]	[...]	[0-5]	[...]	[0-5]	CONF	CONF
Telenor	[...]	[20-30]	[...]	[10-20]	[...]	[10-20]	[...]	[10-20]	[...]	[0-5]	[...]	[0-5]	CONF	CONF
NENT	[...]	[10-20]	[...]	[5-10]	[...]	[10-20]	[...]	[5-10]	[...]	[10-20]	[...]	[10-20]	CONF	CONF
Netflix	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[...]	[10-20]	[...]	[40-50]	[...]	[40-50]	CONF	CONF
HBO Nordic	[...]	[0-5]	[...]	[0-5]	[...]	[10-20]	[...]	[0-5]	[...]	[20-30]	[...]	[10-20]	CONF	CONF
Other	[...]	[0-5]	[...]	[5-10]	[...]	[5-10]	[...]	[10-20]	[...]	[5-10]	[...]	[10-20]	CONF	CONF
<b>Total</b>	<b>[...]</b>	<b>100</b>	<b>[...]</b>	<b>100</b>	<b>[...]</b>	<b>100</b>	<b>[...]</b>	<b>100</b>	<b>[...]</b>	<b>100</b>	<b>[...]</b>	<b>100</b>	CONF	<b>100</b>

Source: Form, CO, Annex 7 & Commission's calculations based on RFI 44, Annex 1 and RFI 75, question 1.

- (328) On the overall market for the retail supply of AV services, Telia and Bonnier Broadcasting have a combined market share of [10-20]% by value in 2018. However, the Parties have mainly a complementary position since Telia is active in the market segment excluding OTT services, with a market share of [10-20]% [...], while Bonnier Broadcasting is exclusively active as an OTT player with a market share of [10-20]% by value and [10-20]% by volume.
- (329) Table 5 below shows the position of the Parties and their main competitors in certain segments of the market for the retail supply of AV services, by main technology and type of contract (i.e., MDU vs SDU) in Sweden in 2018.

<sup>317</sup>

The Parties indicate that it is not unconceivable that the pattern of the volume market shares for the total market (excluding OTT services) are representative of the market position of the Parties and their competitors also on the market segment for the retail supply of linear pay AV services, retail supply of basic pay AV services and for the retail supply of FTA AV services (the Parties define market shares for retail supply of FTA services as volume shares of FTA channels included in pay TV subscriptions since FTA is advertising financed and there are no revenues from traditional FTA distribution at retail level). See the Parties' response to the Commission's RFI 77, question 1 (ID003210). The Parties further confirm that their combined market share is below 30% in the market segment for the retail supply of basic AV services. See the Parties' response to the Commission's RFI 82, question 3. The Commission has included in section 8.5.1.1.2 an overview of the activities of the merged entity's main competitors in Sweden. The Commission notes that Tele2, Telenor, NENT and the other suppliers of retail AV services presented in the table below for the "Total market (excluding OTT services)" provide linear pay AV services and are, therefore, active in the market segment for the retail supply of linear pay AV services. The Commission further notes that Tele2, Telenor, NENT and the other suppliers of retail AV services included in the table below for the "Total market (excluding OTT services)" offer packages including basic TV channels and, therefore, are active in the market segment for the retail supply of basic AV services.

<sup>318</sup>

The Parties consider that the market shares for the retail supply of pay AV services are the same as for the retail supply of AV services (including OTT services). See the Parties' response to the Commission's RFI 77, question 1 (ID003210).

<sup>319</sup>

The Parties indicate that it is not unconceivable that the pattern of the market shares for the retail supply of OTT services are representative of the market position of the Parties and their competitors also on the market segment for the retail supply of non-linear pay AV services. See the Parties' response to the Commission's RFI 77, question 1 (ID003210). The Parties further confirm that their combined market share is below 30% in the market segment for the retail supply of non-linear pay AV services. See the Parties' response to the Commission's RFI 82, question 4. The Commission further notes that, first, the leading supplier of retail OTT AV services, Netflix, provides exclusively non-linear pay AV services; second, the market shares for the retail supply of OTT AV service would at best overestimate Bonnier Broadcasting's market position in the market for the retail supply of non-linear pay AV services since, recently, Bonnier Broadcasting started to offer its linear TV channels in its OTT service.

<sup>320</sup>

The Notifying Party's response to the Commission's RFI 59.

**Table 5: Market shares in 2018  
in the market for the retail supply of AV services, by technology and type of contract**

	IPTV				Cable				Collective agreements ("MDU")		Single agreements ("SDU")	
	Value (mEUR)	Shares (%)	Volume ('000)	Shares (%)	Value (mEUR)	Shares (%)	Volume ('000)	Shares (%)	Volume ('000)	Shares (%)	Volume ('000)	Shares (%)
Telia	[...]	[60-70]	[...]	[50-60]	[...]	[0-5]	[...]	[5-10]	[...]	[10-20]	[...]	[5-10]
Bonnier Broadcast	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[...]	[5-10]
<i>Combi ned</i>	[...]	[60-70]	[...]	[50-60]	[...]	[0-5]	[...]	[5-10]	[...]	[10-20]	[...]	[10-20]
Tele2	[...]	[10-20]	[...]	[10-20]	[...]	[70-80]	[...]	[60-70]	[...]	[60-70]	[...]	[10-20]
Telenor	[...]	[10-20]	[...]	[10-20]	[...]	[10-20]	[...]	[10-20]	[...]	[10-20]	[...]	[5-10]
NENT	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[...]	[10-20]
Netflix	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[...]	[20-30]
HBO Nordic	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[...]	[5-10]
Other	[...]	[0-5]	[...]	[5-10]	[...]	[5-10]	[...]	[10-20]	[...]	[5-10]	[...]	[10-20]
<b>Total</b>	<b>[...]</b>	<b>100</b>	<b>[...]</b>	<b>100</b>	<b>[...]</b>	<b>100</b>	<b>[...]</b>	<b>100</b>	<b>[...]</b>	<b>100</b>	<b>[...]</b>	<b>100</b>

Source: Form, CO, Annex 7.

- (330) Based on the above market share, Telia has a higher market position compared to the one presented in Table 4 exclusively in the market for the retail supply of AV services through IPTV technology with a market share by value of [60-70]% and by volume of [50-60]%.

#### 8.3.1.4. Retail supply of telecom services

- (331) Table 6 below shows the market shares of Telia and its main competitors in the markets for the retail supply of fixed internet access, fixed telephony and mobile telecommunication and multiple play services in Sweden in 2018.

**Table 6: Market shares in 2018  
in the market for the retail supply of fixed internet access, fixed telephony, mobile telecommunication and fixed voice services**

Company	Retail market for fixed internet access services				Retail market for mobile telecommunication services				Retail fixed voice services				Retail multiple play services <sup>321</sup>	
	Value (mEUR)	Shares (%)	Volume ('000)	Shares (%)	Value (mEUR)	Shares (%)	Volume ('000)	Shares (%)	Value (mEUR)	Shares (%)	Volume ('000)	Shares (%)	Volume ('000)	Shares (%)
Telia	[...]	[30-40]	[...]	[30-40]	[...]	[30-40]	[...]	[30-40]	[...]	[60-70]	[...]	[50-60]	[...]	[30-40]
Tele2	[...]	[20-30]	[...]	[20-30]	[...]	[20-30]	[...]	[20-30]	[...]	[10-20]	[...]	[10-20]	[...]	[40-50]
Telenor	[...]	[10-20]	[...]	[10-20]	[...]	[20-30]	[...]	[10-20]	[...]	[0-5]	[...]	[5-10]	[...]	[10-20]
[...]	[...]	[0-5]	[...]	[0-5]	[...]	[10-20]	[...]	[10-20]	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]
Other	[...]	[20-30]	[...]	[20-30]	[...]	[0-5]	[...]	[0-5]	[...]	[10-20]	[...]	[20-30]	[...]	[5-10]
<b>Total</b>	<b>[...]</b>	<b>100</b>	<b>[...]</b>	<b>100</b>	<b>[...]</b>	<b>100</b>	<b>[...]</b>	<b>100</b>	<b>[...]</b>	<b>100</b>	<b>[...]</b>	<b>100</b>	<b>[...]</b>	<b>100</b>

Source: Form CO, Annex 7, RFI 29 and RFI 77.

- (332) Based on the above market shares, Telia is the leading supplier of fixed telephony, mobile and fixed internet access services in Sweden with a market share by value of respectively [30-40]%, [30-40]% and [60-70]%. Telia is the second supplier of multiple play services with a market share by volume of [30-40]%.

<sup>321</sup>

See the Notifying Party's reply to the Commission's RFI 29, Annex 1 (ID01360).

### 8.3.1.5. Sale of advertising space

- (333) Table 7 below shows the market shares of Bonnier Broadcasting and its main competitors in the market for the sale of advertising space in Sweden in 2018.

**Table 7: Market shares in 2018  
in the market for the sale of advertising space**

Company	All media		TV and online video (e.g. AVOD)		TV advertising	
	Value (mEUR)	Shares (%)	Value (mEUR)	Shares (%)	Value (mEUR)	Shares (%)
Telia	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]
Bonnier Broadcasting	[...]	[10-20]	[...]	[50-60]	[...]	[60-70]
<b>Combined</b>	<b>[...]</b>	<b>[10-20]</b>	<b>[...]</b>	<b>[50-60]</b>	<b>[...]</b>	<b>[60-70]</b>
Google	[...]	[20-30]	[...]	[10-20]	[...]	[0-5]
Schibsted	[...]	[5-10]	[...]	[0-5]	[...]	[0-5]
Bonnier	[...]	[5-10]	[...]	[0-5]	[...]	[0-5]
Facebook	[...]	[5-10]	[...]	[0-5]	[...]	[0-5]
MTG/NENT	[...]	[0-5]	[...]	[10-20]	[...]	[10-20]
Discovery	[...]	[0-5]	[...]	[10-20]	[...]	[10-20]
Other	[...]	[30-40]	[...]	[0-5]	[...]	[0-5]
<b>Total</b>	<b>[...]</b>	<b>100</b>	<b>[...]</b>	<b>100</b>	<b>[...]</b>	<b>100</b>

*Source: Form CO, Annex 7.*

- (334) Based on the above market share, Bonnier Broadcasting is the leading supplier of advertising space in video format whether the market is limited to the sale of advertising space on TV channels or instead also includes the sale of advertising space in other AV services, most notably AVOD services. More specifically, Bonnier Broadcasting has a market share by value of respectively [60-70]% and [50-60]% under these two possible market definitions. The other main providers of advertising space are NENT and Discovery with each a market share of [10-20]% in the supply of TV advertising space.

### 8.3.2. *Finland*

#### 8.3.2.1. Production of AV content and licensing of broadcasting rights for AV content (demand-side)

- (335) Table 8 below shows the market shares of the Parties and their main competitors in the market for (i) the production of AV sports content (demand-side), (ii) the licensing of broadcasting rights for AV content (demand-side), and (iii) the licensing of broadcasting rights for sport AV content in Finland in 2018 (demand-side)

**Table 8: Market shares in 2018  
in the markets for the production of AV content and licensing of broadcasting rights for AV content (demand-side) (Finland)<sup>322</sup>**

	Production of AV content (demand-side)			Acquisition of broadcasting rights for AV content		Acquisition of broadcasting rights for sport AV content		Acquisition of broadcasting rights for pay AV content		Acquisition of broadcasting rights for FTA AV content	
	Value (mEUR)	Shares (%)		Value (mEUR)	Shares (%)	Value (mEUR)	Shares (%)	Value (mEUR)	Shares (%)	Value (mEUR)	Shares (%)
Telia	[...]	[0-5]	Telia	[...]	[0-5]	[...]	[5-10]	[...]	[5-10]	[...]	[0-5]
Bonnier Broadcasting	[...]	[20-30]	Bonnier Broadcasting	[...]	[20-30]	[...]	[20-30]	[...]	[40-50]	[...]	[20-30]
<b>Combined</b>	<b>[...]</b>	<b>[20-30]</b>	<b>Combined</b>	<b>[...]</b>	<b>[20-30]</b>	<b>[...]</b>	<b>[30-40]</b>	<b>[...]</b>	<b>[50-60]</b>	<b>[...]</b>	<b>[20-30]</b>
Yle	[...]	[20-30]	Sanoma/Nelonen	[...]	[10-20]	[...]	[10-20]	[...]	[0-5]	[...]	[30-40]
Sanoma/Nelonen	[...]	[20-30]	YLE	[...]	[10-20]	[...]	[30-40]	[...]	[10-20]	[...]	[10-20]
International	[...]	[10-20]	MTG/NENT	[...]	[10-20]	[...]	[10-20]	[...]	[0-5]	[...]	[0-5]
Elisa	[...]	[5-10]	Discovery	[...]	[5-10]	[...]	[5-10]	[...]	[0-5]	[...]	[0-5]
Vaikkaus/Fintoto	[...]	[0-5]	Netflix	[...]	[10-20]	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]
Others	[...]	[5-10]	Others	[...]	[10-20]	[...]	[0-5]	[...]	[30-40]	[...]	[20-30]
<b>Total</b>	<b>[...]</b>	<b>100</b>	<b>Total</b>	<b>[...]</b>	<b>100</b>	<b>[...]</b>	<b>100</b>	<b>[...]</b>	<b>100</b>	<b>[...]</b>	<b>100</b>

Source: Form CO, Annex 7 and Annex 1, RFI 79.

- (336) On the market for the production of AV content (demand-side), the Parties had a combined market share of [20-30]% in 2018, with a low increment of [0-5]%. The Parties' activities do not overlap on narrower segments of this market, since Telia is only active in the commissioning of sport AV content where Bonnier Broadcasting is not active.
- (337) On the market for the licensing of broadcasting rights for AV content (demand-side), the Parties had a combined market share of [20-30]% in 2018. In the market for the licensing of broadcasting rights for sport AV content (demand-side), pay AV content (demand-side) and FTA AV content (demand side), the Parties had a combined market share of respectively [30-40]%, [50-60]% and [20-30]%.

### 8.3.2.2. Wholesale supply of FTA and basic pay TV channels

- (338) Table 9 below shows the market shares of the Parties and their main competitors in the markets for the wholesale supply of FTA and basic pay TV channels in Finland in 2018.

<sup>322</sup> With reference to Finnish speaking areas, the Parties indicates that market shares submitted for Finland serves as a proxy for the Finnish speaking areas as the market shares of the Parties would not materially differ compared to the market shares for Finland. With reference to the Nordic region, the Parties note that [...]. Therefore, the Parties' estimated market shares on a Nordic market would be significantly smaller than their respective shares in Sweden and Finland. See the Parties' response to the Commission's RFI 77, question 1 (ID003210).

**Table 9: Market shares in 2018  
in the market for the wholesale supply of FTA and basic pay TV channels<sup>323324</sup>**

Company	FTA		FTA/basic pay		Basic pay <sup>325</sup>		Pay Children	
	Volume (min)	Shares (%)	Volume (min)	Shares (%)	Volume (min)	Shares (%)	Volume (min)	Shares (%)
Telia	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]
Bonnier Broadcasting	[...]	[20-30]	[...]	[20-30]	[...]	[5-10]	[...]	[60-70]
<b>COMBINED</b>	[...]	[20-30]	[...]	[20-30]	[...]	[5-10]	[...]	[60-70]
MTG/NENT	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]
Sanoma/Nelonen	[...]	[10-20]	[...]	[10-20]	[...]	[10-20]	[...]	[0-5]
Discovery	[...]	[5-10]	[...]	[5-10]	[...]	[10-20]	[...]	[0-5]
Disney	[...]	[5-10]	[...]	[0-5]	[...]	[20-30]	[...]	[20-30]
Yle	[...]	[40-50]	[...]	[40-50]	[...]	[0-5]	[...]	[0-5]
Others	[...]	[0-5]	[...]	[0-5]	[...]	[20-30]	[...]	[0-5]
<b>MARKET SIZE</b>	[...]	<b>100</b>	[...]	<b>100</b>	[...]	<b>100</b>	[...]	<b>100</b>

Source: Form CO, Annex 7 and response to RFI 31.

- (339) On the markets for the wholesale supply of FTA and FTA/basic pay TV channels, Bonnier Broadcasting's market share was, respectively [20-30]% (by volume) and [20-30]% (combined, by volume). However the Commission notes that in terms of commercial share of viewing (excluding Yle, the public broadcaster), Bonnier Broadcasting has a market share of [40-50]%.<sup>326</sup>

### 8.3.2.3. Wholesale supply of premium pay TV channels

- (340) Table 10 below shows the market shares of the Parties and their main competitors in the market for the wholesale supply of premium pay TV channels in Finland in 2018.

**Table 10: Market shares in 2018  
in the market for the wholesale supply of premium pay TV channels<sup>327</sup>**

Company	Premium pay TV channels		Premium pay TV sport channels				Premium pay TV non-sport channels			
	Value (mEUR)	Shares (%)	Value (mEUR)	Shares (%)	Volume (min)	Shares (%)	Value (mEUR)	Shares (%)	Volume (min)	Shares (%)
Telia	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]
Bonnier Broadcasting	[...]	[40-50]	[...]	[40-50]	[...]	[50-60]	[...]	[50-60]	[...]	[70-80]
<b>COMBINED</b>	[...]	[40-50]	[...]	[40-50]	[...]	[50-60]	[...]	[40-50]	[...]	[70-80]
MTG/NENT	[...]	[30-40]	[...]	[30-40]	[...]	[30-40]	[...]	[30-40]	[...]	[20-30]
Sanoma/Nelonen	[...]	[20-30]	[...]	[20-30]	[...]	[5-10]	[...]	[10-20]	[...]	[0-5]
<b>MARKET SIZE</b>	[...]	<b>100</b>	[...]	<b>100</b>	[...]	<b>100</b>	[...]	<b>100</b>	[...]	<b>100</b>

Source: Form CO, Annex 7.

- (341) On the overall market for wholesale supply of premium pay TV channels, Bonnier Broadcasting had a market share of [40-50]% (by value) in 2018. When looking at the narrower product markets for the wholesale supply of premium pay TV sports

<sup>323</sup> The market share by value represent the Parties' best estimates of the revenues generated from the carriage fees paid by distributors to broadcasters (including both fixed carriage fees and fees based on individual subscriptions). For the wholesale supply of FTA TV channels or, any combination including FTA TV channels, market shares by volume are provided since market shares by value are not available.

<sup>324</sup> The volumes presented below represent daily viewing minutes per TV channel as measured by the survey firm Finnpanel for Finland.

<sup>325</sup> C More Juniori has been considered as basic pay channel.

<sup>326</sup> Form CO, annex 6.11.

<sup>327</sup> The volumes presented below represent daily viewing minutes per TV channel as measured by the survey firm Finnpanel for Finland.

channels and premium pay TV non-sports channels, Bonnier Broadcasting's market share was respectively [40-50]% and [50-60]% by value.

#### 8.3.2.4. Retail supply of AV services

- (342) Table 11 below shows the market shares of the Parties and their main competitors in the market for the retail supply of AV services, including and excluding OTT services in Finland in 2018.

**Table 11: Market shares in 2018  
in the market for the retail supply of AV services<sup>328</sup>**

Total market (excluding OTT services) <sup>329</sup>				Total market (including OTT services) <sup>330</sup>				OTT services <sup>331</sup>				Premium Pay AV services	
Value (mEUR)	Shares (%)	Volume ('000)	Shares (%)	Value (mEUR)	Shares (%)	Volume ('000)	Shares (%)	Value (mEUR)	Shares (%)	Volume ('000)	Shares (%)	Value ('000)	Shares (%)
Telia	[...]	[10-20]	[...]	[20-30]	[...]	[10-20]	[...]	[10-20]	[...]	[0-5]	[...]	[0-5]	CONF
Bonnier Broadcasting	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[...]	[5-10]	[...]	[5-10]	CONF
<b>COMBINED</b>	[...]	[10-20]	[...]	[20-30]	[...]	[10-20]	[...]	[10-20]	[...]	[10-20]	[...]	[10-20]	CONF

<sup>328</sup> Upon completion of the acquisition of sole control of DNA by Telenor, which was cleared by the Commission on 15 July 2019 (case M.9370 *Telenor/DNA*), and following a mandatory public cash tender offer to acquire all of the issued and outstanding shares in DNA Plc, Telenor has, as of 15 October 2019, acquired a shareholding of 97.87% in DNA Plc and has initiated a mandatory redemption proceeding for the remaining shares (see Stock Exchange Release of 15 October 2019: <https://corporate.dna.fi/stock-exchange-releases?type=nasdaq&id=2184310&scrollTo=L4cXp95w7TqQ>).

<sup>329</sup> The Parties indicate that it is not unconceivable that the pattern of the volume market shares for the retail supply of the total market (excluding OTT services) are representative of the market position of the Parties and their competitors also on the market segment for the retail supply of linear pay AV services, retail supply of basic pay AV services and for the retail supply of FTA AV services (the Parties define market shares for retail supply of FTA services as volume shares of FTA channels included in pay TV subscriptions since FTA is advertising financed and there are no revenues from traditional FTA distribution at retail level). See the Parties' response to the Commission's RFI 77, question 1 (ID003210). The Parties further confirm that their combined market share is below 30% in the market segment for the retail supply of basic pay AV services. See the Parties' response to the Commission's RFI 82, question 3. The Commission has included in section 8.5.2.1.2 an overview of the activities of the merged entity's main competitors in Finland. The Commission notes that Elisa, DNA, Canal Digital and the other suppliers of retail AV services presented in the table below for the "Total market (excluding OTT services)" provide linear pay AV services and are, therefore, are active in the market segment for the retail supply of linear pay AV services. The Commission further notes that Elisa, DNA, Canal Digital and the other suppliers of retail AV services included in the table below for the "Total market (excluding OTT services)" offer packages including basic TV channels and, therefore, are active in the market segment for the retail supply of basic AV services.

<sup>330</sup> The Parties indicate that the market shares for the retail supply of pay AV services are the same as for the retail supply of AV services (including OTT services). See the Notifying Parties' response to the Commission's RFI 77, question 1 (ID003210).

<sup>331</sup> The Parties indicate that it is not unconceivable that the pattern of the market shares for the retail supply of OTT services are representative of the market position of the Parties and their competitors also on the market segment for the retail supply of non-linear pay AV services. See the Parties' response to the Commission's RFI 77, question 1 (ID003210). The Parties further confirm that their combined market share is below 30% in the market segment for the retail supply of non-linear pay AV services. See the Parties' response to the Commission's RFI 82, question 4. The Commission further notes that, first, the leading supplier of retail OTT AV services, Netflix, provides exclusively non-linear pay AV services; second, the market shares for the retail supply of OTT AV service would at best overestimate Bonnier Broadcasting's market position in the market for the retail supply of non-linear pay AV services since, recently, Bonnier Broadcasting started to offer its linear TV channels in its OTT service.

	Total market (excluding OTT services) <sup>329</sup>				Total market (including OTT services) <sup>330</sup>				OTT services <sup>331</sup>				Premium Pay AV services	
	Value (mEUR)	Shares (%)	Volume ('000)	Shares (%)	Value (mEUR)	Shares (%)	Volume ('000)	Shares (%)	Value (mEUR)	Shares (%)	Volume ('000)	Shares (%)	Volume ('000)	Shares (%)
Elisa	[...]	[30-40]	[...]	[30-40]	[...]	[20-30]	[...]	[20-30]	[...]	[5-10]	[...]	[5-10]	CONF	CONF
DNA	[...]	[30-40]	[...]	[30-40]	[...]	[20-30]	[...]	[20-30]	[...]	[5-10]	[...]	[0-5]	CONF	CONF
Netflix	[...]	[0-5]	[...]	[0-5]	[...]	[10-20]	[...]	[10-20]	[...]	[40-50]	[...]	[40-50]	CONF	CONF
Canal Digital	[...]	[5-10]	[...]	[0-5]	[...]	[5-10]	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	CONF	CONF
Viaplay	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[...]	[10-20]	[...]	[10-20]	CONF	CONF
Ruutu	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[...]	[10-20]	[...]	[10-20]	CONF	CONF
HBO	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[...]	[5-10]	[...]	[10-20]	CONF	CONF
Other	[...]	[10-20]	[...]	[10-20]	[...]	[10-20]	[...]	[10-20]	[...]	[0-5]	[...]	[0-5]	CONF	CONF
<b>Total</b>	[...]	<b>100</b>	[...]	<b>100</b>	[...]	<b>100</b>	[...]	<b>100</b>	[...]	<b>100</b>	[...]	<b>100</b>	CONF	<b>100</b>

Source: Form, CO, Annex 7 & Commission's calculations based on RFI 44, Annex 1 and RFI 75, question 1.

- (343) On the overall market for the retail supply of AV services, Telia and Bonnier Broadcasting have a combined market share of [10-20]% in 2018. However, the Parties have mainly a complementary position since Telia is active in the market for the supply of retail AV services, excluding OTT, with a market share of [10-20]% by value and [20-30]% by volume in the market segment excluding OTT services, while Bonnier Broadcasting is exclusively active as an OTT player with a market share of [5-10]% by value and [5-10]% by volume.
- (344) Table 12 below gives the position of the Parties and their main competitors in certain segments of the market for the retail supply of AV services, by main technology and type of contract (i.e., MDU vs SDU) in Finland in 2018.

**Table 12: Market shares in 2018  
in the market for the retail supply of AV services, by technology and type of contract**

	IPTV				Cable				Single agreements ("SDU")		Collective agreements ("MDU")	
	Value (mEUR)	Shares (%)	Volume ('000)	Shares (%)	Value (mEUR)	Shares (%)	Volume ('000)	Shares (%)	Volume ('000)	Shares (%)	Volume ('000)	Shares (%)
Telia	[...]	[20-30]	[...]	[20-30]	[...]	[10-20]	[...]	[20-30]	[...]	[5-10]	[...]	[20-30]
Bonnier Broadcasting	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[...]	[5-10]	[...]	[0-5]
<b>COMBINED</b>	[...]	[20-30]	[...]	[20-30]	[...]	[10-20]	[...]	[20-30]	[...]	[10-20]	[...]	[20-30]
DNA	[...]	[0-5]	[...]	[0-5]	[...]	[30-40]	[...]	[30-40]	[...]	[10-20]	[...]	[30-40]
Elisa	[...]	[60-70]	[...]	[60-70]	[...]	[30-40]	[...]	[20-30]	[...]	[10-20]	[...]	[20-30]
Netflix	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[...]	[20-30]	[...]	[0-5]
Canal Digital	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]
Anvia	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]
Other	[...]	[10-20]	[...]	[10-20]	[...]	[10-20]	[...]	[10-20]	[...]	[20-30]	[...]	[10-20]
<b>Total</b>	[...]	<b>100</b>	[...]	<b>100</b>	[...]	<b>100</b>	[...]	<b>100</b>	[...]	100	[...]	100

Source: Form CO, Annex 7.

- (345) Based on the above market share, Telia is the [...] provider in the market for the retail supply of AV services through IPTV technology with a market share by value of [20-30]% and by volume of [20-30]%. Post-Transaction, Telia would be the [...] provider in the market for the retail supply of AV services through cable and by type of contract (both single and collective agreements).

### 8.3.2.5. Retail supply of telecom services

- (346) Table 13 below shows the market shares of Telia and its main competitors in the markets for the retail supply of fixed internet access, fixed telephony, mobile telecommunication and multiple play services in Finland in 2018.

**Table 13: Market shares in 2018  
in the markets for the retail supply of fixed internet access, fixed telephony and mobile telecommunication services**

Company	Retail market for fixed internet access services		Retail market for mobile telecommunication services				Retail fixed telephony services		Retail multiple play services <sup>332</sup>	
	Volume ('000)	Shares (%)	Value (mEUR)	Shares (%)	Volume ('000)	Shares (%)	Value ('000)	Shares (%)	Volume ('000)	Shares (%)
Telia	[...]	[20-30]	[...]	[30-40]	[...]	[30-40]	[...]	[20-30]	[...]	[20-30]
Bonnier Broadcasting	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]
Combined	[...]	[20-30]	[...]	[30-40]	[...]	[30-40]	[...]	[20-30]	[...]	[20-30]
Elisa	[...]	[30-40]	[...]	[30-40]	[...]	[30-40]	[...]	[40-50]	[...]	[60-70]
DNA	[...]	[20-30]	[...]	[20-30]	[...]	[20-30]	[...]	[10-20]	[...]	[0-5]
Finnet	[...]	[5-10]	[...]	[0-5]	[...]	[0-5]	[...]	[10-20]	[...]	[0-5]
Other	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[...]	[5-10]	[...]	[10-20]
<b>MARKET SIZE</b>	[...]	<b>100</b>	[...]	<b>100</b>	[...]	<b>100</b>	[...]	<b>100</b>	[...]	<b>100</b>

Source: Form CO, Annex 7, RFI 29 and RFI 77.

- (347) Based on the above market share, Telia is the [...] supplier by volume and value of mobile, fixed internet access and fixed telephony services in Finland with a market share of respectively [30-40]%, [20-30]% and [20-30]%. Telia is the [...] provider of multiple play services with a market share by volume of [20-30]%.

#### 8.3.2.6. Sale of advertising space

- (348) Table 14 below shows the market shares of Bonnier Broadcasting and its main competitors in the market for the retail sale of advertising space in Finland in 2018.

**Table 14: Market shares in 2018  
in the market for the sale of advertising space**

Company	All media		TV and online video (e.g. AVOD)		TV advertising	
	Value (mEUR)	Shares (%)	Value (mEUR)	Shares (%)	Value (mEUR)	Shares (%)
Telia	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]
Bonnier Broadcasting	[...]	[10-20]	[...]	[40-50]	[...]	[40-50]
<b>COMBINED</b>	[...]	[10-20]	[...]	[40-50]	[...]	[40-50]

<sup>332</sup> The Notifying Party has made the assumption that [...]. The Notifying Party has estimated the market shares on dual play using this assumption, i.e. market shares for IPTV reflect the market shares for dual play. See the Notifying Party's reply to the Commission's RFI 29 (ID01359).

Company	All media		TV and online video (e.g. AVOD)		TV advertising	
	Value (mEUR)	Shares (%)	Value (mEUR)	Shares (%)	Value (mEUR)	Shares (%)
Sanoma	[...]	[10-20]	[...]	[30-40]	[...]	[30-40]
Alma	[...]	[5-10]	[...]	[0-5]	[...]	[0-5]
Google	[...]	[10-20]	[...]	[0-5]	[...]	[0-5]
Facebook	[...]	[5-10]	[...]	[5-10]	[...]	[0-5]
Discovery	[...]	[0-5]	[...]	[5-10]	[...]	[10-20]
Disney	[...]	[0-5]	[...]	[5-10]	[...]	[5-10]
YouTube	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]
Other	[...]	[40-50]	[...]	[0-5]	[...]	[0-5]
<b>MARKET SIZE</b>	[...]	<b>100</b>	[...]	<b>100</b>	[...]	<b>100</b>

Source: Form CO, Annex 7.

- (349) Based on the above market share, Bonnier Broadcasting is the leading supplier of advertising space in video format whether the market is limited to the sale of advertising space on TV channels or instead also includes the sale of advertising space in other AV services, most notably AVOD services. More specifically, Bonnier Broadcasting has a market share by value of respectively [40-50]% and [40-50]% under these two possible market definitions. The other main providers of advertising space are Sanoma and Discovery with market shares of respectively [30-40]% and [10-20]% in the supply of TV advertising space.

### 8.3.3. Norway

#### 8.3.3.1. Wholesale supply of premium pay TV channels

- (350) Table 15 below shows the market shares of the Parties and their main competitors in the market for the wholesale supply of premium pay TV channels in Norway in 2018.

**Table 15: Market shares in 2018  
in the market for the wholesale supply of premium pay TV channels in Norway<sup>333</sup>**

Company	Premium pay TV channels		Premium pay TV sport channels		Premium pay TV non-sport channels			
	Volume (min)	Shares (%)	Volume (min)	Shares (%)	Value (mNOK)	Shares (%)	Volume (min)	Shares (%)
Telia	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]
BBR's TV4 channels (distributed via UBON)	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]
BBR's C More TV channels (distributes via TV2)	[...]	[10-20]	[...]	[0-5]	[...]	[70-80]	[...]	[60-70]
<b>COMBINED</b>	[...]	[10-20]	[...]	[0-5]	[...]	[70-80]	[...]	[60-70]

<sup>333</sup> The volumes presented below represent daily viewing minutes per TV channel as measured by the survey firm Kantar TNS in Norway.

	Premium pay TV channels		Premium pay TV sport channels		Premium pay TV non-sport channels			
Company	Volume (min)	Shares (%)	Volume (min)	Shares (%)	Value (mNOK)	Shares (%)	Volume (min)	Shares (%)
TV2	[...]	[50-60]	[...]	[60-70]	[...]	[0-5]	[...]	[0-5]
NENT	[...]	[30-40]	[...]	[30-40]	[...]	[20-30]	[...]	[30-40]
<b>MARKET SIZE</b>	[...]	<b>100</b>	[...]	<b>100</b>	[...]	<b>100</b>	[...]	<b>100</b>

*Source: Form, CO, Annex 7.*

- (351) On the overall market for wholesale supply of premium pay TV channels, Bonnier Broadcasting had a market share of [10-20]% (by volume) in 2018. When looking at the narrower product markets for the wholesale supply of premium pay TV sport channels and premium pay TV non-sports channels, Bonnier Broadcasting's market share was respectively [0-5]% and [60-70]% (by volume).

#### 8.3.3.2. Retail supply of AV services

- (352) Table 16 below shows the market shares of the Parties and their main competitors in the market for the retail supply of AV services in Norway in 2018.

**Table 16: Market shares in 2018 in the market for the retail supply of AV services in Norway<sup>334</sup>**

	Total market (excluding OTT services) <sup>335</sup>				Total market (including OTT services) <sup>336</sup>				OTT services <sup>337</sup>			
	Value (mEUR)	Shares (%)	Volume ('000)	Shares (%)	Value (mEUR)	Shares (%)	Volume ('000)	Shares (%)	Value (mEUR)	Shares (%)	Volume ('000)	Shares (%)
Telia	[...]	[0-5]	[...]	[10-20]	[...]	[0-5]	[...]	[10-20]	[...]	[0-5]	[...]	[0-5]
Get Partner <sup>338</sup>	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]
Bonnier Broadcasting	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]
<b>Combined</b>	[...]	[0-5]	[...]	[20-30]	[...]	[0-5]	[...]	[10-20]	[...]	[0-5]	[...]	[0-5]

<sup>334</sup> With reference to the market for the retail supply of FTA AV services, the Parties have not provided market shares since in Norway, FTA is publicly funded and NRK, (Norwegian Broadcasting Corporation, the public service broadcaster), are the only free-to-air channels available to all through the digital terrestrial television network. The company Riks TV has the nationwide license to use the Norwegian digital terrestrial television network and offer the NRK channels free of charge. See the Notifying Parties' response to the Parties' response to the Commission's RFI 77, question 1 (ID03226). With reference to the possible markets for the retail supply of AV services to (i) SDUs and (ii) MDUs in Norway, the Parties have estimated to hold a combined market share of approximately [10-20]% in the SDU segment and [20-30]% in the MDU segment. See the Parties' response to the Commission's RFI 82, question 3.

<sup>335</sup> The Parties indicate that the market shares for the retail supply of linear pay AV services and for the retail supply of basic pay AV services would not materially differ compared to volumes shares pattern of the market shares for the retail supply of AV services (excluding OTT services). See the Notifying Parties' response to the Parties' response to the Commission's RFI 77, question 1 (ID003210). The Parties further confirm that their combined market share is below 30% in the market segment for the retail supply of basic pay AV services. See the Parties' response to the Commission's RFI 82, question 3.

<sup>336</sup> The Parties indicate that the market shares for the retail supply of AV services (including OTT services) may be used as a proxy for the market shares of the Parties and their competitors in the market for the retail supply of pay AV services. See the Parties' response to the Commission's RFI 77, question 1 (ID003210).

<sup>337</sup> The Parties indicate that it is not unconceivable that the pattern of the market shares for the retail supply of OTT services are representative of the market position of the Parties and their competitors also on the market segment for the retail supply of non-linear pay AV services. See the Parties' response to the Commission's RFI 77, question 1 (ID003210). The Parties further confirm that their combined market share is below 30% in the market segment for the retail supply of non-linear pay AV services. See the Parties' response to the Commission's RFI 82, question 4. The Commission further notes that, first, the leading supplier of retail OTT AV services, Netflix, provides exclusively non-linear pay AV services; second, the market shares for the retail supply of OTT AV service would at best overestimate Bonnier Broadcasting's market position in the market for the retail supply of non-linear pay AV services since, recently, Bonnier Broadcasting started to offer its linear TV channels in its OTT service.

<sup>338</sup> The term "Get Partner" refers to a service provider that has signed a partnership agreement with Get for distribution of Get's products and services. These service providers are typically regional utility companies that own the local infrastructure.

Total market (excluding OTT services) <sup>335</sup>				Total market (including OTT services) <sup>336</sup>				OTT services <sup>337</sup>			
Value (mEUR)	Shares (%)	Volume ('000)	Shares (%)	Value (mEUR)	Shares (%)	Volume ('000)	Shares (%)	Value (mEUR)	Shares (%)	Volume ('000)	Shares (%)
Telenor	[...]	[0-5]	[...]	[40-50]	[...]	[0-5]	[...]	[20-30]	[...]	[0-5]	[...]
Canal Digital partner	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[0-5]	[...]	[0-5]
Altibox	[...]	[0-5]	[...]	[10-20]	[...]	[0-5]	[...]	[5-10]	[...]	[0-5]	[...]
RiksTV	[...]	[0-5]	[...]	[10-20]	[...]	[0-5]	[...]	[5-10]	[...]	[0-5]	[...]
ViaSat AS (NENT)	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[0-5]
NextGen Tel As	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[0-5]
<i>Other</i>	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[...]	[10-20]	[...]	[0-5]	[...]
<i>Netflix</i>	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[...]	[10-20]	[...]	[0-5]	[...]
<i>TV2</i>	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[...]	[10-20]	[...]	[0-5]	[...]
<b>Total</b>	[...]	[...]	[...]	<b>100</b>	[...]	[...]	[...]	<b>100</b>	[...]	[...]	<b>100</b>

Source: Annex 4, RFI 33.

- (353) On the overall market for the retail supply of AV services, Telia and Bonnier Broadcasting have a combined market share (by volume) of [20-30]% excluding OTT, and [10-20]% including OTT, in 2018.
- (354) Table 17 below gives the position of the Parties and their main competitors in certain segments of the market for the retail supply of AV services, by main technology in Norway in 2018.

**Table 17: Market shares in 2018  
in the market for the retail supply of AV services and by technology**

	IPTV				Cable			
	Value (mEUR)	Shares (%)	Volume ('000)	Shares (%)	Value (mEUR)	Shares (%)	Volume ('000)	Shares (%)
Telia Get	[...]	[5-10]	[...]	[10-20]	[...]	[40-50]	[...]	[40-50]
Get Partner	[...]	[10-20]	[...]	[5-10]	[...]	[0-5]	[...]	[0-5]
<b>COMBINED</b>	[...]	<b>[10-20]</b>	[...]	<b>[10-20]</b>	[...]	<b>[40-50]</b>	[...]	<b>[40-50]</b>
Telenor	[...]	[20-30]	[...]	[20-30]	[...]	[50-60]	[...]	[40-50]
Canal Digital partner	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]
Altibox	[...]	[50-60]	[...]	[50-60]	[...]	[0-5]	[...]	[0-5]
RiksTV	[...]	n.a	[...]	n.a	[...]	n.a	[...]	n.a
ViaSat AS (NENT)	[...]	[0-5]	[...]	[0-5]	[...]	n.a	[...]	n.a
NextGen Tel As	[...]	[0-5]	[...]	[0-5]	[...]	n.a	[...]	n.a
<i>Other</i>	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]
<b>Total</b>	[...]	<b>100</b>	[...]	<b>100</b>	[...]	<b>100</b>	[...]	<b>100</b>

Source: Form CO, Annex 7.

- (355) Based on the above market share, Telia would have a significantly higher market position exclusively in the market for the retail supply of AV services through cable with a market share of [40-50]%.

#### 8.3.4. Denmark

##### 8.3.4.1. Wholesale supply of premium pay TV channels

- (356) Table 18 below shows the market shares of the Parties and their main competitor in the market for the wholesale supply of premium pay TV channels in Denmark in 2018.

**Table 18: Market shares in 2018  
in the market for the wholesale supply of premium pay TV channels<sup>339</sup>**

Company	Premium pay TV channels		Premium pay TV non-sport channels			
	Value (mEUR)	Shares (%)	Value (mEUR)	Shares (%)	Volume (min)	Shares (%)
Telia	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]
Bonnier Broadcasting	[...]	[40-50]	[...]	[40-50]	[...]	[40-50]
<b>Combined</b>	[...]	[40-50]	[...]	[40-50]	[...]	[40-50]
Nent	[...]	[50-60]	[...]	[50-60]	[...]	[50-60]
<b>Market size</b>	[...]	<b>100</b>	[...]	<b>100</b>	[...]	<b>100</b>

Source: Form, CO, Annex 7 and reply to RFI 8, Annex 1.

- (357) On both the overall market for the wholesale supply of premium pay TV channels and the narrower market for premium pay TV non-sports channels, Bonnier Broadcasting had a market share of [40-50]% (by value) in 2018.

##### 8.3.4.2. Retail supply of AV services

- (358) Table 19 below shows the market shares of the Parties and their main competitors in the market for the retail supply of AV services, including and excluding OTT services in Denmark in 2018.

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<sup>339</sup> The volumes presented below represent daily viewing minutes per TV channel as measured by the survey firm TNS Gallup in Denmark.

**Table 19: Market shares in 2018  
in the market for the retail supply of AV services<sup>340</sup>**

	Total market (excluding OTT services) <sup>341</sup>				Total market (including OTT services) <sup>342</sup>				OTT services <sup>343</sup>			
	Value (mEUR )	Share s (%)	Volum e ('000)	Share s (%)	Value (mEUR )	Share s (%)	Volum e ('000)	Share s (%)	Value (mEUR )	Share s (%)	Volum e ('000)	Share s (%)
Telia	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]
Bonnier Broadcasting	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]
<i>Combined</i>	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[...]	[5-10]
TDC	[...]	[60-70]	[...]	[50-60]	[...]	[50-60]	[...]	[30-40]	[...]	[0-5]	[...]	[0-5]
Stofa	[...]	[10-20]	[...]	[10-20]	[...]	[10-20]	[...]	[5-10]	[...]	[0-5]	[...]	[0-5]
NENT	[...]	[0-5]	[...]	[0-5]	[...]	[5-10]	[...]	[10-20]	[...]	[30-40]	[...]	[10-20]
Netflix	[...]	[0-5]	[...]	[0-5]	[...]	[5-10]	[...]	[10-20]	[...]	[30-40]	[...]	[30-40]
Waoo	[...]	[5-10]	[...]	[5-10]	[...]	[5-10]	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]
Boxer	[...]	[5-10]	[...]	[5-10]	[...]	[0-5]	[...]	[5-10]	[...]	[0-5]	[...]	[0-5]
Canal Digital	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]
HBO	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[...]	[10-20]	[...]	[10-20]	[...]	[0-5]
TV2 Play	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[...]	[5-10]	[...]	[10-20]	[...]	[10-20]

<sup>340</sup> With reference to the market for the retail supply of FTA AV services in Denmark, the Parties have not provided market shares since the Danish Radio is publicly funded and there is no advertising financed FTA. See the Parties' response to the Commission's RFI 77, question 1 (ID03210), and to the Commission's RFI 80, question 5 (ID03259).

<sup>341</sup> The Parties indicate that it is not unconceivable that the pattern of the volume market shares for the retail supply of the total market (excluding OTT services) are representative of the market position of the Parties and their competitors also on the market segment for the retail supply of linear pay AV services and the retail supply of basic pay AV services. See the Parties' response to the Commission's RFI 77, question 1 (ID003210). The Parties further confirm that their combined market share is below 30% in the market segment for the retail supply of basic pay AV services. See the Parties' response to the Commission's RFI 82, question 3.

<sup>342</sup> The Parties indicate that the market shares for the retail supply of pay AV services are the same as for the retail supply of pay AV services (including OTT services). The Parties indicate that it is not unconceivable that the pattern of the market shares for the retail supply of the total market (including OTT services) are representative of the market position of the Parties and their competitors also on the market segment for the retail supply of premium pay AV services. See the Notifying Parties' response to the Commission's RFI 77, question 1 (ID003210).

<sup>343</sup> The Parties indicate that it is not unconceivable that the pattern of the market shares for the retail supply of OTT services are representative of the market position of the Parties and their competitors also on the market segment for the retail supply of non-linear pay AV services. See the Parties' response to the Commission's RFI 77, question 1 (ID003210). The Parties further confirm that their combined market share is below 30% in the market segment for the retail supply of non-linear pay AV services. See the Parties' response to the Commission's RFI 82, question 4. The Commission further notes that, first, the leading supplier of retail OTT AV services, Netflix, provides exclusively non-linear pay AV services; second, the market shares for the retail supply of OTT AV service would at best overestimate Bonnier Broadcasting's market position in the market for the retail supply of non-linear pay AV services since, recently, Bonnier Broadcasting started to offer its linear TV channels in its OTT service.

	Total market (excluding OTT services) <sup>341</sup>				Total market (including OTT services) <sup>342</sup>				OTT services <sup>343</sup>			
	Value (mEUR)	Shares (%)	Volume ('000)	Shares (%)	Value (mEUR)	Shares (%)	Volume ('000)	Shares (%)	Value (mEUR)	Shares (%)	Volume ('000)	Shares (%)
MinBio	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]
DPlay	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]
<b>Total</b>	[...]	<b>100</b>	[...]	<b>100</b>	[...]	<b>100</b>	[...]	<b>100</b>	[...]	<b>100</b>	[...]	<b>100</b>

Source: Form, CO, Annex 7.

- (359) On the overall market for the retail supply of AV services, Telia and Bonnier Broadcasting have a combined market share of [0-5)% by value and [0-5)% by volume in 2018. Moreover, the Parties have mainly a complementary position since Telia is active in the market for the supply of retail AV services, excluding OTT, with a market share of [0-5)% by value and [0-5)% by volume in the market segment excluding OTT services, while Bonnier Broadcasting is exclusively active as an OTT player with a market share of [0-5)% by value and [5-10)% by volume.
- (360) Table 20 below shows the position of the Parties and their main competitors in certain segments of the market for the retail supply of AV services, by main technology and type of contract (i.e., SDU vs MDU) in Denmark in 2018.

**Table 20: Market shares in 2018  
in the market for the retail supply of AV services, by technology and type of contract**

	IPTV				Single agreements ("SDU")		Collective agreements ("MDU")	
	Value (mEUR)	Shares (%)	Volume ('000)	Shares (%)	Volume ('000)	Shares (%)	Volume ('000)	Shares (%)
Telia	[...]	[5-10]	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]
Bonnier Broadcasting	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]
<b>Combined</b>	[...]	<b>[5-10]</b>	[...]	<b>[0-5]</b>	[...]	<b>[5-10]</b>	[...]	<b>[0-5]</b>
TDC	[...]	[70-80]	[...]	[70-80]	[...]	[10-20]	[...]	[70-80]
Stofa	[...]	[0-5]	[...]	[0-5]	[...]	[5-10]	[...]	[10-20]
NENT	[...]	[0-5]	[...]	[0-5]	[...]	[10-20]	[...]	[0-5]
Netflix	[...]	[0-5]	[...]	[0-5]	[...]	[20-30]	[...]	[0-5]
Waoo	[...]	[20-30]	[...]	[20-30]	[...]	[0-5]	[...]	[5-10]
Boxer	[...]	[0-5]	[...]	[0-5]	[...]	[5-10]	[...]	[0-5]
Canal Digital	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]
HBO	[...]	[0-5]	[...]	[0-5]	[...]	[10-20]	[...]	[0-5]
TV2 Play	[...]	[0-5]	[...]	[0-5]	[...]	[10-20]	[...]	[0-5]
MinBio	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]
Dplay	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]	[...]	[0-5]
<b>Total</b>	[...]	<b>100</b>	[...]	<b>100</b>	[...]	<b>100</b>	[...]	<b>100</b>

Source: Form, CO, Annex 7.

- (361) Based on the above market share, the merged entity would have [...] e. In particular, in the market for the retail supply of AV services through IPTV technology with a market share by value of [5-10)% and by volume of [0-5)% and in the market for the retail supply of AV services through single agreements with a market share of [5-10)%.

## 8.4. Horizontal assessment

### 8.4.1. Production of AV content (demand-side) in Finland

#### 8.4.1.1. Notifying Party's views

- (362) The Notifying Party submits that the Transaction does not give rise to an affected relevant market within the field of production of AV content, as there is only a minor horizontal overlap between the Parties' activities on the demand-side of the production of AV content in Finland.
- (363) Bonnier Broadcasting commissions TV content for use in its activities as a TV broadcaster.<sup>344</sup> A portion of MTV's commissioned TV content is commissioned internally from the MTV company Mediahub. However, a portion of the commissioned TV content, scripted as well as non-scripted, is commissioned from external production companies and format owners.
- (364) Telia was not active on the commissioning of AV content in the period 2015-2017. Telia has only recently commissioned production of content related to the *Liiga*. [Telia Company's business strategy and agreements].<sup>345</sup>
- (365) The Notifying Party submits that it is not appropriate to view this market as horizontally affected since Telia only has very minor activities on the market relating to one sports right. Furthermore, the merged entity will continue to face fierce competition from a plethora of companies that seek to acquire TV content.<sup>346</sup>

#### 8.4.1.2. Commission's assessment

- (366) The Commission considers that the Transaction does not give rise to competition concerns on the demand-side of the market for the production of AV content in Finland, for the following reasons.
- (367) First, the Commission notes that the Parties have a combined market share of [20-30]% on the demand-side for the overall market for the production of AV content in Finland (Bonnier Broadcasting: [20-30]%, Telia: [0-5%]). There are other players in this market, in particular Yle ([20-30]%), Sanoma/Nelonen ([20-30]%), International ([10-20]%)<sup>347</sup> and Elisa ([0-5%]).
- (368) Second, the Commission notes that the increment brought by the Transaction on demand-side of the production of AV content is limited to [...] million EUR corresponding to a market share of approximately [0-5]% as Telia's activities are confined to one sport right, the *Liiga*.
- (369) Third, the Commission also notes that the Parties' activities do not overlap on the narrower market segment for the production of sport AV content (demand-side), as only Telia is active in this market segment and Bonnier Broadcasting is not.
- (370) Fourth, the Commission also notes that the Parties' activities do not overlap on any narrower market segments for the production of AV content (demand-side), as only Bonnier Broadcasting is active in the remaining market segments and Telia is not.<sup>348</sup>

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<sup>344</sup> Form CO, paragraph 217.

<sup>345</sup> Form CO, paragraph 220.

<sup>346</sup> Form CO, paragraphs 223 and 249.

<sup>347</sup> Annex 7, Form CO.

<sup>348</sup> Form CO, Annex 7, Section 2.

- (371) Finally, the Commission notes that the respondents to the market investigation did not raise any concerns in relation to the impact of the Transaction on the market for the commissioning of AV content in Finland.<sup>349</sup>

#### 8.4.1.3. Conclusion

- (372) In light of the above, the Commission concludes that the Transaction would not significantly impede effective competition as a result of horizontal non-coordinated effects in the market for the production of AV content on the demand-side in Finland.

#### 8.4.2. *Licensing of broadcasting rights for AV content in Finland (demand-side)*

##### 8.4.2.1. Notifying Party's view

- (373) The Notifying Party submits that the Transaction does not give rise to any affected relevant market within the markets for licensing and acquisition of broadcasting rights, as there are only very minor horizontal overlaps between the Parties' activities in the licensing and acquisition of broadcasting rights for AV content in Finland.

- (374) On the licensing side (supply-side), Bonnier Broadcasting generally does not out-license content to external purchasers.<sup>350</sup> Telia is only active through the contractually required sub-licensing of some *Liiga* games.<sup>351</sup> The Notifying Party submits that a distinction should be made between the Parties' sporadic activities on this market and the activities of, more traditional, rights owners. For example, movie studios and national sports associations are the true rights owners to specific content (movies, series, sports) which they out-license frequently and with a high degree of expertise.<sup>352</sup> As a result, the Notifying Party does not consider it relevant or appropriate to view the market for licensing and acquisitions of broadcasting rights as horizontally or vertically affected.

- (375) On the acquisition side (demand-side), Bonnier Broadcasting acquires broadcasting rights primarily to foreign pre-produced TV content through MTV. This content is largely acquired with the purpose of incorporating it into TV channels but also to incorporate in its streaming services. With regard to broadcasting rights for sport AV content, Bonnier Broadcasting holds the license of broadcasting rights in Finland in ice hockey (2018 World Championships, Champions Hockey League, SHL), in football (Champions League, UEFA Europa League, La Liga) and in motor sports (Formula 1, Formula 2, GP3, MotoGP, Redbull Air Race). Telia acquired the rights to broadcast the *Liiga*, in spring 2017, for the seasons 2018/2019 to 2023/2024. In addition, Telia has acquired some minor broadcasting rights (mainly as regards concerts of Finnish artists).<sup>353</sup>

- (376) The Notifying Party submits that this limited ad-hoc-based overlap will not give rise to competition concerns since it will not (i) significantly strengthen the merged entity's position relative to the owners of sports rights or (ii) lessen competition among buyers of sports rights.

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<sup>349</sup> Responses to questionnaires Q1 – TV distributors in Finland, Q2 – TV broadcasters in Finland and Q3 – Sports right holders in Finland.

<sup>350</sup> [Business strategy].

<sup>351</sup> Telia has only acquired the right to broadcast *Liiga*. The Finnish Ice Hockey Association is the rights owner that supply the broadcasting right. Telia won the tender process to broadcast *Liiga* and [Information about Telia Company's licensing agreements].

<sup>352</sup> Form CO, paragraphs 266-272.

<sup>353</sup> Form CO, paragraph 279.

#### 8.4.2.2. Commission's assessment

- (377) In the following recitals, the Commission assesses the impact of the Transaction on the market for the licensing of broadcasting rights for sport AV content, pay AV content and FTA AV content in Finland (demand-side). Since Telia is only active in the market segments for sports AV content, pay AV content and FTA AV content<sup>354</sup>, the Commission notes that Telia would have a more limited market position in the broader market for the licensing and acquisition of broadcasting rights for AV content in Finland (demand-side).<sup>355</sup> Furthermore, the Commission also notes that the Parties' activities do not overlap on any narrower market segments for the production of AV content (demand-side), as only Bonnier Broadcasting is active in the remaining market segments and Telia is not.
- (378) The Commission considers that the Transaction does not give rise to competition concerns in relation to the licensing and acquisition of broadcasting rights for AV content, pay AV content, FTA AV content and sport AV content<sup>356</sup> in Finland (demand-side), for the following reasons.
- (379) First, the Commission notes that the Parties have a combined market share of [20-30]% on the demand-side for the overall market for the licensing of broadcasting rights for AV content (demand-side) in Finland (Bonnier Broadcasting: [20-30]%, Telia: [0-5%]). There are other players in this market, in particular Yle ([10-20]%), Sanoma/Nelonen ([10-20]%), NENT ([10-20]%), Discovery ([5-10]%) and Netflix ([10-20]%).
- (380) Second, the Commission notes that the Parties have a combined market share of [30-40]% on the demand-side for the market for the licensing of broadcasting rights for sport AV content (demand-side) in Finland (Bonnier Broadcasting: [20-30]%, Telia: [0-5%]). In the market segments for the licensing of broadcasting rights for pay AV content (demand-side) and for the licensing of broadcasting rights for FTA AV content (demand-side), the Parties have a combined market share of respectively [50-60]% and [20-30]%.
- (381) Third, with regard to the market for the acquisition of broadcasting rights for sport AV content in Finland, while some respondents to the market investigation, mainly suppliers of retail AV services, considered that the merged entity will be in a better bargaining position post-Transaction and that this will would negatively impact smaller participants to the tenders<sup>357</sup>; the vast majority of sport right holders indicated that the Transaction will have no impact on the price and/or other

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<sup>354</sup> Form CO, Annex 7, Section 3 and Form CO, paragraph 265, 279, 282, 288 and 300.

<sup>355</sup> Based on the Parties' submissions, there is no horizontal overlap between the Parties activities on the market for the licensing and acquisition of broadcasting rights for AV content in Finland (demand-side) by exhibition technology. See, Form CO, Annex 7. See Parties' reply to RFI 77, question 1.

<sup>356</sup> In Finland, Telia has acquired regular non-football broadcasting rights for La Liiga. Therefore, the Commission has not assessed the impact of the Transaction on the narrower potential segments for the licensing of broadcasting rights for sport football AV content (demand-side) and non-regular sport AV content (demand-side) since Telia is not active in such segments . The Commission further considers that the impact of the Transaction on the narrower segments for the licensing of broadcasting rights for sport non-football AV content and regular AV content (demand-side) would be similar as in the overall segment for the licensing of broadcasting rights for sport AV content (demand-side). First, the same companies would be active in such segment, including but not limited to Discovery, NENT, Telia and Bonnier Broadcasting. Second, Bonnier Broadcasting's position on the non-football segment would likely be more limited since in such market segment Bonnier Broadcasting's significant broadcasting rights for football sports events (e.g., Champions League) would not be relevant.

<sup>357</sup> Responses to questionnaire Q2 to TV distributors in Finland, question I.2.

parameters of competition in the market for the acquisition of broadcasting rights for sport AV content in Finland.<sup>358</sup>

- (382) Fourth, as explained above, the Commission observes that the Parties currently face and will continue to face effective competition from a large number of players in the overall market for the licensing and acquisition of broadcasting rights for AV content (demand-side) and the narrower market segments for the licensing and acquisition of broadcasting rights for sport AV content, pay AV content and FTA AV content (demand-side). The following players would remain active in the overall market for the licensing and acquisition of broadcasting rights for AV content (demand-side), Yle, NENT, Sanoma and Netflix with market shares of respectively [10-20]%, [10-20]%, [10-20]% and [10-20]. In the narrower product market for the licensing and acquisition of broadcasting rights for sport AV content (demand-side), remaining competitors include Yle, NENT, Sanoma and Discovery with market shares of respectively [30-40]%, [10-20]%, [10-20]% and [5-10]%. In the narrower product market for the licensing and acquisition of broadcasting rights for pay AV content (demand-side), remaining competitors include NENT and Sanoma with market shares of respectively [30-40]% and [10-20]%. In the narrower product market for the licensing and acquisition of broadcasting rights for FTA AV content (demand-side), remaining competitors include Yle, Sanoma and Discovery with market shares of respectively [30-40]%, [10-20]% and [10-20]%.<sup>359</sup>
- (383) Fifth, the Commission notes that, while the Parties have a combined high share in the and the narrower market segment for the licensing and acquisition of broadcasting rights for pay AV content (demand-side), the relevance of such market segment is significantly decreasing. In particular, the spending for pay AV content in Finland decreased from EUR [...] in 2015 to EUR [...] in 2018. At the same time, the Commission notes that in the same period there was a significant increase in spending for SVOD AV content, acquired by retail suppliers of AV services in Finland. Spending for SVOD AV content in Finland increased from EUR [...] in 2015 to EUR [...] in 2018.<sup>360</sup>
- (384) Moreover, the results of the market investigation showed that the Parties are not necessarily considered as the closest competitors in terms of portfolio of sport broadcasting rights. Other players, such as Viasat/NENT, Yle, Discovery also hold broadcasting rights to key sports events in Finland.<sup>361</sup> Furthermore, all responding sports right holders indicated that if post-Transaction the merged entity were to either cease acquiring sport broadcasting rights from them or significantly degrade the terms on which it acquires sport broadcasting rights, there are other players to which the sport right holders could license their content instead of the merged entity.<sup>362</sup> Finally, the Commission observes that not only traditional TV broadcasters are seeking to acquire sports rights content for distribution, but also OTT operators and independent sport rights agents. For example, OTT operators, such as Amazon and Facebook, have started participating in tenders for sports broadcasting rights in other parts of the world and could start bidding in the next tenders in Finland. Another example concerning the independent sport rights agents is the sports rights agent

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<sup>358</sup> Responses to questionnaire Q3, question F.2.

<sup>359</sup> Market shares are available in Section 8.3.2.1

<sup>360</sup> Form CO, Appendix 1 to Annex 7.

<sup>361</sup> Responses to questionnaire Q3 to sports right holders in Finland, question E.4, and Form CO, paragraph 312.

<sup>362</sup> Responses to questionnaire Q3 to sports right holders in Finland, question E.9.

IMG that acquired broadcasting rights to La Liga and Serie A created the streaming service Strive to distribute this content in Scandinavia.<sup>363</sup> For example, in Sweden where also NENT and Discovery are active, Bonnier Broadcasting has recently lost the most prominent national premium sports right, Allsvenskan, to Discovery and in Finland Elisa has a strong portfolio of national premium sports rights.

- (385) Further, competing operators would have the opportunity to bid for the sports AV content currently held by the merged entity in the next three years in Finland. The Commission notes that the sports rights come up for tender on a regular basis.<sup>364</sup> In Finland, licensing agreements for sports AV content are entered into on an exclusive basis for a period of around two to six seasons.<sup>365</sup> As shown in Figure 1 below, several broadcasting rights to key sports AV content will be tendered in the next three years in Finland including but not limited to the UEFA's Champions League and Formula 1.<sup>366</sup>

**Figure 1: Sport rights to be tendered in the next years**

[...]

*Source: RFI 62, Annex to question 3 – Doc ID(2470-121).*

- (386) Finally, the Commission notes that the [Terms and conditions in Telia Company's licensing agreements].<sup>367</sup>

#### 8.4.2.3. Conclusion

- (387) In light of the above, the Commission concludes that the Transaction would not significantly impede effective competition as a result of horizontal non-coordinated effects in the market for the licensing of broadcasting rights for AV content (demand-side) in Finland and in the narrower market segments for the licensing of broadcasting rights for sport AV content (demand-side), for the licensing of broadcasting rights for pay AV content (demand-side) and for the licensing of broadcasting rights for FTA AV content (demand-side) in Finland.

### 8.5. Non-horizontal assessment

#### 8.5.1. Sweden

##### 8.5.1.1. Competitive conditions in the market for the retail supply of AV services absent the Transaction

- (388) In this section, in line with recital 308 above, the Commission will examine, as background to its assessment of the non-horizontal effects of the Transaction in the markets for the wholesale supply of FTA and basic pay TV channels, wholesale supply of pay TV channels and retail supply of AV services, the competitive conditions that would have likely prevailed on those markets absent the Transaction, based on the review of the Parties' internal documents and the results of the market investigation.

<sup>363</sup> See: <https://www.sportsbusinessdaily.com/Global/Issues/2018/08/07/Media/IMG-Strive-Scandinavia.aspx>.

<sup>364</sup> Responses to questionnaire Q3 to sports right holders in Finland question E.5.

<sup>365</sup> Form CO, paragraph 351.

<sup>366</sup> The Notifying Party's internal document, "Sport rights" provided in response to the Commission's RFI 63 (ID2470-121).

<sup>367</sup> Form CO, paragraph 282.

1. Introduction

- (389) Retail providers of AV services offer packages of linear and/or non-linear AV services to end customers.
- (390) Linear services are services that broadcast scheduled programs, conventionally over the air or through satellite/cable, not streamed to a specific user. Nearly, all broadcast television services count as linear services.
- (391) Non-linear services, or VOD services, are services provided for the viewing of programmes at the moment chosen by the user and at the user's individual request on the basis of a catalogue of programmes selected by the service provider. As presented in section 7.1.5, non-linear services can be further differentiated into the following types: AVOD, SVOD, TVOD and PPV.
- (392) The above described linear and non-linear AV services can be augmented with ancillary services, such as Catch-Up TV, PVR, TVE, Start-Over or Dual Entry.
- (393) To provide their linear and non-linear services to end-customers, retail providers of AV services use (i) traditional networks, such as cable, xDSL and fibre, internet protocol television, "IPTV", satellite and, to a lesser extent, digital terrestrial TV ("DTT"), and/or (ii) the "Over-The-Top" ("OTT") distribution technology, which allows AV content to be delivered through the use of the internet. AV services that are supplied via the OTT distribution technology are hereinafter referred to as "OTT-based AV services" or as "OTT services".
- (394) TV distributors, such as Telia, are a sub-set of retail suppliers of AV services, who usually act as TV channel aggregators, i.e. they licence TV channels and ancillary services from different broadcasters and make them available to end users a package(s). The AV services supplied by TV distributors to end users consist of: (i) packages of linear TV channels (which they have either acquired or created themselves); and (ii) content aggregated in non-linear services, such as VOD, SVOD, TVOD and PPV. TV content can be delivered to end users through a number of technical means including cable, satellite and IPTV.
- (395) OTT players are a sub-set of retail suppliers of AV services, who deliver TV channels and AV content in both a linear and non-linear fashion through the use of the internet. The main global OTT players, such as Netflix and Amazon, deliver content exclusively in a non-linear fashion. Local OTT players, such as Bonnier Broadcasting and NENT offer to their customers non-linear AV content but also the possibility to watch their TV channels linearly through the use of the internet. In order to provider OTT services, OTT players acquire OTT rights for channels and ancillary services from broadcasters, and OTT rights for AV content from suppliers of AV content or of broadcasting rights for AV content. OTT players that, similarly to TV distributors, act as TV channels aggregators are hereinafter referred as "OTT channels aggregators"
- (396) Operator OTT services are a sub-set of OTT services enabling a company, usually providers of telecommunications services, to grant OTT access to their subscribers, even to those who do not have traditional TV subscriptions, as long as they are existing customers of other services (for example, as subscriber of fixed internet or mobile services). In order to provide Operator OTT services, OTT players acquire Operator OTT rights.
- (397) OTT services that are purchased on a standalone basis without any other service are hereinafter referred as "standalone OTT services". In order to provide standalone OTT services, OTT players acquire standalone OTT rights.

- (398) TV distributors also deliver TV channels and AV content in both a linear and non-linear fashion through the use of the internet as an ancillary service to the main cable, satellite or IPTV subscription, namely TVE. TVE enables end customers to watch the TV channels or AV content linked to their cable, satellite or IPTV subscription through the internet, on multiple devices, such as tablets and smartphones. In order to provider TVE services, TV distributors acquire TVE rights from broadcasters.
- (399) Therefore, while both TVE and OTT are services delivered over the internet, TVE is an ancillary service to the traditional subscription to retail AV services (i.e. cable, satellite, DTT, DTH or IPTV AV service), while OTT service could also be purchased on a standalone basis without any other service (i.e. standalone OTT services).
- (400) This section is structured as follows. First, the Commission will provide a summary of the main activities carried out by the Parties and their competitors in Sweden in the markets for the wholesale supply of TV channels and the retail supply of AV services (Section 8.5.1.1.-2). Second, the Commission will present the view of the Parties on the role of OTT channels aggregators via OTT in the next years, absent the Transaction in Sweden and Finland (Section 8.5.1.1.-3). Third, the Commission will review the results of the market investigation on the role of OTT channel aggregators in the next years, absent the Transaction in Sweden and Finland (Section 8.5.1.1.-4). Fourth, the Commission will assess the Parties' internal documents regarding the role of SVOD services, in particular Netflix, and the extent to which they are complementary to TV channel aggregators in Sweden and Finland. (Section 8.5.1.1.-5). Subsequently, the Commission will review the internal documents of Bonnier Broadcasting [...] (Section 8.5.1.1.-6). Finally, the Commission will review the internal documents of Bonnier Broadcasting discussing the benefits of licensing OTT rights for its channels to retail suppliers of AV services, in Sweden (Section 8.5.1.1.-7).

## 2. The activities of the Parties and their main competitors in Sweden, pre-Transaction

- (401) **Telia** is active in the retail supply of AV services. Through its IPTV and cable network, Telia provides access to the following packages including both linear and non-linear content:
- Telia's branded TV packages, namely "Lagom", "Stor" and "Kids" providing access to respectively 23, 43 and 7 channels<sup>368</sup>, which include both linear content and non-linear content available through Telia's "Playtjänster" services.<sup>369</sup>

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<sup>368</sup> See <https://www.telia.se/privat/tv/tvpaket#teliaspaket>.

<sup>369</sup> See "Playtjänster för tv", available at: <https://www.telia.se/privat/support/info/programbibliotek-digital-tv>

"I dina Playtjänster hittar du tusentals inspelade program, serier och filmer som du kan se, pausa och spola när du vill och utan extra kostnad. Vilka playtjänster du har tillgång till beror på vilket tv-paket du har valt. Du kan bara starta program som ligger i de playtjänster du abonnerar på. Playtjänsterna innehåller en stor del av de program som sänds i motsvarande kanal. Ibland finns alla program i till exempel en serie, ibland finns ett urval av programmen. Många av programmen blir tillgängliga i dina playtjänster samtidigt som de sänds, och är då markerade med en play-ikon i tv-guiden och i miniguiden. Det finns även program som inte är markerade men som läggs upp i playtjänster i efterhand. Välj bibliotek och program Tryck MENU på tv-boxens fjärrkontroll och välj sedan Playtjänster. Välj sedan den playtjänst du vill titta på, och sedan program och datum för sändningen. Du bekräftar dina val genom att trycka på OK."

- Bonnier Broadcasting's premium packages including access to both linear and non-linear content under the C-More brand.
  - NENT's premium packages including access to both linear and non-linear content under the Viasat brand.
  - HBO's non-linear content available exclusively through Telia's "Playtjänster" services.
- (402) Telia's IPTV and cable customers have also access to all content and channels in both linear and non-linear way through Telia Play as ancillary TVE service.<sup>370</sup>
- (403) Telia also provides retail AV services through its OTT application, Telia Play, including the following packages<sup>371</sup>:
- Telia's branded TV packages, namely "Telia Play TV, film och series", "Telia Play Mini" and "Telia Play Kids" providing access to respectively 12, 7 and 7 channels, which include both linear content and non-linear content available.
  - Bonnier Broadcasting's premium packages including access to both linear and non-linear content under the C-More brand;
  - HBO's non-linear content.
- (404) Currently, Telia already has [Information about Telia Company's distribution rights].<sup>372</sup>
- (405) **Bonnier Broadcasting** is active in Sweden as (i) wholesale supplier of TV channels and its ancillary services, and (ii) retail supplier of AV services through its OTT applications.
- (406) As wholesale supplier of TV channels and ancillary services, Bonnier Broadcasting licenses to retail providers of AV services in Sweden:
- FTA and basic pay TV channels (see Section 8.5.1.2);<sup>373</sup>
  - Premium pay TV sports channels, or any packages of premium pay TV channels including sports TV channels under the C More brand (see Section 8.5.1.3).<sup>374</sup>

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Translation: "In your Play Services you will find thousands of recorded programs, series and movies that you can see, pause and rewind whenever you want and at no extra cost. Which play services you have access to depends on the TV package you have chosen. You can only launch programs that are in the play services you subscribe to. The play services contain a large part of the programs broadcast in the corresponding channel. Sometimes all programs are in a series, for example, sometimes there is a selection of programs. Many of the programs become available in your play services while they are being broadcast, and are then marked with a play icon in the TV guide and in the mini-guide. There are also programs that are not marked but which are posted in play services afterwards.

**Select libraries and programs**

Press MENU on the remote control of the TV box and then select Play Services. Then select the play service you want to watch, and then the program and date of the broadcast. You confirm your choices by pressing OK."

<sup>370</sup> Please see: [https://www.telia.se/privat/tv/aktivera-telia-play?intcmp=play\\_aktivera-play](https://www.telia.se/privat/tv/aktivera-telia-play?intcmp=play_aktivera-play).

<sup>371</sup> Please see: [https://www.telia.se/privat/tv/playpaket?intcmp=play\\_fler-paket](https://www.telia.se/privat/tv/playpaket?intcmp=play_fler-paket).

<sup>372</sup> Parties' response to the Commission's RFI 62 [Annex 1] (ID002566).

<sup>373</sup> In the agreements with the main TV distributors (Tele2, Telia, Telenor, NENT) in Sweden, Bonnier Broadcasting licenses both its only FTA channel, TV4, and its basic pay TV channels, such as channel 7,12, 4 Fakta or 4 Guld collectively. For the agreements, see the Parties' response to the Commission's RFI 14 [Annex 2] (ID001573-55, ID001573-24, ID001573-11, ID001573-27).

<sup>374</sup> Form CO, Table 13.

- (407) In the agreements with the main TV distributors (for example, Tele2, Telia, Telenor, NENT) in Sweden, Bonnier Broadcasting licenses the TV4 channel and the remaining basic pay TV channels, such as channel 7, 12, 4 Fakta or 4 Guld collectively. In addition, when licensing its FTA and basic channels, Bonnier Broadcasting also licenses ancillary rights providing access to Bonnier Broadcasting's non-linear content including but not limited to catch-up service, TVE<sup>375</sup>.
- (408) Therefore, for the purpose of the competitive assessment in this case, there is no need to draw a distinction between: (i) each of Bonnier Broadcasting's FTA and basic channel, and (ii) linear TV channels and those functionally related ancillary non-linear pay AV services. These non-linear services are ancillary to the main linear channels and are licensed by the TV broadcasters to the TV distributors along with, or in addition to, those channels, and not on a distinct stand-alone basis separately from the channels to which they relate.
- (409) As a supplier of retail AV services, Bonnier Broadcasting is active through its OTT applications:
- TV4 Play<sup>376</sup>
  - C-More<sup>377</sup>, Bonnier Broadcasting's OTT SVOD service, with four different packages, namely C-More, C-More TV4, C-More Mycket Sport, C-More All Sport, those packages include both linear and non-linear content.
- (410) **Tele2/Com Hem** is active in the retail supply of AV services via cable, IPTV, DTT and OTT. Through its fixed coax network, open fibre networks and unbundled fibre,<sup>378</sup> Tele2/Com Hem provides access to the following packages:
- Com Hem's branded TV packages, namely "TV Bas", "TV Silver" and "TV Guld"<sup>379</sup> providing access to respectively 27, 57 and 99 TV channels, which include both linear content and non-linear content available through Com Hem's TVE service "Com Hem Play";<sup>380</sup>

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<sup>375</sup> Parties' response to the Commission's RFI 14, [Annex 2] (ID000198).

<sup>376</sup> The AVOD service TV4 Play provides viewers on-demand access to content from the various TV4 TV channels operated by TV4 AB. The content on TV4 Play includes advertisement breaks before and during viewing of the content.

<sup>377</sup> C More's SVOD service provides viewers on-demand access to movies, series and sports. Subscribers of the SVOD service C More get access to TV4 Play without advertisement breaks. Please see: <https://www.cmore.se/alla-paket>. C-More's OTT packages provide also access to SVT's linear channels. All C-More's packages, except the entry C-More package, provide access to Bonnier Broadcasting's FTA and basic pay TV channels, namely channels 4, 7, 12, 4Fakta, 4Guld, 4Film.

<sup>378</sup> Tele2's response to questionnaire Q4 to TV distributors in Sweden, question A.1 (ID000634).

<sup>379</sup> Please see: <https://www.comhem.se/tv>.

<sup>380</sup> Please see: <https://www.comhem.se/tv/comhemplay>.

*"With Com Hem Play you can see most of your TV channels and play libraries on your computer, tablet and mobile at no extra cost.*

*Bring your TV experience wherever you want in the EU*

*Watch what you missed when you want*

*Tighten the series and watch the latest films ad-free"*

*(Translated from Swedish: "Det här är Com Hem Play*

*Med Com Hem Play kan du se de flesta av dina tv-kanaler och playbibliotek på din dator, surfplatta och mobil utan extra kostnad.*

*Ta med dig din tv-upplevelse var du vill i EU*

*Titta ikapp det du missade när du vill*

*Sträcktitta på serier och se de senaste filmerna reklamfritt »)*

- Bonnier Broadcasting's premium packages including access to both linear and non-linear content under the C More brand, namely "C More Standard", "C More Stor" and C More Premium". These packages are sold on top of Com Hem's branded TV packages;<sup>381</sup>
  - NENT's premium packages including access to both linear and non-linear content under the Viasat brand, namely "Viasat Film", "Viasat Sport" and "Viasat Film & Sport". These packages are sold on top of Com Hem's branded TV packages.<sup>382</sup>
- (411) Com Hem also provides retail AV services through its standalone OTT service named "ComBo", including *inter alia* two linear channels from Viacom (Comedy Central and MTV) and SVOD/Play content from Viacom, Fox and National Geographic.<sup>383</sup>
- (412) **Telenor** is active in the retail supply of AV services. Through its cable, IPTV and satellite networks,<sup>384</sup><sup>385</sup> Telenor provides access to the following packages:
- Telenor's branded TV packages, namely "TV Bas", "TV Flex" and "TV Stor" providing access to respectively 16, 24 and 57 TV channels, which include both linear content and non-linear content, through Telenor's "Playtjänster" services and Telenor's TVE service "Telenor Stream";<sup>386</sup>
  - Bonnier Broadcasting's premium packages including access to both linear and non-linear content under the C More brand, namely "C More Standard", "C More Stor" and C More Premium". These packages are sold on top of Telenor's TV packages or to new TV customers with Telenor;<sup>387</sup>
  - NENT's premium packages including access to both linear and non-linear content under the Viasat brand, namely "Viasat Film", "Viasat Sport" and "Viasat Film & Sport", which all include Viasat's streaming service "Viaplay". These packages are sold on top of Telenor's TV packages or to new TV customers with Telenor.<sup>388</sup>
- (413) Telenor does not provide standalone OTT service.<sup>389</sup>
- (414) **NENT** is active in Sweden as (i) wholesale supplier of TV channels and ancillary services, and (ii) retail supplier of AV services via satellite, IPTV and OTT.<sup>390</sup>

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<sup>381</sup> Please see: <https://www.comhem.se/tv/cmore>.

<sup>382</sup> Please see: <https://www.comhem.se/tv/viasat>.

<sup>383</sup> Please see: <https://www.comhem.se/tv/tillval/combo-ott-tv>; and Tele2's response to questionnaire Q13 to retail providers of AV services in Sweden, question 6 (ID002255).

<sup>384</sup> Telenor's response to questionnaire Q4 to TV distributors in Sweden, questions B.1.3.1 and B.2 (ID001180).

<sup>385</sup> On 22 October, Telenor and NENT announced the formation of a new company that combines Canal Digital and Viasat Consumer (satellite pay-TV & broadband-TV operations). See: <https://www.telenor.com/media/press-release/telenor-group-and-nent-group-to-merge-canal-digital-and-viasat-consumer>.

<sup>386</sup> Please see: <https://www.telenor.se/handla/tv/>, and <https://www.telenor.se/handla/tv/stream/>.

<sup>387</sup> Please see: <https://www.telenor.se/handla/tv/cmore/>.

<sup>388</sup> Please see: <https://www.telenor.se/handla/tv/viasat/>.

<sup>389</sup> Telenor's response to questionnaire Q4 to TV distributors in Sweden, question B.1.1 (ID001180).

<sup>390</sup> NENT's response to questionnaire Q13 to retail providers of AV services in Sweden, question 1 (ID002270).

- (415) As a retail supplier of AV services, NENT provides access to the following packages through its own satellite platform<sup>391</sup> and IPTV open networks,<sup>392</sup> NENT provides access to the following packages:
- NENT's branded TV packages providing access to up to 64 TV channels, namely "Viasat Base" which offers linear content, and "Viasat Between", "Viasat Great" and "Viasat Premium" which include both linear content and non-linear content.<sup>393</sup> All TV packages include Viasat's streaming service "Viaplay";<sup>394</sup>
  - NENT's premium packages including access to both linear and non-linear content under the Viasat brand, namely "Viasat Film", "Viasat Sport" and "Viasat Golf",<sup>395</sup> which all include Viasat's streaming service "Viaplay".<sup>396</sup> These packages are sold on top of NENT's TV packages;<sup>397</sup>
  - Bonnier Broadcasting's premium package (i) "C More Sport" including access to nine sports TV channels,<sup>398</sup> and (ii) "C More Golf"<sup>399</sup>, also streamed on "Viaplay" and accessible via C More streaming service, which includes the entire sports offering and web-exclusive matches. These packages are sold on top of NENT's TV packages;<sup>400</sup>
  - a package named "Viasat Golf & C More Golf", which includes the Viasat Golf and C More Golf channels, both also streamed on "Viaplay". C More Golf is accessible via C More streaming service;<sup>401</sup>
  - a package of four Norwegian public service TV channels, also accessible on "Viaplay".<sup>402</sup>

(416) NENT also offers "Viaplay" as a standalone OTT service.<sup>403</sup>

(417) NENT is also one of the main wholesale suppliers of FTA and basic pay TV channels<sup>404</sup> and premium pay TV channels. NENT supplies its TV channels to the main TV distributors (Telia, Telenor, Tele2) for distribution via IPTV, cable, DTH and DTT. NENT does not supply its FTA and basic pay TV channels for distribution via OTT.

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<sup>391</sup> On 22 October, Telenor and NENT announced the formation of a new company that combines Canal Digital and Viasat Consumer (satellite pay-TV & broadband-TV operations). See: <https://www.telenor.com/media/press-release/telenor-group-and-nent-group-to-merge-canal-digital-and-viasat-consumer>.

<sup>392</sup> NENT's response to questionnaire Q13 to retail providers of AV services in Sweden, question 2 (ID002270).

<sup>393</sup> Please see: <https://www.viasat.se/utbud>.

<sup>394</sup> Please see: <https://www.nentgroup.com/brands/viaplay>.

<sup>395</sup> Please see: <https://www.viasat.se/utbud>.

<sup>396</sup> Please see: <https://www.nentgroup.com/brands/viaplay>.

<sup>397</sup> Please see: <https://www.viasat.se/utbud>.

<sup>398</sup> Please see: <https://www.viasat.se/utbud/tv/innehall-och-rattigheter/sport/c-more-sport>.

<sup>399</sup> Please see: <https://www.viasat.se/utbud>.

<sup>400</sup> Please see: <https://www.viasat.se/utbud>.

<sup>401</sup> Please see: <https://www.viasat.se/utbud>.

<sup>402</sup> Please see: <https://www.viasat.se/utbud>.

<sup>403</sup> Please see: <https://www.nentgroup.com/brands/viaplay>.

<sup>404</sup> NENT's FTA and basic pay TV channels include TV3, TV6; TV8 and TV10. See <https://www.nentgroup.com/brands/tv>.

- (418) **Netflix** is also active in the retail supply of AV services via OTT. Netflix distributes non-linear content and the related ancillary services through its OTT service.<sup>405</sup>
- (419) **Discovery** is active in Sweden as (i) wholesale supplier of TV channels, and (ii) retail supplier of AV services via OTT.
- (420) Discovery is the third largest wholesale suppliers of FTA and basic pay TV channels<sup>406</sup> in Sweden by audience share. Discovery supplies its TV channels to the main TV distributors (Telia, Telenor, Tele2) for distribution via IPTV, cable, DTH and DTT but it also supplies its FTA and basic pay TV channels for distribution via OTT to Telia and Tele2. Discovery is also active as a retail supplier of AV services through its standalone OTT services, Dplay<sup>407</sup> and Eurosportplayer.<sup>408</sup>
- (421) Finally, **SVT** is the Swedish public broadcaster. SVT's FTA TV channels are subject to a “must-carry” obligation<sup>409</sup> and, differently from other TV broadcasters, SVT is not dependent on advertising revenues and carriage fees from TV distributors.<sup>410</sup> SVT is also offers “SVT Play” as a standalone AVOD OTT service.<sup>411</sup> SVT's FTA TV channels are available to all retail suppliers of AV services via all type of distribution, including OTT. Therefore, for the purpose of the assessment of this Decision and for the reasons presented in Section 8.5.1.2.2, the Commission does therefore not consider SVT as a commercial broadcaster. The Commission nonetheless conducts an assessment of the relevance, if any, by SVT's channels in Section 8.5.1.2.2 on competitive analysis.

### 3. The Parties' view on the role of OTT channels aggregator

- (422) The Parties have argued that the supply of aggregated TV channels via OTT would not be significant in Sweden and Finland over the next years for the following reasons.
- (423) First, in the course of the Phase I investigation, the Parties indicated that [...].<sup>412</sup>
- (424) Second, in the Response to the Article 6(1)(c) Decision, the Parties submit that OTT is not just another distribution technology and that there are several differences between OTT distribution and other distribution technologies such as IPTV, cable, DTH and DTT.<sup>413</sup>
- (425) Moreover, in the course of the Phase II investigation, the Parties have reiterated that the ability to act as OTT channels aggregator would not be important in order to compete in the market for the retail supply of AV services. Bonnier Broadcasting

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<sup>405</sup> <https://www.netflix.com/lu-en/>

<sup>406</sup> Discovery's FTA and basic pay TV channels include Kanal5, Kanal9 and Kanal11. See <https://www.discoverynetworks.se/>.

<sup>407</sup> <https://www.dplay.se/>.

<sup>408</sup> <https://lu.eurosportplayer.com/>

<sup>409</sup> Form CO, paragraph 738.

<sup>410</sup> Form CO, paragraph 118. More information on SVT's funding conditions are available in Section 2.3.

<sup>411</sup> <https://www.svtplay.se/>

<sup>412</sup> The Notifying Party's “Memorandum of 2 May 2019” (ID001521).

<sup>413</sup> First, the Parties indicate that OTT refers to unicast and unmanaged distribution whereby unmanaged means that OTT providers cannot guarantee the quality of the service. Second, in the traditional TV world, consumers are bound to set-top-boxes while the OTT world is app based and consumer may watch content on several type of devices (mobile, desktop, TV, etc.). Third, in the OTT world, all broadcasters have their own app and switching between applications is easy. The role of OTT channels aggregators is questionable. Fourth, competition among OTT players is global and not local. Finally, in the OTT world, any TV distributor could acquire content directly and distribute on its streaming services.

indicated that “*OTT aggregation will remain a fringe phenomenon and is not necessary to compete efficiently*”.<sup>414</sup> Telia considered that real world evidence shows that there are “*no indications of a trend towards OTT aggregation of linear channels being important for the market, that this is demanded by consumers nor that this is the next natural step for the market*”.<sup>415</sup>

4. Third parties’ view on the role of OTT distribution and OTT channels aggregators absent the Transaction
- (426) In the course of its Phase I and Phase II market investigations, the Commission has asked market participants, namely wholesale suppliers of TV channels and retail providers of AV services, their views as to the importance of OTT distribution over the next years in the media sector in Sweden and Finland to provide retail AV services.
- (427) First, as stated in Section 7.5.1, most of the retail providers of AV services consider that the retail supply of OTT services (including the aggregation of TV channels via OTT) is an alternative to the retail supply of AV services via other technologies (that is to say, cable, IPTV, satellite or terrestrial), now or will become such on a two to three-year horizon.<sup>416</sup> In particular, NENT indicates that OTT distribution is “just” another distribution platform for TV channels and AV content while Tele2 highlights how almost 30% of online viewing in 2018 was linear. DNA notes that, while today OTT distribution is not an equally attractive option to view linear content, over a two to three-year horizon, broadband networks will in general be able to handle more AV content over OTT which will increase OTT’s competitiveness against traditional cable and DTT distribution.
- (428) Second, retail suppliers of AV services note that the role of TV channels aggregator would continue to be relevant over the next years when channels and content would be mainly distributed via OTT. In particular, Tele2 notes that TV distributors play an important role in the market by “*averaging consumers demand*” whereby “*broadcasters’ ability to price discriminate is limited*”. As Tele2 further explained “[a]ggregators create bundles which meet and even out the diverging content and price preferences of large consumer groups. This averaging of demand maximizes both reach and revenue (carriage fees as well as advertising revenues) of broadcasters’ content”. Due to their expertise, Tele2 notes that TV distributors are the best placed to act as aggregator in an OTT world.<sup>417</sup>
- (429) Finally, respondents to the market investigation indicated that historically lower tier broadcasters (such as Viacom, Turner, the Walt Disney Company in both Sweden and Finland) have been willing to offer OTT rights to providers of retail AV services, including TV distributors, while it has been harder to secure such rights from the top tier broadcasters (such as Bonnier Broadcasting, Discovery and NENT in Sweden and Bonnier Broadcasting, Discovery and Sanoma in Finland). This dynamic changed around 2017 when top tier broadcasters started also offering standalone OTT rights. However, one respondent [Telenor] notes that standalone OTT rights

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<sup>414</sup> Bonnier Broadcasting’s response to the Commission’s RFI 60, question 1 (ID002511).

<sup>415</sup> Telia’s response to the Commission’s RFI 59, question 1 (ID002506).

<sup>416</sup> Responses to questionnaire Q13 to retail suppliers of AV services in Sweden, questions 44 and 44.1 and to questionnaire Q14 to retail suppliers of AV services in Finland, questions 43 and 43.1

<sup>417</sup> See the agreed non-confidential version of the minutes of a meeting with Tele2, 29 July 2019, Annex 1 (ID003006).

from top tier broadcasters are available at a higher cost than rights for cable, IPTV, DTH, DTT distribution.

- (430) Most of the third party suppliers of AV services responding to the questionnaire consider the distribution of TV channels via OTT as important for their future competitiveness in the market for the retail supply of AV services in Sweden and Finland and that Bonnier Broadcasting, in line with market practice, would have started to license OTT rights, absent the Transaction.<sup>418</sup>
5. The complementarity between OTT services for films/series, such as Netflix, with basic pay AV services
- (431) In the Response to the Article 6(1)(c) Decision, the Parties indicated that the introduction of OTT distribution has opened the local markets up for global players (such as Netflix, HBO, and YouTube) who have been able to enter these markets with very limited investments and today exert immense competitive pressure on local TV distributors.
- (432) The Phase II market investigation and the analysis of the Parties' internal documents show that global OTT players, such as Netflix, offer services to a large extent complementary to the retail AV services of TV distributors.
- (433) First, most of the retail providers of AV services consider that SVOD OTT services (such as Netflix) are complementary to the services offered by retail TV distributors in Sweden and Finland.<sup>419</sup> NENT notes that SVOD services empirically function as add-on services on top of traditional pay TV. Tele2 considers that, for end-customers, services such as Netflix are largely a complement to the main TV channels because of the significant content differences between the two offerings.
- (434) Second, Telia's internal documents show [Telia Company's internal documents].<sup>420<sup>421</sup></sup>

**Figure 2: [...]**

[...]

*Source: [...]*

- (435) Telia's assessment does [Telia Company's internal documents].

**Figure 3: [...]**

[...]

*Source: Annex 2 to RFI 60, 11 June 2018.*

- (436) Third, Bonnier Broadcasting's internal documents support the view that Netflix, and other OTT SVOD services, offer services that are mostly complementary to TV channel aggregators, such as Telia. In an internal document, Bonnier Broadcasting foresees that [Internal quote related to Bonnier Broadcasting's analysis of the market

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<sup>418</sup> Responses to questionnaire Q13 to retail suppliers of AV services in Sweden, questions 47 and 47.1 and to questionnaire Q14 to retail suppliers of AV services in Finland, questions 46 and 46.1

<sup>419</sup> See responses to questionnaire Q13 to retail suppliers of AV services in Sweden, questions 45 and 45.1, and responses to questions 44 and 44.1 to questionnaire Q14 to retail suppliers of AV services in Finland.

<sup>420</sup> Telia's internal document [Reference to Telia Company's internal documents] March 2019 (ID001913-048583).

<sup>421</sup> Telia's internal document [Reference to Telia Company's internal documents] (ID001913-040753).

evolvement in relation to distribution models for AV content distribution, and consumer consumption (e.g. concerning OTT distribution/viewing OTT)].<sup>422</sup>

- (437) Finally, the complementarity of OTT SVOD services, such as Netflix, is supported by customers' usage data. As shown in Figure 4 below, in Sweden, as of December 2018, [...]<sup>423</sup> [...].<sup>424</sup> Only [...]% of households were subscribing only to OTT SVOD services.

**Figure 4: [...]**

[...]

*Source: [...]*

- (438) Based on the above, the Commission concludes that, in Sweden and Finland, SVOD OTT services currently complement the retail offering of FTA and basic pay TV channels provided by TV distributors such as Telia.

6. Bonnier Broadcasting as OTT channels aggregator

- (439) In the following recitals, the Commission analyses internal documents submitted by Bonnier Broadcasting regarding the evolution of the importance of OTT services, and notably of OTT channels aggregators, in the coming years. [...].

- (440) [Internal documents related to Bonnier Broadcasting's analysis of the market evolvement in relation to OTT distribution].

**Figure 5: [...]**

[...]

*Source: [...]*

- (441) [Internal documents related to Bonnier Broadcasting's analysis of the market evolvement in relation to OTT distribution].<sup>425</sup>

- (442) [Internal documents related to Bonnier Broadcasting's analysis of the market evolvement in relation to OTT distribution].<sup>426</sup>

**Figure 6: [...]**

[...]

*Source: [...]*

- (443) [...].

- (444) [Internal documents related to assessments of and work concerning alternative strategies]<sup>427 428</sup>

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<sup>422</sup> Bonnier Broadcasting's response to RFI 30, Annex 1, Document 024, titled [Bonnier Broadcasting's internal document name] (ID1334-46)

<sup>423</sup> Telia's internal document [Telia Company's internal document name] slide 5 (ID001913-023157).

<sup>424</sup> Bonnier Broadcasting's internal document [Bonnier Broadcasting's internal document name] (ID001773-008188).

<sup>425</sup> [Internal documents related to Bonnier Broadcasting's analysis of the market evolvement in relation to OTT distribution] (ID001774-063232).

<sup>426</sup> Bonnier Broadcasting's response to RFI 30, Annex 1, Document 024, titled [Bonnier Broadcasting's internal document details] (ID1334-46).

<sup>427</sup> Bonnier Broadcasting's internal document [Bonnier Broadcasting's internal document details] (ID001773-000104).

<sup>428</sup> Bonnier Broadcasting's internal document [Bonnier Broadcasting's internal document details] (ID001773-000060)

- (445) [Internal work relating to Bonnier Broadcasting's strategy for OTT distribution].<sup>429</sup>  
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- (446) [Internal assessments of and work concerning strategies relating to OTT distribution].<sup>431</sup>
- (447) [Internal strategies relating to OTT distribution].<sup>432 433</sup>
- (448) [Internal strategies relating to OTT distribution].<sup>434</sup>

**Figure 7: [...]**

[...]

*Source: [...]*

- (449) [Internal strategies relating to OTT distribution].<sup>435</sup>
- (450) [Internal strategies relating to OTT distribution].

**Figure 8: [...]**

[...]

*Source: [...]*

- (451) [Internal strategies relating to OTT distribution].<sup>436</sup>
- (452) [Internal strategies relating to OTT distribution].<sup>437</sup>

**Figure 9: [...]**

[...]

*Source: [...]*

- (453) [Internal strategies relating to OTT distribution].<sup>438</sup>

**Figure 10: [...]**

[...]

*Source: [...]*

- (454) [Internal documents related to strategies].<sup>439 440</sup>

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<sup>429</sup> Bonnier Broadcasting's internal document [Bonnier Broadcasting's internal document details] (ID001775-1092). [Bonnier Broadcasting's internal document details]

<sup>430</sup> Bonnier Broadcasting's internal document [Bonnier Broadcasting's internal document details] (ID001774-87086).

<sup>431</sup> Bonnier Broadcasting's internal document [Bonnier Broadcasting's internal document details] (ID001775-155).

<sup>432</sup> Bonnier Broadcasting's internal document [Bonnier Broadcasting's internal document details] (ID001419-000034).

<sup>433</sup> Bonnier Broadcasting's internal document [Bonnier Broadcasting's internal document details] (ID001773-8188). See also Bonnier Broadcasting's internal document [Bonnier Broadcasting's internal document details] (ID001773-8142).

<sup>434</sup> Bonnier Broadcasting's response to RFI 30, Annex 1, Document 018, titled [Bonnier Broadcasting's internal document details] (ID1334-39). [Bonnier Broadcasting's internal document details].

<sup>435</sup> Bonnier Broadcasting's response to RFI 30, Annex 1, Document 018, titled [Bonnier Broadcasting's internal document details] (ID1334-39)

<sup>436</sup> Bonnier Broadcasting's response to Commission's RFI 60, question 3. (ID02511)

<sup>437</sup> [Internal documents related to Bonnier Broadcasting's future strategies].

<sup>438</sup> See slide 26 [Bonnier Broadcasting's internal document details] (ID01773).

- (455) [Strategies concerning OTT distribution].
- (456) [Internal documents related to strategies].<sup>441</sup> <sup>442</sup>
- (457) [Internal documents related to strategies].<sup>443</sup>
- (458) [Internal strategies relating to OTT distribution].<sup>444</sup>
- (459) [...].
7. Bonnier Broadcasting's strategy regarding the licensing of OTT rights for its channels to retail suppliers of AV services in Sweden
- (460) [...].
- (461) [Internal strategy related to the question of granting of OTT rights].<sup>445</sup>
- (462) In the Phase II investigation, the Commission has reviewed internal documents related to Bonnier Broadcasting's negotiations to license its (i) FTA and basic pay and (ii) premium pay TV channels to TV distributors in Sweden. In the following recitals, the Commission will assess Bonnier Broadcasting's licensing strategy vis-à-vis the major TV distributors in Sweden, namely Tele2, Telia, Telenor and NENT.
- (463) [Internal strategy related to the question of granting of OTT rights].<sup>446</sup>
- (464) Second, [...]<sup>447</sup> the Commission notes that (i) [...] (ii) [...]. In particular, [...] do not enable Telia to offer a standalone OTT retail AV service on the market. [...].<sup>448</sup> <sup>449</sup>
- (465) Third, [Internal strategy related to the question of granting of OTT rights].<sup>450</sup> <sup>451</sup> <sup>452</sup>  
<sup>453</sup>
- (466) Fourth, with reference to NENT, which is also active as a TV broadcaster, the Commission refers to Section 8.5.1.1.6 above, [Internal strategy related to the question of granting of OTT rights].
- (467) [Internal strategy related to the question of granting of OTT rights].<sup>454</sup>

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<sup>439</sup> Bonnier Broadcasting's response to Commission's RFI 60, question 5. (ID2511). Bonnier Broadcasting indicates that [Bonnier Broadcasting's internal document details].

<sup>440</sup> Bonnier Broadcasting's internal document submitted in response to Commission's RFI 35, Para 6(b) [Bonnier Broadcasting's internal document details]. (ID1773-1127)

<sup>441</sup> [Bonnier Broadcasting's e-mail exchange details] [Bonnier Broadcasting's e-mail exchange details] (ID1777-83779)

<sup>442</sup> [Bonnier Broadcasting's e-mail exchange details] (ID1778-40439).

<sup>443</sup> [Bonnier Broadcasting's internal e-mail exchange details], RFI 35 - Case M.9064 - RFI 35\_part\_01\_of\_06 - BBRO0005719. (ID1773-5721).

<sup>444</sup> [Bonnier Broadcasting's internal e-mail exchange details] RFI 35 - BBRO0007985. (ID1773-7987) See also [Bonnier Broadcasting's internal e-mail exchange details] (ID02531).

<sup>445</sup> Bonnier Broadcasting's response to the Commission's RFI 60, question 1.c.ii (ID02511).

<sup>446</sup> Bonnier Broadcasting's internal document submitted in response to Commission's RFI 5, Annex 1, documents 008 and 010 (ID191-14 and ID191-18).

<sup>447</sup> Parties' response to RFI 61, Annex 1 and Annex 2 (ID02492).

<sup>448</sup> Telia's internal document [Internal document details] (ID001775-079541). [Internal document details]

<sup>449</sup> See [The Parties' distribution agreement] (ID001573-000017).

<sup>450</sup> Parties' response to the Commission's RFI 3, question 3 (ID00142).

<sup>451</sup> Bonnier Broadcasting's internal document [Bonnier Broadcasting's internal document details] (ID001775-069070).

<sup>452</sup> See Bonnier Broadcasting's internal document [Bonnier Broadcasting's internal document details].

<sup>453</sup> Bonnier Broadcasting's submission of [Bonnier Broadcasting's internal document details] (ID03195).

<sup>454</sup> Based on its review of Bonnier Broadcasting's internal documents submitted in the course of the proceedings, the Commission considers that [...] related to its premium pay TV channel in Sweden.

## 8. Conclusion

(468) The Commission considers that the Parties' internal documents described above show that (i) the Parties view OTT as a significant type of distribution; (ii), [Internal strategy related to the question of granting of OTT rights].

8.5.1.2. Total and partial input foreclosure relating to the wholesale supply of FTA and basic pay TV channels and the retail provision of AV services

(469) In Sweden, Telia is active in the retail supply of AV services, in particular through its IPTV network. Bonnier Broadcasting is mainly active in the wholesale supply of FTA and basic pay TV channels, as well as at the retail level, through its TV channels and OTT applications. The merger specific change is the addition of Telia's downstream activities as retail supplier of AV services.

(470) The Commission has assessed the risk of the following two types of input foreclosure strategies in Sweden: (i) total input foreclosure of rival providers of retail AV services through the denial of access to Bonnier Broadcasting's channels; and (ii) partial input foreclosure of rival providers of retail AV services through an increase of carriage fees<sup>455</sup> paid by rival providers to the merged entity or by significantly degrading the quality of channels licensed to rival providers of AV services (for example, by removing significant content or ancillary rights).

(471) Second, the Commission has assessed the two abovementioned types of input foreclosure strategies on the following two types of TV channels, which Bonnier Broadcasting licenses to retail providers of AV services in Sweden:

- Bonnier Broadcasting's FTA and basic pay TV channels (addressed in this section);<sup>456</sup>
- premium pay TV sports channels, or any packages of premium pay TV channels including sports TV channels under the C More brand (see Section 8.5.1.3).<sup>457</sup>

(472) For the purpose of its assessment, the Commission has considered, as the more likely potential targets of an input foreclosure strategy, Telia's largest competitors in the retail supply of AV services, irrespective of any potential market segmentation. On the basis of the market shares presented in Section 8.3.1.3, in relation to the market for the retail supply of AV services, the main targets of a potential foreclosure strategy are the other main TV distributors, namely Tele2, Telenor, and NENT.

### 1. Notifying Party's view

(473) The Notifying Party submits that the merged entity would have neither the ability nor the incentive to pursue a total or partial input foreclosure strategy against rival TV distributors, related to the provision of FTA and basic pay TV channels. The Notifying Party further submits that any such input foreclosure strategies would have no significant effect on effective competition.

(474) With respect to the merged entity's ability to undertake a total input foreclosure strategy, in its initial submission and in the Response to the Article 6(1)(c) Decision,

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<sup>455</sup> TV channels are licensed by TV broadcasters to TV distributors, against payment of carriage fees.

<sup>456</sup> In the agreements with the main TV distributors (Tele2, Telia, Telenor) in Sweden, Bonnier Broadcasting licenses both its only FTA channel, TV4, and its basic pay TV channels, such as TV4 Fakta or TV4 Guld.

<sup>457</sup> Form CO, Table 13.

the Notifying Party submits [Internal market analysis]. In particular, the Notifying Party submits that customers are bound by collective and individual agreements, by other switching costs (for example, related to the installation of new equipment) and by Telia's fixed geographic footprint. The Notifying Party further submits that countervailing buyer power and counter strategies of rival TV distributors to develop alternatives to the foreclosed input would reduce the occurrence of switching.

- (475) The Notifying Party submits that, even if it could hypothetically be shown that the merged entity would have the ability to engage in such foreclosure strategy, it would have no incentive to deploy a total input foreclosure strategy because such a strategy would not be profitable. In particular, the Notifying Party submits a quantitative analysis aiming at demonstrating that the merged entity would not have the incentive to deploy a total input foreclosure strategy against all of its rival TV distributors, related to the supply of FTA and basic pay TV channels.<sup>458</sup> Based on its vertical arithmetic model, the Notifying Party submits that [...]% (or more) of foreclosed rivals' customers would need to leave their suppliers of retail AV services, in order to provide the merged entity with the incentive to engage in such foreclosure strategy. This threshold of [...]% is called the critical departure rate. It is derived from the model and needs to be compared to what would be the likely, actual rate of switching of foreclosed consumers. If the likely, actual rate of switching were to be larger than the critical departure rate, the merged entity would have incentives to foreclose. The Notifying Party further submits that the likely, actual rate of switching in a foreclosure scenario would lie below the critical departure rate<sup>459</sup> of [...]% mentioned above and, hence, that the merged entity would not have any incentive to foreclose rival TV distributors.
- (476) The Notifying Party presents a further quantitative analysis with the aim of showing that the merged entity would not have the incentive to deploy a total input foreclosure strategy targeted at any of its main rival TV distributors to restrict competition in the market for the distribution of FTA and basic pay TV channels.<sup>460</sup> Relying on vertical arithmetic models, the Notifying Party submits that the critical departure rates, above which the merged entity would have the incentive to engage in total input foreclosure of FTA and basic pay TV channels, are [...]% for Tele2, [...]% for Canal Digital/Telenor, and [...]% for NENT.
- (477) In respect of partial input foreclosure, the Notifying Party submits that the merged entity would have neither the ability nor the incentive to pursue a partial input foreclosure strategy against rival TV distributors related to the provision of FTA and basic pay TV channels. The Notifying Party submits that, even if it would hypothetically engage in such a partial input foreclosure strategy there would be no significant detrimental effect on effective competition.<sup>461</sup>
- (478) In particular, the Notifying Party submits that the merged entity has no ability to undertake a partial input foreclosure strategy because of binding distribution agreements between Bonnier Broadcasting and TV distributors, the threat of a black

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<sup>458</sup> RBB Economics' report "A vertical arithmetic model" (ID000123).

<sup>459</sup> The critical departure rate corresponds to the minimum proportion of customers that would need to leave foreclosed downstream rivals for total input foreclosure to be profitable. If the evidence show that the likely actual rate of switching is inferior to the critical rate, this implies that it is unlikely that the merged entity would have an incentive to engage in total input foreclosure, and vice-versa.

<sup>460</sup> RBB Economics' report "Selective total input foreclosure targeted at main rival TV distributors," 15 March 2019 (ID000500).

<sup>461</sup> Form CO, section 6.9.4.4.

out is not credible and pressure that the merged entity would face from suppliers, namely rights owners, to maximise exposure of content. The Notifying Party also submits that [...].

- (479) The Notifying Party submits a quantitative analysis aiming at demonstrating that the merged entity would have no incentive to deploy a partial input foreclosure strategy against rival TV distributors, related to the supply of FTA and basic pay TV channels. The Notifying Party provides a Nash bargaining framework<sup>462</sup> to quantify the potential increase in carriage fees of Bonnier Broadcasting's TV channels that rival TV distributors would face due to a shift in bargaining power to the merged entity. The Notifying Party submits that the incentives of the merged entity to engage in partial foreclosure are limited because [...] and based on the alternatives available to customers interested in switching. In other words, Bonnier Broadcasting's channels are widely available to consumers and customers' dissatisfaction would lead to less bargaining power of the merged entity.
- (480) The Notifying Party submits that even if the merged entity had the ability and incentive to undertake a partial input foreclosure strategy, this would have no significantly detrimental effect on effective competition.<sup>463</sup> The Notifying Party's quantitative model shows that the effect of a potential partial input foreclosure of all competing TV distributors would lead to an increase of [...] SEK in carriage fees per subscriber per year for rival TV distributors, which can be translated to a [...]% increase in prices of retail TV services of rival TV distributors (assuming a full pass-on to consumers).

## 2. Commission's assessment

- (481) The Commission's assessment of anticompetitive input foreclosure, in light of the results of the market investigation, is set out in the following recitals. For this purpose, consistent with paragraph 32 of the Non-Horizontal Merger Guidelines, in relation to each of these practices, the Commission examines, (i) whether the merged entity would have, post-merger, the ability to foreclose access to inputs, (ii) whether it would have the incentive to do so, and (iii) whether a foreclosure strategy would have a significant detrimental effect on competition in the downstream markets.
- (482) In its analysis, the Commission has treated the assessment of the Bonnier Broadcasting FTA or basic pay TV channels as a package. This conclusion is based on demand and supply side factors, which support the view that the Bonnier Broadcasting FTA and basic pay TV channels should be treated as a package product. On the demand side, TV distributors purchase a package of Bonnier Broadcasting's FTA and basic pay TV channels in Sweden. Bonnier Broadcasting always licenses the TV4 channels together with other FTA and basic pay TV channels<sup>464</sup> and licenses all of its main six TV4 channels to its main distributors.<sup>465</sup>

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<sup>462</sup> A Nash bargaining framework aims to model a bargaining problem and generates predictions about the outcome of the negotiations between two parties, following the principles of John Nash in 1950. In the model, a potential seller (having a minimum price for its good/service) and a potential buyer (having a maximum willingness to pay) negotiate about the trade of a good or service. If the trade is concluded, the negotiating parties split the gains of trade, i.e., the surplus from reaching an agreement.

<sup>463</sup> RBB Economics' report "Partial input foreclosure of FTA/basic pay TV channels," 27 February 2019 (ID000317).

<sup>464</sup> Based on a review of the distribution agreements between Bonnier Broadcasting and respectively NENT, Tele2, Telenor, and Telia provided in the Parties' response to the Commission's RFI 14 (ID001573-27, ID001573-11, ID001573-55, ID001573-24).

- (483) On the supply side, Bonnier Broadcasting's channels are sold by TV distributors to end-customers as packages including, not only TV4 but also other Bonnier Broadcasting FTA and basic pay TV channels.<sup>466</sup> For example, [Information relating to details on Bonnier Broadcasting's distribution agreement].<sup>467 468</sup>
- (484) Accordingly, the demand and supply side analysis of the purchase and supply of Bonnier Broadcasting's FTA or basic pay channels shows that Bonnier Broadcasting channels comprising *inter alia* TV4 but also other FTA and basic pay TV channels constitute a package product.
- (485) The Commission has therefore made its assessment of anticompetitive input foreclosure considering Bonnier Broadcasting's FTA or basic pay TV channels as a package therefore including all different genres of FTA and basic pay TV channels supplied by Bonnier Broadcasting in the market.
- (486) The Commission has conducted its assessment on the basis of all possible downstream market definitions. The question as to whether the merged entity would have the ability to undertake a partial or total input foreclosure strategy has therefore been undertaken in light of the importance of those channels to TV distributors active in the potential markets for which FTA and basic pay TV channels are acquired, namely the markets for the retail supply of (i) AV services (ii) linear pay AV services, (iii) linear basic pay AV services (iv) all possible markets (i) to (iii) segmented into MDU and SDU.<sup>469</sup> The Commission's assessment of the impact of a total or partial foreclosure strategy also applies in respect of the above mentioned possible markets for which FTA and basic pay TV channels are an important input. Since the importance of Bonnier Broadcasting's FTA and basic TV channels and the likely impact of foreclosure to those channels as inputs, is as least as significant on the narrower relevant markets as it is on the broader market for the retail provision of AV services, the Commission hereafter, in this section, refers to the 'retail supply of AV services' or 'retail AV services' as shorthand for all possible markets comprising the retail supply of (i) AV services (ii) linear pay AV services, (iii) linear basic pay AV services (iv) all possible markets (i) to (iii) segmented into MDU and SDU.

*a. Ability to engage in input foreclosure*

- (487) For the reasons set out below, the Commission considers that the merged entity will likely have the ability to engage in total or partial input foreclosure of Bonnier Broadcasting's FTA and basic pay TV channels in Sweden.

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<sup>465</sup> The six channels as identified in the Form CO, section 6.2.2.2 are TV4, TV4 Fakta, TV4 Film, TV4 Guld, Sjuan and TV12. [Content of Bonnier Broadcasting's distribution agreements]

<sup>466</sup> [Information relating to details on Bonnier Broadcasting's distribution agreement].

<sup>467</sup> See Annex 2 of the distribution agreement between Bonnier Broadcasting and Telia for the distribution of TV4 and other Bonnier Broadcasting channels. (ID001573-000024).

<sup>468</sup> See Annex 2 of the distribution agreement between Bonnier Broadcasting and Tele2 for the distribution of TV4 and other Bonnier Broadcasting channels. (ID001573-000011).

<sup>469</sup> Before the Transaction, Bonnier Broadcasting's FTA and basic pay TV channels are not sold to retail suppliers of AV services as inputs for the provision of (i) premium pay services or (ii) non-linear pay AV services. [Content of Bonnier Broadcasting's business agreements]. Therefore, the Commission considers that it is not relevant to consider the impact of the Transaction on market segments where the Bonnier Broadcasting's FTA and basic pay TV channels are not acquired as an input.

*The importance of FTA and basic pay TV channels for the retail supply of AV services*

- (488) The Non-Horizontal Merger Guidelines indicate that input foreclosure may only give rise to competition problems if the upstream input is important for the downstream product.<sup>470</sup> An input may be important if it represents a significant cost factor relative to the price of the downstream product, if without the input the downstream product could not be manufactured or effectively sold on the market, or if the input represents a significant source of product differentiation for the downstream product.<sup>471</sup>
- (489) FTA and basic pay TV channels are important inputs for TV distributors' ability to compete on the downstream market for the supply of retail AV services.
- (490) FTA and basic pay TV channels constitute the backbones of the FTA/basic pay packages to which a large proportion if not all customers of TV services in Sweden subscribe. Typically, TV customers must subscribe to a basic package comprising FTA and basic pay TV channels before they are able to purchase add-ons such as a premium pay TV channels and content. For example, Telia's premium pay TV package is only available to customers that have an existing FTA/basic pay TV package.<sup>472</sup>
- (491) FTA and basic pay TV channels represent a large part of TV distributors' retail business thereby contributing to the overall effectiveness of the business. Telia's internal documents show that [Telia Company's internal documents].<sup>473</sup>
- (492) Finally, as far as the Commission is aware, there is no TV distributor in Sweden whose TV offering does not include FTA or basic pay TV channels. It is likely that consumers therefore expect that such channels will be available to them regardless of the identity of their TV distributor and regardless of the means through which they choose to view TV content (i.e., by cable, satellite, fibre etc.). That expectation in turn makes it important that TV distributors are able to offer FTA and basic pay TV channels to be able to effectively compete in supplying retail AV services.
- (493) Accordingly, the Commission considers that FTA and basic pay TV channels are very important to compete in the downstream market.

*Market power of the merged entity and the importance of Bonnier Broadcasting's FTA and basic pay TV channels*

- (494) For input foreclosure to be a concern, a vertically integrated merged entity must have a significant degree of market power in the upstream market. It is only in those circumstances that the merged entity can be expected to have significant influence on the conditions of competition in the upstream market and thus, possibly, on prices and supply conditions in the downstream market.<sup>474</sup>
- (495) In this section, the Commission discusses whether the merged entity would have a significant degree of market power in the upstream market for the supply of FTA and basic pay TV channels in Sweden and therefore whether Bonnier Broadcasting's

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<sup>470</sup> Non-Horizontal Merger Guidelines, paragraph 34.

<sup>471</sup> Non-Horizontal Merger Guidelines, paragraph 34.

<sup>472</sup> Form CO, paragraph 461. The Notifying Party notes that Telia , like most TV distributors, offers its premium pay TV package to customers that have a FTA/basic pay TV package.

<sup>473</sup> Telia's internal document [Telia Company's internal documents] (ID001924-037101). [Telia Company's internal documents] (ID001924-003003).

<sup>474</sup> Non-Horizontal Merger Guidelines, paragraph 35.

FTA and basic pay TV channels (i.e., TV4 group channels) can be considered an important input within the meaning of the Non-Horizontal Merger Guidelines.

- (496) Table 2, re-produced below, shows the market shares of the Parties and their main competitors in the market for the wholesale supply of FTA and basic pay TV channels in Sweden in 2018. Bonnier Broadcasting's market share in 2018 was respectively [30-40]% (by volume) for the wholesale supply of FTA TV channels, [30-40]% (by volume) for the wholesale supply of combined FTA/basic pay TV channels, and [30-40]% (by value) for the wholesale supply of basic pay TV channels.<sup>475</sup>

**Table 2: Market shares in 2018  
in the market for the wholesale supply of FTA and basic pay TV channels<sup>476</sup>**

	FTA		FTA/basic pay		Basic pay	
	Volume (min)	Shares (%)	Volume (min)	Shares (%)	Value (mEUR)	Shares (%)
Telia	-	-	-	-	-	-
Bonnier Broadcasting	[...]	[30-40]	[...]	[30-40]	[...]	[30-40]
<b>Combined</b>	[...]	<b>[30-40]</b>	[...]	<b>[30-40]</b>	[...]	<b>[30-40]</b>
MTG/NENT	[...]	[0-5]	[...]	[10-20]	[...]	[20-30]
Discovery	-	-	[...]	[10-20]	[...]	[20-30]
SVT	[...]	[50-60]	[...]	[30-40]		
Others	-	-		[5-10]	[...]	[10-20]
<b>Total</b>	[...]	<b>100</b>	[...]	<b>100</b>	[...]	<b>100</b>

*Source: Form, CO, Annex 7.*

- (497) The Commission considers that with upstream shares in the range of [30-40]-[30-40]% there is an indication that the merged entity will have significant market power in the wholesale supply of FTA and basic pay TV channels (whether considered separately or together) in Sweden. The only other broadcaster that comes anywhere close to the position of the merged entity is the public broadcaster, SVT, and the commercial broadcaster MTG/NENT. The table above shows that while Discovery's share (by volume) is equivalent to that of MGT/NENT as the third largest player in the market for the wholesale supply of FTA/basic pay TV channels, its value proposition is weaker with a share of only [20-30]% in the potential market for basic pay TV channels where the merged entity represents nearly [40-50]% of the market by share.
- (498) The market shares presented above provide a conservative view of Bonnier Broadcasting's market position in the upstream supply of wholesale FTA and basic pay TV channels because they take into account SVT. SVT is not a commercial broadcaster and cannot properly be regarded a viable alternative to Bonnier Broadcasting's FTA and basic pay TV channels. SVT's TV channels are subject to a "must carry" obligation meaning that all TV distributors carry those channels and

<sup>475</sup> For the purpose of this Decision, we do not need to assess whether the Transaction would significantly impede effective competition in the market for the retail supply of AV services in Sweden, as a result of total and/or partial input foreclosure of Bonnier Broadcasting's channels segmented between (i) FTA and basic pay channels, or (ii) according to genre, since such assessment would not change the outcome of the competitive assessment in this case.

<sup>476</sup> The market share by value represent the Parties' best estimates of the revenues generated from the carriage fees paid by distributors to broadcasters (including both fixed carriage fees and fees based on individual subscriptions). For the wholesale supply of FTA TV channels or, any combination including FTA TV channels, market shares by volume are provided since market shares by value are not available.

therefore they cannot be used to replace commercial TV channels whilst maintaining a differentiated offering from other rival TV distributors. SVT's public status also explains why its value share is zero whereas its volume share is significantly higher since all TV distributors are required to carry SVT content. When excluding SVT from the market share calculation, the merged entity will have a share (due to Bonnier Broadcasting's share) of [50-60]% and [80-90]% in the wholesale supply of FTA and basic pay TV channels and the wholesale supply of FTA channels respectively in Sweden.

- (499) In the markets for the wholesale supply of FTA and basic pay TV channels in Sweden, Bonnier Broadcasting is the largest player with a share of [30-40]% in FTA (the closest commercial competitor NENT has a share of [0-5]%) and a share of [40-50]% in FTA/basic pay (NENT and Discovery each [10-20]%). Bonnier Broadcasting's share of the basic pay segment is [30-40]% in terms of revenue with the next closest competitor being MTG ([20-30]%). Therefore, Bonnier Broadcasting's position on the wholesale market for the supply of FTA and basic pay TV channels, regardless of whether one considers FTA, basic pay or a combination of the two, is much stronger than any other commercial broadcaster.
- (500) Whereas the Commission considers that Bonnier Broadcasting's high share of carriage fees alone could be an indicator of the merged entity's market power, the Commission has analysed a range of metrics directed at determining the importance of the Bonnier Broadcasting's FTA and basic pay TV channels for TV distributors. This approach is consistent with Commission practice and the court's review in the case *Liberty Global/Vodafone/Dutch JV*.<sup>477</sup> In that case the number of subscribers in addition to share of revenue was relevant to assessing whether the integrated firm would have a significant degree of market power in the upstream market for the wholesale supply of premium pay TV sports channels. The Commission will therefore, in this case, analyse in addition to the relevant market shares (i) the proportion of end users who watch the TV4 channel in Sweden (i.e., audience reach) (ii) the share of total viewing time attributable to viewing the Bonnier Broadcasting FTA and basic pay TV channels, and (iii) the views of market participants on the importance of the Bonnier Broadcasting FTA and basic pay TV channels for AV distribution businesses.
- (501) The Bonnier Broadcasting's TV4 channel (which as discussed in recitals 482-484 is always licensed together with other TV4 group channels) is the most important commercial channel in Sweden by daily reach. TV4 has a daily reach (based on 2018 figures) of [...]% whereas the next closest commercial competitors have a daily reach of only [...]%.<sup>478</sup> In addition, Bonnier Broadcasting distributes several basic pay TV channels under the TV4 brand name, such as TV4 Fakta, TV4 Film or TV4 Guld.<sup>479</sup> These channels are not as popular as the TV4 channel but are always sold by Bonnier Broadcasting together in packages together with TV4.
- (502) To assess the importance of Bonnier Broadcasting's FTA or basic pay TV channels to TV distributors who provide retail AV services, the Commission asked the Parties

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<sup>477</sup> Judgement of the General Court of 23 May 2019, *Liberty Global/Vodafone/Dutch JV*, T-370/17, ECLI:EU:T:2019:354.

<sup>478</sup> The second and third largest commercial channels on the basis of average daily reach are Kanal5 (Discovery) and TV3 (NENT). See Tele2's response to questionnaire Q4 – TV distributors in Sweden [Annex 1, figure 4 and recital 2.14] (ID000636).

<sup>479</sup> Form CO, Table 13.

to provide viewer shares based on different parameters.<sup>480</sup> Table 21 summarises this information in relation to the total viewing, continuous viewing and prime time viewing of the most popular commercial FTA and basic pay TV channels in Sweden. TV4 is the leading channel under all metrics, ahead of Discovery's Kanal5 and NENT's TV3 TV channels. The fact that among this package, viewership is higher for some channels than others, notably TV4, does not alter the conclusion that Bonnier Broadcasting's package of licensed channels are an important input for TV distributors. For the reasons explained in recitals 517-518, SVT is not considered in the table below.

**Table 21: Viewership reach data of FTA and basic pay TV channels in Sweden**

Channel	total time 30 min <sup>481</sup>	N. <sup>482</sup>	total time 300 min <sup>483</sup>	N.	continuous time 5 min <sup>484</sup>	N.	Viewers continuous time 30 min <sup>485</sup>	N.	prime time 30 min <sup>486</sup>	N.	prime time 300 min <sup>487</sup>	N.
<b>TV4</b>	[50-60]	[...]	[40-50]	[...]	[70-80]	[...]	[60-70]	[...]	[60-70]	[...]	[30-40]	[...]
<b>Kanal 5</b>	[50-60]	[...]	[20-30]	[...]	[50-60]	[...]	[40-50]	[...]	[40-50]	[...]	[10-20]	[...]
<b>TV3 se</b>	[40-50]	[...]	[10-20]	[...]	[50-60]	[...]	[30-40]	[...]	[40-50]	[...]	[10-20]	[...]

*Source: Commission's calculation on Annex 6 to response to RFIS.*

- (503) In addition, the Commission has analysed the views of market participants and the Parties' internal documents on the importance of Bonnier Broadcasting's FTA and basic pay TV channels for retail suppliers of AV services.
- (504) First, most TV distributors that replied to the market investigation consider Bonnier Broadcasting's FTA and basic pay TV channels as important for their retail TV offering in Sweden, in the sense that they contribute significantly to the competitiveness of their retail offering. According to the market investigation, TV4 includes the most popular TV shows and a large share of local content, and presents one of the most diverse programme genres. Respondents to the market investigation refer to TV4 as a "*must have*" channel,<sup>488</sup> the "*most viewed commercial channel*"<sup>489</sup>

<sup>480</sup> In line with Commission Decision of 24 February 2015 in case M.7194 - Liberty Global/Corelio/W&W/De Vijver Media and Commission Decision of 6 February 2018 in case M.8665 – Discovery/Scripps, the Commission requested viewership data based on (i) total viewing time per month, (ii) continuous viewing time per month and (iii) prime time viewing time per month. For each (i) and (iii), the Parties submitted data for (a) 30 minutes, (b) 60 minutes, (d) 300 minutes. For (ii) the Parties submitted data for (a) 5 minutes (b) 15 minutes (c) 30 minutes. Table 21 presents a summary of the data provided.

<sup>481</sup> Share of target group that watch, on average, at least 30 minutes of the channel during one month.

<sup>482</sup> Rank.

<sup>483</sup> Share of target group that watch, on average, at least 300 minutes of the channel during one month.

<sup>484</sup> Share of target group that watch, on average, at least 5 continuous minutes of the channel during one month.

<sup>485</sup> Share target group that watch, on average, at least 30 continuous minutes of the channel during one month.

<sup>486</sup> Share target group that watch, on average, at least 30 minutes of the channel during prime time and during one month.

<sup>487</sup> Share target group that watch, on average, at least 300 minutes of the channel during prime time and during one month.

<sup>488</sup> Tele2's response to questionnaire Q4 to TV distributors in Sweden, question F.3 (ID001510).

<sup>489</sup> NENT's response to questionnaire Q4 to TV distributors in Sweden, question F.3 (ID001508).

and the largest or main commercial channel.<sup>490</sup> One respondent TV distributor says that TV4 and other Bonnier Broadcasting channels “*are of course [of] importance to us.*”<sup>491</sup>

- (505) The market feedback shows that there is a clear link between the inclusion of the TV4 channel in a TV distributor’s offering and the distributor’s ability to effectively compete for customers. All TV distributor respondents consider that if they could no longer offer TV4 and/or other Bonnier Broadcasting FTA and basic pay TV channels, its customers would switch to a competitor distributor that could offer those channels.<sup>492</sup> NENT explains that “[i]f there is another distributor carrying the channel at no additional cost, there is no reason for a consumer to stick with a bundle lacking must-have content or paying significantly higher prices for the [sic] accessing it.”<sup>493</sup> Tele2 considers that it would lose customers if TV4 were no longer available to it: “*To the extent that TBV4 is available in competing distributor’s package, both private customers and landlord’s [sic] can be expected to switch to such a distributor.*”<sup>494</sup>
- (506) Second, internal documents submitted by the Notifying Party show that Bonnier Broadcasting’s FTA and basic pay TV channels, [Telia Company’s internal documents].<sup>495 496 497</sup>
- (507) Third, the Parties’ internal documents and the market feedback indicate that Bonnier Broadcasting’s FTA and basic pay TV channels are important inputs for TV distributors regardless of distribution platform. For example, as stated in Bonnier Broadcasting’s 2018 annual report, “*TV4 Play [one of Bonnier Broadcasting’s OTT applications] had over 4.7 million registered users, and accounted for 54 per cent of commercial MMS-monitored AVOD consumption. The TV4 channels had their best year ever in terms of share of viewing time among their main 15–64-year-old target group.*”<sup>498</sup> Therefore, Bonnier Broadcasting’s content is relevant also when distributed on non-traditional TV platforms.
- (508) In the Response to the Article 6(1)(c) Decision, the Notifying Party submits that other TV channels of Bonnier Broadcasting (which the Commission understands to mean channels other than TV4 and MTV3) [...].<sup>499</sup> The Commission’s preliminary view is that the Bonnier Broadcasting FTA or basic pay TV channels constitute a package in and of themselves based on the demand and supply side analysis of the trade of these channels. The Commission refers to recitals 482-485 of this decision where it shows that the purchase and supply of Bonnier Broadcasting’s FTA or basic pay channels comprising, *inter alia*, TV4 but also other channels, constitute a package product. The fact that among this package, viewership is higher for some

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<sup>490</sup> Vicissima and Tele2’s responses to questionnaire Q4 to TV distributors in Sweden, question F.3 (ID000618, ID001510).

<sup>491</sup> Sappa’s response to questionnaire Q4 to TV distributors in Sweden, question F.1.1 (ID000639).

<sup>492</sup> Responses to questionnaire Q13 to TV distributors in Sweden, question 54.

<sup>493</sup> NENT’s response to questionnaire Q13 to TV distributors in Sweden, question 54.1 (ID002270) (emphasis added).

<sup>494</sup> Tele2’s response to questionnaire Q13 to TV distributors in Sweden, question 54.1 (ID002255).

<sup>495</sup> Parties’ response to the Commission’s RFI 14, question 4 d-e-, Appendix 18 (ID00935).

<sup>496</sup> Parties’ response to the Commission’s RFI 14, question 4 d-e-, Appendix 11 (ID00928).

<sup>497</sup> Form CO, Annex 6.11.

<sup>498</sup> Bonnier Broadcasting’s 2018 Annual Report, available at: <https://www.bonnierbroadcasting.com/senaste-nytt/pressmeddelanden-foretaget/2019/annual-report-bonnier-broadcasting-2018/>.

<sup>499</sup> Notifying Party’s response to the Article 6(1)(c) Decision, section G.2.2.

channels than others, notably TV4, does not alter the conclusion that Bonnier Broadcasting's package of licensed channels are an important input for TV distributors.

*Technical ability to implement a total or partial foreclosure strategy*

- (509) With reference to the Notifying Party's view that possible contractual limitations that may reduce the merged entity's ability to engage in total or partial input foreclosure, the Commission notes that Bonnier Broadcasting's agreements with Telia's competing TV distributors, Tele2, Telenor and NENT, are expiring respectively in [...].<sup>500</sup> Therefore, the Commission considers that there are no contractual limitations to the merged entity's ability to implement foreclosure strategies [...].
- (510) In the Response to the Article 6(1)(c) Decision, the Notifying Party submits that many customers cannot easily switch TV distributors even if Bonnier Broadcasting's FTA or basic pay channels are removed from the package they have purchased, thereby reducing the merged entity's ability to engage in total or partial input foreclosure. The market feedback, however, indicates that customers can terminate their contracts, with the majority of respondent TV distributors indicating that customers could terminate their agreement if their distributor could no longer offer TV4.<sup>501</sup> Moreover, the market results show that most TV distributors who responded to the question consider customers could relatively easily switch TV distributors without incurring substantial costs.<sup>502</sup> Tele2 indicates that “[r]emoving these channels is expected to trigger significant churn” and further explains that “a large proportion of ComHem's private customer base is not covered by any binding period as of today. These customers can terminate their agreements at will.”<sup>503</sup>
- (511) With reference to the technical ability to implement any foreclosure strategy, most respondents to the market investigation indicate that the merged entity post-Transaction could either stop licensing certain of its TV channels<sup>504</sup> or degrade the terms and conditions at which it licenses its TV channels.<sup>505</sup> In addition, Tele2/Com Hem submits a quantitative analysis showing that the merged entity would have the ability to implement such foreclosing strategy post-Transaction due to the importance of Bonnier Broadcasting's channels.<sup>506</sup>
- (512) In the Response to the Article 6(1)(c) Decision, the Notifying Party submits that the Decision fails to address the fixed footprint of Telia which would prevent all subscribers of foreclosed distributors from switching to Telia, thereby limiting Telia's ability to foreclose rival distributors.<sup>507</sup> The Notifying Party explains that [...].
- (513) In response, the Commission notes that while [...].

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<sup>500</sup> Form CO, Annex 11; Parties' response to the Commission's RFI 65, question 1 (ID02649).

<sup>501</sup> Responses to questionnaire Q13 to TV distributors in Sweden, question 58.1.

<sup>502</sup> Responses to questionnaire Q4 to TV distributors in Sweden, questions F.18.

<sup>503</sup> See Tele2's response to questionnaire Q13 to TV distributors in Sweden, question 58.1.1 (ID002255).

<sup>504</sup> See responses to questionnaire Q4 to TV distributors in Sweden, questions F.7 and F.7.2.

<sup>505</sup> See responses to questionnaire Q4 to TV distributors in Sweden, questions F.8 and F.8.2.

<sup>506</sup> Compass Lexecon's report “Anticompetitive effects of the Telia/Bonnier merger - Report for Tele2/Com Hem” (ID001301).

<sup>507</sup> Notifying Party's response to the Article 6(1)(c) Decision, section G.2.3.2.

*Remaining upstream suppliers offer less preferred alternatives*

- (514) The main remaining upstream suppliers of FTA or basic pay TV channels in Sweden are Discovery, NENT, Fox<sup>508</sup> and SVT. SVT is a non-commercial broadcaster of FTA or basic pay TV channels whereas all other broadcasters are commercial broadcasters whose channels are dependent on advertising revenues and carriage fees.
- (515) The FTA and basic pay channels of the remaining commercial broadcasters are less preferred alternatives to Bonnier Broadcasting's FTA and basic pay TV channels in Sweden. The market investigation shows that Bonnier Broadcasting's FTA and basic pay channels, in particular TV4, are important commercial channels that cannot be replaced by other broadcasters' channels. For example, Tele2's view is that "*TV4 and its [Bonnier Broadcasting's] basic pay TV channels belong to the most popular channels in Sweden. There is no substitute to TV4 and TV7...*".<sup>509</sup> The Commission also observes that the basic TV packages of all major TV distributors in Sweden include the Bonnier Broadcasting FTA and basic pay TV channels. Therefore, customers cannot simply switch to a different package offered by those TV distributors without paying more (e.g., upgrading to a premium package).
- (516) In the Response to the Article 6(1)(c) Decision, the Notifying Party submits that when assessing the importance of Bonnier Broadcasting's TV channels for distributors public broadcast channels (i.e., SVT's channels) should be included in the analysis.
- (517) The Commission considers that SVT's channels are not a valid alternative to Bonnier Broadcasting's FTA and basic pay TV channels for the following reasons. First, SVT is a public broadcaster and does not operate according to commercial incentives that drives competition between commercial broadcasters in the wholesale supply of FTA and basic pay TV channels. SVT operates under strict rules that do not apply to commercial broadcasters. SVT is owned by a trust and financed by the tax return of Swedish people. It is therefore not accountable to shareholders. SVT does not operate commercial channels nor does SVT have subscribers, carriage fees, or operate with advertising revenue.<sup>510</sup> Therefore, contrary to the approach of commercial broadcasters, SVT does "*not operate with commercial strategies based on either subscription, pay per view or advertising.*"<sup>511</sup> Accordingly, since SVT is not driven by the commercial incentives that drive competition among other broadcasters, it cannot be presumed to respond to market opportunities (e.g., should Bonnier Broadcasting TV channels no longer be available to TV distributors) in a way that other commercial broadcasters would.
- (518) Second, SVT's TV channels are subject to a "must-carry" obligation.<sup>512</sup> SVT is obliged by the parliament and government to operate four TV-channels that reach 99.8% of the Swedish population via multiplex 1.<sup>513</sup> SVT's TV channels are not a suitable replacement for Bonner Broadcasting's FTA and basic pay TV channels. In the circumstance that Bonnier Broadcasting's FTA and basic pay TV channels are

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<sup>508</sup> Fox had an audience share of less than 1% for the retail supply of FTA AV services in Sweden in 2018. Parties' response to the Commission's RFI 77, question 1 (ID003210).

<sup>509</sup> See Tele2's response to questionnaire Q4 to TV distributors in Sweden, question F.8.2 (ID000634).

<sup>510</sup> Form CO, paragraph 118. More information on SVT's funding conditions are available in Section 2.3.

<sup>511</sup> See SVT's response to the Commission's RFI 40 (ID002759).

<sup>512</sup> Form CO, paragraph 738.

<sup>513</sup> See SVT's response to the Commission's RFI 40 (ID002759).

available to one TV distributor other TV distributors would not be able to differentiate their offering by distributing only SVT channels instead (which by definition are available to all TV distributors). The market investigation shows that SVT is not a substitute for TV4. All respondent TV distributors expect that if they could no longer offer TV4 and/or other Bonnier Broadcasting FTA and basic pay TV channels their customers would switch suppliers,<sup>514</sup> rather than, as the Notifying Party argues, switch to watching SVT. Therefore, SVT is not a valid alternative to Bonnier Broadcasting's FTA and basic pay TV channels.

*No effective and timely counterstrategies*

- (519) The Non-Horizontal Merger Guidelines indicates that when assessing the ability to foreclose access to inputs the Commission will consider, based on available information, whether there are effective and timely counter-strategies that the rival firms would be likely to deploy.<sup>515</sup>
- (520) The Notifying Party submits that rival TV distributors could develop alternatives to the input in question by sponsoring new TV channels from rival broadcasters and/or launching their own TV channels in cooperation with content owners.
- (521) However, the Notifying Party has not provided any examples of instances where TV distributors have adopted such counter-strategies in the past nor substantiated whether such strategies would likely be timely and effective in countering the effects of foreclosure to Bonner Broadcasting's important channels.
- (522) The results of the market investigation indicate that TV distributors would not be able to deploy effective counter-strategies to overcome the effects of a total or partial input foreclosure strategy by the merged entity. The majority of TV distributor respondents indicate that there is no substitute for Bonner Broadcasting's TV4 channel and according to one distributor "*no new ones replacing or partially replacing Bonnier Broadcasting exist*".<sup>516</sup> Another distributor suggests that given the importance of Bonner Broadcasting's channels "*a channel aggregator cannot exist without them*".<sup>517</sup>
- (523) In light of the above, the Commission considers that there would not be any effective and timely counter-strategies for rivals to overcome the effects of total or partial input foreclosure by the merged entity post-Transaction.

*b. Incentive to engage in input foreclosure*

*Total input foreclosure*

- (524) The merged entity will have an incentive to undertake a foreclosure strategy if doing so would be profitable. The strategy would be profitable for the merged entity if the lost profit in the upstream market, that is to say carriage fees and advertising revenues<sup>518</sup> of the Bonnier Broadcasting FTA and basic pay TV channels, is smaller

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<sup>514</sup> Responses to questionnaire Q13 to TV distributors in Sweden, question 54.

<sup>515</sup> Non-Horizontal Merger Guidelines, paragraph 39.

<sup>516</sup> Responses to questionnaire Q4 to TV distributors in Sweden, questions F.10 and F.10.1; NENT's response to questionnaire Q4 to TV distributors in Sweden, question F.10.1 (ID001508).

<sup>517</sup> Vicissima AB's response to questionnaire Q4 to TV distributors in Sweden, question F.10.1 (ID000618).

<sup>518</sup> TV broadcasters generate revenues from the wholesale supply of TV channels mainly from (i) carriage fees obtained from retail AV distributors and, (ii) advertising revenues generated from the sale of advertising space on those channels.

than the profit gain from being able to expand sales or raise prices in the downstream market for the retail supply of AV services.<sup>519</sup>

- (525) The Commission's analysis has led to the conclusion that overall the merged entity will likely have the incentive to engage in total input foreclosure of Bonnier Broadcasting's FTA and basic pay TV channels in Sweden.
- (526) First, most of the respondents to the market investigation have indicated that they consider it likely that the merged entity would either stop licensing all of its channels or certain of its channels to competing TV distributors.<sup>520</sup> In particular, Tele2/Com Hem indicates that such foreclosure will create significant consumer switching to Telia's TV packages. To this end, Tele2/Com Hem provides a quantitative analysis showing that the merged entity would have the incentive to implement such foreclosing strategy post-Transaction.<sup>521</sup> Moreover, Tele2 stresses that a significant number of switching consumers are also likely to purchase additional services, such as broadband and mobile telephony from Telia making such a strategy profitable for the merged entity.<sup>522</sup>
- (527) Second, the Commission has carried out a quantitative analysis of the merged entity's incentives to engage post-Transaction in a number of input foreclosure strategies. This analysis is presented in Annex I. In particular, the results of the analysis of the merged entity's incentives to engage in total input foreclosure of FTA and basic pay TV channels in Sweden are presented in Section 2.3.2 of Annex I. The quantitative analysis models the trade-off of expected earned benefits and resulting costs faced by the merged entity under various total input foreclosure scenarios. The results of this analysis suggest that, post-Transaction, there will likely be a strong incentive for the merged entity to engage in total input foreclosure of FTA and basic pay TV channels against competing retail providers of AV services in Sweden since the expected benefits from such a strategy would significantly exceed the expected resulting costs.
- (528) Third, the Commission has reviewed the quantitative analyses submitted by the Notifying Party and considers that those analyses do not validly support the Notifying Party's position that the merged entity would lack the incentive to engage in total foreclosure strategy for the following reasons. The Notifying Party's analyses build on the same analytical framework as the analysis of the Commission presented in Annex I but introduce a number of perturbations in the form of modelling adjustments.<sup>523</sup> These adjustments increase significantly the estimates of the critical

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<sup>519</sup> The Commission has also taken into account in its assessment the possible increase in revenue also in neighbouring the following markets where Telia is active: (i) retail supply of fixed internet access services; and (ii) retail mobile telecommunications services.

<sup>520</sup> Responses to questionnaire Q4 to TV distributors in Sweden, questions F.7 and F.7.3.

<sup>521</sup> Compass Lexecon report "Anticompetitive effects of the Telia/Bonnier merger - Report for Tele2/Com Hem", submitted on 25 March 2019 (ID001301). This report develops a vertical arithmetic model and a bargaining model, similar in spirit to some of the submissions made by the Notifying Party discussed in this section, but arrives at different conclusions because it relies on a different set of parameters and assumptions than the Party's submissions.

<sup>522</sup> Tele2's response to questionnaire Q4 to TV distributors in Sweden, question F.7.3 (ID000634). While Tele2's analysis is directed at the right question and makes a good attempt to analyse the merged entity's incentives post-Transaction, the data available to Tele2 as a third party is understandably limited. The Commission's own analysis, as outlined in Annex I, relies on data provided by the Notifying Party and is therefore likely to produce more accurate estimates for analysing the incentives of the merged entity.

<sup>523</sup> RBB Economics' report "A vertical arithmetic model", section 4.2 (ID000123).

departure rate. The Commission has carefully considered and ultimately rejected the majority of the adjustments proposed by the Notifying Party as inappropriate and/or unsupported. The details of this assessment can be found in Section 2.4.3 of Annex I.

- (529) In the first place, and as shown by the Commission's quantitative analysis set out in section 2.2.2 of Annex I, the critical departure rate is [...] the estimate of [...]% found in the Notifying Party's quantitative analysis, namely [...]. Furthermore, as regards the likely actual rate of switching in an input foreclosure scenario, in light of the popularity of Bonnier Broadcasting's FTA and basic pay TV channels reflected in a large market share among consumers of TV channels ([...]% in 2018, in volume), the Commission considers that such likely actual rate would typically be [...] and estimates it to be [...]% in Sweden, as discussed in section 2.3.2 in Annex I. The estimated likely switching rate based on black-out studies that examine exactly the question of likely departure rates in the event of a black-out of Bonnier Broadcasting's channels against providers of AV services, are presented in Annex I.
- (530) In the second place, with respect to the contributing margins of customers who switch from a foreclosed rival to the merged entity<sup>524</sup>, the Commission does not follow the argumentation of the Notifying Party that assumes a [...] for switching customers compared to the average existing customer of Telia. This claim is particularly not credible as the Notifying Party submits documents that describe [Telia Company's internal documents].<sup>525</sup> Further, the documents submitted by the Notifying Party explain that the merged entity [Telia Company's internal documents]<sup>526 527</sup>. The plans to [Telia Company's internal documents]. In any event, in the context of carrying out its own quantitative analysis the Commission estimated what the appropriate margins for including in the vertical arithmetic model would likely be, as discussed in Section 2.2.1 of Annex I.
- (531) In the third place, the Commission observes that the assessment of the incentive to engage in total input foreclosure made above, as well as the criticisms of the various hypotheses and adjustments made in the vertical arithmetic model submitted by the Notifying Party, also applies to the quantitative analysis submitted by the Notifying Party that assesses selective total input foreclosure targeted individually at main rival TV distributors instead of targeted against all rival TV distributors.<sup>528</sup>
- (532) Fourth, in the Response to the Article 6(1)(c) Decision, the Notifying Party submits that the Commission's analysis of the total input foreclosure analysis of FTA and basic pay TV channels, as contained in the Article 6(1)(c) Decision, is unfounded and raises issue in particular with (i) [Information relating to Bonnier Broadcasting's business strategy]. With respect to the Notifying Party's critique of the Commission's analysis of the First RBB Report, the Commission notes that the quantitative analysis presented in Annex I largely renders such critique moot since, on the one hand, it presents the Commission's own findings with respect to the existence of strong incentives for the merged entity to engage post-Transaction in input foreclosure strategies, and on the other hand, assesses and largely dismisses the adjustments proposed by the Notifying Party as inappropriate and/or unsupported. The Commission assesses the arguments and assumptions made by the Notifying

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<sup>524</sup> The contributing margin is the profit margin Telia makes with each new customer.

<sup>525</sup> Form CO, annex 6.12.

<sup>526</sup> Form CO, annex 6.12, slide 12.

<sup>527</sup> Form CO, annex 6.12.

<sup>528</sup> RBB Economics' report "Selective total input foreclosure targeted at main rival TV distributors", dated 15 March 2019 (ID000500).

Party in the quantitative analyses of total input foreclosure in Section 2.4.3. of Annex I. Finally, the Commission considers that the merged entity will not have the incentive to license Bonnier Broadcasting's FTA and basic TV channels, via any distribution means, also including OTT. [Information relating to Bonnier Broadcasting's business strategy].

*Partial input foreclosure*

- (533) In a partial foreclosure scenario, the merged entity would only consent to license its channels in distribution agreements that impose higher carriage fees (and, more generally, worse commercial conditions) on competitors than in pre-Transaction agreements. In such a case, the respective competitor could either decline to enter into a carrier agreement or accept the higher licence fees. Partial foreclosure could also be implemented by significantly degrading the quality of channels licensed to third party distributors (for example, by removing significant content or ancillary rights).
- (534) The Commission's analysis has led to the conclusion that overall the merged entity will likely have the incentive to engage in partial input foreclosure of Bonnier Broadcasting's FTA and basic pay TV channels in Sweden.
- (535) First, most of the respondents to the market investigation indicate that the merged entity would likely have the incentive to degrade the terms and conditions when licensing FTA and basic pay TV channels to competing TV distributors. One respondent highlights that post-Transaction, the merged entity will enjoy a significant increase in bargaining power vis-a-vis competing TV distributors since its outside option will be vastly improved. As a result, the merged entity will have the incentive to raise carriage fees to competing distributors. The respondents to the market investigation expect increasing revenues for the merged entity upstream as well as raising costs for rivals in the downstream market.<sup>529</sup> Tele2/Com Hem submits a quantitative assessment showing that the merged entity would have the incentive to partially foreclose Bonnier Broadcasting's premium pay TV and FTA/basic pay TV channels to its competitors post-Transaction.<sup>530</sup> Building on a vertical analysis that weights the costs and benefits of vertical foreclosure the report finds incentives for total or partial input foreclosure of Bonnier's channels in the market for the retail supply of AV services in each of the SDU and MDU market segments.
- (536) Second, the Commission considers that the bargaining power of the merged entity is increased by the Transaction because a failure to reach agreement with a downstream TV distributor would harm Bonnier Broadcasting less than it would absent the Transaction. This is because the merged entity will internalise the profits of customers that potentially switch to Telia from rival TV distributors upon a blackout of the rivals. This improved threat point for the merged entity (of potentially leaving the negotiations without concluding a deal) allows the upstream division to negotiate a higher licence fee with downstream rivals. This is also recognised in the Notifying Party's quantitative analyses of partial foreclosure of FTA and basic pay TV channels, which considers the potential additional profits from switching customers and the potential losses from customers that leave a rival which, thus, pays less carriage fees to the merged entity.

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<sup>529</sup> Responses to questionnaire Q4 to TV distributors in Sweden, questions F.8 and F.8.3.

<sup>530</sup> Compass Lexecon's report "Anticompetitive effects of the Telia/Bonnier merger - Report for Tele2/Com Hem" (ID001301).

- (537) Third, the Commission has carried out a quantitative analysis of the merged entity's incentives to engage post-Transaction in a number of input foreclosure strategies. This analysis is presented in Annex I. In particular, the results of the analysis of the merged entity's incentives to engage in partial input foreclosure of FTA and basic pay TV channels in Sweden are presented in Section 3.2.3 of Annex I. The quantitative model, a Nash bargaining framework, shows that the Transaction would improve Bonnier Broadcasting's bargaining position over carriage fees vis-à-vis Telia's rival distributors compared to the pre-merger situation. This is due to the merged entity's ability to capture some of the potentially departing subscribers of the foreclosed distributors, resulting in higher carriage fees charged by the merged entity to rival distributors. The results of this analysis suggest that, post-Transaction, there will likely be a strong incentive for the merged entity to engage in partial input foreclosure of FTA and basic pay TV channels against competing retail providers of AV services in Sweden.
- (538) Fourth, the Commission has reviewed the Notifying Party's quantitative analysis which estimates the level of carriage fees post-Transaction incurred by rival TV distributors based on various assumptions in the Nash bargaining framework. The Commission considers that a potential partial foreclosure of rival TV distributors should have a larger effect on the carriage fees of Bonnier Broadcasting's channels for the two reasons laid out below, in addition to supplementary reasons discussed in section 3.4.2 of Annex I.
- (539) In the first place, the Nash bargaining model as implemented by the Notifying Party builds on the idea that the merged entity and a competing TV distributor negotiate over the integration of Bonnier Broadcasting's FTA and basic pay TV channels in the TV offering of the rival. The parties negotiate over the terms of the agreement while facing costs of reaching no agreement, for example, the blackout of TV4 channels from the rival's TV offering. Post-merger, the costs of the hypothetical threat point to reach no agreement decrease for the merged entity and, thus, its bargaining power increases. The costs of the threat point of not reaching an agreement, one of the key inputs into the quantitative model, is regularly approximated by the costs (that typically take the form of foregone profits) of a permanent or long-term blackout. The Notifying Party's analysis approximates the costs of a permanent blackout with figures from a blackout period from one week to one month. The chosen blackout period leads to a barely improved bargaining situation of the merged entity and, thus, to a mild impact of the potential merger on rivals' carriage fees.<sup>531</sup> The Commission considers the blackout time periods selected by the Notifying Party [...] too short and therefore not appropriate to approximate the merged entity's threat point in the negotiations.<sup>532</sup> This consideration is supported by internal documents submitted by the Notifying Party that show [Bonnier Broadcasting's internal market analysis].<sup>533</sup> In Section 3.1, section 3.2.1 and section 3.4.2.1 of Annex I, the Commission provides its view on why it considers departure rates from longer blackout periods in the quantitative assessments of partial input foreclosure.

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<sup>531</sup> RBB Economics' report "Partial input foreclosure FTA & Basic Pay" (ID000317).

<sup>532</sup> While the Commission acknowledges that observed blackouts in Europe last typically around a few weeks, these observations are not a relevant input into the Nash bargaining framework as it does not proxy the long-term value of a blackout event.

<sup>533</sup> Parties' response to the Commission's RFI 5, document 81 [Bonnier Broadcasting's internal document details] (ID000191-000001).

- (540) In the second place, the analysis submitted by the Notifying Party assumes that [...].<sup>534</sup> Based on reasons discussed in Section 3.4.2.2 of Annex I, the Commission rejects the assumption of diversion to streaming services that would lead to a negative impact of partial foreclosure on the merged entity's profit and, thus, biases the results in favour of the Notifying Party as inappropriate.
- (541) Finally, there is evidence in the file that the merged entity could have an incentive to hold back ancillary rights currently granted to competing TV distributors, thereby putting them at a competitive disadvantage. For instance, Tele2 submits that the merged entity will have an incentive to foreclose "*by imposing restrictions on the distribution (partial foreclosure) e.g. limited catch-up rights and limited supplementary content*" or "*by imposing limitations on the quality of its services, content (e.g. no High Definition) or on the addressable customer base (e.g. a prohibition to address users outside the existing customer base)*".<sup>535</sup>
- (542) In the Response to the Article 6(1)(c) Decision, the Notifying Party submits that the Commission's concerns with the Notifying Party's quantitative analysis are unfounded. In particular, the Notifying Party objects to the Commission's views that [...]. The Notifying Party also comments on the Commission's critique of the "proportional switching assumption". The Commission assesses the arguments and assumptions made by the Notifying Party in the quantitative analyses of partial input foreclosure in Sections 3.2.1 and 3.4.2 of Annex I. On the issues of blackout length and the treatment of switching to OTT subscriptions, the Commission's views are summarized in the previous recitals but further developed in the referred sections of Annex I. On the proportional switching issue, the Commission can ultimately agree with the Notifying Party that in the absence of reliable estimates on the relative likelihood of departing customers of acquiring a subscription with Telia rather than other rival distributors, it is a reasonable, albeit conservative, assumption that however underestimates the likely price effects, to the benefit of the Notifying Party.

c. *Impact on effective competition of total/partial input foreclosure*

- (543) A merger will raise competition concerns due to input foreclosure when it would lead to increased prices in the downstream market, thereby significantly impeding effective competition.<sup>536</sup> The Non-Horizontal Merger Guidelines note that anticompetitive foreclosure may occur by allowing the merged entity to increase the costs of downstream rivals thereby leading to upward pressure on sales prices. Competition may also be significantly impeded if the merged entity would be likely to raise barriers to entry to potential competitors by refusing to supply them or by supplying them on less favourable terms than absent the merger.<sup>537</sup>

*Total input foreclosure*

- (544) This section discusses whether the withdrawal of Bonnier Broadcasting's FTA and basic pay TV channels from rival TV distributors' offerings would likely have a significant detrimental effect on effective competition on the downstream market for the retail supply of AV services. As shown above in Sections 8.5.1.2.2.a and 8.5.1.2.2.b, post-Transaction, the merged entity will have the ability and the incentive to carry out a total input foreclosure strategy. Consequently, rival TV

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<sup>534</sup> RBB Economics' report "Partial input foreclosure FTA & Basic Pay" (ID000317).

<sup>535</sup> Agreed non-confidential minutes of a call with Tele2, 7 November 2018 (ID000156).

<sup>536</sup> Non-Horizontal Merger Guidelines, paragraph 47.

<sup>537</sup> Non-Horizontal Merger Guidelines, paragraph 48.

distributors will no longer be able to offer the Bonnier Broadcasting FTA or basic pay TV channels, including TV4, to their customers. The Commission considers that as a result, rival TV distributors will no longer be able to compete effectively in the market for the retail supply of AV services, thereby enabling the merged entity to significantly increase retail prices for TV packages.

- (545) First, the withdrawal of an important input will harm the business of rival TV distributors thereby negatively affecting their ability to compete against the merged entity. The market investigation shows that most TV distributor respondents consider that if the merged entity were to cease licensing Bonnier Broadcasting's FTA and basic pay TV channels and/or degrade the terms on which it does so, it would have a broadly negative impact on their companies.<sup>538</sup> In particular, Tele2 indicates that the negative impact would be particularly significant on the MDU market segment, since foreclosure of key Bonnier Broadcasting channels will lead to the termination of Com Hem's coax-based TV agreements with landlords/housing associations. Such termination implies that Com Hem will lose not only most of its TV customers on the MDU side (all subscribers covered by terminated landlord agreements), but also most of its broadband (and fixed telephony) customers on the MDU side.
- (546) Second, the market investigation shows that if the merged entity were to cease licensing Bonnier Broadcastings FTA and basic pay TV channels and/or degrade the terms on which it does so, customers could and would switch to competitor distributors who offer those channels.<sup>539</sup> The TV distributor NENT considers that if another distributor carries the channel there would be “*no reason for a customer to stick with a bundle lacking must-have content or paying significantly higher prices for accessing it*”.<sup>540</sup> Telenor also expects customer churn if TV4 were withdrawn.<sup>541</sup> Tele2 agrees that if TV4 were available in a competing distributor's package, but withdrawn from their own, both private customers and landlords would be expected to switch to that distributor.<sup>542</sup>
- (547) Third, the Commission considers that a significant number of customers would likely switch away from rival TV distributors in the event of the withdrawal of Bonnier Broadcasting's FTA and basic pay TV channels. The market investigation confirms that Bonnier Broadcasting's FTA or basic pay TV channels are needed to attract and maintain customers. For example, Tele2 states that “*there is no substitute to TV4 and TV7*” and “*foreclosure of Bonnier's FTA and basic pay TV channels will have devastating effect*” on its business.<sup>543</sup> According to Tele2, foreclosure would lead to the termination of its TV agreements with landlords/housing associations and the loss of most of its TV customers on the MDU side.<sup>544</sup> Tele2 also expects crippling effects from any partial or total input foreclosure on its ability to compete for SDU customers.<sup>545</sup> Telenor expects that foreclosure will lead to “*churn from our TV platforms as this [TV4] channel is considered as 'must have channel'*”.<sup>546</sup>

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<sup>538</sup> See responses to questionnaire Q4 to TV distributors in Sweden, question F.9.

<sup>539</sup> Responses to questionnaire Q13 to TV distributors in Sweden, question 54.

<sup>540</sup> NENT's response to questionnaire Q13 to TV distributors in Sweden, question 54.1 (ID02270).

<sup>541</sup> Telenor's response to questionnaire Q13 to TV distributors in Sweden, question 54.1 (ID02816).

<sup>542</sup> Tele2's response to questionnaire Q13 to TV distributors in Sweden, question 54.3 (ID02255).

<sup>543</sup> Tele2's response to questionnaire Q4 to TV distributors in Sweden, question F.9.2 (ID00634).

<sup>544</sup> Tele2's response to questionnaire Q4 to TV distributors in Sweden, question F.9.2 (ID00634).

<sup>545</sup> Tele2's response to questionnaire Q4 to TV distributors in Sweden, question F.9.2 (ID00634).

<sup>546</sup> Telenor's response to questionnaire Q13 to TV distributors in Sweden, question 54.1 (ID02816).

- (548) In addition, contrary to the Notifying Party's argument, the market feedback confirms that customers would be able to terminate agreements in the event that Bonnier Broadcasting's FTA/pay TV channels were no longer available (see recital 510). The ability for customers to terminate their agreements, coupled with the popularity of the channels and market feedback that the impact of foreclosure would be 'devastating', would 'cripple' business or would involve the loss of 'most' customers,<sup>547</sup> lead to the conclusion that a sufficiently large number of consumers could and would switch away from foreclosed rivals toward the merged entity. This would have detrimental impacts on the ability for rival TV distributors to compete effectively against the merged entity.
- (549) Fourth, the Transaction is likely to have a significant detrimental impact on effective competition in the overall market for the retail supply of AV services, but also when looking specifically at OTT as a distribution channel. The market investigation shows that Bonnier Broadcasting's FTA and basic pay TV channels are important irrespective of their means of distribution and market respondents consider them important for the distribution of TV content via OTT (see Section 8.5.1.2.2.a). [Information relating to Bonnier Broadcasting's business strategy].
- (550) In the Response to the Article 6(1)(c) Decision, the Notifying Party submits that the Transaction will not have a significant detrimental effect on effective competition because total input foreclosure is unlikely to result in higher prices at the retail level. It concludes that in principle there will be no upward pressure on retail prices as provided for in the Non-Horizontal Merger Guidelines. However, the Commission notes that post-Transaction, a foreclosure strategy by the merged entity will likely result in a significant number of customers switching to the merged entity, the monopoly supplier of Bonnier Broadcasting's FTA and basic pay channels. Principles of supply and demand lead to the conclusion that with the concentration of this important input in the hands of one supplier, there would indeed be upward pressure on retail prices by the merged entity together with a reduction in quality offering of rival TV distributors. The Commission notes that the Non-Horizontal Merger Guidelines refer to 'increased prices' as shorthand for the various ways in which a merger can result in competitive harm, including reduction in quality and reduced innovation and choice.<sup>548</sup>
- (551) In summary, total input foreclosure would make competition from foreclosed rivals less effective. Due to their inferior product offering, subscribers would switch from these competitors to Telia, thereby reducing pricing pressure on Telia and giving it the ability to profitably raise prices. Total input foreclosure would also likely cause significant harm to the business of rival TV distributors, reducing their ability to invest in new content and service offerings to customers, ultimately to the detriment of end-customers. Overall, total input foreclosure would likely lead to higher prices, lower levels of innovation and less consumer choice in the market for the retail supply of AV services.

*Partial input foreclosure*

- (552) Post-Transaction the merged entity will have the ability and the incentive to carry out a partial input foreclosure strategy (see Sections 8.5.1.2.2.a and 8.5.1.2.2.b). The likely effect of the implementation of such a partial input foreclosure strategy is a significant increase in the price of rival TV distributors' offerings. In particular,

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<sup>547</sup> Responses to questionnaire Q4 to TV distributors in Sweden, question F.12.3 (ID01180).

<sup>548</sup> Non-Horizontal Merger Guidelines, paragraph 10 and footnote 1.

partial input foreclosure in the form of increased licence fees to rival TV distributors for Bonnier Broadcasting's FTA and basic pay TV channels is likely to weaken Telia's competitors and make them less effective competitors against the merged entity. A significant increase in licence fees, as shown by the Commission's economic modelling, will likely translate to a significant increase in end-customer subscriber fees.

- (553) The Commission's economic modelling, in particular the Nash bargaining model, shows how the Proposed Transaction improves Bonnier Broadcasting's bargaining position over carriage fees vis-à-vis Telia's rivals distributors compared to the pre-merger situation, due to the merged entity internalization of some of the potentially foreclosed subscribers, which result in higher carriage fees for rival distributors, as detailed in Annex I, and shows that carriage fees of FTA and basic pay TV channels for rival TV distributors would increase by 109% to 342% in Sweden in the event of a partial foreclosure strategy. The Commission considers the increase in carriage fees for rival TV distributors as a significant price increase. Further, assuming a pass-through rate of 100%, the increase in carriage fees would translate into price increases of retail TV services of 10% to 20% in Sweden. The Commission considers the increase in prices for retail TV services of rival TV distributors as a significant price increase. For further details the Commission refers to section 3 of Annex I.
- (554) In the Response to the Article 6(1)(c) Decision, the Notifying Party submits that a partial input foreclosure strategy will not result in increased retail prices because [...].<sup>549</sup> The Notifying Party further submits that the actual switching by customers from rival TV distributors to the merged entity will be "very limited" if the merged entity were to degrade the terms and conditions of licensing of ancillary services. The Notifying Party submits that customers of foreclosed rivals are more likely to turn to Bonnier Broadcasting's AVOD service than go through the trouble of switching TV distributor.<sup>550</sup>
- (555) With respect to the pass-on rate, the Commission refers to section 3.4.2.3 of Annex I, which sets out its approach and assumptions for its analysis.
- (556) With respect to the Notifying Party's view that customers would sooner switch to viewing AVOD than to a rival TV distributor, the market feedback shows that the majority of TV distributor respondents consider that customers would not simply watch the channels via the AVOD app because the user experience and content is not the same.<sup>551</sup> For example, Tele2 notes that TV4 linear is not available on the AVOD service but only as part of CMore's premium pay AV service. NENT considers that the user experience is not the same and not all customers would have the know-how to view via the AVOD service. Share of viewing data confirms that viewing online is much more popular among younger customers segments than older ones, thereby supporting the view that at least certain customer segments would not switch to the AVOD service (even if it could offer the exact same content and customer experience).<sup>552</sup> Moreover, the market investigation shows that for older customers, traditional TV play an important role and these customers are not likely to go cordless.<sup>553</sup> While there is a trend that OTT viewing is increasing, in particular

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<sup>549</sup> Notifying Party's response to the Article 6(1)(c) decision, section G.4.2.

<sup>550</sup> Notifying Party's response to the Article 6(1)(c) decision, section G.4.3.

<sup>551</sup> Responses to questionnaire Q13 – TV distributors in Sweden, question 58.5.

<sup>552</sup> Agreed non-confidential minutes of a meeting with Tele2, 29 July 2019 [annex 1, slide 3] (ID03006).

<sup>553</sup> Responses to questionnaire Q14 retail providers of AV services in Finland, question 53.3.

among younger generations, the consumption of TV via traditional means remains important.

- (557) For a detailed discussion of the assumptions made by the Notifying Party in their submitted economic models, including in their Response to the Article 6(1)(c) Decision and the Commission's analysis of the Notifying Party's submissions, the Commission refers to Section 3.4. of Annex I.
- (558) For the reasons set out above, the Commission considers that the input foreclosure strategies considered above could have a significant negative impact on consumers and effective competition in Sweden.

*Lack of sufficient countervailing factors*

- (559) There are no countervailing factors such as the presence of buyer power or likely entry upstream that would maintain effective competition.<sup>554</sup> Downstream competitors cannot easily bypass the merged entity because, as shown above in Section 8.5.1.2.2.a, Bonnier Broadcasting's FTA or basic TV channels are important to TV distributors' business and include the most viewed commercial channel in Sweden, TV4. The Notifying Party acknowledges that while the value chain for AV content has been evolving for a long time, "*not necessarily many new linear TV channels will be launched.*" The Notifying Party considers that entry will occur in other ways as part of the evolving value chain but does not give any examples of new entry into the wholesale supply of FTA and basic pay TV channels in Sweden. Accordingly, the Commission is of the view that the negative impact of input foreclosure will not be overcome by any new entry in the foreseeable future considering that no new entry is foreseen at present let alone new entry that would likely be considered an alternative to TV4.
- (560) The Notifying Party submits that there is significant countervailing buyer power on the TV distribution market and that TV distributors can respond to any attempt to foreclose access to inputs by acquiring their own TV content or entering into various collaborations with upstream suppliers of TV content. The Notifying Party provides two examples of such countervailing power, the possible expansion upstream by Com Hem/Boxer to source specific TV content directly and the recent acquisition by Discovery of rights to Sweden's top football league.
- (561) The Commission considers that rival TV distributors do not have sufficient buyer power to overcome the effects of partial or total foreclosure. The main TV distributors in Sweden have downstream shares not exceeding [20-30]% for all major distributors and even the largest, Tele2, has a share not more than [30-40]% for the retail supply of AV services (including OTT) in Sweden (see Table 4).<sup>555</sup> Second, creating a new channel or vertically integrating is not likely to be a timely counterstrategy. The Notifying Party itself acknowledges that there are "*not necessarily many new linear TV channels*".<sup>556</sup> Moreover, to be a suitable alternative to Bonnier Broadcasting's FTA and basic pay TV channels, any new channels would need to be important to TV distributors' businesses to an extent comparable to Bonnier Broadcasting's channels.

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<sup>554</sup> Non-Horizontal Guidelines, paragraph 76.

<sup>555</sup> Even if Tele2 has shares in excess of [30-40]% in some market segments, it does not lead to the conclusion that Tele2 has buyer power or that its position in those segments can give it greater negotiating power in its dealings with a given broadcaster given that a given agreement will typically include the variety of distribution methods and customer segments (e.g., MDUs, SDUs, cable, IPTV).

<sup>556</sup> Form CO, paragraph 1055.

(562) Third, most of the respondents to the market investigation have indicated that there are no alternative TV broadcasters providing FTA and basic pay TV channels of similar quality in Sweden if post-Transaction the merged entity were to cease licensing Bonnier Broadcasting's FTA and basic pay TV channels and/or degrade the terms on which it does so.<sup>557</sup> In particular, respondents noted that Bonnier Broadcasting's channels are the most popular and there is no substitute for them. One respondent notes that, due to Bonnier Broadcasting's strong position, a channel aggregator cannot survive without it. In addition, Tele2 submits that foreclosure of competing TV distributors from Bonnier Broadcasting channels would create significant consumer switching to Telia TV packages.<sup>558</sup>

### 3. Conclusion

(563) In light of the foregoing, the Commission concludes that the Transaction would significantly impede effective competition in the market for the retail supply of AV services in Sweden, as a result of total or partial input foreclosure of FTA and basic pay TV channels<sup>559</sup>, irrespective of any possible market definition.

#### 8.5.1.3. Total and partial input foreclosure relating to the wholesale supply of premium pay TV sports channels and the retail provision of AV services

##### 1. Notifying Party's view

(564) In its initial submission, which the Notifying Party maintains in the Response to the Article 6(1)(c) Decision, the Notifying Party submits that the merged entity would have neither the ability nor the incentive to pursue a total or partial input foreclosure strategy against rival TV distributors, related to the provision of premium pay TV sports channels, or any packages of premium pay TV channels including sports TV channels. The Notifying Party also submits that, even if it could hypothetically be shown that the merged entity would have the ability and the incentive to engage in such foreclosure strategy, it would not have any significant detrimental effect on effective competition.<sup>560</sup>

(565) With respect to the merged entity's ability to undertake a total input foreclosure strategy, the Notifying Party submits that [...] for input foreclosure concerns to arise. Furthermore, according to the Notifying Party, any foreclosure strategy would likely trigger a response from rival TV broadcasters who would capture additional viewers with new forms of content and from TV distributors who could develop their own premium offering for their customers. The Notifying Party further notes that the merged entity would not be able to foreclose rival distributors until each existing individual distribution agreement between Bonnier Broadcasting and traditional TV distributors regarding C More's TV channels ends. Finally, the Notifying Party states that Bonnier Broadcasting holds the right [Licensing agreement information], meaning that rivals could bid for this content as a counterstrategy and the sports rights owners would restrict attempts to deny access to C More's premium pay TV sports channels.

(566) Even if the merged entity had the ability to engage in a total input foreclosure strategy by preventing rival TV distributors from offering C More's TV channels to

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<sup>557</sup> Responses to questionnaire Q4 to TV distributors in Sweden, question F.10.

<sup>558</sup> Tele2's response to questionnaire Q4 to TV distributors in Sweden, question F.7.3 (ID00634).

<sup>559</sup> Bonnier Broadcasting's FTA or basic pay TV channels includes all different genres of FTA and basic pay TV channels supplied by Bonnier Broadcasting in the market.

<sup>560</sup> Form CO, section 6.9.4.5.

their customers, the Notifying Party submits that it is highly unlikely that it would have the incentive to do so. The Notifying Party recognizes that this concern could arise because Telia has, since winning the rights to *Liiga*, offered this content on a near exclusive basis through its own retail arm. However, the Notifying Party submits that exclusive distribution of premium pay TV sports channels is likely to be unprofitable.

- (567) In particular, the Notifying Party submits a quantitative analysis aiming at demonstrating that the merged entity would not have the incentive to deploy a total input foreclosure strategy against rival TV distributors, related to the supply of C More channels, and C More's sports TV channels in particular.<sup>561</sup> Building on a vertical arithmetic model, the Notifying Party submits that [...]% (or more) of customers of foreclosed rival distributors would need to be recaptured by the merged entity, for the total foreclosure of all C More's premium pay TV sports channels to be a profitable strategy. The Notifying Party further submits that the likely actual recapture rate in a foreclosure scenario would lie below the critical recapture rate mentioned above.<sup>562</sup>
- (568) In addition, the Notifying Party submits that even if the sports content on C More's premium pay TV sports channels would be important for some customers, blacking out these TV channels would induce some customers of foreclosed TV distributors to continue accessing C More sports content through other means such as account sharing and possibly piracy. The Notifying Party further argues that a total input foreclosure strategy would likely lead to a significant and irreparable loss of goodwill for both the foreclosed TV channels and for Telia, which would limit the merged entity's incentive to engage in total input foreclosure.
- (569) Even if the merged entity would have the ability and incentive to engage in total input foreclosure, the Notifying Party submits that such strategy would not have any significant detrimental effect on effective competition. According to the Notifying Party, [...] for TV distributors to compete and therefore new players could enter the market and operate profitably without these TV channels. If such distributors wanted to offer premium pay TV channels, they could carry existing premium pay TV channels, promote new premium pay TV channels that broadcasters could create, or acquire premium content in order to create their own new premium pay TV channels.

## 2. Commission's assessment

- (570) The Commission's assessment of anticompetitive input foreclosure, in light of the results of the market investigation, is set out in the following recitals. For this purpose, consistent with paragraph 32 of the Non-Horizontal Merger Guidelines, in relation to each of these practices of total and partial input foreclosure of premium pay TV sports channels, the Commission examines, (i) whether the merged entity would have, post-merger, the ability to substantially foreclose access to inputs, (ii) whether it would have the incentive to do so, and (iii) whether a foreclosure strategy would have a significant detrimental effect on competition in the downstream markets.

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<sup>561</sup> RBB Economics' report "Total input foreclosure of C More's channels", 5 March 2019 (ID000402-000129).

<sup>562</sup> The critical recapture rate corresponds to the minimum proportion of customers of foreclosed downstream rivals that would need to be recaptured by the merged entity for total input foreclosure to be profitable.

(571) The Commission has conducted its assessment on the basis of all possible downstream market definitions. The question as to whether the merged entity would have the ability to undertake a partial or total input foreclosure strategy has therefore been undertaken in light of the importance of those channels to TV distributors active in the potential markets for which premium pay TV sports channels are acquired, namely the markets for the retail supply of: (i) AV services; (ii) linear pay AV services; (iii) linear premium pay AV services; (iv) all possible markets (i) to (iii) segmented into MDU and SDU.<sup>563</sup> The Commission's assessment of the impact of a total or partial input foreclosure strategy also applies in respect of the above mentioned possible markets for which premium pay TV sports channels are an important input. Since the importance of Bonnier Broadcasting's premium pay TV sports channels and the likely impact of foreclosure to those channels as inputs, is as least as significant on the narrower relevant markets as it is on the broader market for the retail provision of AV services, the Commission hereafter in this Section refers to the 'retail supply of AV services' or 'retail AV services' as shorthand for all possible markets comprising the retail supply of: (i) AV services; (ii) linear pay AV services; (iii) linear premium pay AV services; (iv) all possible markets (i) to (iii) segmented into MDU and SDU.

a. *Ability to engage in input foreclosure*

*The importance of premium pay TV sports channels for retail supply of AV services*

- (572) In this section, the Commission discusses whether Bonnier Broadcasting's premium pay TV sports channels can be considered an important input within the meaning of the Non-Horizontal Merger Guidelines for TV distributors to be able to compete in the downstream market for the provision of retail AV services. According to the Non-Horizontal Merger Guidelines, input foreclosure may only give rise to competition problems if the upstream input is important for the downstream product.<sup>564</sup>
- (573) Premium pay TV sports channels are important inputs to TV distributors' ability to compete on the downstream market for the supply of retail AV services, for the following reasons.
- (574) First, retail AV services providers often sell their AV services on their websites with specific reference to the premium pay TV sports channels that customers are able to subscribe to.<sup>565</sup> In order to attract new customers retail AV services providers in Sweden often offer such premium pay TV sports channels for free for an initial period of time.<sup>566</sup> Furthermore, as far as the Commission is aware, there is no TV

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<sup>563</sup> Before the Transaction, Bonnier Broadcasting's premium pay TV sports channels are not sold to retail suppliers of AV services as inputs for the provision of (i) linear FTA AV services, (ii) linear basic pay AV services or (iii) non-linear pay AV services. In respect of the latter, Bonnier Broadcasting does provide rights to distribute its premium pay TV sports channels in a non-linear manner as ancillary to the linear distribution of its channels (e.g., catch up rights) and that ancillary form of distribution has been included in the Commission's assessment together with the primary linear distribution of the premium pay TV sports channels. Therefore, the Commission considers that it is not relevant to consider the impact of the Transaction on market segments where the Bonnier Broadcasting's premium pay TV sports channels are not acquired as an input.

<sup>564</sup> Non-Horizontal Merger Guidelines, paragraph 34.

<sup>565</sup> See the websites of Telia ([https://www.telia.se/privat/tv/tvpaket?intcmp=vg\\_tv\\_tvpaket](https://www.telia.se/privat/tv/tvpaket?intcmp=vg_tv_tvpaket)), Tele2 (<https://www.comhem.se/tv>), Telenor (<https://www.telenor.se/handla/tv/om/>) and NENT (<https://www.viasat.se/utbud/tv>) (consulted on 26 September 2019).

<sup>566</sup> For instance, the website of NENT states that a new customer of Viasat can add C More Sport freely for 3 months (<https://www.viasat.se/>) (consulted on 26 September 2019). Telenor's website states that « C

distributor in Sweden whose TV offering does not include premium pay TV sports channels. It is likely that consumers therefore expect that such channels will be available to them regardless of the identity of their TV distributor and regardless of the means through which they choose to view TV content (i.e., by cable, satellite, fibre etc.). That expectation in turn makes it important that TV distributors are able to offer premium pay TV sports channels to be able to effectively compete in supplying retail AV services.

- (575) Second, most of the TV distributors that replied to the market investigation considered that Bonnier Broadcasting's premium pay TV sports channels are important for their retail TV offering in Sweden, in the sense that they contribute significantly to the competitiveness of their retail offering.<sup>567</sup> Tele2 noted that, from their perspective, C More is a must have channel "*when considering sports content*".<sup>568</sup>
- (576) Third, an analysis provided by the Parties shows that [...].

**Figure 11: [...]**

[...]

*Source: Annex 1 to response to RFI 77*

- (577) In the Response to the Article 6(1)(c) Decision, the Notifying Party notes, without providing any arguments, that it does not understand how the points made by the Decision [...] leads to the conclusion that Bonnier Broadcasting's premium pay TV sports channels are critical for TV distributors' ability to compete on the downstream market. The Commission clarifies in this regard that customers with high sports interest are very valuable customers for retail AV distributors given their willingness to pay more for AV services. It is therefore sufficiently important for TV distributors' ability to compete on the downstream market to be able to attract these customers.
- (578) The Commission therefore considers that those channels in Sweden constitute an important input in the sense outlined in the Non-Horizontal Merger Guidelines.<sup>569</sup>
- Market power of the merged entity in the wholesale distribution of premium pay TV sports channels*
- (579) For input foreclosure to be a concern, a vertically integrated merged entity must have a significant degree of market power in the upstream market. It is only in those circumstances that the merged entity can be expected to have significant influence on the conditions of competition in the upstream market and thus, possibly, on prices and supply conditions in the downstream market.<sup>570</sup>
- (580) First, as described in Section 8.3.1.2 above, Bonnier Broadcasting's premium pay TV sports channels had a market share of [40-50]% both by value and volume in 2018 in Sweden.

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More Stor » is included for free for 6 months when purchasing a TV package (<https://www.telenor.se/handla/tv/cmore/>) (consulted on 26 September 2019).

<sup>567</sup> Responses to questionnaire Q4 to TV distributors in Sweden, question F.3.

<sup>568</sup> Compass Lexecon's report "Anticompetitive effects of the Telia/Bonnier merger - Report for Tele2/Com Hem" (ID001301).

<sup>569</sup> According to the Non-Horizontal Merger Guidelines, input foreclosure may raise competition problems only if it concerns an important input for the downstream product. Non-Horizontal Merger Guidelines, paragraph 34.

<sup>570</sup> Non-Horizontal Merger Guidelines, paragraph 35.

- (581) Second, C More sports channels hold significant sport contents which drive customers' behaviour and switching.<sup>571</sup> In particular, Bonnier Broadcasting has rights for the Swedish first and second highest ice hockey leagues (the Swedish Hockey League ("SHL") and HockeyAllsvenskan).<sup>572</sup>
- (582) Finally, several internal documents submitted by the Parties show that Bonnier Broadcasting's premium pay TV sports channels are particularly important to compete in the Swedish market. In one document, prepared to check the importance of C More's channels in negotiations with Bonnier Broadcasting, [Telia Company's internal documents].<sup>573</sup> In a memo outlining the rationale of the acquisition of Bonnier Broadcasting, Telia indicates that [Telia Company's internal documents]<sup>574</sup> In another document, [Telia Company's internal documents].<sup>575</sup>
- (583) With reference to possible contractual limitations that may reduce the merged entity's ability to perform such conduct, the Commission notes that Bonnier Broadcasting's agreements with Telia's competing TV distributors, Tele2, Telenor and NENT, are expiring in [...] respectively. Therefore, the Commission considers that there are no contractual limitations to the merged entity's ability to implement foreclosure strategies in the [...].
- (584) With reference to the technical ability to implement any foreclosure strategy, most of the respondents to the market investigation have indicated that the merged entity post-Transaction could either stop licensing premium pay TV sports channels<sup>576</sup> or degrade the terms and conditions at which it does so.<sup>577</sup> In particular, Tele2 submitted that the merged entity could reduce "*the functionality of CMore for competing distributors, for example by not providing ultra HD functionality or providing reduced commentary options or reduced supplementary materials for sports broadcasts*"<sup>578</sup>, and has provided a quantitative analysis showing that the merged entity would implement such foreclosing strategy post-Transaction.<sup>579</sup>
- (585) In the Response to the Article 6(1)(c) Decision, the Notifying Party submits, first, that certain factors limit the importance of Bonnier Broadcasting's premium pay TV sports channels as input. In particular, the Notifying Party submits that (i) the TV distributor NENT/Viasat did not offer C More TV channels until recently and has been able to compete effectively on the retail market without them; (ii) [...]. Second, the Notifying Party submits that the same factors that undermine the merged entity's ability to engage in input foreclosure in relation to FTA and basic pay TV channels also apply for premium pay TV sports channels, namely that customers cannot switch TV distributors and [...], which limits the merged entity's ability to foreclose rivals.

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<sup>571</sup> For instance, a market participant in Sweden stated, in its response to questionnaire Q4 to TV distributors in Sweden, that a large share of its customers would switch away if C More Sports channels were to be foreclosed.

<sup>572</sup> Form CO, annex 15. Bonnier Broadcasting has also rights for the Swedish football league but those rights will move to Discovery as of 2020.

<sup>573</sup> Parties' response to the Commission's RFI 14, question d-e-, Appendix 6, slide 40 (ID00942).

<sup>574</sup> Form CO, Annex 6.11.

<sup>575</sup> Form CO, Annex 6.12.

<sup>576</sup> Responses to questionnaire Q5 to TV distributors in Sweden, questions F.12 and F.12.2.

<sup>577</sup> Responses to questionnaire Q4 to TV distributors in Sweden, questions F.13.2 and F.13.2.

<sup>578</sup> Tele2's response to questionnaire Q4 to TV distributors in Sweden, question F.13.3 (ID00634).

<sup>579</sup> Compass Lexecon's report "Anticompetitive effects of the Telia/Bonnier merger - Report for Tele2/Com Hem" (ID001301).

- (586) With reference to the Notifying Party's argument that NENT/Viasat was able to compete effectively on the retail market without Bonnier Broadcasting's premium pay TV sports channels, the Commission observes that NENT/Viasat is currently offering its retail customers the C More premium pay TV sports channels.<sup>580</sup> This undermines the Notifying Party's argument that it would not be important for NENT to offer these channels. Furthermore, during the Phase I market investigation, NENT explained that C More Sport, C More Fotboll, C More Golf and C More Hockey are particularly important for its retail offering as each of these channels is a “[s]trong premium niche channel in terms of viewing” and, in particular, C More Sport has “first choice” sports content for national hockey and football.<sup>581</sup>
- (587) As to the claim that Bonnier Broadcasting's portfolio of sports rights does not include all the most important sports rights, the Notifying Party argues that NENT holds the rights for the sports with the highest viewer's interest in Sweden. The Notifying Party refers to an economic report<sup>582</sup>, presenting important sport leagues/tournaments in Sweden, ranked by “viewer interest” in population of 15 to 74 year olds as of Q2 2018. The source of this information is a market research report (“Mediavision Report”).<sup>583</sup>
- (588) The Mediavision Report shows that Bonnier Broadcasting's current and future sports rights attract significant interest from viewers.<sup>584</sup> In addition, among the viewers interested in sport, the largest group [...] is interested in only one league or tournament. Among those viewers interested in only one league or tournament, SHL has the strongest single interest among viewers.<sup>585</sup> The report also indicates that SHL and HockeyAllsvenskan belong to the top 3 clusters among viewers with interest in two or three leagues.<sup>586</sup> Internal documents of Telia [Telia Company's internal documents].<sup>587 588</sup> A Bonnier internal document states that [Telia Company's internal documents].<sup>589 590</sup> The Commission further observes that Bonnier Broadcasting has held the rights for SHL until 2024<sup>591</sup>, while it holds the rights for HockeyAllsvenskan until 2026.<sup>592</sup> Their duration is therefore sufficiently long to be taken into account into the assessment of the ability to foreclose.
- (589) As to the Notifying Party's argument that various statements in internal documents as to the popularity of Bonnier Broadcasting's premium pay TV sports channels do not lead to the conclusion that these TV channels are critical for TV distributors' ability to compete downstream, the Commission observes that the Notifying Party has not brought forward convincing evidence that would invalidate the

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<sup>580</sup> <https://www.viasat.se/utbud/tv/tv-paket/ovriga-tillval>, consulted on 6 August 2019.

<sup>581</sup> NENT's response to Q4 – TV distributors in Sweden, question F.3 (ID001508).

<sup>582</sup> RBB Economics' report “Total input foreclosure of C More's channels”, pages 12-14 (ID000402-000129).

<sup>583</sup> Mediavision Sports Analysis 2018, page 13 and 36.

<sup>584</sup> Mediavision Sports Analysis 2018, page 13.

<sup>585</sup> Mediavision Sports Analysis 2018, page 14.

<sup>586</sup> Mediavision Sports Analysis 2018, page 14.

<sup>587</sup> Telia's internal document [Telia Company's internal document name] slide 19 (ID001938-035161).

<sup>588</sup> Telia's internal document, [Telia Company's internal document name] slide 4 (ID001925-016309).

<sup>589</sup> Bonnier Broadcasting's internal document [Bonnier Broadcasting's internal documents] slide 7. Translated from Swedish: [Bonnier Broadcasting's internal documents] (ID001776-025841).

<sup>590</sup> Bonnier Broadcasting's internal document, [Bonnier Broadcasting's internal documents] slide 5. Translated from Swedish: [Bonnier Broadcasting's internal documents] (ID001776-025841).

<sup>591</sup> Telia's internal document, [Telia Company's internal document name] slide 41 (ID001938-035161).

<sup>592</sup> After notification of the transaction, Bonnier Broadcasting has acquired the rights to continue to broadcast "Hockeyallsvenskan" for the seasons 2021/2022 – 2025/2026.

Commission's conclusion. The Notifying Party states [...] in Sweden). In this regard, the Commission notes that premium packages are add-on packages targeted to specific audiences, in this case sport enthusiasts with higher willingness to pay. Therefore, such customers bring value to rival distributors. In addition, the Commission recalls that all main TV distributors pre transaction provide access to Bonnier Broadcasting's premium pay TV sports channels.

- (590) As to the Notifying Party's argument that exclusivity of premium pay TV sports channels is not sufficiently important to induce customers to switch away from rivals in large numbers, the Notifying Party considers that Telia has had [...]. Nevertheless, this argument is more related to the specific situation of Finland, where Telia acquired the *Liiga* rights, which is discussed in Section 8.5.2.3.2.a, recitals (992) to (995).
- (591) With reference to the Notifying Party's argument that customers are unable to switch TV distributors, the results of the market investigation indicate that customers could terminate their agreements in case TV distributors would be unable to continue offering an existing customer one of the premium pay TV sports channels that was available to them at the time they signed up<sup>593</sup>. NENT stated the Viasat Terms & Conditions give customers the right to terminate their TV service, during a binding period, when this constitutes an "essential change" to the current offering of TV channels from a customer's point of view.<sup>594</sup> This is for example the case if a premium pay TV sports channel with for instance all Hockey, Soccer or Golf would be terminated because of the loss of major rights.<sup>595</sup>
- (592) With reference to the argument, that Telia would have a limited fixed footprint, the Commission considers that the same reasons as explained in recital (513) above with regard to basic and FTA TV channels apply also to the premium pay TV sports channels.

*Remaining upstream suppliers offer less preferred alternatives*

- (593) The only remaining upstream supplier of premium pay TV sports channels in Sweden is NENT. If Bonnier Broadcasting would reduce the availability of its premium pay TV sports channels, NENT would not be able to replace the Bonnier Broadcasting's premium pay TV sports channels in Sweden. The market investigation shows that Bonnier Broadcasting's premium pay TV sports channels are important channels that cannot be replaced by other broadcasters' channels. Sappa noted that to be an operator in Sweden, it is important to represent all important sports rights<sup>596</sup> and Telenor noted that there is no replacement "for the premium sport rights such as SHL and Allsvenskan".<sup>597</sup> NENT stated during the market investigation there are no alternative suppliers of sports premium pay TV channels as "Bonnier Broadcasting holds exclusive rights".<sup>598</sup> Tele2 noted: "*there is a distinct demand for Swedish hockey as compared to NHL. As a result, a retail*

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<sup>593</sup> Responses to questionnaire Q13 to retail providers of AV services in Sweden, question 69.1.

<sup>594</sup> NENT's response to questionnaire Q13 to retail providers of AV services in Sweden, question 69.1.1 (ID02270).

<sup>595</sup> NENT's response to questionnaire Q13 to retail providers of AV services in Sweden, question 69.1.1 (ID02270).

<sup>596</sup> Sappa's response to questionnaire Q4 – TV distributors in Sweden, question F.1.1 (ID000639).

<sup>597</sup> Telenor's response to questionnaire Q4 to TV distributors in Sweden, questions B.1.3.1. and B2 (ID01180).

<sup>598</sup> NENT's response to questionnaire Q4 to TV distributors in Sweden, question F.15 (ID001508).

*distributor needs to be able to offer both C More and Viasat to be able to cater to customer demand.”<sup>599</sup>*

- (594) During the market investigation, one respondent highlighted that C More focuses on distributing national sports content while Viasat (NENT) focuses on international sports content. Hence, C More and Viasat (NENT) are not close competitors given the very specific niche of international versus national sports content. From a business perspective, it is therefore important to have the full suite of channels covering the sports in total to be relevant in the market.<sup>600</sup> Another respondent noted that “*no other provider offers the same extent of local content as C More*”.<sup>601</sup>
- (595) In the Response to the Article 6(1)(c) Decision, the Notifying Party submits that it does not agree that C More does not compete closely with Viasat (NENT). The Notifying Party states that in Sweden Bonnier Broadcasting has lost the national premium sports right Allsvenskan, to Discovery. The Notifying Party further observes that NENT has recently strengthened its local rights portfolio through the acquisition of the broadcasting rights to FIS cross country and alpine world cups in the Nordic countries.
- (596) In this regard, the Commission observes that C More currently has the rights to the Swedish sports leagues Allsvenskan, SHL, HockeyAllsvenskan and Superettan, while NENT has the rights to international and foreign sports leagues Champions League, Premier League, Bundesliga, Ligue 1 and NHL amongst others. The Mediavision Report submitted by the Notifying Party makes a clear distinction between Swedish sports, where C More has the rights, and International football, where Viasat (NENT) holds the rights.<sup>602</sup> In an internal document of Bonnier Broadcasting C More is labelled as [Bonnier Broadcasting's internal strategy and analysis of the market]<sup>603 604</sup>
- (597) While Bonnier Broadcasting will lose the rights to Allsvenskan as from the year 2020, Bonnier Broadcasting will still maintain the major Swedish sports leagues SHL and HockeyAllsvenskan. Therefore, it does not affect Bonnier Broadcasting's focus on local sports. As to the acquisition by NENT of the broadcasting rights to FIS cross country and alpine world cups in the Nordic countries, the Commission does not share the view of the Notifying Party that these rights relate to “local” content, given that they concern disciplines that are not limited to Swedish teams or players in particular.<sup>605</sup>

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<sup>599</sup> Tele2's response to questionnaire Q4 to TV distributors in Sweden, question C.3.1 (ID000634).

<sup>600</sup> Responses to questionnaire Q4 to TV distributors in Sweden, question F.6.1.

<sup>601</sup> Responses to questionnaire Q4 to TV distributors in Sweden, question F.15.1.

<sup>602</sup> Mediavision Sports Analysis 2018, pages 13 and 15.

<sup>603</sup> Bonnier Broadcasting's internal document [Bonnier Broadcasting's internal document details] slide 13 (ID001773-000045). Original in Swedish: [Bonnier Broadcasting's internal document details].

<sup>604</sup> Bonnier Broadcasting's internal document [Bonnier Broadcasting's internal document details] slide 59 (ID001774-048295).

<sup>605</sup> The rights concerned are to events from the following World Cup disciplines:

- Mens and Ladies FIS Alpine Ski World Cup
- Mens and Ladies FIS Cross Country World Cup
- Mens and Ladies FIS Ski Jumping World Cup
- Mens FIS Nordic Combined World Cup
- Mens and Ladies FIS Snowboard World Cup
- Mens and Ladies FIS Freestyle Ski and Freeski World Cup

The deal also includes the FIS World Ski Championships in 2023 and 2025. Source: <https://news.cision.com/nordic-entertainment-group/r/nent-group-to-be-home-of-alpine-and-nordic-winter-sports-from-2021.c2786440> (consulted on 10 September 2019).

*No effective and timely counterstrategies*

- (598) The Commission considers that there are no effective and timely counterstrategies that the rival firms operating in the downstream market would be likely to deploy.
- (599) In the Response to the Article 6(1)(c) Decision, the Notifying Party submits that rival TV distributors could implement counterstrategies. The Notifying Party notes that premium sports rights are frequently tendered so any TV distributors could bid for those rights and expand into the market for the wholesale supply of premium pay TV sports channels as a counter-strategy to any attempt by the merged entity to foreclose access to premium pay TV sports channels. The Notifying Party considers that market practice shows that broadcasters and TV distributors have expanded into the premium pay sports space, and these entries happen “all the time”. The Notifying Party has provided two examples for Sweden: Discovery will take over Allsvenskan in Sweden as of 2020, and NENT will take over the Alpine and Nordic ski rights in the Nordic countries.
- (600) The Commission considers that while broadcasters and distributors could acquire sports rights, it is not likely that this will occur in the near future to such an extent that distributors operating on the downstream market would be less reliant on Bonnier Broadcasting’s premium pay TV sports channels. As noted, Bonnier Broadcasting holds a bouquet of strong sports rights including SHL and HockeyAllsvenskan. For example, Bonnier Broadcasting holds SHL until 2024 and HockeyAllsvenskan until 2026. When such rights come to expiry, Bonnier Broadcasting could extend these rights beyond their term. In addition, Bonnier Broadcasting could acquire further broadcasting rights for premium sports. In this regard, the Commission notes that after notification of the Transaction, Bonnier Broadcasting informed the Commission that it has acquired the broadcasting rights to La Liga and Serie A [Internal agreement content] and MLS [Internal agreement content] from the current owner IMG Media.
- (601) The results of the market investigation indicate that TV distributors would not be able to deploy effective counter-strategies to overcome the effects of a total or partial input foreclosure strategy by the merged entity. All TV distributors responding indicated that there are no other TV broadcasters from which they could license premium pay TV channels.<sup>606</sup> One respondent noted that “*there are no alternative suppliers*” for premium sports.<sup>607</sup> With reference to the acquisition of certain sports rights by Discovery and NENT, the Commission notes that even with the loss of the rights to Allsvenskan, downstream TV distributors will still be reliant on the C More channels. As one respondent to the market investigation stated: “*To be an operator in Sweden the Bonnier channels incl[uding] C More [are] needed.*”<sup>608</sup> Furthermore, while Bonnier Broadcasting has lost certain premium sports rights, it has also acquired other rights. As to the examples given by the Notifying Party, the Commission notes that Discovery is a wholesale supplier of FTA and basic pay TV channels and the Commission has no indication as to whether it will become a wholesale supplier of premium pay TV sports channels. As to NENT, the Commission notes that NENT is already active as a wholesale supplier of premium pay TV sports channels, and therefore, it is not an example of an entry into that market.

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<sup>606</sup> Responses to questionnaire Q4 to TV distributors in Sweden, question F.15.

<sup>607</sup> Responses to questionnaire Q4 to TV distributors in Sweden, question F.15.1.

<sup>608</sup> Responses to questionnaire Q4 to TV distributors in Sweden, question F.15.1.

b. *Incentive to engage in input foreclosure*

*Total input foreclosure*

- (602) As regards a total input foreclosure scenario, the merged entity will face a trade-off between lost profits in the upstream market, that is to say mainly licensing revenues of the Bonnier Broadcasting's premium pay TV sports channels, and a profit gain from being able to expand sales or to raise prices to consumers in the market for the retail supply of AV services because of the marginalisation or the increase of the barriers to expansion of existing competitors and/or the increase of the barriers to entry for potential entrants.
- (603) The Commission considers that overall the merged entity may have the incentive to engage in total input foreclosure of Bonnier Broadcasting's premium pay TV sports channels or any packages of premium pay TV channels including sports TV channels for the following reasons.
- (604) First, most of the respondents to the market investigation have indicated that the merged entity would either stop licensing all of its channels or certain of its premium pay TV sports channels to competing TV distributors.<sup>609</sup> In particular, Tele2 indicates that "*by withholding CMore, the combined entity can drive customers towards its fixed offerings, including both broadband and TV*". To this end, Tele2 has provided a quantitative analysis showing that the merged entity would have the incentive to implement such foreclosing strategy post-Transaction.<sup>610</sup>
- (605) Second, as shown in Figure 11 above, [...]. The merged entity may therefore have the incentive to engage in total input foreclosure of Bonnier Broadcasting's premium pay TV sports channels to attract customers of competing downstream providers of retail AV services.
- (606) Third, the Commission considers that the merged entity will have a different incentive post-Transaction than Bonnier Broadcasting does today in the licensing of its channels via traditional methods (such as cable and IPTV) [...].
- (607) [Internal strategy related to the question of granting of OTT rights].
- (608) [Internal strategy related to the question of granting of OTT rights].
- (609) Fourth, the Commission considers that post-Transaction, the merged entity would have the incentive to exclusively provide Bonnier Broadcasting's premium pay TV sports channels to Telia since it would also have a positive effect on the sale of Telia's fixed internet access services and basic pay retail AV services. Absent the Transaction, Telia was conducting analysis [Telia Company's internal analysis] (see Figure 12). This internal analysis shows that, [Telia Company's internal analysis].<sup>611</sup>

**Figure 12: [...]**

[...]

*Source: RFI 14, question d-e-, Appendix 6.*

- (610) Fifth, the Commission has carried out a quantitative analysis of the merged entity's incentives to engage post-Transaction in a number of input foreclosure strategies. The quantitative analysis models the trade-off of earned benefits and costs faced by

<sup>609</sup> Responses to questionnaire Q4 to TV distributors in Sweden, questions F.12 and F.12.3.

<sup>610</sup> Compass Lexecon's report "Anticompetitive effects of the Telia/Bonnier merger - Report for Tele2/Com Hem" (ID001301).

<sup>611</sup> Parties' response to the Commission's RFI 14, question d-e-, Appendix 6, slide 49 (ID000942).

the merged entity in a potential input foreclosure scenario. This analysis is presented in Annex I. In particular, the results of the analysis of the merged entity's incentives to engage in total input foreclosure of premium pay TV sports channels in Sweden are presented in Section 2.3.5 of Annex I. The results of this analysis suggest that, post-Transaction, there will likely be a strong incentive for the merged entity to engage in total input foreclosure of premium pay TV sports channels against competing retail providers of AV services in Sweden.

- (611) Sixth, the Commission has reviewed the quantitative analyses<sup>612</sup> submitted by the Notifying Party and it considers that the analyses do not validly support the Notifying Party's position that the merged entity would lack the incentive to engage in a total input foreclosure strategy for the reasons outlined in Section 8.5.1.2.b. In addition, in the quantitative analysis provided by the Notifying Party, several adjustments, specific to the foreclosure of premium pay TV sports channels, were made to the vertical arithmetic model. The Commission has carefully considered but ultimately had to reject the majority of those adjustments, which all raise the critical recapture rate found as a result of the analysis, as inappropriate and/or unsupported.
- (612) In the first place, the model<sup>613</sup> introduces a degree of uncertainty as to whether the merged entity would maintain the rights it currently holds to broadcast sports also in the future. In the 6(1)(c) Decision the Commission wrongly concluded that the manner in which this uncertainty was modelled allowed for losing but not regaining such rights. The Commission notes that although, as clarified by the Notifying Party in its Response to the Article 6(1)(c) Decision, the model does allow for the re-acquisition of sport rights, the model's treatment of this probability as an exogenous element outside of the merged entity's control is unwarranted and in direct contradiction to how the acquisition of non-sport content is treated by the Notifying Party, as explained in detail in Section 2.4.3.6 of Annex I.
- (613) In the second place, the model<sup>614</sup> assumes that customers of foreclosed rival TV distributors may be in binding contracts with their distributors, and, thus, not able to switch to the merged entity's retail AV services immediately. The Notifying Party justifies this assumption with contracts usually entailing a binding period, during which consumers are locked in. However, the Commission understands that the model also assumes that customers recaptured by the merged entity in a total foreclosure scenario would be able to switch away from the merged entity immediately, in case the merged entity loses the relevant sports rights. This asymmetry in customers' switching ability seems at odds with the Notifying Party's claim mentioned above, and artificially raises the critical recapture rate.
- (614) In the third place, the model<sup>615</sup> defines two categories of subscribers of premium sports channels: fans of a specific sport ('that are loyal to [a] specific sport/league') and casual viewers.<sup>616</sup> Moreover, the Notifying Party's model separates subscribers

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<sup>612</sup> See RBB Economics report 'Total input foreclosure of C More's channels', submitted on 5 March 2019 (ID00358) and RBB Economics report 'A response to the 6(1)(c) Decision regarding the vertical arithmetic analysis related to premium sports TV channels', submitted on 23 May 2019 (ID01590).

<sup>613</sup> See RBB Economics report 'Total input foreclosure of C More's channels', submitted on 5 March 2019 (ID00358).

<sup>614</sup> See RBB Economics report 'Total input foreclosure of C More's channels', submitted on 5 March 2019 (ID00358).

<sup>615</sup> See RBB Economics report 'Total input foreclosure of C More's channels', submitted on 5 March 2019 (ID00358).

<sup>616</sup> See RBB Economics report 'Total input foreclosure of C More's channels', submitted on 5 March 2019, p. 34 (ID00358).

into two groups under a foreclosure scenario: recaptured subscribers and non-recaptured subscribers. According to the Notifying Party, [Internal market analysis]<sup>617</sup> <sup>618</sup>. On the other hand, the model also assumes that ‘subscribers that would be recaptured in a foreclosure scenario would cancel their subscription if the rights are lost, irrespective of whether foreclosure has taken place or not,’<sup>619</sup> thus assuming that all recaptured subscribers are so-called fans of a specific sport. The Commission disagrees with the modelling assumption because they impose an unsubstantiated segmentation of subscribers of premium pay TV sports channels as discussed in more detail in the Commission’s assessment of the modelling adjustments proposed by the Notifying Party specific to premium sports channels in Section 2.4.3.6 of Annex I.

- (615) In the fourth place, the various criticisms made in Section 8.5.1.2.2.b also apply here. In particular, the Commission largely rejects the accuracy of the assumptions and adjustments to the model relating to the footprint of Telia, the long delay faced by end consumers with respect to their ability to switch, and the contributing margins of customers who switch from a foreclosed rival to the merged entity.
- (616) Overall, on the basis of the discussion above, the Commission considers that the critical departure rate should be lower than the one found in the Notifying Party’s quantitative analysis and in line with the results of the Commission’s own quantitative analysis.
- (617) In the Response to the Article 6(1)(c) Decision, the Notifying Party submits that the results of its own quantitative analyses hold and that these results show that the merged entity would have no profit incentive to engage in a total input foreclosure strategy of premium pay TV sport channels.<sup>620</sup>
- (618) First, the Notifying Party submits that the quantitative analysis does allow the merged entity to win the sport rights back after losing them. Second, according to the Notifying Party the view that the quantitative analysis is biased because of its asymmetric treatment of customers’ ability to switch TV distributors is unfounded and, can in any case be resolved by adjusting the parameters of the model, and without significantly affecting the results. Third, as to the concern that the quantitative analysis would not allow so-called “casual viewers” to switch to the merged entity in the event of foreclosure (thereby understating the potential gains from foreclosure), the Notifying Party submits that the results of the quantitative analysis do not actually depend on the classification of “casual viewers” and sports “fans” as described in the Decision.
- (619) The Commission has assessed the economic models and the Response to the Article 6(1)(c) Decision submitted by the Notifying Party. In its assessment, presented in Section 2.4 of Annex I, the Commission has carefully considered but ultimately rejected most of the Notifying Party’s assumptions as inappropriate and/or unsupported, and notes that the proposed adjustment would, in any event, not change the conclusions drawn from the results of Commission’s total input foreclosure

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<sup>617</sup> See RBB Economics report ‘Total input foreclosure of C More’s channels’, submitted on 5 March 2019, footnote 48 (ID00358).

<sup>618</sup> See RBB Economics report ‘Total input foreclosure of C More’s channels’, submitted on 5 March 2019, page 62 (ID00358).

<sup>619</sup> See RBB Economics report ‘Total input foreclosure of C More’s channels’, submitted on 5 March 2019 (ID00358).

<sup>620</sup> RBB Economics report ‘A response to the 6(1)(c) Decision regarding the vertical arithmetic analysis related to premium sports TV channels’, submitted on 23 May 2019 (ID01590).

analysis of premium pay TV sport channels in Sweden presented in Section 2.2.4 of Annex I.

- (620) In particular, as discussed in detail in Section 2.4.3.6 of Annex I, the Commission must reject the assumptions made by the Notifying Party on segmentation of subscribers of premium pay TV sports. In particular, the Notifying Party assumes, as described above, that subscribers are segregated into ‘fans’, ‘casual viewers’, ‘recaptured customers’ and ‘non-recaptured customers’. These assumptions have strong implications for the overall results because (i) the gains from foreclosure only occur when specific sports rights are held by the merged entity, and (ii) the losses from foreclosure always occur whether the specific sports rights stand with the merged entity or not. Hence, the gains of foreclosure are uncertain, while the losses are certain, because of the underlying assumptions made in the model. The Commission considers the assumptions on subscriber segmentation as not substantiated and, therefore, rejects it.
- (621) On the basis of the above considerations, the Commission considers that overall the merged entity will have the incentive to engage in total input foreclosure of Bonnier Broadcasting’s premium pay TV sports channels or any packages of premium pay TV channels including sports TV channels.

*Partial input foreclosure*

- (622) In a partial input foreclosure scenario, the merged entity would only consent to license its channels in its distribution agreements that impose licence fees (and, more generally, commercial conditions) on competitors that are higher than their current licence fees. In such a case, the respective competitor could either decline to enter into a carrier agreement or accept the higher licence fees. Partial foreclosure could also be implemented by significantly degrading the quality of channels licensed to third party distributors (for example, by removing significant content or ancillary rights).
- (623) The Commission considers that overall the merged entity may have the incentive to engage in partial input foreclosure of Bonnier Broadcasting’s premium pay TV sports channels, or any possible segmentation, for the following reasons.
- (624) First, most of the respondents to the market investigation indicate that the merged entity would likely have the incentive to degrade the terms and conditions when licensing premium pay TV sports channels to competing TV distributors.<sup>621</sup> In particular, Tele2 indicates that both for SDUs and MDUs, the merged entity will have the ability and the incentives to substantially increase its share of the revenue split in the distribution of C More. To this end, Tele2 has provided a quantitative analysis showing that the merged entity would have the incentive to such foreclosing strategy post-Transaction.<sup>622</sup>
- (625) Second, the Commission considers that the merged entity can use the threat of total foreclosure (or, at least, the credible threat of a long blackout) in its negotiations over the licence fees with the downstream rivals.
- (626) Third, in any case, the bargaining power of the merged entity is increased by the Transaction because a failure to reach agreement with a downstream TV distributor

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<sup>621</sup> Responses to questionnaire Q4 to TV distributors in Sweden, questions F.13 and F.13.3.

<sup>622</sup> Compass Lexecon’s report “Anticompetitive effects of the Telia/Bonnier merger - Report for Tele2/Com Hem” (ID001301).

would harm Bonnier Broadcasting less than it did absent the Transaction. This is because after the Transaction Bonnier Broadcasting will internalise the profits of Telia and these profits increase if Telia's downstream rivals cannot access Bonnier Broadcasting's premium pay TV sports channels. This improved threat point for the merged entity allows the upstream division to negotiate a higher licence fee with downstream rivals.

- (627) Fourth, TV distributors consider that the merged entity could have an incentive to hold back ancillary rights currently distributed to competing TV distributors, thereby putting them at a competitive disadvantage. For instance, Tele2 submits that the merged entity will have an incentive to foreclose "*by imposing restrictions on the distribution (partial foreclosure) e.g. limited catch-up rights and limited supplementary content*" or "*by imposing quality limitations*".<sup>623</sup>
- (628) Fifth, the Commission has carried out a quantitative analysis of the merged entity's incentives to engage post-Transaction in a number of input foreclosure strategies. This analysis is presented in Annex I. In particular, the results of the analysis of the merged entity's incentives to engage in partial input foreclosure of premium pay TV sports channels in Sweden are presented in Section 3.3.2 of Annex I. The results of this analysis suggest that, post-Transaction, there will likely be a strong incentive for the merged entity to engage in partial input foreclosure of premium pay TV sports channels against competing retail providers of AV services in Sweden.
- (629) In the Response to the Article 6(1)(c) Decision, the Notifying Party submitted that the merged entity would not have sufficient bargaining power vis-à-vis rival TV distributors so as to harm those rivals' ability to compete in the downstream market. The Notifying Party also contests that customers would likely switch TV providers but rather, in the case of a blackout, submits that those customers would remain with the current distributor and access the blacked out content via Bonnier Broadcasting's online streaming service. The Notifying Party has provided a quantitative analysis estimating price increases in retail price of [...]% on average in Sweden in a worst-case scenario (i.e. with [...]). Therefore, the Notifying Party considers that there is no basis for concluding that rivals' ability to compete in the downstream market would be harmed by the Transaction.
- (630) The Commission has reviewed the argument that the merged entity would not have sufficient bargaining power and that subscribers switch to the merged entity's streaming service and the quantitative analysis submitted by the Notifying Party and confirms its views that the majority of the proposed adjustments to the quantitative model are inappropriate and/or unsupported as discussed in Section 3.4.2 of Annex I. The Commission maintains that the results of its own analysis, as presented in Section 3.3 of Annex I more accurately capture the likely retail price increases that can be expected to result from the change in bargaining power between the merged entity and competing retail providers of AV services in Sweden, for the reasons discussed therein.

c. *Impact on effective competition of total/partial input foreclosure*

*Total input foreclosure*

- (631) This section discusses whether the withdrawal of Bonnier Broadcasting's premium pay TV sports channels from rival TV distributors' offerings would likely significantly impede effective competition on the downstream market for the retail

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<sup>623</sup>

Agreed non-confidential minutes of a call with Tele2, 7 November 2018 (ID001504).

supply of AV services. As shown above in Sections 8.5.1.3.2.a and 8.5.1.3.2.b, post-Transaction, the merged entity will have the ability and the incentive to carry out a total input foreclosure strategy. Consequently, rival TV distributors will no longer be able to offer the Bonnier Broadcasting premium pay TV sports channels to their customers. The Commission considers that as a result, rival TV distributors will no longer be able to compete effectively in the market for the retail supply of AV services, thereby enabling the merged entity to significantly increase retail prices for TV packages.

- (632) First, the withdrawal of an important input will harm the business of rival TV distributors thereby negatively affecting their ability to compete against the merged entity. The market investigation shows that most of the respondents to the market investigation consider that, if post-Transaction, the merged entity were to cease licensing Bonnier Broadcasting's premium pay TV sports channels and/or degrade the terms on which it does so, it would have a broadly negative impact on their companies.<sup>624</sup> In particular, Tele2 indicates that the negative impact would be particularly significant on the MDU market segment, since foreclosure of key Bonnier Broadcasting channels will lead to the termination of Com Hem's coax-based TV agreements with landlords/housing associations. Such termination implies that Com Hem will lose not only most of its TV customers on the MDU side (all subscribers covered by terminated landlord agreements), but also most of its broadband (and fixed telephony) customers on the MDU side.<sup>625</sup>
- (633) Second, the market investigation shows that if the merged entity were to cease licensing Bonnier Broadcasting's premium pay TV sports channels and/or degrade the terms on which it does so, customers could and would switch away from the distributors who do not offer these channels to distributors who offer those channels, such as the merged entity<sup>626</sup>.
- (634) Third, the Commission considers that a significant number of customers would likely switch away from rival TV distributors in the event of the withdrawal of Bonnier Broadcasting's premium pay TV sports channels. Most of the respondents to the market investigation indicate that there are no alternative TV broadcasters providing premium pay TV sports channels of similar quality in Sweden if post-Transaction, the merged entity were to cease licensing Bonnier Broadcasting's premium pay TV sports channels and/or degrade the terms on which it does so.<sup>627</sup> Therefore, their retail AV offering would significantly be impacted by not providing Bonnier Broadcasting's premium pay TV sports channels, or similar TV channels, to their end customers.
- (635) In addition, contrary to the Notifying Party's argument, the market feedback confirms that customers would be able to terminate agreements in the event that Bonnier Broadcasting's premium pay TV sports channels were no longer available (see recital (591)). The ability for customers to terminate their agreements, coupled with the popularity of the channels and market feedback that the impact of foreclosure would be negative, lead to the conclusion that a sufficiently large number of consumers could and would switch away from foreclosed rivals toward the

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<sup>624</sup> Responses to questionnaire Q4 to TV distributors in Sweden, question F.14.

<sup>625</sup> Tele2's response to questionnaire Q4 to TV distributors in Sweden, question J.1.1 (ID00634).

<sup>626</sup> Responses to questionnaire Q13 to retail providers of AV services in Sweden, question 67.

<sup>627</sup> Responses to questionnaire Q4 to TV distributors in Sweden, question F.15.

merged entity. This would have detrimental impacts on the ability for rival TV distributors to compete effectively against the merged entity.

- (636) In the Response to the Article 6(1)(c) Decision, the Notifying Party submits that: (i) [...].
- (637) In this regard, the Commission notes, first, that Bonnier Broadcasting's premium pay TV sports channels are important inputs, as explained in Section 8.5.1.3.2.a above. Second, as to the possible reactions of MDUs in case Tele2/Com Hem would no longer be able to offer Bonnier Broadcasting's premium pay TV channels, the Commission notes that Tele2/Com Hem has stated that in case Tele2/Com Hem would be unable to continue offering an existing customer one of the premium pay TV sports channels that was available to them at the time they signed up with Tele2/Com Hem, that customer could terminate the agreement.<sup>628</sup>
- (638) Third, as to the absence of alternative sources of premium pay TV sports channels, the Commission refers to recitals (593) to (597) above.
- (639) In summary, total input foreclosure would make competition from foreclosed rivals less effective. Due to their inferior product offering, subscribers would switch from these competitors to Telia or fewer subscribers would switch away from Telia than would have been the case without total input foreclosure. In either scenario, pricing pressure on Telia would be reduced, giving it the ability to raise prices. Total input foreclosure would also likely cause significant harm to the business of rival TV distributors, reducing their ability to invest in new content and service offerings to customers, ultimately to the detriment of end-customers. Overall, total input foreclosure would likely lead to higher prices, lower levels of innovation and less consumer choice in the market for the retail supply of AV services.

*Partial input foreclosure*

- (640) Post-Transaction, the merged entity will have the ability and the incentive to carry out a partial input foreclosure strategy (see Sections 8.5.1.3.2.a and 8.5.1.3.2.b). The likely effect of the implementation of such a partial input foreclosure strategy is a significant increase in the price of rival TV distributors' offerings. Partial input foreclosure in the form of increased licence fees or limited ancillary rights for Bonnier Broadcasting's premium pay TV sports channels is likely to weaken Telia's competitors and make them less effective competitors. In particular, a significant increase in licence fees, as shown by the Commission's economic modelling, will likely translate to a significant increase in end-customer subscriber fees.
- (641) The Commission's economic modelling of partial input foreclosure of Bonnier Broadcasting's premium pay TV sports channels towards its Swedish rivals Viasat, Telenor/CanalDigital and Comhem/Boxer finds that their licensing fees, i.e. revenue shares earned by the merging entity, will increase post-merger by about SEK [...] to SEK [...] which corresponds to increases of current revenue shares of about [...]% to [...]%. Assuming a 100% pass-on rate of the increase in upstream prices, downstream prices are expected to [...], depending on the foreclosed rival. For the Commission's detailed economic model, see Section 3.1.2 of Annex I.
- (642) The Commission has assessed the economic models and the Response to the Article 6(1)(c) Decision submitted by the Notifying Party. In its assessment in Annex I, the Commission rejects most of the Notifying Party's assumptions and notes that the

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<sup>628</sup>

Responses to questionnaire Q13 to retail providers of AV services in Sweden, question 69.1.

proposed adjustment would, in any event, not change the conclusions drawn on the results of Commission's partial input foreclosure analysis of premium pay TV sport channels presented in Section 3.1.2 of Annex I.

- (643) In the Response to the Article 6(1)(c) Decision, the Notifying Party submits that partial input foreclosure would not result in increased retail prices given the limited pass-on to consumers. According to the Notifying Party, pass-on to consumers is likely to be [...].
- (644) As to [...], the Commission has carefully reviewed the Notifying Party's submissions and must reject the modified pass-on rate for reasons laid out in Section 3.4.2.3 in Annex I.
- (645) In the Response to the Article 6(1)(c) Decision, the Notifying Party further submits a quantitative analysis aiming at showing that the merged entity would not substantially improve its bargaining position, meaning that any changes to the way that revenue is shared between the merged entity and its rivals is [...] and even if passed-on to consumers in its entirety would only result in small increases of less than [...]% in price [...]% in Sweden).
- (646) The Commission has reviewed the quantitative analysis submitted by the Notifying Party and rejected the majority of the adjustments proposed by the Notifying Party to the model of partial input foreclosure of premium pay TV sports channels as inappropriate and/or unsupported. The details of this assessment can be found in Section 3.4.2 of Annex I.

*Lack of sufficient countervailing factors*

- (647) There are no countervailing factors such as likely entry upstream that would maintain effective competition. Downstream competitors cannot easily bypass the merged entity because, as show above in Section 8.5.1.3.2.a, Bonnier Broadcasting's premium pay TV sports channels are important to TV distributors' business. The Notifying Party acknowledges that while the value chain for AV content has been evolving for a long time, "not necessarily many new linear TV channels will be launched." The Notifying Party considers that entry will occur in other ways as part of the evolving value chain but does not give any examples of new entry into the wholesale supply of premium pay TV sports channels in Sweden. The Notifying Party considers that market practice shows that broadcasters and TV distributors have expanded into the premium pay sports space, and these entries happen "all the time". The Notifying Party has provided two examples for Sweden: Discovery will take over Allsvenskan in Sweden as of 2020, and NENT will take over the Alpine and Nordic ski rights in the Nordic countries. In this regard, the Commission refers to recital (601) above.
- (648) Accordingly, the Commission is of the view that the negative impact of input foreclosure will not be overcome by any new entry in the foreseeable future considering that no new entry is foreseen at present let alone new entry that would likely be considered an alternative to C More.
- (649) In addition, most of the respondents to the market investigation indicate that there are no alternative TV broadcasters providing premium pay TV sports channels of similar quality in Sweden if post-Transaction, the merged entity were to cease licensing

Bonnier Broadcasting's premium pay TV sports channels and/or degrade the terms on which it does so.<sup>629</sup>

### 3. Conclusion

- (650) In light of the foregoing, the Commission concludes that the Transaction is likely to significantly impede effective competition in the market for the retail supply of AV services in Sweden, as a result of total or partial input foreclosure of premium pay TV sports channels or any premium pay package including those channels.
- 8.5.1.4. Total and partial input foreclosure relating to the wholesale supply of premium pay TV non-sport channels and retail provision of AV services in Sweden
- (651) The Commission's assessment of anticompetitive input foreclosure in Sweden, in light of the results of the market investigation, is set out in the following recitals. For this purpose, consistent with paragraph 32 of the Non-Horizontal Merger Guidelines, the Commission examines, (i) whether the merged entity would have, post-merger, the ability to foreclose access to inputs, (ii) whether it would have the incentive to do so, and (iii) whether a foreclosure strategy would have a significant detrimental effect on competition downstream.
- (652) The Commission assesses the risk of foreclosure of rival retail providers of AV services through the denial of access to Bonnier Broadcasting's premium pay TV non-sports channels, or through an increase of the carriage fees paid by such rival providers to be able to carry Bonnier Broadcasting's premium pay TV non-sports channels. In Sweden, premium pay TV non-sports channels are all premium pay TV films and series channels.<sup>630</sup>
1. Potential targets of input foreclosure
- (653) For the purposes of its assessment, the Commission has considered, in particular, as the more likely potential targets of an input foreclosure strategy, the retail suppliers of AV services that compete closely with Telia, irrespective of any potential market segmentation. On the basis of the market shares presented in Section 8.3.1.3, in relation to the market for the retail supply of AV services the main targets of potential foreclosure are the other main TV distributors, Tele2, Telenor and NENT.
2. Notifying Party's view
- (654) In its initial submission the Notifying Party submits that the merged entity would have neither the ability nor the incentive to pursue a total input foreclosure strategy against rival TV distributors, related to the provision of premium pay TV non-sports channels.
- (655) As regards the ability to engage in input foreclosure, the Notifying Party stresses that until recently, the competing retail provider of AV services Viasat (NENT) did not offer C More TV channels and that popular streaming services have grown rapidly without offering C More either. In addition, end-customers would have a wide range of alternatives, like other premium pay TV channels, such as Viasat, or SVOD services, such as Netflix, Amazon or HBO Nordic. In that respect, the Notifying Party submits that market shares for wholesale supply of premium pay TV films and series channels do not reflect the full competitive environment, given that

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<sup>629</sup> Responses to questionnaire Q4 to TV distributors in Sweden, question F.15.

<sup>630</sup> Form CO, Schedule 1. Bonnier Broadcasting's premium pay TV non-sport channels offered in Sweden are all film and series TV channels, i.e. C More First, C More Hits, C More Stars, C More Series and SF-Kanalens.

competitive pressure from SVOD providers would be particularly relevant for TV channels of this genre. The Notifying Party submits that a foreclosure strategy would most likely lead customers to switch to these alternatives, and concludes that C More is not a sufficiently important input in Sweden for input foreclosure to be a concern.<sup>631</sup>

- (656) As regards the incentive to engage in input foreclosure, the Notifying Party submits [...]. Input foreclosure would thus not be a profitable strategy in this case. In particular, C More subscribers could choose from a variety of alternatives, such as competing premium pay TV channels and popular standalone streaming services like Netflix and HBO. There is a high risk that of large numbers of customers switching to these alternatives, if C More were no longer available via their TV distributor. In addition, the Notifying Party states that any input foreclosure strategy would likely lead to [...] for both Telia and Bonnier Broadcasting.<sup>632</sup>
- (657) As for the effect on competition, the Notifying Party submits that [...]. In addition, the Notifying Party submits that new players could enter the market and operate profitably without these C More premium pay TV films and series channels.<sup>633</sup>

### 3. Commission's assessment

- (658) The Commission has conducted its assessment on the basis of all possible downstream market definitions. The question as to whether the merged entity would have the ability to undertake a partial or total input foreclosure strategy has therefore been undertaken in light of the possible importance of those premium non-sports TV channels to TV distributors active in the potential markets for which premium pay TV non-sports channels are acquired, namely the markets for the retail supply of (i) AV services; (ii) linear pay AV services; (iii) linear premium pay AV services; (iv) all possible markets (i) to (iii) segmented into MDU and SDU.<sup>634</sup>

#### a. Ability to engage in input foreclosure

- (659) In the present case, a majority of respondents to the Phase I market investigation indicated that the merged entity post-Transaction could stop licensing its premium pay TV non-sports channels, or degrade the terms and conditions of the acquisition of premium pay TV non-sports channels from third parties in Sweden.<sup>635</sup>
- (660) Nevertheless, the Commission considers that the merged entity would lack the ability to engage in any input foreclosure of Bonnier Broadcasting's premium pay TV non-sports channels since, for the reasons outlined hereafter, those channels do not constitute an important input on any potential markets for which premium pay TV non-sports channels are acquired, namely the markets for the retail supply of: (i) AV

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<sup>631</sup> Form CO, paragraphs 668 and 669.

<sup>632</sup> Form CO, paragraphs 678-681 and 687.

<sup>633</sup> Form CO, paragraph 688-691.

<sup>634</sup> Before the Transaction, Bonnier Broadcasting's premium pay TV non-sports channels are not sold to retail suppliers of AV services as inputs for the provision of (i) linear FTA AV services, (ii) linear basic pay AV services or (ii) non-linear pay AV services. In respect of the latter, Bonnier Broadcasting does provide rights to distribute its premium pay TV non-sports channels in a non-linear manner as ancillary to the linear distribution of its channels (e.g., catch up rights) and that ancillary form of distribution has been included in the Commission's assessment together with the primary linear distribution of the premium pay TV non-sports channels. Therefore, the Commission considers that it is not relevant to consider the impact of the Transaction on market segments for which the Bonnier Broadcasting's premium pay TV non-sports channels are not acquired as an input.

<sup>635</sup> Responses to questionnaire Q4 to TV distributors in Sweden, questions F.12, F.12.1, F.12.2, F.13, F.13.1 and F.13.2.

services; (ii) linear pay AV services; (iii) linear premium pay AV services; (iv) all possible markets (i) to (iii) segmented into MDU and SDU in Sweden in the sense outlined in the Non-Horizontal merger Guidelines.<sup>636</sup>

- (661) First, despite Bonnier Broadcasting having a market share of [40-50]% in value and [50-60]% in volume in the wholesale supply of premium pay TV non-sports channels in 2018 in Sweden, the film and series content included in those channels does not seem as particularly important from a viewer perspective irrespective of any possible product market segmentation. In fact, when considering the share of viewing of premium pay TV films and series channels and non-linear pay AV services in Sweden, Bonnier Broadcasting has a share of [10-20]% significantly behind Netflix with a share of [50-60]% and NENT with a share of [20-30]%. The fourth player, HBO has a share of [5-10]%.<sup>637</sup> In that respect, Telenor stated that “*SVOD OTT services such as Netflix/HBO may from a customer point of view be considered an alternative to the additional C More film and series packages offered by Telenor*”.<sup>638</sup> Therefore, these other players like Netflix and HBO offering non-linear premium AV services at the retail level exercise an indirect competitive constraint on Bonnier Broadcasting’s premium pay TV non-sports channels active at the wholesale level.
- (662) Indeed, SVOD providers already exercise a strong out-of-market constraint on TV broadcasters, as linear TV is losing viewership to VOD services, by “cord shaving” (that is a reduction of the scope of the subscription), thereby limiting the market power of the merged entity in the wholesale supply of premium pay TV non-sports channels in Sweden. The information gathered during the market investigation confirmed that SVOD and TVOD are relevant distribution channels for films. In that respect, Telenor stressed that international thematic pay TV channels have alternatives<sup>639</sup> and that “*C More Film competes primarily with Viaplay, Netflix and HBO for their premium film and series offering*”.<sup>640</sup> In that respect, the Commission notes that, in Sweden, [Information about Bonnier Broadcasting’s commercial data].<sup>641</sup>

**Figure 13: [...]**

[...]

*Source : [...].*

- (663) Second, the information gathered during the market investigation indicated that retail providers of AV services competing with Telia, and seeking to include attractive premium pay TV non-sports channels in their offering, can typically license alternative channels to C More premium pay TV non-sports channels. In that respect, one respondent to the market investigation stated that “[w]hen it comes to films and series there are other/more substitutes/competitors”.<sup>642</sup> The results of the market

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<sup>636</sup> According to the Non-Horizontal Merger Guidelines, input foreclosure may raise competition problems only if it concerns an important input for the downstream product. Non-Horizontal Merger Guidelines, paragraph 34.

<sup>637</sup> Form CO, Annex 7, Appendix 1.

<sup>638</sup> Telenor’s response to questionnaire Q13 to retail providers of AV services in Sweden, question 45.1 (ID02816).

<sup>639</sup> Telenor’s response to questionnaire Q4 to TV distributors in Sweden, question C.3.1 (ID01180).

<sup>640</sup> Telenor’s response to questionnaire Q4 to TV distributors in Sweden, question E.3.1 (ID01180).

<sup>641</sup> Form CO, paragraph 703.

<sup>642</sup> Responses to questionnaire Q13 to retail providers of AV services in Sweden, question 30.

investigation indicated that Viasat Film TV channels, owned by NENT, are valued alternative films and series TV channels.<sup>643</sup>

- (664) Third, the importance of premium pay TV non-sports channels is further impacted by the launch of OTT offerings directly by content owners. For example, HBO already provides its film and series in Sweden through its streaming services HBO Nordic.<sup>644</sup> Disney has stated that the global rollout for its streaming service Disney Plus (Disney+) begins on 12 November 2019 in the US, Canada and Europe, starting in the Netherlands<sup>645</sup>, and that it would rapidly expand globally “*with plans to be in nearly all major regions of the world within the next two years*”.<sup>646</sup> Specifically, Disney announced that Disney+ will launch in Western Europe in the first half of 2020.<sup>647</sup> In addition, other digital players have entered the market such as Amazon<sup>648</sup> and Apple.<sup>649</sup>

*b. Incentive to engage in total or partial input foreclosure*

- (665) Several respondents to the market investigation consider that the merged entity may have the incentive to exclusively supply its premium pay TV non-sports channels to Telia and not to other TV distributors, or to degrade the terms and conditions of the acquisition of its premium pay TV non-sports channels from third parties.<sup>650</sup>
- (666) In any event, given the lack of ability to foreclose, it is not necessary to conclude as to whether the merged entity will have the incentive to implement a strategy aimed at foreclosing competing retail suppliers of AV services from its premium pay TV non-sports channels in Sweden.

*c. Impact on effective competition of total/partial input foreclosure*

- (667) A merger will raise competition concerns due to input foreclosure when it would lead to increased prices in the downstream market, thereby significantly impeding effective competition.<sup>651</sup> The Non-Horizontal Merger Guidelines note that anticompetitive foreclosure may occur by allowing the merged entity to increase the costs of downstream rivals thereby leading to upward pressure on sales prices. Competition may also be significantly impeded if the merged entity would be likely to raise barriers to entry to potential competitors by refusing to supply them or by supplying them on less favourable terms than absent the merger.<sup>652</sup> In particular, if there remain sufficient credible downstream competitors whose costs are not likely to be raised, for example because they are themselves vertically integrated or capable of switching to adequate alternative inputs, competition from those firms may constitute

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<sup>643</sup> Responses to questionnaire Q4 to retail providers of AV services in Sweden, question F.15.

<sup>644</sup> See <https://en.hbonordic.com/>.

<sup>645</sup> See “New Global Launch Dates Confirmed for Disney+”, available at: <https://www.thewaltdisneycompany.com/new-global-launch-dates-confirmed-for-disney>.

<sup>646</sup> See <https://www.thewaltdisneycompany.com/disney-spotlights-comprehensive-direct-to-consumer-strategy-at-2019-investor-day/>.

<sup>647</sup> See [https://www.thewaltdisneycompany.com/wp-content/uploads/2019/03/Disney\\_Investor\\_Day\\_2019\\_transcript.pdf](https://www.thewaltdisneycompany.com/wp-content/uploads/2019/03/Disney_Investor_Day_2019_transcript.pdf)

<sup>648</sup> Amazon Prime Video is a streaming service provided by Amazon. The streaming service offers exclusive Prime Originals to customers in more than 200 countries, including the Nordics. See: <https://www.primevideo.com/>.

<sup>649</sup> Apple recently announced the launch of Apple TV+, a new streaming service where featuring original shows and movies across every genre, <https://www.apple.com/apple-tv-plus/>.

<sup>650</sup> Responses to questionnaire Q4 to TV distributors in Sweden, questions F.12, F.12.3, F.13 and F.13.3.

<sup>651</sup> Non-Horizontal Merger Guidelines, paragraph 47.

<sup>652</sup> Non-Horizontal Merger Guidelines, paragraph 48.

a sufficient constraint on the merged entity and therefore prevent output prices from rising above pre-merger levels.<sup>653</sup>

- (668) Regardless of whether the merged entity has either the ability or the incentive to foreclose competing downstream rivals with regard to the wholesale supply of premium pay TV non-sports channels, the Commission discusses whether the withdrawal of Bonnier Broadcasting's premium pay TV non-sports channels from rival TV distributors' offerings would likely have a significant detrimental impact on effective competition on any of the potential downstream markets for which premium pay TV non-sports channels are acquired, namely the markets for the retail supply of: (i) AV services; (ii) linear pay AV services; (iii) linear premium pay AV services; (iv) all possible markets (i) to (iii) segmented into MDU and SDU, and does not consider that such strategy would have any such impact on competition downstream.
- (669) First, as explained in Section 8.5.1.4.3.a, Bonnier Broadcasting's premium pay TV non-sports channels are not an important input for retail suppliers of AV services in Sweden. Therefore, their withdrawal would not harm the business of rival TV distributors in Sweden, thereby not affecting their ability to compete against the merged entity.
- (670) Second, as explained in Section 8.5.1.4.3.a, the information gathered during the market investigation indicated that retail providers of AV services competing with Telia, and seeking to include attractive premium pay TV non-sports channels in their offering, can typically license alternative channels to C More premium pay TV non-sports channels. In addition, NENT is vertically integrated and offers the Viasat premium pay TV non-sports channels, which directly compete with the C More premium pay TV non-sports channels. Therefore, there remain sufficient credible downstream competitors whose costs are not likely to be raised.
- (671) Third, the Transaction will not raise barriers to entry or expansion. As explained in Section 8.5.1.4.3.a, a number of significant content owners and digital players have launched their own direct-to-consumer services via OTT, mainly based on films and series.

#### 4. Conclusion

- (672) On the basis of the foregoing, the Commission concludes that the Transaction would not significantly impede effective competition as a result of total or partial input foreclosure of premium pay TV non-sports channels in Sweden since the merged entity would lack the ability to foreclose downstream competitors and such strategy would likely have no detrimental impact on effective competition. The Commission's assessment applies in respect of any potential markets for which premium pay TV non-sports channels are acquired, namely the markets for the retail supply of: (i) AV services; (ii) linear pay AV services; (iii) linear premium pay AV services; (iv) all possible markets (i) to (iii) segmented into MDU and SDU.

#### 8.5.1.5. Total and partial input foreclosure relating to the wholesale supply of premium pay TV channels and the retail provision of AV services

- (673) The Commission has assessed the risk of input foreclosure strategies relating to the wholesale supply of premium pay TV sports channels, or any premium pay package including those channels (Section 8.5.1.3) and in relation to the wholesale supply of premium pay TV non-sports channels (Section 8.5.1.4).

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<sup>653</sup> Non-Horizontal Merger Guidelines, paragraph 50.

- (674) The Commission has found that the Transaction is likely to significantly impede effective competition only in relation to input foreclosure of premium pay TV sports channels, in Sweden (Section 8.5.1.3), but not in relation to the wholesale supply of premium pay TV non-sports channels (Section 8.5.1.4).
- (675) These two types of TV channels together form the overall market for the wholesale supply of premium pay TV channels in Sweden.
- (676) Any competition concerns in relation to this overall market for the wholesale supply of premium pay TV channels in Sweden, would result exclusively from the concerns found on the market for the wholesale supply of premium pay TV sports channels. The Commitments offered by the Notifying Party eliminate the competition concerns in relation to premium pay TV sports channels and these Commitments therefore also eliminate any concerns on the overall market for the wholesale supply of premium pay TV channels.
- 8.5.1.6. Total and partial customer foreclosure of competing wholesale suppliers of FTA and basic pay TV channels with regard to the retail supply of AV services in Sweden
- (677) In Sweden, Telia is active in the retail supply of AV services, in particular through its IPTV network. Bonnier Broadcasting is mainly active as TV broadcaster. The merger specific change is the addition of Telia's downstream activities as retail supplier of AV services.
- (678) The Commission notes that the merged entity's market share in the Swedish market for the retail supply of AV services is below 30%, and that the downstream market is therefore not a vertically affected market.<sup>654</sup> Nevertheless, given the results of the market investigation and Telia's [...] in the narrow market segment for the retail supply of AV services through IPTV networks ([60-70]% by value in 2018), the Commission has assessed the risk of customer foreclosure strategies in Sweden.
- (679) In particular, the Commission has assessed the risk of the following two types of customer foreclosure strategies: (i) total foreclosure of rival TV broadcasters through the merged entity refusal to carry competing TV channels on its downstream distribution platform; and (ii) partial foreclosure of rival TV broadcasters through, for instance, a degradation of the quality of the viewers' experience for competing TV channels on Telia's distribution platform, or through a reduction in carriage fees.
- (680) Moreover, the Commission has assessed the two abovementioned types of customer foreclosure strategies on the following two types of TV channels, which Telia purchases in Sweden:
- FTA and basic pay TV channels (addressed in this section 8.5.1.6);
  - premium pay TV channels (see section 8.5.1.7).
- (681) For the purposes of its assessment, the Commission has considered, in particular, as the more likely potential targets of a customer foreclosure strategy, the channels that compete closely with Bonnier Broadcasting's FTA and basic pay TV channels. On the basis of the market shares presented in section 8.3.1.1, the main targets of

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<sup>654</sup> See Section 8.3.1.3, the merged entity would not hold a market share above 30% under any possible market segmentation.

potential foreclosure in Sweden are the other two main commercial broadcasters, NENT and Discovery.<sup>655</sup>

1. Notifying Party's view

- (682) In its initial submission,<sup>656</sup> the Notifying Party submits that the merged entity would have no ability to fully or partially foreclose rival TV broadcasters, irrespective of the type of TV channels (FTA, basic or premium) since (i) it will not have sufficient market power in the downstream market; (ii) rival TV broadcasters can provide services to end customers through several technologies and other third parties retail suppliers of AV services; and (iii) contractual limitations limit its ability to implement such conducts.
- (683) The Notifying Party further indicates that the merged entity would have no incentive to foreclose rivals TV broadcasters, irrespective of the type of TV channels (FTA, basic or premium) since (i) it will lead to a significant Telia's customer losses; (ii) only a minority of customers would start watching/increase their time spent watching Bonnier Broadcasting's TV channels; and (ii) the strategy would have a limited impact on Bonnier Broadcasting's advertising revenues.
- (684) The Notifying Party further indicates that the merged entity would have no incentive to partially foreclose rivals TV broadcasters, irrespective of the type of TV channels (FTA, basic or premium). The merged entity will not significantly strengthen its bargaining position vis-à-vis TV broadcasters. The bargaining position of the merged entity depends on the value of its outside option which corresponds to cease distributing competing TV channels and it would not be affected by the Transaction. The merged entity would not have the incentive to degrade the quality of competing TV channels, since by doing so, it will affect the quality and user experience of its retail offering, leading to customers switching to higher quality offers from competing suppliers of retail AV services.
- (685) Finally, the Notifying Party submits that, even if it could hypothetically be shown that the merged entity would have the ability and incentive to engage in (total or partial) customer foreclosure (*quod non*), such a strategy would not have any significant detrimental effect on effective competition. First, [...] to access the competing offering of rival TV broadcasters, irrespective of the type of TV channels (FTA, basic or premium). Second, such a strategy would have a limited impact on the revenues of TV broadcasters and their ability to invest in content over the next years.
- (686) In its Response to the Article 6(1)(c) Decision,<sup>657</sup> the Notifying Party first pointed out that any customer foreclosure strategy would have a negative impact on the user experience of its customers. It then maintained that the merged entity would lack the ability to engage in such a strategy as (i) it would not have a sufficiently large customer base in the market for the retail supply of AV services, and (ii) rivals could reach customers through other distribution technologies, such as OTT, DTH and DTT. The Notifying Party added that it would lack the incentive to engage in customer foreclosure, notably given that (i) there are normally no carriage fees for

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<sup>655</sup> The Commission has not considered SVT as a potential target of foreclosure strategy since Telia is subject to "must-carry" obligations and is therefore required to carry SVT's channels on its network. See European Audiovisual Observatory, Access to TV platforms: must-carry rules, and access to free-DTT, <https://rm.coe.int/16807835e4>.

<sup>656</sup> Form CO, Section 6.9.5.

<sup>657</sup> Notifying Party's response to the Article 6(1)(c) Decision, paragraphs 180 and ff.

FTA channels in Sweden and Finland, and thereby no carriage fees to decrease for such channels, (ii) [...] and (iii) [...]. Last, the Notifying Party submitted that since rivals would be able to reach customers through other distributions technologies, they would be able to maintain their advertising revenues and subscription fees, thereby eliminating any negative impact on consumers and effective competition.

## 2. Commission's assessment

- (687) The Commission's assessment of potential concerns regarding the foreclosure of competing wholesale suppliers of FTA and basic pay TV channels, in light of the results of the market investigation, is set out in the following recitals. For this purpose, in line with paragraph 59 of the Non-Horizontal Merger Guidelines, the Commission examines: (i) whether the merged entity would have the ability to foreclose competing wholesale supplier of TV channels; (ii) whether it would have the economic incentive to do so; and (iii) what overall impact such a foreclosure strategy would have on competition.
- (688) The Commission has conducted its assessment on the basis of all possible downstream market definitions. The question as to whether the merged entity would have the ability to undertake a partial or total customer foreclosure strategy has therefore been undertaken in all possible market segments where FTA and basic pay TV channels are licensed to TV distributors, namely in the potential markets for the retail supply of (i) AV services (ii) linear pay AV services, (iii) linear basic pay AV services (iv) all possible markets (i) to (iii) segmented into MDU and SDU.<sup>658</sup> The Commission's assessment of the impact of a total or partial foreclosure strategy also applies in respect of the above mentioned possible markets for which FTA and basic pay TV channels are an input. The Commission hereafter, in this section, refers to the 'retail supply of AV services' or 'retail AV services' as shorthand for all possible markets comprising the retail supply of (i) AV services (ii) linear pay AV services, (iii) linear basic pay AV services (iv) all possible markets (i) to (iii) segmented into MDU and SDU.
- a. *Ability to engage in customer foreclosure*
- (689) When considering whether the merged entity would have the ability to foreclose access to downstream markets, the Commission examines whether there are sufficient economic alternatives in the downstream market for upstream rivals to sell their output.
- (690) In the present case, while most of the respondents to the Phase I market investigation have indicated that the merged entity post-Transaction could have the technical ability to implement a customer foreclosure strategy by either stop sourcing TV channels<sup>659</sup> or degrade the terms and conditions at which it does so<sup>660</sup>, the

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<sup>658</sup> Before the Transaction, FTA and basic pay TV channels are not sold to retail suppliers of AV services as inputs for the provision of (i) premium pay services or (ii) non-linear pay AV services. In respect of the latter, Bonnier Broadcasting does provide rights to distribute its FTA and basic pay TV channels in a non-linear manner as ancillary to the linear distribution of its channels (e.g., NPVR rights) and that ancillary form of distribution has been included in the Commission's assessment together with the primary linear distribution of the FTA and basic pay TV channels. Therefore, the Commission has not assessed the impact of the Transaction on (i) market segments for the retail supply of premium pay AV services and for the retail supply of non-linear pay AV services where the Bonnier Broadcasting's FTA and basic pay TV channels are not acquired as an input since there is no merger specific change brought by the Transaction; (ii) the market segment for the retail supply of FTA AV services since Telia is not active in such market segment and there is no merger specific change brought by the Transaction.

<sup>659</sup> Responses to questionnaire Q5 to TV broadcasters in Sweden, questions F.7, F.7.1 and F.7.3.

Commission considers that the merged entity would lack the ability to engage in either total or partial customer foreclosure strategies of third parties' FTA and basic pay TV channels since it does not have a sufficient degree of market power in the market for the retail supply of AV services, irrespective of any possible segmentation, for the following reasons.

- (691) First, as described in section 8.3.1, the merged entity will hold a market share of [10-20]% by value in the Swedish market for the retail supply of AV services in 2018.<sup>661</sup> In the possible markets for the retail supply of AV services to SDUs and for the retail supply of AV services to MDUs, the merged entity would hold a similar market position, with market shares by volume in 2018 of [10-20]% and [10-20]% respectively. With such market shares, the merged entity would be the [...] retail supplier of AV services in Sweden, behind Tele2 (30%) and similar to Telenor and NENT ([10-20]% each). Therefore, there is a certain number of alternative distributors that competing TV broadcasters can choose in the Swedish market, irrespective of any possible segmentation.<sup>662</sup>
- (692) Second, when considering the narrow market segment for the retail supply of AV services through IPTV, Telia holds a market share above 30% ([60-70]% by value and [50-60]% by volume). Despite the importance of Telia as a purchaser of FTA and basic pay TV channels in this segment, the Commission considers that it would have a limited ability to foreclose rivals by ceasing to purchase from them. Indeed, as explained in section 7.4, the market for the retail supply of AV services encompasses all distribution technologies, and in the areas where Telia is active through its IPTV network, competing TV broadcasters continue to have access to a large customer base, through alternative distribution technologies. In that respect, NENT's FTA and basic pay TV channels (including TV3, TV6) and Discovery's basic pay TV channels are also widely accessible *via* OTT.<sup>663</sup> Therefore, competing wholesale suppliers of FTA and basic pay TV channels would be able to maintain a significant portion of their viewership base in case the merged entity were to cut them off its distribution service.<sup>664</sup> Moreover, the evidence in the file shows that OTT is a significant alternative when customers have no longer access to FTA and basic pay TV channels *via* traditional distribution technologies. For example, [details from internal documents].<sup>665</sup> In addition, TV6, which is NENT's second largest TV channel in Sweden,<sup>666</sup> is also accessible *via* DTT<sup>667</sup> (namely, to 98% of the population<sup>668</sup>).

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<sup>660</sup> Responses to questionnaire Q5 to TV broadcasters in Sweden, questions F.8, F.8.1 and F.8.4.

<sup>661</sup> See Section 8.3.1.3, the merged entity would not hold a market share above 30% under any possible market segmentation.

<sup>662</sup> See Section 8.3.1.3, several competing suppliers of retail AV services would remain active under any possible market segmentation.

<sup>663</sup> Parties' response to the Commission's RFI 74, questions 9 and 10 (ID03094). NENT distributes all its linear FTA and basic pay TV channels TV3, TV6, TV8 and TV10 through Viaplay, and Discovery distributes all its linear basic pay TV channels (including Kanal 5, Kanal 9, Kanal 11, Discovery Channel, TLC) through Dplay.

<sup>664</sup> Based on the above, the Commission further considers that competing wholesale suppliers of FTA and basic pay TV channels can continue to supply their input to customers in the market for the retail supply of AV services, and any possible segmentation, without incurring costs significantly higher than those they were incurring prior to the Transaction. Non-Horizontal Merger Guidelines, paragraph 66.

<sup>665</sup> RBB Economics' report "Partial input foreclosure of FTA/basic pay TV channels" (ID000317).

<sup>666</sup> MMS 2018 Report, page 9.

<sup>667</sup> Without any subscription, Swedish households have access, *via* DTT, to SVT's channels, TV4, NENT's channel TV6 and a number of regional channels. See PTS market analysis for the wholesale market for

(693) Third, with reference to possible contractual limitations that may reduce the merged entity's ability to perform such conduct, the Commission notes that Telia's agreements with the competing TV broadcaster [...] is expiring on respectively [...].<sup>669</sup> Therefore, an ability on the part of Telia to totally or partially foreclose [...] cannot be held to arise in the near future in light of [...].

*b. Incentive to engage in customer foreclosure*

*Total customer foreclosure*

(694) Given the lack of ability to foreclose, it is not necessary to conclude as to whether the merged entity will have the incentive to engage in total customer foreclosure strategies of third parties' FTA and basic pay TV channels.

(695) Nevertheless, the Commission has assessed the merged entity's incentives, and considers that the merged entity would lack the incentive to engage in total customer foreclosure strategies of third parties' FTA and basic pay TV channels for the following reasons.

(696) First, the results of the Phase I market investigation indicated that the merged entity may have an incentive to stop licensing just some third party TV channels rather than all third party TV channels.<sup>670</sup> In that respect, NENT indicated that the merged entity would likely limit the distribution of those channels that directly compete more closely with Bonnier Broadcasting's FTA and basic pay TV channels.<sup>671</sup>

(697) Second, the Commission notes that a total foreclosure strategy whereby the merged entity would not broadcast channels of competing TV broadcasters could have a detrimental impact on the retail AV offering of the merged entity. One document submitted by the Notifying Party provides [Telia Company's internal market analysis].<sup>672</sup>

**Figure 14: [...]**

[...]

*Source: Annex 9 to RFI 14.*

(698) Third, the Commission considers that (i) retail suppliers of AV services need a large and diverse portfolio of attractive TV channels of different genres for their retail packages (see section 7.3.1.3), and (ii) the role of TV channel aggregator would continue to be relevant on the OTT distribution platform over the next years (see section 7.4.1.3). Further, the evidence presented indicates that both Parties believe that the aggregation of FTA and basic pay TV channels is currently relevant, and would continue to be relevant also when distributed *via* OTT.<sup>673</sup> [Internal documents

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terrestrial FTA television, dated 10 June 2013: [www.pts.se/globalassets/startpage/dokument/legaldokument/beslut/2013/radio/bc-tv-ra/11-9834-beslut-broadcasting-tv-20130610.pdf](http://www.pts.se/globalassets/startpage/dokument/legaldokument/beslut/2013/radio/bc-tv-ra/11-9834-beslut-broadcasting-tv-20130610.pdf), pages 21 and 22.

<sup>668</sup> <https://www.kth.se/social/files/5ae4d5c756be5b02216bbf06/KTH%202018-04-11.pdf>.

<sup>669</sup> Parties' response to the Commission's RFI 74, Annex 1 (ID3127-69).

<sup>670</sup> Responses to questionnaire Q5 to TV broadcasters in Sweden, questions F.7 and F.7.4.

<sup>671</sup> NENT's response to questionnaire Q5 to TV broadcasters in Sweden, question F.7.1 (ID00752).

<sup>672</sup> Parties' response to RFI 14, Annex 9 (ID00665).

<sup>673</sup> See, for example, Telia's internal documents [Internal document name] (ID002420), [Internal document name] slide 26 (ID00924-031564), [Internal document name] slides 8 and 10 (ID001924-043048), [Internal document name] slide 3 (ID001925-039658), [Internal document name] slides 32 and 37 (ID001913-018005), [Internal document name] (ID001938-018841). See also Bonnier Broadcasting's response to the Commission's RFI 30 [Annex 1, document 18] (ID001334-000039-018), and Telia's internal document [Internal document name] slides 2, 3, 6 and 23 (ID001775-000155), Bonnier

related to Bonnier Broadcasting's analysis of the market evolution in relation to OTT distribution].<sup>674</sup>

- (699) Fourth, the Commission notes that there is already another vertically integrated player, NENT, active in Sweden both as (i) wholesale supplier of FTA and basic pay TV channels, and (ii) retail supplier of AV services, with a market share similar to the one of the merged entity (that is [10-20]% by value). Despite its vertical integration, NENT is offering Bonnier Broadcasting's FTA and Basic TV channels to its customers.<sup>675</sup> The Commission considers that, similarly to NENT, the merged entity would have limited incentives to engage in total customer foreclosure strategies.

*Partial customer foreclosure*

- (700) Given the lack of ability to foreclose, it is not necessary to conclude as to whether the merged entity will have the incentive to engage in partial customer foreclosure strategies of third parties' FTA and basic pay TV channels.
- (701) Nevertheless, the Commission has assessed the merged entity's incentives, and considers that the merged entity might have some incentives to engage in partial customer foreclosure of third parties' FTA and basic pay TV channels in Sweden. Indeed, the majority of broadcasters responding to the Phase I market investigation were concerned about possible incentives of the merged entity to degrade the terms and conditions of acquisition of rival TV channels. Respondents indicated that this strategy could be implemented by (i) applying lower carriage fees, (ii) giving unfavourable EPG slots, or (iii) applying "zero rating" (i.e., not deducting the consumption of data related to Bonnier Broadcasting's OTT services from the data volume included in the customer's subscription of internet access services) to Bonnier Broadcasting's channel TV4 when distributed over the internet, therefore giving it a competitive advantage vis-à-vis its competitors.<sup>676</sup> NENT noted that the merged entity might threaten not to distribute competing TV channels in order to be able to negotiate degraded terms.<sup>677</sup>
- (702) However, the Commission notes that other elements indicate that the concerns raised by third parties are unwarranted.
- (703) In the first place, in relation to a possible EPG degradation, the Commission notes that, while the merged entity could in theory have the incentive to favour Bonnier Broadcasting's channels and the advertising revenue associated to such channels, it seems unlikely that Telia would move Bonnier Broadcasting's channels to either NENT or Discovery's EPG since by doing so it would impact the user experience of its own TV channels.

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Bonnier Broadcasting's internal document [Internal document name] (ID001773-008510) (and the attached file 20180516 – [Internal document name]).

<sup>674</sup> Bonnier Broadcasting's response to the Commission's RFI 30 [Annex 1, document 18] (ID001334-000039-018), and Telia's internal documents [Internal document name] slides 2, 3, 6 and 23 (ID001775-000155), [Internal document name] (ID001419-000034), [Internal document name] (ID001773-008188) and [Internal document name] (ID001773-8142).

<sup>675</sup> See Bonnier Broadcasting's agreement with [...] provided in response to RFI 14, Annex 2, document 01.04.27, titled [Bonnier Broadcasting's internal document details] (ID01573-81)

<sup>676</sup> NENT's response to questionnaire Q5 to TV broadcasters in Sweden, questions F.8, F.8.1, F.8.2 and F.8.5 (ID00752).

<sup>677</sup> Responses to questionnaire Q5 to TV broadcasters in Sweden, question F.8.3.

- (704) In the second place, the Commission notes that there is already another vertically integrated player, NENT, active in Sweden both as (i) wholesale supplier of FTA and basic pay TV channels, and (ii) retail supplier of AV services, with a market share similar to the one of the merged entity (that is [10-20]% by value). [Content of Bonnier Broadcasting's agreement]. The Commission considers that, similarly to NENT, the merged entity would have, limited incentives to engage in partial customer foreclosure strategies.
- (705) In the third place, in relation to the incentive to give a preference to Bonnier Broadcasting's OTT offering on Telia's mobile network, it should be noted that zero rating practices would be restricted by the provisions in the Open Internet Regulation. Article 2 foresees that "*[p]roviders of internet access services shall not engage in traffic management measures [...], and in particular shall not block, slow down, alter, restrict, interfere with, degrade or discriminate between specific content, applications or services, or specific categories thereof*". The Commission notes that Telia in the past has violated the Open Internet Regulation by launching zero-rate service for mobile subscribers in Sweden in 2016. After the launch, the Swedish regulator PTS, has concluded that the practice of zero-rating to the extent that it continues after the data cap is reached is not in line with the Open Internet Regulation. Telia appealed PTS' decision to court. The court, however, upheld the decision and Telia consequently stopped the practice.<sup>678</sup> Tre implemented similar zero-rating practices in Sweden but amended them after the verdict in the Telia case.<sup>679</sup> Considering the illegality of such conduct and the close scrutiny of PTS, it is therefore unlikely that the merged entity would engage it.
- (706) In light of the above, the Commission concludes that while the merged entity could in theory have some incentives to engage in partial customer foreclosure, the question can be left open as, in any event, it is clear from the above that the merged entity has no ability to significantly foreclose access to the market for the retail supply of AV services.

c. *Impact on effective competition of total/partial customer foreclosure*

- (707) The Commission considers that it is unlikely that any customer foreclosure strategies of third parties' FTA and basic pay TV channels considered above would have a significant negative impact on consumers and effective competition in Sweden, for the following reasons.
- (708) First, as noted in section 8.5.2.6.-2-a, the merged entity would not hold a significant market position as a customer in the downstream market for the retail supply of AV services, irrespective of any possible segmentation of the market for the retail supply of AV services.<sup>680</sup> The merged entity will have a limited market share of [10-20]% in the national market for the retail supply of AV services. In the event that Telia sought to cease carrying third party FTA and basic pay TV channels on its platform, competing broadcasters would still be able to expand their activities with other retail suppliers of AV services.<sup>681</sup>

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<sup>678</sup> Telia's response to the Commission's RFI 28, question 14 (ID01303).

<sup>679</sup> PTS, "Rapportering till EU-kommissionen och Berec enligt förordning (EU) 2015/2120".

<sup>680</sup> See Section 8.3.1.3, the merged entity would not hold a market share above 30% under any possible market segmentation.

<sup>681</sup> See Section 8.3.1.3, several competing suppliers of retail AV services would remain active under any possible market segmentation.

- (709) Second, while the results of the Phase I market investigation indicated that such foreclosure strategy may have a negative impact on their ability to compete,<sup>682</sup> the Commission considers that rival TV broadcasters are also able to develop new strategies to reach viewers. In the first place, the Commission notes that both Discovery and NENT have launched their own OTT services in order to reach viewers directly. Moreover, as stated above, other suppliers of retail AV services would remain available as potential customers of rival TV broadcasters, irrespective of any possible segmentation of the market for the retail supply of AV services.<sup>683</sup> In particular in the market for the retail supply of AV services, the following companies would remain active as purchasers of FTA and basic pay TV channels, Tele2 the leading supplier with a market share by value of [30-40]%, as well as Telenor and NENT, both with market shares of [10-20]%.<sup>684</sup>
- (710) Third, even when considering the market segment of retail supply of AV services through IPTV, the Commission notes that competing distributors have similar reach compared to Telia's IPTV network. Tele2 provided an analysis showing that SDU customers have the possibility to access TV through coax, DTT, DTH and xDSL, as well as increasingly through fibre, while MDU customers receive TV either through coax or fibre networks.<sup>685</sup> Therefore, customers within Telia's footprint would have the ability to switch to a competing provider of retail AV services.
- (711) Finally, as also indicated above, the agreements in place between Telia and wholesale suppliers of FTA and basic pay TV channels afford protection in relation to carriage fees and potential partial foreclosure strategy. In particular, the agreement between Telia and [Terms and condition in Telia Company's distribution agreements].

*d. Conclusion*

- (712) In light of the foregoing, the Commission considers that, even if the merged entity had some incentives to engage in either total or partial customer foreclosure strategies of third parties' FTA and basic pay TV channels, it would lack the ability to do it. In any event, it is unlikely that any customer foreclosure strategies would have an impact on effective competition, irrespective of any possible market definition.
- (713) The Commission therefore concludes that the Transaction would not significantly impede effective competition as a result of total or partial customer foreclosure of FTA and basic pay TV channels in Sweden.

- 8.5.1.7. Total and partial customer foreclosure of competing wholesale suppliers of premium pay TV channels with regard to the retail supply of AV services in Sweden
- (714) For the purposes of its assessment, the Commission has considered, in particular, as the more likely potential targets of a customer foreclosure strategy, the channels that compete closely with Bonnier Broadcasting's premium pay TV channels, including the potential market segment of sports and non-sports premium pay TV channels. On

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<sup>682</sup> Responses to questionnaire Q5 to TV broadcasters in Sweden, question F.10.

<sup>683</sup> See Section 8.3.1.3, the merged entity would not hold a market share above 30% under any possible market segmentation.

<sup>684</sup> See Section 8.3.1.3, several competing suppliers of retail AV services would remain active under any possible market segmentation.

<sup>685</sup> Tele2, Compass Lexecon's presentation "An analytical framework for assessing possible anticompetitive effects of the Telia/Bonnier merger", 2 April 2019 (ID00966).

the basis of the market shares presented in section 8.3.1.2, the only target of potential foreclosure is NENT.

1. Notifying Party's view

(715) For the same reasons as for FTA and basic pay TV channels (section 8.5.1.6), both in its initial submission and in its Response to the Article 6(1)(c) Decision, the Notifying Party submits that (i) the merged entity would have neither the ability nor the incentive to fully or partially foreclose rival TV broadcasters of premium pay TV channels, and (ii) even if it could hypothetically be shown that the merged entity would have the ability and incentive to engage in (total or partial) customer foreclosure (*quod non*), such a strategy would not have any significant detrimental effect on effective competition.

2. Commission's assessment

(716) The Commission's assessment of potential concerns regarding the foreclosure of competing wholesale suppliers of premium pay TV channels, in light of the results of the market investigation, is set out in the following recitals. For this purpose, in line with paragraph 59 of the Non-Horizontal Merger Guidelines, the Commission examines: (i) whether the merged entity would have the ability to foreclose competing wholesale supplier of TV channels; (ii) whether it would have the economic incentive to do so; and (iii) what overall impact such a foreclosure strategy would have on competition.

(717) The Commission has conducted its assessment on the basis of all possible downstream market definitions. The question as to whether the merged entity would have the ability to undertake a partial or total customer foreclosure strategy has therefore been undertaken in all possible market segments where FTA and basic pay TV channels are licensed to TV distributors, namely in the potential markets for the retail supply of (i) AV services (ii) linear pay AV services, (iii) linear premium pay AV services (iv) all possible markets (i) to (iii) segmented into MDU and SDU.<sup>686</sup> The Commission's assessment of the impact of a total or partial foreclosure strategy also applies in respect of the above mentioned possible markets for which FTA and basic pay TV channels are an input. The Commission hereafter, in this section, refers to the 'retail supply of AV services' or 'retail AV services' as shorthand for all possible markets comprising the retail supply of (i) AV services (ii) linear pay AV services, (iii) linear premium pay AV services (iv) all possible markets (i) to (iii) segmented into MDU and SDU.

a. *Ability to engage in customer foreclosure*

(718) When considering whether the merged entity would have the ability to foreclose access to downstream markets, the Commission examines whether there are

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<sup>686</sup> Before the Transaction, premium pay TV channels are not sold to retail suppliers of AV services as inputs for the provision of (i) premium pay services or (ii) non-linear pay AV services. In respect of the latter, Bonnier Broadcasting does provide rights to distribute its FTA and basic pay TV channels in a non-linear manner as ancillary to the linear distribution of its channels (e.g., NPVR rights) and that ancillary form of distribution has been included in the Commission's assessment together with the primary linear distribution of the FTA and basic pay TV channels. Therefore, the Commission has not assessed the impact of the Transaction on (i) market segments for the retail supply of basic pay AV services and for the retail supply of non-linear pay AV services where the Bonnier Broadcasting's FTA and basic pay TV channels are not acquired as an input since there is no merger specific change brought by the Transaction; (ii) the market segment for the retail supply of FTA AV services since Telia is not active in such market segment and there is no merger specific change brought by the Transaction.

sufficient economic alternatives in the downstream market for upstream rivals to sell their output.

- (719) In the present case, while most of the respondents to the Phase I market investigation have indicated that the merged entity post-Transaction could either stop sourcing TV channels<sup>687</sup> or degrade the terms and conditions at which it does so,<sup>688</sup> the Commission considers that the merged entity would lack the ability to engage in either total or partial customer foreclosure strategies of third parties' premium pay TV channels since it does not have a sufficient degree of market power in the market for the retail supply of AV services, irrespective of any possible segmentation, for the following reasons.
- (720) First, as described in section 8.5.1.6-2-a, there is a certain number of alternative distributors that competing TV broadcasters can choose in the Swedish market, irrespective of any possible segmentation of the market for the retail supply of AV services.<sup>689</sup>
- (721) Second, when considering the narrow market segment for the retail supply of AV services through IPTV, Telia holds a market share above 30% ([60-70]% by value and [50-60]% by volume). Despite the importance of Telia as a purchaser of premium pay TV channels in this segment, the Commission considers that it would have a limited ability to foreclose NENT by ceasing to purchase from it. Indeed, as explained in section 7.4, the market for the retail supply of AV services encompasses all distribution technologies, and in the areas where Telia is active through its IPTV network, NENT continues to have access to a large customer base, through alternative distribution technologies. In that respect, NENT's premium pay TV channels are also widely accessible *via* OTT.<sup>690</sup> Therefore, NENT would be able to maintain a significant portion of their viewership base in case the merged entity were to cut its premium pay TV channels off its distribution service.<sup>691</sup> Moreover, the evidence in the file shows that OTT is a significant alternative to traditional distribution technologies to access premium pay TV channels. For example, as of January 2018 the number of customers accessing Bonnier Broadcasting's premium pay TV channels through third party services (e.g., Telia's retail AV services) decreased of approximately [...] units, while the number of customers accessing such channels through Bonnier Broadcasting's OTT application increased of approximately [...] units.<sup>692</sup>
- (722) Third, with reference to possible contractual limitations that may reduce the merged entity's ability to perform such conduct, the Commission notes that Telia has recently [Information about Telia Company's distribution agreements][Business secrets]. Therefore, an ability on the part of Telia to totally or partially foreclose [...] cannot be held to arise in the near future in light of the [...].

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<sup>687</sup> Responses to questionnaire Q5 to TV broadcasters in Sweden, questions F.7, F.7.1 and F.7.3.

<sup>688</sup> Responses to questionnaire Q5 to TV broadcasters in Sweden, questions F.8, F.8.1 and F.8.4.

<sup>689</sup> See Section 8.3.1.3, several competing suppliers of retail AV services would remain active under any possible market segmentation.

<sup>690</sup> See recital 692.

<sup>691</sup> Based on the above, the Commission further considers that the competing wholesale supplier of premium pay TV channels can continue to supply its input to customers in the market for the retail supply of AV services, and any possible segmentation, without incurring costs significantly higher than those they were incurring prior to the Transaction. Non-Horizontal Merger Guidelines, paragraph 66.

<sup>692</sup> Commission's calculations based on Telia's response to the Commission's RFI 75 [Annex 1] (ID003154).

- b. *Incentive to engage in customer foreclosure*

*Total customer foreclosure*

- (723) Given the lack of ability to foreclose, it is not necessary to conclude as to whether the merged entity will have the incentive to engage in total customer foreclosure strategies of third parties' premium pay TV channels.
- (724) Nevertheless, the Commission has assessed the merged entity's incentives. While the results of the Phase I market investigation indicated that the merged entity may have an incentive to stop licensing third party premium pay TV channels directly competing with Bonnier Broadcasting's premium pay TV channels,<sup>693</sup> the Commission considers that the merged entity would lack the incentive to engage in total customer foreclosure strategies of third parties' premium pay TV channels, including both sport and non-sport premium pay TV channels, for the following reasons.
- (725) First, the Commission notes that a total foreclosure strategy whereby the merged entity would not broadcast channels of competing TV broadcasters could have a detrimental impact on the retail AV offering of the merged entity. For example, in response to RFI 56, Telia has provided data showing that [Telia Company internal data]<sup>694</sup>.
- (726) Second, NENT's premium pay TV channels hold significant sport contents which drive customers' behaviour and switching.<sup>695</sup> In particular, NENT has rights for the Champions League and Premier League.<sup>696</sup> In addition, an analysis provided by the Parties show that customers with "high sports interest" spend on average twice as much for AV services compared to customers with no or medium interest in sports. Therefore, the merged entity would have no incentive not to provide such channels in order to attract customers with a higher willingness to pay.

**Figure 15: [...]**

[...]

*Source: Annex 11, RFI 14*

- (727) Third, the Commission notes that there is already another vertically integrated player, NENT, active in Sweden both as (i) wholesale supplier of premium pay TV channels, and (ii) retail supplier of AV services, with a market share similar to the one of the merged entity (that is [10-20]% by value). Despite its vertical integration, NENT is offering Bonnier Broadcasting's FTA and Basic TV channels to its customers.<sup>697</sup> The Commission considers that, similarly to NENT, the merged entity would have limited incentives to engage in total customer foreclosure strategies.

*Partial customer foreclosure*

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<sup>693</sup> Responses to questionnaire Q5 to TV broadcasters in Sweden, questions F.7, F.7.1 and F.7.4.

<sup>694</sup> Parties' response to the Commission's RFI 56, question 7 (ID002563).

<sup>695</sup> For instance, a market participant in Sweden stated, in its reply to the questionnaire Q4 to TV distributors in Sweden, that a large share of its customers would switch away if C More Sports channels were to be foreclosed.

<sup>696</sup> Form CO, Annex 15. Bonnier Broadcasting has also rights for the Swedish football league but those rights will move to Discovery as of 2020.

<sup>697</sup> See Bonnier Broadcasting's agreement with [...] provided in response to RFI 14, Annex 2, document 01.04.28, titled [Bonnier Broadcasting's internal document details] (ID01573-82).

- (728) Given the lack of ability to foreclose, it is not necessary to conclude as to whether the merged entity will have the incentive to engage in partial customer foreclosure strategies of third parties' premium pay TV channels.
- (729) Nevertheless, the Commission has assessed the merged entity's incentives, and considers that the merged entity might have some incentives to engage in partial customer foreclosure of third parties' premium pay TV channels in Sweden. Indeed, the results of the Phase I market investigation revealed some concerns about possible incentives of the merged entity to degrade the terms and conditions of acquisition of rival TV channels. In particular, this strategy could be implemented by (i) applying lower carriage fees, and (ii) giving unfavourable EPG slots.<sup>698</sup> NENT noted that the merged entity might threaten not to distribute competing TV channels in order to be able to negotiate degraded terms.<sup>699</sup>
- (730) However, the Commission notes that other elements indicate that the concerns raised by third parties are unwarranted.
- (731) In the first place, in relation to a possible EPG degradation, the Commission notes that, while the merged entity could in theory have the incentive to favour Bonnier Broadcasting's channels and the advertising revenue associate to such channels, it seems unlikely that Telia would move Bonnier Broadcasting's channels to NENT's EPG since by doing so it would impact the user experience of its own channels.
- (732) In the second place, the Commission notes that there is already another vertically integrated player, NENT, active in Sweden both as (i) wholesale supplier of premium pay TV channels, and (ii) retail supplier of AV services, with a market share similar to the one of the merged entity (that is [10-20]% by value). [Content of Bonnier Broadcasting's agreement]. The Commission considers that, similarly to NENT, the merged entity would have, limited incentives to engage in partial customer foreclosure strategies.
- (733) In the third place, in relation to any possible preference given to Bonnier Broadcasting's OTT offering on Telia's mobile network, the Commission considers such concerns unwarranted for the same reasons as discussed in Section 8.5.1.6.2(b).
- (734) In light of the above, the Commission concludes that while the merged entity could in theory have some incentives to engage in partial customer foreclosure, the question can be left open as, in any event, it is clear from the above that the merged entity has no ability to significantly foreclose access to the market for the retail supply of AV services.

c. *Impact on effective competition of total/partial customer foreclosure*

- (735) The Commission considers that it is unlikely that any customer foreclosure strategies of third parties premium pay TV channels, including both sports and non-sports TV channels, considered above would have a significant negative impact on consumers and effective competition in Sweden, for the following reasons.
- (736) First, as noted in section 8.5.1.7.2(a), the merged entity would not hold a significant market position as a customer in the downstream market for the retail supply of AV services, irrespective of any possible segmentation of the market for the retail supply

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<sup>698</sup> Responses to questionnaire Q5 to TV broadcasters in Sweden, questions F.8, F.8.1, F.8.2 and F.8.5.  
<sup>699</sup> NENT's response to questionnaire Q5 to TV broadcasters in Sweden, question F.8.3 (ID00752).

of AV services.<sup>700</sup> The merged entity will have a limited market share of [10-20]% in the national market for the retail supply of AV services. In the event that Telia sought to cease carrying third party premium pay TV channels on its platform, competing broadcasters would still be able to expand their activities with other TV distributors.<sup>701</sup>

- (737) Second, while the results of the Phase I market investigation indicated that such foreclosure strategy may have a negative impact on their ability to compete,<sup>702</sup> the Commission considers that rival TV broadcasters are also able to develop new strategies to reach viewers. In the first place, rival TV broadcasters can offer their premium pay TV channels directly to the consumers via OTT. In that respect, the Commission notes that NENT already offers its own direct-to-consumer OTT service, Viasat OTT. In the second place, already pre-Transaction, an increasing number of customers access premium pay TV channels, through Bonnier Broadcasting and NENT's OTT application. For example, as of January 2018 the number of customers accessing Bonnier Broadcasting's premium pay TV channels through third party services (e.g., Telia's retail AV services) decreased of approximately [...] units, while the number of customers accessing such channels through Bonnier Broadcasting's OTT application increased of approximately [...] units.<sup>703</sup> CONFIDENTIAL.<sup>704</sup> In the third place, as stated above, other suppliers of retail AV services would remain available as potential customers of rival TV broadcasters, irrespective of any possible segmentation of the market for the retail supply of AV services.<sup>705</sup> In particular in the market for the retail supply of AV services, the following companies would remain active as purchasers of premium pay TV channels, Tele2 with a market share by value of [30-40]%, as well as Telenor and NENT, both with market shares of [10-20]%.
- (738) Third, in relation to the retail AV services provided through IPTV networks, competing providers of retail AV services have similar reach compared to Telia's IPTV network. Tele2 provided an analysis showing that SDU customers have the possibility to access TV through coax, DTT, DTH and xDSL, as well as increasingly through Fibre while MDU customers receive TV either through coax or fibre networks.<sup>706</sup> Therefore, customers within Telia's footprint would have the ability to switch to a competing provider of retail AV services.
- (739) Finally, as also indicated above, the [Content of Telia Company's agreements].
- d. Conclusion*
- (740) In light of the foregoing, the Commission considers that, even if the merged entity had some incentives to engage in either total or partial customer foreclosure strategies of third parties' premium pay TV channels, it would lack the ability to do

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<sup>700</sup> See Section 8.3.1.3, the merged entity would not hold a market share above 30% under any possible market segmentation.

<sup>701</sup> See Section 8.3.1.3, several competing suppliers of retail AV services would remain active under any possible market segmentation.

<sup>702</sup> Responses to questionnaire Q5 to TV broadcasters in Sweden, question F.10.

<sup>703</sup> Commission's calculations based on Telia's response to the Commission's RFI 75 [Annex 1] (ID003154).

<sup>704</sup> Commission's calculations based on CONFIDENTIAL.

<sup>705</sup> See Section 8.3.1.3, the merged entity would not hold a market share above 30% under any possible market segmentation.

<sup>706</sup> Tele2, Compass Lexecon's presentation "An analytical framework for assessing possible anticompetitive effects of the Telia/Bonnier merger", 2 April 2019 (ID000966).

it. In any event, it is unlikely that any customer foreclosure strategies would have an impact on effective competition, irrespective of any possible market definition.

- (741) The Commission therefore concludes that the Transaction would not significantly impede effective competition as a result of total or partial customer foreclosure of premium pay TV channels in Sweden.
- 8.5.1.8. Conglomerate non-coordinated effects relating to the retail supply of fixed internet access, mobile telecommunications, multiple play and retail OTT AV services in Sweden
- (742) The Non-Horizontal Guidelines<sup>707</sup> indicate that competition concerns can arise in circumstances where a merger involves companies that are active in closely related markets. While in the majority of circumstances conglomerate mergers will not lead to any competition problems, in certain circumstances they can lead to anticompetitive effects. One such example is when the combination of products in related markets would give the merged entity the ability and incentive to leverage a strong market position in one of the markets to the other market by means of tying or bundling. Where tying or bundling is likely to lead to a reduction in actual or potential rivals' ability or incentive to compete it may reduce competitive pressure on the merged entity, allowing it to increase prices.
- (743) In Sweden, Telia is active on the market for the retail supply of fixed internet access, mobile telecommunications and multiple play services. Telia also provides retail AV services which may be included in its multiple play offering.<sup>708</sup>
- (744) Bonnier Broadcasting is active as supplier of retail AV services through its OTT applications. In Sweden, Bonnier Broadcasting provides OTT services through the following applications:
- TV4 Play, is an AVOD service giving non-linear access to most of the content offered on Bonnier Broadcasting's FTA and basic pay TV channels, and to some additional content;
  - C More app, is a SVOD service giving access to both linear and non-linear content of Bonnier Broadcasting FTA, basic and premium pay TV channels, and to some additional content.
- (745) Multiple play services can comprise a mixture of two or more of AV services (in particular OTT services such as AVOD and SVOD), fixed telephony, mobile telecommunications and fixed internet services.
- (746) The Commission has therefore assessed the risk of the following types of foreclosure strategies in Sweden: (i) foreclosure of rival providers of fixed internet access, mobile telecommunications and multiple play services (together defined as "providers of telecommunications services"), under any possible market segmentation, by tying or bundling Bonnier Broadcasting's OTT AV service with Telia's telecommunications services<sup>709</sup> (Section 8.5.1.8.-1), and (ii) foreclosure of

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<sup>707</sup> Non-Horizontal Merger Guidelines, Section V.A.

<sup>708</sup> For a description of Telia's retail AV offering in Sweden, please refer to Section 8.5.1.1.1.

<sup>709</sup> Before the Transaction, customers of competing providers of telecommunications services can access Bonnier Broadcasting's OTT AV service. Some respondents to the market investigation were concerned that the merged entity would (i) bundle or tie OTT AV services exclusively with Telia's fixed internet, mobile and multiple play services or (ii) bundle such OTT AV services in a way that it would be difficult to match the merged entity's pricing conditions.

rival retail suppliers of OTT AV services by tying or bundling Bonnier Broadcasting's OTT AV service with Telia's telecommunications services or engaging in exclusionary practices<sup>710</sup> (Section 8.5.1.8.-2)..

- (747) Therefore, in the present case, the Commission analyses whether the merged entity would have the ability and incentive to foreclose rival suppliers of :
- (1) telecommunications services;
  - (2) OTT AV services.
- (748) The Commission then assesses whether each of these foreclosure strategies would likely result in a significant detriment to effective competition in the markets for the retail supply of fixed internet access services, mobile services, retail AV services and mixed multiple play packages.
1. Foreclosure of competing providers of telecommunications services
    - a. *Notifying Party's view*
- (749) The Parties submit that the Transaction does not give rise to any negative competitive effect on the market for the retail supply of fixed internet access and mobile telecommunications services since the merged entity would have the incentive to make its OTT (AVOD and SVOD) services available as widely as possible to end users in Sweden.<sup>711</sup>
- (750) In the Response to the 6(1)(c) Decision, the Notifying Party submits that the merged entity would not have the ability to foreclose competing providers of telecommunication services since [...]. Furthermore, any such strategy would not have any impact on competition since there is a plethora of options for telecommunications providers to differentiate their multiple play packages.
- b. *Commission's assessment*
- (751) The Commission's assessment of conglomerate effects, in light of the results of the market investigation, is set out in the following recitals. For this purpose, consistent with paragraph 94 of the Non-Horizontal Merger Guidelines, in relation to each of these practices, the Commission examines, (i) whether the merged entity would have, post-merger, the ability to foreclose its rivals, (ii) whether it would have the incentive to do so, and (iii) whether a foreclosure strategy would have a overall negative impact on effective competition.
- The importance of multiple play packages in Sweden*
- (752) The Commission considers that retail AV services, in particular OTT services such as AVOD and SVOD, are important to the market for multiple play packages in Sweden. Multiple play packages can comprise a mixture of two or more of AV services, fixed telephony, mobile telecommunications and fixed internet services, for the following reasons.

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<sup>710</sup> Before the Transaction, customers of competing providers of OTT AV services can access Telia's telecommunications services and provide their services to customers of Telia's telecommunications services. Post-Transaction, the merged entity may (i) deny that such OTT AV services are distributed to customers of the merged entity's telecommunications services or (ii) degrade the quality of competing providers of OTT AV services when distributed to customers of the merged entity's telecommunications services. The merged entity may have such incentive in order to favour its own OTT AV services which would be tied or bundled with the telecommunications services.

<sup>711</sup> Form CO, paragraphs 867 to 875 and 890 to 896.

- (753) First, most of the providers of telecommunications services that responded to the market investigation indicate that they are offering multiple play packages including AV service with one or more telecommunications services such as fixed internet and mobile telecommunications services<sup>712</sup> and that also Telia offers similar bundles<sup>713</sup> under the brand name Telia Life<sup>714</sup>.
- (754) Second, the Commission considers that bundles including retail AV services, such as OTT services (e.g., SVOD and AVOD services), and fixed internet access services are relevant in Sweden to the overall customers of fixed internet access services since approximately [...]% of the fixed internet access broadband subscriptions include retail AV services.<sup>715</sup>
- (755) Third, multiple play packages including retail AV services are relevant for Telia's fixed internet customers, since approximately [...].<sup>716</sup>
- (756) Finally, the Commission notes that AVOD services are also relevant for mobile customers. For example, TV4 Play app has [...] registered users<sup>717</sup> in Sweden, which corresponds to almost [...]% of all mobile users in Sweden. The number of TV4 Play registered users is [...].

*Ability to foreclose*

- (757) In the following recitals, the Commission has assessed whether the merged entity would have the ability to engage in (a) tying retail OTT AV services, in particular its OTT AVOD and SVOD services, with either retail mobile telecommunications or retail fixed internet access services<sup>718</sup> or any multiple play package; (b) pure bundling strategies, whereby the merged entity would not make AVOD/SVOD services and telecommunications services available separately, (c) mixed bundling strategies, whereby the merged entity's AVOD/SVOD services, or content included in such services, would be sold jointly with either (i) Telia's mobile or (ii) Telia's fixed internet access service or (iii) both services, but those products would also be made available separately to end customers.
- (758) The Commission considers that the merged entity would likely have the ability to foreclose competing providers of telecommunications services in Sweden from its OTT services. Bonnier Broadcasting has a significant degree of market power in relation to AVOD services, containing content of Bonnier Broadcasting's FTA and basic pay TV channels, and SVOD services containing sport rights for the following reasons.
- (759) First, as described in Section 8.5.1.2.2.(a) and Section 8.5.1.3.2.(a), Bonnier Broadcasting's content on which AVOD services and SVOD services are based,

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<sup>712</sup> Responses to questionnaire Q4 to TV distributors in Sweden, question H.1.

<sup>713</sup> Responses to questionnaire Q4 to TV distributors in Sweden, question H.2.

<sup>714</sup> See <https://www.telia.se/privat/erbjudanden/telia-life>.

<sup>715</sup> Commission's calculation based on the Form CO [Annex 7] and on the Parties' response to the Commission's RFI 29 [Annex 1] (ID001360).

<sup>716</sup> Commission's calculation based on RBB Economics' report "A vertical arithmetic model", Table 13 (ID000123) and Annex 7, Form CO.

<sup>717</sup> Form CO, Annex 6.42, slide 8.

<sup>718</sup> OTT services, in particular AVOD and SVOD services, are usually sold in a bundle with fixed telephony services when at least fixed internet access services are included in the subscription acquired by end customers. Therefore, the Commission would not consider scenarios whereby retail OTT AV services are tied or bundled exclusively with fixed telephony services. When referring to tying or bundling including fixed internet access services, the Commission considers that fixed telephony services are included proportionally based on the evidence provided in Annex I.

namely TV4 and C More Sport's linear and non-linear content, has been defined as an important input for the provision of retail AV services. In particular, Section 8.5.1.3.2.(a) has presented the relevance of C More's sports content which drives customers' behaviour and switching. In particular, the TV4 Play app has more than [...] registered users in Sweden<sup>719</sup> and the C More app is the only OTT player providing access to significant sport content, such as SHL ice hockey, in Sweden.

- (760) Second, based on an internal document submitted by Telia, [Telia Company's internal document].<sup>720</sup>
- (761) Third, the merged entity would also likely have significant market power in the retail supply of OTT SVOD services including sports content with a market share of approximately CONFIDENTIAL.<sup>721</sup>
- (762) Fourth, the Commission notes that, before the Transaction, there is a large common pool of customers for Bonnier Broadcasting's AVOD and SVOD services and customers of fixed internet access and mobile telecommunications services. Indeed, all customers of AVOD and SVOD services in order to access the services are also required to purchase either fixed internet access or mobile telecommunications services.
- (763) Fifth, the Commission notes that in Sweden there is an increasing trend whereby customers buy retail AV services with fixed internet access or mobile telecommunications services from a single source. As explained above in recital 755, approximately [...]% of Telia's fixed internet access broadband customers have also a TV subscriptions with Telia and almost [...]% of all customers of mobile telecommunications services in Sweden are registered users of Bonnier Broadcasting's AVOD services.

*Incentive to foreclose*

Tying and pure bundling

- (764) The Commission considers that the merged entity would lack the incentive to tie either retail mobile telecommunications or retail fixed internet access services or any multiple play package (the tying good) with retail AV services, in particular its OTT AVOD and SVOD services (the tied good), to engage in pure bundling strategies (i.e., not making those AVOD/SVOD services separately available) for the following reasons.
- (765) First, before the Transaction, Telia is already active in all relevant markets and it is not offering those products either jointly in fixed proportions or is it conditioning the sale of one service (e.g., fixed internet) to the purchase of the other one (e.g., SVOD).
- (766) Second, the Commission considers that, should the merged entity post-Transaction decide to implement either of the two strategies (i.e., tying or pure bundling) this would likely significantly negatively impact its revenues and profitability. For example, Telia would [...].<sup>722</sup>

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<sup>719</sup> Form CO, Annex 6.42, slide 8.

<sup>720</sup> Parties' response to the Commission's RFI 3 [Annex 2] (ID000127).

<sup>721</sup> Commission's calculations based on Bonnier Broadcasting's response to the Commission's RFI 75 [Annex 1, question 1] (ID003154) and CONFIDENTIAL.

<sup>722</sup> Commission's calculation based on RBB Economics' report "A vertical arithmetic model", Table 3 (ID000123) and Form CO, Annex 7.

(767) However, the Commission cannot exclude that the merged entity would have the incentive to tie AV services, in particular its OTT AVOD and SVOD services (the tying good) with either retail mobile telecommunications or retail fixed internet access services or any multiple play package (the tied good). First, the Commission notes that, as presented in Annex I, that customers of retail AV services, and therefore also OTT AV services, on average acquire an appreciably larger set of additional services from Telia, such as fixed internet access and mobile telecommunications services.<sup>723</sup> Therefore, the merged entity may have the incentive to push customers of competing telecommunications services subscribing to Bonnier Broadcasting's OTT services to switch to Telia. [Information on Telia Company's revenue synergies]<sup>724</sup>.

#### Mixed bundling

- (768) The Commission considers that the merged entity would likely have the incentive to engage in mixed bundling strategies, whereby Bonnier Broadcasting's AVOD/SVOD services, or content included in such services, would be sold jointly with either (i) Telia's mobile or (ii) Telia's fixed internet access service or (iii) both services, but those products would also be made available separately to end customers.
- (769) First, absent the Transaction, [Telia Company's sales strategy]<sup>725</sup>.
- (770) Second, compared to a pure bundling or tying strategy, the merged entity would likely not incur significant additional costs since the standalone products would remain available to users in the market who have a preference for single sourcing or with no interest in one of the product parts of the bundle. Therefore, the merged entity would not risk to incur into significantly reductions in revenue in the single components market. For example, the approximately [...]% of Telia's fixed internet customer base that has no AV service subscription with Telia would not switch to competing providers of fixed internet access services and keep their subscription with Telia.
- (771) Finally, the Parties' internal documents indicate that [Telia Company's internal documents]. One document states that [Telia Company's internal documents], in particular there would be [Telia Company's internal documents].<sup>726</sup> A separate document indicates that [Telia Company's internal documents].<sup>727</sup>

#### *Overall likely impact on effective competition*

- (772) The Commission considers that the Transaction would likely have a significant detrimental effect on effective competition in the markets for the retail supply of mobile telecommunications services, fixed internet access services and multiple play packages, for the following reasons.
- (773) The Commission considers that, similarly to what Telia is doing in Sweden absent the Transaction, the merged entity would likely limit access by rival providers of telecommunications services to the merged entity's OTT applications, including AVOD and SVOD services. The merged entity could either make those applications

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<sup>723</sup> Economic Annex, Section 2.2.1.

<sup>724</sup> Commission's calculations based on the Parties' response to the Commission's RFI 3 [Annex 3] (ID000126).

<sup>725</sup> See "Liiga + Laajakaista + Telia TV alk. 39,90 €kk/" available at: <https://www.telia.fi/liiga/tuotteet/tilaa-liiga-laajakaistalla>.

<sup>726</sup> Form CO, Annex 6.42, slide 38.

<sup>727</sup> Form CO, Annex 6.11.

exclusive to its fixed internet access and mobile customers, make them available with a significant price discount to its fixed internet access and mobile customers, or provide exclusive content to such customers.<sup>728</sup>

- (774) First, since as shown above from recitals 757 to 763, Bonnier Broadcasting has significant degree of market power in AVOD and SVOD services, its refusal to make these services available to rival suppliers of multiple play packages would have significant detrimental effect on their ability to compete. In particular, as described above, the merged entity would have significant market power in the retail supply of OTT AVOD services due to the popularity of the TV4 Play app, which has more than [...] registered users in Sweden. The merged entity would also likely have significant market power in the retail supply of OTT SVOD services including sports content with a market share of approximately CONFIDENTIAL.<sup>729</sup>
- (775) Second, competing providers of mobile and fixed internet telecommunications services would not be able to deploy counter strategies in a timely fashion in order to bypass the merged entity and neutralise the effects of any attempted foreclosure. The market investigation shows that rival are unlikely to be able to replicate the merged entity's offering.<sup>730</sup> Tele2 highlights that it "*would be able to replicate as attractive multiple play packages provided that the merged entity will offer access to Bonnier content on fair, equal and non-discriminatory terms. However, since the combined entity will have the ability and incentive to deny such access and favor its own distribution channels, this cannot be expected to be the case*". NENT expects "*the merged entity to keep part of the acquired content exclusively on its own platforms, and also use differentiated pricing for the remainder of content (i.e. including for own broadband/mobile subscribers while charging high fees from others), no one will be able to replicate their offers*".
- (776) Third, as described above, a significant proportion of telecommunications customers, in particular fixed internet access customers, would be impacted by such a foreclosure strategy. In particular, within Telia's fixed internet customer base, [Internal customer information].

c. *Conclusion*

- (777) In light of the foregoing, the Commission concludes that the Transaction is likely to significantly impede effective competition in Sweden, as a result of the conglomerate relationships between Telia's activities as provider of telecommunications services and Bonnier Broadcasting's activities as retail supplier of OTT AV services, by tying or bundling Bonnier Broadcasting's OTT AV services with Telia's telecommunications services.

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<sup>728</sup> The Commission notes that AVOD applications are made available in the market for free and funded through advertising revenue. Therefore, possible foreclosure strategy related to the merged entity's AVOD application consist of either make such applications not available at all or provide more exclusive content to the merged entity's customers.

<sup>729</sup> Commission's calculations based on Bonnier Broadcasting's response to the Commission's RFI 75 [Annex 1, question 1] (ID003154) and CONFIDENTIAL.

<sup>730</sup> Responses to questionnaire Q4 to TV distributors, questions H.4 and H.5.

2. Foreclosure of competing providers of OTT AV service providers
  - a. *Notifying Party's view*

(778) The Notifying Party submits that the Transaction does not give rise to any negative competitive effect on the market for the supply of retail AV services, in particular OTT services such as AVOD and SVOD.<sup>731</sup>

(779) First, the merged entity would not have the ability to degrade the quality of rival streaming services on its mobile and fixed networks since the net neutrality rules of the Open Internet Regulation (Regulation (EU) 2015/2120)<sup>732</sup> prohibit internet service providers from blocking, slowing down or otherwise discriminating between specific content, applications or services.

(780) Second, the merged entity will not have an economic incentive to prevent competing streaming services from reaching end users by blocking or deprioritising access to such services as a result of the Transaction. Such traffic management practices would likely result in losses due to current customers switching to competing providers of mobile internet services, which would be commercially irrational.

- (781) In the Response to the 6(1)(c) Decision, the Notifying Party further considers that such strategy would have no impact on prices and choices since competing providers of OTT services could partner with competing providers of fixed internet and mobile telecommunications services.

b. *Commission's assessment*

- (782) In the following recitals, the Commission will assess whether the merged entity would by means of a tying or mixed bundling strategies, as presented in Section 8.5.1.7.1 above, have the ability and the incentive to significantly degrade the service offerings of competing providers of OTT AV services on Telia's mobile and fixed networks in order to favour its services.

*Ability to foreclose*

- (783) The Commission considers that the merged entity would lack the ability to foreclose competing providers of OTT AV services by tying or bundling Bonnier Broadcasting's OTT AV service with Telia's telecommunications services or by significantly degrading their service offerings on Telia's mobile and fixed networks.

- (784) First, the Commission considers that alternative providers of retail mobile telecommunications services, retail fixed internet access services and retail multiple play services would remain available to partner with competing providers of OTT services in Sweden. As described in Section 8.3.1.4, Telia is one of the [...] suppliers of retail mobile telecommunications and fixed internet access services in Sweden. It is the [...] in Sweden with a market share of [30-40]% by value both in the retail market for fixed internet access services and retail market for mobile telecommunication services in 2018. However, the Commission notes that other single-component rivals would remain available in the market. Tele2 and Telenor would actively compete in the market for the retail supply of fixed internet access

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<sup>731</sup> Form CO, paragraphs 867 to 875 and 890 to 896.

<sup>732</sup> Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services and Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union.

services with market shares of respectively [20-30]<sup>733</sup> and [10-20]%. Other competitors represent [20-30]% of the market. Tele2, Telenor and Tre would actively compete in the market for the retail supply of mobile telecommunications services with market shares of respectively [20-30]%, [20-30]% and [10-20]%. Furthermore, Telia holds a market share of [30-40]% in the potential market for the retail supply of multiple play services including a retail AV component in Sweden.<sup>734</sup> However, the Commission notes that other rivals would remain active in such market.

- (785) Second, the Commission considers that any ability to implement zero rating practices, i.e., not deducting the consumption of data related to Bonnier Broadcasting's OTT services from the data volume included in the customer's subscription of internet access services, would be restricted by the provisions in the Open Internet Regulation. Article 2 foresees that "*[p]roviders of internet access services shall not engage in traffic management measures [...], and in particular shall not block, slow down, alter, restrict, interfere with, degrade or discriminate between specific content, applications or services, or specific categories thereof*". The Commission notes that Telia in the past has violated the Open Internet Regulation by launching zero-rate service for mobile subscribers in Sweden in 2016. After the launch, the Swedish regulator, namely the PTS, has concluded that the practice of zero-rating to the extent that it continues after the data cap is reached is not in line with the Open Internet Regulation. Telia appealed PTS' decision to court. The court, however, upheld the decision and Telia consequently stopped the practice.<sup>735</sup> Tre implemented similar zero-rating practices in Sweden but amended them after the verdict in the Telia case.<sup>736</sup>

#### *Incentive to foreclose*

- (786) With reference to the merged entity's incentive to engage in tying and bundling strategies in Sweden, the Commission refers to Section 8.5.1.7.1.(b) above. In this section, the Commission assesses whether the merged entity would have the incentive to favour its own OTT services tied or bundled with its own telecommunications services.
- (787) Given the lack of ability to foreclose, it is not necessary to conclude as to whether the merged entity will have the incentive to engage in foreclosure strategies of competing providers of OTT services
- (788) Nevertheless, the Commission has assessed the merged entity's incentives, and considers that the merged entity would lack the incentive to foreclose competing providers of OTT services by significantly degrading their service offerings on Telia's mobile and fixed networks and by violating the Open Internet Regulation.
- (789) Some respondents to the market investigation indicated that Telia already implemented such practices and it would have similar incentive in the future.<sup>737</sup> The Commission considers that, first, Telia implemented some practices in the past when it was not clear to the company whether such practices could risk breaching the Open Internet Regulation; second, that the penalties from violating such regulation would be higher than any revenue from the additional traffic to the merged entity's OTT service and the revenue from advertising associated with those services. At the same

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<sup>733</sup> Form CO, Annex 7. Adding shares for ComHem and Tele2.

<sup>734</sup> Parties' response to the Commission's RFI 29 [Annex 1] (ID001360).

<sup>735</sup> Telia's response to the Commission's RFI 28, question 14 (ID01303).

<sup>736</sup> PTS, "Rapportering till EU-kommissionen och Berec enligt förordning (EU) 2015/2120".

<sup>737</sup> See responses to questionnaire Q5 to TV broadcasters in Sweden, questions F.8 and F.8.2, I.1.1.

time, competitors would be at a disadvantage since customers would need to pay for the additional data traffic on Telia's mobile network.

- (790) Finally, the Commission notes that in Sweden, there is already another vertically integrated player active both as retail supplier of fixed internet access service and retail supplier of AV services via OTT with market shares similar to the merged entity of respectively [10-20]% by value in the retail market for the retail supply of linear pay AV services (i.e., excluding non-linear OTT services) and [10-20]% by value in the retail market for the retail supply of AV services via OTT. [...].<sup>738</sup> The Commission considers that the merged entity would have similarly to NENT limited incentives to engage in foreclosing strategies to the detriment of competing providers of retail OTT AV services.

#### *Impact on effective competition of foreclosure*

- (791) Regardless of whether the merged entity has either the ability or the incentive to foreclose competing provider of retail OTT AV services, the Commission discusses whether any of the practices presented above would likely have a significant detrimental impact on effective competition. The Commission considers that it is unlikely that any foreclosure of competing OTT AV service providers will have a significant detrimental effect on effective competition for the retail supply of OTT services, for the following reasons.
- (792) First, as described above in recital 784, several single-component rivals would remain available in the relevant markets. Bonnier Broadcasting's competing providers of retail AV OTT services could partner with such providers in order to expand their sales, if needed.
- (793) Second, cooperating with providers of fixed internet access services and mobile telecommunications services is not necessary for providers of OTT services to compete in the retail AV market and any possible market segments. For example, [Bonnier Broadcasting's internal strategy regarding SVOD customers].<sup>739</sup>
- (794) Third, the Open Internet Regulation would protect the merged entity's competitors from any discriminatory treatment on Telia's mobile and fixed internet access networks. Article 2 foresees that “[p]roviders of internet access services shall not engage in traffic management measures [...], and in particular shall not block, slow down, alter, restrict, interfere with, degrade or **discriminate between specific content, applications or services [emphasis added]**, or specific categories thereof”.
- (795) Finally, with reference to “zero rating” practices (i.e., not deducting the consumption of data related to Bonnier Broadcasting's OTT services from the data volume included in the customer's subscription of internet access services), the Commission notes that anti-competitive effects could be mitigated on the fixed internet access market where services are mainly offered to end customers with unlimited data traffic and on the market for the retail supply of mobile telecommunications services since there is a trend of offering unlimited data packages in Sweden.<sup>740</sup>

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<sup>738</sup> Bonnier Broadcasting's response to the Commission's RFI 76, question 1 (ID003198).

<sup>739</sup> Telia's response to the Commission's RFI 75, question 1 (ID03153).

<sup>740</sup> Hutchison offers unlimited mobile data packages, see : [https://www.tre.se/privat/webshop/abonnemang/?p=1\\_13,2\\_31321](https://www.tre.se/privat/webshop/abonnemang/?p=1_13,2_31321). Tele2 offers unlimited mobile data packages as well, see: <https://www.comhem.se/mobiltelefoni/abonnemang>. Telenor offers unlimited mobile data packages, see: <https://www.telenor.se/handla/mobilabonnemang/>.

c. *Conclusion*

(796) In light of the foregoing, the Commission considers that the merged entity would lack the ability and the incentive to foreclose rival retail suppliers of OTT AV services in Sweden. In any event, it is unlikely that any foreclosure strategy would have an impact on effective competition, irrespective of any possible market definition.

(797) The Commission therefore concludes that the Transaction would not significantly impede effective competition in Sweden, as a result of the conglomerate relationships between Telia's activities as provider of telecommunications services and Bonnier Broadcasting's activities as retail supplier of OTT AV services.

8.5.1.9. Total and partial input foreclosure relating to the sale of advertising space in video format and the retail provision of AV services, mobile telecommunication services and fixed internet access services in Sweden

(798) In Sweden, Bonnier Broadcasting is the leading supplier of advertising space for advertisements in video format both on a market for the sale of advertising space on TV channels only and on a wider market including the sale of advertising space on TV channels and in other AV services, most notably AVOD services. [...].<sup>741</sup> Telia on the other hand is not active in the market for the sale of advertising space in video format in Sweden.<sup>742</sup>

(799) However, there is a vertical link between Bonnier Broadcasting's activities as a seller of advertising space in video format, and Telia's activities in the markets for the retail provision of AV services, mobile telecommunication services and fixed internet access services, since advertising space in video format can be viewed as an input for TV/telecommunications distributors, which purchase advertising space in video format in order to promote and market their products and services.

(800) The Commission has assessed the risk of total and partial input foreclosure of rival providers of retail AV services, retail mobile telecommunication services and retail fixed internet access services through the denial or degradation of access to Bonnier Broadcasting's advertising space in video format.

1. Notifying Party's view

(801) The Notifying Party submits that the merged entity would have no ability to foreclose or partially foreclose rival TV distributors and telecommunications providers by denying them access to advertising space in video format supplied by Bonnier Broadcasting, given that: (i) Bonnier Broadcasting's advertising inputs are not essential for rival TV distributors and telecommunications providers; (ii) there are many alternative suppliers of advertising space in video format available to rival TV distributors and telecommunications providers; (iii) there are alternative mediums for advertising spaces for rival TV distributors and telecommunications

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<sup>741</sup> Form CO, Annex 7, Section 8.5. Given the leading position of Bonnier under both possible market segmentations, the Commission will carry out one single competitive assessment covering both possible segmentations and will hereafter only refer to advertising space in video format, which should be understood to cover either advertising space on TV channels and/or more generally all advertising space in video format whether on TV channels or on other AV services.

<sup>742</sup> The Commission in this Section will not assess the impact of the Transaction on the market for the sale of advertising space on other media channels since Bonnier Broadcasting's activities in such market are limited and do not give rise to any vertically affected market.

providers; and (iv) Bonnier Broadcasting's contractual obligations may prevent or will constrain the merged entity from its ability to implement such conduct.

- (802) The Notifying Party further indicates that the merged entity would have no incentive to totally foreclose rival TV distributors and telecommunications providers, since: (i) the merged entity would forego a significant potential source of revenues; (ii) the merged entity would not be able to steal existing or new customers from rival TV distributors and telecommunications providers through such a strategy since rival distributors and telecommunications providers would retain their current retail customers and would not lose the ability to market their services in order to find new retail customers and (iii) even if it would be possible to foreclose in order to steal rival TV distributors' and telecommunications providers' customers, it would not likely result from input foreclosure.
- (803) The Notifying Party further indicates that the merged entity would have no incentive to partially foreclose rival TV distributors and telecommunications providers. The merged entity's bargaining position as a seller vis-à-vis rival TV distributors and telecommunications providers would be weakened since the Transaction would lead to the dissolution of the horizontal overlap between Bonnier Broadcasting and other sellers of advertising space in video format owned by the Bonnier group.
- (804) Finally, the Notifying Party submits that, even if it could hypothetically be shown that the merged entity would have the ability and incentive to engage in input foreclosure (*quod non*), such a strategy would not have any impact on effective competition. First, the merged entity would continue to face fierce competition from a large number of strong rival TV distributors and telecommunications providers, whose subscriber base would be unaffected by the foreclosure. Second, such a strategy would not raise barriers to entry on the market for the retail supply of AV services since it would not prevent the emergence and expansion of streaming services, many of which have little or no dependency on TV advertising for their expansion. Third, media agencies that represent advertising buyers across multiple media channels would be able to respond rapidly and effectively to any attempt by the merged entity to engage in such a strategy.<sup>743</sup>

## 2. Commission's assessment

- (805) The Commission's assessment of anticompetitive input foreclosure, in light of the results of the market investigation, is set out in the following recitals. For this purpose, consistent with paragraph 32 of the Non-Horizontal Merger Guidelines, in relation to each of these practices, the Commission examines, (i) whether the merged entity would have, post-merger, the ability to foreclose access to inputs, (ii) whether it would have the incentive to do so, and (iii), whether a foreclosure strategy would have a significant detrimental effect on competition downstream.
- (806) The Commission has conducted its assessment on the basis of all possible downstream market definitions.
- a. Ability to engage in input foreclosure*
- (807) In the Article 6(1)(c) Decision, the Commission preliminary considered that the merged entity could have the ability to engage in either total or partial foreclosure of advertising space in video format since, for the reasons outlined hereafter, the advertising space available on the Bonnier Broadcasting TV channels and AVOD

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<sup>743</sup>

Form CO, Section 6.9.6.

services in Sweden constitutes an important input<sup>744</sup> in the sense outlined in the Non-Horizontal Merger Guidelines. The Commission considered that the input is of significant importance for Telia's competing retail suppliers of AV services, retail mobile telecommunications services and retail fixed internet access services, for the following reasons.

- (808) First, as described in Section 8.3.1.5, Bonnier Broadcasting is the leading supplier of advertising space for advertisements in video format in Sweden with a market share by value of [60-70]% if the market is limited to the sale of advertising space on TV channels and [50-60]% if the market also includes the sale of advertising space in other AV services, most notably AVOD services. The Commission considers such high market shares as evidence that Bonnier Broadcasting has a significant degree of market power in the upstream market. The other main providers of advertising space in video format are NENT and Discovery with each a market share of [10-20]% in the sale of advertising space on TV channels and [10-20]% and [10-20]% respectively on a wider market encompassing advertising space both on TV channels and in other AV services.
- (809) Second, the Phase I market investigation has confirmed that access to advertising space on TV channels (where Bonnier Broadcasting is particularly strong) is particularly important for retail providers of AV services, mobile telecommunication services and fixed internet access services to promote their retail services in Sweden in the sense that other advertising media cannot replicate TV advertising specificities.<sup>745</sup> In particular, NENT indicated that TV is the most relevant for advertising reach in Sweden.
- (810) Third, retail providers of AV services, mobile telecommunication services and fixed internet access services noted that Bonnier Broadcasting's channels are particularly important for them to be able to reach a wide audience since Bonnier Broadcasting's TV channels have more than [...] national commercial share of viewing. In particular, all market respondents indicated TV4 as particularly important as no other commercial TV channel allows reaching a comparable audience.<sup>746</sup> According to Tele2, TV4 is uniquely positioned in terms of being able to provide fast advertising reach in Sweden. Without access to TV4, Tele2 explains that it would not be able to reach the same share of their target audience, and certainly not as fast.<sup>747</sup>
- (811) Bonnier Broadcasting's relevance in terms of advertising reach is further supported by a document provided by Telenor where it is shown how Bonnier Broadcasting's channels have a significantly higher daily reach than NENT and Discovery in all target groups in the last three years.<sup>748</sup>

**Figure 16: [...]**

[...]

*Source: RFI-23 bis to Telenor, Appendix.*

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<sup>744</sup> According to the Non-Horizontal Merger Guidelines, input foreclosure may raise competition problems only if it concerns an important input for the downstream product. Non-Horizontal Merger Guidelines, paragraph 34.

<sup>745</sup> Responses to questionnaire Q4 to TV distributors in Sweden, question I.8.

<sup>746</sup> Responses to questionnaire Q4 to TV distributors in Sweden, questions I.8 and I.9.

<sup>747</sup> Tele2's response to the Commission's RFI 24 (ID001067).

<sup>748</sup> Telenor's response to the Commission's RFI 23 [Appendix] (ID01165).

- (812) The fact that TV4 is [Telia Company's internal documents].<sup>749</sup>
- (813) Finally, the Commission considered that not only would retail providers of AV services, mobile telecommunication services and fixed internet access services be unable to reach a similar proportion of their target audience without access to Bonnier Broadcasting channels, they would also most likely face increased advertising costs. This is because the remaining suppliers of TV advertising space – NENT and Discovery – would face less competition and would therefore most likely be able to increase their prices.
- (814) In its Response to the Article 6(1)(c) Decision, the Notifying Party however claims that the TV advertising inputs offered by Bonnier Broadcasting in Sweden are not important inputs in the sense outlined in the Non-Horizontal Merger Guidelines, because none of the reasons that are given as examples in the Non-Horizontal Merger Guidelines to qualify an input as “important” applies in the case of the TV advertising inputs offered by Bonnier Broadcasting. According to the Notifying Party, the TV advertising inputs offered by Bonnier Broadcasting (i) [...]. The Notifying Party considers instead that the availability of advertising options for rival TV distributors and telecommunication providers clearly shows that Bonnier Broadcasting's TV advertising is not an important input for rivals to compete on the downstream markets.
- (815) The Commission notes that the four factors listed in the Non-Horizontal Merger Guidelines are mere examples of reasons for which an input can qualify as an “important” input, rather than an exhaustive list of reasons. The Commission considers TV advertising inputs offered by Bonnier Broadcasting in Sweden as important inputs for the downstream players because if these inputs were no longer available to Telia's rivals, these rivals would not be able to compete as effectively with Telia as is the case today on the relevant retail markets. This is because, as explained by Tele 2, in order to compete effectively in the retail supply of AV, fixed internet and mobile telecommunication services, irrespective of the exact market definitions for these downstream services, Telia's rivals need to advertise their offers in a way that allows to reach as many of their potential customers as possible in a fast and impactful way.<sup>750</sup>
- (816) As is recognised by Telia, TV advertising [Telia Company's internal documents].<sup>751</sup> Within TV advertising, in Sweden, TV4 has a unique position, as no other TV channel allows telecommunications companies (and other advertisers) to reach such a high percentage of their target customer group. The average daily reach by TV4 for the total Swedish population in 2018 was 30.5%, compared to 11.2% for the second commercial channel in terms of reach, Kanal 5.<sup>752</sup>
- (817) Actually, as suggested by the figures provided by Telia, without access to Bonnier Broadcasting's channels, [Internal market analysis].<sup>753</sup> As purchasers of TV advertising space typically complement the reach from TV4 with advertising on other TV channels to reach as many potential customers as possible within

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<sup>749</sup> Form CO, Annex 6.11.

<sup>750</sup> Tele2's response to the Commission's RFI 24, question 1 (ID001067)

<sup>751</sup> Telia's internal document [Telia Company internal document name] slide 7 (ID001924-009923).

<sup>752</sup> MMS' annual report of 2018, available at <http://mms.se/wp-content/uploads/ dokument/rapporter/tv-tittande/ar/%C3%85rsrapporter/%C3%85rsrapport%202018.pdf>

<sup>753</sup> Bonnier Broadcasting's response to the Commission's RFI 10, question 3 (ID000332).

2-4 weeks,<sup>754</sup> access to advertising space on Bonnier Broadcasting's TV channels (and in particular on TV4) is critical for advertisers to communicate effectively to their potential customers and therefore compete effectively with Telia.

2. *Incentive to engage in total or partial input foreclosure*

- (818) In the Article 6(1)(c) Decision, the Commission preliminarily considered that overall the merged entity would have the incentive to engage in either total or partial input foreclosure strategies for the following reasons.
- (819) First, the Commission noted that, absent the Transaction, [Bonnier Broadcasting's sales strategy].<sup>755</sup>
- (820) Second, most of the respondents to the Phase I market investigation considered that, post-Transaction, the merged entity would likely have the incentive to stop selling TV advertising space or degrade the quality of TV advertising space to competitors.<sup>756</sup> In particular, one respondent indicated that by blocking competition from marketing their services, Telia would increase its market share and profitability in the markets where they compete.
- (821) Finally, the Commission noted that the cost of implementing an input foreclosure strategy would be low. Bonnier Broadcasting obtains [0-5)% of its advertising revenue from Telia's competing providers of retail AV services, retail mobile telecommunications services and fixed internet access services.<sup>757</sup> Moreover, the Commission noted that the demand for Bonnier Broadcasting's advertising space on TV channels, in particular on TV4, is high. Therefore, should the merged entity ban Telia's competitors, it could most likely fill its TV advertising space with other advertisers in the market with limited or no impact on Bonnier Broadcasting's advertising revenues.
- (822) In its response to the Article 6(1)(c) Decision, the Notifying Party maintains that the merged entity would lack the incentive to foreclose its advertising inputs, for the following reasons.
- (823) First, as regards the Commission's argument that Bonnier Broadcasting [Bonnier Broadcasting's sales strategy].<sup>758</sup>
- (824) Second, as regards the argument of the Commission that the cost of implementing such strategy would be low, the Notifying Party claimed that “[i]t is an inaccurate assumption that there are alternative buyers lining up to acquire the advertising space that TV distributors or telecommunications providers otherwise would acquire”.<sup>759</sup>
- (825) The Commission however maintains its position that in all likelihood the cost of implementing a foreclosure strategy would be low, because demand for Bonnier Broadcasting's advertising space on TV channels, in particular on TV4, is high. This was confirmed by a number of market players. Vicissima AB for instance explained that when buying advertising space on Bonnier Broadcasting's TV channels, it has low bargaining power and Bonnier Broadcasting is able to impose unfavourable

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<sup>754</sup> Responses to questionnaire Q1 to TV distributors in Finland, question I.16  
Telenor's and Tele2's responses to the Commission's RFI 23 and 24, questions 4-5 (ID001164 and ID001067).

<sup>755</sup> Responses to questionnaire Q5 to TV broadcasters in Sweden, question H.2.1.

<sup>756</sup> Responses to questionnaire Q4 to TV distributors in Sweden, questions I.11, I.11.3, I.12 and I.12.3.

<sup>757</sup> Bonnier Broadcasting's response to the Commission's RFI 10, questions 5-6 [Annex 1] (ID000327).

<sup>758</sup> Notifying Party's response to the Article 6(1)(c) Decision, section K.3.

<sup>759</sup> Notifying Party's response to the Article 6(1)(c) Decision, section K.3.

contractual terms because “TV4 is always sold out”.<sup>760</sup> Telenor also noted that “TV4 is normally sold out of advertising space”. Therefore, “Telia will not lose any revenues by rejecting Telenor as advertiser or by reducing or eliminating Telenor advertising discounts”.<sup>761</sup>

c. *Impact on effective competition of total/partial input foreclosure*

- (826) In the Article 6(1)(c) Decision, the Commission preliminary considered that it is likely that the input foreclosure strategies considered above would have a significant negative impact on consumers and effective competition in Sweden for the following reasons.
- (827) First, as explained in Section 8.3.1.5, the merged entity has a significant degree of market power in the Swedish market for the sale of advertising space in video format whether limited to space on TV channels or including also space in other AV services, most notably AVOD services.
- (828) Second, most of the respondents to the Phase I market investigation indicated that, if post-Transaction, the merged entity were to stop selling TV advertising space and/or degrade the quality of its TV advertising space to providers of retail AV services, retail mobile telecommunication services and retail fixed internet access services, it would have a broadly negative impact on their companies. Most of the respondents highlighted that Bonnier Broadcasting offers the most valuable TV advertising space in the Swedish market and it is extremely important to advertise on its TV channels (and in particular on TV4) in order to inform Swedish consumers of their offers.<sup>762</sup>
- (829) Third, respondents to the Phase I market investigation indicated that while alternative suppliers of TV advertising space are available, they would not be able to replicate Bonnier Broadcasting’s offering in terms of reach. In this respect, Tele2 indicated that if post-Transaction Telia stops selling TV advertising space to Tele2 (especially on TV4), Tele2 would not be able to fully build a brand associated with its services. According to Tele2, Telia would then face less competition, which would be detrimental for Swedish consumers.<sup>763</sup>
- (830) In its response to the Article 6(1)(c) Decision, the Notifying Party maintains that even if the merged entity would have the ability and incentives to engage in input foreclosure of TV advertising (quod non), this could not have any negative effects on TV distributors’ or telecommunications providers’ ability to compete on their respective downstream markets.
- (831) First, the Notifying Party disagrees with the Commission’s finding of significant market power because it relies on the assumption that the relevant market at most encompasses the sale of advertising space in video format, which the Notifying Party disputes. The Commission notes however that, as explained in section 7.10.1, this was confirmed by the Phase II market investigation.
- (832) Second, the Notifying Party considers that the advertising inputs of Bonnier Broadcasting are simply not important enough to cause any competitive effects on the TV distributors’ or telecommunications companies’ ability to compete on their downstream markets.

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<sup>760</sup> Vicissima AB’s response to questionnaire Q4 to TV distributors in Sweden, question I.10 (ID000618).  
<sup>761</sup> Telenor’s presentation entitled “Telia’s acquisition of Bonnier Broadcasting”, 27 November 2018, slide 37 (ID000160).

<sup>762</sup> Responses to questionnaire Q4 to TV distributors in Sweden, questions I.13 and I.13.1.  
<sup>763</sup> Tele2’s response to the Commission’s RFI 24 (ID01067).

- (833) However, as explained above in this section, the Commission considers that if advertising space on Bonnier Broadcasting's TV channels and AVOD services was no longer available to Telia's rivals, these rivals would not be able to compete as effectively with Telia as is the case today on the relevant retail markets. This is because, as explained by Tele 2, in order to compete effectively in the retail supply of AV, fixed internet and mobile telecommunication services, Telia's rivals need to advertise their offers in a way that allows to reach as many of their potential customers as possible in a fast and impactful way.<sup>764</sup>
- (834) As is recognised by Telia, [Internal market analysis].<sup>765</sup> Within TV advertising, in Sweden, TV4 has a unique position, as no other TV channel allows telecommunications companies (and other advertisers) to reach such a high percentage of their target customer group. The average daily reach by TV4 for the total Swedish population in 2018 was 30.5%, compared to 11.2% for the second commercial channel in terms of reach, Kanal 5.<sup>766</sup>
- (835) [Internal market analysis].<sup>767</sup> As purchasers of TV advertising space typically complement the reach from TV4 with advertising on other TV channels to reach as many potential customers as possible within 2-4 weeks,<sup>768</sup> access to advertising space on Bonnier Broadcasting's TV channels (and in particular on TV4) is critical for advertisers to communicate effectively to their potential customers and therefore compete effectively with Telia.

### 3. Conclusion

- (836) In light of the foregoing, the Commission concludes that the Transaction is likely to significantly impede effective competition in the markets retail provision of AV services, mobile telecommunication services and fixed internet access services in Sweden, as a result of total or partial input foreclosure of advertising space in video format.

#### 8.5.2. *Finland*

##### 8.5.2.1. Competitive conditions in the market for the retail supply of AV services absent the Transaction

###### 1. Introduction

- (837) In this section, in line with recital 308 above, the Commission will examine, as background to its assessment of the non-horizontal effects of the Transaction in the markets for the wholesale supply of FTA and basic pay TV channels, wholesale supply of pay TV channels and retail supply of AV services, the competitive conditions that would have likely prevailed on those markets absent the Transaction, based on the review of the Parties' internal documents and the results of the market investigation.
- (838) This section is structured as follows. First, the Commission will provide a summary of the main activities carried out by the Parties and their competitors in Finland in the

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<sup>764</sup> Tele2's response to the Commission's RFI 24, question 1 (ID001067).

<sup>765</sup> Telia's internal document [...], slide 7 (ID001924-009923).

<sup>766</sup> MMS' annual report of 2018, available at [http://mms.se/wp-content/uploads/\\_dokument/rapporter/tv-tittande/ar/%C3%85rsrapporter/%C3%85rsrapport%202018.pdf](http://mms.se/wp-content/uploads/_dokument/rapporter/tv-tittande/ar/%C3%85rsrapporter/%C3%85rsrapport%202018.pdf).

<sup>767</sup> Bonnier Broadcasting's response to the Commission's RFI 10, question 3 (ID000332).

<sup>768</sup> Responses to questionnaire Q1 to TV distributors in Finland, question I.16.

Telenor's and Tele2's responses to the Commission's RFI 23 and 24, questions 4-5 (ID001164 and ID001067).

markets for the wholesale supply of TV channels and retail supply of AV services, before the Transaction (Section 8.5.2.1.2). Subsequently, the Commission will review the internal documents of Bonnier Broadcasting discussing the benefits of adopting an “OTT channels aggregator” role, absent the Transaction (Section 8.5.2.1.3). Finally, the Commission will review the internal documents of Bonnier Broadcasting discussing the benefits of licensing OTT rights for its channels to retail suppliers of AV services (Section 8.5.2.1.4).

- (839) The Commission notes that the view submitted by the Parties’ and third parties on the role of OTT channels aggregators in the next years, absent the Transaction, presented previously respectively in Section 8.5.1.1.3 and 8.5.1.1.4 are not limited to Sweden but also apply to the Finnish market for the retail supply of AV services and any possible market segment. Furthermore, the Commission notes that the findings on the complementary role of SVOD services, in particular Netflix, in relation to TV channels aggregators presented in Section 8.5.1.1.5 also apply the Finnish market for the retail supply of AV services and any possible market segment.
2. The activities of the Parties and their main competitors, pre-Transaction
- (840) In Finland, **Telia** distributes TV through cable and IPTV (both fibre and xDSL). Telia also provides the standalone Telia TV streaming service.<sup>769</sup>
- (841) Through its cable network, Telia provides access to 39 free basic channels, which become 43 for customers in possession of a cable card. Through a cable card and a digital receiver with a card slot or a separate card reader, it is possible to additionally subscribe to the following packages including both linear and non-linear content:<sup>770</sup>
- Bonnier Broadcasting’s premium packages including access to both linear and non-linear content under the C-More brand.
  - NENT’s premium packages including access to both linear and non-linear content under the Viasat brand.
  - HBO’s linear and non-linear content exclusively available to cable customers in the Telia TV App.
  - The *Liiga* package.
  - The following Telia branded package: “Paramount”, featuring Paramount’s linear and non-linear content (exclusively available to cable customers in the Telia TV App); “Discovery”, including Discovery channels and Eurosport 2; “Surf”, including an extensive offering of linear content from different brands; “Kids”; “Team Passport”, including all the games for a selected team; “Mix S”, featuring 6 channels chosen out of 30; “Mix M” featuring 10 channels chosen out of 60; “Russia” , including a selection of Russian linear and non-linear content.
  - Packages including different combinations of the *Liiga*, CMORE, Viasat and HBO packages.
  - There is also the possibility to add separate pay channels.
- (842) The packages available for cable customers are 25. Any of these channel packages can be also viewed on the Telia TV App free of any additional charge (service referred as TVE).

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<sup>769</sup> Form CO, page 284.

<sup>770</sup> See: <https://www.telia.fi/kauppa/tv-ja-viihde/kanavakartat>.

- (843) For Telia TV customers owning a set-top box, the offer is more limited than for cable customers, but they are also granted TVE ancillary services. The offer for STB customers includes 13 basic free channels and the possibility to add 22 different channel packages and have the access to a video rental shop. For set-top box and broadband customers, the offering is however wider than for set-top box customers without broadband.
- (844) Telia also distributes content via OTT through the Telia TV streaming service. The offering for the Telia TV application foresees the possibility to subscribe to 13 different packages and provides some supplementary services such as a programme library, the catch-up service and the “fast forward and rewind” service. There is also the possibility to subscribe to the recording service, which enables the user to record programmes from 18 different channels. The recording service also enables users to watch 8 out of the 18 channels live, but Bonnier Broadcasting’s MTV3, AVA and Sub are not among these.
- (845) The other main players in the market for the retail supply of AV services in Finland are DNA and Elisa.
- (846) **DNA** is active in the retail supply of AV services via cable, IPTV, DTT and OTT. DNA offers Bonnier Broadcasting’s FTA channels in its cable and IPTV distribution. Bonnier Broadcasting’s channels are included free of charge in the cable TV subscription that DNA offers to housing companies or individual houses in Finland.<sup>771</sup>
- (847) DNA customers can subscribe to the following pay TV packages and single channels through DNA’s OTT service “DNA TV”:<sup>772</sup>
- DNA’s branded packages including linear and non-linear content: “S”, “M” and “L”, featuring respectively 8, 15 and 23 channels; the “Mix” packages, which might include 4,8 or 12 channels at choice; the “Sweden”, “Russia” and “Turkey” packages, including popular channels from these countries; the “Cirkus” library, including a selection of British shows.
  - Bonnier Broadcasting’s premium packages including access to both linear and non-linear content under the C-More brand.
  - NENT’s premium packages including access to both linear and non-linear content under the Viasat brand.
  - The following single channels: “Al Jazeera”, “Brazzers TV Europe”, “TotoTV”, “ETV”.
- (848) **Elisa** is also active in the retail supply of AV services via cable, IPTV, DTT and OTT. Elisa distributes linear content and the related ancillary services and non-linear content through its OTT service Elisa Viihde and the Elisa Viihde mobile application service.<sup>773</sup>
- (849) Elisa Viihde subscribers have access to 13 free channels visible through an antenna or cable, plus 19 free channels available through the set-top box.

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<sup>771</sup> DNA’s response to questionnaire Q14 to retail providers of AV services in Finland (ID001990).

<sup>772</sup> See : <https://kauppa4.dna.fi/TV/Kanavapaketit/c/kanavapaketit>

<sup>773</sup> See : <https://elisa.fi/viihde/>

- (850) Additionally, subscribers can purchase shows and movies from a video rental shop and subscribe to separate VOD libraries, such as Elisa's Aitio and third-party libraries such as Ruutu+ (Sanoma Media), Netflix and HBO Nordic.
- (851) The following packages are available to Elisa Viihde customers:<sup>774</sup>
- Elisa Viihde's branded packages: "Sport", including 8 channels; "Mix S", "Mix M" and "Mix L", including a starting package or respectively 11, 18 and 34 channels, to which it is possible to add or purchase more; two "Kids" packages; "Discovery" package, including 5 Discovery's channels; "Picnic", including 8 channels; "Local", including 2 channels; three "Sweden" packages, including 5, 7 and 8 popular Swedish channels; "Russia", with 7 Russian channels, "TotoTV", with 2 channels.
  - The HBO Nordic VOD package.
  - Bonnier Broadcasting's C-More premium packages.
  - NENT's premium packages including access to both linear and non-linear content under the Viasat brand.
  - Packages bundling C-More, Viasat and Elisa Viihde's branded packages.
- (852) **Netflix** is active in the retail supply of AV services via OTT. Netflix distributes non-linear content and the related ancillary services through its OTT service.<sup>775</sup>
- (853) **Bonnier Broadcasting** is active in Finland as (i) wholesale supplier of TV channels and ancillary services, and (ii) retail supplier of AV services through its OTT applications.
- (854) As wholesale supplier of TV channels and its ancillary services, Bonnier Broadcasting licenses to retail providers of AV services in Finland:
- FTA and basic pay TV channels (the MTV channels "MTV3", "Sub", "AVA", and "C More Juniori" );
  - premium pay TV sports channels, or any packages of premium pay TV channels including sports TV channels under the C More brand.
- (855) As a supplier of retail AV services, Bonnier Broadcasting is active through its OTT services :
- the standalone AVOD service MTV AVOD;
  - the standalone SVOD service C-More.
- (856) The other main broadcasters, apart from Bonnier Broadcasting, are Sanoma, Discovery and Yle.<sup>776</sup> In addition, NENT is the only other supplier of premium pay TV channels.
- (857) **Sanoma** supplies its TV channels to TV distributors active in the market for the retail supply of AV services including Telia, Elisa, DNA for distribution via IPTV, cable, DTH and DTT, OTT. However, Sanoma does not supply standalone OTT rights to its FTA channels.
- (858) Sanoma is also active as a retail supplier of AV services through its standalone OTT service "Ruutu". Ruutu provides a free catch-up service to all customers; in addition

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<sup>774</sup> See: <https://elisa.fi/kaapeli-tv/kanavat/>.

<sup>775</sup> <https://www.netflix.com/lu-en/>

<sup>776</sup> Form CO, page 124.

to that, Ruutu+ paying subscribers have also access to Sanoma's FTA channels in live streaming.<sup>777</sup>

- (859) **Discovery**, similarly to Bonnier Broadcasting and Sanoma, distributes its linear TV channels (both FTA and pay TV channels) to retail suppliers of AV services for distribution via cable, IPTV and satellite. Terrestrial distribution is achieved via Digita Oy for Discovery's free-to-air channels.
- (860) Discovery is active at the retail level as well, as it provides its VOD services Dplay and Eurosport Player directly to subscribers via OTT. Dplay has both an AVOD and a SVOD version; Eurosport Player is only provided upon pay subscription as SVOD service.<sup>778</sup>
- (861) **NENT** is also one of the main wholesale suppliers of premium pay TV channels. NENT supplies its TV channels to the main TV distributors (Telia, Elisa, DNA) for distribution via IPTV, cable, DTH and DTT. NENT is also active in the retail supply of AV services via OTT though "Viaplay" as a standalone OTT service<sup>779</sup>, providing access to linear and non-linear content of its premium pay TV channels directly to end customers. Lastly, **Yle** is Finland's national public broadcaster. Yle's FTA TV channels are subject to a "must-carry" obligation and, differently from other TV broadcasters, Yle is not dependent on advertising revenues and carriage fees from TV distributors, because it is funded by governmental taxation. Yle's FTA TV channels are available to all retail suppliers of AV services via all type of distribution, including OTT.<sup>780</sup> Therefore, for the purpose of the assessment of this Decision and for the reasons presented in Section 8.5.2.2.2, the Commission does therefore not consider Yle as a commercial broadcaster. The Commission nonetheless conducts an assessment of the relevance, if any, of Yle's channels in Section 8.5.2.2.2 on competitive analysis.

3. Bonnier Broadcasting as OTT channels aggregator
- (862) [Internal documents related to assessments of and work concerning Bonnier Broadcasting's strategies].
- (863) [Internal documents related to assessments of and work concerning Bonnier Broadcasting's strategies].<sup>781</sup>
- (864) [Internal assessments of and work concerning strategies for OTT distribution].

**Figure 17: [...]**

[...]

*Source: [...].*

- (865) [Internal information related to assessments of and work concerning strategies for OTT distribution].<sup>782</sup>
- (866) [Internal documents related to assessments of and work concerning strategies for OTT distribution].<sup>783</sup>

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<sup>777</sup> Sanoma's response to questionnaire Q16 to TV broadcasters in Finland (ID002063).

<sup>778</sup> Discovery's response to questionnaire to TV broadcasters in Finland (ID002848).

<sup>779</sup> See: <https://www.nentgroup.com/brands/viaplay>.

<sup>780</sup> Yle's response to questionnaire Q16 to TV broadcasters in Finland (ID002083).

<sup>781</sup> Bonnier Broadcasting's internal document [Bonnier Broadcasting's internal document details] (ID001773-000104).

<sup>782</sup> Bonnier Broadcasting's internal document [Bonnier Broadcasting's internal document details] (RFI 35 - BBR0097867.00001; Doc ID: 1774-97871).

**Figure 18: [...]**

[...]

*Source: [...].*

- (867) [Internal documents related to Bonnier Broadcasting's strategies].
  - (868) [Internal documents related to assessments of and work concerning strategies relating to OTT distribution].<sup>784</sup>
  - (869) [Internal documents related to assessments of and work concerning strategies relating to OTT distribution]<sup>785 786 787 788</sup>.
  - (870) [Internal documents related to assessments of and work concerning strategies relating to OTT distribution].<sup>789</sup>
  - (871) [Internal documents related to assessments of and work concerning strategies relating to OTT distribution].<sup>790</sup>
  - (872) [Internal documents related to assessments of and work concerning strategies relating to OTT distribution].
4. [Information related to assessments of and work concerning strategies relating to OTT distribution]
- (873) [Information related to assessments of and work concerning strategies relating to OTT distribution].
  - (874) [Internal documents related to assessments of and work concerning strategies relating to OTT distribution].<sup>791</sup>
  - (875) In the Phase II investigation, the Commission has reviewed internal documents related to Bonnier Broadcasting's negotiations to license its (i) FTA and basic pay and (ii) premium pay TV channels to TV distributors in Finland. In the following recitals, the Commission will assess Bonnier Broadcasting's licensing strategy vis-à-vis the major TV distributors in Finland.
  - (876) [Internal documents related to assessments of and work concerning strategies relating to OTT distribution].
  - (877) [Internal documents related to assessments of and work concerning strategies relating to OTT distribution].
  - (878) [Internal documents related to assessments of and work concerning strategies relating to OTT distribution].<sup>792 793</sup>

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<sup>783</sup> Bonnier Broadcasting's internal document [Bonnier Broadcasting's internal document details] (ID001775-1092).

<sup>784</sup> Bonnier Broadcasting's internal document [Bonnier Broadcasting's internal document details] (RFI 35 - BBR0085540.00001; Doc ID: 1774- 85544).

<sup>785</sup> [Bonnier Broadcasting's internal strategies]

<sup>786</sup> [Bonnier Broadcasting's internal strategies]

<sup>787</sup> [Bonnier Broadcasting's internal strategies]

<sup>788</sup> [Bonnier Broadcasting's internal strategies] (RFI 35 - BBR0047711.00001; Doc ID: 1774- 47714).

<sup>789</sup> [Bonnier Broadcasting's internal strategies] (RFI 35 - BBR0439081.00001; Doc ID: 1778-39107).

<sup>790</sup> [Bonnier Broadcasting's internal document] (RFI 35 - BBR0026406.00001; Doc ID: 2397-212).

<sup>791</sup> Notifying Party's response to Commission's RFI 60, question 1.c.ii (ID02511).

<sup>792</sup> See Annex 2 to RFI 14, document [Bonnier Broadcasting's internal document details] (ID01573-37).

<sup>793</sup> See Annex 2 to RFI 14, document [Bonnier Broadcasting's internal document details] (ID01573-29).

(879) [Internal documents related to assessments of and work concerning strategies relating to OTT distribution].<sup>794</sup>

5. Conclusion

(880) The Commission considers that the Parties' internal documents described above show that (i) the Parties view OTT as a significant type of distribution; (ii), [Internal documents related to assessments of and work concerning strategies relating to OTT distribution].

8.5.2.2. Total and partial input foreclosure relating to the wholesale supply of FTA and basic pay TV channels and the retail provision of AV services

(881) In Finland, Telia is active in the retail supply of AV services. Bonnier Broadcasting is mainly active in the wholesale supply of FTA and basic pay TV channels, as well as at the retail level, through its TV channels and OTT applications. The merger specific change is the addition of Telia's downstream activities as retail supplier of AV services.

(882) The Commission has assessed the risk of the following two types of input foreclosure strategies in Finland: (i) total input foreclosure of rival providers of retail AV services through the denial of access to Bonnier Broadcasting's channels; and (ii) partial input foreclosure of rival providers of retail AV services through imposing of carriage fees<sup>795</sup> on rival providers of AV services or by significantly degrading the quality of channels licensed to rival providers of AV services (for example, by removing significant content or ancillary rights).

(883) Moreover, the Commission has assessed the two abovementioned types of input foreclosure strategies on the following two types of TV channels, which Bonnier Broadcasting licenses to retail providers of AV services in Finland:

- Bonnier Broadcasting's FTA and basic pay TV channels (addressed in this section);<sup>796</sup>
- premium pay TV sports channels, or any packages of premium pay TV channels including sports TV channels under the C More brand (see Section 8.5.2.3).<sup>797</sup>

(884) For the purpose of its assessment, the Commission has considered, as the more likely potential targets of an input foreclosure strategy, Telia's largest competitors in the retail supply of AV services irrespective of any potential market segmentation. On the basis of the market shares presented in Section 8.3.2.4, in relation to the market for the retail supply of AV services, the main targets of a potential foreclosure strategy are the other main TV distributors, namely DNA and Elisa.

1. Notifying Party's view

(885) The Notifying Party submits that the merged entity would have neither the ability nor the incentive to pursue a total or partial input foreclosure strategy against rival TV distributors in Finland. The arguments put forward by the Notifying Party are largely the same as those advanced in respect of Sweden.

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<sup>794</sup> [Internal documents related to assessments of and work concerning strategies relating to OTT distribution].

<sup>795</sup> TV channels are licensed by TV broadcasters to TV distributors, against payment of carriage fees.

<sup>796</sup> In the agreements [Information on Bonnier Broadcasting's distribution agreements].

<sup>797</sup> Form CO, Table 13.

- (886) In respect of the merged entity's ability to undertake a total input foreclosure strategy, in its initial submission and in the Response to the Article 6(1)(c) Decision, the Notifying Party submits that denying access to Bonnier Broadcasting's TV channels would not harm rival TV distributors because customers would switch to other channels instead of cancelling their existing TV subscription. The Notifying Party considers that contractual and technical limitations prevent customers from easily switch away from a (foreclosed) TV distributor if TV channels are removed from the customer's package, thereby preventing the merged entity from being able to engage in input foreclosure. In particular, the Notifying Party submits that customers are bound by collective and individual agreements, by other switching costs (e.g., related to the installation of new equipment) and by Telia's fixed geographic footprint. The Notifying Party further submits that countervailing buyer power and counter strategies of rival TV distributors to develop alternatives to the foreclosed input would reduce the occurrence of switching.
- (887) The Notifying Party submits that, even if it could hypothetically be shown that the merged entity would have the ability to engage in such foreclosure strategy, it would have no incentive to deploy a total input foreclosure strategy because such strategy would not be profitable. In particular, the Notifying Party submits a quantitative analysis aiming at demonstrating that the merged entity would not have the incentive to deploy a total input foreclosure strategy against all of its rival TV distributors, related to the supply of FTA and basic pay TV channels.<sup>798</sup> Based on its vertical arithmetic model, the Notifying Party submits that [...]% (or more) of foreclosed rivals' customers would need to leave their suppliers of retail AV services, in order to provide the merged entity with the incentive to engage in such foreclosure strategy. This threshold of [...]% is called the critical departure rate. It is derived from the model, and needs to be compared to what would be the likely, actual rate of switching of foreclosed consumers. If the likely, actual rate of switching were to be larger than the critical departure rate, the merged entity would have incentives to foreclose. The Notifying Party further submits that the likely actual rate of switching in a foreclosure scenario would lie below the critical departure rate<sup>799</sup> of [...]% mentioned above and, hence, that the merged entity would not have any incentive to foreclose rival TV distributors.
- (888) The Notifying Party submits a further quantitative analysis with the aim of showing that the merged entity would not have the incentive to deploy a total input foreclosure strategy targeted at any of its main rival TV distributors to restrict competition in the market for the distribution of FTA and basic pay TV channels.<sup>800</sup> Relying on vertical arithmetic models, the Notifying Party submits that the critical departure rates, above which the merged entity would have the incentive to engage in total input foreclosure of FTA TV channels, are [...]% for DNA and Elisa and [60-80]% for Canal Digital/Telenor.<sup>801</sup>

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<sup>798</sup> RBB Economics' report "A vertical arithmetic model", 3 December 2018 (ID000123).

<sup>799</sup> The critical departure rate corresponds to the minimum proportion of customers that would need to leave foreclosed downstream rivals for total input foreclosure to be profitable. If the evidence show that the likely actual rate of switching is inferior to the critical rate, this implies that it is unlikely that the merged entity would have an incentive to engage in total input foreclosure, and vice-versa.

<sup>800</sup> RBB Economics' report "Selective total input foreclosure targeted at main rival TV distributors," dated 15 March 2019 (ID00500).

<sup>801</sup> RBB Economics' report "Selective total input foreclosure targeted at main rival TV distributors," dated 15 March 2019, page 7 (ID00500).

- (889) In respect of partial input foreclosure, the Notifying Party submits that the merged entity would have neither the ability nor the incentive to pursue a partial input foreclosure strategy against rival TV distributors, related to the provision of FTA TV channels. In particular, the Notifying Party notes that Bonnier Broadcasting's channels are all FTA TV channels for which [Bonnier Broadcasting's key commercial data regarding FTA channel pricing] are charged, and that [Bonnier Broadcasting's key commercial data regarding FTA channel pricing].<sup>802</sup> The Notifying Party also submits that, even if it would hypothetically engage in such a partial foreclosure strategy, there would be no significant detrimental effect on effective competition.<sup>803</sup>
- (890) The Notifying Party submits a quantitative analysis aiming at demonstrating that the merged entity would have no incentive to deploy a partial input foreclosure strategy against rival TV distributors, related to the supply of FTA TV channels, and that the effects of such foreclosure strategy would not have a significant detrimental effect on effective competition.<sup>804</sup> The Notifying Party provides a Nash bargaining framework that quantifies the potential increase in carriage fees of Bonnier Broadcasting's TV channels that rival TV distributors would face due to a shift in bargaining power to the merged entity. The Notifying Party submits that the incentives of the merged entity to engage in partial input foreclosure are limited because [...].
- (891) The Notifying Party submits that even if the merged entity had the ability and incentive to undertake a partial input foreclosure strategy, it would have no significant detrimental effect on effective competition.<sup>805</sup> The Notifying Party's quantitative model finds that the effect of a potential partial foreclosure of all competing TV distributors would lead to an increase of [...] EUR in carriage fees per subscriber per year for rival TV distributors, which can be translated to a [...]% increase in prices of retail TV services of rival TV distributors (assuming a full pass-on to consumers).

## 2. Commission's assessment

- (892) The Commission's assessment of anticompetitive input foreclosure, in light of the results of the market investigation, is set out in the following recitals. For this purpose, consistent with paragraph 32 of the Non-Horizontal Merger Guidelines, in relation to each of these practices, the Commission examines, (i) whether the merged entity would have, post-merger, the ability to foreclose access to inputs, (ii) whether it would have the incentive to do so, and (iii) whether a foreclosure strategy would have a significant detrimental effect on competition in the downstream markets.
- (893) In its analysis, the Commission has treated the assessment of the Bonnier Broadcasting FTA or basic pay TV channels as a package, as was done for Sweden and for the same reasons set out in recitals 482-485. This conclusion is based on demand and supply side factors, which support the view that the Bonnier Broadcasting FTA and basic pay TV channels should be treated as a package product. Namely, that Bonnier Broadcasting [Content of Bonnier Broadcasting's

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<sup>802</sup> RBB Economics' report "Partial input foreclosure of FTA/basic pay TV channels" footnote 2 (ID000317).

<sup>803</sup> Form CO, section 6.9.4.4.

<sup>804</sup> RBB Economics' report "Partial input foreclosure of FTA TV channels in Finland", 15 March 2019 (ID000503).

<sup>805</sup> RBB Economics' report "Partial input foreclosure of FTA/basic pay TV channels" (ID000317).

distributions agreements],<sup>806</sup> and TV distributors sell the licensed channels in packages to end-customers.

- (894) The Commission has therefore made its assessment of anticompetitive input foreclosure considering Bonnier Broadcasting's FTA or basic pay TV channels as a package therefore including all different genres of FTA and basic pay TV channels supplied by Bonnier Broadcasting in the market.
- (895) The Commission has conducted its assessment on the basis of all possible downstream market definitions. The question as to whether the merged entity would have the ability to undertake a partial or total input foreclosure strategy has therefore been undertaken in light of the importance of those channels to TV distributors active in the potential markets for which FTA and basic pay TV channels are acquired, namely the markets for the retail supply of (i) AV services (ii) linear pay AV services, (iii) linear basic pay AV services (iv) all possible markets (i) to (iii) segmented into MDU and SDU.<sup>807</sup> The Commission's assessment of the impact of a total or partial foreclosure strategy also applies in respect of the above mentioned possible markets for which FTA and basic pay TV channels are an important input. Since the importance of Bonnier Broadcasting's FTA and basic TV channels and the likely impact of foreclosure to those channels as inputs, is as least as significant on the narrower relevant markets as it is on the broader market for the retail provision of AV services, the Commission hereafter, in this section, refers to the 'retail supply of AV services' or 'retail AV services' as shorthand for all possible markets comprising the retail supply of (i) AV services (ii) linear pay AV services, (iii) linear basic pay AV services (iv) all possible markets (i) to (iii) segmented into MDU and SDU.

a. *Ability to engage in input foreclosure*

*Importance of FTA and basic pay TV channels for the overall downstream market*

- (896) The Non-Horizontal Merger Guidelines indicate that input foreclosure may only give rise to competition problems if the upstream input is important for the downstream product.<sup>808</sup> An input may be important if it represents a significant cost factor relative to the price of the downstream product, if without the input the downstream product could not be manufactured or effectively sold on the market, or if the input represents a significant source of product differentiation for the downstream product.<sup>809</sup>
- (897) FTA TV channels are important inputs for TV distributors' ability to compete on the downstream market for the supply of retail AV services.

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<sup>806</sup> Based on a review of distribution agreements between Bonnier Broadcasting and respectively DNA, Elisa, Canal Digital, and Telia provided in the Parties' response to the Commission's RFI 14 (ID001573).

<sup>807</sup> Before the Transaction, Bonnier Broadcasting's FTA and basic pay TV channels are not sold to retail suppliers of AV services as inputs for the provision of (i) premium pay services or (ii) non-linear pay AV services. In respect of the latter, Bonnier Broadcasting does provide rights to distribute its FTA and basic pay TV channels in a non-linear manner as ancillary to the linear distribution of its channels (e.g., NPVR rights) and that ancillary form of distribution has been included in the Commission's assessment together with the primary linear distribution of the FTA and basic pay TV channels. Therefore, the Commission considers that it is not relevant to consider the impact of the Transaction on market segments where the Bonnier Broadcasting's FTA and basic pay TV channels are not acquired as an input.

<sup>808</sup> Non-Horizontal Merger Guidelines, paragraph 34.

<sup>809</sup> Non-Horizontal Merger Guidelines, paragraph 34.

- (898) In Finland, FTA channels are available to practically all customers who have a traditional TV subscription and major TV distributors in Finland offer FTA channels as part of their TV service offering.<sup>810</sup> FTA channels are accessible at zero price to more than half the population who view TV content via DTT antenna.<sup>811</sup> In addition, consumers who want to watch pay TV channels in addition to FTA channels can pay for access to IPTV, cable TV and DTH and purchase the most basic TV package.<sup>812</sup> Since the channels are FTA, customers will generally only pay the price of access to the actual distribution technology.<sup>813</sup>
- (899) Pay TV channels are also important to be able to compete in the retail AV services market. All major TV distributors offer both FTA and pay TV channels. Customers who demand specific content that is not available on FTA channels purchase pay TV channels and packages. The fact that on the demand side customers habitually purchase pay TV channels and, on the supply side, all major TV distributors make available pay TV channels or packages, is evidence that pay TV channels are important inputs for TV distributors to compete in the retail supply of AV services.
- (900) Accordingly, the fact that practically the entire population of Finland that has access to a TV services is able to view FTA channels and all the major distributors offer FTA channels as part of their package offerings, makes FTA channels important, if not essential, to compete in the downstream market for retail AV services in Finland.
- Market power of the merged entity in the wholesale distribution of FTA and basic pay TV channels*
- (901) As stated in Section 8.5.1.2.2.a, for input foreclosure to give rise to competition problems the merged entity must have a significant degree of market power in the upstream market for it to be capable of having a significant influence on the conditions of competition and thereby on prices and supply in the downstream market.<sup>814</sup>
- (902) In this section, the Commission discusses whether the merged entity would have a dominant position in the upstream market for the supply of FTA and basic pay TV channels in Finland, and therefore whether Bonnier Broadcasting's FTA and basic pay TV channels (i.e., FTA channels MTV3, Sub and AVA and basic pay channel C More Juniori) can be considered an important input within the meaning of the Non-Horizontal Merger Guidelines.
- (903) Table 9, re-produced below, shows the market shares of the Parties and their main competitors in the markets for the wholesale supply of FTA and basic pay TV channels in Finland in 2018. As outlined in Section 8.3.2.2, post-Transaction the merged entity will have a share of [20-30]% in the wholesale supply of FTA TV channels, a share of [20-30]% in the wholesale supply of FTA and basic pay TV channels (considered together) and a share of [60-70]% in the supply of pay children's TV channels. The next closest competitor, Sanoma/Nelonen, with shares (by volume) less than [20-30]% for FTA channels and less than [5-10]% for pay children's TV channels, is unlikely to be able to exercise sufficient constraint on the merged entity. Other competitors (Discovery, Disney) have shares below [10-20]% for the wholesale supply of FTA channels and the wholesale supply of FTA/basic

<sup>810</sup> Responses to questionnaire Q1 to TV distributors in Finland, question F.4.

<sup>811</sup> Form CO, paragraph 735.

<sup>812</sup> Form CO, footnote 369.

<sup>813</sup> Form CO, paragraph 461.

<sup>814</sup> Non-Horizontal Merger Guidelines, paragraph 35.

pay TV channels in Finland. While in basic pay TV channels the merged entity has a share of [5-10]%, smaller than competitors Sanoma/Nelonen ([10-20]%), Discovery ([20-30]%) and Disney ([20-30]%), the Commission notes that these shares are likely to underestimate the negotiating power of the merged entity since both FTA and basic TV channels are included in the same distribution agreements and therefore a provider's strong position on one segment (e.g., FTA) will influence the outcome of the overall negotiations.

- (904) In terms of commercial share of viewing (excluding Yle, the public broadcaster), the merged entity would have a share (by volume) of [40-50]% for FTA channels and [40-50]% for FTA and basic pay TV channels considered together as part of the one market.<sup>815</sup> The Commission refers to recitals 927-928 as to the reasons why Yle should not be considered a suitable alternative to commercial FTA and basic pay TV channels, in particular Bonnier Broadcasting's.

**Table 9: Market shares in 2018  
in the market for the wholesale supply of FTA and basic pay TV channels<sup>816</sup>**

Company	FTA		FTA/basic pay		Basic pay <sup>817</sup>		Pay Children	
	Volume (min)	Shares (%)	Volume (min)	Shares (%)	Volume (min)	Shares (%)	Volume (min)	Shares (%)
Telia	-	-	-	-	-	-	-	-
Bonnier Broadcasting	[...]	[20-30]	[...]	[20-30]	[...]	[5-10]	[...]	[60-70]
<b>COMBINED</b>	<b>[...]</b>	<b>[20-30]</b>	<b>[...]</b>	<b>[20-30]</b>	<b>[...]</b>	<b>[5-10]</b>	<b>[...]</b>	<b>[60-70]</b>
MTG/NENT	-	-	-	-	-	-	-	-
Sanoma/Nelonen	[...]	[10-20]	[...]	[10-20]	[...]	[10-20]	[...]	[0-5]
Discovery	[...]	[5-10]	[...]	[5-10]	[...]	[20-30]	-	-
Disney	[...]	[5-10]	[...]	[5-10]	[...]	[20-30]	[...]	[20-30]
Yle	[...]	[40-50]	[...]	[40-50]	-	-	-	-
Others	[...]	[0-5]	[...]	[0-5]	[...]	[20-30]	-	-
<b>MARKET SIZE</b>	<b>[...]</b>	<b>100</b>	<b>[...]</b>	<b>100</b>	<b>[...]</b>	<b>100</b>	<b>[...]</b>	<b>100</b>

*Source: Form CO, Annex 7 and response to RFI 31.*

- (905) With upstream shares of at least [40-50]% (excluding Yle) and over [60-70]% in the case of pay children TV channels, and no competitors with a position coming close to that of the merged entity, as shown in recitals 903-904, the merged entity will likely have significant market power in the potential markets for the wholesale supply of FTA channels, the wholesale supply of FTA channels and basic pay TV channels, and the wholesale supply of pay children's TV channels.
- (906) Whereas the Commission considers that Bonnier Broadcasting's high market shares especially when excluding the public broadcaster Yle, taken together with feedback from the market test in addition to metrics on audience reach and share of total viewing, all reinforce the view that the merged entity will have significant market power upstream in the wholesale supply of FTA and basic pay TV channels in Finland.
- (907) First, Bonnier Broadcasting's FTA TV channels include the FTA TV channel MTV3, the most important commercial channel in Finland, with [40-50]% share of viewing

<sup>815</sup> Commission's calculation: [...].

<sup>816</sup> The market share by value represent the Parties' best estimates of the revenues generated from the carriage fees paid by distributors to broadcasters (including both fixed carriage fees and fees based on individual subscriptions). For the wholesale supply of FTA TV channels or, any combination including FTA TV channels, market shares by volume are provided since market shares by value are not available.

<sup>817</sup> C More Juniori has been considered as basic pay channel.

based on 2018 figures.<sup>818</sup> In addition, Bonnier Broadcasting distributes two other MTV channels, which are also FTA, namely Sub, and AVA as well as C More Juniori, the leading pay TV children channel in Finland by volume share.<sup>819</sup>

- (908) In order to assess whether MTV3 should be considered a particularly important input for TV distributors, more than its audience share could suggest, the Commission asked the Parties to provide viewer shares based on different parameters.<sup>820</sup> Table 22 summarises that information in relation to the total viewing, continuous viewing and prime time viewing of the most popular commercial FTA and basic pay TV channels in Finland. MTV3 is the leading channel under all metrics, ahead of Nelonen (Sanoma). In addition, the third most relevant commercial FTA channel is Sub, which is also part of Bonnier Broadcasting's FTA channels portfolio. For the reasons explained in recitals 927-928, Yle is not considered in the table below.

**Table 22: Viewership reach data of commercial FTA TV channels in Finland**

Channel	total time 30 min	N.	total time 300 min	N.	continuous time 5 min	N.	Viewers continuous time 30 min	N.	prime time 30 min	N.	prime time 300 min	N.
MTV3	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Nelonen (Sanoma)	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Sub	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]

*Source: Commission's calculation on Annex 6 to RFI3.*

- (909) Bonnier Broadcasting's FTA and basic pay TV channels are important inputs for TV distributors regardless of distribution platform. For example, as stated in Bonnier Broadcasting's 2018 annual report, [...] compared to the year before.<sup>821</sup> Therefore, Bonnier Broadcasting's content is relevant also when distributed on non-traditional TV platforms.
- (910) Second, most TV distributors that replied to the market investigation consider Bonnier Broadcasting's FTA channels as important for their retail TV offering in Finland, in the sense that they contribute significantly to the competitiveness of their retail offering.<sup>822</sup>

<sup>818</sup> Form CO, Annex 6.11 and Bonnier Broadcasting 2018 annual report ("MTV increased its share of commercial viewing time as compared with 2017 (42.4 per cent in 2018, compared with 41.7 per cent in 2017 among the 10–54-year-old target group)").

<sup>819</sup> Form CO, Table 13.

<sup>820</sup> In line with Commission Decision of 24 February 2015 in case M.7194 - Liberty Global/Corelio/W&W/De Vijver Media and Commission Decision of 6 February 2018 in case M.8665 – Discovery/Scripps, the Commission requested viewership data based on (i) total viewing time per month, (ii) continuous viewing time per month and (iii) prime time viewing time per month. For each (i) and (iii), the Parties submitted data for (a) 30 minutes, (b) 60 minutes, (d) 300 minutes. For (ii) the Parties submitted data for (a) 5 minutes (b) 15 minutes (c) 30 minutes. Table 22 presents a summary of the data provided.

<sup>821</sup> Bonnier Broadcasting's 2018 annual report, available at: <https://www.bonnierbroadcasting.com/senaste-nytt/pressmeddelanden-foretaget/2019/annual-report-bonnier-broadcasting-2018/>

<sup>822</sup> Responses to questionnaire Q1 to TV distributors in Finland, question F.4.

- (911) MTV3 is the most popular commercial FTA channel, with a wide range of attractive quality content with key strength in domestic series, entertainment and news, and market participants consider that no channel will be able to replicate Bonnier Broadcasting's FTA offering in Finland in the short/medium term.<sup>823</sup> For example, Telenor submits the commercial share of viewing of FTA channels in Finland showing that Bonnier Broadcasting would be the clear market leader. DNA submits that MTV3 is the number one viewed channel.<sup>824</sup> Both NENT and DNA consider that the Bonnier Broadcasting TV channel MTV3 is the “*most important*” and “*the most popular*” commercial FTA channel in Finland and that there is an expectation by customers, whether they be individuals or a housing company, that it is available to them.<sup>825</sup>
- (912) Third, the majority of respondents who replied also consider that Bonnier Broadcasting's pay TV children's channel, C More Juniori, is also particularly important to TV distributors' competitiveness.<sup>826</sup> One respondent considered that C More Juniori is not particularly important for its own TV offering.<sup>827</sup>
- (913) In addition, TV distributors consider that the ancillary rights of Bonnier Broadcasting's FTA and basic pay TV channels are important for their retail TV offering in Finland. In that respect, DNA considers that NPVR, catch-up, HD quality are of particular importance for their TV offering and customer demand.<sup>828</sup>

**Figure 19: [...]**

[...]

*Source: Telenor's non-confidential version of presentation of 22 November 2018.*

- (914) Finally, [Telia Company's internal documents].<sup>829 830</sup>
- (915) Finally, since the retail market for AV services shifts towards more OTT consumption<sup>831</sup>, the Commission considers the OTT rights for retail distributors of AV services to distribute Bonnier Broadcasting's channels, either as standalone OTT rights or as ancillary services in addition to traditional AV services, as relevant as the rights to distribute its channels through IPTV, DTH, cable or DTT. The relevance of OTT rights for retail distributors of AV services is also confirmed by Telia's role as aggregator of TV channels for OTT distribution. Absent the Transaction, [Content of Telia Company's agreements]<sup>832 833 834</sup>.
- (916) With reference to possible contractual limitations that may reduce the merged entity's ability to engage in total or partial input foreclosure, the Commission notes

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<sup>823</sup> Responses to questionnaire Q1 to TV distributors in Finland, questions F.4. and F.10.

<sup>824</sup> DNA's response to questionnaire Q1 to TV distributors in Finland, questions F.4 (ID00739).

<sup>825</sup> NENT and DNA's responses to questionnaire Q1 to TV distributors in Finland, questions F.4 (ID01506 and ID00739).

<sup>826</sup> Responses to questionnaire Q1 to TV distributors in Finland, question F.4.

<sup>827</sup> DNA's response to questionnaire Q1 to TV distributors in Finland, question F.4 (ID000739).

<sup>828</sup> DNA's response to questionnaire Q1 to TV distributors, question F.7.1 (ID00739).

<sup>829</sup> Parties' response to the Commission's RFI 14, question 4 d-e-, Appendix 11(ID00928)..

<sup>830</sup> Form CO, Annex 6.11.

<sup>831</sup> Parties' response to the Commission's RFI 14, Annex 12 (ID00658).

<sup>832</sup> Parties' response to the Commission's RFI 14, Annex 2.2.3.44. Telia has distribution rights for: [Information about Telia Company's distribution rights] (ID01573-43).

<sup>833</sup> Parties' response to the Commission's RFI 14, Annex 3.14 and Annex 3.39 (ID01572-14 and ID01572-35).

<sup>834</sup> Parties' response to the Commission's RFI 14, Annex 3.29 (ID01572-3).

- that Bonnier Broadcasting's agreements with [Bonnier Broadcasting's distribution agreements].<sup>835</sup>
- (917) Moreover, the market investigation shows that if distributors were unable to continue offering Bonnier Broadcasting's FTA and basic pay TV channels, in particular MTV3, all TV distributors who answered the question consider that the customer could terminate their agreement.<sup>836</sup> NENT further explains that distributors cannot change the content of the subscription during the term of the agreement with the customer and if they do, the customer could argue that the change is significant, providing grounds for termination.<sup>837</sup>
- (918) With reference to the technical ability to implement any foreclosure strategy, most respondents to the market investigation have indicated that the merged entity post-Transaction could either stop licensing certain of its TV channels<sup>838</sup> or degrade the terms and conditions at which it licenses its TV channels.<sup>839</sup>
- (919) In the Response to the Article 6(1)(c) Decision, the Notifying Party submits that the Decision fails to address the fixed footprint of Telia which would prevent all subscribers of foreclosed distributors from switching to Telia, thereby limiting Telia's ability to foreclose rival distributors.<sup>840</sup> The Notifying Party explains that Telia cannot provide streaming services with guarantee outside of its geographical footprint and the merged entity's streaming service would not be a suitable replacement for a traditional TV subscription. However, the fact that Telia cannot serve 100% of customers in Finland is beside the point. Complete geographic coverage is not a necessary condition to establish that within the national territory of Finland, Bonnier Broadcasting's FTA and basic pay TV channels are important to TV distributors. The scope of Telia's footprint is relevant to assessing the likely incentive and effect of a foreclosure strategy on competition in the market for the retail supply of AV services (addressed in Section 2.4.3.1 of Annex I).
- (920) In the Response to the Article 6(1)(c) Decision, the Notifying Party contests the Commission's assessment that Bonnier Broadcasting's channels are important to TV distributors, submitting that the Commission's approach is too narrow in some respects and too broad in others. Specifically, the Notifying Party considers that when assessing the importance of Bonnier Broadcasting's TV channels for distributors (i) public broadcast channels should be included in the analysis (ii) the popularity of AVOD services should not be taken into account.
- (921) The Parties' internal documents show that [Bonnier Broadcasting's internal documents]. A Bonnier Broadcasting internal document recognises that [Bonnier Broadcasting's internal documents]<sup>841</sup> The importance of [Telia Company's internal documents].<sup>842 843</sup>

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<sup>835</sup> Form CO, Annex 11.

<sup>836</sup> Responses to questionnaire Q14 to retail providers of AV services in Finland, question 57.1.

<sup>837</sup> NENT's response to questionnaire Q14 to retail providers of AV services in Finland, question 57.1.1 (ID02304).

<sup>838</sup> Responses to questionnaire Q1 to TV distributors in Finland, questions F.7 and F.7.2.

<sup>839</sup> Responses to questionnaire Q1 to TV distributors in Finland, questions F.8 and F.8.2.

<sup>840</sup> Notifying Party's response to the Article 6(1)(c) Decision, section G.2.3.2.

<sup>841</sup> Bonnier Broadcasting's internal document, [no title], slide 3 (ID001774-009005).

<sup>842</sup> Telia's internal document, [Telia Company's internal documents], slides 2 and 9 (ID001924-046262).

<sup>843</sup> Bonnier Broadcasting's internal document [Bonnier Broadcasting's internal documents] slide 5 (ID017770-070093).

(922) With reference to the importance of Bonnier Broadcasting's "other" channels, apart from MTV3, the Commission observes that in the majority of the distribution agreements between Bonnier Broadcasting and TV distributors,<sup>844</sup> Bonnier Broadcasting licenses MTV3 together with at least one of Sub and Ava as well as C more Juniori. Moreover, on the supply side, Bonnier Broadcasting's channels are distributed as packages and the basic packages always include MTV3 together with other FTA and basic pay Bonnier Broadcasting TV channels. Accordingly, the relevant product for the purposes of the Commission's assessment is the package of Bonnier Broadcasting channels comprising *inter alia* MTV3 but also other channels that are licensed together. The fact that among this package, viewership is higher among some channels than others, does not alter the conclusion that Bonnier Broadcasting's channels, which are typically sold as a package of channels, are an important inputs.

*Remaining upstream suppliers offer less preferred alternatives*

- (923) The Notifying Party submits in the Response to the Article 6(1)(c) Decision that when assessing the importance of Bonnier Broadcasting's TV channels for distributors public broadcast channels should be included in the analysis.
- (924) The market test shows that rival commercial TV distributors' FTA channels are less preferred alternatives to Bonnier Broadcasting's FTA channels in Finland. Digita and DNA consider, having regard to the popularity of MTV3, that it would be difficult to replace the MTV3 channel with another one.<sup>845</sup> DNA says that competing FTA channels, such as Nelonen (Sanoma) could not create an equally attractive bundle as Bonnier Broadcasting's FTA channels.<sup>846</sup> Elisa considers that the unavailability of MTV3 or other Bonnier Broadcasting channels [CONFIDENTIAL].<sup>847</sup>
- (925) In respect of Bonnier Broadcasting's pay TV channel, C More Juniori, as stated in recital 893, [Business strategy].<sup>848</sup> Therefore, C More Juniori together with MTV3 and Bonnier Broadcasting's other FTA TV channels are considered together as an important product input to the retail supply of AV services.
- (926) The Commission considers that non-commercial channels that are subject to a "must carry" obligation, such as Yle's TV channels,<sup>849</sup> are not a valid alternative to Bonnier Broadcasting's FTA and basic pay TV channels for the following reasons.
- (927) First, Yle does not operate according to commercial incentives and is not dependent on advertising revenues and carriage fees from TV distributors.<sup>850</sup> It operates under strict rules that do not apply to commercial broadcasters. Therefore, since Yle is not driven by the commercial incentives that drive competition among other broadcasters, it cannot be presumed to respond to market opportunities (e.g., should Bonnier Broadcasting TV channels no longer be available to TV distributors) in a way that other commercial broadcasters would.

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<sup>844</sup> Agreements between Bonnier Broadcasting and respectively NENT, Tele2, Telenor, and Telia provided in the Parties' response to the Commission's request for information RFI 14 (ID00885).

<sup>845</sup> Digita's response to questionnaire Q1 to TV distributors in Finland, question F.10.1 (ID00780).

<sup>846</sup> DNA's response to questionnaire Q1 to TV distributors in Finland, question H.4.1 (ID00739).

<sup>847</sup> Elisa's response to questionnaire Q14 to TV distributors in Finland, question 53.1 (ID02036).

<sup>848</sup> Based on a review of distribution agreements between Bonnier Broadcasting and respectively DNA, Elisa, Canal Digital, and Telia provided in the Parties' response to the Commission's RFI 14 (ID001573).

<sup>849</sup> Form CO, paragraph 738.

<sup>850</sup> Form CO, paragraph 118.

- (928) Second, since Yle's channels are subject to a "must carry" obligation, Yle's channels cannot replace Bonnier Broadcasting's FTA and basic pay TV channels since no TV distributor can distinguish their offering on the basis of Yle's channels (since all TV distributors carry the channels). Accordingly, if one distributor were to cease to offer, a commercial TV channel, such as Bonnier Broadcasting's MTV3 TV channels, Yle's TV channels would be an inadequate substitute since the TV distributor is already obligated to carry that channel (as are other all other TV distributors). The fact that Yle's FTA channels are also highly viewed channels does not change the fact that they cannot be a factor influencing the consumer decision to switch between TV distributors, since by law, all TV distributors offer those channels. This is supported by the market investigation, which shows that if MTV3 was no longer available "*the most obvious choice [for MDUs] would be to switch to another cable/fiber operator.*"<sup>851</sup>

*No effective and timely counterstrategies*

- (929) The Non-Horizontal Merger Guidelines indicates that when assessing the ability to foreclose access to inputs the Commission will consider, based on available information, whether there are effective and timely counter-strategies that the rival firms would be likely to deploy.<sup>852</sup>
- (930) The Notifying Party submits that rival TV distributors could develop alternatives to the input in question by sponsoring new TV channels from rival broadcasters and/or launching their own TV channels in cooperation with content owners.
- (931) However, the Notifying Party has not provided any examples of instances where TV distributors have adopted such counter strategies in the past nor substantiated whether such strategies would likely be timely and effective in countering the effects of foreclosure to Bonner Broadcasting's important channels.
- (932) The results of the market investigation indicate that TV distributors would not be able to deploy effective counter-strategies to overcome the effects of a total or partial input foreclosure strategy by the merged entity. TV distributors indicated that there are no other TV broadcasters from which they could license FTA and basic pay TV channels or that alternative suppliers' TV channels would not completely replicate the current arrangements.<sup>853</sup>
- (933) In any case, any counter strategies will only be effective if they can be effectively implemented in a short time and before customer switching. In that respect, the market investigation shows that customers could terminate their agreements with TV distributors if Bonnier Broadcasting's FTA and basic pay TV channels were no longer available.<sup>854</sup> Moreover, customer switching would likely occur in the event of foreclosure. DNA cites statistics from Finnpanel indicating that the average weekly reach of MTV3 in 2018 was 72% and as a result in the event of foreclosure would expect that customers would switch TV distributors.<sup>855</sup> NENT considers that if a TV distributor changed the content of a package that a customer had subscribed to, the

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<sup>851</sup> DNA's response to questionnaire Q14 to retail providers of AV services in Finland, question 57.6.1 (ID01990).

<sup>852</sup> Non-Horizontal Merger Guidelines, paragraph 39.

<sup>853</sup> Responses to questionnaire Q1 to TV distributors in Finland, question F.10.

<sup>854</sup> Responses to questionnaire Q14 to retail providers of AV services in Finland, question 57.1.

<sup>855</sup> DNA's response to questionnaire Q14 to retail providers of AV services in Finland, question 53.1 (ID01990).

*“change is significant to him and he can then end the agreement and seek another provider.”*<sup>856</sup>

b. *Incentive to engage in input foreclosure*

*Total input foreclosure*

- (934) The merged entity will have an incentive to undertake a total input foreclosure strategy if it will be profitable. Total input foreclosure will be profitable if losses in the upstream market, that is to say carriage fees and advertising revenues generated by Bonnier Broadcasting’s FTA and basic pay TV channels, are smaller than the gains from subscribers that switch to the merged entity’s downstream business of retail supply of AV services.<sup>857</sup>
- (935) First, the market feedback shows that respondent TV distributors in Finland consider the merged entity has an incentive to engage in total or partial input foreclosure of its FTA and basic pay TV channels.<sup>858</sup>
- (936) Second, the Commission’s quantitative modelling shows that the merged entity has an incentive to engage in total input foreclosure. As detailed in Section 2.1.1 of Annex I, the Commission uses vertical arithmetic models to quantify the critical departure rate at which total input foreclosure will be profitable for the merged entity.
- (937) The Commission estimates the critical departure rate for FTA and basic pay TV channels in Finland at [...] % (see Section 2.3.1 of Annex I). The total foreclosure strategy will therefore be profitable if the actual departure induced at Telia’s rivals is higher than this, in other words, if at least [...] % of subscribers would switch from their TV distributor to Telia if that were the only way to obtain access to MTV3 and the other channels provided by Bonnier Broadcasting in Finland. This critical departure rate is compared to the actual estimates of departure rates that would occur in the event of a permanent blackout of FTA channels in Finland, namely [...] % (see Section 2.3.3 of Annex I). Since the likely actual departure rate is higher than the estimated likely critical departure rate, the merged entity will likely have the incentive to engage in total input foreclosure of Bonnier Broadcasting’s FTA channels and basic pay TV channel.
- (938) Third, the Commission has reviewed the quantitative analyses submitted by the Notifying Party and it considers that this analysis does not validly support the Notifying Party’s position that the merged entity would lack the incentive to engage in a total foreclosure strategy.
- (939) The Commission, as already mentioned, considers that the critical departure rate is approximately [...] % instead of [...] % as submitted by the Notifying Party relying on various adjustments.<sup>859</sup> The Commission has carefully considered but ultimately rejected the majority of the adjustments proposed by the Notifying Party as inappropriate and/or unsupported. The details of this assessment can be found in Section 2.4.3 of Annex I. As reported by the Notifying Party, without the various

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<sup>856</sup> NENT’s response to questionnaire Q14 to retail providers of AV services in Finland, question 57.1.1 (ID02304).

<sup>857</sup> The Commission has also taken into account in its assessment the possible increase in revenue also in neighbouring the following markets where Telia is active: (i) retail supply of fixed internet access services; and (ii) retail mobile telecommunications services.

<sup>858</sup> Responses to questionnaire Q1 to retail providers of AV services in Finland, question F.7.

<sup>859</sup> RBB Economics’ report “A vertical arithmetic model”, 3 December 2018, Section 4.2 (ID000123).

adjustments made to the model, the critical departure rate would be [...].<sup>860</sup> Hence, such adjustments increase significantly the critical departure rate.

- (940) The Commission explains the set-up of the vertical arithmetic model including the assumptions it has adopted as well as a discussion of the Notifying Party's submissions about the Commission's economic model in Annex I.
- (941) In the Reply to the Article 6(1)(c) Decision, the Notifying Party submits that the Commission's analysis of the First RBB Report, as contained in the Article 6(1)(c) Decision, is unfounded and raises issue in particular with [...]. The Commission notes that the quantitative analysis presented in Annex I presents the Commission's own findings with respect to the existence of strong incentives for the merged entity to engage post-Transaction in input foreclosure strategies and also assesses the adjustments proposed by the Notifying Party, which it concludes are inappropriate or unsupported. Further detail on the Commission's assessment is available in Section 2.3 and 2.4 of Annex I, that present the results of the Commission's quantitative analysis of total input foreclosure and a full assessment of the modelling adjustments proposed by the Notifying Party.
- (942) Finally, the Commission considers that the merged entity will not have the incentive to license Bonnier Broadcasting's FTA and basic pay TV channels, via any distribution means, also including OTT. [Internal documents related to assessments of and work concerning strategies relating to OTT distribution].

- (943) [...]

*Partial input foreclosure*

- (944) In a partial input foreclosure scenario, the merged entity would only consent to license its channels in its distribution agreements that impose the introduction of significant carriage fees (and, more generally, worse commercial conditions) on competitors than in pre-Transaction agreements. Partial foreclosure could also be implemented by significantly degrading the quality of channels licensed to third party distributors (for example, by removing significant content or ancillary rights).
- (945) The Commission considers that overall the merged entity would likely have the incentive to engage in partial input foreclosure of Bonnier Broadcasting's FTA and basic pay TV channels for the following reasons.
- (946) First, most of the respondents to the market investigation indicate that the merged entity would likely have the incentive to degrade the terms and conditions when licensing FTA and basic pay TV channels to competing TV distributors.<sup>861</sup> The market feedback also shows that TV distributors consider that the merged entity could have an incentive to limit the scope of, or increase the fees for ancillary rights currently distributed to competing TV distributors, thereby putting them at a competitive disadvantage. In that respect, DNA submits that the merged entity would be "*likely to demand excessive fees from competing operators for access to FTA services such as NPVR services with regard to its FTA channels (MTV, AVA, Sub)*", and "*may also apply excessive fees for access to high-quality services (e.g. HD quality versions of the FTA channels)*", thereby raising the costs of its competitors.<sup>862</sup>

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<sup>860</sup> RBB Economics' report "A vertical arithmetic model", 3 December 2018, Section 3.3 (ID000123).

<sup>861</sup> Responses to questionnaire Q1 to TV distributors in Finland, questions F.8 and F.8.3.

<sup>862</sup> DNA's response to questionnaire Q1 to TV distributors in Finland, question F.7.1 (ID00739).

- (947) Second, the Commission considers that the Transaction would likely increase the bargaining power of the merged entity because a failure to reach agreement with a downstream TV distributor would harm Bonnier Broadcasting less than it would absent the Transaction. The reason is that the merged entity, post-Transaction, internalise the profits of customers that potentially switch from rival TV distributors to Telia in response to a blackout. This improved threat point for the merged entity (of potentially leaving the negotiations without concluding a deal) would allow the upstream (wholesale licensing of channels) division of the business to negotiate significant increases in licence fees from downstream rivals. [...] in its quantitative analysis of partial input foreclosure of FTA and basic pay TV channels. That analysis considers the potential additional profits from switching customers and the potential losses from customers that leave a rival, which, thus, pays less carriage fees to the merged entity.
- (948) Third, the Commission has carried out a quantitative analysis of the merged entity's incentives to engage post-Transaction in a number of input foreclosure strategies. This analysis is presented in Annex I. In particular, the results of the analysis of the merged entity's incentives to engage in partial input foreclosure of FTA and basic pay TV channels in Finland are presented in Section 3.2.4 and 3.3.1 of Annex I. The quantitative model, a Nash bargaining framework, shows how the Proposed Transaction improves Bonnier Broadcasting's bargaining position over carriage fees vis-à-vis Telia's rival distributors compared to the pre-merger situation, due to the merged entity's ability to capture some of the potentially departing subscribers of the foreclosed distributors, resulting in higher carriage fees charged to rival distributors. The results of this analysis suggest that, post-Transaction, there will likely be a strong incentive for the merged entity to engage in partial input foreclosure of FTA and basic pay TV channels against competing retail providers of AV services in Finland.
- (949) Fourth, the Commission has reviewed the Notifying Party's quantitative analysis, which estimates the post-Transaction carriage fees incurred by rival TV distributors based on various assumptions in the Nash bargaining framework. The Commission considers that a potential partial input foreclosure of rival TV distributors should have a larger effect on the carriage fees of Bonnier Broadcasting's channels than the Notifying Party suggests, in particular for the detailed reasons laid out in section 3.4.2 of Annex I and for the reasons laid out below.
- (950) In the first place, the Nash bargaining model as implemented by the Notifying Party builds on the idea that the merged entity and a competing TV distributor negotiate over the integration of Bonnier Broadcasting's FTA and basic pay TV channels in the TV offering of the rival. The parties negotiate over the terms of the agreement while facing costs of reaching no agreement, for example, the blackout of MTV3 from the rival's TV offering. Post-merger, the costs of the hypothetical threat point to reach no agreement decrease for the merged entity and, thus, its bargaining power increases. The costs of the threat point of not reaching an agreement, one of the key inputs into the quantitative model, is regularly approximated by the costs (that typically take the form of foregone profits) of a permanent or long-term blackout. The Notifying Party's analysis approximates the costs of a permanent blackout with figures from a blackout period from one week to one month. The chosen blackout period leads to a barely improved bargaining situation of the merged entity and, thus, to a mild impact of the potential merger on rival's carriage fees. The Commission

considers the blackout time periods selected by the Notifying Party ([...])<sup>863</sup> too short and therefore not appropriate to approximate the merged entity's threat point in the negotiations.<sup>864</sup> [Bonnier Broadcasting's internal analysis].<sup>865</sup> In Section 3.1 and section 3.4.2.1 of Annex I, the Commission provides its view on why it considers departure rates from longer blackout periods in the quantitative assessments of partial input foreclosure.<sup>866</sup>

- (951) In the second place, the Notifying Party's analysis assumes, as in the case of Sweden, that some foreclosed customers of FTA and basic pay TV channels will choose to divert to premium pay TV OTT services and that, following a blackout of all of Bonnier Broadcasting's FTA and basic pay TV channels on rival TV distributors, [...] would choose to buy access to the merged entity's premium pay TV OTT service (C More OTT).<sup>867</sup> The Commission considers this assumption similarly inappropriate for Finland as for Sweden, as per the discussion in recital 540 above. In the case of Finland in particular, the Commission further notes that in order for a retail TV customer to acquire access to a FTA or basic pay TV channel through a C More OTT subscription, he or she would have to buy a premium pay TV package, i.e., the package of C More OTT that includes MTV3, at the cost of [...] EUR per year<sup>868</sup>. Given the fact that the potential switchers did not subscribe to premium pay TV OTT services before the merger, the Commission considers the Notifying Party's assumption of considerable diversion post-Transaction to C More OTT as wholly unjustified. The Commission further notes that this assumed diversion to OTT has the effect of reducing the negative impact of partial foreclosure on the merged entity's profit and, thus, biases the results in favour of the Notifying Party.
- (952) In the Response to the Article 6(1)(c) Decision, the Notifying Party submits that the Commission's concerns with the RBB quantitative analysis are unfounded. In particular, the Parties object to the Commission's views that (i) the blackout length is too short (ii) the amount of switching to C More OTT is too high, and (iii) the "proportional switching assumption" may mean that diversion to Telia is too low. The Notifying Party further submits that the Commission fails to acknowledge that in Finland no carriage fees are charged for FTA and basic pay TV channels and that introducing carriage fees would represent a major shift in long-standing business rules and a significant change in business model for all market participants.<sup>869</sup>
- (953) In response, the Commission refers above to Section 8.5.1.2.2.b, which responds to the arguments put forward by the Notifying Party, as summarised above and which apply to both Sweden and Finland. In respect of the Notifying Party's submission that [...] carriage fees would represent a major shift, the Commission recognises that

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<sup>863</sup> RBB Economics' report "Partial input foreclosure of FTA TV channels in Finland", 15 March 2019 (ID000503).

<sup>864</sup> While the Commission acknowledges that observed blackouts in Europe last typically around a few weeks, these observations are not a relevant input into the Nash bargaining framework as it does not proxy the long-term value of a blackout event.

<sup>865</sup> Notifying Parties' response to the Commission's RFI 5, document 81 [Bonnier Broadcasting's internal document details].

<sup>866</sup> The European Commission looked into longer blackout periods in its quantitative assessments in the above-mentioned case M.7194. This is also the case in the United States, see UNITED STATES OF AMERICA v. AT&T INC., et al., 2018.

<sup>867</sup> RBB Economics' report "Partial input foreclosure of FTA TV channels in Finland," 15 March 2019 (ID000503).

<sup>868</sup> See: <https://www.cmore.fi/>.

<sup>869</sup> Notifying Party's Response to the Article 6(1)(c) Decision, section G.3.2.

[...] carriage fees for FTA and basic pay TV channels are applicable today but cannot rule out that post-Transaction, the merged entity (due to incentives different to those of Bonnier Broadcasting today) would not [...] such fees. It is important to note that increase in carriage fees is not the only way that a partial input foreclosure strategy could be implemented. The merged entity could instead degrade the quality of the FTA and basic pay TV channels relative to that available pre-merger without charging carriage fees.

c. *Impact on effective competition of total/partial input foreclosure*

- (954) A merger will raise competition concerns due to input foreclosure when it would lead to increased prices in the downstream market, thereby significantly impeding effective competition.<sup>870</sup> The Non-Horizontal Merger Guidelines note that anticompetitive foreclosure may occur by allowing the merged entity to increase the costs of downstream rivals thereby leading to upward pressure on sales prices. Competition may also be significantly impeded if the merged entity would be likely to raise barriers to entry to potential competitors by refusing to supply them or by supplying them on less favourable terms than absent the merger.<sup>871</sup>

*Total input foreclosure*

- (955) This section discusses whether the withdrawal of Bonnier Broadcasting's FTA TV channels from rival TV distributors' offerings would likely have a significant detrimental impact on effective competition on the downstream market for the retail supply of AV services. As shown above in Sections 8.5.2.2.2.a and 8.5.2.2.2.b, post-Transaction, the merged entity will have the ability and the incentive to carry out a total input foreclosure strategy. Consequently, rival TV distributors will no longer be able to offer the Bonnier Broadcasting FTA, including MTV3, to their customers. The Commission considers that as a result, rival TV distributors will no longer be able to compete effectively in the market for the retail supply of AV services, thereby enabling the merged entity to significantly increase retail prices in Finland, for the reasons set out below.

- (956) First, as concluded in Section 8.5.2.2.2.a, Bonnier Broadcasting's FTA channels are an important input for retail suppliers of AV services. The withdrawal of an important input will harm the business of rival TV distributors in Finland thereby negatively affecting their ability to compete against the merged entity. The market investigation shows that all respondent TV distributors consider that if the merged entity were to cease licensing Bonnier Broadcasting's FTA and basic pay TV channels and/or degrade the terms on which it does so, it would have a broadly negative impact on their companies.<sup>872</sup> DNA submits that “[t]he foreclosing effect of blocking access to catch-up or NPVR services for FTA channels for subscribers of competing broadband subscriptions is significant.” and that similarly, applying unfair terms and conditions to the supply of HD quality is likely to have significant foreclosing effects”.<sup>873</sup> Elisa considers that due to the popularity of MTV3 or other

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<sup>870</sup> Non-Horizontal Merger Guidelines, paragraph 47.

<sup>871</sup> Non-Horizontal Merger Guidelines, paragraph 48.

<sup>872</sup> Responses to questionnaire Q1 to TV distributors in Finland, question F.9; Responses to questionnaire Q14 to TV distributors in Finland, questions 53 and 53.1.

<sup>873</sup> DNA's response to questionnaire Q1 to TV distributors in Finland, question F.7.1 (ID00739).

Bonnier Broadcasting channels, if it could no longer offer those channels, customers would likely switch to a competitor distributor and the [CONFIDENTIAL].<sup>874</sup>

- (957) Second, most of the respondents to the market investigation indicate that there are no alternative TV broadcasters providing FTA and basic pay TV channels of similar quality in Finland if, post-Transaction, the merged entity were to cease licensing Bonnier Broadcasting's FTA and basic pay TV channels and/or degrade the terms on which it does so.<sup>875</sup>
- (958) In the Response to the Article 6(1)(c) Decision, the Notifying Party submits that the Transaction will not have a significant detrimental effect of effective competition because total input foreclosure is unlikely to result in higher prices at the retail level. It concludes that in principle there will be no upward pressure on retail prices as provided for in the Non-Horizontal Merger Guidelines. However, the Commission notes that this ignores the fact that post-Transaction, a foreclosure strategy by the merged entity will likely result in a significant number of customers switching to the merged entity, the monopoly supplier of Bonnier Broadcasting's FTA and basic pay channels. Principles of supply and demand lead to the conclusion that with the concentration of this important input in the hands of one supplier, there would indeed be upward pressure on retail prices by the merged entity together with a reduction in quality offering of rival TV distributors. The Commission notes that the Non-Horizontal Merger Guidelines refer to 'increased prices' as shorthand for the various ways in which a merger can result in competitive harm, including reduction in quality and reduced innovation and choice.<sup>876</sup>
- (959) In summary, total input foreclosure would make competition from foreclosed rivals less effective. Due to their inferior product offering, subscribers would switch from these competitors to Telia, resulting in reduced pricing pressure on Telia and giving it the ability to profitably raise prices. Total input foreclosure would also likely cause significant harm to the business of rival TV distributors, reducing their ability to invest in new content and service offerings to customers, ultimately to the detriment of end-customers. Overall, total input foreclosure would likely lead to higher prices, lower levels of innovation and less consumer choice in the market for the retail supply of AV services.

*Partial input foreclosure*

- (960) Post-Transaction the merged entity will have the ability and the incentive to carry out a partial input foreclosure strategy (see Sections 8.5.2.2.2.a and 8.5.2.2.2.b). The likely effect of the implementation of such a partial input foreclosure strategy is a significant increase in the price of rival TV distributors' offerings. Partial input foreclosure in the form of increased licence fees or excluded ancillary rights for Bonnier Broadcasting's FTA and basic pay TV channels is likely to weaken Telia's competitors and make them less effective competitors. In particular, the introduction of significant licence fees may translate in a significant increase in subscriber fees paid by customers.
- (961) The Commission's economic modelling shows that although carriage fees of FTA and basic pay TV channels for rival TV distributors in Finland are currently zero, the

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<sup>874</sup> Elisa's response to questionnaire Q14 to retail providers of AV services in Finland, question 53.1 (ID02037).

<sup>875</sup> Responses to questionnaire Q1 to retail providers of AV services in Finland, questions F.9.2 and F.10.

<sup>876</sup> Non-Horizontal Merger Guidelines, paragraph 10 and footnote 1.

merged entity will have an incentive to [...] a carriage fee of EUR [...] to EUR [...] per subscriber, which in percentage terms corresponds to an [...] increase. The Commission considers the [...] of carriage fees for rival TV distributors, where those were [...], as the equivalent of a significant price increase. Further, assuming a pass-through rate of 100%, the increase in carriage fees translates into price increases of retail TV services of [...]% to [...]% in Finland. Further details are provided in section 3.2.4 of Annex I.

- (962) In the Response to the Article 6(1)(c) Decision, the Notifying Party submits that a partial input foreclosure strategy will not result in increased retail prices because even if there is an increase in carriage fees paid by TV distributors there will be limited pass-on to consumers.<sup>877</sup> The Notifying Party further submits that the actual switching by customers from rival TV distributors to the merged entity will be “very limited” if the merged entity were to degrade the terms and conditions of licensing of ancillary services. The Notifying Party submits that customers of foreclosed rivals are more likely to turn to Bonnier Broadcasting’s AVOD service than go through the trouble of switching TV distributor.<sup>878</sup>
- (963) With respect to the pass-on rate, the Commission addresses this in Section 3.4.2.3 of Annex I.
- (964) With respect to the argument that customers would sooner switch to viewing foreclosed content via AVOD than switch to a rival TV distributor, the market feedback shows that while customers could in theory view content via AVOD<sup>879</sup> it is not likely to be the their ‘next best’ option. The market feedback indicates that customers, at least segments thereof, prefer viewing the content via traditional means. For example, there is a preference, in particular among older customers, for viewing content via traditional TV. There are also reasons associated with quality of the viewing experience that may make AVOD viewing a less desirable alternative (e.g., slow broadband connection may reduce the viewing experience of an AVOD service). Finally, some customers would need to undertake additional investments or alter viewing habits to switch to viewing content via an AVOD service (e.g., some customers may prefer using a remote versus a separate application; and to accommodate the switch, customers would need to purchase a smart TV or STB that enables third party applications).<sup>880</sup> Therefore, it is doubtful that a significant number of customers would maintain a subscription with a TV distributor who lacks important content in circumstances where a rival TV distributor can provide the content both via traditional and AVOD means of distribution.
- (965) Further details about the Commission’s vertical arithmetic model including the assumptions it has adopted as well as an analysis of the Notifying Party’s submissions about the Commission’s economic model are included in the Annex.

*Lack of sufficient countervailing factors*

- (966) The Commission considers that there would not be any sufficient countervailing factors, such as the presence of buyer power or likely entry upstream, which would maintain effective competition in the event of a partial or total input foreclosure

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<sup>877</sup> Notifying Party’s Response to the Article 6(1)(c) decision, section G.4.2.

<sup>878</sup> Notifying Party’s Response to the Article 6(1)(c) decision, section G.4.3.

<sup>879</sup> Responses to questionnaire Q14 to TV distributors in Finland, questions 57.5.

<sup>880</sup> Responses to questionnaire Q14 to TV distributors in Finland, questions 53.3 and 57.5.1. For instance, NENT considers that older customers, who are numerous, prefer to view content via traditional means (ID02304).

strategy. First, the considerations set out in respect of Sweden in Section 8.5.1.2.2 apply equally to Finland, in that Bonnier Broadcasting's FTA or basic pay TV channels are also important inputs to TV distributors in Finland and no entry is foreseen in the near future. In response to the market investigation, DNA shares its view that “*there are no new entrants/channels on the FTA market*” in Finland.<sup>881</sup> Respondents to the market test confirm that no new entrants are foreseen to start supplying FTA TV channels in the next two to three years.<sup>882</sup>

- (967) Second, the Commission considers that rival TV distributors do not have sufficient buyer power to overcome the effects of partial or total foreclosure. The rival TV distributors in Finland have downstream shares not exceeding [20-30]% of the market for the retail supply of AV services including OTT services and [30-40]% when excluding OTT services. Moreover, for buyer power to be effective, rival TV distributors must have the ability to (credibly threaten to) switch to alternative sources of supply.<sup>883</sup> Most of the respondents to the market investigation indicate that there are no alternative TV broadcasters providing FTA and basic pay TV channels of similar quality in Finland if post-Transaction the merged entity were to cease licensing Bonnier Broadcasting's FTA and basic pay TV channels and/or degrade the terms on which it does so.<sup>884</sup> Digita considers that “*as MTV's FTA... channels are very popular, it would be difficult to replace such channels.*”<sup>885</sup> NENT is of the view that since it already licenses all relevant TV channels “*no new ones replacing or partially replacing Bonnier Broadcasting exist.*”<sup>886</sup> DNA affirms, there is no alternative supplier for MTV's FTA channels.<sup>887</sup>
- (968) Third, the results of the market investigation indicate that TV distributors would not be able to deploy effective counter-strategies to overcome the effects of a total or partial input foreclosure strategy by the merged entity. TV distributors indicated that there are no other TV broadcasters from which they could license FTA and basic pay TV channels or that alternative suppliers' TV channels would not completely replicate the current arrangements.<sup>888</sup> The market investigation also confirms that in the event of foreclosure, customers would likely terminate their agreements and switch TV distributors.<sup>889</sup>

### 3. Conclusion

- (969) In light of the foregoing, the Commission concludes that the Transaction would significantly impede effective competition in the market for the retail supply of AV services in Finland, as a result of total or partial input foreclosure of FTA and basic pay TV channels<sup>890</sup>, irrespective of any possible market definition.

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<sup>881</sup> Responses to questionnaire Q1 to retail providers of AV services in Finland, question F.10.1.

<sup>882</sup> Responses to questionnaire Q4 to TV distributors in Sweden, question F.19.

<sup>883</sup> Non-Horizontal Merger Guidelines, paragraph 65.

<sup>884</sup> Responses to questionnaire Q4 to TV distributors in Sweden, question F.10.

<sup>885</sup> Digita's response to questionnaire Q1 to retail providers of AV services in Finland, question F.10.1 (ID000780).

<sup>886</sup> NENT's response to questionnaire Q1 to retail providers of AV services in Finland, question F.10.1 (ID001506).

<sup>887</sup> DNA's response to questionnaire Q1 to retail providers of AV services in Finland, question F.10.1 (ID000739).

<sup>888</sup> Responses to questionnaire Q1 to TV distributors in Finland, question F.10.

<sup>889</sup> Responses to questionnaire Q14 to retail providers of AV services in Finland, questions 53, 56 and 57.

<sup>890</sup> Bonnier Broadcasting's FTA or basic pay TV channels includes all different genres of FTA and basic pay TV channels supplied by Bonnier Broadcasting in the market.

- 8.5.2.3. Total and partial input foreclosure relating to the wholesale supply of premium pay TV sports channels and the retail provision of AV services
1. Notifying Party's view
- (970) In its initial submission, which the Notifying Party maintains in the Response to the Article 6(1)(c) Decision, the Notifying Party submits that the merged entity would have neither the ability nor the incentive to pursue a total or partial input foreclosure strategy against rival TV distributors, related to the provision of premium pay TV sports channels, or any packages of premium pay TV channels including sports TV channels. The Notifying Party also submits that, even if it could hypothetically be shown that the merged entity would have the ability and the incentive to engage in such foreclosure strategy, it would not have any significant detrimental effect on effective competition.<sup>891</sup>
- (971) In respect of the merged entity's ability to undertake a total input foreclosure strategy, the Notifying Party submits that C More's premium pay TV channels are not an important input for input foreclosure concerns to arise. Furthermore, according to the Notifying Party, any foreclosure strategy would likely trigger a response from rival TV broadcasters who would capture additional viewers with new forms of content and from TV distributors who could develop their own premium offering for their customers. The Notifying Party further notes that the merged entity would not be able to foreclose rival distributors until each existing individual distribution agreement between Bonnier Broadcasting and traditional TV distributors regarding C More's TV channels ends. Finally, the Notifying Party states that [...], meaning that rivals could bid for this content as a counterstrategy and the sports rights owners would restrict attempts to deny access to C More's premium pay TV sports channels.
- (972) Even if the merged entity had the ability to engage in a total input foreclosure strategy by preventing rival TV distributors from offering C More's TV channels to their customers, the Notifying Party submits that it is highly unlikely that it would have the incentive to do so. The Notifying Party recognizes that this concern could arise because Telia has, since winning the rights to *Liiga*, offered this content on a near exclusive basis through its own retail arm. However, the Notifying Party submits that [...].
- (973) In particular, the Notifying Party submits a quantitative analysis aiming at demonstrating that the merged entity would not have the incentive to deploy a total input foreclosure strategy against rival TV distributors, related to the supply of C More channels, and C More's sports TV channels in particular.<sup>892</sup> Building on a vertical arithmetic model, the Notifying Party submits that [...]% (or more) of customers of foreclosed rival distributors would need to be recaptured by the merged entity, for the total foreclosure of all C More's premium pay TV sports channels to be a profitable strategy in Finland. The Notifying Party further submits that the likely actual recapture rate in a foreclosure scenario would lie below the critical recapture rate mentioned above.
- (974) In addition, the Notifying Party submits that even if the sports content on C More's premium pay TV sports channels would be important for some customers, blacking

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<sup>891</sup> Form CO, Section 6.9.4.5.

<sup>892</sup> RBB Economics' report "Total input foreclosure of C More's channels", 5 March 2019 (ID000402-000129).

out these TV channels would induce some customers of foreclosed TV distributors to continue accessing C More sports content through other means such as account sharing and possibly piracy. The Notifying Party further argues that a total input foreclosure strategy would likely lead to a significant and irreparable loss of goodwill for both the foreclosed TV channels and for Telia, which would limit the merged entity's incentive to engage in total input foreclosure.

- (975) Even if the merged entity would have the ability and incentive to engage in total input foreclosure, the Notifying Party submits that such strategy would not have any significant detrimental effect on effective competition. According to the Notifying Party, C More is not a critical component for TV distributors to compete and therefore new players could enter the market and operate profitably without these TV channels. If such distributors wanted to offer premium pay TV channels, they could carry existing premium pay TV channels, promote new premium pay TV channels that broadcasters could create, or acquire premium content in order to create their own new premium pay TV channels.

## 2. Commission's assessment

- (976) The Commission's assessment of anticompetitive input foreclosure, in light of the results of the market investigation, is set out in the following recitals. For this purpose, consistent with paragraph 32 of the Non-Horizontal Merger Guidelines, in relation to each of these practices of total and partial input foreclosure of premium pay TV sports channels, the Commission examines, (i) whether the merged entity would have, post-merger, the ability to substantially foreclose access to inputs, (ii) whether it would have the incentive to do so, and (iii) whether a foreclosure strategy would have a significant detrimental effect on competition in the downstream markets.
- (977) The Commission has conducted its assessment on the basis of all possible downstream market definitions. The question as to whether the merged entity would have the ability to undertake a partial or total input foreclosure strategy has therefore been undertaken in light of the importance of those channels to TV distributors active in the potential markets for which premium pay TV sports channels are acquired, namely the markets for the retail supply of: (i) AV services; (ii) linear pay AV services; (iii) linear premium pay AV services; (iv) all possible markets (i) to (iii) segmented into MDU and SDU.<sup>893</sup> The Commission's assessment of the impact of a total or partial input foreclosure strategy also applies in respect of the above mentioned possible markets for which premium pay TV sports channels are an important input. Since the importance of Bonnier Broadcasting's premium pay TV sports channels and the likely impact of foreclosure to those channels as inputs, is as least as significant on the narrower relevant markets as it is on the broader market for the retail provision of AV services, the Commission hereafter in this Section refers to the 'retail supply of AV services' or 'retail AV services' as shorthand for all possible

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<sup>893</sup> Before the Transaction, Bonnier Broadcasting's premium pay TV sports channels are not sold to retail suppliers of AV services as inputs for the provision of (i) linear FTA AV services, (ii) linear basic pay AV services or (ii) non-linear pay AV services. In respect of the latter, Bonnier Broadcasting does provide rights to distribute its premium pay TV sports channels in a non-linear manner as ancillary to the linear distribution of its channels (e.g., catch up rights) and that ancillary form of distribution has been included in the Commission's assessment together with the primary linear distribution of the premium pay TV sports channels. Therefore, the Commission considers that it is not relevant to consider the impact of the Transaction on market segments for which the Bonnier Broadcasting's premium pay TV sports channels are not acquired as an input.

markets comprising the retail supply of: (i) AV services; (ii) linear pay AV services; (iii) linear premium pay AV services; (iv) all possible markets (i) to (iii) segmented into MDU and SDU.

a. *Ability to engage in input foreclosure*

*The importance of premium pay TV sports channels for retail supply of AV services*

- (978) In this section, the Commission discusses whether Bonnier Broadcasting's premium pay TV sports channels can be considered an important input within the meaning of the Non-Horizontal Merger Guidelines for TV distributors to be able to compete in the downstream market for the provision of retail AV services. According to the Non-Horizontal Merger Guidelines, input foreclosure may only give rise to competition problems if the upstream input is important for the downstream product.<sup>894</sup>
- (979) Premium pay TV sports channels are important inputs to TV distributors' ability to compete on the downstream market for the supply of retail AV services, for the following reasons.
- (980) First, retail AV services providers often sell their AV services on their websites with specific reference to the premium pay TV sports channels that customers are able to subscribe to.<sup>895</sup> Furthermore, as far as the Commission is aware, there is no TV distributor in Finland whose TV offering does not include premium pay TV sports channels. It is likely that consumers therefore expect that such channels will be available to them regardless of the identity of their TV distributor and regardless of the means through which they choose to view TV content (i.e., by cable, satellite, fibre etc.). That expectation in turn makes it important that TV distributors are able to offer premium pay TV sports channels to be able to effectively compete in supplying retail AV services.
- (981) Second, most of the TV distributors that replied to the market investigation consider Bonnier Broadcasting's premium pay TV sports channels as important for their retail TV offering in Finland, in the sense that they contribute significantly to the competitiveness of their retail offering.<sup>896</sup> Elisa notes that the merged entity would hold the most popular exclusive sports right in Finland for which the customers are willing to pay the most, namely ice hockey and Formula 1.<sup>897</sup> DNA indicates that [50-100%] of DNA's pay TV customers subscribe to packages including at least one of the three sport rights, Formula 1, Liiga ice hockey and UEFA football.<sup>898</sup>
- (982) The Commission therefore considers that those channels in Finland constitute an important input in the sense outlined in the Non-Horizontal Merger Guidelines.<sup>899</sup>

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<sup>894</sup> Non-Horizontal Merger Guidelines, paragraph 34.

<sup>895</sup> For example, DNA advertises C More on its main web page, see <https://www.dna.fi/>.

<sup>896</sup> Responses to questionnaire Q1 to TV distributors in Finland, question F.4.

<sup>897</sup> Agreed non-confidential version of Elisa's submission "Memorandum for the European Commission, DG Competition, with respect to the acquisition of Bonnier Broadcasting by Telia Company", 2 October 2018 (ID002853).

<sup>898</sup> Agreed non-confidential version of DNA's submission "Additional information to the European Commission", 11 February 2019 (ID000253).

<sup>899</sup> According to the Non-Horizontal Merger Guidelines, input foreclosure may raise competition problems only if it concerns an important input for the downstream product. Non-Horizontal Merger Guidelines, paragraph 34.

*Market power of the merged entity in the wholesale distribution of premium pay TV sports channels*

- (983) For input foreclosure to be a concern, a vertically integrated merged entity must have a significant degree of market power in the upstream market. It is only in those circumstances that the merged entity can be expected to have significant influence on the conditions of competition in the upstream market and thus, possibly, on prices and supply conditions in the downstream market.<sup>900</sup>
- (984) First, as described in Section 8.3.2.3 above, Bonnier Broadcasting's premium pay TV sports channels had a market share of [40-50]% by value and [50-60]% by volume in 2018 in Finland.
- (985) Second, C More sports channels hold significant sport contents which drive customers' behaviour and switching.<sup>901</sup> In particular, Bonnier Broadcasting holds major ice hockey rights (IIHF Ice Hockey World Championships, Champions Hockey League, SHL), football rights (UEFA Champions League, UEFA Europa League, La Liga) and Formula 1 rights.<sup>902</sup> In a memo outlining the rationale of the acquisition of Bonnier Broadcasting, Telia indicates that Bonnier Broadcasting has a “*Strong base of premium sports*” in Finland, with Formula 1, the “*World Cup in Ice Hockey*” (i.e. the IIHF Ice Hockey World Championship) and the UEFA Champions League.<sup>903</sup> In an internal document of Bonnier Broadcasting describing the AV content in its portfolio, Bonnier Broadcasting states that [Bonnier Broadcasting's internal analysis of consumer behaviour].<sup>904</sup>
- (986) Finally, several internal documents submitted by the Parties show that [Internal documents]. In one document, prepared to check the importance of C More's channels in negotiations with Bonnier Broadcasting, [Internal documents].<sup>905</sup> In a document [Internal documents].<sup>906</sup> In another document, [Internal documents].<sup>907</sup>
- (987) With reference to possible contractual limitations that may reduce the merged entity's ability to perform such conduct, the Commission notes that Bonnier Broadcasting's agreements with Telia's competing TV distributors, Elisa, DNA, and Canal Digital/Telenor, [...].<sup>908</sup> Therefore, the Commission considers that there are no contractual limitations to the merged entity's ability to implement foreclosure strategies [...].
- (988) With reference to the technical ability to implement any foreclosure strategy, most of the respondents to the market investigation have indicated that the merged entity post-Transaction could either stop licensing premium pay TV sports channels<sup>909</sup> or degrade the terms and conditions at which it does so.<sup>910</sup> In particular, respondents indicate that Telia when it acquired significant content (i.e., the *Liiga* ice hockey

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<sup>900</sup> Non-Horizontal Merger Guidelines, paragraph 35.

<sup>901</sup> Responses to questionnaire Q1 to TV distributors in Finland, question F.4 and E.2.

<sup>902</sup> RBB Economics' report “Total input foreclosure of C More's channels”, 5 March 2019 (ID000402-000129).

<sup>903</sup> Form CO, Annex 6.11.

<sup>904</sup> [Bonnier Broadcasting's internal document details] (ID001774-063232).

<sup>905</sup> Notifying Party's response to the Commission's RFI 14, question 4 d-e-, Appendix 6, slide 40 (ID00942).

<sup>906</sup> Form CO, Annex 6.12.

<sup>907</sup> Telia's internal document [Telia' Company's internal documents] (ID001924-044124).

<sup>908</sup> Form CO, Annex 11.

<sup>909</sup> Responses to questionnaire Q1 to TV distributors in Finland, questions F.12 to F.12.2.

<sup>910</sup> Responses to questionnaire Q1 to TV distributors in Finland, questions F.13 to F.13.2.

sport rights) decided to reduce the competitiveness of other TV distributors by making *Liiga* content exclusively available on Telia's TV services. DNA considers that, post-Transaction, the merged entity would apply similar restrictions also for C More's significant sports content.<sup>911</sup> In addition, DNA submits that access to premium sports content could be made technically less user-friendly for subscribers of rival TV distributors by, for example, requiring the use of additional devices in order to access the content, or by degrading picture quality, audio quality, simultaneous audio sports coverage, or additional content, such as studio commentaries and interviews in connection with live sports content.<sup>912</sup>

- (989) In the Response to the Article 6(1)(c) Decision, the Notifying Party submits, first, that certain factors limit the importance of Bonnier Broadcasting's premium pay TV sports channels as input. In particular, the Notifying Party submits that [...].
- (990) As to the claim that Bonnier Broadcasting's portfolio of sports rights does not include all the most important sports rights, the Commission notes that the Notifying Party gives the specific example of NENT in Sweden, but does not make this claim specifically for Finland. With regard to NENT in Sweden, the Commission refers to recitals (587) to (588) above. With regard to Finland, the Commission notes that respondents to the market investigation indicated that Formula 1, UEFA Champions League and Ice Hockey World Championship, are among the top 10 most important sports events in Finland.<sup>913</sup>
- (991) As to the Notifying Party's argument that various statements in internal documents as to the popularity of Bonnier Broadcasting's premium pay TV sports channels do not lead to the conclusion that these TV channels are critical for TV distributors' ability to compete downstream, the Commission observes that the Notifying Party has not brought forward convincing evidence that would invalidate the Commission's conclusion. The Notifying Party states that only a small percentage of rival TV distributors' customers subscribe to Bonnier Broadcasting's premium pay TV sports channels ([10-20% in Finland]). In this regard, the Commission notes that premium packages are add-on packages targeted to specific audiences, in this case sport enthusiasts with higher willingness to pay. Therefore, such customers bring value to rival distributors. In addition, the Commission recalls that all main TV distributors pre transaction provide access to Bonnier Broadcasting's premium pay TV sports channels.
- (992) As to the Notifying Party's argument that exclusivity of premium pay TV sports channels is not sufficiently important to induce customers to switch away from rivals in large numbers, the Notifying Party considers that [Telia Company's performance and business strategy].
- (993) First, the Notifying Party [Telia Company's performance and business strategy].<sup>914</sup>
- (994) Second, Telia offers TV subscriptions, including *Liiga*, in Finland via Telia TV which is a streaming service that can be linked to TVs using a set-top box (for an extra fee of EU 10/month). While the submissions of the Notifying Party states traditional TV subscriptions, they are silent about the additions to Telia TV.

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<sup>911</sup> DNA's response to questionnaire Q1 to TV distributors in Finland, question F.12.1 (ID00739).

<sup>912</sup> Agreed non-confidential version of DNA's submission entitled "Statement to the European Commission", 7 September 2018 (ID001503).

<sup>913</sup> Responses to questionnaire Q14 to retail providers of AV services in Finland, question 59.

<sup>914</sup> See Telia's website: <https://www.telia.fi/liiga/tuotteet>

- (995) Third, Telia heavily advertises its *Liiga* content as streaming product and only states the compatibility with TV subscriptions on the very bottom of its website.<sup>915</sup>
- (996) With reference to the Notifying Party's argument that customers are unable to switch TV distributors, the results of the market investigation indicate that customers could terminate their agreements in case TV distributors would be unable to continue offering an existing customer one of the premium pay TV sports channels that was available to them at the time they signed up.<sup>916</sup> In this regard, NENT stated that “[g]enerally you can't change the content of the subscription during the term the customer has signed into. If you do the customer can argue that the change is significant to him and he can then end the agreement and seek another provider.”<sup>917</sup> DNA explained that unreasonable terms are forbidden according to the Consumer Protection Act and that consumer protection authorities have interpreted that in such a way that binding agreements can be terminated before the end of the binding period in case there is a significant change of the TV service to the detriment of the consumer. DNA has also pointed at the “Special terms and conditions” applicable to DNA's TV and entertainment services, which provide that “*the customer has the right to terminate a fixed-term contract when the content of the service changes*”.<sup>918</sup> Furthermore, Telenor stated that “*if the change is significant or the whole package is terminated, then there are possibilities to terminate the whole subscription while in a binding period*” and that that could be the case if the C More Sport–package would be terminated or if the most important channel or channels would be terminated from the C More package.<sup>919</sup>
- (997) With reference to the argument, that Telia would have [...], the Commission considers that the same reasons as explained in recital (919) above with regard to basic and FTA TV channels apply also to the premium pay TV sports channels.

*Remaining upstream suppliers offer less preferred alternatives*

- (998) The only remaining upstream suppliers of premium pay TV sports channels in Finland are MTG/NENT and Sanoma/Nelonen. If Bonnier Broadcasting would reduce the availability of its premium pay TV sports channels, MTG/NENT and Sanoma/Nelonen would not be able to replace the Bonnier Broadcasting's premium pay TV sports channels in Sweden. The market investigation shows that Bonnier Broadcasting's premium pay TV sports channels are important channels that cannot be replaced by other broadcasters' channels.<sup>920</sup> In this regard DNA noted that “*equally attractive premium sports content will no longer be available on the*

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<sup>915</sup> See Telia's website: <https://www.telia.fi/liiga/tuotteet>

<sup>916</sup> Responses to questionnaire Q14 to retail providers of AV services in Finland, question 68.1.

<sup>917</sup> NENT's response to questionnaire Q14 to retail providers of AV services in Finland, question 68.1.1 (ID02304).

<sup>918</sup> DNA's response to questionnaire Q14 to retail providers of AV services in Finland, questions 34 and 68.1.1 : “*Variation and alterations in channel and content selection due to reasons fully or partly beyond DNA's control are a normal feature of content services. DNA cannot affect the decisions made by channel and programme providers or third parties concerning the content of the services. This means that, for example, the provision of a channel, series, or sport in a channel package may end or change during the contractual relationship. The aim is to maintain the content of the service during these changes sufficiently diverse and as similar as possible. If this is not possible, the customer has the right to terminate a fixed-term contract when the content of the service changes.*” (ID01990).

<sup>919</sup> Telenor's response to questionnaire Q14 to retail providers of AV services in Finland, question 34 (ID02214).

<sup>920</sup> Responses to questionnaire Q1 to TV distributors in Finland, question F.15.

*wholesale market in Finland*<sup>921</sup> and even though a customer may switch to a different package of premium pay TV sports channels with DNA, “*typically there is no substitute sports content available*”.<sup>922</sup>

*No effective and timely counterstrategies*

- (999) The Commission considers that there are no effective and timely counterstrategies that the rival firms operating in the downstream market would be likely to deploy.
- (1000) In the Response to the Article 6(1)(c) Decision, the Notifying Party submits that rival TV distributors could implement counterstrategies. The Notifying Party notes that premium sports rights are frequently tendered so any TV distributors could bid for those rights and expand into the market for the wholesale supply of premium pay TV sports channels as a counter-strategy to any attempt by the merged entity to foreclose access to premium pay TV sports channels. The Notifying Party considers that market practice shows that broadcasters and TV distributors have expanded into the premium pay sports space, and these entries happen “all the time”. The Notifying Party has provided three examples for Finland: Telia acquired the *Liiga* rights in Finland, Sanoma will take over the second highest hockey league rights in Finland in Fall 2019 and Yle has taken over the FIA World Rally Championship rights in Finland.
- (1001) The Commission considers that while broadcasters and distributors could acquire sports rights, it is not likely that this will occur in the near future to such an extent that distributors operating on the downstream market would be less reliant on Bonnier Broadcasting’s premium pay TV sports channels. As noted, Bonnier Broadcasting holds a bouquet of strong sports rights including major ice hockey rights (IIHF Ice Hockey World Championships, Champions Hockey League, SHL), football rights (UEFA Champions League, UEFA Europa League, La Liga) and Formula 1 rights. For example, Bonnier Broadcasting holds the rights to IIHF Ice Hockey World Championships and Champions Hockey League until 2023 and the UEFA Champions League, UEFA Europa League, La Liga and Formula 1 until 2021. When such rights come to expiry, Bonnier Broadcasting could extend these rights beyond their term. In addition, Bonnier Broadcasting could acquire further broadcasting rights for premium sports. In this regard, the Commission notes that NENT holds the rights to NHL until 2021 and to Premier League until 2022.
- (1002) The results of the market investigation indicate that TV distributors consider that there are no other TV broadcasters from which they could license premium pay TV channels or that alternative suppliers’ TV channels would not completely replicate the current arrangements.<sup>923</sup> Furthermore, market participants have not indicated any new entrants that would start supplying premium pay TV sports channels in the next two to three years.<sup>924</sup>

*b. Incentive to engage in input foreclosure*

*Total input foreclosure*

- (1003) As regards a total input foreclosure scenario, the merged entity will face a trade-off between lost profits in the upstream market, that is to say mainly licensing revenues

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<sup>921</sup> DNA’s response to questionnaire Q1 to TV distributors in Finland, question H.5.1 (ID00739).

<sup>922</sup> DNA’s response to questionnaire Q14 to retail providers of AV services in Finland, question 68.2.1 (ID01990).

<sup>923</sup> Responses to questionnaire Q1 to TV distributors in Finland, question F.15.

<sup>924</sup> Responses to questionnaire Q1 to TV distributors in Finland, question F.19.

of the Bonnier Broadcasting's premium pay TV sports channels, and a profit gain from being able to expand sales or to raise prices to consumers in the market for the retail supply of AV services because of the marginalisation or the increase of the barriers to expansion of existing competitors and/or the increase of the barriers to entry for potential entrants.

- (1004) The Commission considers that overall the merged entity may have the incentive to engage in total input foreclosure of Bonnier Broadcasting's premium pay TV sports channels or any packages of premium pay TV channels including sports TV channels for the following reasons.
- (1005) First, most of the respondents to the market investigation have indicated that the merged entity would either stop licensing all of its premium pay TV sports channels or certain of its channels to competing TV distributors.<sup>925</sup>
- (1006) Second, [...]. Therefore, each potential customer of Bonnier Broadcasting's premium pay TV sports channels switching to Telia is willing to spend more for all Telia's AV offering, including FTA or premium pay TV non-sports channels. The merged entity may therefore have the incentive to engage in total input foreclosure of Bonnier Broadcasting's premium pay TV sports channels to attract customers of competing downstream providers of retail AV services.
- (1007) Third, the Commission considers that post-Transaction, the merged entity would have the incentive to exclusively provide Bonnier Broadcasting's premium pay TV sports channels to Telia since this would also have a positive effect on the sale of Telia's fixed internet access services and basic pay retail AV services. The Commission considers that the same conditions discussed at recital (609) for Sweden would apply also for Finland, in particular in relation to the SDU market. Therefore, post-Transaction, the merged entity knows that a foreclosing strategy would have positive effects also on its fixed internet access services and basic pay retail AV services offerings.
- (1008) Fourth, the Commission has carried out a quantitative analysis of the merged entity's incentives to engage post-Transaction in a number of input foreclosure strategies. This analysis is presented in Annex I. In particular, the results of the analysis of the merged entity's incentives to engage in total input foreclosure of premium pay TV sports channels in Finland are presented in Section 2.3.4 of Annex I. The results of this analysis suggest that, post-Transaction, there will likely be a strong incentive for the merged entity to engage in total input foreclosure of premium pay TV sports channels against competing retail providers of AV services in Finland.
- (1009) Fifth, the Commission has reviewed the quantitative analyses submitted by the Notifying Party and it considers that it does not credibly support the conclusion that the merged entity would lack the incentive to engage in a total input foreclosure strategy for the reasons outlined in Section 8.5.1.2.2.b. In addition, in the quantitative analysis provided by the Notifying Party, several adjustments, specific to the foreclosure of premium pay TV sports channels, were made to the vertical arithmetic model. In particular, the Commission raises some doubts as to the accuracy of the following adjustments, which all raise the critical recapture rate found as a result of the analysis.<sup>926</sup>

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<sup>925</sup> Responses to questionnaire Q1 to TV distributors in Finland, questions F.12, F.12.1 and F.12.3.

<sup>926</sup> RBB Economics' report "Total input foreclosure of C More's channels", 5 March 2019 (ID000402-000129).

- (1010) In the first place, the model<sup>927</sup> introduces a degree of uncertainty as to whether the merged entity would maintain the rights it currently holds to broadcast sports also in the future. In the 6(1)(c) Decision the Commission wrongly concluded that manner in which this uncertainty was modelled allowed for losing but not regaining such rights. The Commission notes that although, as clarified by the Notifying Party in its Response to the Article 6(1)(c) Decision, the model does allow for the re-acquisition of sport rights, the model's treatment of this probability as an exogenous element outside of the merged entity's control is unwarranted and [...], as explained in detail in Section 2.4.3.6 of Annex I.
- (1011) In the second place, the model assumes that customers of foreclosed rival TV distributors may be in binding contracts with their distributors, and, thus, not able to switch to the merged entity's retail AV services immediately. The Notifying Party justifies this assumption in that contracts usually entail a binding period, during which consumers are locked in. However, the Commission understands that the model also assumes that customers recaptured by the merged entity in a total foreclosure scenario would be able to switch away from the merged entity immediately, in case the merged entity loses the relevant sports rights. This asymmetry in customers' switching ability seems at odds with the Notifying Party's claim mentioned above, and artificially raises the critical recapture rate.
- (1012) In the third place, the model assumes that all customers recaptured by the merged entity in a foreclosure scenario would cancel their subscription, if the merged entity loses the sports rights. By contrast, the model assumes that all customers who are not recaptured by the merged entity in a foreclosure scenario would have kept their subscriptions to the merged entity absent foreclosure, even if sports right were to be lost. By contrast, non-recaptured customers would have kept their subscriptions, absent foreclosure, if rights had been lost. The Commission considers this assumption unsubstantiated. Consumers which attach a high value to accessing specific sports rights (the "fans") would indeed often remain loyal to the league or tournament they have been watching, regardless of the retail distributor. However, consumers which attach value to having a wide offer of premium sports content, without being particularly attached to a particular sport or league (the "casual viewers"), would also derive some (potentially high) utility from accessing the premium sports content, and, thus, could potentially switch to the merged entity's offer in case of a total foreclosure scenario. Alternatively, if one were to accept the assumptions made by the Notifying Party in their quantitative analysis [...], and only foreclose the former channel.
- (1013) In the fourth place, the various criticisms made in Section 8.5.2.2.2.b also apply here. In particular, the Commission raises some doubts as to the accuracy of the assumptions and adjustments to the model relating to the long delay faced by consumers with respect to their ability to switch, or the contributing margins of customers who switch from a foreclosed rival to the merged entity.
- (1014) Overall, based on the above, the Commission considers that the critical recapture rate should be lower than the one found in the Notifying Party's quantitative analysis.
- (1015) In the Response to the Article 6(1)(c) Decision, the Notifying Party submits that the results of its own quantitative analyses hold and that these results show that the merged entity would have no profit incentive to engage in a total input foreclosure

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<sup>927</sup> RBB Economics' report "Total input foreclosure of C More's channels", 5 March 2019 (ID000402-000129).

strategy of premium pay TV sport channels. First, the Notifying Party submits that the quantitative analysis does allow the merged entity to win the sport rights back after losing them. Second, according to the Notifying Party the view that the quantitative analysis is biased because of its asymmetric treatment of customers' ability to switch TV distributors is unfounded and, can in any case be resolved by adjusting the parameters of the model, and without significantly affecting the results. Third, as to the concern that the quantitative analysis would not allow so-called "casual viewers" to switch to the merged entity in the event of foreclosure (thereby understating the potential gains from foreclosure), the Notifying Party submits that the results of the quantitative analysis do not actually depend on the classification of "casual viewers" and sports "fans" as described in the Decision.

- (1016) As discussed in detail in section 2.4.3.6 of Annex I, the Commission must reject the Notifying Party's assumption on [...] because the set of assumptions has strong implications for the overall results, as it implies that (i) the gains from foreclosure only occur when specific sports rights are held by the merged entity (but that there are no gains from foreclosure from the set of casual viewers interested in non-specific sport offers), and that (ii) the losses from foreclosure always occur whether the specific sports rights stand with the merged entity or not (i.e., amongst the non-recaptured customers under foreclosure, no one would have decided to discontinue its subscription absent foreclosure if rights were lost). Hence, the gains of foreclosure are uncertain, while the losses are certain, because of the underlying assumptions made in the model.
- (1017) Finally, the Commission considers that the merged entity will not have the incentive to license Bonnier Broadcasting's premium pay TV sports channels via any distribution means, [...], post-Transaction nothing will change with regard to licensing of standalone OTT rights. As explained in Section 8.5.2.1, pre-Transaction [...].
- (1018) On the basis of the above considerations, the Commission considers that overall the merged entity will have the incentive to engage in total input foreclosure of Bonnier Broadcasting's premium pay TV sports channels or any packages of premium pay TV channels including sports TV channels.

*Partial input foreclosure*

- (1019) In a partial input foreclosure scenario, the merged entity would only consent to license its channels in its distribution agreements that impose licence fees (and, more generally, commercial conditions) on competitors that are higher than their current, potentially null licence fees. Partial foreclosure could also be implemented by significantly degrading the quality of channels licensed to third party distributors (for example, by removing significant content or ancillary rights).
- (1020) The Commission considers that overall the merged entity may have the incentive to engage in partial input foreclosure of Bonnier Broadcasting's premium pay TV sports channels, or any possible segmentation, for the following reasons.
- (1021) First, most of the respondents to the market investigation indicate that the merged entity would likely have the incentive to degrade the terms and conditions when licensing premium pay TV sports channels to competing TV distributors.<sup>928</sup>

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Responses to questionnaire Q1 to TV distributors in Finland, questions F.13, F.13.1 and F.13.3.

- (1022) Second, the Commission considers that the bargaining power of the merged entity is increased by the Transaction because a failure to reach agreement with a downstream TV distributor would harm Bonnier Broadcasting less than it did absent the Transaction. This is because after the Transaction Bonnier Broadcasting will internalise the profits of Telia and these profits increase if Telia's downstream rivals cannot access Bonnier Broadcasting's premium pay TV sports channels. This improved threat point for the merged entity allows the upstream division to negotiate a higher licence fee with downstream rivals.
- (1023) Third, TV distributors consider that the merged entity could have an incentive to limit the scope of the ancillary rights currently distributed to competing TV distributors, thereby putting them at a competitive disadvantage. In that respect, DNA considers that the merged entity would likely limit TVE rights.<sup>929</sup>
- (1024) Fourth, the Commission has carried out a quantitative analysis of the merged entity's incentives to engage post-Transaction in a number of input foreclosure strategies. This analysis is presented in Annex I. In particular, the results of the analysis of the merged entity's incentives to engage in partial input foreclosure of premium pay TV sports channels in Finland are presented in Section 3.3.3. of Annex I. The results of this analysis suggest that, post-Transaction, there will likely be a strong incentive for the merged entity to engage in partial input foreclosure of premium pay TV sports channels against competing retail providers of AV services in Finland.
- (1025) In the Response to the Article 6(1)(c) Decision, the Notifying Party submitted that the merged entity would not have sufficient bargaining power vis-à-vis rival TV distributors so as to harm those rivals' ability to compete in the downstream market. The Notifying Party also contests that customers would likely switch TV providers but rather, in the case of a blackout, submits that those customers would remain with the current distributor and access the blacked out content via Bonnier Broadcasting's online streaming service. The Notifying Party has provided a quantitative analysis estimating price increases in retail price of [...]% on average in Finland in a worst-case scenario (i.e. with 100% pass-on). Therefore, the Notifying Party considers that there is no basis for concluding that rivals' ability to compete in the downstream market would be harmed by the merger.
- (1026) The Commission has reviewed the quantitative analysis submitted by the Notifying Party and confirms its views that the majority of the proposed adjustments are inappropriate and/or unsupported as discussed in Section 3.4.2 of Annex I. The Commission maintains that the results of its own analysis, as presented in Section 3.3.1 of Annex I more accurately capture the likely retail price increases that can be expected to result from the change in bargaining power between the merged entity and competing retail providers of AV services in Sweden, for the reasons discussed therein.

c. *Impact on effective competition of total/partial input foreclosure*

*Total input foreclosure*

- (1027) This section discusses whether the withdrawal of Bonnier Broadcasting's premium pay TV sports channels from rival TV distributors' offerings would likely significantly impede effective competition on the downstream market for the retail supply of AV services. As shown above in Sections 8.5.2.3.2.a and 8.5.2.3.2.b, post-Transaction, the merged entity will have the ability and the incentive to carry out a

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<sup>929</sup>

DNA's response to questionnaire Q1 to TV distributors in Finland, question F.12.1 (ID000739).

total input foreclosure strategy. Consequently, rival TV distributors will no longer be able to offer the Bonnier Broadcasting premium pay TV sports channels to their customers. The Commission considers that as a result, rival TV distributors will no longer be able to compete effectively in the market for the retail supply of AV services, thereby enabling the merged entity to significantly increase retail prices for TV packages.

- (1028) First, the withdrawal of an important input will harm the business of rival TV distributors thereby negatively affecting their ability to compete against the merged entity. The market investigation shows that respondents to the market investigation have indicated that, if post-Transaction, the merged entity were to cease licensing Bonnier Broadcasting's premium pay TV sports channels and/or degrade the terms on which it does so, it would have a broadly negative impact on their companies.<sup>930</sup>
- (1029) Second, the market investigation shows that if the merged entity were to cease licensing Bonnier Broadcasting's premium pay TV sports channels and/or degrade the terms on which it does so, customers could and would switch away from the distributors who do not offer these channels to distributors who offer those channels such as the merged entity.<sup>931</sup>
- (1030) Third, the Commission considers that a significant number of customers would likely switch away from rival TV distributors in the event of the withdrawal of Bonnier Broadcasting's premium pay TV sports channels. Most of the respondents to the market investigation have indicated that there are no alternative TV broadcasters providing premium pay TV sports channels of similar quality in Finland if post-Transaction, the merged entity were to cease licensing Bonnier Broadcasting's premium pay TV sports channels and/or degrade the terms on which it does so.<sup>932</sup> Therefore, their retail AV offering would significantly be impacted by not providing Bonnier Broadcasting's premium pay TV sports channels, or similar TV channels, to their end customers.
- (1031) In addition, contrary to the Notifying Party's argument, the market feedback confirms that customers would be able to terminate agreements in the event that Bonnier Broadcasting's premium pay TV sports channels were no longer available (see recital (996)). The ability for customers to terminate their agreements, coupled with the popularity of the channels and market feedback that the impact of foreclosure would be negative, lead to the conclusion that a sufficiently large number of consumers could and would switch away from foreclosed rivals toward the merged entity. This would have detrimental impacts on the ability for rival TV distributors to compete effectively against the merged entity.
- (1032) In the Response to the Article 6(1)(c) Decision, the Notifying Party submits that: (i) Bonnier Broadcasting's premium pay TV sports channels are not important inputs; and, (ii) there are alternative sources of premium pay sports (broadcasters as well as TV distributors).
- (1033) In this regard, the Commission notes, first, that Bonnier Broadcasting's premium pay TV sports channels are important inputs, as explained in Section 8.5.2.3.2.a above. Second, as to the absence of alternative sources of premium pay TV sports channels, the Commission refers to Section 8.5.2.3.2.a above.

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<sup>930</sup> Responses to questionnaire Q1 to TV distributors in Finland, question F.14.

<sup>931</sup> Responses to questionnaire Q14 to retail providers of AV services in Finland, question 66.

<sup>932</sup> Responses to questionnaire Q1 to TV distributors in Finland, question F.15.

- (1034) In summary, total input foreclosure would make competition from foreclosed rivals less effective. Due to their inferior product offering, subscribers would switch from these competitors to Telia or fewer subscribers would switch away from Telia than would have been the case without total input foreclosure. In either scenario, pricing pressure on Telia would be reduced, giving it the ability to raise prices. Total input foreclosure would also likely cause significant harm to the business of rival TV distributors, reducing their ability to invest in new content and service offerings to customers, ultimately to the detriment of end-customers. Overall, total input foreclosure would likely lead to higher prices, lower levels of innovation and less consumer choice in the market for the retail supply of AV services.

*Partial input foreclosure*

- (1035) Post-Transaction, the merged entity will have the ability and the incentive to carry out a partial input foreclosure strategy (see Sections 8.5.2.3.2.a and 8.5.2.3.2.b). The likely effect of the implementation of such a partial input foreclosure strategy is a significant increase in the price of rival TV distributors' offerings. Partial input foreclosure in the form of increased licence fees or limited ancillary rights for Bonnier Broadcasting's premium pay TV sports channels is likely to weaken Telia's competitors and make them less effective competitors. In particular, a significant increase in licence fees, as shown by the Commission's economic modelling, will likely translate to a significant increase in end-customer subscriber fees.
- (1036) The Commission's economic modelling of partial input foreclosure of Bonnier Broadcasting's premium pay TV sports channels towards its Finnish rivals DNA, Telenor/CanalDigital and Elisa finds that their revenue shares left to the merging entity will increase post-merger by approximately EUR [...] to EUR [...] which corresponds to increases of current revenue shares of approximately [...]% to [...]. Assuming a 100% pass-on rate of the increase in upstream prices, downstream prices are expected to significantly increase by about [...]% to [...], depending on the foreclosed rival. For the Commission's detailed economic model, see Sections 3.1.1 and 3.2.4 of Annex I.
- (1037) In the Response to the Article 6(1)(c) Decision, the Notifying Party submits that partial input foreclosure would not result in increased retail prices given the limited pass-on to consumers. According to the Notifying Party, pass-on to consumers is likely to be very limited since the carriage fee increases are firm and time specific.
- (1038) As to limited pass-on to consumers, the Commission has considered and rejected the majority the adjustments proposed by the Notifying Party as inappropriate and/or unsupported. The details of this assessment can be found in Section 3.4.2.3 of Annex I.
- (1039) In the Response to the Article 6(1)(c) Decision, the Notifying Party submits a quantitative analysis aiming at showing that the merged entity would not substantially improve its bargaining position, meaning that any changes to the way that revenue is shared between the merged entity and its rivals is extremely limited and even if passed-on to consumers in its entirety would only result in small increases of less than [...]% in price [...]% in Finland).
- (1040) The Commission has reviewed the quantitative analysis of partial input foreclosure of premium pay TV sports channels submitted by the Notifying Party, has assessed it and rejects the submitted results for reasons given in section 3.4.2 of Annex I.

### *Lack of sufficient countervailing factors*

- (1041) There are no countervailing factors such as likely entry upstream that would maintain effective competition. Downstream competitors cannot easily bypass the merged entity because, as shown above in Section 8.5.2.3.2.a, Bonnier Broadcasting's premium pay TV sports channels are important to TV distributors' business. The Notifying Party acknowledges that while the value chain for AV content has been evolving for a long time, "not necessarily many new linear TV channels will be launched." The Notifying Party considers that entry will occur in other ways as part of the evolving value chain but does not give any examples of new entry into the wholesale supply of premium pay TV sports channels in Finland. The Notifying Party considers that market practice shows that broadcasters and TV distributors have expanded into the premium pay sports space, and these entries happen "all the time". The Notifying Party has provided three examples for Finland: Telia acquired the *Liiga* rights in Finland, Sanoma will take over the second highest hockey league rights in Finland in Fall 2019 and Yle has taken over the FIA World Rally Championship rights in Finland. In this regard, the Commission refers to recital (1001) above.
- (1042) Accordingly, the Commission is of the view that the negative impact of input foreclosure will not be overcome by any new entry in the foreseeable future considering that no new entry is foreseen at present let alone new entry that would likely be considered an alternative to C More.
- (1043) In addition, most of the respondents to the market investigation indicate that there are no alternative TV broadcasters providing premium pay TV sports channels of similar quality in Finland if post-Transaction, the merged entity were to cease licensing Bonnier Broadcasting's premium pay TV sports channels and/or degrade the terms on which it does so.<sup>933</sup>

### 3. Conclusion

- (1044) In light of the foregoing, the Commission concludes that the Transaction is likely to significantly impede effective competition in the market for the retail supply of AV services in Finland, as a result of total or partial input foreclosure of premium pay TV sports channels or any premium pay package including those channels.
- 8.5.2.4. Total and partial input foreclosure relating to the wholesale supply of premium pay TV non-sport channels and retail provision of AV services in Finland
- (1045) The Commission's assessment of anticompetitive input foreclosure in Finland, in light of the results of the market investigation, is set out in the following recitals. For this purpose, consistent with paragraph 32 of the Non-Horizontal Merger Guidelines, the Commission examines, (i) whether the merged entity would have, post-merger, the ability to foreclose access to inputs, (ii) whether it would have the incentive to do so, and (iii) whether a foreclosure strategy would have a significant detrimental effect on competition downstream.
- (1046) The Commission assesses the risk of foreclosure of rival retail providers of AV services through the denial of access to Bonnier Broadcasting's premium pay TV non-sports channels, or through an increase of the carriage fees paid by such rival providers to be able to carry Bonnier Broadcasting's premium pay TV non-sports

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<sup>933</sup>

Responses to questionnaire Q1 to TV distributors in Finland, question F.15.

channels. In Finland, premium pay TV non-sports channels are all premium pay TV films and series channels.<sup>934</sup>

1. Potential targets of input foreclosure

(1047) For the purposes of its assessment, the Commission has considered, in particular, as the more likely potential targets of an input foreclosure strategy, the retail suppliers of AV services that compete closely with Telia, irrespective of any potential market segmentation. On the basis of the market shares presented in Section 8.3.2.4, in relation to the market for the retail supply of AV services the main targets of potential foreclosure are the other main TV distributors, Elisa, DNA and Telenor.

2. Notifying Party's view

(1048) In its initial submission the Notifying Party submits that the merged entity would have neither the ability nor the incentive to pursue a total input foreclosure strategy against rival TV distributors, related to the provision of premium pay TV non-sports channels.

(1049) As regards the ability to engage in input foreclosure, the Notifying Party stresses that [...]. In addition, end-customers would have a wide range of alternatives, like other premium pay TV channels, such as Viasat, or SVOD services, such as Netflix, Amazon or HBO Nordic. In that respect, the Notifying Party submits that market shares for wholesale supply of premium pay TV films and series channels do not reflect the full competitive environment, given that competitive pressure from SVOD providers would be particularly relevant for TV channels of this genre. The Notifying Party submits that a foreclosure strategy would most likely lead customers to switch to these alternatives, and concludes that C More is not a sufficiently important input in Finland for input foreclosure to be a concern.<sup>935</sup>

(1050) As regards the incentive to engage in input foreclosure, the Notifying Party submits that the results of the vertical arithmetic model developed for C More by RBB Economics shows that the actual recapture rates are likely to be lower than the critical recapture rates. The latter correspond to the minimum proportion of customers of foreclosed TV distributors that would have to continue subscribing to C More, either by joining Telia's traditional TV distribution or by subscribing to C More's standalone streaming service, in order to make total input foreclosure profitable. Input foreclosure would thus not be a profitable strategy in this case. In particular, C More subscribers could choose from a variety of alternatives, such as competing premium pay TV channels and popular standalone streaming services like Netflix and HBO. There is a high risk that of large numbers of customers switching to these alternatives, if C More were no longer available via their TV distributor. In addition, the Notifying Party states that any input foreclosure strategy would likely lead to a [...] for both Telia and Bonnier Broadcasting.<sup>936</sup>

(1051) As for the effect on competition, the Notifying Party submits that C More would not be a critical component for TV distributors to compete on the market in Finland, as only a small proportion of rival TV distributors' customers would purchase C More. In addition, the Notifying Party submits that new players could enter the market and

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<sup>934</sup> Form CO, Schedule 1. Bonnier Broadcasting's premium pay TV non-sport channels offered in Finland are all film and series TV channels, i.e. C More First, C More Hits, C More Stars, C More Series and SF-Kanalens.

<sup>935</sup> Form CO, paragraphs 668 and 669.

<sup>936</sup> Form CO, paragraphs 678-681 and 687.

operate profitably without these C More premium pay TV films and series channels.<sup>937</sup>

### 3. Commission's assessment

- (1052) The Commission has conducted its assessment on the basis of all possible downstream market definitions. The question as to whether the merged entity would have the ability to undertake a partial or total input foreclosure strategy has therefore been undertaken in light of the possible importance of those premium non-sports TV channels to TV distributors active in the potential markets for which premium pay TV non-sports channels are acquired, namely the markets for the retail supply of (i) AV services; (ii) linear pay AV services; (iii) linear premium pay AV services; (iv) all possible markets (i) to (iii) segmented into MDU and SDU.<sup>938</sup>
- a. *Ability to engage in input foreclosure*
- (1053) In the present case, a majority of respondents to the Phase I market investigation indicated that the merged entity post-Transaction could stop licensing its premium pay TV non-sports channels, or degrade the terms and conditions of the acquisition of premium pay TV non-sports channels from third parties in Finland.<sup>939</sup> Nevertheless, the Commission considers that the merged entity would lack the ability to engage in any input foreclosure of Bonnier Broadcasting's premium pay TV non-sports channels since, for the reasons outlined hereafter, those channels do not constitute an important input on any potential markets for which premium pay TV non-sports channels are acquired, namely the markets for the retail supply of: (i) AV services; (ii) linear pay AV services; (iii) linear premium pay AV services; (iv) all possible markets (i) to (iii) segmented into MDU and SDU in Finland in the sense outlined in the Non-Horizontal Merger Guidelines.<sup>940</sup>
- (1054) First, despite Bonnier Broadcasting having a market share of [50-60]% in value and [70-80]% in volume in the wholesale supply of premium pay TV non-sports channels in 2018 in Finland, the film and series content included in those channels does not seem as particularly important from a viewer perspective irrespective of any possible product market segmentation. In fact, when considering the share of viewing of premium pay TV films and series channels and non-linear pay AV services in Finland, Bonnier Broadcasting has a share of viewing [...].<sup>941</sup> In that respect, DNA stated that "*[r]egarding movies and series especially, SVOD OTT services have*

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<sup>937</sup> Form CO, paragraph 688-691.

<sup>938</sup> Before the Transaction, Bonnier Broadcasting's premium pay TV non-sports channels are not sold to retail suppliers of AV services as inputs for the provision of (i) linear FTA AV services, (ii) linear basic pay AV services or (ii) non-linear pay AV services. In respect of the latter, Bonnier Broadcasting does provide rights to distribute its premium pay TV non-sports channels in a non-linear manner as ancillary to the linear distribution of its channels (e.g., catch up rights) and that ancillary form of distribution has been included in the Commission's assessment together with the primary linear distribution of the premium pay TV non-sports channels. Therefore, the Commission considers that it is not relevant to consider the impact of the Transaction on market segments for which the Bonnier Broadcasting's premium pay TV non-sports channels are not acquired as an input.

<sup>939</sup> Responses to questionnaire Q1 to TV distributors in Finland, questions F.12, F.12.1, F.12.2, F.13, F.13.1 and F.13.2.

<sup>940</sup> According to the Non-Horizontal Merger Guidelines, input foreclosure may raise competition problems only if it concerns an important input for the downstream product. Non-Horizontal Merger Guidelines, paragraph 34.

<sup>941</sup> Form CO, Appendix 1 to Annex 7.

*become and will come alternative to more and more of the customers*<sup>942</sup> while Elisa noted that “*S-VOD an T-VOD are meaningful distribution channels for films and general entertainment*”.<sup>943</sup> Therefore, these other players like Netflix and HBO offering non-linear premium AV services at the retail level exercise an indirect competitive constraint on Bonnier Broadcasting’s premium pay TV non-sports channels active at the wholesale level.

- (1055) Indeed, SVOD providers already exercise a strong out-of-market constraint on TV broadcasters, as linear TV is losing viewership to VOD services, by “cord shaving” (that is a reduction of the scope of the subscription), thereby limiting the market power of the merged entity in the wholesale supply of premium pay TV non-sports channels in Finland. The information gathered during the market investigation confirmed that SVOD and TVOD are relevant distribution channels for films. In that respect, DNA noted that “*Pay TV and SVOD have become alternatives to each other especially in terms of movies and TV series*” and in Finland “*the majority of stand-alone SVOD subscriptions are Netflix and HBO*”.<sup>944</sup> Digita stated that “*Netflix has challenged the traditional payTV services during past five years becoming the biggest subscription based service in Finland. This has forced also the Finnish MNO’s (i.e. payTV operators) and broadcasters to launch their own OTT SVOD services.*”<sup>945</sup> Telenor replied that: “*The new OTT SVOD services (Netflix and HBO) are competitors and complements to the existing Premium TV packages. These are increasing the competition for both retailers and broadcasters*”.<sup>946</sup> Telenor further underlined that “*Premium Film channels compete with streaming film and series services where Netflix is number 1 and HBO and Viaplay are competing over second place*”.<sup>947</sup> In addition, the Parties submitted that the entry of Netflix, HBO and similar streaming service providers in Finland in 2012 forced Bonnier Broadcasting [information about Bonnier Broadcasting’s commercial data].<sup>948</sup> It is noted that such [...] is relevant for all potential downstream markets for which premium pay TV non-sports channels are acquired.

**Figure 20: [...]**

[...]

*Source : [...]*

- (1056) Second, the information gathered during the market investigation indicated that retail providers of AV services competing with Telia, and seeking to include attractive premium pay TV non-sports channels in their offering, can typically license alternative channels to C More premium pay TV non-sports channels. In that respect, one respondent to the market investigation stated that “*there is larger variety of (premium) film content in comparison to premium sports content, which to some extent widens the alternatives available for retail distributors*”.<sup>949</sup>
- (1057) Third, the importance of premium pay TV non-sports channels is further impacted by the launch of OTT offerings directly by content owners. For example, HBO already

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<sup>942</sup> DNA’s response to questionnaire Q14 to retail providers of AV services in Finland, question 44.1 (ID01990).

<sup>943</sup> Elisa’s response to questionnaire Q1 to TV distributors in Finland, question C.3.1 (ID01084).

<sup>944</sup> DNA’s response to questionnaire Q1 to TV distributors in Finland, question C.12.1 (ID000739).

<sup>945</sup> Digita’s response to questionnaire Q1 to TV distributors in Finland, question F.20 (ID000780).

<sup>946</sup> Telenor’s response to questionnaire Q1 to TV distributors in Finland, question F.20 (ID00703).

<sup>947</sup> Telenor’s response to questionnaire Q1 to TV distributors in Finland, question F.5.1 (ID00703).

<sup>948</sup> Form CO, paragraph 703.

<sup>949</sup> Elisa’s response to questionnaire Q1 to TV distributors in Finland, question C.3.1 (ID01084).

provides its film and series in Finland through its streaming services HBO Nordic.<sup>950</sup> Disney has stated that the global rollout for its streaming service Disney Plus (Disney+) begins on 12 November 2019 in the US, Canada and Europe, starting in the Netherlands<sup>951</sup>, and that it would rapidly expand globally “*with plans to be in nearly all major regions of the world within the next two years*”.<sup>952</sup> Specifically, Disney announced that Disney+ will launch in Western Europe in the first half of 2020.<sup>953</sup> In addition, other digital players have entered the market such as Amazon<sup>954</sup> and Apple.<sup>955</sup>

*b. Incentive to engage in total or partial input foreclosure*

- (1058) Several respondents to the market investigation consider that the merged entity may have the incentive to exclusively supply its premium pay TV non-sports channels to Telia and not to other TV distributors, or to degrade the terms and conditions of the acquisition of its premium pay TV non-sports channels from third parties.<sup>956</sup>
- (1059) In any event, given the lack of ability to foreclose, it is not necessary to conclude as to whether the merged entity will have the incentive to implement a strategy aimed at foreclosing competing retail suppliers of AV services from its premium pay TV non-sports channels in Finland.

*c. Impact on effective competition of total/partial input foreclosure*

- (1060) A merger will raise competition concerns due to input foreclosure when it would lead to increased prices in the downstream market, thereby significantly impeding effective competition.<sup>957</sup> The Non-Horizontal Merger Guidelines note that anticompetitive foreclosure may occur by allowing the merged entity to increase the costs of downstream rivals thereby leading to upward pressure on sales prices. Competition may also be significantly impeded if the merged entity would be likely to raise barriers to entry to potential competitors by refusing to supply them or by supplying them on less favourable terms than absent the merger.<sup>958</sup> In particular, if there remain sufficient credible downstream competitors whose costs are not likely to be raised, for example because they are themselves vertically integrated or capable of switching to adequate alternative inputs, competition from those firms may constitute a sufficient constraint on the merged entity and therefore prevent output prices from rising above pre-merger levels.<sup>959</sup>
- (1061) Regardless of whether the merged entity has either the ability or the incentive to foreclose competing downstream rivals with regard to the wholesale supply of

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<sup>950</sup> See: <https://en.hbonordic.com/>.

<sup>951</sup> See “New Global Launch Dates Confirmed for Disney+”, available at: <https://www.thewaltdisneycompany.com/new-global-launch-dates-confirmed-for-disney>.

<sup>952</sup> See <https://www.thewaltdisneycompany.com/disney-spotlights-comprehensive-direct-to-consumer-strategy-at-2019-investor-day/>.

<sup>953</sup> See [https://www.thewaltdisneycompany.com/wp-content/uploads/2019/03/Disney\\_Investor\\_Day\\_2019\\_transcript.pdf](https://www.thewaltdisneycompany.com/wp-content/uploads/2019/03/Disney_Investor_Day_2019_transcript.pdf)

<sup>954</sup> Amazon Prime Video is a streaming service provided by Amazon. The streaming service offers exclusive Prime Originals to customers in more than 200 countries, including the Nordics. See: <https://www.primevideo.com/>.

<sup>955</sup> Apple recently announced the launch of Apple TV+, a new streaming service where featuring original shows and movies across every genre, <https://www.apple.com/apple-tv-plus/>.

<sup>956</sup> Responses to questionnaire Q1 to TV distributors in Finland, questions F.12, F.12.1, F.12.3, F.13, F.13.1 and F.13.3.

<sup>957</sup> Non-Horizontal Merger Guidelines, paragraph 47.

<sup>958</sup> Non-Horizontal Merger Guidelines, paragraph 48.

<sup>959</sup> Non-Horizontal Merger Guidelines, paragraph 50.

premium pay TV non-sports channels, the Commission discusses whether the withdrawal of Bonnier Broadcasting's premium pay TV non-sports channels from rival TV distributors' offerings would likely have a significant detrimental impact on effective competition on any of the potential downstream markets where premium pay TV non-sports channels are acquired, namely the markets for the retail supply of: (i) AV services; (ii) linear pay AV services; (iii) linear premium pay AV services; (iv) all possible markets (i) to (iii) segmented into MDU and SDU, and does not consider that such strategy would have any such impact on competition downstream.

- (1062) First, as explained in section 8.5.2.4-3-a, Bonnier Broadcasting's premium pay TV non-sports channels are not an important input for retail suppliers of AV services in Finland. Therefore, their withdrawal would not harm the business of rival TV distributors in Finland, thereby not affecting their ability to compete against the merged entity.
- (1063) Second, as explained in section 8.5.2.4-3-a, the information gathered during the market investigation indicated that retail providers of AV services competing with Telia, and seeking to include attractive premium pay TV non-sports channels in their offering, can typically license alternative channels to C More premium pay TV non-sports channels. Therefore, there remain sufficient credible downstream competitors whose costs are not likely to be raised.
- (1064) Third, the Transaction will not raise barriers to entry or expansion. As noted in section 8.5.2.4-3-a, a number of significant content owners and digital players have launched their own direct-to-consumer services via OTT, mainly based on films and series.

#### 4. Conclusion

- (1065) On the basis of the foregoing, the Commission concludes that the Transaction would not significantly impede effective competition as a result of total or partial input foreclosure of premium pay TV non-sports channels in Finland since the merged entity would lack the ability to foreclose downstream competitors and such strategy would likely have no detrimental impact on effective competition. The Commission's assessment applies in respect of any potential markets for which premium pay TV non-sports channels are acquired, namely the markets for the retail supply of: (i) AV services; (ii) linear pay AV services; (iii) linear premium pay AV services; (iv) all possible markets (i) to (iii) segmented into MDU and SDU.

#### 8.5.2.5. Total and partial input foreclosure relating to the wholesale supply of premium pay TV channels and the retail provision of AV services

- (1066) The Commission has assessed the risk of input foreclosure strategies relating to the wholesale supply of premium pay TV sports channels, or any premium pay package including those channels (Section 8.5.2.3) and in relation to the wholesale supply of premium pay TV non-sports channels (Section 8.5.2.4).
- (1067) The Commission has found that the Transaction is likely to significantly impede effective competition only in relation to input foreclosure of premium pay TV sports channels, in Finland (Section 8.5.2.3), but not in relation to the wholesale supply of premium pay TV non-sports channels (Section 8.5.2.4).
- (1068) These two types of TV channels together form the overall market for the wholesale supply of premium pay TV channels in Finland.
- (1069) Any competition concerns in relation to this overall market for the wholesale supply of premium pay TV channels in Finland, would result exclusively from the concerns found on the market for the wholesale supply of premium pay TV sports channels.

The Commitments offered by the Notifying Party eliminate the competition concerns in relation to premium pay TV sports channels and these Commitments therefore also eliminate any concerns on the overall market for the wholesale supply of premium pay TV channels.

8.5.2.6. Total and partial customer foreclosure of competing wholesale suppliers of FTA and basic pay TV channels with regard to the retail supply of AV services in Finland

(1070) In Finland, Telia is active in the retail supply of AV services. Bonnier Broadcasting is mainly active as TV broadcaster. The merger specific change is the addition of Telia's downstream activities as retail supplier of AV services.

(1071) The Commission notes that the merged entity's market share in the Finnish market for the retail supply of AV services is below 30%, and that downstream market is therefore not a vertically affected market.<sup>960</sup> Nevertheless, given the results of the market investigation and Telia's higher market share in the geographical areas of Finland where Telia owns the regional fixed network ([60-70]% by volume in 2018)<sup>961</sup>, the Commission has assessed the risk of customer foreclosure strategies in Finland.

(1072) In particular, the Commission has assessed the risk of the following two types of customer foreclosure strategies: (i) total foreclosure of rival TV broadcasters through the merged entity refusal to carry competing TV channels on its downstream distribution platform; and (ii) partial foreclosure of rival TV broadcasters through, for instance, a degradation of the quality of the viewers' experience for competing TV channels on Telia's distribution platform.

(1073) Moreover, the Commission has assessed the two abovementioned types of customer foreclosure strategies on the following two types of TV channels, which Telia purchases in Finland:

- FTA and basic pay TV channels (addressed in this section);
- premium pay TV channels (see Section 8.5.2.7).

(1074) For the purposes of its assessment, the Commission has considered, in particular, as the more likely potential targets of a customer foreclosure strategy, the channels that compete closely with Bonnier Broadcasting's FTA and basic pay TV channels. On the basis of the market shares presented in Section 8.3.2.2, the main targets of potential foreclosure in Finland are the other two main commercial broadcasters, Sanoma and Discovery.<sup>962</sup>

#### 1. Notifying Party's view

(1075) For the same reasons as for FTA and basic pay TV channels in Sweden (section 8.5.1.6), both in its initial submission in its Response to the Article 6(1)(c) Decision, the Notifying Party submits that (i) the merged entity would have neither the ability nor the incentive to fully or partially foreclose rival TV broadcasters of premium pay TV channels, and (ii) even if it could hypothetically be shown that the merged entity

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<sup>960</sup> See Section 8.3.2.4, the merged entity would not hold a market share above 30% under any possible market segmentation.

<sup>961</sup> Parties' response to the Commission's RFI 71, Annex 4 (ID003037).

<sup>962</sup> The Commission has not considered Yle as a potential target of foreclosure strategy since Telia is subject to "must-carry" obligations and is therefore required to carry Yle's channels on its network. See European Audiovisual Observatory, Access to TV platforms: must-carry rules, and access to free-DTT, <https://rm.coe.int/16807835e4>.

would have the ability and incentive to engage in (total or partial) customer foreclosure (*quod non*), such a strategy would not have any significant detrimental effect on effective competition.

- (1076) With specific regard to Finland, the Notifying Party added that it would lack the ability to engage in customer foreclosure in its fixed network footprint, despite owning copper networks which cover almost [...]% of the Finnish territory. In the first place, Telia's copper networks would (i) be largely located in rural areas, and (ii) cover around [...]% of the Finnish households. The old copper networks would currently be phased out in favour of alternative technologies. In the second place, end customers would consider that mobile internet access as increasingly substitutable with fixed internet access in remote areas. In the third place, Bonnier Broadcasting's rivals could be distributed on alternative distribution platforms, such as DTT and OTT. In addition, the Notifying Party claimed that it would lack the incentive to engage in partial customer foreclosure, through a preferential treatment of Bonnier Broadcasting's streaming services on Telia's mobile network, given that mobile data would already be sold within unlimited offers.

## 2. Commission's assessment

- (1077) The Commission's assessment of potential concerns regarding the foreclosure of competing wholesale suppliers of FTA and basic pay TV channels, in light of the results of the market investigation, is set out in the following recitals. For this purpose, in line with paragraph 59 of the Non-Horizontal Merger Guidelines, the Commission examines: (i) whether the merged entity would have the ability to foreclose competing wholesale supplier of TV channels; (ii) whether it would have the economic incentive to do so; and (iii) what overall impact such a foreclosure strategy would have on competition.
- (1078) The Commission has conducted its assessment on the basis of all possible downstream market definitions. The question as to whether the merged entity would have the ability to undertake a partial or total customer foreclosure strategy has therefore been undertaken in all possible market segments where FTA and basic pay TV channels are licensed to TV distributors, namely in the potential markets for the retail supply of (i) AV services (ii) linear pay AV services, (iii) linear basic pay AV services (iv) all possible markets (i) to (iii) segmented into MDU and SDU.<sup>963</sup> The Commission's assessment of the impact of a total or partial foreclosure strategy also applies in respect of the above mentioned possible markets for which FTA and basic pay TV channels are an input. The Commission hereafter, in this section, refers to the 'retail supply of AV services' or 'retail AV services' as shorthand for all possible markets comprising the retail supply of (i) AV services (ii) linear pay AV services, (iii) linear basic pay AV services (iv) all possible markets (i) to (iii) segmented into MDU and SDU.

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<sup>963</sup> Before the Transaction, FTA and basic pay TV channels are not sold to retail suppliers of AV services as inputs for the provision of (i) premium pay services or (ii) non-linear pay AV services. In respect of the latter, Bonnier Broadcasting does provide rights to distribute its FTA and basic pay TV channels in a non-linear manner as ancillary to the linear distribution of its channels (e.g., NPVR rights) and that ancillary form of distribution has been included in the Commission's assessment together with the primary linear distribution of the FTA and basic pay TV channels. Therefore, the Commission has not assessed the impact of the Transaction on (i) market segments for the retail supply of premium pay AV services and for the retail supply of non-linear pay AV services where the Bonnier Broadcasting's FTA and basic pay TV channels are not acquired as an input since there is no merger specific change brought by the Transaction; (ii) the market segment for the retail supply of FTA AV services since Telia is not active in such market segment and there is no merger specific change brought by the Transaction.

a. *Ability to engage in customer foreclosure*

- (1079) When considering whether the merged entity would have the ability to foreclose access to downstream markets, the Commission examines whether there are sufficient economic alternatives in the downstream market for upstream rivals to sell their output.
- (1080) In the present case, while most of the respondents to the Phase I market investigation have indicated that the merged entity post-Transaction could either stop sourcing TV channels<sup>964</sup> or degrade the terms and conditions at which it does so,<sup>965</sup> the Commission considers that the merged entity would lack the ability to engage in either total or partial customer foreclosure strategies of third parties' FTA and basic pay TV channels since it does not have a sufficient degree of market power in the market for the retail supply of AV services, irrespective of any possible segmentation, for the following reasons.
- (1081) First, as described in section 8.3.2.4, the merged entity will hold a market share of [10-20]% by value in the Finnish market for the retail supply of AV services in 2018.<sup>966</sup> With such a market share, the merged entity would be the [...] retail supplier of AV services in Sweden, behind Elisa ([20-30]%) and DNA ([20-30]%).<sup>967</sup> Therefore, there is a certain number of alternative distributors that competing TV broadcasters can choose in the Swedish market, irrespective of any possible segmentation.<sup>968</sup>
- (1082) Second, when considering the market segment for the retail supply of AV services in geographical areas of Finland where Telia owns the regional fixed network ("Telia SMP Area"), Telia holds a market share above 30% ([60-70]% by volume<sup>969</sup>). Despite the importance of Telia as a purchaser of FTA and basic pay TV channels in this segment, the Commission considers that it would have a limited ability to foreclose rivals by ceasing to purchase from them. Indeed, as explained in Section 7.4, the market for the retail supply of AV services encompasses all distribution technologies, and in the Telia SMP Area, competing TV broadcasters continue to have access to a large customer base, through alternative distribution technologies. In that respect, Sanoma's FTA TV channels and Discovery's basic pay TV channels are also widely accessible *via* OTT.<sup>970</sup> Therefore, competing wholesale suppliers of FTA and basic pay TV channels would be able to maintain a significant portion of their viewership base in case the merged entity were to cut them off its distribution service.<sup>971</sup> Moreover, the evidence in the file shows that OTT is a significant alternative when customers have no longer access to FTA and basic pay TV channels *via* traditional distribution technologies. For example, Bonnier Broadcasting's

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<sup>964</sup> Responses to questionnaire Q2 to TV broadcasters in Finland, questions F.7, F.7.1 and F.7.3.

<sup>965</sup> Responses to questionnaire Q2 to TV broadcasters in Finland, questions F.8, F.8.1 and F.8.4.

<sup>966</sup> See Section 8.3.2.4, the merged entity would not hold a market share above 30% under any possible market segmentation.

<sup>967</sup> Form CO, Annex 7.

<sup>968</sup> See Section 8.3.2.4, several competing suppliers of retail AV services would remain active under any possible market segmentation.

<sup>969</sup> Parties' response to the Commission's RFI 71, Annex 4 (ID003037).

<sup>970</sup> Parties' response to RFI 74, questions 8 and 10 (ID003094). Sanoma distributes its four linear FTA TV channels (Nelonen, Jim, Liv and Hero) through Ruutu+, and Discovery distributes all its linear basic pay TV channels (including Kanal 5, Kanal 9, Kanal 11, Discovery Channel, TLC) through Dplay.

<sup>971</sup> Based on the above, the Commission further considers that competing wholesale suppliers of FTA and basic pay TV channels can continue to supply their input to customers in the market for the retail supply of AV services, and any possible segmentation, without incurring costs significantly higher than those they were incurring prior to the Transaction. Non-Horizontal Merger Guidelines, paragraph 66.

internal analyses show that [Bonnier Broadcasting's internal analysis].<sup>972</sup> In addition, Sanoma's and Discovery's TV channels in Finland would remain also accessible *via* DTT<sup>973</sup> (namely, to 99% of the population<sup>974</sup>). Finally, while Telia has a stronger market position in the Telia SMP Area, such area cover approximately [...]% of the Finnish population. Telia's agreements with providers of FTA and basic pay TV channels in Finland are on a national basis. Therefore, any threat to carry competing TV channels at worse terms and conditions in Telia SMP Area, would not be credible since Telia would still be obliged to obtain such input in Telia non-SMP areas.

- (1083) Third, with reference to possible contractual limitations that may reduce the merged entity's ability to perform such conduct, the Commission notes that that [Terms and conditions in Telia Company's distribution agreements].<sup>975</sup>

*b. Incentive to engage in customer foreclosure*

*Total customer foreclosure*

- (1084) Given the lack of ability to foreclose, it is not necessary to conclude as to whether the merged entity will have the incentive to engage in total customer foreclosure strategies of third parties' FTA and basic pay TV channels.
- (1085) Nevertheless, the Commission has assessed the merged entity's incentives, and considers that the merged entity would lack the incentive to engage in total customer foreclosure strategies of third parties' FTA and basic pay TV channels for the following reasons.
- (1086) First, the results of the Phase I market investigation indicated that the merged entity may have an incentive to stop licensing just some third party TV channels rather than all third party TV channels.<sup>976</sup>
- (1087) Second, the Commission notes that a total foreclosure strategy whereby the merged entity would not broadcast channels of competing TV broadcasters could have a detrimental impact on the retail AV offering of the merged entity. Sanoma's and Discovery's FTA and basic pay TV channels in Finland have a [...] in Finland. The Commission therefore considers that it may be likely that the foreclosure of such channels would have at least similar detrimental effects on Telia's customer base, churn and acquisition on the market for the retail supply of AV services.
- (1088) Third, the Commission considers that (i) retail suppliers of AV services need a large and diverse portfolio of attractive TV channels of different genres for their retail packages (see section 7.3.1.3), and (ii) the role of TV channel aggregator would continue to be relevant on the OTT distribution platform over the next years (see section 7.4.1.3). Further, the evidence presented indicates that both Parties believe that the aggregation of FTA and basic pay TV channels is currently relevant, and would continue to be relevant also when distributed *via* OTT.<sup>977</sup> In particular, in

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<sup>972</sup> RBB Economics' report "Partial input foreclosure of FTA TV channels in Finland," 15 March 2019 (ID000503).

<sup>973</sup> Roughly half of Finnish households watch television via the terrestrial network, which means using rooftop antennas. The terrestrial TV network reaches over 99.9% of the people in Finland. See: <https://www.traficom.fi/en/communications/tv-and-radio/broadcasts-terrestrial-tv-network>.

<sup>974</sup> See: <https://www.traficom.fi/en/communications/tv-and-radio/broadcasts-terrestrial-tv-network>.

<sup>975</sup> Telia's submission of 25 September 2019 in response to RFI 76 (ID00319). [Terms and conditions in Telia Company's distribution agreements].

<sup>976</sup> Responses to questionnaire Q2 to TV broadcasters in Finland, questions F.7, F.7.1 and F.7.3.

<sup>977</sup> See, for example, Telia's internal documents [Internal document name] (ID001913-015652), [Internal document name] (ID001924-031564), [Internal document name], slide 26 (ID001938-035052),

order to create an attractive OTT offering that could compete with TV distributors in the downstream market for the retail supply of AV services, [Internal documents related to assessments of and work concerning strategies relating to OTT distribution].<sup>978</sup>

*Partial customer foreclosure*

- (1089) Given the lack of ability to foreclose, it is not necessary to conclude as to whether the merged entity will have the incentive to engage in partial customer foreclosure strategies of third parties' FTA and basic pay TV channels.
  - (1090) Nevertheless, the Commission has assessed the merged entity's incentives, and considers that the merged entity might have some incentives to engage in partial customer foreclosure of third parties' FTA and basic pay TV channels in Finland. Indeed, the majority of broadcasters responding to the Phase I market investigation were concerned about possible incentives of the merged entity to degrade the terms and conditions of acquisition of rival TV channels.<sup>979</sup> In that respect, Sanoma indicated that this strategy could be implemented by requesting distribution fees from the broadcasters, which would "eat" their profitability.<sup>980</sup>
  - (1091) However, the Commission notes that other elements indicate that the concerns raised by third parties are unwarranted.
  - (1092) In the first place, in relation to a possible EPG degradation, the Commission notes that while the merged entity could in theory have the incentive to favour Bonnier Broadcasting's channels and the advertising revenue associate to such channels, it seems unlikely that Telia would move Bonnier Broadcasting's channels, the leading FTA commercial channels in Finland, to either Sanoma's or Discovery's EPG since by doing so it would impact the user experience of its own channels.
  - (1093) In the second place, [Business strategy].
  - (1094) In light of the above, the Commission concludes that while the merged entity could in theory have some incentives to engage in partial customer foreclosure, the question can be left open as, in any event, it is clear from the above that the merged entity has no ability to significantly foreclose access to the market for the retail supply of AV services.
- c. *Impact on effective competition of total/partial customer foreclosure*
- (1095) The Commission considers that it is unlikely that any customer foreclosure strategies of third parties' FTA and basic pay TV channels considered above would have a significant negative impact on consumers and effective competition in Finland, for the following reasons.

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[Internal document name], slides 8 and 10 (ID000924-043048), [Internal document name], slide 3 (ID001925-039658), [Internal document name], slides 32 and 37 (ID001913-018005), [Internal document name] (ID001938-018841). See also Bonnier Broadcasting's response to the Commission's RFI 30 [Annex 1, document 18] (ID001334-000039-018), and internal documents [Internal document name], slides 2, 3, 6 and 23 (ID001775-000155), [Internal document name] (ID001773-008510) (and the attached file 20180516 – [Internal document name]).

<sup>978</sup> Bonnier Broadcasting's response to the Commission's RFI 30 [Annex 1, document 18] (ID001334-000039-018), and internal documents [Bonnier Broadcasting's internal document details], slides 2, 3, 6 and 23 (ID001775-000155), [Bonnier Broadcasting's internal document details] (ID001773-013713).

<sup>979</sup> Responses to questionnaire Q2 to TV broadcasters in Finland, questions F.8, F.8.1, F.8.2 and F.8.5.

<sup>980</sup> Sanoma's letter to the Commission of 28 February 2019 (ID00324).

- (1096) First, as explained in section 8.5.2.6.2.a, the merged entity would not hold a significant market position as a customer in the downstream market for the retail supply of AV services. The merged entity will have a limited market share of [10-20]% in the national market for the retail supply of AV services, irrespective of any possible segmentation of the market for the retail supply of AV services.<sup>981</sup> In the event that Telia sought to cease carrying third party FTA and basic pay TV channels on its platform, competing broadcasters would still be able to expand their activities with other retail suppliers of AV services.<sup>982</sup>
- (1097) Second, while most of the respondents to the Phase I market investigation indicate that such foreclosure strategy may have a negative impact on their ability to compete,<sup>983</sup> the Commission considers that rival TV broadcasters are also able to develop new strategies to reach viewers. In the first place, the Commission notes that both Discovery and Sanoma have launched their own OTT services in order to reach viewers directly. In the second place, other suppliers of retail AV services would remain available as potential customers of rival TV broadcasters, irrespective of any possible segmentation of the market for the retail supply of AV services.<sup>984</sup> In particular in the market for the retail supply of AV services, DNA and Elisa would remain active as purchasers of FTA and basic pay TV channels, with a combined market share of around [50-60]%.
- (1098) Third, when considering the segment of retail supply of AV services in Telia SMP Area, the Commission notes that, while Telia has a stronger market position in such area, the Transaction does not increase Telia's position vis-à-vis competing broadcasters since Telia would still be required to acquire such channels on a national basis and Telia has a significant smaller market position in Telia non-SMP areas.
- (1099) Finally, as also indicated above, [Telia Company's distribution agreements].

### 3. Conclusion

- (1100) In light of the foregoing, the Commission considers that, even if the merged entity had some incentives to engage in either total or partial customer foreclosure strategies of third parties' FTA and basic pay TV channels, it would lack the ability to do it. In any event, it is unlikely that any customer foreclosure strategies would have an impact on effective competition, irrespective of any possible market definition.
- (1101) The Commission therefore concludes that the Transaction would not significantly impede effective competition as a result of total or partial customer foreclosure of FTA and basic pay TV channels in Finland.

#### 8.5.2.7. Total and partial customer foreclosure of competing wholesale suppliers of premium pay TV channels with regard to the retail supply of AV services in Finland

- (1102) For the purposes of its assessment, the Commission has considered, in particular, as the more likely potential targets of a customer foreclosure strategy, the channels that

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<sup>981</sup> See Section 8.3.2.4, the merged entity would not hold a market share above 30% under any possible market segmentation.

<sup>982</sup> See Section 8.3.2.4, several competing suppliers of retail AV services would remain active under any possible market segmentation.

<sup>983</sup> Responses to questionnaire Q2 to TV broadcasters in Finland, question F.10.

<sup>984</sup> See Section 8.3.2.4, several competing suppliers of retail AV services would remain active under any possible market segmentation.

compete closely with Bonnier Broadcasting's premium pay TV channels, including the potential market segment of sports and non-sports premium pay TV channels. On the basis of the market shares presented in section 8.3.2.3, the main targets of potential foreclosure in Finland are the other two main commercial broadcasters, NENT and Sanoma.

1. Notifying Party's view

- (1103) For the same reasons as for FTA and basic pay TV channels in Finland (section 8.5.2.5), both in its initial submission in its Response to the Article 6(1)(c) Decision, the Notifying Party submits that (i) the merged entity would have neither the ability nor the incentive to fully or partially foreclose rival TV broadcasters of premium pay TV channels, and (ii) even if it could hypothetically be shown that the merged entity would have the ability and incentive to engage in (total or partial) customer foreclosure (*quod non*), such a strategy would not have any significant detrimental effect on effective competition.
- (1104) The Commission has conducted its assessment on the basis of all possible downstream market definitions. The question as to whether the merged entity would have the ability to undertake a partial or total customer foreclosure strategy has therefore been undertaken in all possible market segments where premium pay TV channels are licensed to TV distributors, namely in the potential markets for the retail supply of (i) AV services (ii) linear pay AV services, (iii) linear premium pay AV services (iv) all possible markets (i) to (iii) segmented into MDU and SDU.<sup>985</sup> The Commission's assessment of the impact of a total or partial foreclosure strategy also applies in respect of the above mentioned possible markets for which premium pay TV channels are an input. The Commission hereafter, in this section, refers to the 'retail supply of AV services' or 'retail AV services' as shorthand for all possible markets comprising the retail supply of (i) AV services (ii) linear pay AV services, (iii) linear premium pay AV services (iv) all possible markets (i) to (iii) segmented into MDU and SDU.

2. Commission's assessment

- (1105) The Commission's assessment of potential concerns regarding the foreclosure of competing wholesale suppliers of premium pay TV channels, in light of the results of the market investigation, is set out in the following recitals. For this purpose, in line with paragraph 59 of the Non-Horizontal Merger Guidelines, the Commission examines: (i) whether the merged entity would have the ability to foreclose competing wholesale supplier of TV channels; (ii) whether it would have the economic incentive to do so; and (iii) what overall impact such a foreclosure strategy would have on competition.
- (1106) The Commission has conducted its assessment on the basis of all possible downstream market definitions. The question as to whether the merged entity would have the ability to undertake a partial or total customer foreclosure strategy has therefore been undertaken in all possible market segments where FTA and basic pay TV channels are licensed to TV distributors, namely in the potential markets for the

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<sup>985</sup> Before the Transaction, premium pay TV channels are not sold to retail suppliers of AV services as inputs for the provision of (i) linear FTA AV services, (ii) basic pay AV services or (iii) non-linear pay AV services. Therefore, the Commission considers that it is not relevant to consider the impact of the Transaction on market segments for the retail supply of AV services where the Bonnier Broadcasting's premium pay TV channels are not acquired as an input since there is no merger specific change brought by the Transaction.

retail supply of (i) AV services (ii) linear pay AV services, (iii) linear premium pay AV services (iv) all possible markets (i) to (iii) segmented into MDU and SDU.<sup>986</sup> The Commission's assessment of the impact of a total or partial foreclosure strategy also applies in respect of the above mentioned possible markets for which FTA and basic pay TV channels are an input. The Commission hereafter, in this section, refers to the 'retail supply of AV services' or 'retail AV services' as shorthand for all possible markets comprising the retail supply of (i) AV services (ii) linear pay AV services, (iii) linear premium pay AV services (iv) all possible markets (i) to (iii) segmented into MDU and SDU.

*a. Ability to engage in customer foreclosure*

- (1107) When considering whether the merged entity would have the ability to foreclose access to downstream markets, the Commission examines whether there are sufficient economic alternatives in the downstream market for upstream rivals to sell their output.
- (1108) In the present case, while most of the respondents to the Phase I market investigation have indicated that the merged entity post-Transaction could either stop sourcing TV channels<sup>987</sup> or degrade the terms and conditions at which it does so,<sup>988</sup> the Commission considers that the merged entity would lack the ability to engage in either total or partial customer foreclosure strategies of third parties' premium pay TV channels since it does not have a sufficient degree of market power in the market for the retail supply of AV services, irrespective of any possible segmentation, for the following reasons.
- (1109) First, as described in section 8.5.2.6.2.a, there is a certain number of alternative distributors that competing TV broadcasters can choose in the Finnish market, irrespective of any possible segmentation.<sup>989</sup>
- (1110) Second, when considering the market segment for the retail supply of AV services in geographical areas of Finland where Telia owns the regional fixed network ("Telia SMP Area"), Telia holds a market share above 30% ([60-70]% by value<sup>990</sup>). Despite the importance of Telia as a purchaser of premium pay TV channels in this segment, the Commission considers that it would have a limited ability to foreclose rivals by ceasing to purchase from them. Indeed, as explained in Section 7.4, the market for the retail supply of AV services encompasses all distribution technologies, and in the Telia SMP Area, competing TV broadcasters continue to have access to a large customer base, through alternative distribution technologies. In that respect, NENT's

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<sup>986</sup> Before the Transaction, premium pay TV channels are not sold to retail suppliers of AV services as inputs for the provision of (i) premium pay services or (ii) non-linear pay AV services. In respect of the latter, Bonnier Broadcasting does provide rights to distribute its FTA and basic pay TV channels in a non-linear manner as ancillary to the linear distribution of its channels (e.g., NPVR rights) and that ancillary form of distribution has been included in the Commission's assessment together with the primary linear distribution of the FTA and basic pay TV channels. Therefore, the Commission has not assessed the impact of the Transaction on (i) market segments for the retail supply of basic pay AV services and for the retail supply of non-linear pay AV services where the Bonnier Broadcasting's FTA and basic pay TV channels are not acquired as an input since there is no merger specific change brought by the Transaction; (ii) the market segment for the retail supply of FTA AV services since Telia is not active in such market segment and there is no merger specific change brought by the Transaction.

<sup>987</sup> Responses to questionnaire Q2 to TV broadcasters in Finland, questions F.7, F.7.1 and F.7.3.

<sup>988</sup> Responses to questionnaire Q2 to TV broadcasters in Finland, questions F.8, F.8.1 and F.8.4.

<sup>989</sup> See Section 8.3.2.4, several competing suppliers of retail AV services would remain active under any possible market segmentation.

<sup>990</sup> Parties' response to the Commission's RFI 71, Annex 4 (ID003037).

and Sanoma's TV channels are also widely accessible *via* OTT.<sup>991</sup> Therefore, competing wholesale suppliers of premium pay TV channels would be able to maintain a significant portion of their viewership base in case the merged entity were to cut them off its distribution service.<sup>992</sup> Finally, while Telia has a stronger market position in the Telia SMP Area, such area cover approximately [20-40]% of the Finnish population. [Content of Telia Company's distribution agreements].

- (1111) Third, with reference to possible contractual limitations that may reduce the merged entity's ability to perform such conduct, the Commission notes that [Content of Telia Company's distribution agreements]<sup>993</sup>.

- b. *Incentive to engage in customer foreclosure*

*Total customer foreclosure*

- (1112) Given the lack of ability to foreclose, it is not necessary to conclude as to whether the merged entity will have the incentive to engage in total customer foreclosure strategies of third parties' premium pay TV channels.
- (1113) Nevertheless, the Commission has assessed the merged entity's incentives, and considers that the merged entity would lack the incentive to engage in total customer foreclosure strategies of third parties' premium pay TV channels, including both sport and non-sport premium pay TV channels, for the following reasons.
- (1114) First, the results of the Phase I market investigation indicated that the merged entity may have an incentive to stop licensing just some third party TV channels rather than all third party TV channels.<sup>994</sup>
- (1115) Second, the Commission notes that a total foreclosure strategy whereby the merged entity would not broadcast channels of competing TV broadcasters could have a detrimental impact on the retail AV offering of the merged entity.
- (1116) Third, NENT's premium pay TV channels hold significant sport contents which drive customers' behaviour and switching. In particular, NENT has rights for the KHL and Premier League.<sup>995</sup> In addition, an analysis provided by Telia shows that [Internal market analysis]. Therefore, the merged entity would have no incentive not to provide such channels in order to attract customers with a higher willingness to pay.<sup>996</sup>

*Partial customer foreclosure*

- (1117) Given the lack of ability to foreclose, it is not necessary to conclude as to whether the merged entity will have the incentive to engage in partial customer foreclosure strategies of third parties' premium pay TV channels.

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<sup>991</sup> Parties' response to RFI 74, questions 8 and 10 (ID003094). Sanoma distributes its four linear FTA TV channels (Nelonen, Jim, Liv and Hero) through Ruutu+, and Discovery distributes all its linear basic pay TV channels (including Kanal 5, Kanal 9, Kanal 11, Discovery Channel, TLC) through Dplay.

<sup>992</sup> Based on the above, the Commission further considers that competing wholesale suppliers of premium pay TV channels can continue to supply their input to customers in the market for the retail supply of AV services, and any possible segmentation, without incurring costs significantly higher than those they were incurring prior to the Transaction. Non-Horizontal Merger Guidelines, paragraph 66.

<sup>993</sup> Parties' response to the Commission's RFI 74 [Annex 1] (ID003127).

<sup>994</sup> Responses to questionnaire Q2 to TV broadcasters in Finland, questions F.7, F.7.1 and F.7.3.

<sup>995</sup> Form CO, Annex 15. Bonnier Broadcasting has also rights for the Swedish football league but those rights will move to Discovery as of 2020.

<sup>996</sup> Telia's internal document [Telia Company's internal documents] (ID001925-012210).

- (1118) Nevertheless, the Commission has assessed the merged entity's incentives, and considers that the merged entity might have some incentives to engage in partial customer foreclosure of third parties' premium pay TV channels in Finland. Indeed, the majority of broadcasters responding to the Phase I market investigation were concerned about possible incentives of the merged entity to degrade the terms and conditions of acquisition of rival TV channels.<sup>997</sup> In that respect, Sanoma indicated that this strategy could be implemented by requesting distribution fees from the broadcasters, which would "eat" their profitability.<sup>998</sup>
- (1119) However, the Commission notes that other elements indicate that the concerns raised by third parties are unwarranted.
- (1120) For example, in relation to a possible EPG degradation, the Commission notes that while the merged entity could in theory have the incentive to favour Bonnier Broadcasting's channels and the advertising revenue associated to such channels, it seems unlikely that Telia would move Bonnier Broadcasting's channels to NENT's or Sanoma's EPG since by doing so it would impact the user experience of its own channels.
- (1121) In light of the above, the Commission concludes that while the merged entity could in theory have some incentives to engage in partial customer foreclosure, the question can be left open as, in any event, it is clear from the above that the merged entity has no ability to significantly foreclose access to the market for the retail supply of AV services.

c. *Impact on effective competition of total/partial customer foreclosure*

- (1122) The Commission considers that it is unlikely that any customer foreclosure strategies of third parties premium pay TV channels, including both sports and non-sports TV channels, considered above would have a significant negative impact on consumers and effective competition in Finland, for the following reasons.
- (1123) First, as noted in section 8.3.2.4, the merged entity would not hold a significant market position as a customer in the downstream market for the retail supply of AV services. Telia has a limited market share of [10-20]% in the market for the retail supply of AV services, irrespective of any possible segmentation of the market for the retail supply of AV services.<sup>999</sup> In the event that Telia sought to cease carrying third party premium pay TV channels on its platform, competing broadcasters would still be able to expand their activities with other TV distributors.<sup>1000</sup>
- (1124) Second, while most of the respondents to the market investigation indicate that such foreclosure strategy may have a negative impact on their ability to compete,<sup>1001</sup> the Commission considers that rival TV broadcasters are also able to develop new strategies to reach viewers. In the first place, rival TV broadcasters can offer their premium pay TV channels directly to the consumers via OTT. In that respect, the Commission notes that NENT and Sanoma already offer their own direct-to-consumer OTT service, Viasat OTT and Ruutu+. In the second place, already pre-Transaction, an increasing number of customers access premium pay TV channels,

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<sup>997</sup> Responses to questionnaire Q2 to TV broadcasters in Finland, questions F.8, F.8.1, F.8.2 and F.8.5.

<sup>998</sup> Sanoma's letter to the Commission of 28 February 2019 (ID00324).

<sup>999</sup> See Section 8.3.2.4, the merged entity would not hold a market share above 30% under any possible market segmentation.

<sup>1000</sup> See Section 8.3.2.4, several competing suppliers of retail AV services would remain active under any possible market segmentation.

<sup>1001</sup> Responses to questionnaire Q2 to TV broadcasters in Finland, questions F.10.

through Bonnier Broadcasting and NENT's OTT application. For example, as of January 2018 the number of customers accessing Bonnier Broadcasting's premium pay TV channels through third party services (e.g., Telia's retail AV services) [...] of approximately [...] units; while the number of customers accessing such channels through Bonnier Broadcasting's OTT application [...] of approximately [...] units.<sup>1002</sup> CONFIDENTIAL<sup>1003</sup> In the third place, other suppliers of retail AV services would remain available as potential customers of rival TV broadcasters, irrespective of any possible segmentation of the market for the retail supply of AV services.<sup>1004</sup> In particular in the market for the retail supply of AV services, the DNA and Elisa would remain active as purchasers of premium pay TV channels, the with a combined market share of around [50-60]%.

(1125) Third, when considering the segment of retail supply of AV services in Telia SMP Area, the Transaction does not increase Telia's position vis-à-vis competing broadcasters since Telia would still be required to acquire such channels on a national basis and Telia has a significantly smaller market position in Telia non-SMP areas.

(1126) Finally, as also indicated above, [Telia Company's distribution agreements].

*d. Conclusion*

(1127) In light of the foregoing, the Commission considers that, even if the merged entity had some incentives to engage in either total or partial customer foreclosure strategies of third parties' premium pay TV channels, it would lack the ability to do it. In any event, it is unlikely that any customer foreclosure strategies would have an impact on effective competition, irrespective of any possible market definition.

(1128) The Commission therefore concludes that the Transaction would not significantly impede effective competition as a result of total or partial customer foreclosure of premium pay TV channels in Finland.

8.5.2.8. Conglomerate non-coordinated effects relating to the retail supply of fixed internet access, mobile telecommunications, multiple play and retail OTT AV services in Finland

(1129) The Non-Horizontal Guidelines<sup>1005</sup> indicate that competition concerns can arise in circumstances where a merger involves companies that are active in closely related markets. While in the majority of circumstances conglomerate mergers will not lead to any competition problems, in certain circumstances they can lead to anticompetitive effects. One such example is when the combination of products in related markets would give the merged entity the ability and incentive to leverage a strong market position in one of the markets to the other market by means of tying or bundling. Where tying or bundling is likely to lead to a reduction in actual or potential rivals' ability or incentive to compete it may reduce competitive pressure on the merged entity, allowing it to increase prices.

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<sup>1002</sup> Commission's calculations based on the Telia's response to the Commission's RFI 75 [Annex 1] (ID003154).

<sup>1003</sup> Commission's calculations based on CONFIDENTIAL.

<sup>1004</sup> See Section 8.3.2.4, several competing suppliers of retail AV services would remain active under any possible market segmentation.

<sup>1005</sup> Non-Horizontal Merger Guidelines, section V.A.

- (1130) In Finland, Telia is active on the markets for the retail supply of fixed internet access, mobile telecommunications and multiple play services. Telia also provides retail AV services which may be included in its multiple play offering.<sup>1006</sup>
- (1131) Bonnier Broadcasting is active as supplier of retail AV services through its OTT applications. In Finland, Bonnier Broadcasting provides OTT services through the following applications:
- “mtv” app (formerly MTV Katsomo), is an AVOD service giving access to the non-linear content of Bonnier Broadcasting’s FTA TV channels;
  - C More app, is a SVOD service giving access to both linear and non-linear content of Bonnier Broadcasting’s FTA, basic and premium pay TV channels, and to some additional content.
- (1132) Multiple play services can comprise a mixture of two or more of AV services (in particular OTT services such as AVOD and SVOD), fixed telephony, mobile telecommunications and fixed internet services. .
- (1133) The Commission has therefore assessed the risk of the following types of foreclosure strategies in Finland: (i) foreclosure of rival providers of fixed internet access, mobile telecommunications and multiple play services, under any possible market segmentation, by tying or bundling Bonnier Broadcasting’s OTT AV service with Telia’s telecommunications services<sup>1007</sup> (section 8.5.2.8.1), and (ii) foreclosure of rival retail suppliers of OTT AV services by tying or bundling Bonnier Broadcasting’s OTT AV service with Telia’s telecommunications services or engaging in exclusionary practices<sup>1008</sup> (section 8.5.2.8.2).
- (1134) Therefore, in the present case, the Commission analyses whether the merged entity would have the ability and incentive to foreclose rival suppliers of :
- (1) telecommunications services;
  - (2) OTT AV services.
- (1135) The Commission then assesses whether each of these foreclosure strategies would likely result in a significant detriment to effective competition in the markets for the retail supply of fixed internet access services, mobile services, retail AV services and mixed multiple play packages.
1. Foreclosure of competing providers of telecommunications services
    - a. *Notifying Party’s view*
- (1136) The Parties submit that the Transaction does not give rise to any negative competitive effect on the market for the retail supply of fixed internet access and

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<sup>1006</sup> For a description of Telia’s retail AV offering in Finland, please refer to Section 8.5.2.1.1.

<sup>1007</sup> Before the Transaction, customers of competing providers of telecommunications services can access Bonnier Broadcasting’s OTT AV service. Some respondents to the market investigation were concerned that the merged entity would (i) bundle or tie OTT AV services exclusively with Telia’s fixed internet, mobile and multiple play services or (ii) bundle such OTT AV services in a way that it would be difficult to match the merged entity’s pricing conditions.

<sup>1008</sup> Before the Transaction, customers of competing providers of OTT AV services can access Telia’s telecommunications services. Post-Transaction, the merged entity may (i) deny that such OTT AV services are distributed to customers of the merged entity’s telecommunications services or (ii) degrade the quality of competing providers of OTT AV services when distributed to customers of the merged entity’s telecommunications services. The merged entity may have such incentive in order to favour its own OTT AV services which would be tied or bundled with the telecommunications services.

mobile telecommunications services for the same reasons as presented in section 8.5.1.8.1.a.<sup>1009</sup>

- (1137) In the Response to the 6(1)(c) Decision, the Notifying Party submits that the merged entity would not have the ability to foreclose competing providers of telecommunication services since Bonnier Broadcasting [...] for the retail supply of AV services via OTT through its AVOD and SVOD applications. Furthermore, any such strategy would not have any impact on competition since there is a plethora of options for telecommunications providers to differentiate their multiple play packages.

*b. Commission's assessment*

- (1138) The Commission's assessment of conglomerate effects, in light of the results of the market investigation, is set out in the following recitals. For this purpose, consistent with paragraph 94 of the Non-Horizontal Merger Guidelines, in relation to each of these practices, the Commission examines, (i) whether the merged entity would have, post-merger, the ability to foreclose its rivals, (ii) whether it would have the incentive to do so, and (iii) whether a foreclosure strategy would have a overall negative impact on effective competition.

*The importance of multiple play packages in Finland*

- (1139) The Commission considers that retail AV services, in particular OTT services such as AVOD and SVOD, are important to the market for multiple play packages in Finland. Multiple play packages can comprise a mixture of two or more of AV services, fixed telephony, mobile telecommunications and fixed internet services, for the following reasons.
- (1140) First, most of the respondents to the market investigation indicate that they are offering multiple play packages including AV service with one or more telecommunications services such as fixed internet access servives<sup>1010</sup> and that, to their knowledge also Telia offers similar bundles<sup>1011</sup>.
- (1141) Second, the Commission considers that bundles including AV services, such as OTT services (e.g., SVOD and AVOD services), and fixed internet access services are relevant in Finland. In particular, based on Telia's submission, at least [...]% of Telia's retail AV customers in Finland have also a fixed internet mobile service and [...]% have also a mobile service.<sup>1012</sup> The Parties have indicated that they had approximately [...] subscribers of multiple play bundled services including a TV component<sup>1013</sup>, however the Commission notes that this figure is significantly lower than the one provided before.<sup>1014</sup>.

*Ability to foreclose*

- (1142) In the following recitals, the Commission has assessed whether the merged entity would have the ability to engage in (a) tying retail OTT AV services, in particular its

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<sup>1009</sup> Form CO, paragraphs 867 to 875 and 890 to 896.

<sup>1010</sup> Responses to questionnaire Q1 to TV distributors in Finland, question H.1.

<sup>1011</sup> Responses to questionnaire Q1 to TV distributors in Finland, question H.2.

<sup>1012</sup> RBB Economics' report "A vertical arithmetic model", 3 December 2018 (ID000123).

<sup>1013</sup> Parties' response to the Commission's RFI 29 [Annex 2] (ID01361).

<sup>1014</sup> In its submission, the Notifying Party indicates that approximately [...] customers acquire both retail AV services and fixed internet services from Telia and that approximately [...] customers acquire both retail AV services and mobile telecommunications services from Telia in Finland. RBB Economics' report "A vertical arithmetic model", 3 December 2018 (ID000123).

OTT AVOD and SVOD services, with either retail mobile telecommunications or retail fixed internet access services<sup>1015</sup> or any multiple play package; (b) pure bundling strategies, whereby the merged entity would not make AVOD/SVOD services and telecommunications services available separately, (c) mixed bundling strategies, whereby the merged entity's AVOD/SVOD services, or content included in such services, would be sold jointly with either (i) Telia's mobile or (ii) Telia's fixed internet access service or (iii) both services, but those products would also be made available separately to end customers.

- (1143) The Commission considers that the merged entity would likely have the ability to foreclose competing providers of telecommunications services in Finland from its OTT services. Bonnier Broadcasting has a significant degree of market power in relation to AVOD services, containing content of Bonnier Broadcasting's FTA and basic pay TV channels, and SVOD services containing sport rights for the following reasons.
- (1144) First, as described in Section 8.5.2.2.2.(a) and Section 8.5.2.3.2.(a), Bonnier Broadcasting's content on which AVOD services and SVOD services are based, namely MTV and C More Sport's linear and non-linear content, has been defined as an important input for the provision of retail AV services. In particular, Section 8.5.2.3.2.(a) has presented the relevance of C More's sports content which drives customers' behaviour and switching. Moreover, the *mtv* app has more than [...] registered users in Finland<sup>1016</sup> and the C More app is the only OTT player providing access to significant sport content, such as Formula 1, in Finland.
- (1145) Second, the merged entity would also likely have significant market power in the retail supply of OTT SVOD services including sports content with a market share of approximately CONFIDENTIAL.<sup>1017</sup>.
- (1146) Third, the Commission notes that, before the Transaction, there is a large common pool of customers for Bonnier Broadcasting's AVOD and SVOD services and customers of fixed internet access and mobile telecommunications services. Indeed, all customers of AVOD and SVOD services in order to access the services are also required to purchase either fixed internet access or mobile telecommunications services.
- (1147) Fourth, the Commission notes that in Finland there is an increasing trend whereby customers buy retail AV services with fixed internet access or mobile telecommunications services from a single source. As stated above in recitals 1141, at least [...]% of Telia's TV customers in Finland have also a fixed internet mobile service and [...]% have also a mobile telecommunications service.<sup>1018</sup>

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<sup>1015</sup> OTT services, in particular AVOD and SVOD services, are usually sold in a bundle with fixed telephony services when at least fixed internet access services are included in the subscription acquired by end customers. Therefore, the Commission would not consider scenarios whereby retail OTT AV services are tied or bundled exclusively with fixed telephony services. When referring to tying or bundling including fixed internet access services, the Commission considers that fixed telephony services are included proportionally based on the evidence provided in Annex I.

<sup>1016</sup> Form CO, Annex 6.42, slide 8.

<sup>1017</sup> Commission's calculations based on Telia's response to the Commission's RFI 75, question 1 (ID003154) and CONFIDENTIAL.

<sup>1018</sup> RBB Economics' report "A vertical arithmetic model", 3 December 2018 (ID000123).

### *Incentive to foreclose*

#### Tying and pure bundling

- (1148) The Commission considers that the merged entity would lack the incentive to tie either retail mobile telecommunications or retail fixed internet access services or any multiple play package (the tying good) with retail AV services, in particular its OTT AVOD and SVOD services (the tied good), to engage in pure bundling strategies (i.e., not making those AVOD/SVOD services separately available) for the following reasons.
- (1149) First, before the Transaction, Telia is already active in all relevant markets and it is not offering those products either jointly in fixed proportions or is it conditioning the sale of one service (e.g., fixed internet) to the purchase of the other one (e.g., SVOD).
- (1150) Second, the Commission considers that, should the merged entity post-Transaction decide to implement either of the two strategies (i.e., tying or pure bundling), this would likely significantly negatively impact its revenues and profitability. For example, Telia would risk significant reductions in revenue in the market for the retail supply of fixed internet access services by not offering standalone fixed internet access services since approximately [...]% of Telia's fixed internet customer base has no AV service subscription with Telia.<sup>1019</sup>
- (1151) However, the Commission cannot exclude that the merged entity would have the incentive to tie AV services, in particular its OTT AVOD and SVOD services (the tying good) with either retail mobile telecommunications or retail fixed internet access services or any multiple play package (the tied good). First, the Commission notes that, as presented in Annex I, that customers of retail AV services, and therefore also OTT AV services, on average acquire an appreciably larger set of additional services from Telia, such as fixed internet access and mobile telecommunications services.<sup>1020</sup> Therefore, the merged entity may have the incentive to push customers of competing telecommunications services subscribing to Bonnier Broadcasting's OTT services to switch to Telia. Second, the Commission notes that a significant part of the revenue synergies of the Transaction in Finland [...]%<sup>1021</sup>, is derived from the increase in Telia's fixed internet access and mobile telecommunications customer base by selling Bonnier Broadcasting's content and services, including OTT AV services. Therefore, showing Telia's incentive to use such services to increase its presence in the relevant telecommunications markets.

#### Mixed bundling

- (1152) The Commission considers that the merged entity would likely have the incentive to engage in mixed bundling strategies whereby Bonnier Broadcasting's AVOD/SVOD services, or content included in such services<sup>1022</sup>, would be sold jointly with either

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<sup>1019</sup> Commission's calculation based on RBB Economics' report "A vertical arithmetic model", 3 December 2018 (ID000123).

<sup>1020</sup> Economic Annex, Section 2.2.1.

<sup>1021</sup> Commission's calculations based on the Parties' response to the Commission's RFI 3 [Annex 3] (ID000126).

<sup>1022</sup> For example, DNA indicates that Telia could offer extra benefits for the residents of housing companies (e.g. free Liiga or F1 service for certain period of time) to promote its sales of broadband and cable tv connections to housing companies. See Non-Confidential version of DNA's presentation of 18 September 2018.

- (i) Telia's mobile or (ii) Telia's fixed internet access service or (iii) both services, but those products would also be made available separately to end customers.
- (1153) First, absent the Transaction, Telia is already implementing a strategy in Finland whereby it offers a standalone OTT application including important content. Telia sells its broadband services by bundling the Finnish ice hockey league (*Liiga*) content with broadband, digibox and the Telia TV application.<sup>1023</sup> The bundled product is EUR [...] cheaper than the individual products bought separately, representing a discount of approximately [...]%. Therefore, the Commission considers it likely that the merged entity would implement a similar strategy also once it will acquire, post-Transaction, access to the important content included in the MTV and C More applications.
- (1154) Second, compared to a pure bundling or tying strategy, the merged entity would likely not incur significant additional costs since the standalone products would remain available to users in the market who have a preference for single sourcing or with no interest in one of the product parts of the bundle. Therefore, the merged entity would not risk to incur into significantly reductions in revenue in the single components market. For example, the approximately [...]% of Telia's fixed internet customer base that has no AV service subscription with Telia would not switch to competing providers of fixed internet access services and keep their subscription with Telia.
- (1155) Finally, the Parties' internal documents indicate [Telia Company's internal documents].<sup>1024 1025</sup>

*Overall likely impact on effective competition*

- (1156) The Commission considers that the Transaction would likely have a significant detrimental effect on effective competition in the markets for the retail supply of mobile telecommunications services, fixed internet access services and multiple play packages for the following reasons.
- (1157) The Commission considers that, similarly to what Telia is doing in Finland absent the Transaction, the merged entity would likely limit access by rival providers of telecommunications services to the merged entity's OTT applications, including AVOD and SVOD services. The merged entity could either make those applications exclusive to its fixed internet access and mobile customers, make them available with a significant price discount to its fixed internet access and mobile customers, or provide exclusive content to such customers.<sup>1026</sup>
- (1158) First, since as shown above in Section 8.5.2.8.1.b, Bonnier Broadcasting has significant degree of market power in AVOD and SVOD services, its refusal to make these services available to rival suppliers of multiple play packages would have significant detrimental effect on their ability to compete. In particular, as described above, the merged entity would have significant market power in the retail supply of OTT AVOD services due to the popularity of the *mtv app* which has more than [...]

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<sup>1023</sup> See "Liiga + Laajakaista + Telia TV alk. 39,90 €kk/" available at: <https://www.telia.fi/liiga/tuotteet/tilaa-liiga-laajakaistalla>.

<sup>1024</sup> Form CO, Annex 6.42, slide 38.

<sup>1025</sup> Form CO, Annex 6.11.

<sup>1026</sup> The Commission notes that AVOD applications are made available in the market for free and funded through advertising revenue. Therefore, possible foreclosure strategy related to the merged entity's AVOD application consist of either make such applications not available at all or provide more exclusive content to the merged entity's customers.

registered users in Finland. The merged entity would also likely have significant market power in the retail supply of OTT SVOD services including sports content with a market share of approximately CONFIDENTIAL.<sup>1027</sup>

- (1159) Second, competing providers of mobile and fixed internet telecommunications services would not be able to deploy counter strategies in a timely fashion in order to bypass the merged entity and neutralise the effects of any attempted foreclosure. The market investigation shows that rival are unlikely to be able to replicate the merged entity's offering.<sup>1028</sup> In particular, with reference to Bonnier Broadcasting's FTA channels, DNA highlights that "*Bonnier Broadcasting's [MTV3] is the most popular commercial FTA channel in Finland and the Sub and AVA channels complement it. The competing channels, such as Nelonen, would not suffice to create an equally attractive bundle. To illustrate this, it may be noted that the prime time viewing shares of the commercial FTA channel providers are the following: MTV [20-30]%, Sanoma [10-20]%, Discovery [5-10]% and Fox [0-5]%*". Furthermore, with reference to Bonnier Broadcasting's premium pay TV channels and content associated with those channels, Elisa notes that most of its premium pay TV packages are based on C More content. Elisa notes that Bonnier Broadcasting's relevance is based mainly on sports content since on films and series other content libraries must also be taken into consideration (for example, Netflix, Viaplay, HBO Nordic).
- (1160) Third, as described above, a significant proportion of telecommunications customers, in particular fixed internet access customers, would be impacted by such a foreclosure strategy. In particular, within Telia's fixed internet customer base, over [...]% of those customers are also subscribers of AV services with Telia.<sup>1029</sup> The [...] of customers of multiple play packages that are also subscribers of AV services indicates that rival distributors could stand to lose a large proportion of their multiple play customers if the merged entity were to undertake a foreclosure strategy. In other words, those customers would likely switch from rival telecommunications providers to the merged entity in order to benefit from a multiple play package that includes Bonnier Broadcasting's AVOD/SVOD services.

c. *Conclusion*

- (1161) In light of the foregoing, the Commission concludes that the Transaction is likely to significantly impede effective competition in Finland, as a result of the conglomerate relationships between Telia's activities as provider of telecommunications services and Bonnier Broadcasting's activities as retail supplier of OTT AV services, by tying or bundling Bonnier Broadcasting's OTT AV services with Telia's telecommunications services.

2. Foreclosure of competing providers of OTT AV service providers

a. *Notifying Party's view*

- (1162) The Notifying Party submits that the Transaction does not give rise to any negative competitive effect on the market for the supply of OTT AV services for the same reasons as presented in Section 8.5.1.6.2.(a).<sup>1030</sup>

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<sup>1027</sup> Commission's calculations based on Telia's response to the Commission's RFI 75, question 1 (ID003153) and CONFIDENTIAL.

<sup>1028</sup> Responses to questionnaire Q1 to TV distributors in Finland, questions H.4 and H.5.

<sup>1029</sup> RBB Economics' report "A vertical arithmetic model", 3 December 2018 (ID000123).

<sup>1030</sup> Form CO, paragraphs 867 to 875 and 890 to 896.

- (1163) In the Response to the 6(1)(c) Decision, the Notifying Party further considers that such strategy would have no impact on prices and choices since competing providers of OTT services could partner with competing providers of fixed internet and mobile telecommunications services.

*b. Commission's assessment*

- (1164) In the following recitals, the Commission will assess whether the merged entity would by means of a tying or mixed bundling strategies, as presented in Section 8.5.1.7.1 above, have the ability and the incentive to significantly degrade the service offerings of competing providers of OTT AV services on Telia's mobile and fixed networks in order to favour its services.

*Ability to foreclose*

- (1165) The Commission considers that the merged entity would lack the ability to foreclose competing providers of OTT AV services by tying or bundling Bonnier Broadcasting's OTT AV service with Telia's telecommunications services or by significantly degrading their service offerings on Telia's mobile and fixed networks.

- (1166) First, as described in Section 8.3.2.5, Telia is one of the leading suppliers of retail mobile telecommunications and fixed internet access services in Finland. It was the second provider of both retail fixed internet access services and retail mobile telecommunication services in 2018 with market shares by volume of [20-30]% and [30-40]% respectively. However, the Commission notes that other single-component rivals would remain available in the market. Elisa and DNA, would actively compete (i) in the market for the retail supply of fixed internet access services, with market shares by volume [30-40]% and [20-30]% respectively, and (ii) in the market for the retail supply of mobile telecommunications services, with market shares by value of respectively [30-40]% and [20-30]% respectively.<sup>1031</sup>

- (1167) Second, the Commission notes that in Finland there is an increasing trend of offering unlimited mobile data packages. Therefore, all OTT applications would be offered at zero rate on the merged entity's mobile network and the merged entity would have no ability to favour its own OTT services by engaging into zero rating practices.

- (1168) Finally, as discussed in Section 8.5.1.8.2.b, the Commission considers that any ability to implement zero rating practices would be restricted by the provisions in the Open Internet Regulation and by the guidance provided to National Regulatory Authorities by the related BEREC Guidelines on its implementation.

*Incentive to foreclose*

- (1169) With reference to the merged entity's incentive to engage in tying and bundling strategies in Sweden, the Commission refers to Section 8.5.2.7.1.(b) above. In this section, the Commission assesses whether the merged entity would have the incentive to favour its own OTT services tied or bundled with its own telecommunications services.

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<sup>1031</sup> The Commission notes that access to markets for the wholesale supply of fixed internet services, namely the market for wholesale local access provided at a fixed location and the market for wholesale central access provided at a fixed location for mass market products is regulated in Finland ensuring that customers can access retail fixed internet access services from different operators. See: [https://circabc.europa.eu/webdav/CircaBC/CONNECT/e-cctf/Library/01%20-20Commission%20Decisions/Commission%20Decisions%202018/FI-2018-2052-2053%20ADOPTED\\_EN.pdf](https://circabc.europa.eu/webdav/CircaBC/CONNECT/e-cctf/Library/01%20-20Commission%20Decisions/Commission%20Decisions%202018/FI-2018-2052-2053%20ADOPTED_EN.pdf).

- (1170) Given the lack of ability to foreclose, it is not necessary to conclude as to whether the merged entity will have the incentive to engage in foreclosure strategies of competing providers of OTT services
- (1171) Nevertheless, the Commission has assessed the merged entity's incentives, and considers that the merged entity would lack the incentive to foreclose competing providers of OTT services by significantly degrading their service offerings on Telia's mobile and fixed networks violating the Open Internet Regulation for the same reasons as presented in Section 8.5.1.7.2.(b). Indeed, also in Finland, the regulator is checking that operators are in compliance with the regulation<sup>1032</sup> and are following the guidance provided by the related BEREC Guidelines on its implementation.

*Impact on effective competition of foreclosure*

- (1172) Regardless of whether the merged entity has either the ability or the incentive to foreclose competing provider of retail OTT AV services, the Commission discusses whether any of the practices presented above would likely have a significant detrimental impact on effective competition. The Commission considers that it is unlikely that any foreclosure of competing OTT AV service providers will have a significant detrimental effect on effective competition for the retail supply of OTT services, for the following reasons.
- (1173) First, as described above in recital 1166, several single-component rivals would remain available in the relevant markets. Bonnier Broadcasting's competing providers of retail AV OTT services could partner with such providers in order to expand their sales, if needed.
- (1174) Second, cooperating with providers of fixed internet access services and mobile telecommunications services is not necessary for providers of OTT services to compete in the retail AV market and any possible market segments. For example, most of Bonnier Broadcasting's SVOD customers were acquired through direct-to-consumer relationships and not by partnering with telecom providers.<sup>1033</sup>
- (1175) Third, the Open Internet Regulation would protect the merged entity's competitors from any discriminatory treatment on Telia's mobile and fixed internet access networks. Article 2 foresees that "*[p]roviders of internet access services shall not engage in traffic management measures [...], and in particular shall not block, slow down, alter, restrict, interfere with, degrade or discriminate between specific content, applications or services [emphasis added], or specific categories thereof*".
- (1176) Finally, with reference to "zero rating" practices (i.e., not deducting the consumption of data related to Bonnier Broadcasting's OTT services from the data volume included in the customer's subscription of internet access services), the Commission notes that anti-competitive effects could be mitigated on the fixed internet access market where services are mainly offered to end customers with unlimited data traffic and on the market for the retail supply of mobile telecommunications services since there is a trend of offering unlimited data packages in Finland.<sup>1034</sup>

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<sup>1032</sup> Annual country reports on open internet from national regulators – 2019. Available at: <https://ec.europa.eu/digital-single-market/en/news/annual-country-reports-open-internet-national-regulators-2019>.

<sup>1033</sup> Telia's response to the Commission's RFI 75, question 1 (ID003153).

<sup>1034</sup> DNA offers unlimited mobile data packages, see: <https://www.dna.fi/puhe>; Elisa offers unlimited mobile data packages, see: <https://elisa.fi/kauppa/matkapuhelinliittymat/>

c. *Conclusion*

(1177) In light of the foregoing, the Commission considers that the merged entity would lack the ability and the incentive to foreclose rival retail suppliers of OTT AV services in Finland. In any event, it is unlikely that any foreclosure strategy would have an impact on effective competition, irrespective of any possible market definition.

(1178) The Commission therefore concludes that the Transaction would not significantly impede effective competition in Finland, as a result of the conglomerate relationships between Telia's activities as provider of telecommunications services and Bonnier Broadcasting's activities as retail supplier of OTT AV services.

8.5.2.9. Total and partial input foreclosure relating to the sale of advertising space in video format and the retail provision of AV services, mobile telecommunication services and fixed internet access services in Finland

(1179) In Finland, Bonnier Broadcasting is the leading supplier of advertising space for advertisements in video format both on a market for the sale of advertising space on TV channels only and on a wider market including the sale of advertising space on TV channels and in other AV services, most notably AVOD services. More specifically, Bonnier Broadcasting has a market share by value of respectively [40-50]% and [40-50]% under these two possible market definitions.<sup>1035</sup> Telia on the other hand [...] on the market for the sale of advertising space in video format in Finland, as it has entered into advertisement and sponsorship agreements in connection with the broadcast of *Liiga* ice hockey games.<sup>10361037</sup>

(1180) There is a vertical link between Bonnier Broadcasting's activities as a seller of advertising space in video format, and Telia's activities in the markets for the retail provision of AV services, mobile telecommunication services and fixed internet access services, since advertising space in video format can be viewed as an input for TV/telecommunications distributors, which purchase advertising space in video format in order to promote and market their products and services.

(1181) The Commission has assessed the risk of total and partial input foreclosure of rival providers of retail AV services, retail mobile telecommunication services and retail fixed internet access services through the denial or degradation of access to Bonnier Broadcasting's advertising space in video format.

1. Notifying Party's view

(1182) The Notifying Party submits that the merged entity would have no ability to foreclose or partially foreclose rival TV distributors and telecommunications providers by denying them access to advertising space in video format supplied by Bonnier Broadcasting, given that: (i) Bonnier Broadcasting's advertising inputs are not essential for rival TV distributors and telecommunications providers; (ii) there

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<sup>1035</sup> Form CO, annex 7, section 8.5. Given the leading position of Bonnier under both possible market segmentations, the Commission will carry out one single competitive assessment covering both possible segmentations and will hereafter only refer to advertising space in video format, which should be understood to cover either advertising space on TV channels and/or more generally all advertising space in video format whether on TV channels or on other AV services.

<sup>1036</sup> Form CO, paragraph 516.

<sup>1037</sup> The Commission in this Section will not assess the impact of the Transaction on the market for the sale of advertising space on other media channels since Bonnier Broadcasting's activities in such market are limited and do not give rise to any vertically affected market.

are many alternative suppliers of advertising space in video format available to rival TV distributors and telecommunications providers; (iii) there are alternative mediums for advertising spaces for rival TV distributors and telecommunications providers; and (iv) Bonnier Broadcasting's contractual obligations may prevent or will constrain the merged entity from its ability to implement such conduct.

- (1183) The Notifying Party further indicates that the merged entity would have no incentive to totally foreclose rival TV distributors and telecommunications providers, since: (i) the merged entity would forego a significant potential source of revenues; (ii) the merged entity would not be able to steal existing or new customers from rival TV distributors and telecommunications providers through such a strategy since rival distributors would retain their current retail customers and would not lose the ability to market their services in order to find new retail customers and (iii) even if it would be possible to foreclose in order to steal rival TV distributors' and telecommunications providers' customers, it would not likely result from input foreclosure.
- (1184) The Notifying Party further indicates that the merged entity would have no incentive to partially foreclose rival TV distributors and telecommunications providers. The merged entity's bargaining position as a seller vis-à-vis rival TV distributors and telecommunications providers would be weakened since the Transaction would lead to the dissolution of the horizontal overlap between Bonnier Broadcasting and other sellers of advertising space in video format owned by the Bonnier group.
- (1185) Finally, the Notifying Party submits that, even if it could hypothetically be shown that the merged entity would have the ability and incentive to engage in input foreclosure (*quod non*), such a strategy would not have any impact on effective competition. First, the merged entity would continue to face fierce competition from a large number of strong rival TV distributors and telecommunications providers, whose subscriber base would be unaffected by the foreclosure. Second, such a strategy would not raise barriers to entry on the market for the retail supply of AV services since it would not prevent the emergence and expansion of streaming services, many of which have little or no dependency on TV advertising for their expansion. Third, media agencies that represent advertising buyers across multiple media channels would be able to respond rapidly and effectively to any attempt by the merged entity to engage in such a strategy.<sup>1038</sup>

## 2. Commission's assessment

- (1186) The Commission's assessment of anticompetitive input foreclosure, in light of the results of the market investigation, is set out in the following recitals. For this purpose, consistent with paragraph 32 of the Non-Horizontal Merger Guidelines, in relation to each of these practices, the Commission examines, (i) whether the merged entity would have, post-merger, the ability to foreclose access to inputs, (ii) whether it would have the incentive to do so, and (iii), whether a foreclosure strategy would have a significant detrimental effect on competition downstream.
- (1187) The Commission has conducted its assessment on the basis of all possible downstream market definitions.

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Form CO, section 6.9.6.

a. *Ability to engage in input foreclosure*

- (1188) In the Article 6(1)(c) Decision, the Commission preliminary considered that the merged entity could have the ability to engage in either total or partial foreclosure of advertising space in video format since, for the reasons outlined hereafter, the advertising space available on the Bonnier Broadcasting TV channels and AVOD services in Finland constitutes an important input<sup>1039</sup> in the sense outlined in the Non-Horizontal Merger Guidelines. The Commission considered that the input is of significant importance for Telia's competing retail suppliers of AV services, retail mobile telecommunications services and retail fixed internet access services, for the following reasons.
- (1189) First, as described in Section 8.3.2.6, Bonnier Broadcasting is the leading supplier of advertising space for advertisements in video format in Finland with a market share by value of [40-50]% if the market is limited to the sale of advertising space on TV channels and [40-50]% if the market also includes the sale of advertising space in other AV services, most notably AVOD services. The Commission considers such [...]. The other main providers of advertising space in video format are Sanoma and Discovery with respective market shares of [30-40]% and [10-20]% in the supply of advertising space on TV channels and [30-40]% and [5-10]% respectively on a wider market encompassing advertising space both on TV channels and in other AV services.
- (1190) Second, the Phase I market investigation has confirmed that access to advertising space on TV channels (where Bonnier Broadcasting is particularly strong) is particularly important for retail providers of AV services, mobile telecommunication services and fixed internet access services to promote their retail services in Finland in the sense that other advertising media cannot replicate TV advertising specificities.<sup>1040</sup> In particular, NENT indicates that TV is the most relevant for advertising reach in Finland.<sup>1041</sup>
- (1191) Third, retail providers of AV services, mobile telecommunication services and fixed internet access services note that Bonnier Broadcasting's channels are particularly important for them to be able to reach a wide audience since Bonnier Broadcasting's TV channels have approximately [...] of all national commercial share of viewing.<sup>1042</sup> In particular, all market respondents indicate MTV3 as particularly important.<sup>1043</sup>
- (1192) The fact that MTV3 [Internal market analysis].<sup>1044</sup>
- (1193) Finally, the Commission considered that not only would retail providers of AV services, mobile telecommunication services and fixed internet access services be unable to reach a similar proportion of their target audience without access to Bonnier Broadcasting channels, they would also most likely face increased advertising costs. This is because the remaining suppliers of advertising space –

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<sup>1039</sup> According to the Non-Horizontal Merger Guidelines, input foreclosure may raise competition problems only if it concerns an important input for the downstream product. Non-Horizontal Merger Guidelines, paragraph 34.

<sup>1040</sup> Responses to questionnaire Q1 to TV distributors in Finland, question I.8.

<sup>1041</sup> NENT's response to questionnaire Q1 to TV distributors in Finland, question I.8.1 (ID01506).

<sup>1042</sup> Responses to questionnaire Q1 to TV distributors in Finland, question I.8.1.

<sup>1043</sup> Responses to questionnaire Q1 to TV distributors in Finland, question I.9.

<sup>1044</sup> Form CO, Annex 6.11.

Sanoma and Discovery – would face less competition and would therefore most likely be able to increase their prices.

- (1194) In its Response to the Article 6(1)(c) Decision, the Notifying Party however claims that the TV advertising inputs offered by Bonnier Broadcasting in Finland are not important inputs in the sense outlined in the Non-Horizontal Merger Guidelines, for the reasons explained in Section 8.5.1.9.
- (1195) As explained in Section 8.5.1.9, similarly to the situation in Sweden, the Commission considers the advertising space in video format offered by Bonnier Broadcasting in Finland as an important input for the downstream players because if these inputs were no longer available to Telia's rivals, these rivals would not be able to compete as effectively with Telia as is the case today on the relevant retail markets. This is because in order to compete effectively in the retail supply of AV, fixed internet and mobile telecommunication services, irrespective of the exact market definitions for these downstream services, Telia's rivals need to advertise their offers in a way that allows to reach as many of their potential customers as possible in a fast and impactful way.
- (1196) As explained by DNA Oyj, TV advertising is particularly important to advertise its retail services because “[i]n Finland, TV reaches 88% of the 10+ population on a weekly basis (appr. 4.3 million people). The average viewing time per day is 2 hours and 53 minutes, and it has fallen by only 3 minutes from 2017 to 2018. TV advertising is the most effective medium to reach a wide population at once. Print media are very regional and the Internet is fragmented. TV is also the most powerful medium to enforce the brand image”.<sup>1045</sup>
- (1197) Within TV advertising, in Finland, MTV (and MTV3 in particular) has a unique position, as no other TV channels allows telecommunications companies (and other advertisers) to reach such a high percentage of their target customer group. For instance, the average daily reach of MTV in the age group 10-54 years old in 2018 was [...], compared to [...] for Nelonen Media, [...] for Discovery and [...] for Fox. Average weekly reach on the same target group was [...] for MTV against [...] for Nelonen Media, [...] for Discovery and [...] for Fox.<sup>1046</sup>
- (1198) According to the Notifying Party, an advertiser would be able to obtain similar reach by either advertising exclusively on MTV channels or exclusively on the other commercial TV channels in Finland (combining Nelonen Media, Discovery and Fox channels). However, the Commission considers it unlikely that without access to Bonnier Broadcasting's channels, advertisers would be able to obtain a reach similar to the one they currently require when they organise their advertising campaigns. This is because currently purchasers of TV advertising space typically complement the reach from MTV3 with advertising on other competing TV channels to reach as many potential customers as possible within 2-4 weeks.<sup>1047</sup>

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<sup>1045</sup> DNA's response to questionnaire Q1 to TV distributors in Finland, question I.8 (ID00739). See also <https://www.finppanel.fi/en/tulokset/tv/vuosi/sharev/2018/10plus.html>

<sup>1046</sup> Bonnier Broadcasting's response to the Commission's RFI 35 - Case M.9064 - RFI 35\_part\_05\_of\_06 - BBR0378829.00001 (ID1777-78857)

<sup>1047</sup> Responses to questionnaire Q1 to TV distributors in Finland, question I.16  
Telenor's and Tele 2's responses to the Commission's RFI 23 and 24, questions 4-5 (ID001164 and ID001067)

*b. Incentive to engage in total or partial input foreclosure*

- (1199) In the Article 6(1)(c) Decision, the Commission preliminarily considered that overall the merged entity would have the incentive to engage in either total or partial input foreclosure strategies for the following reasons.
- (1200) First, most of the respondents to the Phase I market investigation considered that, post-Transaction, the merged entity would have the incentive to likely stop selling TV advertising space or degrade the quality of TV advertising space to competitors.<sup>1048</sup> In particular, one respondent indicated, based on its experience in Sweden, that the merged entity would be likely to deny opportunities to have MTV3 as a commercial advertising alternative.
- (1201) Second, the Commission noted that the cost of implementing an input foreclosure strategy would be low. Bonnier Broadcasting obtains [...]% of its advertising revenue from Telia's competing providers of retail AV services, retail mobile telecommunications services and fixed internet access services.<sup>1049</sup> Moreover, the Commission noted that the demand for Bonnier Broadcasting's advertising space on TV channels in Finland, in particular MTV3, is high. Therefore, should the merged entity ban Telia's competitors, it could most likely fill its advertising space with other advertisers in the market with limited or no impact on Bonnier Broadcasting's advertising revenues.
- (1202) In its response to the Article 6(1)(c) Decision, the Notifying Party maintains that the merged entity would lack the incentive to foreclose its advertising inputs, for the reasons explained in Section 8.5.1.9.
- (1203) The Commission however maintains its position that in all likelihood the cost of implementing a foreclosure strategy would be low and likely to be compensated by downstream gains, given that Bonnier Broadcasting obtains only [...]% of its advertising revenue from Telia's competing providers of retail AV services, retail mobile telecommunications services and fixed internet access services. In any event, the Commission considers that a partial foreclosure strategy by which the merged entity would degrade the quality of its TV advertising space made available to Telia's competitors (e.g., not giving access to prime time spots on MTV3) could have a very significant impact on the ability of Telia's competitors to compete effectively downstream, while not impacting to any significant extent the profitability of the merged entity's advertising business.

*c. Impact on effective competition of total/partial input foreclosure*

- (1204) In the Article 6(1)(c) Decision, the Commission preliminary considered that the input foreclosure strategies considered above could have a significant negative impact on consumers and effective competition in Finland for the following reasons.
- (1205) First, as explained above, the merged entity has a significant degree of market power in the Finnish market for the supply of advertising space in video format whether limited to space on TV channels or including also space in other AV services, most notably AVOD services.
- (1206) Second, most of the respondents to the Phase I market investigation indicated that, if post-Transaction, the merged entity were to stop selling TV advertising space and/or degrade the quality of its TV advertising space to providers of retail AV services,

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<sup>1048</sup> Responses to questionnaire Q1 to TV distributors in Finland, questions I.11, I.11.3, I.12 and I.12.3.

<sup>1049</sup> Bonnier Broadcasting's response to the Commission's RFI 10, questions 5 and 6, Annex 1 (ID000327).

retail mobile telecommunication services and retail fixed internet access services, it would have a broadly negative impact on their companies. Most of the respondents highlighted that Bonnier Broadcasting offers the most valuable advertising space in the Finnish market and it is extremely important to advertise on its channels (and in particular MTV3) in order to inform the Finnish people of their offers.<sup>1050</sup>

- (1207) Third, respondents to the Phase I market investigation indicated that Sanoma would be the only comparable alternative supplier of TV advertising space in Finland and that the Transaction would give it a very powerful position when negotiating prices.<sup>1051</sup>
- (1208) In its response to the Article 6(1)(c) Decision, the Notifying Party maintains that even if the merged entity would have the ability and incentives to engage in input foreclosure of TV advertising (quod non), this could not have any negative effects on TV distributors' or telecommunications providers' ability to compete on their respective downstream markets, for the reasons explained in Section 8.5.1.9.
- (1209) The Commission however maintains its position that the input foreclosure strategies considered above could have a significant negative impact on consumers and effective competition in Finland. In particular, as explained above in this section, the Commission considers that if advertising space on Bonnier Broadcasting's TV channels and AVOD services was no longer available to Telia's rivals, these rivals would not be able to compete as effectively with Telia as is the case today on the relevant retail markets. This is because in order to compete effectively in the retail supply of AV, fixed internet and mobile telecommunication services, Telia's rivals need to advertise their offers in a way that allows to reach as many of their potential customers as possible in a fast and impactful way.
- (1210) As explained by DNA Oyj, TV advertising is particularly important to advertise its retail services because "[i]n Finland, TV reaches 88% of the 10+ population on a weekly basis (appr. 4.3 million people). The average viewing time per day is 2 hours and 53 minutes, and it has fallen by only 3 minutes from 2017 to 2018. TV advertising is the most effective medium to reach a wide population at once. Print media are very regional and the Internet is fragmented. TV is also the most powerful medium to enforce the brand image".<sup>1052</sup>
- (1211) Within TV advertising, in Finland, MTV (and MTV3 in particular) has a unique position, as no other TV channels allows telecommunications companies (and other advertisers) to reach such a high percentage of their target customer group. For instance, the average daily reach of MTV in the age group 10-54 years old in 2018 was [...]%, compared to [...]% for Nelonen Media, [...]% for Discovery and [...]% for Fox. Average weekly reach on the same target group was [...]% for MTV against [...]% for Nelonen Media, [...] for Discovery and [...]% for Fox.<sup>1053</sup>
- (1212) According to the Notifying Party, an advertiser would be able to obtain similar reach by either advertising exclusively on MTV channels or exclusively on the other commercial TV channels in Finland (combining Nelonen Media, Discovery and Fox

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<sup>1050</sup> Responses to questionnaire Q1 to TV distributors in Finland, questions I.13 and I.13.1.

<sup>1051</sup> Responses to questionnaire Q1 to TV distributors in Finland, questions I.7.1, I.10.1, I.10.2.1, I.13.1, I.14.1 and I.15.1.

<sup>1052</sup> DNA's response to questionnaire Q1 to TV distributors in Finland, question I.8 (ID00739). See also <https://www.finppanel.fi/en/tulokset/tv/vuosi/sharev/2018/10plus.html>

<sup>1053</sup> Bonnier Broadcasting's response to the Commission's RFI 35 (ID02397)- Case M.9064 – RFI 35\_part\_05\_of\_06 - BBR0378829.00001 (ID1777-78857)

channels). However, the Commission considers it unlikely that without access to Bonnier Broadcasting's channels, advertisers would be able to obtain a reach similar to the one they currently require when they organise their advertising campaigns. This is because currently purchasers of TV advertising space typically complement the reach from MTV3 with advertising on other competing TV channels to reach as many potential customers as possible within 2-4 weeks.<sup>1054</sup>

### 3. Conclusion

- (1213) In light of the foregoing, the Commission concludes that the Transaction is likely to significantly impede effective competition in the markets retail provision of AV services, mobile telecommunication services and fixed internet access services in Finland, as a result of total or partial input foreclosure of advertising space in video format.

#### 8.5.3. Norway

##### 8.5.3.1. Parties' activities and affected markets in Norway

- (1214) Until recently, Telia was not active in the market for the retail supply of AV services in Norway and primarily offered mobile services in Norway. However, in October 2018 Telia acquired the Norwegian company Get AS ("GET") after clearance in phase I by the Norwegian Competition Authority. GET is mainly active in the provision of fixed broadband and TV services over its fixed network.<sup>1055</sup> Telia/GET is currently the second largest TV distributor (with a market share of [10-20]% in volume) in Norway.<sup>1056</sup>
- (1215) Bonnier Broadcasting's activities in Norway are currently limited. In [...], Bonnier Broadcasting entered into a sub-licensing agreement with [...].<sup>1057</sup> This sub-licensing agreement will expire on [...].
- (1216) The Notifying Party submits that there is no link between the Parties' activities in Norway because Bonnier Broadcasting is not active directly in the wholesale supply of TV channels, but only through the sub-licensing agreement concluded with TV2.<sup>1058</sup> The Notifying Party stresses that, unlike Sweden and Finland, Norway is not a key market for Bonnier Broadcasting.<sup>1059</sup>
- (1217) However, as confirmed by the Notifying Party,<sup>1060</sup> upon expiry of that agreement, Bonnier Broadcasting could resume its activity as wholesale supplier of TV channels in Norway. [Bonnier Broadcasting's agreements].<sup>1061</sup> Therefore, it cannot be excluded that the merged entity will be active again in the wholesale supply of premium pay TV non-sports channels in Norway within [...]. Moreover, the fact that Norway is not a key market for Bonnier Broadcasting does not entail that it would

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<sup>1054</sup> Responses to questionnaire Q1 to TV distributors in Finland, question I.16  
Telenor's and Tele 2's responses to the Commission's RFI 23 and 24, questions 4-5 (ID001164 and ID001067).

<sup>1055</sup> Parties' response to the Commission's RFI 3, question 39 and 40 (ID00142).

<sup>1056</sup> See section 8.3.3.2.

<sup>1057</sup> Bonnier Broadcasting's premium pay TV channels broadcast in Norway are all films and series channels, namely C More First, C More Hits, C More Stars, C More Series and SF-Kanalen (Form CO, table 13).

<sup>1058</sup> Form CO, paragraph 502.

<sup>1059</sup> Form CO, footnote 186.

<sup>1060</sup> Form CO, footnote 186.

<sup>1061</sup> [Bonnier Broadcasting's].

not be a key market for the merged entity, given the recent acquisition of GET by Telia.

- (1218) The Transaction will thus create a potential vertical link between Bonnier Broadcasting's activities in the possible market for wholesale supply of premium pay TV non-sports channels (upstream), and Telia's activities in the market for the retail supply of AV services (downstream) in Norway. Given that Bonnier Broadcasting has a market share in excess of 30% in the market for the wholesale supply of premium pay TV non-sports channels, the markets for the wholesale supply of premium pay TV non-sports channels and for the retail supply of AV services are vertically affected by the Transaction.

#### 8.5.3.2. Input foreclosure relating to the wholesale supply of premium pay TV non-sport channels and retail provision of AV services in Norway

- (1219) The Commission's assessment of anticompetitive input foreclosure in Norway, in light of the results of the market investigation, is set out in the following recitals. For this purpose, consistent with paragraph 32 of the Non-Horizontal Merger Guidelines, the Commission examines, (i) whether the merged entity would have, post-merger, the ability to foreclose access to inputs, (ii) whether it would have the incentive to do so, and (iii) whether a foreclosure strategy would have a significant detrimental effect on competition downstream.
- (1220) The Commission assesses the risk of foreclosure of rival retail providers of AV services through the denial of access to Bonnier Broadcasting's premium pay TV non-sports channels,<sup>1062</sup> or through an increase of the carriage fees paid by such rival providers to be able to carry Bonnier Broadcasting's premium pay TV non-sports channels. In Norway, premium pay TV non-sports channels are all premium pay TV films and series channels.<sup>1063</sup>

##### 1. Potential targets of input foreclosure

- (1221) For the purposes of its assessment, the Commission has considered, in particular, as the more likely potential targets of an input foreclosure strategy, the retail suppliers of AV services that compete closely with Telia, irrespective of any potential market segmentation. On the basis of the market shares presented in section 8.3.3.2, in relation to the market for the retail supply of AV services the main targets of potential foreclosure are the other main TV distributors, Telenor, Altibox and RiksTV.

##### 2. Notifying Party's view

- (1222) As regards the ability to engage in input foreclosure, the Notifying Party stresses that until recently, the competing retail provider of AV services Viasat (NENT) did not offer C More TV channels and that popular streaming services have grown rapidly without offering C More either. In addition, end-customers would have a wide range of alternatives, like other premium pay TV channels, such as Viasat, or SVOD

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<sup>1062</sup> The analysis of the Commission focuses on the potential market for the wholesale supply of premium pay TV non-sports channels, as Bonnier Broadcasting does not offer premium pay sports TV channels in Norway (see Form CO, Schedule 1 and Table 13). In the overall market for the wholesale supply of premium pay TV channels, Bonnier Broadcasting has a market share of approximately [10-20]%. (See Section 8.3.3.1). Therefore, the Transaction does not give rise to a vertically affected market.

<sup>1063</sup> Form CO, Schedule 1. Bonnier Broadcasting's premium pay TV non-sport channels offered in Norway are all film and series TV channels, i.e. C More First, C More Hits, C More Stars, C More Series and SF-Kanalene.

services, such as Netflix, Amazon or HBO Nordic. In that respect, the Notifying Party submits that market shares for wholesale supply of premium pay TV films and series channels do not reflect the full competitive environment, given that competitive pressure from SVOD providers would be particularly relevant for TV channels of this genre. They consider that Bonnier Broadcasting's share of the premium segment would dramatically drop if considering also HBO and Netflix.<sup>1064</sup> The Notifying Party submits that a foreclosure strategy would most likely lead customers to switch to these alternatives, and concludes that C More is not a sufficiently important input in Norway for input foreclosure to be a concern. This would be highlighted by the actual number of viewers/subscribers C More has in Norway.<sup>1065</sup>

- (1223) As regards the incentive to engage in input foreclosure, the Notifying Party submits that the results of the vertical arithmetic model developed for C More by RBB Economics would also apply to Norway. These results would show that the actual recapture rates are likely to be lower than the critical recapture rates, which correspond to the minimum proportion of customers of foreclosed TV distributors that would have to continue subscribing to C More, either by joining Telia's traditional TV distribution or by subscribing to C More's standalone streaming service, in order to make total input foreclosure profitable. Input foreclosure would thus not be a profitable strategy in this case. In particular, the likely actual recapture rate in Norway would probably be very low, as C More subscribers could choose from a variety of alternatives, such as competing premium pay TV channels and popular standalone streaming services like Netflix and HBO. In addition, the Notifying Party states that any input foreclosure strategy would likely lead to a [...] for both Telia and Bonnier Broadcasting.<sup>1066</sup>
- (1224) As for the effect on competition, the Notifying Party submits that C More would not be a critical component for TV distributors to compete on the market in Norway, as only a small proportion of rival TV distributors' customers would purchase C More. In addition, the Notifying Party submits that new players could enter the market and operate profitably without these C More premium pay TV films and series channels.<sup>1067</sup>

### 3. Commission's assessment

- (1225) The Commission has conducted its assessment on the basis of all possible downstream market definitions. The question as to whether the merged entity would have the ability to undertake a partial or total input foreclosure strategy has therefore been undertaken in light of the possible importance of those premium non-sports TV channels to TV distributors active in the potential markets for which premium pay TV non-sports channels are acquired, namely the markets for the retail supply of (i) AV services; (ii) linear pay AV services; (iii) linear premium pay AV services; (iv) all possible markets (i) to (iii) segmented into MDU and SDU.<sup>1068</sup>

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<sup>1064</sup> Parties' response to the Commission's RFI 9, question 2 (ID000402-000047).

<sup>1065</sup> Form CO, paragraphs 668, 669 and 693.

<sup>1066</sup> Form CO, paragraphs 678-681, 687 and 694.

<sup>1067</sup> Form CO, paragraph 695.

<sup>1068</sup> Before the Transaction, Bonnier Broadcasting's premium pay TV non-sports channels are not sold to retail suppliers of AV services as inputs for the provision of (i) linear FTA AV services, (ii) linear basic pay AV services or (ii) non-linear pay AV services. In respect of the latter, Bonnier Broadcasting does provide rights to distribute its premium pay TV non-sports channels in a non-linear manner as ancillary to the linear distribution of its channels (e.g., catch up rights) and that ancillary form of distribution has

a. Ability to engage in input foreclosure

- (1226) In the present case, while a majority of respondents to the Phase I market investigation indicated that the merged entity post-Transaction could stop licensing its premium pay TV non-sports channels,<sup>1069</sup> none of the respondents to the Phase I market investigation indicated that the merged entity post-Transaction could degrade the terms and conditions of the acquisition of premium pay TV non-sports channels from third parties.<sup>1070</sup> Nevertheless, the Commission considers that the merged entity would lack the ability to engage in any input foreclosure of Bonnier Broadcasting's premium pay TV non-sports channels since those channels do not constitute an important input on any potential markets for which premium pay TV non-sports channels are acquired, namely the markets for the retail supply of: (i) AV services; (ii) linear pay AV services; (iii) linear premium pay AV services; (iv) all possible markets (i) to (iii) segmented into MDU and SDU in Norway in the sense outlined in the Non-Horizontal merger Guidelines, for the following reasons.<sup>1071</sup>
- (1227) First, despite Bonnier Broadcasting, via TV2, having a market share of [60-70]% in the wholesale supply of premium pay TV films and series channels in volume in 2018 in Norway, the films and series content included in those channels do not seem as particularly important from a viewer perspective irrespective of any possible product market segmentation. In fact, when considering the share of viewing of both premium pay TV films and series channels and non-linear pay AV services in Norway, Bonnier Broadcasting has a share of viewing of [10-20]%, significantly behind Netflix with a share of [60-70]%, and similar to the other two main players NENT and HBO with shares of respectively [10-20]% and [10-20]%.<sup>1072</sup> Therefore, these other players like Netflix and HBO offering non-linear premium AV services at the retail level exercise an indirect competitive constraint on Bonnier Broadcasting's premium pay TV non-sports channels active at the wholesale level.
- (1228) Indeed, SVOD providers already exercise a strong out-of-market constraint on TV broadcasters, as linear TV is losing viewership to VOD services, by "cord shaving" (that is a reduction of the scope of the subscription), thereby limiting the market power of the merged entity in the wholesale supply of premium pay TV non-sports channels in Norway. The information gathered during the market investigation confirmed that SVOD and TVOD are relevant distribution channels for films. To that extent, Telenor stressed that rights for different premium film and series may to some extent be interchangeable,<sup>1073</sup> and that "*C More Film competes primarily with Viaplay, Netflix and HBO for their premium film and series offering*".<sup>1074</sup> This trend would be widely observed. In that respect, the Parties evidenced that, in Sweden, C More [...]. The Parties also submitted that the entry of Netflix, HBO and similar

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been included in the Commission's assessment together with the primary linear distribution of the premium pay TV non-sports channels. Therefore, the Commission considers that it is not relevant to consider the impact of the Transaction on market segments for which the Bonnier Broadcasting's premium pay TV non-sports channels are not acquired as an input.

<sup>1069</sup> Responses to questionnaire Q8 to TV distributors in Norway, questions E.6.2 and E.6.2.2.

<sup>1070</sup> Responses to questionnaire Q8 to TV distributors in Norway, questions E.6.3.

<sup>1071</sup> According to the Non-Horizontal Merger Guidelines, input foreclosure may raise competition problems only if it concerns an important input for the downstream product. Non-Horizontal Merger Guidelines, paragraph 34.

<sup>1072</sup> Form CO, Appendix 1 to Annex 7.

<sup>1073</sup> Telenor's response to questionnaire Q8 to TV distributors in Norway, questions C.6.1 (ID01190).

<sup>1074</sup> Telenor's response to questionnaire Q4 to TV distributors in Sweden, question E.3.1 (ID01180).

- streaming service providers in Finland in 2012 [...].<sup>1075</sup> [...] for all potential downstream markets for which premium pay TV non-sports channels are acquired.
- (1229) Second, retail providers of AV services competing with Telia in Norway, and seeking to include attractive premium pay TV non-sports channels in their offering, can typically license alternative channels to C More premium pay TV non-sports channels, namely Viasat Film Hits, Viasat Series, Viasat Film Action, Viasat Film Family and Viasat Film Premiere<sup>1076</sup>.
- (1230) Third, the importance of premium pay TV non-sports channels is further impacted by the launch of OTT offerings directly by content owners. For example, HBO already provides its film and series in Norway through its streaming services HBO Nordic.<sup>1077</sup> Disney has stated that the global rollout for its streaming service Disney Plus (Disney+) begins on 12 November 2019 in the US, Canada and Europe, starting in the Netherlands<sup>1078</sup>, and that it would rapidly expand globally “*with plans to be in nearly all major regions of the world within the next two years*”.<sup>1079</sup> Specifically, Disney announced that Disney+ will launch in Western Europe in the first half of 2020.<sup>1080</sup> In addition, other digital players have entered the market such as Amazon<sup>1081</sup> and Apple.<sup>1082</sup>

*b. Incentive to engage in total or partial input foreclosure*

- (1231) A limited number of respondents to the market investigation consider that the merged entity may have the incentive to exclusively supply its premium pay TV non-sports channels to Telia and not to other TV distributors.<sup>1083</sup>
- (1232) In any event, given the lack of ability to foreclose, it is not necessary to conclude as to whether the merged entity will have the incentive to implement a strategy aimed at foreclosing competing retail suppliers of AV services from its premium pay TV non-sports channels in Norway.

*c. Impact on effective competition of total/partial input foreclosure*

- (1233) A merger will raise competition concerns due to input foreclosure when it would lead to increased prices in the downstream market, thereby significantly impeding effective competition.<sup>1084</sup> The Non-Horizontal Merger Guidelines note that anticompetitive foreclosure may occur by allowing the merged entity to increase the costs of downstream rivals thereby leading to upward pressure on sales prices. Competition may also be significantly impeded if the merged entity would be likely to raise barriers to entry to potential competitors by refusing to supply them or by

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<sup>1075</sup> Form CO, paragraph 703.

<sup>1076</sup> Form CO, Schedule 1.

<sup>1077</sup> See: <https://en.hbonordic.com/>.

<sup>1078</sup> See “New Global Launch Dates Confirmed for Disney+”, available at: <https://www.thewaltdisneycompany.com/new-global-launch-dates-confirmed-for-disney>.

<sup>1079</sup> See <https://www.thewaltdisneycompany.com/disney-spotlights-comprehensive-direct-to-consumer-strategy-at-2019-investor-day/>.

<sup>1080</sup> See [https://www.thewaltdisneycompany.com/wp-content/uploads/2019/03/Disney\\_Investor\\_Day\\_2019\\_transcript.pdf](https://www.thewaltdisneycompany.com/wp-content/uploads/2019/03/Disney_Investor_Day_2019_transcript.pdf)

<sup>1081</sup> Amazon Prime Video is a streaming service provided by Amazon. The streaming service offers exclusive Prime Originals to customers in more than 200 countries, including the Nordics. See: <https://www.primevideo.com/>.

<sup>1082</sup> Apple recently announced the launch of Apple TV+, a new streaming service where featuring original shows and movies across every genre, see <https://www.apple.com/apple-tv-plus/>.

<sup>1083</sup> Responses to questionnaire Q8 to TV distributors in Norway, questions E.6.2, E.6.2.3, E.6.3.

<sup>1084</sup> Non-Horizontal Merger Guidelines, paragraph 47.

supplying them on less favourable terms than absent the merger.<sup>1085</sup> In particular, if there remain sufficient credible downstream competitors whose costs are not likely to be raised, for example because they are themselves vertically integrated or capable of switching to adequate alternative inputs, competition from those firms may constitute a sufficient constraint on the merged entity and therefore prevent output prices from rising above pre-merger levels.<sup>1086</sup>

- (1234) Regardless of whether the merged entity has either the ability or the incentive to foreclose competing downstream rivals with regard to the wholesale supply of premium pay TV non-sports channels, the Commission discusses whether the withdrawal of Bonnier Broadcasting's premium pay TV non-sports channels from rival TV distributors' offerings would likely have a significant detrimental impact on any of the potential downstream markets where premium pay TV non-sports channels are acquired, namely the markets for the retail supply of: (i) AV services; (ii) linear pay AV services; (iii) linear premium pay AV services; (iv) all possible markets (i) to (iii) segmented into MDU and SDU, and does not consider that such strategy would have any such impact on competition downstream.
- (1235) First, as explained in section 8.5.3.2-3-a, Bonnier Broadcasting's premium pay TV non-sports channels are not an important input for retail suppliers of AV services in Norway. Therefore, their withdrawal would not harm the business of rival TV distributors in Norway, thereby not affecting their ability to compete against the merged entity.
- (1236) Second, as explained in section 8.5.3.2-3-a, the information gathered during the market investigation indicated that retail providers of AV services competing with Telia, and seeking to include attractive premium pay TV non-sports channels in their offering, can typically license alternative channels to C More premium pay TV non-sports channels. Therefore, there remain sufficient credible downstream competitors whose costs are not likely to be raised.
- (1237) Third, the Transaction will not raise barriers to entry or expansion. As noted in section 8.5.3.2-3-a, a number of significant content owners and digital players have launched their own direct-to-consumer services via OTT, mainly based on films and series.

#### 4. Conclusion

- (1238) On the basis of the foregoing, the Commission concludes that the Transaction would not significantly impede effective competition as a result of total or partial input foreclosure of premium pay TV non-sports channels in Norway since the merged entity would lack the ability to foreclose upstream competitors and such strategy would likely have no detrimental impact on effective competition. The Commission's assessment applies in respect of any potential markets for which premium pay TV non-sports channels are acquired, namely the markets for the retail supply of: (i) AV services; (ii) linear pay AV services; (iii) linear premium pay AV services; (iv) all possible markets (i) to (iii) segmented into MDU and SDU.

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<sup>1085</sup> Non-Horizontal Merger Guidelines, paragraph 48.  
<sup>1086</sup> Non-Horizontal Merger Guidelines, paragraph 50.

- 8.5.3.3. Total and partial customer foreclosure of competing wholesale suppliers of premium pay TV channels with regard to the retail supply of AV services in Norway
- (1239) In Norway, Telia is active in the retail supply of AV services, in particular through its cable network. Bonnier Broadcasting could become active as wholesale supplier of premium pay TV non-sports channels when its agreement with TV2 expires. The merger specific change is the addition of Telia's downstream activities as retail supplier of AV services.
- (1240) The Commission notes that the merged entity's market share in the Norwegian market for the retail supply of AV services is below 30%, and that the downstream market is therefore not a vertically affected market.<sup>1087</sup> Nevertheless, Telia's higher market share in the narrow market segment for the retail supply of AV services through cable networks ([40-50]% by value in 2018), the Commission has assessed the risk of customer foreclosure strategies in Norway.
- (1241) In particular, the Commission has assessed the risk of the following two types of customer foreclosure strategies: (i) total foreclosure of rival TV broadcasters through the merged entity refusal to carry competing TV channels on its downstream distribution platform; and (ii) partial foreclosure of rival TV broadcasters through, for instance, a degradation of the quality of the viewers' experience for competing TV channels on Telia's distribution platform, or through a reduction in carriage fees.
- (1242) Moreover, the Commission has assessed the two abovementioned types of customer foreclosure strategies in relation to Bonnier Broadcasting's premium pay TV non-sports channels, which Telia purchases in Norway.
- (1243) For the purposes of its assessment, the Commission has considered, in particular, as the more likely potential targets of a customer foreclosure strategy, the channels that compete closely with Bonnier Broadcasting's premium pay TV non-sports channels. On the basis of the market shares presented in section 8.3.3.1, the main targets of potential foreclosure in Sweden are the other two main commercial broadcasters, NENT and TV2.

1. Notifying Party's view

- (1244) For the same reasons as for premium pay TV channels in Sweden (section 8.5.1.6), in its initial submission, the Notifying Party submits that (i) the merged entity would have neither the ability nor the incentive to fully or partially foreclose rival TV broadcasters of premium pay TV channels, and (ii) even if it could hypothetically be shown that the merged entity would have the ability and incentive to engage in (total or partial) customer foreclosure (*quod non*), such a strategy would not have any significant detrimental effect on effective competition.

2. Commission's assessment

- (1245) The Commission's assessment of potential concerns regarding the foreclosure of competing wholesale suppliers of premium pay TV channels, in light of the results of the market investigation, is set out in the following paragraphs. For this purpose, in line with paragraph 59 of the Non-Horizontal Merger Guidelines, the Commission examines: (i) whether the merged entity would have the ability to foreclose competing wholesale supplier of TV channels; (ii) whether it would have the

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<sup>1087</sup> See Section 8.3.3.2, the merged entity would not hold a market share above 30% under any possible market segmentation.

economic incentive to do so; and (iii) what overall impact such a foreclosure strategy would have on competition.

- (1246) The Commission has conducted its assessment on the basis of all possible downstream market definitions. The question as to whether the merged entity would have the ability to undertake a partial or total customer foreclosure strategy has therefore been undertaken in all possible market segments where FTA and basic pay TV channels are licensed to TV distributors, namely in the potential markets for the retail supply of (i) AV services (ii) linear pay AV services, (iii) linear premium pay AV services (iv) all possible markets (i) to (iii) segmented into MDU and SDU.<sup>1088</sup> The Commission's assessment of the impact of a total or partial foreclosure strategy also applies in respect of the above mentioned possible markets for which FTA and basic pay TV channels are an input. The Commission hereafter, in this section, refers to the 'retail supply of AV services' or 'retail AV services' as shorthand for all possible markets comprising the retail supply of (i) AV services (ii) linear pay AV services, (iii) linear premium pay AV services (iv) all possible markets (i) to (iii) segmented into MDU and SDU.

a. *Ability to engage in customer foreclosure*

- (1247) When considering whether the merged entity would have the ability to foreclose access to downstream markets, the Commission examines whether there are sufficient economic alternatives in the downstream market for upstream rivals to sell their output.
- (1248) In the present case, the Commission considers that the merged entity would lack the ability to engage in either total or partial customer foreclosure strategies of third parties' premium pay TV channels since it does not have a sufficient degree of market power in the market for the retail supply of AV services, irrespective of any possible segmentation, for the following reasons.
- (1249) First, as described in section 8.3.3, the merged entity will hold a market share of [10-20]% by value in the Norwegian market for the retail supply of AV services in 2018, under any possible market segmentation<sup>1089</sup> and there is a certain number of alternative distributors that competing TV broadcasters can choose in the Norwegian market irrespective of any possible segmentation<sup>1090</sup>, namely Telenor, the market leader with a market share by value of [40-50]%, Altibox and RiskTV with market shares of respectively [10-20]% and [10-20]%.

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<sup>1088</sup> Before the Transaction, premium pay TV channels are not sold to retail suppliers of AV services as inputs for the provision of (i) premium pay services or (ii) non-linear pay AV services. In respect of the latter, Bonnier Broadcasting does provide rights to distribute its FTA and basic pay TV channels in a non-linear manner as ancillary to the linear distribution of its channels (e.g., NPVR rights) and that ancillary form of distribution has been included in the Commission's assessment together with the primary linear distribution of the FTA and basic pay TV channels. Therefore, the Commission has not assessed the impact of the Transaction on (i) market segments for the retail supply of basic pay AV services and for the retail supply of non-linear pay AV services where the Bonnier Broadcasting's FTA and basic pay TV channels are not acquired as an input since there is no merger specific change brought by the Transaction; (ii) the market segment for the retail supply of FTA AV services since Telia is not active in such market segment and there is no merger specific change brought by the Transaction.

<sup>1089</sup> See Section 8.3.3.2, the merged entity would not hold a market share above 30% under any possible market segmentation.

<sup>1090</sup> See Section 8.3.3.2, several competing suppliers of retail AV services would remain active under any possible market segmentation. .

- (1250) Second, when considering the narrow market segment for the retail supply of AV services through cable, Telia holds a market share above 30% ([40-50]% by value and [40-50]% by volume). Despite the importance of Telia as a purchaser of premium pay TV channels in this segment, the Commission considers that it would have a limited ability to foreclose NENT or TV2 by ceasing to purchase from them. Indeed, as noted in section 7.4, the market for the retail supply of AV services encompasses all distribution technologies, and in the areas where Telia is active through its cable network, NENT and TV2 continue to have access to a large customer base, through alternative distribution technologies. In that respect, NENT's and TV2's premium pay TV channels are also widely accessible via OTT.<sup>1091</sup> Therefore, NENT would be able to maintain a significant portion of their viewership base in case the merged entity were to cut its premium pay TV channels off its distribution service.<sup>1092</sup>
- (1251) Moreover, the evidence in the file shows that OTT is a significant alternative when customers have no longer access to TV channels via traditional distribution technologies. For example, in both Sweden and Finland were Bonnier Broadcasting is currently active, [...].<sup>1093</sup>
- (1252) Third, with reference to possible contractual limitations that may reduce the merged entity's ability to perform such conduct, the Commission notes that [Content of Telia Company's agreements].<sup>1094</sup>

*b. Incentive to engage in customer foreclosure*

- (1253) Given the lack of ability to foreclose, it is not necessary to conclude as to whether the merged entity will have the incentive to engage in total or partial customer foreclosure strategies of third parties' premium pay TV non-sports channels.
- c. Impact on effective competition of total/partial customer foreclosure*
- (1254) The Commission considers that it is unlikely that any customer foreclosure strategies of third parties premium pay non-sports TV channels would have a significant negative impact on consumers and effective competition in Norway, for the following reasons.
- (1255) First, as explained in section 8.3.3.2, the merged entity would not hold a significant market position as a customer in the downstream market for the retail supply of AV services. The merged entity will have a limited market share of [20-30]% in the national market for the retail supply of AV services, under any possible market segmentation.<sup>1095</sup> In the event that Telia sought to cease carrying third party premium pay TV channels on its platform, competing broadcasters would still be able to expand their activities with other TV distributors which will remain active in the

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<sup>1091</sup> For NENT, see <https://www.nentgroup.com/brands/viaplay>. For TV2, see TV2 Sumo <https://sumo.tv2.no/velkommen>

<sup>1092</sup> Based on the above, the Commission further considers that competing wholesale suppliers of premium pay TV channels can continue to supply their input to customers in the market for the retail supply of AV services, and any possible segmentation, without incurring costs significantly higher than those they were incurring prior to the Transaction. Non-Horizontal Merger Guidelines, paragraph 66.

<sup>1093</sup> Commission's calculation based on Telia's response to the Commission's RFI 75, question 1 (ID003153).

<sup>1094</sup> Parties' response to RFI 76 (ID003198).

<sup>1095</sup> See Section 8.3.3.2, the merged entity would not hold a market share above 30% under any possible market segmentation.

market for the retail supply of AV services, under any possible market segmentation.<sup>1096</sup>

- (1256) Second, the Commission notes that, already pre-Transaction, there is an increasing number of customers accessing premium pay TV channels or content through OTT application.
- (1257) Third, several OTT players are actively competing in the market segment for the retail supply of premium non-sports AV services such as Netflix, Amazon and Apple. The entrance of such players in the retail market suggests that access to traditional retail suppliers of AV services is not particularly important in order to reach end customers in the market segment for the retail supply of premium non-sports AV services.
- (1258) Finally, as also indicated above, the [Content of Telia Company's distribution agreements].

### 3. Conclusion

- (1259) In light of the foregoing, the Commission considers that the merged entity would lack the ability to engage in either total or partial customer foreclosure strategies of third parties' premium pay TV non-sports channels. In any event, it is unlikely that any customer foreclosure strategies would have an impact on effective competition, irrespective of any possible market definition.
- (1260) Therefore, and as Bonnier Broadcasting is not active as wholesale supplier of premium pay TV sports channels in Norway, the Commission concludes that the Transaction would not significantly impede effective competition as a result of total or partial customer foreclosure of premium pay TV channels in Norway.

#### 8.5.4. Denmark

- (1261) In this Section, the Commission assesses the risk of total and partial input foreclosure relating to the wholesale supply of premium pay TV non-sports channels (upstream) and retail provision of AV services (downstream) in Denmark.<sup>1097</sup>

##### 8.5.4.1. Parties' activities and affected markets in Denmark

- (1262) In Denmark, Telia provides fixed and mobile telephony, broadband and AV services. As regards AV services, it distributes IPTV as a service provider on the national incumbent's (TDC) fixed networks and via its OTT service Telia TV. Bonnier Broadcasting offers premium pay TV film and series channels (namely C More First, C More Hits, C More Stars, C More Series and SF-Kanalen)<sup>1098</sup> and is also active as OTT service provider. The change brought by the merger is the addition of Telia's downstream activities as retail supplier of AV services. As stated in Section 8.3.4.2 above, Telia has [...].
- (1263) The Transaction will create a potential vertical link between Bonnier Broadcasting's activities in the possible market for wholesale supply of premium pay TV channels, including the potential submarket for the wholesale supply of premium pay TV non-sport channels (upstream), and Telia's activities in the market for the retail supply of

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<sup>1096</sup> See Section 8.3.3.2, several competing suppliers of retail AV services would remain active under any possible market segmentation.

<sup>1097</sup> The competitive assessment focuses on the potential market limited to premium pay TV non-sports channels, because Bonnier Broadcasting does not offer premium pay TV sports channels in Denmark.

<sup>1098</sup> Bonnier Broadcasting does not offer premium pay TV sport channels, FTA TV channels or basic pay TV channels in Denmark.

AV services (downstream) in Denmark. Given that Bonnier Broadcasting has a market share in excess of 30% upstream,<sup>1099</sup> these markets (for the wholesale supply of premium pay TV channels, including the sub-market for the wholesale supply of premium pay TV non-sports channels), and for the retail supply of AV services<sup>1100</sup> are vertically affected by the Transaction.<sup>1101</sup>

8.5.4.2. Total and partial input foreclosure relating to the wholesale supply of premium pay TV non-sport channels and retail provision of AV services in Denmark

- (1264) The Commission's assessment of anticompetitive input foreclosure in Denmark, in light of the results of the market investigation, is set out in the following recitals. For this purpose, consistent with paragraph 32 of the Non-Horizontal Merger Guidelines, the Commission examines, (i) whether the merged entity would have, post-merger, the ability to foreclose access to inputs, (ii) whether it would have the incentive to do so, and (iii) whether a foreclosure strategy would have a significant detrimental effect on competition downstream.
- (1265) The Commission assesses the risk of foreclosure of rival retail providers of AV services through the denial of access to Bonnier Broadcasting's premium pay TV non-sports channels<sup>1102</sup>, or through an increase of the carriage fees paid by such rival providers to be able to carry Bonnier Broadcasting's premium pay TV non-sport channels. In Denmark, premium pay TV non-sport channels are all premium pay TV films and series channels.<sup>1103</sup>
1. Potential targets of input foreclosure
- (1266) For the purposes of its assessment, the Commission has considered, in particular, as the more likely potential targets of an input foreclosure strategy, the retail suppliers

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<sup>1099</sup> In response to RFIs 8 (ID00402), 16 (ID00899) and 31 (ID01366), the Notifying Party explained that a hypothetical segment for premium pay TV channels in Denmark, as well as an even narrower segment for premium pay TV film channels in Denmark, would only include the film and series channels of NENT and C More, and thus the market share estimates would be the same for both of these hypothetical market segments. The assessment of the risk of input foreclosure in this Section therefore applies to both the upstream markets for the wholesale supply of premium pay TV channels and the sub-market for the wholesale supply of premium pay TV non-sports channels.

<sup>1100</sup> The assessment of the risk of input foreclosure in this Section applies to the downstream market for the retail supply of AV services, including and excluding OTT services, as well as further sub-markets by technology and type of contract. The Commission notes that on each of these markets and submarkets, the merged entity has market shares no higher than [5-10]% as explained in Section 8.3.4.2.

<sup>1101</sup> Bonnier Broadcasting's market share is below 30% on the total market for wholesale supply of TV channels in Denmark and Telia's market share on the market for retail supply of TV content is also significantly below 30% (below 5%).

<sup>1102</sup> The analysis of the Commission focuses on the potential market for the wholesale supply of premium pay TV non-sports channels, as Bonnier Broadcasting does not offer premium pay sports TV channels in Denmark (see Form CO, Table 13). Moreover, in Denmark, the major sports events, such as the Danish football league and the Champions League, are broadcasted on basic pay TV and FTA channels in Denmark (see the Notifying Party's response to the Commission's RFI 8), the two wholesale suppliers of premium pay TV channels are active only in the supply of non-sports premium pay TV channels (Form CO, Annex 7) and Bonnier Broadcasting has the same market share by value and volume in the market for the wholesale supply of premium pay TV channels and the market for the wholesale supply of premium pay TV non-sports channels (Form CO, Annex 7). Therefore, the findings made in this section as regards the wholesale supply of non-sports premium pay TV channels would also apply if the market were to extend to all premium pay TV channels.

<sup>1103</sup> Form CO, Schedule 1. Bonnier Broadcasting's premium pay TV non-sport channels offered in Denmark are all film and series TV channels, i.e. C More First, C More Hits, C More Stars, C More Series and SF-Kanalene.

of AV services that compete closely with Telia, irrespective of any potential market segmentation. On the basis of the market shares presented in Section 8.3.4.2, in relation to the market for the retail supply of AV services the main targets of potential foreclosure are the other main TV distributors, namely TDC, Stofa, Wao, Boxer and Telenor.

## 2. Notifying Party's view

- (1267) As regards the ability to engage in input foreclosure, the Notifying Party submits that the reasons presented for Sweden and Finland<sup>1104</sup> (summarized in Section 8.5.3.2.2 above in relation to Norway) are also relevant for Denmark.<sup>1105</sup> In particular, [...]. This would be highlighted by the actual number of viewers/subscribers C More has in Denmark.<sup>1106</sup>
- (1268) As regards the incentive to engage in input foreclosure, the Notifying Party submits that the results of the vertical arithmetic model developed for C More by RBB Economics would also apply to Denmark.<sup>1107</sup> In particular, the likely actual recapture rate in Denmark would probably be very low, as C More subscribers could choose from a variety of alternatives, such as competing premium pay TV channels and popular standalone streaming services like Netflix and HBO.
- (1269) As for the effect on competition, the Notifying Party submits that C More would not be a critical component for TV distributors to compete on the market in Denmark, as only a small proportion of rival TV distributors' customers would purchase C More. In addition, new players could enter the market and operate profitably without these C More premium pay TV films and series channels.<sup>1108</sup>

## 3. Commission's assessment

- (1270) The Commission has conducted its assessment on the basis of all possible downstream market definitions. The question as to whether the merged entity would have the ability to undertake a partial or total input foreclosure strategy has therefore been undertaken in light of the possible importance of those premium non-sports TV channels to TV distributors active in the potential markets for which premium pay TV non-sports channels are acquired, namely the markets for the retail supply of

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<sup>1104</sup> Form CO, section 6.9.4.5.2.

<sup>1105</sup> In particular, the Notifying Party stresses that until recently, the competing retail provider of AV services Viasat (NENT) did not offer C More TV channels and that popular streaming services have grown rapidly without offering C More either. In addition, end-customers would have a wide range of alternatives, like other premium channels, such as Viasat, or SVOD services, such as Netflix, Amazon or HBO Nordic. In that respect, the Notifying Party submits that market shares for wholesale supply of premium pay TV films and series channels do not reflect the full competitive environment, given that competitive pressure from SVOD providers would be particularly relevant for TV channels of this genre. They consider that Bonnier Broadcasting's share of the premium segment would dramatically drop if considering also HBO and Netflix (Form CO, paragraph 707). The Notifying Party submits that a foreclosure strategy would most likely lead customers to switch to these alternatives (Form CO, paragraphs 668 and 669).

<sup>1106</sup> Form CO, paragraph 693.

<sup>1107</sup> These results would show that the actual recapture rates are likely to be lower than the critical recapture rates, which correspond to the minimum proportion of customers of foreclosed TV distributors that would have to continue subscribing to C More, either by joining Telia's traditional TV distribution or by subscribing to C More's standalone streaming service, in order to make total input foreclosure profitable. Input foreclosure would thus not be a profitable strategy in this case. In addition, the Notifying Party states that any input foreclosure strategy would [...]. (Form CO, paragraphs 678-681, 687 and 694).

<sup>1108</sup> Form CO, paragraph 695.

(i) AV services; (ii) linear pay AV services; (iii) linear premium pay AV services; (iv) all possible markets (i) to (iii) segmented into MDU and SDU.<sup>1109</sup>

a. *Ability to engage in input foreclosure*

- (1271) The Commission considers that the merged entity would not have the ability to engage in any input foreclosure of Bonnier Broadcasting's premium pay TV non-sports channels since, for the reasons outlined hereafter, those channels in Denmark do not constitute an important input on any potential markets for which premium pay TV non-sports channels are acquired, namely the markets for the retail supply of: (i) AV services; (ii) linear pay AV services; (iii) linear premium pay AV services; (iv) all possible markets (i) to (iii) segmented into MDU and SDU in Denmark in the sense outlined in the Non-Horizontal merger Guidelines.<sup>1110</sup>
- (1272) First, although Bonnier Broadcasting has a market share of [40-50]% in the wholesale supply of premium pay TV non-sports channels in both value and volume in 2018 in Denmark, the film and series content included in those channels does not seem particularly important from a viewer perspective irrespective of any possible product market segmentation. In fact, when considering the share of viewing of premium pay TV films and series channels and non-linear pay AV services in Denmark, Bonnier Broadcasting has the lowest share of viewing, namely [...], significantly behind all other players, namely Netflix ([...]), NENT ([...]) and HBO ([...]).<sup>1111</sup> Therefore, these other players like Netflix and HBO offering non-linear premium AV services at the retail level exercise an indirect competitive constraint on Bonnier Broadcasting's premium pay TV non-sports channels active at the wholesale level.
- (1273) Indeed, SVOD providers already exercise a strong out-of-market constraint on TV broadcasters in Denmark, especially premium linear TV players such as NENT and Bonnier Broadcasting, as linear TV is losing viewership to VOD services, by "cord shaving" (that is reduction of the scope of the subscription), thereby limiting the market power of the merged entity in the wholesale supply of premium pay TV non-sports channels in Denmark. A respondent to the market investigation noted: "*Only Viasat Film/CMore can be considered "premium" in Denmark, and overall their significance in the market is limited. In fact, the success of basic/mid pay tv in Denmark combined with intense SVOD competition has effectively made premium linear tv-channels as its own segment virtually irrelevant in Denmark.*"<sup>1112</sup> The same respondent noted that scripted Hollywood-drama "*is increasingly dominated by OTT service providers such as Netflix, HBO, Viaplay and C More – not linear tv*".<sup>1113</sup>

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<sup>1109</sup> Before the Transaction, Bonnier Broadcasting's premium pay TV non-sports channels are not sold to retail suppliers of AV services as inputs for the provision of (i) linear FTA AV services, (ii) linear basic pay AV services or (ii) non-linear pay AV services. In respect of the latter, Bonnier Broadcasting does provide rights to distribute its premium pay TV non-sports channels in a non-linear manner as ancillary to the linear distribution of its channels (e.g., catch up rights) and that ancillary form of distribution has been included in the Commission's assessment together with the primary linear distribution of the premium pay TV non-sports channels. Therefore, the Commission considers that it is not relevant to consider the impact of the Transaction on market segments for which the Bonnier Broadcasting's premium pay TV non-sports channels are not acquired as an input.

<sup>1110</sup> According to the Non-Horizontal Merger Guidelines, input foreclosure may raise competition problems only if it concerns an important input for the downstream product. Non-Horizontal Merger Guidelines, paragraph 34.

<sup>1111</sup> Form CO, Annex 7.

<sup>1112</sup> Responses to questionnaire Q7 to TV broadcasters in Denmark, question C.5.1.

<sup>1113</sup> Responses to questionnaire Q7 to TV broadcasters in Denmark, question C.11.1.

Another respondent noted: “*In Denmark we see "cable cutters" and "cable shavers". And we see a rising number of "cable nevers". It is very possible that streaming services is the cause of this*”.<sup>1114</sup> The information gathered during the market investigation confirmed that SVOD and TVOD are meaningful distribution channels for films: TV2 noted that “*SVOD providers like Netflix [are] competing directly with pay-tv for end-consumers*”.<sup>1115</sup> This trend would be widely observed. In that respect, the Parties evidenced that, in Sweden, C More [...] the entry of primarily Netflix and HBO in 2012, [...]. The Parties also submitted that the entry of Netflix, HBO and similar streaming service providers in Finland in 2012 [...].<sup>1116</sup> It is noted that such [...] is relevant for all potential downstream markets for which premium pay TV non-sports channels are acquired.

- (1274) Second, the information gathered during the market investigation indicated that retail providers of AV services competing with Telia, and seeking to include attractive premium pay TV non-sports channels in their offering, can typically license alternative channels to C More premium pay TV non-sports channels. In that respect, a distributor in Denmark stated that, contrary to sports rights, “*different Premium film and series may to some extent be interchangeable*”.<sup>1117</sup> In Denmark, NENT (MTG) offers the premium pay TV channels Viasat Film Action, Viasat Film Family, Viasat Film Hits, Viasat Film Premiere and Viasat Series.<sup>1118</sup>
- (1275) Third, the importance of premium pay TV non-sports channels is further impacted by the launch of OTT offerings directly by content owners. For example, HBO already provides its films and series in Denmark through its streaming services HBO Nordic.<sup>1119</sup> Disney has stated that the global rollout for its streaming service Disney Plus (Disney+) begins on 12 November 2019 in the US, Canada and Europe, starting in the Netherlands<sup>1120</sup>, and that it would rapidly expand globally “*with plans to be in nearly all major regions of the world within the next two years*”.<sup>1121</sup> Specifically, Disney announced that Disney+ will launch in Western Europe in the first half of 2020.<sup>1122</sup> In addition, other digital players have entered the market such as Amazon<sup>1123</sup> and Apple.<sup>1124</sup>

*b. Incentive to engage in total or partial input foreclosure*

- (1276) A respondent to the market investigation considered that the merged entity may have the incentive to exclusively supply all or some of its premium pay TV non-sports

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<sup>1114</sup> Responses to questionnaire Q7 to TV broadcasters in Denmark, question C.6.1.

<sup>1115</sup> TV2’s response to questionnaire Q7 to TV broadcasters in Denmark, question C.1.2 (ID00671).

<sup>1116</sup> Form CO, paragraph 703.

<sup>1117</sup> Responses to questionnaire Q6 to TV distributors in Denmark, question C.6.1.

<sup>1118</sup> Form CO, Annex 7.

<sup>1119</sup> See <https://en.hbonordic.com/>.

<sup>1120</sup> See “*New Global Launch Dates Confirmed for Disney+*”, available at: <https://www.thewaltdisneycompany.com/new-global-launch-dates-confirmed-for-disney>.

<sup>1121</sup> See <https://www.thewaltdisneycompany.com/disney-spotlights-comprehensive-direct-to-consumer-strategy-at-2019-investor-day/>.

<sup>1122</sup> See [https://www.thewaltdisneycompany.com/wp-content/uploads/2019/03/Disney\\_Investor\\_Day\\_2019\\_transcript.pdf](https://www.thewaltdisneycompany.com/wp-content/uploads/2019/03/Disney_Investor_Day_2019_transcript.pdf)

<sup>1123</sup> Amazon Prime Video is a streaming service provided by Amazon. The streaming service offers exclusive Prime Originals to customers in more than 200 countries, including the Nordics. See: <https://www.primevideo.com/>.

<sup>1124</sup> Apple recently announced the launch of Apple TV+, a new streaming service where featuring original shows and movies across every genre, see: <https://www.apple.com/apple-tv-plus/>.

channels to Telia and not to other TV distributors, or to degrade the terms and conditions on which it provides access.<sup>1125</sup>

- (1277) However, the Commission notes that the market shares of the merged entity in the market for the retail supply of AV services, under any possible segmentation, are not higher than [5-10]%. Such market shares do not indicate that there is a likelihood that the merged entity would have a sufficiently large base of sales downstream to give it an incentive to engage in total or partial input foreclosure. The Commission further considers that such low downstream market shares are indicative of a limited customer reach which would similarly suggest a low likelihood that the merged entity would have an incentive to engage in total input foreclosure.
- (1278) In any event, given the lack of ability to foreclose, it is not necessary to conclude as to whether the merged entity will have the incentive to implement a strategy aimed at foreclosing competing retail suppliers of AV services from its premium pay TV non-sports channels in Denmark.

c. *Impact on effective competition of total/partial input foreclosure*

- (1279) A merger will raise competition concerns due to input foreclosure when it would lead to increased prices in the downstream market, thereby significantly impeding effective competition.<sup>1126</sup> The Non-Horizontal Merger Guidelines note that anticompetitive foreclosure may occur by allowing the merged entity to increase the costs of downstream rivals thereby leading to upward pressure on sales prices. Competition may also be significantly impeded if the merged entity would be likely to raise barriers to entry to potential competitors by refusing to supply them or by supplying them on less favourable terms than absent the merger.<sup>1127</sup> In particular, if there remain sufficient credible downstream competitors whose costs are not likely to be raised, for example because they are themselves vertically integrated or capable of switching to adequate alternative inputs, competition from those firms may constitute a sufficient constraint on the merged entity and therefore prevent output prices from rising above pre-merger levels.<sup>1128</sup>
- (1280) Regardless of whether the merged entity has either the ability or the incentive to foreclose competing downstream rivals with regard to the wholesale supply of premium pay TV non-sports channels, the Commission discusses whether the withdrawal of Bonnier Broadcasting's premium pay TV non-sports channels from rival TV distributors' offerings would likely have a significant detrimental impact on any of the potential downstream markets where premium pay TV non-sports channels are acquired, namely the markets for the retail supply of: (i) AV services; (ii) linear pay AV services; (iii) linear premium pay AV services; (iv) all possible markets (i) to (iii) segmented into MDU and SDU, and does not consider that such strategy would have any such impact on competition downstream.
- (1281) First, as explained in section 8.5.4.2-3-a, Bonnier Broadcasting's premium pay TV non-sports channels are not an important input for retail suppliers of AV services in Denmark. Therefore, their withdrawal would not harm the business of rival TV distributors in Denmark, thereby not affecting their ability to compete against the merged entity.

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<sup>1125</sup> Responses to questionnaire Q6 to TV distributors in Denmark, question E.8.3.

<sup>1126</sup> Non-Horizontal Merger Guidelines, paragraph 47.

<sup>1127</sup> Non-Horizontal Merger Guidelines, paragraph 48.

<sup>1128</sup> Non-Horizontal Merger Guidelines, paragraph 50.

- (1282) Second, as explained in section 8.5.4.2-3-a, the information gathered during the market investigation indicated that retail providers of AV services competing with Telia, and seeking to include attractive premium pay TV non-sports channels in their offering, can typically license alternative channels to C More premium pay TV non-sports channels. Therefore, there remain sufficient credible downstream competitors whose costs are not likely to be raised.
- (1283) Third, the Transaction will not raise barriers to entry or expansion. As noted in section 8.5.4.2-3-a, a number of significant content owners and digital players have launched their own direct-to-consumer services via OTT, mainly based on films and series.

#### 4. Conclusion

- (1284) On the basis of the foregoing, the Commission concludes that the Transaction would not significantly impede effective competition as a result of total or partial input foreclosure of premium pay TV non-sports channels in Denmark since the merged entity would lack the ability to foreclose upstream competitors and such strategy would likely have no detrimental impact on effective competition. The Commission's assessment applies in respect of any potential markets for which premium pay TV non-sports channels are acquired, namely the markets for the retail supply of: (i) AV services; (ii) linear pay AV services; (iii) linear premium pay AV services; (iv) all possible markets (i) to (iii) segmented into MDU and SDU.

### 9. EFFICIENCIES

#### 9.1. Notifying Party's view

- (1285) The Notifying Party submitted in the Form CO that the Transaction will combine the Parties' complementary services, technology and know-how on vertically related markets in one single entity and that, as a result, the Transaction will give rise to significant efficiencies to the ultimate benefit of consumers.
- (1286) In the Form CO, the Notifying Party focused on (i) pro-competitive effects of the Transaction; (ii) synergies expected to stem from the merged entity's improved AV services; (iii) cost synergies to be generated from the Parties' shared infrastructure and common corporate functions; (iv) efficiencies generated by the elimination of double market-ups in the merged entity's pricing as variable content costs are internalised; and (v) ancillary benefits.
- (1287) On 23 July 2019, the Notifying Party submitted a short note on the synergies and efficiencies resulting from the Transaction (the "Efficiencies Note").<sup>1129</sup>

#### 9.2. Commission's assessment

- (1288) The Commission's framework for assessing efficiencies resulting from a merger is set out in paragraphs 77 and 78 of the Horizontal Merger Guidelines: "*The Commission considers any substantiated efficiency claims in the overall assessment of the merger. It may decide that, as a consequence of the efficiencies that the merger brings about, there are no grounds for declaring the merger incompatible with the common market pursuant to Article 2(3) of the Merger Regulation. This will be the case when the Commission is in a position to conclude on the basis of sufficient evidence that the efficiencies generated by the merger are likely to enhance the*

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<sup>1129</sup> Telia's document "Synergies and efficiencies in Vulcan" submitted on 23 July 2019 (ID002570).

*ability and incentive of the merged entity to act pro-competitively for the benefit of consumers, thereby counteracting the adverse effects on competition which the merger might otherwise have. For the Commission to take account of efficiency claims in its assessment of the merger and be in a position to reach the conclusion that as a consequence of efficiencies, there are no grounds for declaring the merger to be incompatible with the common market, the efficiencies have to benefit consumers, be merger specific and be verifiable. These conditions are cumulative".<sup>1130</sup>*

- (1289) The Commission will therefore consider positive effects of efficiencies that benefit consumers as part of its overall assessment of the concentration, provided the efficiencies are substantiated and satisfy the three cumulative criteria:
- (a) Efficiencies have to be verifiable such that the Commission can be reasonably certain that the efficiencies are likely to materialise and be substantial enough to counteract a merger's potential harm to consumers;<sup>1131</sup>
  - (b) Efficiencies have to be a direct consequence of the concentration and cannot be achieved to a similar extent by less anticompetitive alternatives;<sup>1132</sup>
  - (c) Efficiencies have to benefit consumers in the sense that they should be substantial and timely and should, in principle, benefit consumers in those relevant markets where it is otherwise likely that competition concerns would occur.<sup>1133</sup>
- (1290) The Horizontal Merger Guidelines further explain that the burden of proof for showing that efficiencies fulfil the above criteria lies with the merging parties as most of the information is solely in their possession. It is, therefore, incumbent upon the parties to provide in due time all the relevant information necessary to demonstrate that the claimed efficiencies are merger-specific and likely to be realised. Similarly, it is for the parties to show to what extent the efficiencies are likely to counteract any adverse effects on competition that might otherwise result from the merger, and therefore benefit consumers.<sup>1134</sup> Furthermore, evidence relevant to the assessment of efficiency claims should include, in particular, internal documents that were used by the management to decide on the merger, statements from the management to the owners and financial markets about the expected efficiencies, historical examples of efficiencies and consumer benefit, and pre-Transaction external experts' studies on the type and size of efficiency gains, and on the extent to which consumers are likely to benefit.<sup>1135</sup>
- (1291) In particular, the Commission notes that any double marginalization efficiency requires that the market is not fully covered (i.e., there is substantial substitution between consumption of the product in question and non-consumption). In the present case, there is next to no such substitution, since access to TV distribution is almost universal in the geographic markets in question.<sup>1136</sup> As a result, a significant double marginalization efficiency cannot arise.

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<sup>1130</sup> Horizontal Merger Guidelines, paragraphs 77 and 78. See also, Non-Horizontal Merger Guidelines, paragraphs 77 and 115.

<sup>1131</sup> Horizontal Merger Guidelines, paragraph 86.

<sup>1132</sup> Horizontal Merger Guidelines, paragraph 85.

<sup>1133</sup> Horizontal Merger Guidelines, paragraph 79.

<sup>1134</sup> Horizontal Merger Guidelines, paragraph 87.

<sup>1135</sup> Horizontal Merger Guidelines, paragraph 88.

<sup>1136</sup> Section 2.4.3.1 of Annex I

- (1292) To see this, recall that the elimination of double marginalization assumes that post-merger, Telia will have an incentive to lower TV distribution prices because this attracts new customers (and hence profits) for the new partner Bonnier Broadcasting. However, in a market where already pre-merger the vast majority of addressable customers has access to Bonnier Broadcasting's services, lowering Telia's prices would not allow Bonnier Broadcasting to materially increase its number of viewers. Instead, a price decrease of Telia would merely attract customers that already have access to Bonnier Broadcasting's channels through a competing TV distributor. In such circumstances, therefore, significant efficiencies from the elimination of double marginalization cannot arise.
- (1293) In line with this observation, the Commission notes that also the Notifying Party's own economic modelling of competitive effects did not integrate (let alone quantify) potential countervailing efficiencies.<sup>1137</sup> The Commission must therefore reject that Parties' claim of efficiencies based on the elimination of double marginalization.
- (1294) Particularly, the Notifying Party claims to [Estimated efficiencies].
- (1295) Further, the Notifying Party claims to [Estimated efficiencies].
- (1296) Further, the Notifying Party claims that the merge will [Estimated efficiencies].
- (1297) Regarding the cost savings, [Estimated efficiencies].
- (1298) Overall, the Commission concludes that the efficiencies claimed by the Notifying Party do not meet the three cumulative criteria of verifiability, merger specificity and benefit to consumers set out in the Horizontal Merger Guidelines which are required for such claims to be taken into account in the Commission's assessment of the Transaction.

## 10. COMMITMENTS

### 10.1. Introduction

- (1299) In order to remove the competition concerns arising from the Transaction described in Section 8, the Notifying Party submitted commitments both in Phase I and in Phase II.
- 10.1.1. Phase I Commitments*
- (1300) On 12 April 2019, the Notifying Party submitted commitments pursuant to Article 6(2) of the Merger Regulation, and a slightly revised version of the commitments on 15 April 2019 (the "Initial Phase I Commitments").
  - (1301) The Commission launched a market test of the Initial Phase I Commitments on 15 April 2019, seeking responses from the Parties' customers and competitors on the affected markets. The Commission informed the Notifying Party of the results of the market test on 25, 26 and 29 April 2019.
  - (1302) Based on the Commission's feedback, the Notifying Party submitted a revised set of commitments in Phase I (the "Revised Phase I Commitments") on 3 May 2019.
  - (1303) In the Article 6(1)(c) Decision, the Commission concluded that the commitments submitted in Phase I, namely both the Initial Phase I Commitments and the Revised Phase I Commitments, were not sufficient to eliminate the Commission's serious

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<sup>1137</sup> For an overview of the assessment of the Notifying Party's economic models and submissions, please be referred to Annex I.

doubts as to the compatibility of the Transaction with the internal market and with the functioning of the EEA Agreement.

#### *10.1.2. Phase II Commitments*

- (1304) On 12 August 2019, the Notifying Party submitted commitments pursuant to Article 8(2) and 10(2) of the Merger Regulation (the “Initial Phase II Commitments”).
- (1305) The Commission launched a market test of the Initial Phase II Commitments on 13 August 2019, seeking responses from the Parties’ customers and competitors on the affected markets. The Commission informed the Notifying Party of the results of the market test on 28 August 2019.
- (1306) Based on the Commission’s feedback, the Notifying Party submitted a revised set of commitments on 2 September 2019, and a further slightly revised version of the commitments on 18 September 2019 (the “Final Commitments”).

### **10.2. Analytical framework**

- (1307) Where the Commission considers that a concentration raises competition concerns the parties may seek to modify the concentration in order to resolve such competition concerns and thereby gain clearance of their merger.<sup>1138</sup>
- (1308) Under the Merger Regulation, the Commission only has the power to accept commitments that are deemed capable of rendering the concentration compatible with the common market so that they will prevent a significant impediment to effective competition. The commitments must eliminate the competition concerns entirely and must be comprehensive and effective from all points of view.<sup>1139</sup> The commitments must also be proportionate to the competition concerns identified.<sup>1140</sup> Furthermore, the commitments must be capable of being implemented effectively within a short period of time as the conditions of competition on the market will not be maintained until the commitments have been fulfilled.<sup>1141</sup>
- (1309) In assessing whether the proposed commitments will likely eliminate the competition concerns identified, the Commission considers all relevant factors including *inter alia* the type, scale and scope of the proposed commitments, judged by reference to the structure and particular characteristics of the market in which the competition concerns arise, including the position of the parties and other participants on the market.<sup>1142</sup>
- (1310) When assessing the commitments proposed by the merging parties, the Commission has the legal duty to ensure that such commitments are effective. In order for the commitments to remove the competition concerns entirely and be comprehensive and effective, there has to be an effective implementation and ability to monitor the commitments. Whereas divestitures once implemented do not require any further monitoring measures, other types of commitments require effective monitoring mechanisms in order to ensure that their effect is not reduced or even eliminated by the parties. Otherwise such commitments would have to be considered as mere declarations of intentions by the parties and would not amount to any binding

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<sup>1138</sup> Commission notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (the “Remedies Notice”), OJ 2008/C 267/01, Paragraph 5

<sup>1139</sup> Remedies Notice, paragraph 9.

<sup>1140</sup> Merger Regulation, recital 30.

<sup>1141</sup> Remedies Notice, paragraph 9.

<sup>1142</sup> Remedies Notice, paragraph 12.

obligations, as, due to the lack of effective monitoring mechanisms, any breach of them could not result in the revocation of the decision according to the provision of the Merger Regulation.<sup>1143</sup>

- (1311) Where the parties submit remedies proposals that are so extensive and complex that it is not possible for the Commission to determine with the requisite degree of certainty, at the time of its decision, that they will be fully implemented and that they are likely to maintain effective competition in the market, an authorisation decision cannot be granted. The Commission may reject such remedies in particular on the grounds that the implementation of the remedies cannot be effectively monitored and that the lack of effective monitoring diminishes, or even eliminates, the effect of the commitments proposed.<sup>1144</sup>
- (1312) It is against this background that the Commission analysed the proposed commitments in this case.

### **10.3. Initial Phase I Commitments**

#### *10.3.1. Description of the Initial Phase I Commitments*

- (1313) The Initial Phase I Commitments consisted in a package of four commitments, namely: (i) a commitment to license, on fair, reasonable and non-discriminatory (“FRAND”) terms, Bonnier Broadcasting’s FTA and basic pay TV channels, including ancillary rights, to rival TV distributors in Sweden and Finland; (ii) a commitment to license, on FRAND terms, Bonnier Broadcasting’s premium pay TV sports channels and the *Liiga* channels owned by the merged entity, including ancillary rights, to rival TV distributors in Sweden and Finland; (iii) a commitment not to limit access to the merged entity’s standalone streaming services and applications over the internet (AVOD/SVOD) for end users; and (iv) a commitment not to discriminate when offering TV advertising space, including the maintenance of TV advertising space for acquisition by rivals. Each of the four commitments will be described in more detail below.

##### **10.3.1.1. Commitment to license FTA and basic pay TV channels**

- (1314) This first commitment consists firstly in the merged entity committing to license, on FRAND terms, Bonnier Broadcasting’s FTA and basic pay TV channels, stand-alone or as part of a package (according to the preference of the licensee), to TV distributors<sup>1145</sup> in Sweden and Finland respectively. The channels included in this commitment are all current and future linear FTA and basic pay TV channels owned by the merged entity in Sweden and Finland respectively.
- (1315) Secondly, the merged entity commits, in relation to Bonnier Broadcasting’s FTA and basic pay TV channels, to license, on FRAND terms, ancillary rights, standalone or as part of a package (according to the preference of the licensee but in conjunction with the relevant channel that has been licensed) to TV distributors in Sweden and Finland. The ancillary rights covered by this commitment are any current ancillary services (catch-up, High Definition (“HD”), start-over, Personal Video Recorder (“PVR”), TV Everywhere (“TVE”)) offered by Bonnier Broadcasting to TV distributors in Sweden and Finland and any future service included in the merged

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<sup>1143</sup> Remedies Notice, paragraph 13.

<sup>1144</sup> Remedies Notice, paragraph 14.

<sup>1145</sup> TV distributors are defined as providers of a TV service, namely a service distributed through a proprietary TV platform, branded and operated by the licensee, via Cable, DTH, IPTV, DTT or any other platform using TV broadcasting technology to end users, in Finland and Sweden, respectively.

entity's TV service, provided that such future service is based on content that is broadcast on a Bonnier Broadcasting's FTA and basic pay TV channels in Sweden and Finland and is offered to end users simultaneously or shortly after the linear broadcast of the content on Bonnier Broadcasting's FTA and basic pay TV channels in Sweden and Finland.

- (1316) To assess what constitutes FRAND terms, the commitment foresees that the terms and conditions offered by rival TV distributors to the merged entity for these rival TV distributors' own premium pay TV sports channels (including ancillary rights) or FTA and basic pay TV channels are taken into consideration where applicable.
- (1317) Thirdly, the merged entity commits not to intentionally do anything that would have the effect of significantly reducing the quality of Bonnier Broadcasting's FTA and basic pay TV channels on an "aggregate basis", for example, by intentionally removing significant content from these channels.
- (1318) Fourthly, the merged entity commits to maintain an information barrier between its TV broadcasting business and its TV distribution business when it comes to commercially sensitive information concerning competing third party TV distribution businesses and competing third party broadcasting.

#### 10.3.1.2. Commitment to license premium pay TV sports channels and *Liiga* channels

- (1319) This second commitment consists firstly of the merged entity committing to license, on FRAND terms, Bonnier Broadcasting's premium pay TV sports channels and the *Liiga* channels owned by the merged entity, stand-alone or as part of a package (according to the preference of the licensee), to include in the TV service of TV distributors<sup>1146</sup> in Sweden and Finland respectively. The channels included in this commitment are all existing and future linear premium pay TV sports channels owned by the merged entity and carrying a significant sports right<sup>1147</sup> in Sweden and Finland respectively as well as all current and future *Liiga* channels owned by the merged entity.
- (1320) This commitment also covers situations in which the merged entity would offer bundled packages including Bonnier Broadcasting's premium pay TV sports channels and the *Liiga* channels owned by the merged entity, on the one hand, and Bonnier Broadcasting's premium pay TV non-sports channels, on the other hand.<sup>1148</sup>
- (1321) Secondly, the merged entity commits, in relation to Bonnier Broadcasting's premium pay TV sports channels and the *Liiga* channels owned by the merged entity, to license, on FRAND terms, ancillary rights, standalone or as part of a package (according to the preference of the licensee but in conjunction with the relevant channel that has been licensed) to TV distributors in Sweden and Finland. The ancillary rights covered by this commitment are any current ancillary services (catch-up, HD, start-over, PVR, TVE, and Dual Entry to view concurrent sports matches)

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<sup>1146</sup> TV distributors are defined as providers of a TV service, namely a service distributed through a proprietary TV platform, branded and operated by the licensee, via Cable, DTH, IPTV, DTT or any other platform using TV broadcasting technology to end users, in Finland and Sweden, respectively.

<sup>1147</sup> Significant sports rights are defined as including Premier League, Champions League, Allsvenskan, SHL, National team events in football, ice hockey, handball, alpine and cross-country skiing, and Olympic Games in respect of Sweden and Premier League, Champions League, *Liiga*, Formula 1, National team events in football, ice hockey, handball, alpine and cross-country skiing, and Olympic Games in respect of Finland.

<sup>1148</sup> The premium pay TV non-sports channels intended by this commitment are all current and future linear premium pay TV non-sports channels owned by the merged entity in Sweden and Finland respectively.

offered by Bonnier Broadcasting to TV distributors in Sweden and Finland respectively and any future service included in the merged entity's TV service provided that such future service is based on content that is broadcast on Bonnier Broadcasting's premium pay TV sports channels and the *Liiga* channels owned by the merged entity and is offered to end users simultaneously or shortly after the linear broadcast of the content on these channels.

- (1322) To assess what constitutes FRAND terms, the commitment foresees that the terms and conditions offered by rival TV distributors to the merged entity for these rival TV distributors' own premium pay TV sports channels (including ancillary rights) or FTA and basic pay TV channels are taken into consideration where applicable.
- (1323) Thirdly, the merged entity commits not to intentionally do anything that would have the effect of significantly reducing the quality of Bonnier Broadcasting's premium pay TV sports channels and the *Liiga* channels owned by the merged entity on an "aggregate basis", for example, by intentionally removing significant content from these channels. This commitment also precludes the distribution of any newly acquired significant sports rights exclusively on the merged entity's standalone streaming services.

#### 10.3.1.3. Commitment to provide access to standalone streaming services and applications over the internet for end users

- (1324) This third commitment consists of the merged entity committing to make the merged entity's own content available on the merged entity's standalone streaming services and applications over the internet (AVOD/SVOD) to all end users at the same quality conditions through all mobile and fixed broadband networks and precludes that any extra cost be charged to end users of competing retail TV services, mobile telecommunications services and fixed internet access services.

#### 10.3.1.4. Commitment not to discriminate when offering TV advertising space and maintaining availability of TV advertising space to rivals

- (1325) This fourth commitment consists firstly of the merged entity committing not to discriminate when it offers advertisement opportunities through its TV offer.
- (1326) Specifically, the merged entity commits to sell advertising space to providers of mobile telecommunications services, providers of fixed internet access services and TV distributors in Sweden and Finland on FRAND terms. In addition, the merged entity commits to ensure that advertising space is available for acquisition by rival TV distributors in Finland and Sweden up until 30 days before the end of each calendar year, namely that at least 6% of the advertising inventory of Bonnier Broadcasting's Swedish FTA and basic pay TV channels and at least 4% of the advertising inventory of Bonnier Broadcasting's Finnish FTA and basic pay TV channels are available for acquisition.
- (1327) Secondly, the merged entity commits to maintain an information barrier between its advertising business and its TV distribution and telecoms businesses when it comes to commercially sensitive information concerning competing third party TV distributors, competing mobile telecommunications and fixed internet access providers and competing third party broadcasters.

#### 10.3.1.5. Monitoring trustee, arbitration, duration

- (1328) The Initial Phase I Commitments included a monitoring trustee for the monitoring of the merged entity's compliance with the Initial Phase I Commitments, and an arbitration mechanism, including a fast track dispute resolution mechanism, for disputes arising under the Initial Phase I Commitments.

- (1329) The Initial Phase I Commitments would apply for a period of [...] from the date of the Commission Decision approving the Transaction under the Merger Regulation.

#### *10.3.2. Results of the market test of the Initial Phase I Commitments*

- (1330) The Commission initiated a market test of the Initial Phase I Commitments on 15 April 2019 and received responses from customers and competitors active in the affected markets in Finland and Sweden.
- (1331) The market test of the Initial Phase I Commitments yielded almost exclusively negative responses. Respondents considered the Initial Phase I Commitments not suitable to address the preliminary competition concerns identified by the Commission, and highlighted several improvements to make the commitments more suitable to address the concerns identified.
- (1332) The negative responses in the market test concerned various aspects of the Initial Phase I Commitments. In particular, respondents considered that the definitions and scope of the commitments were too narrow, and excluded certain distribution technologies (in particular distribution over the internet/OTT), and created a risk of circumvention of the commitments. The respondents argued that the Initial Phase I Commitments lacked clarity on what constituted FRAND terms, thus jeopardising the effectiveness of the commitments relying on FRAND. The respondents also considered that the duration of the commitments was too short, some arguing for an unlimited duration and others for a minimum of 10 years. The respondents also questioned the capability of the commitments to be implemented and monitored effectively. The respondents deemed that the proposed arbitration mechanism did not provide sufficient safeguards for appropriate and timely resolution of disputes.
- (1333) With regard to the first and second commitment, none of the respondents indicated that the proposed commitments would be suitable to remove the Commission's competition concerns resulting from the vertical links created by the Transaction.<sup>1149</sup>
- (1334) In particular, respondents to the market test provided the following observations.
- (1335) First, respondents criticised the definitions and the scope of the commitments, and in particular the definition of "TV Distributors" and "TV Service", as being too restrictive and excluding non-linear TV services and providers of TV services over the internet/OTT distribution.<sup>1150</sup> Respondents referred to a previous Commission decision<sup>1151</sup> in which both linear and non-linear TV services are included in the scope of the definitions, such as VOD, SVOD, TVOD and in which the TV services are distributed across various technical means including not only cable, satellite and IPTV but also over the internet/OTT distribution.<sup>1152</sup> The market test responses called for the scope and definitions to be technology neutral and cover also, in particular, VOD and OTT distribution.
- (1336) Respondents to the market test also criticised the proposed definitions for the FTA and basic pay TV channels ("BB FTA/Basic Channel"), premium pay TV sports channels ("BB Premium Sports Channel") and the *Liiga* channels ("Liiga Channel Package") covered by the commitments, again citing the exclusion of TV services over the internet, either non-linear VOD or distribution via OTT.<sup>1153</sup> With regard to

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<sup>1149</sup> Responses to the Market test questionnaire, questions 45.1 and 45.2.

<sup>1150</sup> Responses to the Market test questionnaire, question 3

<sup>1151</sup> Commission decision of 8 October 2018 in Case M.8842 – *Tele2/ComHem Holding*.

<sup>1152</sup> Responses to the Market test questionnaire, question 3.1.

<sup>1153</sup> Responses to the Market test questionnaire, questions 4-6.

premium pay TV sports channels, respondents considered that the sports rights covered by the FRAND commitment was too limited, unclearly drafted, and excluded sports rights that should be considered significant.<sup>1154</sup>

- (1337) Second, the market test respondents considered the list of ancillary rights covered by the two FRAND licence commitments as too restrictive and not covering all the main ancillary services that are usual market practice in Finland and Sweden.<sup>1155</sup>
- (1338) Third, the market test respondents submitted that the reference to licensing on FRAND terms is not sufficiently concrete. Several respondents submitted that there is a need for benchmarks to determine FRAND, and in this context referring in particular to the pre-Transaction price levels.<sup>1156</sup> Furthermore, it was submitted that pricing at FRAND terms would need to ensure that the margin implicitly left to third party TV distributors would need to cover the costs of selling, distributing and marketing the TV channels.<sup>1157</sup>
- (1339) Fourth, market test respondents considered that the proposed commitments provided the possibility for their circumvention by the merged entity. Almost none of the respondents considered that the merged entity would be prevented from significantly increasing the fee of its channels to TV distributors and none considered that there would be anything preventing the merged entity from degrading the conditions at which it licenses these channels post-Transaction.<sup>1158</sup> Almost none of the respondents considered that the Initial Phase I Commitments would prevent the merged entity from circumventing them by shifting content between channels and reducing the quality of the channels covered by the commitments.<sup>1159</sup> The wording of the proposed commitment not to degrade the quality of the channels covered by the FRAND licence obligation, i.e. that the merged entity must act “intentionally”, and the quality degradation to be “significant” on an “aggregate basis”, was found by several respondents as particularly problematic, especially from the point of view of effectiveness of the commitment and the ease of monitoring compliance of the commitment. Respondents were particularly concerned that the merged entity could circumvent the commitments by moving content from the channels covered by the FRAND obligation to the merged entity’s AV distribution services over the internet (for example, OTT applications).<sup>1160</sup>
- (1340) With regard to the third commitment, namely the commitment to provide access to the merged entity’s standalone streaming services and applications over the internet for end users, none of the respondents (with the exception of one) indicated that the

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<sup>1154</sup> Responses to the Market test questionnaire, question 8.

<sup>1155</sup> Responses to the Market test questionnaire, questions 7, 18-21, 28-31. Respondents explained that ancillary rights are necessary for TV distributors to be competitive on the retail distribution market and called on the ancillary rights definition to also include rights such as AVOD, network personal video recorder ("NPVR"), Dual Entry, 4K resolution, offline rights, AirPlay, and Chromecast. Furthermore, respondents underlined the need for the ancillary rights covered by the commitments to reflect those offered by the merged entity through its own distribution business in terms of number of devices, number of simultaneous streams, type of devices, out of home restrictions, and security requirements.

<sup>1156</sup> Respondents did not consider it appropriate that the terms and conditions offered to the merged entity by the TV distributor for the TV distributor's own premium pay TV sports channels, FTA, or basic pay TV channels would be taken into account when determining what constitutes FRAND terms; Responses to the Market test questionnaire, questions 36-38.

<sup>1157</sup> Responses to the Market test questionnaire, questions 34-35.

<sup>1158</sup> Responses to the Market test questionnaire, questions 12-13, 22-23.

<sup>1159</sup> Responses to the Market test questionnaire, questions 14-15, 24-25.

<sup>1160</sup> Responses to the Market test questionnaire, questions 16, 26.

proposed commitments would be sufficient to ensure that customers of competing providers of mobile telecommunication and fixed internet access services would not switch to Telia's mobile telecommunication and fixed internet access services in order to have access to the merged entity's standalone streaming services and applications over the internet (AVOD/SVOD). Respondents to the market test indicated that the commitment would not prevent the merged entity from demanding a high price for the streaming services and applications over the internet to all end users, but providing these services at a discount when offered as a bundle with the merged entity's mobile telecommunication and fixed internet access/broadband services.<sup>1161</sup>

- (1341) With regard to the fourth commitment, namely the commitment not to discriminate when offering TV advertising space and maintaining availability of TV advertising space to rivals, responses were equally negative. Only one respondent considered that the proposed commitments would in principle be suitable to remove the Commission's competition concerns.<sup>1162</sup> Respondents highlighted that this commitment did little to exclude discrimination by the merged entity and would be open to circumvention.<sup>1163</sup> Respondents also called for the inclusion of advertising space on AVOD/OTT services.<sup>1164</sup> Furthermore, respondents were critical of the lack of clarity and concreteness to the proposed commitment to maintain an information barrier. There were calls by respondents to ensure that clear distinctions are put in place between the ad business and the other businesses of the merged entity.<sup>1165</sup>

#### *10.3.3. Commission's assessment of the Initial Phase I Commitments*

- (1342) The Commission assessed the appropriateness of the Initial Phase I Commitments in light of the principles underlying its commitments policy and the results of the market test.
- (1343) The Commission concluded that the commitments fell short of providing a clear-cut solution to the identified competition concerns.
- (1344) The Commission identified the following shortcomings in the Initial Phase I Commitments.
- (1345) First, the Commission considered that the scope of the Initial Phase I Commitments was insufficient, in particular with regard to the first and second commitments. The Commission found that excluding OTT distribution from the scope of the licensing commitments affected their effectiveness. In particular, the merged entity would be able to restrict rival providers from offering a standalone OTT channel aggregation service including the merged entity's very important TV channels.
- (1346) Second, the Commission considered that the scope of the ancillary rights included in the commitments was not sufficient as it did not include all the ancillary rights that are market practice in Sweden and Finland and that may affect the ability of rival AV distributors to compete in the retail market for AV services in Sweden and Finland.
- (1347) Third, the Commission considered that the scope of the sports rights covered by the FRAND licence commitment was too limited.

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<sup>1161</sup> Responses to the Market test questionnaire, question 39.

<sup>1162</sup> Responses to the Market test questionnaire, question 45.3.

<sup>1163</sup> Responses to the Market test questionnaire, question 40.

<sup>1164</sup> Responses to the Market test questionnaire, question 10.

<sup>1165</sup> Responses to the Market test questionnaire, question 41.

- (1348) Fourth, the Commission considered that the reference to FRAND lacked in clarity as to what would constitute FRAND terms, the methodology used to determine FRAND and the benchmarks against which licensing terms should be assessed (and effectively monitored).
- (1349) Fifth, the Commission considered that it was inappropriate to subject the FRAND licence commitment to a reciprocity condition by which the terms and conditions offered to the merged entity by the TV distributors to the latter's own FTA, basic pay TV, and premium pay TV sports channels would need to be taken into consideration when determining what constitutes FRAND terms.
- (1350) Sixth, the Commission considered that the wording of the Initial Phase I Commitments did not exclude to a sufficient degree the risk of circumvention of the commitments by the merged entity, either through the shifting of content to services over the internet or through a degrading of the quality of the channels covered by the FRAND licensing commitments.
- (1351) Seventh, the Commission considered that the [...] duration of the Initial Phase I Commitments was not sufficiently long. The Commission notes that setting up and maintaining TV distribution services require a considerable investment and, hence, the commitments should be in place for a period that is sufficiently long to allow TV distributors to plan and make long-term investments.
- (1352) Eighth, the Commission considered that the commitment not to discriminate in the supply of TV advertising space and maintaining availability of advertising space for acquiring by rivals was too vaguely drafted and excluded advertising on AVOD services, and limited the commitment to reserve ad inventory for purchase only to rival TV distributors, thus excluding unjustifiably both rival mobile telecommunication providers and rival fixed internet access providers from the scope of the beneficiaries of this commitment.
- (1353) In addition, the Commission considered that the commitment to maintain an information barrier was not drafted in a sufficiently clear and concrete manner to be effective.
- (1354) In light of the above, the Commission concluded that the Initial Phase I Commitments were not sufficient to eliminate the Commission's serious doubts as to the compatibility of the Transaction with the internal market and with the functioning of the EEA Agreement.

#### **10.4. Revised Phase I Commitments**

##### *10.4.1. Description of the Revised Phase I Commitments*

- (1355) The Revised Phase I Commitments consisted, similarly to the Initial Phase I Commitments, of a package of four commitments, namely: (i) a commitment to license, on FRAND terms, Bonnier Broadcasting's FTA and basic pay TV channels, including ancillary rights, to rival TV distributors in Sweden and Finland; (ii) a commitment to license, on FRAND terms, Bonnier Broadcasting's premium pay TV sports channels and the *Liiga* channels owned by the merged entity, including ancillary rights, to rival TV distributors in Sweden and Finland; (iii) a commitment not to limit access to the merged entity's standalone streaming services and applications over the internet (AVOD/SVOD) for end users; and (iv) a commitment not to discriminate when offering TV advertising space, including the maintenance of TV advertising space for acquisition by rivals.
- (1356) The Revised Phase I Commitments introduced changes to the Initial Phase I Commitments as follows.

- (1357) First, the Revised Phase I Commitments introduced certain modifications to the definitions, either in the form of introducing new definitions (in particular providing definitions for “4K resolution”, “Ad Inventory”, “AirPlay”, “Catch-up”, “ChromeCast”, “Liiga”, “NPVR”, “OTT”, and “start-over”), modifying definitions that already existed in the Initial Phase I Commitments (in particular “Allocated Ad Inventory”, “Ancillary FTA/Basic Rights”, “Ancillary Premium Rights”, “BB FTA/Basic Channel”, “BB Premium Sports Channel”, “BB Premium Non-Sports Channel”, “Cable”, “Liiga Channel Package”, “Linear”, “Parties”, “Providers of mobile telecom services”, “Providers or fixed internet access services”, “PVR”, “Significant Sports Right”, and “TVE”) and deleting definitions that existed in the Initial Phase I Commitments (in particular “Established Advertising Market Practice”, and “HD”).
- (1358) Second, with regard to the commitment to license on FRAND terms FTA and basic pay TV channels (including ancillary rights), the Revised Phase I Commitments provided additional qualifiers to the benchmark for determining FRAND terms. These new qualifiers were as follows: the terms and conditions, including licence fees, offered from *“time to time”* for other FTA and basic pay TV channels in Sweden and Finland, the total content and production cost development, the share of viewing, and the number of subscribers. The Revised Phase I Commitments maintained as an element in assessing FRAND terms the consideration of the *“terms and conditions offered to the Combined Group by the TV Distributor for the TV Distributor’s own Premium Sports Channels (including ancillary rights) or FTA/Basic TV Channels (including ancillary rights)”*.
- (1359) With regard to the first commitment, the Revised Phase I Commitments also provided clarification as to the mechanisms by which the merged entity would maintain an information barrier.
- (1360) Third, with regard to the commitment to license on FRAND terms premium pay TV sports channels and the *Liiga* channel package, the Revised Phase I Commitments provided additional qualifiers as to what would need to be taken into consideration when determining what constitutes FRAND terms. These new qualifiers were as follows: the terms and conditions, including licence fees, offered from *“time to time”* for other premium pay TV sports channels in Sweden and Finland, the total content and production cost development, the share of viewing, and the number of subscribers. The Revised Phase I Commitments maintained as an element in assessing FRAND terms the consideration of the *“terms and conditions offered to the Combined Group by the TV Distributor for the TV Distributor’s own Premium Sports Channels (including ancillary rights) or FTA/Basic TV Channels (including ancillary rights)”*.
- (1361) With regard to the second commitment, the Revised Phase I Commitments also introduced a commitment, similar to that applicable to the licensing of FTA and basic pay TV channels, by which the merged entity commits to maintain an information barrier between the merged entity’s TV broadcasting business and its TV distribution business in relation to commercially sensitive third party information and the mechanisms by which the merged entity would meet this commitment.
- (1362) Fourth, with regard to the commitment not to discriminate when offering TV advertising space and maintaining availability of TV advertising space to rivals, the Revised Phase I Commitments clarified that the scope of this commitment applied to both the linear FTA and basic pay TV channels as well as AVOD services.
- (1363) With regard to this fourth commitment, the Revised Phase I Commitments also specified that the commitment to sell advertising space on FRAND terms applied not

only to rival TV distributors but also providers of mobile telecommunication services and providers of fixed internet access services.

- (1364) The Revised Phase I Commitments also provided clarification as to the mechanisms by which the merged entity would maintain an information barrier between its advertising business and its TV distribution and telecoms businesses when it comes to competing third party commercially sensitive information.
- (1365) Fifth, with regard to the terms applicable to the monitoring trustee, the Revised Phase I Commitments clarified that the monitoring trustee should have full access to Telia's but also affiliated undertaking's books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the commitments.
- (1366) Sixth, the Revised Phase I Commitments brought modifications to the dispute settlement/arbitration mechanism. In particular, the revised commitments specified that upon receiving a request for arbitration, Telia commits to honour any existing agreements with the requesting party, including after the expiry of such existing agreement on the existing terms, until the arbitration is completed. The revised commitments also stipulated that the arbitration will be conducted by three arbitrators instead of a sole arbitrator, and introduced emergency arbitration as part of the applicable arbitration rules. The Revised Phase I Commitments also introduced some clarifications as to the burden of proof in disputes and on process.

#### *10.4.2. Commission's assessment of the Revised Phase I Commitments*

- (1367) The Commission assessed the appropriateness of the Revised Phase I Commitments in light of the principles underlying its commitments policy and the results of the market test.
- (1368) The Commission concluded that also the Revised Phase I Commitments fell short of providing a clear-cut solution to the identified competition concerns.
- (1369) The Commission identified the following shortcomings in the Revised Phase I Commitments.
- (1370) First, the Revised Phase I Commitments failed to address the Commission's concern on scope, in particular the exclusion of standalone OTT distribution from the commitments.
- (1371) Second, the Revised Phase I Commitments failed to address the Commission's concerns as to the exclusion of non-linearly distributed content, in particular VOD, from the scope of the commitments.
- (1372) Third, the Revised Phase I Commitments failed to address the Commission's concerns with the lack of clarity as to what constitutes a licence on FRAND terms, including what would be the benchmark for pricing at FRAND terms.
- (1373) Fourth, the Revised Phase I Commitments failed to address the Commission's concerns with regard to the continued inclusion of a requirement to take into consideration the terms and conditions offered by rival TV distributors to their own FTA, basic pay TV, and premium pay TV sports channels when determining FRAND licensing terms under the commitments.
- (1374) Fifth, the Revised Phase I Commitments failed to address the Commission's concerns as to the duration of the proposed commitments. The Revised Phase I Commitments maintained the duration of the commitments at 7 years, which the Commission considers to be not sufficiently long to allow TV distributors to plan and make long-term investments.

- (1375) In light of the above, the Commission concluded that the Revised Phase I Commitments were not sufficient to eliminate the Commission's serious doubts as to the compatibility of the Transaction with the internal market and with the functioning of the EEA Agreement.

## **10.5. Initial Phase II Commitments**

### *10.5.1. Description of the Initial Phase II Commitments*

- (1376) The Initial Phase II Commitments consist in a package of six commitments, namely: (i) a commitment to license, on FRAND terms, Bonnier Broadcasting's FTA and basic pay TV channels, including ancillary rights, to rival TV distributors in Sweden and Finland; (ii) a commitment to license, on FRAND terms, Bonnier Broadcasting's premium pay TV sports channels and the *Liiga* channels owned by the merged entity, including ancillary rights, to rival TV distributors in Sweden and Finland; (iii) a commitment to license standalone OTT rights to one other market player in each of Sweden and Finland; (iv) a commitment not to limit access to the merged entity's standalone streaming services and applications over the internet (AVOD/SVOD) for end users; (v) a commitment not to discriminate when offering TV advertising space, including to sell advertising space on FRAND terms to rival providers of mobile telecommunication services, fixed internet access services and TV distribution services in Sweden and Finland and the maintenance of TV advertising space for acquisition by such rival players; and (vi) a commitment to maintain information barriers between, on the one hand, the merged entity's TV broadcasting and advertising business and, on the other hand, the merged entity's TV distribution business and telecoms business with regard to confidential information concerning competitors in TV distribution, mobile telecommunication services and fixed internet access services and broadcasters.
- (1377) The Initial Phase II Commitments have as their basis the Revised Phase I Commitments. While the commitments are packaged in six separate commitments, namely two more than in the Revised Phase I Commitments, only one of these additional commitments constitutes an entirely new commitment that was not included in the package presented in Phase I. This new commitment is commitment (iii) to license standalone OTT rights to one other market player in each of Sweden and Finland. The above commitment (vi) to maintain information barriers between the merged entity's various businesses was in terms of substance to a significant extent already included in the Revised Phase I Commitments, but instead of being embedded into other commitments, it is now presented as a separate commitment.
- (1378) The main elements of and changes introduced in the Initial Phase II Commitments are as follows.

#### **10.5.1.1. Definitions and general provisions**

- (1379) The Initial Phase II Commitments introduce modifications to the definitions as compared to the Revised Phase I Commitments, either in the form of introducing new definitions (in particular providing definitions for "Ancillary OTT Rights", "Basic Content Cost", "Combined Group's Content", "CPI Rate", "New Distributor", "Sports Content Cost", "Standalone OTT Rights", and "Total Content Cost"), modifying definitions that already existed in the Revised Phase I Commitments (in particular "AirPlay", "Allocated Ad Inventory", Ancillary FTA/Basic Rights", "Ancillary Premium Rights", "BB FTA/Basic Channel", "BB Premium Non-Sports Channel", "Catch-up", "Dual Entry Premium Sports", "Liiga Channel Package", "Providers of mobile telecommunication services", "Providers of fixed internet access services", "Significant Sports Right", "TVE", "TV Service") or

deleting definitions that existed in the Revised Phase I Commitments ( “OTT”, and “Prevailing Market Practice”).

#### 10.5.1.2.Commitments to license FTA and basic pay TV channels and the premium pay TV sports channels and *Liiga* channels

- (1380) With regard to the commitments to license on FRAND terms Bonnier Broadcasting’s FTA and basic pay TV channels (including ancillary rights) and premium pay TV sports channels and the *Liiga* channels (including ancillary rights), the Initial Phase II Commitments clarify that the commitment to license of FRAND terms does not limit the possibility of TV distributors to offer a variety of packages of Bonnier Broadcasting’s channels, according to market practice. The Notifying Party deletes, however, the reference to the choice of licensing either stand-alone or as part of a package (according to the preference of the licensee) the channels, with the justification that it is market practice to always offer packages of channels, rather than individual channels, to TV distributors.
- (1381) The Initial Phase II Commitments also replace the qualifiers to be taken into consideration when determining what constitutes a licence on FRAND terms by a new benchmark, namely the “*rights, prices and conditions*” in the distribution agreements in place at the time of assessment of FRAND terms. The Initial Phase II Commitments foresee that these terms can only be adjusted based on adjustment for inflation using the consumer price index rate, changes in the market practices for parameters determining prices (such as volume of subscribers and share of viewing), and changes to the costs related to the TV programmes on the channels in question, such as the cost for acquiring rights and producing content, internal production costs, translations, dubbings and music rights and other costs related to the acquisition, packaging and distribution of content.
- (1382) The Initial Phase II Commitments also explicitly foresee that TV distributors engaged in licensing negotiations with the merged entity for Bonnier Broadcasting’s FTA and basic pay TV channels or premium pay TV sports channels or the *Liiga* channels, may opt for an extension of their existing distribution agreement by 18 months at a minimum, and can do so by giving notice to the merged entity no later than 15 days before the expiration of that distribution agreement. The terms of the existing distribution agreement would, however, be subject to adjustment for inflation using the consumer price index rate.
- (1383) With regard to the commitment for the merged entity not to intentionally do anything with the effect of significantly reducing the quality of Bonnier Broadcasting’s FTA and basic pay TV channels, its premium pay TV sports channels and the *Liiga* channels that are subject to the licensing commitment under FRAND terms, the Initial Phase II Commitments remove the condition that intentional and significant reduction of quality would only be considered “*on an aggregate basis*”. The Initial Phase II Commitments also explicitly foresee that 100% of the content shown on the channels subject to the FRAND licence is included in the ancillary rights also forming part of that licence.

#### 10.5.1.3.Commitment to license standalone OTT rights

- (1384) The Initial Phase II Commitments introduce an entirely new commitment to license standalone OTT rights to one other market participant in each of Finland and Sweden. Each standalone OTT licence is conditional on Commission approval subject to fulfilment of a set of purchaser criteria and verification that the OTT rights have been licensed in a manner consistent with the commitments. The purchaser criteria foresee that the licensees are independent and unconnected to the merged

entity or affiliated undertakings, the licensees have the necessary financial resources, proven expertise and incentive to maintain and develop its OTT TV service as a viable and active competitive force on the market, [OTT Purchaser Criterion] with a market share above [0-20]% in Sweden and [0-20]% in Finland, and that the acquisition of the standalone OTT rights neither create *prima facie* competition concerns nor give rise to a risk that the implementation of the commitments is delayed.

- (1385) Telia commits to enter into a binding licensing agreement for the standalone OTT rights within [0-12] months from the “Effective Date”, namely the date of the Commission Decision approving the Transaction under the Merger Regulation, and commits to finding another licensee for each licence agreement which comes to termination, either before the termination of the existing licence agreement (if the circumstances for termination were foreseen in the licensing agreement) or within a maximum of [0-6] months from the moment the merged entity finds out about the termination of the licensing agreement (in the event that such termination occurs due to unforeseen circumstances).

10.5.1.4. Commitment not to limit access to the merged entity’s standalone streaming services and applications over the internet (AVOD/SVOD) for end users

- (1386) With regard to the commitment not to limit access to the merged entity’s standalone streaming services and applications over the internet (AVOD/SVOD) for end users, the Initial Phase II Commitments maintains the commitment as included in the Revised Phase I Commitment but with the introduction of a clarification as to the meaning of “end users”, namely that such users include both users of fixed internet access services through single and collective agreements.

10.5.1.5. Commitment on non-discrimination in advertising space

- (1387) With regard to the commitment on non-discrimination in advertising space and making available advertising space for acquisition by competing mobile telecommunication services, fixed internet access services and TV distributors, the Initial Phase II Commitments provide further clarity and specificity to how the merged entity is to treat its competitors post-Transaction.
- (1388) First, the definition of “Allocated Ad Inventory” was further clarified in order to ensure that the advertising space made available to providers of mobile telecommunication services, providers of fixed internet access services and TV distributors in Sweden and Finland (“Telia’s retail competitors”) will be equally good as the space made available to other advertisers (including Telia). This was done (1) by specifying the quality features that the “Allocated Ad Inventory” would have to respect, and (2) by specifying that Telia’s retail competitors would have access to a fair share of the total advertising inventory on the two main commercial channels in Sweden and Finland, respectively TV4 and MTV3.
- (1389) Second, the Notifying Party introduced a safeguard to ensure that Telia’s retail competitors will not only be able to book a fair amount and quality of advertising space in a timely manner but that they would be treated in a similar manner as the other advertisers when it comes to the actual placement of the advertising space acquired under annual contracts.

10.5.1.6. Commitment to maintain information barriers

- (1390) The Initial Phase II Commitments introduce as a new separate commitment that the merged entity will maintain information barriers between its various businesses. In terms of substance, this commitment was to a significant extent already included in

the Revised Phase I Commitments, but instead of being embedded into other commitments, in particular the commitment to license on FRAND terms Bonnier Broadcasting's FTA and basic pay TV channels, premium pay TV sports channels and the *Liiga* channel package, as well as the commitment not to discriminate in advertising space, the commitment to maintaining information barriers is now presented as a separate standalone commitment.

- (1391) The main changes with regard to the substance of this commitment are (1) that the application of the commitment was generalised to any type of confidential information (defined as any information that is not in the public domain); and (2) that the ring-fencing of this confidential information was extended to become bi-directional, i.e. not only cover confidential information obtained by Bonnier Broadcasting regarding Telia's retail competitors but also confidential information obtained by Telia regarding Bonnier Broadcasting's competitors.

#### 10.5.1.7. Monitoring trustee, arbitration, duration

- (1392) The Initial Phase II Commitments do not introduce any changes to the sections related to the monitoring trustee.
- (1393) With regard to the arbitration procedure and the fast track dispute resolution, the Initial Phase II Commitments, however, and in response to the market feedback in the Phase I market test, introduce the possibility to serve a request for arbitration not only to the Arbitration Institute of the Stockholm Chamber of Commerce, but also to the Arbitration Institute of the Finland Chamber of Commerce.
- (1394) With regard to the duration of the commitments, the Initial Phase II Commitments maintain the duration at 7 years from the date of the Commission Decision approving the Transaction under the Merger Regulation. The Initial Phase II Commitments introduce, however, the possibility for new TV distributors, namely those not distributing any of Bonnier Broadcasting's FTA and basic pay TV channels, premium pay TV sports channels or the *Liiga* channels on the date of the adoption of the Commission Decision but wishing to make use of the FRAND licensing commitments, to enter into a licensing contract for a duration of up to five years as of the date of the execution of the distribution agreement, without, however, exceeding eight years as from the date of adoption of the Commission Decision approving the Transaction under the Merger Regulation.

#### 10.5.2. *Results of the market test of the Initial Phase II Commitments*

- (1395) The Commission initiated a market test of the Initial Phase II Commitments on 13 August 2019 and received responses from customers and competitors active in the affected markets in Finland and Sweden.
- (1396) Only a small share of respondents considered the Initial Phase II Commitments were suitable to address the competition concerns identified by the Commission. The other respondents, including main competitors and customers of the Parties in both Sweden and Finland, provided detailed replies identifying the key weaknesses in the commitment text and suggestions of ways in which to improve the commitments.
- (1397) The negative responses in the market test concerned various aspects of the Initial Phase II Commitments, in particular the scope and effectiveness of the commitments, in particular with regard to the licensing commitments.
- (1398) First, respondents considered that the definitions of the commitments were not appropriate, remained too narrow and did not correspond to market practice. In particular, the definitions with a direct impact on the scope of the commitments, such as definition of ancillary rights ("Ancillary FTA/Basic Rights", "Ancillary OTT

Rights”, “Ancillary Premium Rights”), “Allocated Ad Inventory”, or “Significant Sports Right”, as well as the definition of content costs used for the determination of FRAND (“Basic Content Cost”, “Total Content Cost”, “Sports Content Cost”), generated particular criticism from the market test respondents.<sup>1166</sup>

- (1399) Second, with regard to the commitments to license Bonnier Broadcasting’s FTA and basic pay TV channels, premium pay TV sports channels and the *Liiga* channels (including ancillary rights) at FRAND terms, respondents were mostly unable to answer or indicated that they considered that the proposed commitments would not be suitable to remove the Commission’s competition concerns.<sup>1167</sup>
- (1400) With regard to the FRAND licensing commitments for Bonnier Broadcasting’s FTA and basic pay TV channels, premium pay TV sports channels and the *Liiga* channel package, respondents were generally critical of the protection that the commitment would give against the degrading of the conditions under which the merged entity would license those channels to rival TV distributors.<sup>1168</sup> Although acknowledging the possibility included in the commitments to extend existing agreements with Bonnier Broadcasting, several respondents highlighted that the provision did not take account of market changes (e.g. new rights becoming available and not included in the existing agreements) or a degradation of content value that may have occurred since the existing agreement was signed (e.g. a loss of a significant sports right making the option of extending an existing contract commercially not interesting).<sup>1169</sup>
- (1401) One of the main criticisms with the FRAND licensing commitments was how licensing at FRAND terms would be determined, in particular in view of the possibility for the licensing terms to be adjusted to take account of changes to the content cost of TV programmes on the channels concerned. The Initial Phase II Commitments defined the content costs as “*all costs related to the TV programmes*” on Bonnier Broadcasting’s FTA, basic pay TV, premium pay TV sport channels and the *Liiga* Channel Package “*such as costs for acquiring rights and producing content, internal production cost (e.g. studio equipment, studio personnel and talents), translations, dubbings and music rights and other direct and indirect costs related to acquisition, packaging and distribution of content*”. Respondents were critical of the lack of clarity in the definitions of “Basic Content Cost”, “Total Content Cost” and “Premium Content Cost” arguing that they undermined the licensing of the channels on FRAND terms, considering in particular that the definitions were too broad and vague, thus allowing the merged entity excessive leeway to include costs unrelated to the content on the channels or that normally are not passed on to customers.<sup>1170</sup> As explained by NENT, the proposed definition is “*too broad, inclusive and non-specific, and can therefore be manipulated to include virtually anything, with very low transparency*”.<sup>1171</sup> Similarly, DNA explains that the definition of content cost, as included in the commitments, does not provide sufficient transparency as to what costs should be included and what not, and it is not enough to commit not to discriminate between competing TV distributors, but non-

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<sup>1166</sup> Responses to the Phase II market test questionnaire, question B.1 and B.1.1.

<sup>1167</sup> Responses to the Phase II market test questionnaire, question K.1.1., K.1.2.

<sup>1168</sup> Responses to the Phase II market test questionnaire, questions C.1.1., D.2.2.

<sup>1169</sup> Responses to the Phase II market test questionnaire, questions C.1.1.1., D.2.2.2.

<sup>1170</sup> Responses to the Phase II market test questionnaire, questions C.1.2., D.2.3.

<sup>1171</sup> NENT’s response to the Phase II market test questionnaire, question C.1.2.1 (ID02940)

discrimination should also apply between the merged entity's own TV distribution arm and competing TV distributors.<sup>1172</sup>

- (1402) Respondents to the market test were also generally concerned about the possibility of circumvention of the commitments by the merged entity, in particular through the vagueness and lack of clarity in how FRAND terms are determined, and through the degradation of content by gradually stripping TV4 in Sweden, MTV3 in Finland or the merged entity's premium pay TV sports channels in either country of their content and putting that content on another or a new channel.<sup>1173</sup>
- (1403) With regard to the scope of the FRAND licensing commitment covering the merged entity's premium pay TV sports channels, namely only those channels carrying a significant sports right as defined in the commitments, market test respondents considered the scope insufficient, especially as key sports rights were missing, thus undermined the effectiveness of the commitment as a whole.<sup>1174</sup> Respondents pointed for instance to the football rights (Serie A and La Liga) recently acquired by Bonnier Broadcasting which remained outside the scope of the commitments despite the rights "*no doubt constitut[ing] a cornerstone in Bonnier Broadcasting's Premium Sports offering*".<sup>1175</sup>
- (1404) With regard to the ancillary rights included within the scope of the FRAND licensing commitments, both for FTA and basic pay TV channels as well as premium pay TV sports channels and the *Liiga* channels, market test respondents gave mixed responses on the appropriateness of the scope of rights covered, with many respondents indicating how the list included in the definition should be complemented, e.g. with AVOD, SVOD, or modified, e.g. on how "catch-up" is defined.<sup>1176</sup>
- (1405) With regard to the standalone OTT licence commitment, market test respondents were unconvinced about the effectiveness of this additional commitment to prevent the merged entity from foreclosing competitors in the retail supply of TV channels.<sup>1177</sup> Respondents explained that the number of licensees, namely one for each of Sweden and Finland, seems too small and is unjustified, as it does not reflect current market practice or future market developments absent the Transaction. Respondents also indicated that it does not reflect the fact that certain [Details about Bonnier Broadcasting's distribution agreements].<sup>1178</sup> One respondent, NENT, indicated its opposition to singling out OTT distribution rights "*as a product different from traditional distribution technologies*" as it does not reflect current or future market conditions. NENT argued that OTT distribution should simply be included among the distribution technologies covered by the FRAND licensing commitments for FTA, basic pay TV, premium pay TV sports channels and the *Liiga* channel package.<sup>1179</sup> [Details about Bonnier Broadcasting's distribution

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<sup>1172</sup> DNA's response to the Phase II market test questionnaire, questions C.1.2.1., D.2.3.1 (ID02390)

<sup>1173</sup> Responses to the Phase II market test questionnaire, questions C.1.3, C.1.4, D.2.4, D.2.5.

<sup>1174</sup> Responses to the Phase II market test questionnaire, question D.1.1.

<sup>1175</sup> NENT and Tele2's responses to the Phase II market test questionnaire, question D.1.1.1 (ID02940 and ID02897).

<sup>1176</sup> Responses to the Phase II market test questionnaire, questions C.2.1- C.2.3.1, D.3.1.-D.3.3.1.

<sup>1177</sup> Responses to the Phase II market test questionnaire, question E.1.; DNA's additional submission of 10 October 2019 entitled "Statement concerning Case M.9064 Telia Company / Bonnier Broadcasting Holding" (ID03281).

<sup>1178</sup> Responses to the Phase II market test questionnaire, question E.1.1.

<sup>1179</sup> NENT's response to the Phase II market test questionnaire, question E.1.1 (ID02940)

agreements].<sup>1180</sup> Vicissima indicated that by licensing OTT rights to only one other market player in each of Sweden and Finland, “*the combined entity can seriously harm the development of the market moving forward by effectively creating a very small oligopoly*”. Instead, the standalone OTT rights should be available at FRAND terms to any standalone OTT operator but excluding traditional TV distributors from eligible licensees.<sup>1181</sup>

- (1406) Respondents to the market test generally doubt that the terms of the standalone OTT licensing agreement, as foreseen by the Initial Phase II Commitments, would ensure that the licensee is able to effectively compete against the merged entity in providing an aggregated OTT service.<sup>1182</sup> Respondents indicated that the purchaser criteria included in the commitments are unclear, and pointed to the absence of a FRAND obligation or other benchmark to determine the terms of the agreement, indicating also the need to include such benchmark.<sup>1183</sup>
- (1407) With regard to the commitment not to limit access to the merged entity’s standalone streaming services, many respondents indicated that the commitment included in the Initial Phase II Commitments was insufficient to ensure that customers of competing mobile telecommunication and fixed internet access services would not switch to Telia’s corresponding services in order to have access to the merged entity’s AVOD and SVOD services.<sup>1184</sup> Respondents referred to the commitment being too vaguely worded, and allowing the practice of zero rating (i.e. not deducting the consumption of data from the data volume included in the customer’s subscription of internet access services) thus benefitting the merged entity’s VOD offerings to the detriment of VOD offerings of others, in conflict with net neutrality rules.<sup>1185</sup> Others indicated that the commitment should make it clear that all content must be made available to competing operators and these operators should have independent reselling rights of such content.<sup>1186</sup> DNA considered that without a commitment for the merged entity to license standalone OTT rights to the merged entity’s premium sports content and premium pay TV sport channels, competitors in the retail market for mobile broadband services or fixed internet access services, would be unable to offer competing bundled offers and be competitive against the merged entity.<sup>1187</sup>
- (1408) With regard to the commitment on non-discrimination in advertising space, some respondents considered that the changes introduced by Telia were not sufficient to ensure that Telia’s competitors could not be discriminated against when the merged entity offers advertisement opportunities through its TV offer, including Bonnier Broadcasting’s FTA and basic pay TV channels and AVOD services.<sup>1188</sup>

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<sup>1180</sup> DNA’s response to the Phase II market test questionnaire, question E.1.1 (ID02930); DNA’s additional submission of 10 October 2019 entitled “Statement concerning Case M.9064 Telia Company / Bonnier Broadcasting Holding” (ID03281).

<sup>1181</sup> Vicissima’s response to the Phase II market test questionnaire, question E.1.1 (ID02887).

<sup>1182</sup> Responses to the Phase II market test questionnaire, question E.4.

<sup>1183</sup> Responses to the Phase II market test questionnaire, questions E.4, E.5.

<sup>1184</sup> Responses to the Phase II market test questionnaire, question F.1.; DNA’s additional submission of 10 October 2019 entitled “Statement concerning Case M.9064 Telia Company / Bonnier Broadcasting Holding” (ID03281).

<sup>1185</sup> NENT and SVT’s responses to the Phase II market test questionnaire, questions F.1.1, F.1.2 (ID02940 and ID02890).

<sup>1186</sup> DNA’s response to the Phase II market test questionnaire, question F.1.2 (ID02930).

<sup>1187</sup> DNA’s additional submission of 10 October 2019 entitled “Statement concerning Case M.9064 Telia Company / Bonnier Broadcasting Holding” (ID03281).

<sup>1188</sup> Responses to the Phase II market test questionnaire, question G.1

- (1409) In particular, some respondents explained that the Initial Phase II commitments would not fully prevent Telia from giving itself an undue advantage in terms of getting access to the best advertising spots. One respondent, in particular suggested that the quality of the advertising space that Telia commits to make available to Telia's retail competitors should not only be benchmarked to the average ad inventory available but also to the ad inventory booked by the merged entity to ensure equal treatment.<sup>1189</sup>
- (1410) Other respondents claimed that the advertising commitment should be extended to pure OTT players.<sup>1190</sup> Some respondents also claimed that the proportion of the overall ad inventory that will be reserved for Telia's retail competitors is not sufficient.<sup>1191</sup>
- (1411) With regard to the commitment to maintain information barriers between the merged entity's various businesses, respondents provided mainly a negative response or did not know whether the commitment as included in the Initial Phase II Commitments would prevent third party confidential information from being passed from the merged entity's broadcasting and advertising business to its TV distribution and telecoms businesses and vice-versa.<sup>1192</sup> Suggested improvements to the commitments include an obligation for the merged entity to keep separate its various businesses, prevent staff from holding roles on either side of the information barrier, and setting up firewall measures or Chinese walls in the company's IT environment. Proposals to change the definition of "confidential information" covered by the commitment were also put forward by respondents with a view to cover for instance metadata and information on consumer behaviour. In addition, respondents called for more specificity as to the relevant information and training that personnel with access to confidential information within the merged entity would be receiving. Respondents also requested that the actual wording of the confidentiality agreements that staff would be required to sign be included as part of the commitments, in line with Commission precedents, e.g. case M.7724 ASL / ARIANESPACE, where a standard form agreement template was enclosed as a schedule to the commitments.<sup>1193</sup>
- (1412) Respondents were positive overall to the proposed dispute resolution mechanism and its effectiveness in allowing third parties to enforce the commitments. Only a handful of respondents provided a negative view on the mechanism, with respondents indicating, for example, that the mechanism was too slow and burdensome even in its expedited form.<sup>1194</sup>
- (1413) Finally, with regard to duration, the majority of respondents indicated that the proposed [...] duration of the commitments is too short to remedy the input foreclosure concerns identified by the Commission, with some arguing for a minimum of 10 years.<sup>1195</sup>

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<sup>1189</sup> Responses to the Phase II market test questionnaire, question G.1.

<sup>1190</sup> Responses to the Phase II market test questionnaire, question G.1.

<sup>1191</sup> Responses to the Phase II market test questionnaire, question G.1.

<sup>1192</sup> Responses to the Phase II market test questionnaire, question H.1.

<sup>1193</sup> Responses to the Phase II market test questionnaire, question H.1.

<sup>1194</sup> Responses to the Phase II market test questionnaire, question J.1.; NENT and Tele2's responses to the Phase II market test questionnaire, question J.1.1 (ID02940 and ID02897).

<sup>1195</sup> Responses to the Phase II market test questionnaire, questions I.1, I.1.1.

#### 10.5.3. Commission's assessment of the Initial Phase II Commitments

- (1414) The Commission assessed the appropriateness of the Initial Phase II Commitments in light of the principles underlying its commitments policy and the results of the market test.
- (1415) The Commission concluded that despite introducing certain improvements compared to the Revised Phase I Commitments, in particular in relation to the benchmark for the assessment of FRAND, the option for TV distributors to extend existing licensing agreements, the introduction of a separate standalone OTT licensing commitment, and clarifications as to what non-discrimination in advertising space entailed, the Initial Phase II Commitments continued to fall short of removing the Commission's competition concerns.
- (1416) The Commission identified the following shortcomings in the Initial Phase II Commitments.
- (1417) First, the Commission considered that the first and the second commitments, namely the commitment to license Bonnier Broadcasting's FTA and basic pay TV channels, premium pay TV sports channels and the *Liiga* channels (including ancillary rights), at FRAND terms to rival TV distributors, lacked in clarity in particular on the question what would constitute FRAND licensing terms, namely on the methodology used to determine FRAND, including the benchmarks used to determine FRAND and what adjustments to the terms offered would be FRAND compliant. Without such clarity, it would be difficult to assess and effectively monitor whether terms offered by the merged entity to rival TV distributors would be compliant with FRAND or not.
- (1418) According to the Commission, the benchmark to determine FRAND should not only be the rights, prices and conditions in distribution agreements in place with third parties at the time of assessing FRAND, but also the content and technical quality of Bonnier Broadcasting's channels and the *Liiga* channels, the programming schedule and programme metadata as provided by the merged entity to rival TV distributors. In addition, these elements should be equal to those provided by the merged entity via its own TV service. The commitments should ensure that the FRAND licensing terms offered to rival TV distributors should be no less favourable than what is available to the merged entity.
- (1419) With regard to the possible adjustments under FRAND, the Commission considered that the Initial Phase II Commitments lacked clarity and specificity as to what is included in the content costs that are taken into account for the adjustment of the terms of distribution agreements compliant with FRAND terms. More specifically, the Commission considered that the definitions of "Basic Content Cost", "Total Content Cost" and "Sports Content Cost" as included in the Initial Phase II Commitments were too vague in their wording and therefore presented a risk of circumvention of the FRAND licensing commitments by the merged entity.
- (1420) The Commission also considered that the Initial Phase II Commitments were too vague as to the responsibility or burden of proof of the merged entity to show that any proposed price increases for the licensing of Bonnier Broadcasting's FTA and basic pay TV channels would be in conformity with FRAND.
- (1421) Second, the Commission considered that the scope of the ancillary rights covered by the FRAND licensing commitments for Bonnier Broadcasting's TV channels and the commitment to license standalone OTT rights was insufficient.

- (1422) In particular, the Commission considered that the scope of the ancillary rights included in these commitments did not cover all the rights that are market practice in Finland and Sweden. Specifically, the definition of “Ancillary FTA/Basic Rights” did not include AVOD, the definition of “catch-up” was limited to only 7 days, and the definition of “Ancillary Premium Rights” did not cover AirPlay and Chromecast.
- (1423) Third, the Commission considered that the scope of the commitment to license Bonnier Broadcasting’s FTA and basic pay TV channels at FRAND terms was too narrow. In particular, the Commission considered that the commitment should cover also FRAND access to standalone NPVR rights to Bonnier Broadcasting’s FTA channels in Finland, considering that such standalone rights (i.e. separate from any NPVR rights granted as an ancillary right to traditional TV distribution) are already available to TV distributors in Finland.
- (1424) Fourth, the Commission considered that the scope of the commitment to license Bonnier Broadcasting’s premium pay TV sports channels was too narrow. Specifically, and in light of the market test feedback from competitors and customers, the Commission considered that the premium pay TV sport channels covered by the FRAND licensing obligation was too restrictive in view of an insufficiently broad scope of sports rights included in the definition of “Significant Sports Right”.
- (1425) In addition, the Commission considered that the FRAND licensing commitment for Bonnier Broadcasting’s premium pay TV sports channels was not consistent with market practice in relation to certain [...] granted to TV distributors in Finland and Sweden. The Commission considered that the FRAND licensing commitment should cover also any [...] for Bonnier Broadcasting’s premium pay TV sports channels and ancillary rights available in current distribution agreements.
- (1426) Fifth, the Commission considered that to be effective, the commitment to license OTT rights on a standalone basis to one other market player in Finland and Sweden, respectively, was too vaguely drafted and left too much leeway for the merged entity to determine the terms and conditions applicable to the standalone OTT licences being offered as part of the commitment, including the duration of such licences, and in terms of the characteristics of market players eligible to be considered as acceptable under the commitments. In this regard, the Commission considered that the standalone OTT licensing commitment should be worded in a way so as to ensure that a market situation corresponding to the scenario absent the Transaction, as described in Sections 8.5.1.1 and 8.5.2.1, would also be achieved post-Transaction. The Commission considered, in particular, that to be effective, the licensee would need to have the means to become a significant aggregator of TV channels and TV content over the internet. This would require that any licensee should be provided with a sufficiently long lasting and renewable standalone OTT licence to the merged entity’s channels, but to be considered eligible, the licensee should also have [OTT purchaser criterion].
- (1427) Sixth, the Commission considered that the wording of the Initial Phase II Commitments did not exclude to a sufficient degree the risk of circumvention of the commitments by the merged entity, either through the shifting of content to services over the internet or through a degrading of the quality of the channels covered by the FRAND licensing commitments or the standalone OTT licensing commitment. With regard to the first and second commitments, the Commission considered that the inclusion of the condition that the degradation would need to be intentional and significant weakened the commitments’ effectiveness and hampered the ability of third party market participants and the monitoring trustee from effectively

monitoring compliance by the merged entity. The Commission was concerned by the terminology used, and considered that, even in the absence of any evidence of a specific intention to degrade the quality of the channels, any degradation consciously operated by the merged entity should be excluded, and the qualifier of “significantly” reducing the quality of its channels should be removed. With regard to the third commitment (standalone OTT rights), the Commission also considered that a similar quality degradation commitment as included in relation to the first and second commitments, would need to be included to avoid circumvention.

- (1428) Seventh, the Commission considered that the commitment to maintain an information barrier between the merged entity's wholesale business for TV and advertising and its retail business for TV distribution and telecoms for the purposes of protecting commercially sensitive third party information was not drafted in a sufficiently clear and concrete manner to be effective.
- (1429) Eighth, the Commission considered that the [...] duration of the Initial Phase II Commitments was not sufficiently long, especially in view of the uncertainty as to how the market will develop, not least in terms of continued importance of linear TV distribution through traditional distribution channels, and distribution of TV channels and content over the internet. Indeed, setting up and maintaining TV distribution services require a considerable investment and, hence, the commitments should be in place for a period that is sufficiently long to allow TV distributors, including OTT channel aggregators, to plan and make long-term investments.
- (1430) In light of the above, the Commission concluded that similarly to the Initial and Revised Phase I Commitments, also the Initial Phase II Commitments fell short of removing the Commission's competition concerns.

## **10.6. Final Commitments**

### *10.6.1. Description of the Final Commitments*

- (1431) The Final Commitments consist in a package of six commitments, namely: (i) a commitment to license, on FRAND terms, Bonnier Broadcasting's FTA and basic pay TV channels, including ancillary rights, to rival TV distributors in Sweden and Finland; (ii) a commitment to license, on FRAND terms, Bonnier Broadcasting's premium pay TV sports channels and the *Liiga* channels owned by the merged entity, including ancillary rights, to rival TV distributors in Sweden and Finland; (iii) a commitment to license standalone OTT rights to one other market player in each of Sweden and Finland; (iv) a commitment not to limit access to the merged entity's standalone streaming services and applications over the internet (AVOD/SVOD) for end users; (v) a commitment not to discriminate when offering TV advertising space, including to sell advertising space on FRAND terms to rival providers of mobile telecommunication services, fixed internet access services and TV distribution services in Sweden and Finland and the maintenance of TV advertising space for acquisition by such rival players; and (vi) a commitment to maintain information barriers between, on the one hand, the merged entity's TV broadcasting and advertising business and, on the other hand, the merged entity's TV distribution business and telecoms business with regard to confidential information concerning competitors in TV distribution, mobile telecommunication services and fixed internet access services and broadcasters.
- (1432) The Final Commitments have as their basis the Initial Phase II Commitments, introducing clarifications and improvements to address the Commission's observations following the market testing of the Initial Phase II Commitments. The main changes introduced in the Final Commitments are as follows.

#### 10.6.1.1. Definitions and general provisions

- (1433) The Final Commitments introduce modifications to the definitions, either in the form of introducing a new definition (namely “STB AVOD”), modifying definitions that already existed in the Initial Phase II Commitments (in particular “Allocated Ad Inventory”, “Ancillary FTA/Basic Rights”, “Ancillary OTT Rights”, “Ancillary Premium Rights”, “Basic Content Cost Index”, “Bonnier Broadcasting”, “Catch-up”, “Combined Group”, “Confidential Information”, “CPI Rate”, “FTA/Basic Channels”, “IPTV”, “Liiga”, “NPVR”, “Significant Sports Right”, “Sports Content Cost Index”, “Telia Company”, “TV Service”) or deleting definitions that existed in the Initial Phase II Commitments (namely “Combined Group’s Content”, “New Distributor”, “Premium Sports Channels”, “Total Content Cost”).
- (1434) The Final Commitments also introduce a clarification as to the conditions under which the Notifying Party offers the licensing commitments covered by the Final Commitments, namely that it will use its *“best efforts”* to acquire content/rights on terms that allow for sub-licensing.

#### 10.6.1.2. Commitment to license FTA and basic pay TV channels

- (1435) With regard to the commitment to license, on FRAND terms, Bonnier Broadcasting’s FTA and basic pay TV channels (including ancillary rights) the Final Commitments bring further clarity to how FRAND should be determined. In particular, it explicitly obliges the merged entity to show to the satisfaction of the monitoring trustee that any adjustments to the FRAND licensing terms are in line with market practice and are necessary to adjust for inflation, take account of changes in the market practice for parameters determining prices, and take account of changes to the content costs. The Final Commitments specify that the burden of proof to show conformity with such conditions rests on the merged entity.
- (1436) With regard to content costs used to determine any price adjustments, the Final Commitments refer to changes in the relevant cost index, with a new definition provided for “Basic Content Cost Index”. The new definition specifically limits the costs to be considered for the index to costs that “it is market practice to be passed on to distributors”. To avoid circumvention and ensure effective monitoring, the Final Commitments state that the merged entity will report periodically to the monitoring trustee on developments in content acquisition costs and that it is for the monitoring trustee to propose, based on a reasoned suggestion from the merged entity, a starting point value for the basic content cost index to be approved by the Commission. To ensure transparency of the process, the Final Commitments foresee that the monitoring trustee provides an annual assessment of which costs should be included or excluded from the content cost index according to market practice. The Final Commitments specify further that the monitoring trustee will be granted access by the merged entity to all necessary information to allow it to determine which are costs related to the TV content considered for the purposes of determining the content cost index according to market practice. TV distributors are also given an opportunity to prepare their own submission to the monitoring trustee to be taken into account when the monitoring trustee makes its decision.
- (1437) The revised wording also strengthens the benchmark for determining FRAND. In addition to “rights, prices and conditions” contained in distribution agreements that are in place, a second leg is added, namely the content and technical quality of Bonnier Broadcasting’s FTA and basic pay TV channels, the programming schedule and programme metadata as per current agreements provided by the merged entity to any other TV distributor in Sweden and Finland. The Final Commitments clarify that the content and technical quality of these channels, programming schedule and

programme metadata should equal that provided by the merged entity through its own TV service.

- (1438) The revised wording also specifies that the FRAND licensing terms offered by the merged entity to TV distributors should be no less favourable than the ones available to the merged entity.
- (1439) With regard to ancillary rights covered by the FRAND licensing commitment, the Final Commitments include “STB AVOD”, namely AVOD on set-top-boxes, among the rights covered by the definition of “Ancillary FTA/Basic Rights”. The Final Commitments also modifies the definition of “catch-up” so as to reflect market practice in terms of the time period during which the catch-up service is available following the linear transmission of the programme.
- (1440) The Final Commitments also extend the scope of the commitment to license Bonnier Broadcasting’s FTA and basic pay TV channels at FRAND terms to cover also standalone NPVR rights to TV distributors in Finland.
- (1441) With regard to the option available to TV distributors to extend their current distribution agreements for Bonnier Broadcasting’s FTA and basic pay TV channels, the Final Commitments clarify that such extensions can be requested multiple times by the TV distributors and the option encompasses not only the channels but also the ancillary rights that are part of the agreements.
- (1442) With regard to the commitment for the merged entity not to do anything that has the effect of reducing the quality of the channels being licensed, the Final Commitments provide that such steps should not be taken “knowingly” rather than “intentionally”, and remove the additional qualifier that the reduction of quality would need to be “significant” in order to fall within the scope of this commitment.
- (1443) The Final Commitments also introduce a clarification that the merged entity will not prevent TV distributors from offering bundles comprising a TV service including Bonnier Broadcasting’s FTA and basic pay TV channels, on the one hand, and other services, such as fixed broadband, on the other hand. The merged entity also commits to facilitating interoperability of such services.

#### 10.6.1.3. Commitment to license premium pay TV sports channels and *Liiga* channels

- (1444) With regard to the commitment to license, on FRAND terms, Bonnier Broadcasting’s premium pay TV sports channels and the *Liiga* channels (including ancillary rights), the Final Commitments bring further clarity to how FRAND should be determined. In particular, it explicitly obliges the merged entity to show to the satisfaction of the monitoring trustee that any adjustments to the FRAND licensing terms are in line with market practice and are necessary take account of changes in the market practice for parameters determining prices, and take account of changes to the content costs. The Final Commitments no longer foresee adjustments for inflation.
- (1445) With regard to content costs used to determine any price adjustments, the Final Commitments refer to changes in the relevant cost index, with a new definition provided for “Sports Content Cost Index”. The new definition specifically limits the costs to be considered for the index to costs that “it is market practice to be passed on to TV Distributors”. To avoid circumvention and ensure effective monitoring, the Final Commitments state that the merged entity will report periodically to the monitoring trustee on developments in content acquisition costs and that it is for the monitoring trustee to propose, based on a reasoned suggestion from the merged entity, a starting point value for the sports content cost index to be approved by the Commission. To ensure transparency of the process, the Final Commitments foresee

that the monitoring trustee provides an annual assessment of which costs should be included or excluded from the content cost index according to market practice. The Final Commitments specify further that the monitoring trustee will be granted access by the merged entity to all necessary information to allow it to determine which are costs related to the TV content considered for the purposes of determining the content cost index according to market practice. TV distributors are also given an opportunity to prepare their own submission to the monitoring trustee to be taken into account when the monitoring trustee makes its decision.

- (1446) The revised wording also strengthens the benchmark for determining FRAND. In addition to “rights, prices and conditions” contained in distribution agreements that are in place, a second leg is added, namely the content and technical quality of Bonnier Broadcasting’s premium pay TV sports channels and the *Liiga* channel package, the programming schedule and programme metadata as per current agreements provided by the merged entity to any other TV distributor in Sweden and Finland. The Final Commitments clarify that the content and technical quality of these channels, programming schedule and programme metadata should equal that provided by the merged entity through its own TV service.
- (1447) The revised wording also specifies that the FRAND licensing terms offered by the merged entity to TV distributors should be no less favourable than the ones available to the merged entity.
- (1448) With regard to ancillary rights covered by the FRAND licensing commitment, the Final Commitments include “AirPlay” and “ChromeCast” among the rights covered by the definition of “Ancillary Premium Rights”. The Final Commitments also modifies the definition of “catch-up” so as to reflect market practice in terms of the time period during which the catch-up service is available following the linear transmission of the programme.
- (1449) The Final Commitments extend the scope of Bonnier Broadcasting’s channels covered by the FRAND licensing commitment. This extension is done through the addition of sports rights to the list included in the definition for “Significant Sports Right”. The Final Commitments expand on the list for Sweden to cover also Serie A, La Liga, Bundesliga, NHL, PGA Tour, HockeyAllsvenskan, FIA Formula One World Championship, and Superettan. For Finland, the list is expanded to cover also La Liga, NHL, Kontinental Hockey League, Diamond League, FIS Alpine world cup tour, World Rally Championships, and NBA.
- (1450) The Final Commitments also extend the scope of the FRAND licensing commitment to cover any OTT rights relating to Bonnier Broadcasting’s premium pay TV sports channels and the merged entity’s SVOD services carrying a significant sports right that were available to TV distributors before the Commission’s final decision. The Final Commitments foresee that any TV distributor to whom such OTT rights were available before the Commission’s final decision have the option of either extending their existing agreements including such OTT rights or negotiating a licensing for such rights at FRAND terms.
- (1451) With regard to the option available to TV distributors to extend their current distribution agreements for Bonnier Broadcasting’s premium pay TV sports channels and the *Liiga* channels, the Final Commitments clarify that such extensions can be requested multiple times by the TV distributors and the option encompasses not only the channels but also the ancillary rights that are part of the agreements.
- (1452) With regard to the commitment for the merged entity not to do anything that has the effect of reducing the quality of the channels being licensed, the Final Commitments

provide that such steps should not be taken “knowingly” rather than “intentionally”, and remove the additional qualifier that the reduction of quality would need to be “significant” in order to fall within the scope of this commitment.

- (1453) The Final Commitments also introduce a clarification that the merged entity will not prevent TV distributors from offering bundles comprising a TV service including Bonnier Broadcasting’s premium pay TV sports channels or the *Liiga* channels, on the one hand, and other services, such as fixed broadband, on the other hand. The merged entity also commits to facilitating interoperability of such services.

#### 10.6.1.4. Commitment to license standalone OTT rights

- (1454) With regard to the commitment to license standalone OTT rights to one other market player in both Finland and Sweden, the Final Commitments provide more specificity and clarity as to the determination of the terms and conditions applicable to the standalone OTT licences being offered as part of the commitment. In particular, the Final Commitments specify that such licences would be for an initial period of [1-5] years and the licensee would have the option to renew such licence by [1-5] years at a time, subject to the Commission’s prior approval.
- (1455) The Final Commitments specify in further detail what characteristics market players eligible to be considered as acceptable under the commitments should have. For Sweden, the Final Commitments foresee that that in order to be approved by the Commission, the OTT licensee should own or have standalone OTT rights [OTT purchaser criteria] with a share higher than [10-20]% among FTA and basic pay TV channels or a share higher than [10-20]% among premium pay TV sports channels in Sweden. For Finland, the OTT licensee should own or have standalone OTT rights [OTT purchaser criteria] with a share higher than [5-10]% among FTA and basic pay TV channels or a share higher than [10-20]% among premium pay TV sports channels in Finland.
- (1456) To ensure the effectiveness of the OTT commitment, the Final Commitments introduce specific steps and time limits for the achievement of each step in the identification of possible OTT licensees, the negotiation of the OTT licensing agreements, presentation of proposed agreements to the Commission for approval, and the final granting of the licences in each of Finland and Sweden.
- (1457) To exclude the risk of circumvention of the commitment, the Final Commitments introduce an anti-circumvention clause by which the merged entity must refrain from “knowingly” doing anything that has the effect of reducing the quality of the standalone OTT rights covered by the commitment. The additional wording also sets the benchmark for how the quality of the standalone OTT rights should be assessed, namely in light of market developments in Finland and Sweden and of the combination of certain metrics, namely audience share, reach, and range of significant sports rights. The Final Commitments also specify that the totality of the content shown in Bonnier Broadcasting’s FTA and basic pay TV channels, premium pay TV sports channels and the *Liiga* channel package will be included in the ancillary OTT rights.
- (1458) The Final Commitments also clarify that the merged entity will not prevent the OTT licensee from offering bundles comprising a standalone OTT service including the merged entity’s channels, on the one hand, and other services, such as fixed broadband, on the other hand. The merged entity also commits to facilitating interoperability of such services.
- (1459) With regard to the scope of the ancillary OTT rights covered by the commitment, the Final Commitments modify the definition of “catch-up” so as to reflect market

practice in terms of the time period during which the catch-up service is available following the linear transmission of the programme.

10.6.1.5. Commitment not to limit access to the merged entity's standalone streaming services and applications over the internet (AVOD/SVOD) for end-users

- (1460) With regard to the commitment not to limit access to the merged entity's standalone streaming services and applications over the internet, the Final Commitments clarify that Telia will not prevent any end user or third party TV distributor, provider of mobile telecommunication services, or provider of fixed internet access services from accessing the merged entity's standalone streaming services and applications over the internet on any third party platform for which those services and applications have been designed. The merged entity also commits to facilitating interoperability of such services.
- (1461) The Notifying Party explains that this is to ensure current market practice post-Transaction, namely that end users will not be prevented from downloading the merged entity's applications also when using third party platforms such as Apple TV (iOS), Android TV and Amazon Fire TV. For example, as some distributors use Android based set-top-boxes, apps that are available to download on Google Play are generally available to download to the set-top-box, as the TV4 app is available on Google Play. The distributor provides a link to the TV4 Play app and all viewing of the TV4 Play content occurs within the walled garden of the TV4 Play app.<sup>1196</sup>

10.6.1.6. Commitment on non-discrimination in advertising space

- (1462) With regard to the commitment on non-discrimination in advertising space, the Final Commitments strengthen the anti-circumvention clause by which the allocated ad inventory, as included within the scope of the commitment and made available to rival providers of mobile telecommunication services, fixed internet access services and TV distributors in Finland and Sweden, should have at least the same quality as that which the merged entity has booked for itself in terms of channels, type of advertising inventory, prime time share, first position share, programming context, and any other quality measures according to market practice.

10.6.1.7. Commitment to maintain information barriers

- (1463) With regard to the commitment to maintain information barriers, the Final Commitments clarify that the merged entity commits to maintaining an information barrier between, on the one hand, its wholesale business (namely TV wholesale and advertising business) and, on the other hand, its retail businesses (namely TV retail distribution business and telecoms businesses) when it comes to confidential information concerning competing third party TV distributors, providers of mobile telecommunication services, providers of fixed internet access services or broadcasters. The Final Commitments modify the definition of "Confidential Information" to clarify that such information would cover also for example any information relating to or generated from providing or using a party's services and content, such as metadata and information on consumer behaviour relating to the service and content.
- (1464) The revised wording also introduces a standard form confidentiality agreement, included as "Schedule 1" to the commitments that the merged entity commits to

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<sup>1196</sup>

Form RM, paragraph 80.

having its personnel and managers to sign. The Final Commitments also explicitly foresee oversight by the monitoring trustee in this process.

#### 10.6.1.8. Monitoring trustee, arbitration and duration

- (1465) In relation to the functions of the monitoring trustee, and in order to ensure the effectiveness of the FRAND licensing commitments as explained in more detail in Section 10.6.1.2 and Section 10.6.1.3, the Final Commitments specify the role of the monitoring trustee in proposing a starting point value for the basic content cost and sports content costs indexes used as a benchmark for the assessment of what constitutes a licence under FRAND terms and the mechanisms to be followed in determining and making changes to the content cost index values.
- (1466) In relation to the fast track dispute resolution system, the Final Commitments clarify that the fast track route is an additional option to the benefit of third parties, and not an obligatory route to follow. The Final Commitments clarify that it remains a discretionary right for a third party to solve any dispute concerning the merged entity's compliance with the commitments through the fast track dispute resolution procedure.
- (1467) Finally, in relation to the duration of the commitments, the Final Commitments foresee a duration of 10 years (instead of [...] as in the Initial Phase II Commitments).
- (1468) In view of the extension of the overall duration to ten years, the provision included in the Initial Phase II Commitments by which new distributors taking advantage of the FRAND licensing commitments would have the option to choose a contract duration of up to five years as from the date of execution of its distribution agreement, has been removed.

#### 10.6.2. *Commission's assessment of the Final Commitments*

- (1469) The Commission assessed the appropriateness of the Final Commitments in light of the principles underlying its commitments policy and the results of the market tests.
- (1470) The Commission concludes that the commitments are capable of eliminating the competition concerns entirely, are comprehensive and effective from all points of view, proportionate, and capable of being implemented effectively within a short period of time.

#### 10.6.2.1. Adequacy of commitments addressing input foreclosure concerns in relation to FTA, basic pay TV and premium pay TV sports channels

- (1471) Several commitments have been presented by the Notifying Party to address the Commission's competition concerns relating to total and partial input foreclosure in relation to FTA, basic pay and premium pay TV sports channels in Finland and Sweden, namely the commitment to license, on FRAND terms, Bonnier Broadcasting's FTA and basic pay TV channels, the commitment to license, on FRAND terms, Bonnier Broadcasting's premium pay TV sports channels and the *Liiga* channel package, the commitment to license standalone OTT rights to one other market player in each of Finland and Sweden, and the commitment to maintain information barriers between the merged entity's wholesale and retail businesses in

relation to third party confidential information. Taken together, these commitments adequately address the input foreclosure concerns identified by the Commission.<sup>1197</sup>

- (1472) The Commission's input foreclosure concerns are based on the importance of Bonnier Broadcasting's FTA, basic pay TV, and premium pay TV sports channels as an input for rival TV distributors to compete with the merged entity in the retail supply of AV services. By committing to offer TV distributors access to these channels (and any future channels) post-Transaction pursuant to the terms mentioned above (see in particular Sections 10.3.1, 10.4.1, 10.5.1 and 10.6.1), the commitments adequately address the Commission's competition concerns.
- (1473) In particular, the Final Commitments ensure that all the FTA, basic pay TV and premium pay TV sports channels, including ancillary rights, which are available to TV distributors in Finland and Sweden pre-Transaction remain available to them also post-Transaction for distribution to end users via traditional TV distribution technologies (cable, DTH, IPTV, DTT<sup>1198</sup>, SMATV or any other platform using TV broadcasting technology to end users). The Final Commitments oblige the merged entity to use its "best efforts" to acquire content/rights covered by the commitments on terms that allow for sub-licensing.
- (1474) Specifically, the Final Commitments foresee that rival TV distributors can obtain the licence of the merged entity's current and future FTA and basic pay TV channels<sup>1199</sup>, premium pay TV sports channels as well as the *Liiga* channel package at FRAND terms. The FRAND licensing commitments for such channels cover all ancillary rights available to TV distributors today and ensure that also future ancillary services offered by the merged entity as part of its TV service will be available for FRAND licensing to rival TV distributors. The commitments cover all broadcasting technologies (cable, DTH, IPTV, DTT, SMATV and any other platform using TV broadcasting technology to end users) as well as ancillary rights enabling non-linear viewing over the open internet, e.g. TV Everywhere. The Final Commitments ensure that rival TV distributors are granted licences to the merged entity's channels and ancillary services at terms that are no less favourable than the ones available to the merged entity. In order to ensure the effectiveness of the commitments, rival TV distributors wishing to distribute the merged entity's channels have, on the one hand, the option to negotiate a new licensing agreement under FRAND terms. On the other hand, the commitments also provide for the possibility for TV distributors to extend their existing distribution agreements (subject only to adjustments for inflation in relation to FTA and basic pay TV channels). TV distributors may also opt to do both, namely extend their existing agreements and also negotiate at FRAND terms additional rights not covered by their existing agreements.<sup>1200</sup>

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<sup>1197</sup> In this regard, it should also be noted that end-customers are also guaranteed access to the AVOD and SVOD services of the merged entity irrespective of the mobile or fixed broadband network they use as a result of the commitment for the merged entity to not limit access to its standalone streaming services and applications over the internet (AVOD/SVOD) for end users.

<sup>1198</sup> Telia has confirmed that the [...]. See the Notifying Party's reply to Commission's RFI 71, question 16 (ID03033).

<sup>1199</sup> The FTA and basic pay TV channels covered by this commitment (as well as by the standalone OTT licensing commitment) include all different genres of FTA and basic pay TV channels supplied by Bonnier Broadcasting/the merged entity in the market. The FRAND licensing commitments and the standalone OTT licensing commitment therefore ensure that effective competition is preserved also as regards any segmentation of the wholesale market by genre.

<sup>1200</sup> With regard to market test respondents indicating that the option to extend existing agreements does not take account of market changes or the possible degradation of content value since the existing

- (1475) The possibility to extend current agreements reinforces the FRAND licensing commitment as it gives licensees an additional way in which to secure access to the merged entity's TV channels and ancillary services, and ensures that the merged entity will not be able to degrade the current contractual terms.
- (1476) In addition to ensuring the availability of Bonnier Broadcasting's FTA, basic pay TV and premium pay TV sports channels to rivals for distribution via traditional TV distribution technologies, the Final Commitments also ensure that the channels (including a set of ancillary OTT rights) are licensed standalone to a competing player in each of Sweden and Finland for distribution to end users over the open internet without requiring that the end customer has a traditional TV service subscription.<sup>1201</sup> <sup>1202</sup> The commitment to license standalone OTT rights will ensure that the merged entity will face competition post-Transaction also in the OTT space, which is an increasingly important distribution channel to reach end customers on the market for retail distribution of AV services. Together, the FRAND licensing commitments and the standalone OTT licensing commitment ensure that input foreclosure concerns in all the possible retail distribution markets (which are not segmented on the basis of the different distribution technologies, which all form part of the same distribution market(s)) are addressed and covered by the commitments.<sup>1203</sup>
- (1477) The FRAND licensing commitments and the standalone OTT licensing commitment contain a quality degradation clause which prevents the merged entity from knowingly doing anything that would reduce the quality of the channels or the OTT rights being licensed, thus preventing the merged entity from using quality degradation as a means to circumvent the commitments and give rise to partial input foreclosure of rivals in the retail supply of AV services.
- (1478) The Final Commitments also ensure that information barriers are erected and maintained between the merged entity's wholesale and retail businesses so as not to give undue advantage to the merged entity's retail TV distribution business by gaining access to third party confidential information.
- (1479) The Final Commitments constitute an improvement to the Initial Phase II Commitments and fully addresses the shortcomings identified by the Commission with respect to the Initial Phase II Commitments.
- (1480) Firstly, in relation to the FRAND licensing commitment for Bonnier Broadcasting's FTA and basic pay TV channels, premium pay TV channels and the *Liiga* channel package, the Final Commitments address the shortcomings of the Initial Phase II

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agreement was signed, the Commission notes that in situations in which the distributor does not consider it commercially interesting to opt for an extension of an existing agreement, that distributor can always negotiate a new agreement which it will be offered at FRAND terms.

<sup>1201</sup> The obligation for the merged entity to use its "best efforts" to acquire content/rights covered by the commitments on terms that allow for sub-licensing applies also in relation to the standalone OTT licensing commitment.

<sup>1202</sup> The FTA and basic pay TV channels covered by this commitment (as well as by the FRAND licensing commitment) include all different genres of FTA and basic pay TV channels supplied by Bonnier Broadcasting/the merged entity in the market. The FRAND licensing commitments and the standalone OTT licensing commitment therefore ensure that effective competition is preserved also as regards any segmentation of the wholesale market by genre.

<sup>1203</sup> As explained in Section 7.5.1.3, the market for the retail supply of AV services has not been segmented by distribution technology.

Commitments by adding the necessary clarity to what constitutes licensing on FRAND terms.

- (1481) The Final Commitments introduce an explicit obligation on the Notifying Party to ensure that the merged entity will offer no less favourable terms to TV distributors than those available to the merged entity, namely the terms should be non-discriminatory vis-à-vis the merged entity's own retail distribution business. This explicit non-discrimination clause addresses the criticism that the Initial Phase II Commitments did not ensure the “non-discriminatory” element in FRAND effectively and vis-a-vis the merged entity itself.
- (1482) The Final Commitments also adjust the benchmark to assess what constitutes FRAND terms. In relation to the first element in the benchmark, namely the “rights, prices and conditions” contained in Bonnier Broadcasting’s or the merged entity’s distribution agreements in place at the time of assessment of FRAND, the Final Commitments oblige the merged entity to show to the satisfaction of the monitoring trustee that any adjustments to the FRAND licensing terms are in line with market practice. Specifically for FTA and basic pay TV channels, it should be shown that such adjustments are necessary to adjust for inflation, take account of changes in the market practice for parameters determining prices, and take account of changes to the TV content costs and explicitly places the burden of proof to show conformity with such conditions on the merged entity. For premium pay TV channels and the *Liiga* channel package, it should be shown that adjustments are necessary to take account of changes in the market practice for parameters determining prices, and take account of changes to the sports content costs.
- (1483) The Final Commitments address one of the key criticisms from the market test, namely how content cost developments are taken into account in the adjustment of FRAND licensing terms, by providing a modified definition of “Basic Content Cost Index” and “Sports Content Cost Index” and leaving it to the monitoring trustee to propose for the Commission’s approval, and based on a reasoned suggestion from the merged entity, the starting point value for such content cost indexes. The monitoring trustee is entrusted with providing an annual assessment of which costs should be included or excluded from the content cost indexes according to market practice, and TV distributors are granted visibility into this process through the provision of a non-confidential version of the merged entity’s reasoned submission, as well as a say in the process, through the explicit possibility for such third parties to submit views to the monitoring trustee on the matter. The revised wording in the Final Commitments provides the necessary transparency into the process of determining which costs are taken into account for the assessment of FRAND and eliminates the possibility for the merged entity to include costs unrelated to the content costs and that would normally not be passed on to customers.
- (1484) The Final Commitments also include a clarification that not only should the “*rights, prices and conditions*” of distribution agreements in place be the benchmark for assessing FRAND, but also Bonnier Broadcasting’s FTA and basic pay TV channels, premium pay TV channels and the *Liiga* channel package, their content and technical quality, the programming schedule and programme metadata (i.e. all metadata for which it is market practice to include in distribution agreements) as provided in current agreements to TV distributors in Finland and Sweden and these should further be equal to what the merged entity offers through its own TV service.
- (1485) The new wording, as introduced in the Final Commitments, therefore contains an effective FRAND licensing commitment that also ensures that it can be properly

- assessed and effectively monitored whether licensing terms offered by the merged entity to rival TV distributors under the commitments are compliant with FRAND.
- (1486) Secondly, the Final Commitments have now sufficient scope and reflect not only what is actually market reality in Finland and Sweden today but is also future proof. The scope has been modified and extended as follows:
- (1487) With regard to the ancillary rights covered by the FRAND licensing commitments, the definitions have been adapted, following feedback from the market test, to ensure that the definitions reflect market practice today but remain valid also in the future, namely that the set of ancillary rights available for licensing should be adjusted based on the ancillary rights offered by the merged entity in its own TV service to end customers. Specifically, the definition of “Ancillary FTA/Basic Rights” has been modified to also include “STB AVOD”, which for Sweden means a service that allows an app provided by the merged entity to be placed as an independent application on the set top boxes, and for Finland, a service that creates a branded space within the user interface of a TV distributor’s TV service that allows for access to the merged entity’s AVOD service through the set top boxes. The definition of “Ancillary Premium Rights” has been modified to also include AirPlay and Chromecast. Both definitions have been modified to not only cover FRAND licensing to existing ancillary rights and to “any future service” included in the merged entity’s TV service, but also any future “functionality” or “feature” included in the merged entity’s TV service to end customers. In seeking to ensure that ancillary rights correspond to market practice, the Final Commitments also modify the definition of “Catch-up” so as to reflect the market practice in terms of time period for which the catch up service is made available as an ancillary right.
- (1488) With regard to NPVR rights to Bonnier Broadcasting’s FTA channels in Finland, the Final Commitments now explicitly also include such standalone NPVR rights within the scope of the FRAND licensing commitment for Bonnier Broadcasting’s FTA and basic pay TV channels in Finland. Such rights are contained in Bonnier Broadcasting’s distribution agreements with TV distributors in Finland today and will remain available to TV distributors in Finland also post-Transaction. This means that TV distributors can continue to offer end users in Finland the right to manually record TV programmes on the merged entity’s FTA and basic pay TV channels in order to watch the specific programme once the linear broadcast of the programme has ended.
- (1489) With regard to premium pay TV sports channels covered by the commitments, the Final Commitments significantly expand on the list of sports rights that are considered “significant” in order for premium pay TV sports channels containing such sports rights to be covered by the FRAND licensing commitment should the merged entity hold such sports rights post-Transaction. The Notifying Party explains that the list of significant sports rights consist of “*the most important sports leagues and tournaments*” in each of Sweden<sup>1204</sup> based on data from Mediavision in Sweden

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<sup>1204</sup> The list of significant sports rights for Sweden are: national team events in football, ice hockey, handball, alpine and cross country skiing, Olympic Games, Premier League, Serie A, La Liga, Bundesliga, NHL, PGA Tour, UEFA Champions League, Allsvenskan, Swedish Hockey League (SHL), HockeyAllsvenskan, FIA Formula One World Championships, and Superettan. For Finland, the significant sports rights are: national team events in football, ice hockey, handball, alpine and cross country skiing, Olympic Games, Premier League, La Liga, NHL, UEFA Champions League, FIA Formula One World Championship, Liiga, Kontinental Hockey League, IAAF World Championships, Diamond League, FIS Alpine world cup tour, World Rally Championships, and NBA.

and an internal survey of Bonnier Broadcasting in Finland.<sup>1205</sup> The expansion of the list of significant sports rights in the Final Commitments addresses the concerns raised by respondents to the market test that the list contained in the Initial Phase II Commitments was incomplete and undermined the effectiveness of the commitments.

- (1490) With regard to the FRAND licensing commitment for Bonnier Broadcasting's premium pay TV sports channels, the Final Commitments expand on its scope also in relation to certain OTT rights that are currently offered by Bonnier Broadcasting in each of Finland and Sweden. The added wording ensures that rights that are already market practice today are preserved and available also post-Transaction to TV distributors that benefit from such rights in their current agreements. The commitment to keep available such OTT rights is separate from the standalone OTT rights that the merged entity has committed to license to one other market participant in each of Finland and Sweden.
- (1491) Third, with regard to the commitment to license standalone OTT rights, the Final Commitments add clarity and specificity to the wording of the commitment, including to the terms and conditions of such licences, their duration, and to the criteria that market players must meet to be eligible for consideration as a standalone OTT licensee. Despite requests by respondents to the market test for the standalone OTT licensing commitment to be expanded to more than just one licensee in each of Finland and Sweden, the Commission considers that the commitment as contained in the Final Commitments reflects what Bonnier Broadcasting would have likely done absent the Transaction, and is therefore sufficient and proportionate with regard to that scenario as well as appropriate to ensure a market situation corresponding to that scenario, as described in Sections 8.5.1.1 and 8.5.2.1. The standalone OTT licensing commitment ensures that an additional distributor, namely one which offers a TV channel aggregation service over the open internet only, will enter the retail supply of AV services in each of Sweden and Finland in competition with TV distributors offering their services (and benefitting from the FRAND licensing commitments) using other distribution technologies, such as cable, DTH, IPTV, DTT, and SMATV.<sup>1206</sup>
- (1492) The commitment to license standalone OTT rights does not include a requirement for the merged entity to offer the OTT licence on FRAND terms or similar benchmark. The Commission considers that introducing such a requirement is not necessary for the following reasons. First, considering that the Final Commitments oblige the merged entity to enter into a binding agreement with an OTT licensee within [0-12] months of the date of the Commission Decision approving the Transaction, the merged entity is incentivised to offer the OTT licence on terms that are acceptable to an OTT licensee in each of Sweden and Finland [...]. Any final OTT licensing agreement is also subject to the Commission's approval, which provides further reassurances on the effectiveness of the standalone OTT commitment and its implementation.<sup>1207</sup> In particular, the Commission approval is conditional on the merged entity demonstrating that the purchaser criteria set out in the commitments are fulfilled and the standalone OTT rights have been licensed in a "*manner*

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<sup>1205</sup> Form RM, paragraph 52.

<sup>1206</sup> In this regard, the Commission notes that, as described in Section 7.5, the market for the retail supply of AV services, and any possible segmentation thereof, encompass all types of distribution technologies.

<sup>1207</sup> Paragraph 28 of the Final Commitments.

*consistent with the Commission’s Decision and the Commitments*”.<sup>1208</sup> The purchaser criteria foresee that the OTT licensee must be able to maintain and develop its OTT TV service as a viable and competitive force in competition with the merged entity<sup>1209</sup> and the licensing of the OTT rights to a specific licensee should not likely create *prima facie* competition concerns.<sup>1210</sup> Taken together, these in-built restrictions, conditions and incentives provide appropriate conditions for the licensing of the standalone OTT rights and ensure the effectiveness of the commitment without the need for a specific provision requiring the licensing to be on FRAND terms.

- (1493) Through the introduction of a specific minimum duration for the standalone OTT licences, namely an initial period of [1-5] years, renewable for further [1-5]-year periods, subject each time to the approval by the Commission, and up to the total duration of the commitments, the wording of the Final Commitments ensure that the standalone OTT licensees will be able to develop a business on the basis of the OTT rights, and that the merged entity cannot undermine such OTT players through a practice of granting licences for [...]. Ensuring the minimum duration of licences and their renewal at the option of the licensee gives the licensee sufficient time to plan and make long-term investments.
- (1494) Similarly, the purchaser criteria as revised in the Final Commitments also ensure the establishment of a credible competitor in the OTT space, and thus secure the effectiveness of the commitment in preserving the scenario that would have likely materialised absent the Transaction. In particular, the Final Commitments specify that to be eligible, a potential licensee for Sweden must [OTT purchaser criteria] with a share higher than [10-20]% among FTA and basic TV channels in Sweden or a share higher than [10-20]% among premium pay TV sports channels in Sweden. To be an eligible licensee for Finland, the potential licensee must [OTT purchaser criteria] with a share higher than [5-10]% among FTA and basic pay TV channels in Finland or a share higher than [10-20]% among premium pay TV sports channels in Finland. Such criteria ensure that the OTT licensee under the commitments can effectively offer to end customers an actual aggregated TV service over the internet, and can compete for retail customers against TV service providers offering their TV service via other distribution technologies such as cable, IPTV, DTT and DTH.
- (1495) Furthermore, by introducing a clear set of procedural steps, with specific deadlines for the identification of possible OTT licensees, the negotiation of the OTT licensing agreements, presentation of proposed agreements to the Commission for approval, and the final granting of the licences in each of Finland and Sweden, the Final Commitments ensure a smooth implementation and further strengthen the effectiveness of the commitments.
- (1496) Fourth, with regard to the shortcomings identified in the Initial Phase II Commitments in relation to the risk of circumvention and quality degradation of channels covered by the licensing commitments, the Final Commitments introduce further clarification to the relevant definitions to ensure that market practice is appropriately reflected, and introduce an explicit obligation for the merged entity to

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<sup>1208</sup> In particular, the Commission notes that some documents submitted by Bonnier Broadcasting provide an indication of the pricing of Bonnier Broadcasting’s channels for distribution via OTT; see Bonnier Broadcasting’s response to the Commission’s RFI 30 [Annex 1, document 18] (ID001334-000039-018), see also “Annex 1” and “Annex 2” to RFI 71 (ID03034 and ID03035).

<sup>1209</sup> Paragraph 27(b) of the Final Commitments.

<sup>1210</sup> Paragraph 27(d) of the Final Commitments.

use its “best efforts” to acquire content/rights covered by the commitments on terms that allow for sub-licensing, thus addressing concerns expressed in the market test that the merged entity could seek to circumvent its licensing commitments and undermine their effectiveness by not seeking to obtain such sub-licensing rights.

- (1497) The revised wording in the Final Commitments also specify that the merged entity should not “knowingly” (instead of “intentionally”) do anything that would have the effect of reducing (instead of “significantly reducing”) the quality of the channels offered under the FRAND licensing commitments to rival TV distributors. In addition, the Final Commitment also introduce a similar anti-quality degradation provision for the standalone OTT licensing commitment, thus removing the weakness and shortcoming identified by the Commission in the Initial Phase II Commitments. With regard to concerns expressed by market test respondents that the merged entity might gradually shift content away from TV4 and MTV3 to other channels and thus circumvent the commitments, the Commission notes that such practices would, firstly, be in contravention of the commitment to not remove significant content away from the channels and, secondly, such content would still be available for licensing as the commitments foresee that apart from TV4 and MTV3 the licensing commitments cover not only all existing but also all future FTA, basic pay and premium pay TV channels owned by the merged entity.
- (1498) Fifth, the Final Commitments also address adequately the shortcoming with regard to the commitment to maintain information barriers between the merged entity’s wholesale and retail businesses, by expanding the definition of what is meant by “confidential information” to also cover e.g. metadata and information on consumer behaviour, and strengthens the effectiveness of the commitment by providing for a standard form confidentiality agreement that the merged entity commits to have relevant personnel and managers sign.
- (1499) Taken together, these commitments eliminate the Commission’s competition concerns in relation to partial and total input foreclosure in Sweden and Finland.

#### 10.6.2.2. Adequacy of commitments addressing conglomerate concerns

- (1500) To address the Commission’s conglomerate competition concerns in Finland and Sweden, the Notifying Party has offered two commitments, namely the commitment to license standalone OTT rights to one other market player in each of Sweden and Finland and the commitment not to limit access to the merged entity’s standalone streaming services and applications over the internet for end users. Taken together, these commitments adequately address the conglomerate concerns identified by the Commission.
- (1501) First, as described in Section 10.6.2.1 above, the commitment to license standalone OTT rights to a market player in each of Sweden and Finland will ensure that the merged entity will face competition post-Transaction also in the OTT space. The standalone OTT licensees would be able to offer an aggregated OTT service, including Bonnier Broadcasting’s channels and ancillary services, in Sweden and Finland. The commitment thereby ensures that providers of retail mobile telecommunications services and retail fixed internet access services<sup>1211</sup> could partner with the standalone OTT licensee and offer bundled services in competition with the merged entity.

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<sup>1211</sup> The commitments therefore ensures retail mobile telecommunications services and retail fixed internet access services to provide retail multiple play services including retail AV OTT services.

- (1502) Second, the Final Commitments ensure that the merged entity's standalone AVOD and SVOD services will remain available to all end users, at the same quality conditions, and irrespective of the provider of the mobile or fixed broadband network of the end user.
- (1503) To address concerns expressed by respondents to the market test, the Notifying Party has specified the wording in the Final Commitment to explicitly commit not to prevent any end user of a third party TV distributor, provider of mobile telecommunication services or provider of fixed internet access services from accessing the merged entity's AVOD and SVOD services and applications on any third party platform (such as Apple TV, Android TV, Amazon Fire TV, including Android based set top boxes used by TV distributors for their TV service to end customers) for which those services and applications have been designed as well as facilitate interoperability among such services.
- (1504) The commitment thereby guarantees that current market practice can continue as regards end users' access to the merged entity's AVOD and SVOD services and applications. For example, third party platforms such as PlayPilot<sup>1212</sup>, would have access to the merged entity's AVOD and SVOD services and applications according to market practice.
- (1505) On the basis of the above commitments, the Commission considers that the Final Commitments address the Commission's conglomerate competition concerns in relation to Telia's activities as provider of telecommunications services and Bonnier Broadcasting's activities in the retail supply of AV services, in particular OTT services, due to the potential foreclosure of providers of retail mobile, fixed internet access and multiple play services through tying or mixed bundling practices.

#### 10.6.2.3. Adequacy of commitments addressing input foreclosure concerns in relation to the sale of advertising space

- (1506) To address the Commission's input foreclosure concerns in relation to the sale of TV advertising space in Finland and Sweden, the Notifying Party has offered two commitments, namely the commitment not to discriminate when offering TV advertising space and the commitment to maintain information barriers between the merged entity's wholesale and retail businesses in relation to third party confidential information. Taken together, these commitments adequately address the input foreclosure concerns identified by the Commission.
- (1507) In particular, the Commission considers that the Final Commitment on non-discrimination in advertising space is capable of eliminating entirely the competition concern it has in relation to the retail supply of AV services, mobile telecommunication services and fixed internet access services in Sweden and Finland as a result of the risk of total or partial input foreclosure of advertising space. In particular, the Commission considers that the final version of this commitment ensures that Telia's competitors will not be discriminated against in their access to advertising space on Bonnier Broadcasting FTA and basic pay TV channels and AVOD services, whether in terms of pricing, of the quality of the advertising space made available, and on the timing for making the ad inventory available.

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<sup>1212</sup> PlayPilot is an OTT aggregator service giving its users access to different OTT services, including but not limited to Netflix, C-More and TV4. See "About PlayPilot", available at: <https://www.playpilot.com/about/>

- (1508) To address certain concerns expressed by respondents to the market test, the merged entity has introduced new language to strengthen the anti-circumvention clause by explicitly stating that the allocated ad inventory made available to rival providers of mobile telecommunication services, fixed internet access services and TV distributors in Finland and Sweden, should have at least the same quality as that which the merged entity has booked for itself in terms of channels, type of advertising inventory, prime time share, first position share, programming context, and any other quality measures according to market practice.
- (1509) With regard to the request made by market test respondents that the advertising commitment should be extended to pure OTT players,<sup>1213</sup> the Commission notes that these OTT players have to date not had access to Bonnier Broadcasting's advertising space. As a result, the Commission considers that such extension is not required to address a merger specific concern.
- (1510) With regard to claims made by market test respondents that the proportion of the overall ad inventory that will be reserved for Telia's retail competitors is not sufficient,<sup>1214</sup> the Commission notes that the percentage included in the commitments is slightly higher than the proportion of the ad inventory that competitors currently consume.<sup>1215</sup> Moreover, a volume adjustment clause is included such that if the merged entity starts consuming more advertising space from Bonnier Broadcasting than today, the proportion of the ad inventory kept for Telia's competitors should also be increased in the same proportion. Therefore, the Commission considers that these claims are not justified.
- (1511) The Final Commitments also address adequately the shortcoming with regard to the commitment to maintain information barriers between the merged entity's wholesale and retail businesses, by modifying the definition of what is meant by "confidential information", and strengthening the effectiveness of the commitment by providing for a standard form confidentiality agreement that the merged entity commits to have relevant personnel and managers sign.

#### 10.6.2.4. Duration and implementation of the Final Commitments

- (1512) The Final Commitments extend the duration of the commitments from [...] (as included in the Initial Phase II Commitments) to 10 years to address the concerns expressed in response to the market test.
- (1513) The Commission considers that in view of the expected market developments with on-demand TV services and distribution over the internet gaining in importance, but considering the uncertainties as to the speed by which the market will evolve, a duration of ten years is appropriate and sufficient.
- (1514) The Commission considers that the commitments are capable of being implemented effectively within a short period of time as they will become effective either immediately or shortly after the adoption of the Commission Decision.
- (1515) The commitments include further safeguards to ensure effectiveness and viability. In particular, the commitments provide for an arbitration mechanism, including an option for a fast track dispute resolution procedure, as a means of resolving disputes relating to the merged entity's compliance with the Final Commitments, thus

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<sup>1213</sup> Phase II market test questionnaire, question G.1

<sup>1214</sup> Phase II market test questionnaire, question G.1

<sup>1215</sup> Bonnier Broadcasting's response to the Commission's RFI 10, questions 5 and 6 (ID000332).

rendering the commitments enforceable by market participants themselves. In response to the market test, the Notifying Party has specified in the Final Commitments that the fast track dispute resolution mechanism is an additional option, but not an obligation, for a third party seeking to enforce the commitments in the event of a dispute as to the compliance of the merged entity with the commitments.

- (1516) The commitments also provide for the appointment of a monitoring trustee to oversee the implementation of the commitments and to ensure the full compliance of the merged entity with the commitments. In particular, the monitoring trustee will have a role in the process of determining what constitutes FRAND terms, act as the contact point for any complaints on non-compliance with the commitments, and be involved in the fast track dispute resolution process.
- (1517) Finally, the commitments provide for specific and clearly defined steps for the merged entity to follow in negotiating and granting a licence for standalone OTT rights in each of Sweden and Finland. These steps are designed to ensure the effectiveness of the standalone OTT licence commitment.

#### 10.6.2.5. Conclusion

- (1518) The Commission therefore concludes that the Final Commitments are capable of eliminating the Commission's competition concerns and are capable of being implemented effectively within a short period of time. Moreover, they are proportionate to the competition concerns identified by the Commission.

### 11. CONCLUSION

- (1519) In the light of the above, the Commission considers the Final Commitments capable of rendering the Transaction compatible with the internal market and the EEA Agreement as it will not create a significant impediment to effective competition in all relevant markets in which competition concerns were identified.

### 12. CONDITIONS AND OBLIGATIONS

- (1520) Pursuant to the second subparagraph of Article 8(2) of the Merger Regulation, the Commission may attach to its decision conditions and obligations intended to ensure that the undertakings concerned comply with the commitments they have entered into vis-à-vis the Commission with a view to rendering the concentration compatible with the internal market.
- (1521) The fulfilment of the measure that gives rise to the structural change of the market is a condition, whereas the implementing steps which are necessary to achieve this result are generally obligations on the parties. Where a condition is not fulfilled, the Commission's decision declaring the concentration compatible with the internal market is no longer applicable. Where the undertakings concerned commit a breach of an obligation, the Commission may revoke the clearance decision in accordance with Article 8(6) of the Merger Regulation. The undertakings concerned may also be subject to fines and periodic penalty payments under Articles 14(2) and 15(1) of the Merger Regulation.
- (1522) In accordance with the basic distinction described in recital (1521) as regards conditions and obligations, this Decision should be made conditional on the full compliance by the Notifying Party with Section A, to the extent the definitions contain operative provisions (such as in the definitions on ancillary rights), and Section B (including Schedule [1]) of the Final Commitments and all other Sections

should be obligations within the meaning of Article 8(2) of the Merger Regulation. The full text of the Final Commitments is set out in Annex II to this Decision and forms an integral part thereof.

HAS ADOPTED THIS DECISION:

*Article 1*

The notified operation whereby Telia Company AB (“Telia”) acquires sole control of Bonnier Broadcasting Holding AB (“Bonnier Broadcasting”) within the meaning of Article 3(1)(b) of Regulation (EC) No 139/2004 is hereby declared compatible with the internal market and the EEA Agreement pursuant to Article 8(2) of Regulation (EC) No 139/2004 and Article 57 of the EEA Agreement.

*Article 2*

Article 1 is subject to compliance with the conditions set out in Section A, to the extent the definitions contain operative provisions such as in the definitions on ancillary rights, and Section B of Annex II.

*Article 3*

Telia shall comply with the obligations set out in Sections A, and C to G of Annex II not referred to in Article 2 of this Decision.

*Article 4*

This Decision is addressed to:

Telia Company AB  
Stjärntorget 1  
169 94 Solna  
Sweden

Done at Brussels, 12.11.2019

*For the Commission*

*(Signed)*  
*Margrethe VESTAGER*  
*Member of the Commission*

ANNEX: [...]

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## CASE M.9064

### **TELIA COMPANY AKTIEBOLAG (PUBL) / BONNIER BROADCASTING HOLDING AB**

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#### **COMMITMENTS TO THE EUROPEAN COMMISSION**

Pursuant to Article 8(2) and 10(2) of Council Regulation (EC) No 139/2004 (the "*Merger Regulation*"), Telia Company AB ("*Telia Company*") hereby enter into the following Commitments (the "*Commitments*") vis-a-vis the European Commission (the "*Commission*") with a view to rendering the acquisition of sole control by Telia Company of Bonner Broadcasting Holding AB and its subsidiaries ("*Bonnier Broadcasting*") (the "*Concentration*") compatible with the internal market and the functioning of the EEA Agreement.

This text shall be interpreted in light of the Commission's decision pursuant to Article 8(2) of the Merger Regulation to declare the Concentration compatible with the internal market and the functioning of the EEA Agreement (the "*Decision*"), in the general framework of European Union law, in particular in light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (the "*Remedies Notice*").

## Section A. Definitions

For the purpose of the Commitments, the following terms shall have the following meaning:

**4K resolution:** horizontal display resolution of approximately 4 000 pixels.

**Ad Inventory:** means the amount of advertising space that the Combined Group has available in the BB FTA/Basic Channels and its AVOD services.

**Affiliated Undertakings:** undertakings controlled by the Parties and/or by the ultimate parents of the Parties, whereby the notion of control shall be interpreted pursuant to Article 3 of the Merger Regulation and in light of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (the "*Consolidated Jurisdictional Notice*").

**AirPlay:** means the Apple airplay output function of iOS mobile devices (i.e. encrypted streaming transmission (with no download) of streaming content from an iOS mobile or tablet device to a playback device supporting airplay, for example the Apple TV).

**Allocated Ad Inventory:** At least 5% of the advertising inventory of the Swedish BB FTA/Basic Channels, measured in rating points, (including at least 5% of the advertising inventory specifically on TV4) and AVOD services, measured in impressions, and at least 3% of the advertising inventory of the Finnish BB FTA/Basic Channels, measured in rating points, (including at least 3% of the advertising inventory specifically on MTV3) and AVOD services, measured in impressions. The Allocated Ad Inventory shall be representative of the overall Ad Inventory available on BB FTA/Basic Channels and AVOD services in Sweden and in Finland in terms of channels, type of advertising inventory, timing (day-parts including prime time), position, programming context, and any other quality measures according to market practice. The Allocated Ad Inventory shall at least have the quality of the ad inventory booked by the Combined Group in terms of channels, type of advertising inventory, prime time share, first position share, programming context, and any other quality measures according to market practice. Should the Combined Group use more than 8% of the ad inventory for Sweden and Finland respectively, the percentages in the first sentence shall be adjusted in the same proportion (this should not be affected by the use of unallocated ad inventory following the yearly negotiations with buyers of advertising space).

**Ancillary FTA/Basic Rights:** means the right to obtain a license for (i) any ancillary service (STB AVOD, Catch-up, Start-over, Network Video Recorder ("NPVR"), Personal Video Recorder ("PVR"), 4K resolution, TV Everywhere ("TVE"), AirPlay, ChromeCast) offered by Bonnier Broadcasting to any TV Distributor at the Effective Date, in Sweden and Finland, respectively, and (ii) any future service, functionality or feature included in the Combined Group's TV Service, in Sweden and Finland, respectively, provided that such future service is based on content that is transmitted on a BB FTA/Basic Channel and is offered to end users in connection with the Linear transmission of the content on the BB FTA/Basic Channel.

For the avoidance of doubt, the Combined Group will not hinder the use of technology not covered by TV Service if it is required for the fulfilment of an Ancillary FTA/Basic Right.

For the avoidance of doubt, any feature that can be developed by a TV Distributor without rights from a broadcaster, is not considered an ancillary service.

For the avoidance of doubt, the Ancillary FTA/Basic Rights should not be restricted by the Combined Group to TV Distributors compared to the Combined Group's own distribution, in terms of number of devices, number of simultaneous streams, type of devices, out of home restrictions and security requirements.

**Ancillary OTT Rights:** means the right to obtain a license for (i) ancillary services relevant to OTT distribution (Catch-up, Start-over, 4K resolution, AirPlay, ChromeCast) provided that such a service is based on content that is transmitted on a BB FTA/Basic Channel, BB Premium Sports Channel or in the Liiga Channel Package, in Sweden and Finland, respectively, and (ii) any future service, functionality or feature included in the Combined Group's TV Service, in Sweden and Finland, respectively, provided that such future service is offered to end users in connection with the Linear transmission of the content on a BB FTA/Basic Channel, BB Premium Sports Channel or in the Liiga Channel Package.

For the avoidance of doubt, the Combined Group will not hinder the use of technology not covered by TV Service if it is required for the fulfilment of an Ancillary OTT Right.

**Ancillary Premium Rights:** means the right to obtain a license for (i) any ancillary service (Catch-up, Start-over, PVR, TVE, Dual Entry Premium Sports, 4K resolution, AirPlay, ChromeCast) offered by Bonnier Broadcasting to any TV Distributor at the Effective Date, in Sweden and Finland, respectively, and (ii) any future service, functionality or feature included in the Combined Group's TV Service, in Sweden and Finland, respectively, provided that such future service is based on content that is transmitted on a BB Premium Sports Channel or Liiga Channel Package and is offered to end users in connection with the Linear transmission of the content on the BB Premium Sports Channel or Liiga Channel Package.

For the avoidance of doubt, the Combined Group will not hinder the use of technology not covered by TV Service if it is required for the fulfilment of an Ancillary Premium Right.

For the avoidance of doubt, any feature that can be developed by a TV Distributor without rights from a broadcaster, is not considered an ancillary service.

For the avoidance of doubt, the Ancillary Premium Rights should not be restricted by the Combined Group to TV Distributors compared to the Combined Group's own distribution, in terms of number of devices, number of simultaneous streams, type of devices, out of home restrictions and security requirements.

**Basic Content Cost Index:** means costs relating to FTA/basic content, in Sweden or Finland as appropriate, and for which it is market practice to be passed on to distributors.

**BB FTA/Basic Channel:** means all current and future Linear free-to-air ("FTA") and

basic pay TV channels, in simulcast versions, owned by the Combined Group, in each of Sweden and Finland, respectively. For the avoidance of doubt, a FTA/basic pay channel where a Significant Sports Right is occasionally broadcast is not a BB Premium Sports Channel.

Currently, the BB FTA/Basic Channels are the following:

- Sportkanalen (formerly C More Live 5) (Sw)
- TV4 (Sw)
- TV4 Fakta (Sw)
- TV4 Film (Sw)
- TV4 Guld (Sw)
- Sjuan (Sw)
- TV12 (Sw)
- MTV3 (Fi)
- Sub (Fi)
- AVA (Fi)
- C More Juniori (Fi)

BB FTA/Basic Channels shall be delivered in SD, HD, 4K resolution or any other format available in the future, to the extent that the Combined Group provides such quality in the Combined Group's TV Service.

**BB Premium Sports Channel:** means all current and future Linear premium sports channels, in simulcast versions, (i) owned by the Combined Group (excluding the Liiga Channel Package), and (ii) carrying a Significant Sports Right, in each of Sweden and Finland, respectively.

Currently, the BB Premium Sports Channels are the following:

- C More Golf (Sw)
- C More Sport (Sw)
- C More Fotboll (Sw)
- C More Hockey (Sw)
- C More Live (Sw)
- C More Live 2 (Sw)
- C More Live 3 (Sw)
- C More Live 4 (Sw)
- C More Max (Fi)

- C More Sport 1 (Fi)
- C More Sport 2 (Fi)

BB Premium Sports Channels shall be delivered in SD, HD, 4K resolution or any other format available in the future, to the extent that the Combined Group provides such quality in the Combined Group's TV Service.

**BB Premium Non-Sports Channel:** means all current and future Linear premium non-sports channels, in simulcast versions, owned by the Combined Group in each of Sweden and Finland, respectively.

Currently, the BB Premium Non-Sports Channels are the following:

- C More First
- C More Hits
- C More Stars
- C More Series
- SF-Kanalen

**Bonnier Broadcasting:** Bonnier Broadcasting Holding AB, incorporated under the laws of Sweden with its registered office at Tegeluddsvägen 3-5, 115 41 Stockholm, Sweden, and registered with the Swedish organization number 556906-0824. Reference to Bonnier Broadcasting includes reference to Bonnier Broadcasting's Affiliated Undertakings.

**Cable:** means a TV broadcasting platform over coaxial fibre hybrid network.

**Catch-up:** means a service corresponding to and containing the same branding as the applicable Linear channel where a program transmitted on that Linear channel is made available on demand for a subscriber to view, stop, start, pause, fast-forward and rewind (or any of these functionalities) during the Linear transmission of such program and shortly after the Linear transmission of such program (e.g. 7-30 days) after the end of the Linear transmission of such program via STB and/or internet/applications.

**ChromeCast:** means a streaming media adapter from Google that allows users to play online content such as videos and music on a digital television. The adapter is a dongle that plugs into the TV's HDMI port; a cable connects to a USB port to power the device.

**Combined Group:** means, following completion of the Transaction, the group consisting of the Bonnier Broadcasting Group and the Telia Company Group. Reference to the Combined Group includes reference to the Combined Group's Affiliated Undertakings.

**Confidential Information:** any business secrets, know-how, commercial information, or any other information of a proprietary nature that is not in the public domain (for example, any information relating to or generated from providing or using a party's

services and content, such as metadata and information on consumer behavior relating to the service and content).

**Conflict of Interest:** any conflict of interest that impairs the Monitoring Trustee's objectivity and independence in discharging its duties under the Commitments.

**CPI Rate:** adjustment for inflation based on the consumer price index rate in each of Sweden and Finland.

**Decision:** means approval by the Commission of the Transaction under Council Regulation (EC) No 139/2004.

**DTH:** means a TV broadcasting platform over satellite network (Direct-To-Home).

**DTT:** means a TV broadcasting platform for the terrestrial network (Digital Terrestrial Television).

**Dual Entry Premium Sports:** means a service enabling end users to view concurrent sports content (in an application/site made available by the Combined Group or the TV Distributor to the end user) that, irrespective of whether the content are offered via Linear transmission, are offered to end users as part of the subscription of a BB Premium Sports Channel and the Liiga Channel Package, live or shortly after the match in question occurs.

**Effective Date:** means the date of adoption of the Decision.

**FTA/Basic TV Channels:** means all current and future Linear free-to-air (FTA) and basic channels.

**IPTV:** means a TV broadcast platform over any fixed or mobile broadband connection to end reception equipment (IPTV set top box) operated by a TV Distributor.

**Liiga:** means the top professional men's ice hockey league in Finland (*Jääkiekon SM-Liiga*).

**Liiga Channel Package:** means all current and future premium sports channels consisting of Liiga matches owned by the Combined Group. Currently, the Liiga Channel Package consists of the following studio and team sub-channels:

- Liiga TV
- HIFK
- HPK
- Ilves
- Jukurit
- JYP
- KalPa

- KooKoo
- Kärpät
- Lukko
- Pelicans
- SaiPa
- Sport
- Tappara
- TPS
- Ässät

Liiga Channel Package shall be delivered in SD, HD, 4K resolution or any other format available in the future, to the extent that the Combined Group provides such quality in the Combined Group's TV Service.

**Linear:** means simulcast access to TV content where viewers (absent ancillary rights) must watch TV content at the established time it is communicated to the public, and on the channel on which it is presented, according to the specific schedule defined by the party having communicated such TV content to the public, with no possibility to interact with it or change the time.

**Monitoring Trustee:** one or more natural or legal person(s) who is/are approved by the Commission and appointed by Telia Company, and who has/have the duty to monitor Telia Company's compliance with the conditions and obligations attached to the Decision.

**NPVR:** means the platform owned and/or operated by a TV Distributor that allows the capture and recording of a programme broadcast on a BB FTA/Basic Channel and to store it on the TV distributor platform for viewing after the Linear broadcast by a particular subscriber that has opted to record such programme before the end of its Linear broadcast, as is market practice from time to time.

**Parties:** Telia Company Group or the Combined Group.

**Providers of mobile telecommunication services:** means providers of voice, messaging and data connectivity services over a cellular mobile network.

**Providers of fixed internet access services:** means providers of internet access services at the retail level consist of the provision of a fixed telecommunications link enabling customers to access the internet.

**PVR:** means a service operated by a TV Distributor allowing a user to select the programs on a Linear TV channel they wish to record (and view at a later date), and once recording has commenced, such programs are made available to the user to view on an on-demand basis for so long as the user continues to subscribe to that TV channel (or as otherwise required due to restrictions from the relevant right holders and/or collective management

organisations administering any such rights (whichever is the prevailing market practice).

**Significant Sports Right:** means, in Sweden and Finland, respectively, (i) the list below, (ii) the Olympic Games and (iii) national team events in football, ice hockey, handball, alpine and cross country skiing.

Sweden:

- A.** Premier League
- B.** Serie A
- C.** La Liga
- D.** Bundesliga
- E.** NHL
- F.** PGA Tour
- G.** UEFA Champions League
- H.** Allsvenskan
- I.** Swedish Hockey League (SHL)
- J.** HockeyAllsvenskan
- K.** FIA Formula One World Championship
- L.** Superettan

Finland:

- M.** Premier League
- N.** La Liga
- O.** NHL
- P.** UEFA Champions League
- Q.** FIA Formula One World Championship
- R.** Liiga
- S.** Kontinental Hockey League
- T.** IAAF World Championships
- U.** Diamond League
- V.** FIS Alpine world cup tour
- W.** World Rally Championships
- X.** NBA
- Y.** European Athletics Championships

**Sports Content Cost Index:** means all costs related to the premium sports content, in Sweden and Finland as appropriate, and for which it is market practice to be passed on to TV Distributors.

**Standalone OTT Rights:** means rights to include the BB FTA/Basic Channels, the BB Premium Sports Channels, and the Liiga Channel Package (including Ancillary OTT Rights) in a TV distribution service over the open internet without requiring that the customer has a TV Service subscription.

**Start-over:** means the functionality whereby a subscriber may restart a programme that is in progress at any time during such programme's Linear broadcast exhibition.

**STB AVOD:** means a service that (i) in Sweden, allows an app provided by the Combined Group to be placed as an independent application on the set top box included in the TV Service of a TV Distributor, as is market practice from time to time, and (ii) in Finland, creates a branded space within the user interface of a TV Distributor's TV Service that allows for access to the Combined Group's AVOD service through the set top box included in the TV Service of a TV Distributor, as is market practice from time to time.

**Telia Company:** Telia Company AB (publ), incorporated under the laws of Sweden with its registered office at Stjärntorget 1, 169 94 Solna, Sweden, and registered with the Swedish organization number 556103-4249. Reference to Telia Company includes reference to Telia Company's Affiliated Undertakings.

**Transaction:** means the acquisition of sole control within the meaning of Article 3(l)(b) of the Merger Regulation over Bonnier Broadcasting Holding AB, reg. no. 556906-0824, and its direct and indirect subsidiaries by Telia Company AB (publ), reg. no. 556103-4249.

**Trustee:** the Monitoring Trustee

**TV Distributor:** means a provider of a TV Service.

**TVE:** TV Everywhere, ancillary TV services that enable customers of a TV Service to have access to TV content over the open internet (on any device, on live or an on-demand basis).

**TV Service:** means a service distributed through a proprietary TV platform, branded and operated by the licensee, via Cable, DTH, IPTV, DTT, SMATV or any other platform using TV broadcasting technology to end users, in each of Sweden and Finland, respectively.

## Section B. The Commitments

1. Telia Company offers the Commitments listed below, provided that the following conditions are fulfilled:
  - a) The Combined Group at each time holds the rights/content covered by the commitment;
  - b) The Combined Group is allowed to sublicense the rights/content covered by the commitment according to the underlying in-license held by the Combined Group;
  - c) The Combined Group has used the rights/content covered by the commitment in the Combined Group's TV Service; and
  - d) The Combined Group's ability to ensure security, protection against piracy as well as protection of copyright and trademark, through requirements that are in line with industry standards or that are imposed by third party agreements, is not limited.

For avoidance of doubt, the Combined Group shall use its best efforts to acquire content/rights covered by the Commitments on terms that allow for sub-licensing.

### *List of commitments*

- (a) *Commitment to license BB FTA/Basic Channels (including ancillary rights)*
2. Telia Company shall procure that the Combined Group will license, on fair, reasonable and non-discriminatory ("FRAND") terms, BB FTA/Basic Channels to TV Distributors in each of Sweden and Finland, respectively. For the avoidance of doubt, the commitment does not limit the possibility of TV Distributors to offer a variety of packages of BB FTA/Basic Channels, according to market practice.
3. Telia Company shall procure, in relation to BB FTA/Basic Channels, that the Combined Group will license, on FRAND terms, Ancillary FTA/Basic TV Rights in conjunction with the relevant channel that has been licensed, to TV Distributors in each of Sweden and Finland, respectively.
4. Telia Company shall procure to license NPVR on FRAND terms to TV Distributors in Finland.
5. When assessing what constitutes FRAND terms for each TV Distributor, the benchmark shall be the following:
  - a) the rights, prices and conditions in the distribution agreements of Bonnier Broadcasting and/or the Combined Group post-Transaction in place in each of Sweden and Finland respectively at the time of assessment of FRAND terms. These terms are only subject to adjustments for each of Sweden and Finland respectively, based on Telia

Company/the Combined Group showing to the satisfaction of the Monitoring Trustee that such changes are in line with market practice and are necessary (i) to adjust for inflation, which shall be measured using the consumer price index rate ("CPI Rate") (unless already included in changes to the Basic Content Cost Index, to avoid double counting), (ii) to take into account changes in the market practice for parameters determining prices (e.g. volume of subscribers and share of viewing), and (iii) to take into account changes to the Basic Content Cost Index, measured as a percentage change during the distribution agreement period. For the avoidance of doubt, the burden of proof rests upon the Combined Group to show that any proposed price increases are in conformity with this paragraph.

- b) the BB FTA/Basic Channels, the content and technical quality of the BB FTA/Basic Channels, the programming schedule and programme metadata as per current agreements from time to time provided by the Combined Group to any and all other TV Distributors in Sweden and Finland, respectively, including that provided by the Combined Group via the Combined Group's TV Service. For the avoidance of doubt, the BB FTA/Basic Channels, the content and technical quality of the BB FTA/Basic Channels, the programming schedule and provision of programme metadata as per current agreements from time to time shall be equal to that provided by the Combined Group via the Combined Group's TV Service.
6. Telia Company shall procure that the Combined Group will offer no less favourable terms to TV Distributors than the ones available to the Combined Group.
  7. Telia Company shall procure that the Combined Group will report to the Monitoring Trustee periodically, as required by the Monitoring Trustee, on developments in content acquisition costs and will provide the Monitoring Trustee with all documents required for verification purposes as provided for in Section III.
  8. For the avoidance of doubt, commitment (a) does not include a right for the licensee to (i) sublicense, (ii) create the perception of a new channel, (iii) undermine channel branding, or (iv) prevent advertising revenue monetization.
  9. At any time during the licensing negotiations, a TV Distributor may elect to, at multiple times, extend the operation of its current distribution agreement for BB FTA/Basic Channels (including ancillary FTA/basic rights part of the agreement) by 18 months at a minimum, by giving notice to the Combined Group no later than 15 days before the current distribution agreement expires. The terms in the current distribution agreement are subject to adjustment for inflation using the CPI Rate. For the avoidance of doubt, the extension of the distribution agreement does not prevent a TV Distributor from seeking to obtain additional rights not included in its distribution agreement at FRAND conditions as described in this section (a).
  10. Telia Company will procure that the Combined Group shall not knowingly do anything that has the effect of reducing the quality of the BB FTA/Basic Channels, for example, by knowingly removing significant content from the BB FTA/Basic Channels. The quality of the BB FTA/Basic Channels should be assessed in light of market developments in Sweden and Finland, as appropriate, and of the combination of the following metrics: audience share, reach, advertising income, and percentage of locally produced content. For the

avoidance of doubt, 100% of the content shown in the BB FTA/Basic Channels will be included in the Ancillary FTA/Basic TV Rights.

11. Telia Company shall procure that the Combined Group will not prevent TV Distributors from providing a TV Service in their own network that includes the BB FTA/Basic Channels to be bundled with other services, such as fixed broadband. Telia Company shall procure that the Combined Group facilitates interoperability among such services according to terms in current agreements and market practice.

*(b) Commitment to license BB Premium Sports Channels and the Liiga Channel Package (including ancillary rights)*

12. Telia Company shall procure that the Combined Group will license, on FRAND terms:
  - a) BB Premium Sports Channels;
  - b) the Liiga Channel Package;
  - c) BB Premium Sports Channels and the Liiga Channel Package as part of a package;

(according to the preference of the licensee) to TV Distributors in each of Sweden and Finland, respectively. For the avoidance of doubt, the commitment does not limit the possibility of TV Distributors to offer a variety of packages of a) and b) above, according to market practice.
13. For the avoidance of doubt, Telia Company shall procure that the Combined Group will not require TV Distributors to license BB Premium Non-Sports Channels in order to be able to license from a)-c) above.
14. Telia Company shall procure that the Combined Group will, in relation to BB Premium Sports Channels and the Liiga Channel Package, license, on FRAND terms, Ancillary Premium Rights in conjunction with the relevant channel that has been licensed), to TV Distributors, in Sweden and Finland, respectively.
15. When assessing what constitutes FRAND terms for each TV Distributor, the benchmark shall be the following:
  - a) the rights, prices and conditions in the distribution agreements of Bonnier Broadcasting and/or the Combined Group post-Transaction in place in each of Sweden and Finland respectively at the time of assessment of FRAND terms. These terms are only subject to adjustments for each of Sweden and Finland respectively, based on Telia Company/the Combined Group showing to the satisfaction of the Monitoring Trustee that such changes are in line with market practice and are necessary (i) to take into account changes in the market practice for parameters determining prices (e.g. volume of subscribers and share of viewing), and (ii) to take into account changes to the Sports Content Cost Index, measured as a percentage change during the distribution agreement period.
  - b) the BB Premium Sports Channels and the Liiga Channel Package, the content and technical quality of the BB Premium Sports Channels and the Liiga Channel Package, the programming schedule and programme

metadata as per current agreements from time to time provided by the Combined Group to any and all other distributors in Sweden and Finland, respectively, including that provided by the Combined Group via the Combined Group's TV Service. For the avoidance of doubt, the BB Premium Sports Channels and the Liiga Channel Package, the content and technical quality of the BB Premium Sports Channels and the Liiga Channel Package, the programming schedule and provision of programme metadata as per current agreements from time to time shall be equal to that provided by the Combined Group via the Combined Group's TV Service.

16. Telia Company shall procure that the Combined Group will offer no less favourable terms to TV Distributors than the ones available to the Combined Group.
17. Telia Company shall procure that the Combined Group will report to the Monitoring Trustee periodically, as required by the Monitoring Trustee, on developments in content acquisition costs and will provide the Monitoring Trustee with all documents required for verification purposes as provided for in Section III.
18. For the avoidance of doubt, commitment (b) does not include a right for the licensee to (i) sublicense, (ii) create the perception of a new channel, or (iii) undermine channel branding.
19. At any time during the licensing negotiations, a TV Distributor may elect to, at multiple times, extend the operation of its current distribution agreement for a), b), or c) (including ancillary premium rights part of the agreement) by 18 months at a minimum, by giving notice to the Combined Group no later than 15 days before the current distribution agreement expires. For the avoidance of doubt, the extension of the distribution agreement does not prevent a TV Distributor from seeking to obtain additional rights not included in its distribution agreement at FRAND conditions as described in this section (b).
20. Any OTT rights relating to BB Premium Sports Channels and the Combined Group's SVOD services that carry a Significant Sports Right which has been available in current distribution agreements before the Effective Date to any TV Distributor in Finland and Sweden may be prolonged according to paragraph 19 or licensed, under FRAND terms, according to paragraphs 12 to 18, to any TV Distributors, in each of Finland and Sweden, to whom these rights have been available in current distribution agreements before the Effective Date. For the avoidance of doubt, this paragraph 20 shall not entail an obligation on the Combined Group to grant any OTT rights for any of the channels and ancillary rights covered by paragraphs 12 to 18, additional to those that have been available in current distribution agreements before the Effective Date.
21. Telia Company will procure that the Combined Group shall not knowingly do anything that has the effect of reducing the quality of the BB Premium Sports Channels and the Liiga Channel Package, for example by knowingly removing significant content from the BB Premium Sports Channels and the Liiga Channel Package. The quality of the BB Premium Sports Channels and Liiga Channel Package should be assessed in light of market developments in Sweden and/or Finland and of the combination of the following metrics: audience share, reach, and range of Significant Sports Rights. For the avoidance of doubt, 100% of the

content shown in the BB Premium Sports Channels and the Liiga Channel Package will be included in the Ancillary Premium Rights.

22. Telia Company shall procure that the Combined Group will not prevent TV Distributors from providing a TV Service in their own network that includes the BB Premium Sports Channels and the Liiga Channel Package to be bundled with other services, such as fixed broadband. Telia Company shall procure that the Combined Group facilitates interoperability among such services according to terms in current agreements and market practice.

(c) *Commitment to license standalone OTT rights*

23. Telia Company commits to license Standalone OTT Rights to 1 other market player (the "OTT Purchasers"), in each of Sweden and Finland respectively for an initial period of [1-5] years. The OTT Purchasers will have the option to renew the term for a further period of [1-5] years, for a total up to the duration of the Commitments (see Section E), on each occasion subject to the Commission's approval following consultation with the Monitoring Trustee.
24. For the avoidance of doubt, commitment (c) does not include a right for the licensee to (i) sublicense, (ii) create the perception of a new channel, (iii) undermine channel branding, or (iv) prevent advertising revenue monetization.
25. Telia Company shall not knowingly do anything that has the effect of reducing the quality of the Standalone OTT Rights, for example by knowingly removing significant content from the Standalone OTT Rights. The quality of the Standalone OTT Rights should be assessed in light of market developments in Sweden and/or Finland and of the combination of the following metrics: audience share, reach, and range of Significant Sports Rights. For the avoidance of doubt, 100% of the content shown in the BB FTA/Basic Channels, BB Premium Sports Channels and the Liiga Channel Package will be included in the Ancillary OTT Rights.
26. Telia Company shall procure that the Combined Group will not prevent the OTT Purchaser from providing a standalone OTT service that includes the Combined Group's TV channels as per the Standalone OTT Rights to be bundled with other services, such as fixed broadband. Telia Company shall procure that the Combined Group facilitates interoperability among such services according to terms in current agreements and market practice.
27. In order to be approved by the Commission, the OTT Purchasers must fulfil the following criteria (the "Purchaser Criteria"):
- (a) The OTT Purchasers must be independent of and unconnected to the Combined Group and its Affiliated Undertakings;
  - (b) The OTT Purchasers must have the financial resources, proven expertise and incentive to maintain and develop their OTT TV Service as a viable and active competitive force in competition with the Parties and other competitors;
  - (c) The OTT Purchaser in Sweden must own or have OTT standalone rights [CONFIDENTIAL] with a share higher than [0-20%] in the most recent year

for which data is available based on the data published by MMS among FTA/Basic TV Channels in Sweden (see also Table 8.3.4.1.1, Annex 7, Form CO) or (ii) a share higher than [0-20%] in the most recent year for which data is available among premium pay sport TV channels in Sweden (see also Table 8.3.9.1.1, Annex 7, Form CO). The OTT Purchaser in Finland must own or have OTT standalone rights [CONFIDENTIAL] with (i) a share higher than [0-20%] in the most recent year for which data is available among FTA/Basic TV Channels in Finland (based on the data published by Finnpanel on

<https://www.finnpanel.fi/en/tulokset/tv/vuosi/sharev/viimeisin/> or (ii) a share higher than [0-20%] in the most recent year for which data is available among premium pay sport TV channels in Finland (see also Table 8.3.9.2.1, Annex 7, Form CO).

- (d) The acquisition of the Standalone OTT Rights by an OTT Purchaser must neither be likely to create, in light of the information available to the Commission, *prima facie* competition concerns, nor give rise to a risk that the implementation of the Commitments will be delayed.
28. All final binding licensing agreements with OTT Purchasers (as well as ancillary agreements) relating to the commitment to license Standalone OTT Rights shall be conditional on the Commission's approval. When Telia Company has reached an agreement with a purchaser, Telia Company must submit a fully documented and reasoned proposal, including a copy of the final agreement(s), within one week to the Commission and the Monitoring Trustee. Telia Company must be able to demonstrate to the Commission that the purchaser fulfils the Purchaser Criteria and that the Standalone OTT Rights have been licensed in a manner consistent with the Commission's Decision and the Commitments. For the approval, the Commission will verify that the purchaser fulfils the Purchaser Criteria and that the Standalone OTT Rights have been licensed in a manner consistent with the Commitments.
29. Telia Company commits to enter into a binding licensing agreement with an OTT Purchaser in Sweden and Finland within [0-12 months] from the Effective Date.
30. In order to ensure the effectiveness of this commitment:
- (a) Telia Company will present a list of potential OTT Purchasers to the Commission on the [Date] at the latest.
  - (b) The Commission will then allow Telia Company to invite [CONFIDENTIAL] potential OTT Purchasers that the Commission considers acceptable to negotiate an offer.
  - (c) Telia Company will thereafter proceed to negotiate with at least [CONFIDENTIAL] of these potential OTT Purchasers and send the Monitoring Trustee a progress report once a month, or as requested by the Monitoring Trustee.
  - (d) Lastly, Telia Company will present a proposed agreement to the Commission for a final confirmation within [0-12 months] from the Effective Date. If this agreement does not meet the OTT Purchaser criteria, Telia Company will within [0-6 months] thereafter present an alternative OTT Purchaser,

including a proposed agreement, to the Commission for confirmation giving the Commission sufficient time to review and assess the potential OTT Purchaser and the agreement.

- (e) The duties and obligations contained in the Monitoring Trustee Mandate shall apply mutatis mutandis to Telia Company and the Monitoring Trustee.
- 31. Should the license agreement with one of the OTT Purchasers terminate due to circumstances foreseen in the licensing agreements, Telia Company commits to find another OTT Purchaser, before termination of the agreement.
- 32. Should the license agreement with one of the OTT Purchasers terminate due to, for Telia Company, unforeseen circumstances, Telia Company shall have a maximum of [0-6 months] to find a new remedy taker as of the moment in which the Combined Group would know that the agreement would terminate.
  - (d) *Not limit access to the Combined Group's standalone streaming services and applications over the internet (AVOD/SVOD) for end users*
- 33. Telia Company commits to make all of the Combined Group's own content available on its standalone streaming services and applications over the internet (AVOD/SVOD) to all end users (for the avoidance of doubt, including users of fixed internet access services through single or collective agreements) at the same quality conditions through all mobile and fixed broadband networks. For the avoidance of doubt, no extra cost will be charged to end users of competing retail TV Services, mobile telecommunications services and fixed internet access services. For the avoidance of doubt, Telia Company shall not prevent any end user of third party TV Distributors, Providers of mobile telecommunication services or Providers of fixed internet access services from accessing such services and applications on any third party platform for which those services and applications have been designed. Telia Company shall procure that the Combined Group facilitates interoperability among such services according to terms in current agreements and market practice.
  - (e) *Commitment on non-discrimination in advertising space*
- 34. Telia Company undertakes not to discriminate when the Combined Group offers advertisement opportunities through its TV offer, including BB FTA/Basic Channels and AVOD services.
- 35. Telia Company commits to sell advertising space, on FRAND terms, to Providers of mobile telecommunication services, Providers of fixed internet access services and TV Distributors in Sweden and Finland, respectively. In addition, Telia Company specifically commits to ensure that up until 30 days before the end of each calendar year, the Allocated Ad Inventory for the following calendar year is available for Providers of mobile telecommunication services, Providers of fixed internet access services and TV Distributors to acquire, excluding the Combined Group. Furthermore, in line with current market practice in terms of timing for the actual ongoing placement/booking of the advertising space acquired by advertisers at the end of the previous year, Telia Company commits to treat Providers of mobile telecommunication services, Providers of fixed internet access services and TV Distributors the same way as other advertising customers with annual contracts, in order to deliver the advertising space acquired by Providers of mobile telecommunication services, Providers of fixed

internet access services and TV Distributors in Sweden and Finland, according to the quality conditions set out for Allocated Ad Inventory.

36. The overall composition, quality and net pricing of the Allocated Ad Inventory shall be comparable to the overall composition, quality and net pricing of advertising agreements concerning comparable volumes of advertising entered into between the Combined Group and companies from comparable industries. The Allocated Ad Inventory shall also at least have the quality of the ad inventory booked by the Combined Group in terms of channels, type of advertising inventory, prime time share, first position share, programming context, and any other quality measures according to market practice. Providers of mobile telecommunication services, Providers of fixed internet access services and TV Distributors that have entered into agreements to acquire Allocated Ad Inventory may after 6 months into each calendar year request that the Monitoring Trustee reviews the agreements concerning the Allocated Ad Inventory for that year to compare these agreements with advertising agreements concerning comparable volumes of advertising that the Combined Group has entered into with companies from comparable industries for the same year, in order to ensure compliance with this paragraph, request an adjustment of the net pricing of the Allocated Ad Inventory.

*(f) Commitment to maintain information barriers*

37. Telia Company commits to maintain an information barrier between on the one hand its TV wholesale and advertising business (“Wholesale Business”) and on the other hand its TV retail distribution and telecoms businesses (“Retail Business”), when it comes to Confidential Information concerning competing third party TV Distributors, Providers of mobile telecommunication services, Providers of fixed internet access services or broadcasters.
38. Specifically, Telia Company commits to (i) have its personnel and managers with access to Confidential Information concerning competing third party TV Distributors, Providers of mobile telecommunication services, Providers of fixed internet access services or broadcasters, receive relevant information and training as well as sign confidentiality agreements in the form set out in Schedule 1, subject to applicable labour law and Monitoring Trustee’s approval and (ii) ensure that Confidential Information from the Retail Business and Wholesale Business is kept separate within Telia Company’s IT systems.

## Section C. Monitoring Trustee

### I. Appointment procedure

39. Telia Company shall appoint a Monitoring Trustee to carry out the functions specified in the Commitments for a Monitoring Trustee. Telia Company commits not to close the Concentration before the appointment of a Monitoring Trustee.
40. The Monitoring Trustee shall:
- (i) at the time of appointment, be independent of Telia Company and its Affiliated Undertakings;

- (ii) possess the necessary qualifications to carry out its mandate, for example have sufficient relevant experience as an investment banker or consultant or auditor; and
  - (iii) neither have nor become exposed to a Conflict of Interest.
41. The Monitoring Trustee shall be remunerated by Telia Company in a way that does not impede the independent and effective fulfilment of its mandate.

*Proposal by Telia Company*

42. No later than two (2) weeks after the Effective Date, Telia Company shall submit the name or names of one or more natural or legal persons whom Telia Company proposes to appoint as the Monitoring Trustee to the Commission for approval.
43. The proposal shall contain sufficient information for the Commission to verify that the person or persons proposed as the Monitoring Trustee fulfil its requirements set out in paragraph 40 and shall include:
- (a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Monitoring Trustee to fulfil its duties under these Commitments;
  - (b) the outline of a work plan which describes how the Monitoring Trustee intends to carry out its assigned tasks.

*Approval or rejection by the Commission*

44. The Commission shall have the discretion to approve or reject the proposed Monitoring Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Monitoring Trustee to fulfil its obligations. If only one name is approved, Telia Company shall appoint or cause to be appointed the person or persons concerned as Monitoring Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, Telia Company shall be free to choose the Monitoring Trustee to be appointed from among the names approved. The Monitoring Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

*New proposal by Telia Company*

45. If all the proposed Monitoring Trustees are rejected, Telia Company shall submit the names of at least two more natural or legal persons within one week of being informed of the rejection, in accordance with paragraphs 39 and 44 of these Commitments.

*Monitoring Trustee nominated by the Commission*

46. If all further proposed Monitoring Trustees are rejected by the Commission, the Commission shall nominate a Monitoring Trustee, whom Telia Company shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

**II. Functions of the Monitoring Trustee**

47. The Monitoring Trustee shall assume its specified duties and obligations in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Monitoring Trustee or Telia Company, give any orders or instructions to the Monitoring Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.
48. The Monitoring Trustee shall:
- (a) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the Commitments;
  - (b) monitor the implementation of and compliance with the Commitments, by the Combined Group, as set out in Section B above;
  - (c) act as a contact point for any requests by third parties in relation to the Commitments;
  - (d) propose to Telia Company such measures as the Monitoring Trustee considers necessary to ensure Telia Company's compliance with the conditions and obligations attached to the Decision;
  - (e) propose, based on a reasoned suggestion from Telia Company, a starting point value for the Basic Content Cost Index and Sports Content Cost Index to be approved by the Commission.
  - (f) provide to the Commission, sending Telia Company a non-confidential copy at the same time, a written report within fifteen (15) days after the end of every quarter, regarding the compliance by Telia Company with the Commitments;
  - (g) promptly report in writing to the Commission, sending Telia Company a non-confidential copy at the same time, if it concludes on reasonable grounds that Telia Company is failing to comply with the Commitments.
  - (h) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision.

### III. Duties and obligations of Telia Company

49. Telia Company shall provide and shall cause its advisors to provide the Monitoring Trustee with all such co-operation, assistance and information as the Monitoring Trustee may reasonably require to perform its tasks.
50. The Monitoring Trustee shall have full and complete access to any of Telia Company's and Affiliated Undertakings' books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments and Telia Company shall provide the Monitoring Trustee upon request with copies of any document. Telia Company shall make available to the Monitoring Trustee one or more offices on their premises and shall be available for meetings in order to provide the Monitoring Trustee with all information necessary for the performance of its tasks.
51. For the purpose of deciding the starting point value of the Basic Content Cost Index and the Sports Content Cost Index, Telia Company shall procure that the Combined Group will provide a reasoned submission, including a description of the types of costs taken into account and calculation of such value, to the Monitoring Trustee. For the purpose of deciding the changes to the Basic Content Cost Index and the Sports Content Cost Index, the Monitoring Trustee will provide a yearly assessment of which costs should be included or excluded from the two indexes according to market practice. TV Distributors shall be given a non-confidential copy of the Combined Group's submission to enable them, if they so wish, to prepare their own submission to the Monitoring Trustee and which shall be taken into account when the Monitoring Trustee is making its decision.
52. In addition, the Monitoring Trustee shall be granted access to all necessary information, including but not limited to the contracts, invoices, balance sheets, income statements of Bonnier Broadcasting and the Combined Group, in order to determine which are costs related to the TV content considered for the purposes of determining the Basic Content Cost Index and the Sports Content Cost Index, according to market practice.
53. Telia Company shall indemnify the Monitoring Trustee and its employees and agents (each an "Indemnified Party") and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to Telia Company for, any liabilities arising out of the performance of the Monitoring Trustee's duties under the Commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Monitoring Trustee, its employees, agents or advisors.
54. At the expense of Telia Company, the Monitoring Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to Telia Company's approval (this approval not to be unreasonably withheld or delayed) if the Monitoring Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Monitoring Trustee are reasonable. Should Telia Company refuse to approve the advisors proposed by the Monitoring Trustee the Commission may approve the appointment of such advisors instead, after having heard Telia Company. Only the Monitoring Trustee shall be entitled to issue instructions to the advisors. Paragraph 53 of these Commitments shall apply *mutatis mutandis*.

- 55. Telia Company agrees that the Commission may share Confidential Information proprietary to Telia Company with the Monitoring Trustee. The Monitoring Trustee shall not disclose such information and the principles contained in Article 17 (1) and (2) of the Merger Regulation apply mutatis mutandis.
- 56. Telia Company agrees that the contact details of the Monitoring Trustee are published on the website of the Commission's Directorate-General for Competition and they shall inform interested third parties, in particular any potential purchasers, of the identity and the tasks of the Monitoring Trustee.
- 57. For a period of ten years (10) from the Effective Date the Commission may request all information from Telia Company that is reasonably necessary to monitor the effective implementation of these Commitments.

#### **IV. Replacement, discharge and reappointment of the Monitoring Trustee**

- 58. If the Monitoring Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Monitoring Trustee to a Conflict of Interest:
  - (a) the Commission may, after hearing the Monitoring Trustee and Telia Company, require Telia Company to replace the Monitoring Trustee; or
  - (b) Telia Company may, with the prior approval of the Commission, replace the Monitoring Trustee.
- 59. If the Monitoring Trustee is removed according to paragraph 58 of these Commitments, the Monitoring Trustee may be required to continue in its function until a new Monitoring Trustee is in place to whom the Monitoring Trustee has effected a full hand over of all relevant information. The new Monitoring Trustee shall be appointed in accordance with the procedure referred to in paragraphs 39-46 of these Commitments.
- 60. Unless removed according to paragraph 58 of these Commitments, the Monitoring Trustee shall cease to act as Monitoring Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Monitoring Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

#### **Section D. Arbitration**

- 61. Telia Company shall abide by the terms of the fast track dispute resolution procedure as described herein, and consents to submit any dispute with any third party relating to compliance by Telia Company with the requirements of the Commitments above vis-a-vis such third party to the dispute resolution procedure set out herein, subject to the terms set out below.
- 62. Such fast track dispute resolution system will be an additional option to the benefit of third parties, and not an obligation for them. Indeed, Telia commits that for any dispute in relation to the compliance with the commitments described above vis-à-vis a third party, such third party will have a discretionary

right, but no obligation to solve it through the dispute resolution procedure set out herein.

*Fast Track Dispute Resolution*

63. In the event that a third party claims that Telia Company or any Affiliated Undertaking is failing to comply with the requirements of the commitment described above vis-a- vis that third party, the third party may choose to utilise the fast track dispute resolution procedure as described herein.
64. Any third party who wishes to avail itself of the fast track dispute resolution procedure (a "Requesting Party") shall send a written request to Telia Company (with a copy to the Monitoring Trustee) setting out in detail the reasons leading that party to believe that Telia Company is failing to comply with the requirements of these Commitments. The Requesting Party and Telia Company will use their best efforts to resolve all differences of opinion and to settle all disputes that may arise through cooperation and consultation within a reasonable period of time not exceeding ten (10) working days after receipt of the request.
65. The Monitoring Trustee shall present its own proposal (the "Trustee Proposal") for resolving the dispute within five (5) working days from the day that the Requesting Party sent the written request to Telia Company, specifying in writing the action, if any, to be taken by Telia Company in order to ensure compliance with the Commitments vis-a-vis the Requesting Party, and be prepared, if requested, to facilitate the settlement of the dispute.
66. Should the Requesting Party and Telia Company (together "Parties to the Arbitration") fail to resolve their differences of opinion within the ten (10) days from the day that the Requesting Party sent the written request to Telia Company, the Requesting Party may serve a Request for Arbitration, to the Arbitration Institute of the Stockholm Chamber of Commerce or to the Arbitration Institute of the Finland Chamber of Commerce, with a copy of such Request for Arbitration to Telia Company. The Request for Arbitration shall, in addition to what is set out in the Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce if the Request for Arbitration is served to the Arbitration Institute of the Stockholm Chamber of Commerce, or in addition to what is set out in the FAI Arbitration Rules if the Request for Arbitration is served to the Arbitration Institute of the Finland Chamber of Commerce (the "Rules") also contain a detailed description of the action to be undertaken by Telia Company (including, if appropriate, a draft contract comprising all relevant terms and conditions) and the Trustee Proposal, including a comment as to its appropriateness.
67. Telia Company shall, when submitting its answer to the Request for Arbitration (the "Answer"), in addition to what is set out in the Rules, if appropriate, also submit a detailed description of the action which Telia Company proposes to undertake vis-a- vis the Requesting Party (including, if appropriate, a draft contract comprising all relevant terms and conditions) and the Trustee Proposal (if not already submitted), including a comment as to its appropriateness.
68. Upon receiving a Request for Arbitration, Telia Company commits to honour any existing agreement with the Requesting Party (even after the expiry of such existing agreement on the current terms) until the arbitration is completed.

*Arbitration Procedure*

69. Any dispute, controversy or claim related to the subject matter of the Request for Arbitration shall be finally settled by arbitration in accordance with the Rules. The seat of arbitration shall be Stockholm if the Request for Arbitration was served to the Arbitration Institute of the Stockholm Chamber of Commerce or Helsinki if the Request for Arbitration was served to the Arbitration Institute of the Finland Chamber of Commerce and the arbitration shall be conducted in the English language. The Parties to the Arbitration shall each appoint one arbitrator and the chairman shall be appointed by the Board of the Arbitration Institute of the Stockholm Chamber of Commerce or by the Board of the Finland Arbitration Institute of the Finland Chamber of Commerce, as the case may be.
70. For the avoidance of doubt, the rules relating to emergency arbitration under Appendix II to the Swedish Rules if the Request for Arbitration was served to the Arbitration Institute of the Stockholm Chamber of Commerce, or Appendix III to the Finnish Rules if the Request for Arbitration was served to the Arbitration Institute of the Finland Chamber of Commerce, shall form part of the Rules. The Emergency Arbitrator may, where no agreement exists between the Requesting Party and Telia Company, decide on appropriate terms to be observed between the Parties to the Arbitration, terms which shall be binding as set out in Article 9 of Appendix II to the Swedish Rules or Article 8 of Appendix III to the Finnish Rules, as the case may be.
71. The Arbitral Tribunal, and an Emergency Arbitrator appointed under Appendix II to the Swedish Rules or Appendix III to the Finnish Rules, as the case may be, is entitled to ask for assistance by the Monitoring Trustee in all stages of the procedure.
72. The burden of proof in any dispute under these Rules shall be borne as follows: (i) the Requesting Party must produce evidence of a *prima facie* case and (ii) if the Requesting Party produces evidence of a *prima facie* case, the Arbitrator must find in favour of the Requesting Party unless Telia Company can produce evidence to the contrary. If Telia Company produces such evidence and the arbitration is not decided in favour of the Requesting Party on the basis of *prima facie* evidence, then the issues in dispute in the arbitration will be decided on the basis of the evidence presented by the parties on the balance of probabilities.
73. For the avoidance of any doubt, the arbitration procedure will be conducted in accordance with the Rules, i.e. it will include the presentation of briefs by both parties, a disclosure phase (including the right to request disclosure from opposing parties), the right to present witness and expert evidence and a merits hearing.

*Involvement of the Commission and the Swedish and Finnish Competition Authorities*

74. The Commission and the Swedish and Finnish Competition Authorities shall be allowed and enabled to participate in all stages of the procedure by:
  - (a) Receiving all written submissions (including documents and reports, etc.) made by the Parties to the Arbitration;
  - (b) Receiving all orders, interim and final awards and other documents exchanged by the Arbitrator with the Parties to

- the Arbitration (including Terms of reference and procedural timetable);
- (c) Having the opportunity to file amicus curiae briefs; and
  - (d) Being present at any potential hearing(s) if considered necessary according to the Rules and being allowed to ask questions to the Parties to the Arbitration, witnesses and experts.
75. The Arbitral Tribunal shall forward, or shall order the Parties to the Arbitration to forward, the documents mentioned to the Commission and the Swedish and Finnish Competition Authorities without delay.
76. In the event of disagreement between the Parties to the Arbitration regarding the interpretation of the Commitments, the Arbitral Tribunal may seek the Commission's interpretation of the Commitments before finding in favour of any Party to the Arbitration and shall be bound by the interpretation.

*Decisions of the Arbitral Tribunal*

77. The Arbitral Tribunal shall decide the dispute on the basis of the Commitments and the Decision. Issues not covered by these Commitments and the Decision shall be decided (in the order as stated) by reference to the Merger Regulation, EU law and the general principles of law common to the legal orders of the Member States without a requirement to apply a particular national system.
78. The Arbitral Tribunal, and an Emergency Arbitrator, shall specify the action, if any, to be taken by Telia Company or any Affiliated Undertaking in order to comply with these Commitments vis-a-vis the Requesting Party (e.g. specify a contract including all relevant terms and conditions). The final award shall be final and binding on the Parties to the Arbitration and shall resolve the Dispute and determine any and all claims, motions or requests submitted in relation to the Dispute. The arbitral award shall also determine the reimbursement of the costs of the successful Party to the Arbitration and the allocation of the arbitration costs. Where a decision by an Emergency Arbitrator is made, it shall specify that terms and conditions determined in the final award apply retroactively.
79. The Arbitral Tribunal shall request an extension of time under the Rules if needed for the Commission to submit an interpretation of these Commitments if asked by the Arbitrator. The Parties to the Arbitration shall prepare a non-confidential version of the final award, which the Commission may publish. Nothing in the arbitration procedure shall affect the power of the Commission to take decisions in relation to the Commitments in accordance with its powers under the Merger Regulation.

**Section E. Duration**

80. The Commitments shall remain in effect for a period of ten (10) years as of the date of the Decision. For the avoidance of doubt, this means, by way of example, that if a license is given after nine years as of the date of the Decision it must not last for more than a year.

81. The Commission may at any time, in accordance with the Review Clause, upon the application of Telia Company, decide that the Commitments (or any of them) shall terminate earlier than the date determined under the preceding sentence on the grounds that the conditions of competition in the relevant market(s) no longer justify the continuation of such Commitments. Where Telia Company requests a termination of the Commitments, it shall submit a reasoned request to the Commission showing good cause. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to Telia Company.

## **Section F. The review clause**

82. The Commission may extend the time periods foreseen in the Commitments in response to a request from Telia Company or, in appropriate cases, on its own initiative. Where Telia Company requests an extension of a time period, it shall submit a reasoned request to the Commission no later than one month before the expiry of that period, showing good cause. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to Telia Company. Only in exceptional circumstances shall Telia Company be entitled to request an extension within the last month of any period.
83. The Commission may further, in response to a reasoned request from Telia Company showing good cause waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non- confidential copy of the report to Telia Company. The request shall not have the effect of suspending the application of the undertaking and, in particular, of suspending the expiry of any time period in which the undertaking has to be complied with.

## **Section G. Entry into force**

84. The Commitments shall take effect upon the date of adoption of the Decision (the Effective Date).

*(Signed)*

**SCHEDULE 1 – CONFIDENTIAL**

**Personal and confidential**

**Individual Confidentiality Agreement**

I, the undersigned,

[NAME], [FUNCTION]

Hereby acknowledge that I am aware of the information barriers implemented in the context of the decision of the European Commission in case COMP/M.9064 – TELIA COMPANY/BONNIER BROADCASTING HOLDING, and have become familiar with their contents.

I agree to comply with the obligations, policies and procedures described therein, for so long as I remain employed by [COMPANY] or any affiliates or remain in possession of material, non-public information gathered while at [COMPANY].

I acknowledge that any breach of the obligations, policies and procedures described therein will constitute a serious and wilful misconduct within the meaning of the law governing my employment contract as an employee of [COMPANY] and can therefore result in a disciplinary dismissal, subject to applicable laws.

[LOCATION, DATE]

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[NAME AND SIGNATURE]