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***Case No COMP/M.7282 - LIBERTY GLOBAL /
DISCOVERY / ALL3MEDIA***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION

Date: 16/09/2014

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EUROPEAN COMMISSION

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Brussels, 16.09.2014
C(2014) 6574 final

PUBLIC VERSION

MERGER PROCEDURE

To the notifying parties

Dear Sir/Madam,

**Subject: Case M.7282 - LIBERTY GLOBAL / DISCOVERY / ALL3MEDIA
Commission decision pursuant to Article 6(1)(b) of Council Regulation
No 139/2004¹**

- (1) On 11 August 2014, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertakings Liberty Global plc ("Liberty", United Kingdom) and Discovery Communications, Inc. ("Discovery", United States) acquire within the meaning of Article 3(1)(b) of the Merger Regulation joint control of the whole of the undertaking All3Media Holdings Limited ("All3Media", United Kingdom) by way of purchase of shares.
- (2) Liberty and Discovery are collectively referred to as the "Notifying Parties" and, together with All3Media, as the "Parties".

1. THE PARTIES

- (3) Liberty is a UK based company which owns and operates cable networks in several EU Member States as well as in certain countries outside of Europe.² In the TV related

¹ OJ L 24, 29.1.2004, p. 1 ('the Merger Regulation'). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ('TFEU') has 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.

² On 14 March 2014, Liberty notified to the Commission its proposed acquisition of Dutch cable operator Ziggo (Case M.7000 – *Liberty Global / Ziggo*). On 8 May 2014, the Commission opened an in-depth investigation into the proposed transaction. The current deadline for the phase II investigation is 3 November 2014.

markets, Liberty is active primarily in the supply of retail TV services through its cable networks,³ although it also has limited TV channel activities in the Netherlands and Belgium.⁴ Liberty is not currently active in the production of TV content or licensing of TV content rights.⁵

- (4) Liberty is a public limited company listed on NASDAQ. According to the Notifying Parties, a significant minority shareholder of Liberty, John Malone (a US citizen who also holds certain minority shareholdings in other companies active in the media, communication and entertainment industry),⁶ would not be capable of exercising decisive influence over Liberty. The issue of whether John Malone controls Liberty can however be left open for the purposes of this investigation, because the proposed transaction will not give rise to serious doubts as to its compatibility with the internal market even under the assumption that Mr Malone were to control Liberty.
- (5) Discovery is a US media company that is primarily active in the production of TV channels. Within the EEA, across the Nordic region, Discovery owns and operates SBS Discovery Media AS ("SBS Nordic"), a portfolio of television channels that feature non-fiction content, as well as locally produced entertainment programmes, sports, series and movies. Since 30 May 2014, Discovery also owns a controlling interest in Eurosport International ("Eurosport") which operates the Eurosport channels. Discovery also has more limited activities in the production of TV content through its two independent TV production companies in the UK, Raw and Betty, and in the licensing of TV content rights. Based on information available to the Commission, it appears that no single shareholder (including Mr. John Malone, who is a significant shareholder of Discovery) has the ability to exercise sole or joint control over Discovery.⁷

³ Liberty also supplies voice telephony and broadband internet services, primarily over its cable networks.

⁴ In the Netherlands, Liberty operates the Film 1 and Sport 1 channels. In Belgium, Liberty produces TV channels, the majority of which are distributed only over Liberty's Telenet retail TV service. It does wholesale supply one channel, Sporting Telenet, to a Belgian retail TV service provider. On 18 August 2014, Liberty notified to the Commission its proposed acquisition of De Vijver Media NV ("DVM") (Case M.7194 – *Liberty Global / Corelio / W&W / De Vijver Media*). The current deadline for the phase I investigation is 22 September 2014. In Belgium, DVM broadcasts the Dutch-language Free-to-Air TV channels "Vier" and "Vijf". In addition, DVM produces Dutch-language TV content mainly intended for captive use in DVM's own channels. Finally, DVM is also active in the sale of advertising space on several TV channels.

⁵ Liberty previously owned Chellomedia (which produces and sells pay TV channels and content in various countries in Europe). However, Liberty sold its Chellomedia division to the US company AMC in 2014.

⁶ John Malone holds minority shareholdings in Discovery, Liberty Interactive Corporation ("LIC") and Liberty Media Corporation ("LMC"). However, according to the Notifying Parties, even assuming that John Malone controls these companies, their activities would not have an impact on the competitive analysis of the proposed transaction. Indeed, although LIC also operates a shopping TV channel, such channel does not contain any general entertainment content comparable to the one produced/licensed by All3Media. Moreover, except for LMC's limited (below 3%) shares of ownership in certain companies active in the distribution of individual content in the EEA, the Notifying Parties are not aware of any LMC business interest active in the supply or acquisition of TV content or related markets in the EEA.

⁷ Indeed, based on available information, it appears that no shareholder, whether solely or jointly, has the ability (whether de jure or de facto) to exercise more than half of the voting rights at Discovery's

- (6) All3Media is a UK independent TV, film and digital production company comprising a number of production and distribution companies in the EU (UK, Germany, the Netherlands), in New Zealand and the US. In the EEA, All3Media is active in the production of TV content and in the licensing/distribution of TV content rights, in particular in the UK, Germany, the Netherlands and Belgium.⁸

2. THE OPERATION

- (7) The proposed transaction concerns the acquisition of joint control of All3Media by Liberty and Discovery.
- (8) Pursuant to an agreement entered into between the Notifying Parties on 8 May 2014, Liberty and Discovery will acquire each 50% of the share capital of the newly created joint venture company DLG Acquisitions Limited ("JVCo"), which in turn will acquire 100% of the issued share capital of All3Media.
- (9) According to the JV term sheet entered into by Liberty and Discovery on 8 May 2014, the Board composition and governance regime of JVCo will be reflective of a 50/50 joint venture [commercial terms of joint venture agreement]
- (10) Therefore, the proposed transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

3. EU DIMENSION

- (11) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million (Liberty: EUR 10 898 million; Discovery: EUR 4 574 million; All3Media: EUR [...] million)⁹. Each of them has an EU-wide turnover in excess of EUR 250 million (Liberty: EUR [...] million; Discovery: EUR [...] million; All3Media: EUR [...] million), but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The notified operation therefore has an EU dimension.

4. MARKET DEFINITION

4.1. Introduction: the TV value chain and the Parties' activities

- (12) Audio-visual TV content (hereinafter, also "TV content") comprises entertainment products (films, sports, series, shows, live events, documentaries, etc.) that can be broadcasted via TV.¹⁰ In its past decisional practice, the Commission has distinguished four levels in the value chain for TV-related content, namely: (1) the

general shareholder meeting and/or to appoint (or block the appointment of) the majority of the members of the Discovery Board of Directors.

⁸ As part of its production and distribution business, aside from TV content, a number of All3Media's production businesses produce content for digital platforms including the internet and mobile platforms. All3Media also has limited talent management activities via its Objective Talent Management business. However, given All3Media's limited talent management activities and the fact that neither Liberty nor Discovery has overlapping talent management activities, talent management is not considered further in this decision.

⁹ Turnover calculated in accordance with Article 5 of the Merger Regulation.

¹⁰ M.5121 – *News Corp / Premiere*, para 28.

production of TV content; (2) the licensing of broadcasting rights relating to TV content; (3) the wholesale supply of TV channels; and (4) the retail supply of TV services to end customers.¹¹

- (13) The proposed transaction mostly relates to levels (1) and (2) identified above, since All3Media is only active in the production of TV content and in the licensing of broadcasting rights relating to TV content rights.

4.1.1. Production of TV content

- (14) TV production companies produce TV content either (i) for internal use on their own TV channels or video-on-demand services if they are vertically integrated broadcasters (i.e., captive TV production), or (ii) for supply to third-party customers (i.e., non-captive TV production). Third-party customers are typically broadcasters (or, alternatively, non-traditional platforms, i.e. Over-The-Top ("OTT") platforms that order TV content from TV production companies.
- (15) In most cases, TV production companies produce TV content tailored to the needs of a broadcaster on the basis of original TV formats that they develop themselves or that they acquire from right holders (so-called "commissioned production"). However, in some instances, TV production companies are hired by a broadcaster to simply provide the technical production means and deliver the finished programme based on a TV format owned or acquired by the broadcaster (so-called "production-for-hire" or "supply of TV production services").
- (16) The production costs are most often borne entirely or almost entirely by the broadcaster. As regards ownership of the various rights relating to the TV content (e.g., primary TV broadcast rights, catch up, VOD, etc), the extent to which those rights are retained by the production company – as opposed to the broadcaster – may vary based on a number of factors, such as national regulation in the country concerned, the type of broadcaster, the outcome of the commercial negotiations between the parties, etc. Producers and/or broadcasters may then achieve secondary revenues by further licensing/distributing the TV content or the TV format to third parties.
- (17) In light of the above, the supply-side of this market comprises TV production companies, while the demand-side comprises third parties that commission the production of TV content or hire TV production services, typically broadcasters or OTT players.
- (18) As regards the supply-side of the market:
- a. All3Media produces TV content for customers based in the United Kingdom, Germany, the Netherlands and, to a more limited extent, Austria and France;
 - b. Liberty does not produce TV content in the EEA; and
 - c. Discovery's production activities within the EEA are limited to the United Kingdom.

¹¹ See, e.g., M.5932 – *News Corp / BSKyB*; M.4353 – *Permira / All3Media Group*; and M.6880 – *Liberty Global / Virgin Media*.

- (19) As regards the demand-side of the market:
- a. All3Media does not commission TV content;
 - b. Liberty purchases a limited amount of TV production services within the EEA (in 2013 Liberty only purchased these services in the Netherlands and Belgium); and
 - c. Discovery commissions TV content throughout the EEA, mostly in the Scandinavian countries (through its SBS Nordics subsidiary).

4.1.2. Licensing of broadcasting rights relating to TV content

- (20) This level of the value chain concerns the licensing of broadcasting rights relating to pre-existing TV content, i.e. TV content that has been previously produced and is subsequently made available "off-the-shelf" by the rights holder (so-called "pre-produced" TV content).
- (21) The broadcasting rights relating to TV content can belong to either (or a combination of) the rights holder to the TV format, the production company that produced the TV content or the company that commissioned the production of the TV content. In addition, the broadcasting rights can belong to a third-party distributor, to which they were licensed by the original owner, along with a right to sub-license.
- (22) All of these categories of rights owners, which constitute the supply-side of the market, license these rights to content aggregators, which constitute the demand-side of the market, namely: (i) TV broadcasters, which then incorporate them into linear TV channels; or (ii) content platform operators, which then retail the TV content to end users on a non-linear basis (i.e., Pay-Per-View ("PPV") or Video-On-Demand ("VOD")), including OTT platforms).
- (23) As regards the supply-side of the market:
- a. All3Media is active in the licensing of broadcasting rights relating to TV content across the EEA, mostly in the UK;
 - b. Liberty is not currently active in the licensing of TV content;¹² and
 - c. Discovery has limited activities in relation to the licensing of individual TV content in several EEA Member States.
- (24) As regards the demand-side of the market:
- a. All3Media does not acquire broadcasting rights for pre-produced TV content for the purpose of incorporation into TV channels or retail to end users;¹³

¹² Until 2013, Liberty's subsidiary Telenet was active to a very limited extent in the sub-licensing of individual TV content in Belgium. However, these activities ceased in 2014.

¹³ All3Media does, however, acquire limited rights which it sub-licenses to wholesale TV channels and VOD service providers.

- b. Liberty acquires broadcasting rights for pre-produced TV content both for incorporation into its Pay-TV channels in Belgium and the Netherlands and for distribution of retail VOD services via its cable network; and
- c. Discovery acquires limited broadcasting rights for pre-produced TV content in most EEA Member States.

4.1.3. *Wholesale supply of TV channels*

(25) TV channel suppliers use the TV content that they have acquired or produced in-house in order to package it into linear TV channels. TV channel suppliers (which constitute the supply-side of the market) then license their channels to providers of retail TV services (which constitute the demand-side of the market) for supply to end users. Some TV channels suppliers are vertically integrated as they are also active as a retail TV operator. Other TV channel suppliers are not vertically integrated and rely on retail TV operators to distribute their channels.

(26) As regards the supply-side of the market:

- a. All3Media is not active;
- b. Liberty wholesale supplies Pay-TV channels in the Netherlands and in Belgium;¹⁴ and
- c. Discovery wholesale supplies a range of TV channels to TV retailers across the EEA.

(27) As regards the demand-side of the market:

- a. All3Media is not active;
- b. Liberty acquires the rights to broadcast TV channels in several EEA Member States where it is active as a retail supplier of TV services; and
- c. Discovery is not active.

4.1.4. *Retail supply of TV content to end users*

(28) Providers of retail TV services supply to end users (i) packages of linear TV channels (which they have either acquired or produced themselves) and (ii) non-linear PPV or VOD services. TV content can be delivered to end users through a number of technical means.¹⁵

(29) In the retail supply of TV content to end users:

- a. All3Media is not active;

¹⁴ See footnote 4 for more details regarding Liberty's activities in Belgium.

¹⁵ In previous decisions, the Commission identified six main technical means of delivering TV content to end users, namely via: (1) analogue terrestrial television and digital terrestrial television ("DTT"); (ii) satellite (also referred to as Direct to Home ("DTH")); (iii) cable; (iv) Internet Protocol Television ("IPTV"); (v) the internet more generally; and (vi) mobile technologies. *See* M.6880 – *Liberty Global / Virgin Media*, para. 44; M.5932 – *News Corp / BSkyB*, para. 46.

- b. Liberty provides retail TV services in several Member States across the EEA; and
- c. Discovery is not active.

4.1.5. *Conclusions*

- (30) In light of the above, and, in particular, of the fact that the activities of All3Media are limited to the production of TV content and to the licensing of broadcasting rights related to TV content, the competitive assessment of the proposed transaction will focus on these levels of the value chain. However, the downstream level related to the wholesale supply of TV channels will also be discussed as part of the analysis of the possible spill-over effects of the proposed transaction under Article 2(4) of the Merger Regulation. Indeed, this is the only level of the value chain where both Liberty and Discovery are active and which has a relationship (vertical in this case) with the activities of All3Media.

4.2. **Relevant market definition**

4.2.1. *Production of TV content and licensing of broadcasting rights for TV content*

Product market definition

4.2.1.1. Production of TV content vs. licensing of broadcasting rights for TV content

- (31) From a demand perspective, the production of TV content and the licensing of broadcasting rights for TV content constitute alternative ways through which downstream players (e.g., TV channel broadcasters, TV service retailers, OTT providers) may source TV content. Therefore, the question arises whether and to what extent these TV content sourcing models could be considered substitutable from the demand side.
- (32) In its past decisional practice regarding the production of TV content, the Commission has found the product market for production to be limited to non-captive TV production, thereby excluding captive TV production (TV content produced by broadcasters for use on their own channels), as this TV content is not offered on the market.¹⁶ Consistent with its decisional practice, the Commission considers this to be the correct approach to be applied also in the case at hand. However, the Commission has not yet had the opportunity in the past to examine the question whether the production of TV content and the licensing of broadcasting rights for TV content belong to the same relevant product market.
- (33) The Notifying Parties submit that the relevant product markets are (i) the production and commissioning of TV content (limited to non-captive production or also including captive) and (ii) the supply and acquisition of individual TV content rights for incorporation into linear TV channels or to populate non-linear services. According to the Notifying Parties, these two markets should be kept separate from each other.

¹⁶ M.1574 – *Kirch / Mediaset*, para 14; M.1943 – *Telefónica / Endemol*, para 8; M.1958 – *Bertelsmann / GBL / Pearson TV*, paras 11-12; and M.4353 – *Permira / All3Media Group*, paras 11-12.

- (34) Broadcasters who seek TV content to populate their channels generally have a choice between a number of sourcing models, which can be broadly categorised as follows:
- a. acquiring broadcasting rights for pre-produced TV content;
 - b. obtaining TV content produced on an "ad hoc" basis (i.e., tailor-made), by either (i) commissioning TV content from a production company (which owns the relevant TV format), (ii) hiring a production company to provide the technical means and deliver the finished TV content based on a format owned by the broadcaster, or (iii) producing the content themselves by relying on their in-house facilities.
- (35) The market investigation conducted for the purpose of reviewing the present transaction indicated that, according to the vast majority of broadcasters, the cost of acquiring broadcasting rights for pre-produced TV content is generally considerably lower compared to the cost of sourcing tailor-made TV content, although costs can vary on a case-by-case basis depending on a number of factors (e.g., type of TV content, ownership of relevant Intellectual Property Rights ("IPRs"), length of TV programme, expected success, place of production, existence of exclusivity clauses, etc.). Acquiring pre-produced TV content tends to be cheaper because the rights owner is able to grant multiple licenses with a more limited scope for the same TV content (e.g., in different territories, to different licensees in distinct time periods and/or for linear vs. non-linear broadcast).¹⁷
- (36) However, for most broadcasters, tailor-made TV content is not substitutable with pre-produced TV content. This is because certain types of TV content (e.g., live entertainment and locally originated TV content as opposed to international/US films and TV series) are typically not available in pre-produced format, but must either be commissioned or produced in-house by the broadcaster.¹⁸
- (37) Although cost-related factors play a role in the broadcasters' choice of TV content and sourcing model (to a varying degree, depending, e.g., on the budget of the channel, on the specific time slot, etc.), such choice is also largely driven by the need to offer a given range of TV content depending on the focus of the channel and on the preferences of the target audience. For most channels, tailor-made TV content is therefore an important part of their TV offering (except those that, e.g., are not targeted at a local audience or do not offer live entertainment) and is also often perceived by broadcasters as a tool to help developing a channel's brand identity. Indeed, many broadcasters have separate budgets for tailor-made TV content and pre-produced content.¹⁹

¹⁷ See Commission questionnaire Q1 - Questionnaire for acquirers of TV content/TV channel suppliers, question 10.

¹⁸ See Commission questionnaire Q1 - Questionnaire for acquirers of TV content/TV channel suppliers, question 11.

¹⁹ See Commission questionnaire Q1 - Questionnaire for acquirers of TV content/TV channel suppliers, questions 11-12.

- (38) All these factors suggest that pre-produced TV content and tailor-made TV content are complementary products rather than substitutes from most broadcasters' perspective.
- (39) Similarly, according to most producers who replied to the market investigation, licensing pre-produced content and producing tailor-made TV content are two distinct complementary supply models. Production companies rarely pre-produce TV content that is not commissioned upfront, as to do so would entail significant financial risks. Typically, production companies produce TV content on a commissioning basis (or on a producer-for-hire basis), which, depending on the circumstances (e.g., content type), they may be able to further license at a subsequent stage to maximise their revenues.²⁰
- (40) With specific respect to the production of TV content, the market investigation provided conflicting indications as regards a possible segmentation between commissioned production and supply of production services. Some broadcasters suggested that, as an alternative to commissioning TV production from a company who also owns the relevant TV format, they could consider acquiring the relevant TV format and hiring a third-party company to produce based on that format. However, others pointed out that such option is often not available in practice, since TV production companies do not always make the TV format available on a stand-alone basis, but tend to sell it as a bundle together with their productions services.²¹
- (41) In light of the above, the Commission concludes that, based on the results of the market investigation in the case at hand, the production of TV content and the licensing of broadcasting rights for TV content appear to belong to separate relevant product markets. However, the question whether the market for the production of TV content is to be further segmented between commissioned production and supply of production services can be left open as the proposed transaction would not give rise to serious doubts as to its compatibility with the internal market under either scenario.

4.2.1.2. Type of TV content

- (42) In its past decisional practice regarding the licensing of broadcasting rights for TV content, the Commission has identified separate markets for (i) films, (ii) sports and (iii) other TV content.²² Moreover, within each of the films and sports segments, the Commission also discussed possible additional sub-segments. However, with specific respect to the market for the licensing of TV content other than films and sports (hereinafter also referred to as "general entertainment TV content"), which is the only area where some of the Parties (Discovery and All3Media) are effectively active, the Commission has not yet identified specific sub-segments which would constitute separate product markets. The Commission considers that a segmentation between

²⁰ See Commission questionnaire Q2 - Questionnaire for producers/licensors of audio-visual TV content, question 9.

²¹ See Commission questionnaire Q1 - Questionnaire for acquirers of TV content/TV channel suppliers, questions 13-15.

²² See M.6369 – *HBO / Ziggo / HBO Nederland*, paras 18-20; M.6880 – *Liberty Global / Virgin Media*, para 19. Moreover, as regards sports, the Commission has also previously considered a distinction between football and other sports and further distinctions within football, e.g., between regular football events and football events that are played more intermittently (M.4519 – *Lagardère / Sportfive*, para. 10. As regards films, the Commission has considered distinguishing between US-produced films and other films (M.2876 – *News Corp / Telepiù*, paras 58 and 61).

films, sports and other TV content could be applied to the market for the production of TV content as well.

- (43) According to the Notifying Parties, a single market exists for all TV content, irrespective of content type. Moreover, with particular regard to the markets for the production and for the licensing of TV content other than films and sports, the Notifying Parties submit that there is no basis to further segment these markets based on the type of content, such as for example, between scripted and unscripted TV content, genres of TV content (e.g., reality shows, drama, comedy, children, documentaries, etc.) and/or between premium and non-premium TV content.
- (44) In the case at hand, the Commission has confirmed, on the basis of the market investigation, the broad distinction between the licensing of TV broadcasting rights (and, similarly, the production of TV content) for each of films, sports and other TV content. However, the market investigation was not conclusive as regards potential further distinctions based on content type.
- (45) In any event, the question whether the markets for the production of general entertainment TV content and for the licensing of broadcasting rights for general entertainment TV content are to be segmented based on content type/genre can be left open as the proposed transaction would not give rise to serious doubts as to its compatibility with the internal market under either scenario.

4.2.1.3. Exhibition window

- (46) In its past decisional practice regarding the licensing of broadcasting rights for TV content (including for "other" non-film, non-sport TV content, which is the relevant type of content for the purposes of the assessment of the proposed transaction), the Commission has divided the market for the licensing of broadcasting rights by exhibition window (i.e., subscription VOD ("SVOD"), transactional VOD ("TVOD"), PPV, first Pay TV window, second Pay TV window, and FTA).²³
- (47) Based on the results of the market investigation in the case at hand, the Commission considers that this distinction appears to continue to be applicable to, and to correspond to market practice in the licensing of broadcasting rights for the different types of pre-produced non-film, non-sport TV content. The Commission, however, considers such market segmentation to be less relevant in relation to the market for the production of such TV content. Indeed, from the demand side, there does not appear to be any intrinsic difference between the type of non-film, non-sport content that a TV broadcaster, a TV retailer and/or an OTT platform would source or commission from a TV production company, depending on the exhibition window in which it intends to broadcast such content on Pay TV or on FTA TV. Moreover, after the relevant TV content is produced, the licensor is typically free to decide to whom to license such content and for what exhibition window and may actually license the same content for different exhibition windows in different territories (or even in the same territory).
- (48) In light of the above, the Commission considers that, based on available information, it does not appear appropriate to segment the market for the production of "other" TV content on the basis of the exhibition window where such content is

²³ M.6369 – *HBO / Ziggo / HBO Nederland*, para 18.

subsequently broadcast. In any case, the question whether the markets for the production of general entertainment TV content and for the licensing of broadcasting right for general entertainment TV content should be segmented based on the relevant exhibition window can be left open as the proposed transaction would not give rise to serious doubts as to its compatibility with the internal market under either scenario.

Geographic market definition

- (49) In its past decisional practice, the Commission defined the market for production of TV content as national in scope or broader, i.e., comprising a particular language region.²⁴ Similarly, as regards the licensing of broadcasting rights for TV content, the Commission considered the market to be national in scope or encompassing a broader linguistically homogeneous area.²⁵
- (50) The Notifying Parties do not take a firm view on the geographic delineation of the markets for production/commissioning of TV content and licensing/acquisition of broadcasting rights relating to TV content.
- (51) The market investigation conducted in the present case revealed that the geographic scope of the contracts for the production of TV content and for the licensing of broadcasting rights for TV content is typically limited to a national territory or comprises a linguistically homogeneous area, either within one Member State or covering (parts of) the territory of multiple Member States.²⁶
- (52) In light of the above, the Commission concludes that there are no indications of any need to depart from the geographic markets defined in previous decisions.

4.2.2. *Wholesale supply of TV channels*

Product market definition

- (53) In its past decisional practice regarding the wholesale supply of TV channels, the Commission identified two separate product markets for FTA channels and for Pay-TV channels and examined a further potential sub-segmentation between "basic" and "premium" Pay-TV channels.²⁷ In addition, the Commission also examined, but ultimately left open, a possible distinction based on thematic content (films, sports, news, youth channels, etc.).²⁸
- (54) The Notifying Parties do not take a firm position as to the potential delineations of the market for the wholesale supply of TV channels.
- (55) In the present case, the market investigation did not provide any indication as to the need to depart from the market definition in previous decisions.

²⁴ M.1574 – *Kirch / Mediaset*, para 17; M.1958 – *Bertelsmann / GBL / Pearson TV*, para 14; M.4353 – *Permira / All3Media Group*, para 15.

²⁵ M.5932 – *News Corp / BSkyB*, paras. 73-75; M.6880 – *Liberty Global / Virgin Media*, para 24.

²⁶ See Commission questionnaire Q1 - Questionnaire for acquirers of TV content/TV channel suppliers, question 33.

²⁷ M.5932 – *News Corp / BSkyB*, paras 80-85; M.4504 – *SFR / Télé 2 France*, paras 37-42.

²⁸ M.2876 – *News Corp / Telepiù*, para 76; M.6880 – *Liberty Global / Virgin Media*, paras 36-37.

Geographic market definition

- (56) In its past decisional practice, the Commission found the market for the wholesale supply of TV channels to be either national in scope²⁹ or potentially to comprise a broader linguistically homogeneous area encompassing more Member States.³⁰
- (57) The Notifying Parties do not take a firm position as to the potential delineations of the market for the wholesale supply of TV channels.
- (58) In the present case, the market investigation did not provide any indication as to the need to depart from the market definition in previous decisions.

5. COMPETITIVE ASSESSMENT

5.1. Horizontal analysis

- (59) The proposed transaction gives rise to limited horizontal overlaps between Discovery and All3Media in relation to the production of general entertainment TV content (i.e., TV content other than sports and films) in the United Kingdom and the licensing of broadcasting rights to general entertainment TV content in a number of EEA Member States (namely Austria, Belgium, Croatia, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Netherlands, Poland, Portugal, Romania, Slovakia, Spain and Sweden).
- (60) The proposed transaction does not, however, give rise to any horizontally affected markets as the Parties' combined share in these markets remains well below 20%.
- (61) As regards a possible segmentation of these markets by type of TV content, such as for example, between scripted and unscripted TV content, between genres of general entertainment TV content (e.g., reality shows, drama, comedy, children, documentaries, etc.), by exhibition window and/or a possible segmentation of the market for the production of general entertainment TV content between commissioned production and supply of production services, the Notifying Parties submit that their combined market shares in each of these segments equally do not exceed 20%.
- (62) Moreover, the market investigation did not provide any indications as to any potential anti-competitive effects of the proposed transaction on these markets and/or any of their possible segments. While the majority of the respondents to the market investigation acknowledged the importance and the attractiveness of All3Media's TV content offer,³¹ most customers and competitors agreed that post-transaction there will remain sufficient competitors capable of providing similar content.³²

²⁹ M.6369 – *HBO / Ziggo / HBO Nederland*, para 39; M.6880 – *Liberty Global / Virgin Media*, para 41.

³⁰ M.5932 – *News Corp / BSkyB*, paras. 86-88; M.6880 – *Liberty Global / Virgin Media*, para 41.

³¹ See Commission questionnaire Q1 - Questionnaire for acquirers of TV content/TV channel suppliers, question 41.

³² See Commission questionnaire Q1 - Questionnaire for acquirers of TV content/TV channel suppliers, question 42 and Commission questionnaire Q2 - Questionnaire for producers/licensors of audio-visual TV content, question 57.

- (63) In light of the above, the Commission therefore concludes that the proposed transaction will not give rise to serious doubts as to its compatibility with the internal market as a result of horizontal anti-competitive effects.

5.2. Vertical analysis

- (64) The proposed transaction gives rise to limited vertical relationships in several Member States. Indeed, both All3Media and Discovery are active on the supply side of the market for the production of general entertainment TV content (i.e., non-film, non-sports) and Liberty and Discovery are active on the demand side of this market (Liberty acquires sports TV content; Discovery acquires general entertainment and sports TV content). Moreover, All3Media and Discovery are active on the supply side of the market for the licensing of broadcasting rights for general entertainment TV content (i.e., non-film, non-sports)³³ and Liberty and Discovery are active on the demand side of this market (both acquire broadcasting rights for films, sports and general entertainment TV content). In addition, Liberty and Discovery are also active in the wholesale supply of TV channels, which is downstream of the markets for the production of TV content and the licensing of broadcasting rights for TV content, where each of All3Media and Discovery are active.

- (65) However, none of these vertical relationships give rise to any affected markets as the Parties' combined shares are well below 30% on any of the relevant markets where such vertical relationships exist. For completeness, the Commission notes that, with regard to possible sub-markets for the wholesale supply of Pay-TV TV channels relating to sports, Liberty and Discovery's combined share would exceed 30% in Belgium and in the Netherlands, being [80-90]% in Belgium (Liberty: [20-30]% via its Sporting Telenet channel; Discovery: [50-60]% via its Eurosport channels) and [50-60]% in the Netherlands (Liberty: [10-20]% via its Sport1 channel; Discovery: [40-50]% via its Eurosport channels). In any event, irrespective of the exact product market definition, given that All3Media does neither produce nor license sports TV content in either Belgium or the Netherlands, such vertical relationships are purely potential: indeed, the type of content produced by All3Media (i.e., general entertainment TV content) is not currently used by either of Liberty or Discovery as an input for any of the channels that they operate in Belgium or in the Netherlands.

- (66) Moreover, the market investigation did not provide indications as to any likely anti-competitive effects resulting from the proposed transaction as regards the vertical relationship between the Parties' activities.

- (67) As regards input foreclosure, the majority of the respondents to the market investigation considered it unlikely that All3Media would, post-transaction, refuse to provide the TV content it produces and/or licenses to third-party broadcasters and supply it only to Liberty or Discovery. Moreover, although the majority of the broadcasters viewed access to All3Media's content as important in order to compete on the market for the wholesale supply of TV channels or retail of TV services,³⁴ they

³³ For completeness, Discovery's Eurosport channels also license a limited amount of their sports rights to third parties. In 2012, Eurosport's licensing activities amounted to approximately EUR [...] million.

³⁴ According to some respondents, All3Media would have some very defining and excellent shows and would be the UK's largest independent production company. See Commission questionnaire Q1 - Questionnaire for acquirers of TV content/TV channel suppliers, question 41.

also considered that a sufficient number of competing production companies will remain active, post-transaction, on the relevant markets. These companies are and will be able to supply TV content similar to that produced by All3Media.³⁵

- (68) As regards customer foreclosure, the respondents to the market investigation considered it equally unlikely that Liberty or Discovery would, post-transaction, refuse to procure TV content from third-party producers and source it only from All3Media. First, neither Discovery nor Liberty would have an incentive to entirely source their need of TV content from All3Media since it is key for TV channels to be able to offer a broad range of different types of TV content in order to reach a wide audience.³⁶ Second, it is unlikely that one production company would be able to supply sufficient volume to cater for a channel's entire programme schedule.³⁷ Third, there would be a variety of competing broadcasters active on the market in each of the EEA Member States where Liberty or Discovery are active, to which competing producers and/or licensors of TV content could provide their services and content.
- (69) The Commission therefore considers that the proposed transaction does not give rise to serious doubts as to its compatibility with the internal market as a result of anti-competitive vertical effects in the markets for the production of TV content and for the licensing of broadcasting rights for TV content.

5.3. Cooperative effects of a joint venture

- (70) Pursuant to Article 2(4) of the Merger Regulation, when the Commission assesses the impact of the creation of a joint venture within the meaning of Article 3 of the Merger Regulation, it should also apprise whether the proposed transaction will have the object or the effect of coordinating the competitive behaviour of undertakings that remain independent within the meaning of Article 101 TFEU. That could be the case when two or more parent companies retain, to a significant extent, activities in the same market as the joint venture or in a market which is downstream or upstream from that of the joint venture.³⁸
- (71) The Notifying Parties are both active in the market for the wholesale supply of TV channels in Belgium and the Netherlands. Discovery supplies a range of TV channels to TV retailers across the EEA, among which Belgium and the Netherlands. In the Netherlands, Liberty supplies its Pay-TV channels Film1 and Sport1. In Belgium, Liberty supplies Sporting Telenet. The market for the wholesale supply of TV channels is vertically related to the market for the production of other TV content and the market for the licensing of broadcasting rights to other TV content, where All3Media is active.

³⁵ See Commission questionnaire Q1 - Questionnaire for acquirers of TV content/TV channel suppliers, question 42.

³⁶ See Commission questionnaire Q1 - Questionnaire for acquirers of TV content/TV channel suppliers, questions 37 and 38.

³⁷ See Commission questionnaire Q1 - Questionnaire for acquirers of TV content/TV channel suppliers, questions 37 and 38.

³⁸ In addition to this scenario, a risk of coordination could also occur when two or more parent companies retain activities in a neighbouring market closely related to the market in which the joint venture is active.

- (72) In the market for the wholesale supply of TV channels, as well as in each of the markets for the wholesale supply of FTA channels and Pay-TV channels, and in the possible segments of the latter market of the wholesale supply of basic and premium Pay-TV channels, Liberty and Discovery's combined market share in terms of viewers is limited in both Belgium (Liberty: less than [0-5]%; Discovery: [0-5]%) and the Netherlands (Liberty: less than [0-5]%; Discovery: [5-10]%). However, in the possible sub-segment regarding the wholesale supply of Pay-TV sports channels, Liberty and Discovery's combined market shares are more significant, more precisely, [80-90]% in Belgium (Liberty: [20-30]% via its Sporting Telenet channel; Discovery: [50-60]% via its Eurosport channels) and [50-60]% in the Netherlands (Liberty: [10-20]% via its Sport1 channel; Discovery: [40-50]% via its Eurosport channels).
- (73) The Commission nonetheless considers that the proposed transaction will not lead to the coordination of the competitive behaviour of Liberty and Discovery for a number of reasons.
- (74) First, All3Media is not active in the possible market for the wholesale supply of sports TV channels in Belgium and/or the Netherlands.
- (75) Second, while active at a level of the value chain that could potentially be considered to be upstream to that of the wholesale supply of sports TV channels in Belgium and/or the Netherlands – that is to say the market for the production of TV content and the licensing of broadcasting rights for TV content – All3Media is not active in the production and/or licensing of sports TV content, which could constitute an input for the downstream activities of Liberty and Discovery.
- (76) Third, the activities of the joint venture are insignificant if compared to those of Liberty and Discovery. In Belgium, All3Media generated turnover of EUR [...] million, whereas Discovery generated turnover of EUR [...] million and Liberty of EUR [...] billion. In the Netherlands, All3Media generated turnover of EUR [...] million, whereas Discovery generated turnover of EUR [...] million and Liberty of EUR [...] million.
- (77) Finally, the market investigation did not reveal any concerns of coordination of the competitive behaviour of the parent companies linked to the acquisition of joint control over All3Media.
- (78) Therefore, the Commission concludes that the acquisition of joint control of All3Media by Liberty and Discovery is not likely to lead to the coordination of Liberty and Discovery's competitive behaviour in the market for the wholesale supply of TV channels in Belgium and the Netherlands.

6. CONCLUSION

- (79) For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

*For the Commission
(signed)
Joaquín ALMUNIA
Vice-President*