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# *Case No COMP/M.7360 - 21st CENTURY FOX/ APOLLO/ JV*

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 09/10/2014

***In electronic form on the EUR-Lex website under document number 32014M7360***

Office for Publications of the European Union
L-2985 Luxembourg

EUROPEAN COMMISSION

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus […]. Where possible the information omitted has been replaced by ranges of figures or a general description.

Brussels, 09.10.2014
C(2014) 7472 final

PUBLIC VERSION

MERGER PROCEDURE

**To the notifying parties**

Dear Sir/Madam,

**Subject: Case M.7360 - 21st Century Fox/ Apollo/ JV**
**Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004**[1]

(1) On 4 September 2014, the European Commission received a notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Twenty-First Century Fox, INC ('21st Century Fox', United States of America) and Apollo Management, LP ('Apollo', United States of America) acquire within the meaning of Article 3(1)(b) and 3(4) of the Merger Regulation joint control of the whole of a joint venture (the 'JV'), by way of contribution to the JV of their respective businesses in the production and distribution of audio-visual content, namely the Shine Group ('Shine', United Kingdom) of 21st Century Fox, and Endemol Holding BV ('Endemol', the Netherlands) as well as CORE Media Group ('CORE Media', United States of America) of Apollo.

(2) 21st Century Fox and Apollo are collectively referred to as 'Notifying Parties'. 21st Century Fox, Apollo, Shine, Endemol and CORE Media are collectively referred to as 'Parties'.

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.

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## 1. THE PARTIES

(3) **21st Century Fox** is a media and entertainment company with operations all over the world in both the production and the distribution of film and TV content. It controls **Shine**, a group of production companies, which is active in the production and distribution of audio-visual content in 12 countries. Shine also distributes a catalogue of pre-produced TV content and formats to TV channel suppliers. Moreover, 21st Century Fox controls **Fox International Channels** which operates TV channels including the Fox Channel, National Geographic, Baby TV, and STAR channels. 21st Century Fox will retain control over Fox International Channels.

(4) **Apollo** manages investment funds which invest in companies involved in various businesses around the world. Funds managed by Apollo control Endemol and CORE Media. **Endemol** produces and distributes audio-visual content for broadcasting and to other platforms. It also distributes a catalogue of pre-produced TV content to TV channel suppliers. **CORE Media** consists of SHARP Entertainment, which produces and distributes TV content in the U.S., and 19 Entertainment, which is active in TV production, recording and artist management. In the EEA it is active in the licensing of audio-visual TV content.

## 2. THE OPERATION

(5) On 25 July 2014, 21st Century Fox and Apollo entered into an agreement with the purpose of combining their respective businesses in the production and distribution of audio-visual content and constitute the JV.

(6) 21st Century Fox and Apollo will each hold […]. The agreement envisages that 21st Century Fox and Apollo will each have the ability to appoint […] voting directors of the Board of Directors, and that approval by at least […] voting directors will be required for, *inter alia*, […]. Both 21st Century Fox and Apollo will have the ability to […]. 21st Century Fox and Apollo will thus acquire joint control over the JV.

(7) The agreement envisages that the JV will have its own management dedicated to the day-to-day operations and access to sufficient resources. It will conduct the businesses previously conducted by each of Endemol, CORE Media and Shine, which involves operating an integrated, standalone business beyond one specific function for 21st Century Fox and Apollo. The JV will be selling to companies outside to its parents' groups and it will operate on a lasting basis. The JV will thus be full-function.

(8) Therefore, the proposed transaction constitutes a concentration within the meaning of Article 3(1)(b) and 3(4) of the Merger Regulation.

## 3. EU DIMENSION

(9) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million[2] (21st Century Fox: EUR 21 682 million[3], Apollo:

[2] Turnover calculated in accordance with Article 5 of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.04.2008, p. 1).

EUR […][4]). Each of them has an EU-wide turnover in excess of EUR 250 million (21st Century Fox: EUR […], Apollo: EUR […]), but they do not achieve more than two-thirds of its aggregate EU-wide turnover within one and the same Member State. The notified operation therefore has an EU dimension pursuant to Article 1(2) of the Merger Regulation.

## 4. INTRODUCTION: THE TV VALUE CHAIN AND THE PARTIES' ACTIVITIES

(10) 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. [5] In its past decisional practice, the Commission has distinguished different activities in the value chain for TV-related content, namely: (1) the 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.[6]

(11) The proposed transaction mostly relates to activities (1) and (2) identified above, since the activities contributed by the Notifying Parties to the JV relate to the production of TV content and the licensing of broadcasting rights relating to TV content rights.[7]

### 4.1. Production of TV content

(12) This part of the value chain concerns the production of new TV content. TV production companies produce TV content either (i) for internal use on their own TV channels or video-on-demand ('VOD') services if they are vertically integrated in the wholesale supply of TV channels and/or in the retail of TV services (i.e., captive TV production), or (ii) for supply to third-party customers (i.e., non-captive TV production). Third-party customers are typically (i) TV channel suppliers, 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 VOD, including non-traditional platforms, i.e. Over-The-Top ('OTT') platforms).

(13) In most cases, TV production companies produce TV content tailored to the needs of their customers on the basis of original TV formats [8] that they develop

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3 This figure and the other turnover figures for 21st Century Fox in this section are for the business year running from 1 July 2012 to 30 June 2013.

4 This figure and the other turnover figures for Apollo in this section are for the business year running from 1 January 2013 to 31 December 2013.

5 Commission decision of 25 June 2008 in case M.5121 *News Corp / Premiere*, paragraph 28.

6 See for instance Commission decision of 21 December 2010 in case M.5932 *News Corp / BSkyB*; Commission decision of 22 September 2006 in case M.4353 *Permira / All3Media Group*; and Commission decision of 15 April 2013 in case M.6880 *Liberty Global / Virgin Media*.

7 Both Shine and Endemol also have activities in digital production and advertising. Shine's ChannelFlip and Endemol Beyond are companies which produce and distribute digital entertainment content and advertising campaigns online. The proposed transaction does not give rise to any affected markets in this area and this overlap will therefore not be further discusses in the present decision.

8 TV format refers to the overall concept and branding of a copyrighted TV program.

themselves or that they acquire from right holders (so-called 'commissioned production'). However, in some instances, TV production companies are hired by TV channel suppliers or content platform operators to simply provide the technical production means and deliver the finished programme based on a TV format owned or acquired by the hiring company (so-called 'production-for-hire' or 'supply of TV production services').

(14) The production costs are most often borne entirely or almost entirely by the TV channel suppliers or content platform operators. 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 acquirer of TV content – may vary based on a number of factors, such as national regulation in the country concerned, the type of broadcasting, the outcome of the commercial negotiations between the parties, etc. Producers and/or the acquirers of TV content may then achieve secondary revenues by further licensing/distributing the TV content or the TV format to third parties.

(15) 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 TV channel suppliers or content platform operators.

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

a. Shine produces TV content for customers based in several EEA countries;

b. Endemol, likewise, produces TV content for customers based in several EEA countries; and

c. CORE Media does not produce TV content in the EEA.

(17) As regards the demand-side of the market only 21st Century Fox is a customer of these services in the EEA.

**4.2. Licensing of broadcasting rights relating to TV content**

(18) This part 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).

(19) 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.

(20) 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 channel suppliers or (ii) content platform operators.

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

(22) Shine is active in the licensing of broadcasting rights relating to TV content across the EEA;

(23) Endemol, likewise, is active in the licensing of broadcasting rights relating to TV content across the EEA; and

(24) CORE Media has limited activities in relation to the licensing of individual TV content in EEA.

(25) As regards the demand-side of the market only 21st Century Fox acquires licences of broadcasting rights relating to TV content in the EEA.

### 4.3. Wholesale supply of TV channels

(26) 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.

(27) Only 21st Century Fox is active at this part of the value chain from both the supply-side and demand-side.

### 4.4. Retail supply of TV content to end users

(28) At retail level, TV services are supplied to end users by content platform operators (i) in packages of linear TV channels (which they have either acquired or produced themselves) and (ii) via non-linear TV services (i.e. PPV, VOD and OTT). TV content can be delivered to end users through a number of technical means.[9]

(29) Only 21st Century Fox is active in the retail supply of TV content to end users.

### 4.5. Conclusions

(30) The proposed transaction gives rise to horizontal overlaps and affected markets with respect to production of TV content and to the licensing of broadcasting rights related to TV content.[10]

(31) There are also vertical relationships between the upstream activities of Shine, Endemol and CORE Media, and the downstream activities of 21st Century Fox as a TV channel supplier (Fox International Channels) and as a retailer of TV services, at least until the closing of BSkyB's proposed acquisition of Sky Italia and Sky

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9 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 Commission decision of 15 April 2013 in case M.6880 *Liberty Global / Virgin Media*, paragraph 44; Commission decision of 21 December 2010 in case M.5932 *News Corp/BSkyB*, paragraph 46.

10 Horizontal overlaps arise also in the market for digital production and advertising, where the businesses contributed by both the Notifying Parties are active.

Germany.[11] However, in view of the Parties' market shares the proposed transaction gives rise to affected markets only with regard to the retail supply of TV services to end customers.

(32) Therefore this decision will only focus: (1) the production of TV content; (2) the licensing of broadcasting rights relating to TV content; and (3) the retail supply of TV services to end customers. .

## 5. RELEVANT MARKETS

### 5.1. Production and licensing of audio-visual content

#### *5.1.1. Product market definition*

5.1.1.1. Models for acquisition of TV content

(33) TV channel suppliers and content platform operators, which acquire TV content, generally have a choice between (i) commissioning the production of new tailor-made content, either from a third party production company or from their in-house production arm, or (ii) acquiring broadcasting rights for pre-produced content (sometimes referred to as 'off-the-shelf' or 'tape sales').

(34) The Notifying Parties claim that these models for acquisition of TV content are substitutable and should be considered as part of the same relevant market. This is because when deciding how to allocate budget and which TV content to acquire all the options would represent an equal alternative.

(35) The Notifying Parties also claim that in-house production constitutes a constraint for producers of TV content and should be therefore included in the relevant market. Moreover, from the supply side perspective it would be common for the same production house to offer all types of production options.

(36) In past decisions the Commission has considered separately (i) the market for the production of non-captive TV content and (ii) the market for licensing/acquisition of rights for TV content.[12] This segmentation has proved to be relevant for product market definition purposes also in more recent investigations,[13] where the Commission has considered the markets for commissioned production of TV content and licencing of broadcasting rights of pre-produced content. The Commission has also considered that in-house production of TV content, which is not available in the market, should be excluded from the relevant market for the production of TV content.[14]

(37) The results of the market investigation in the present case clearly indicated that, while several TV channel suppliers and content platform operators do have in-house or captive production capacity, that is not an option for all of them.

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11 On 25 July 2014, 21st Century Fox entered into a binding sale and purchase agreement with British Sky Broadcasting Group plc to sell its interests in Sky Italia and Sky Deutschland. See paragraph (64).

12 Commission decision of 22 September 2006 in case M.4353 *Permira / All3Media Group*.

13 Commission decision of 15 September 2014 in case M.7282 *Liberty Global / Discovery / All3Media*.

14 Commission decision of 11 July 2000 in case M.1943 *Telefónica / Endemol*.

Moreover, TV channel suppliers and content platform operators, which currently are not active in the in-house production of audio-visual TV content, cannot start to do so within a short timeframe and without incurring significant additional costs.[15] Substitution between external and in-house production can also be limited by lack of capacity or by the fact that many times it is not possible to acquire the rights to a TV format separately from the production services.[16] Therefore, consistently with its precedents, the Commission considers that the relevant market for the assessment of the present case should be limited to the non-captive production of audio-visual TV content.

(38) According to the majority of both TV channel suppliers and production companies, licensing of pre-produced content is less expensive for the TV channel suppliers and content platform operators than the commissioned production of new content. Some customers, however, point out that, while this is true in general, the costs also vary depending on type of content. In any event, the results of the market investigation revealed that a majority of the TV channel suppliers would not substitute commissioned TV with pre-produced content in the event of a price increase in commissioned TV content. Some of the reasons for choosing commissioned TV over pre-produced content put forward by the TV channel suppliers were: quality of content, control of the content and public service obligations. Since the TV channel suppliers' and content platform operators' choice of sourcing model is not only driven by costs but also by the need to offer their target audience a given mix of TV content, the sourcing models tend to be complementary rather than substitutes.[17]

(39) The Commission also examined whether ‘full’ commissioned production of TV content (i.e. production services including the format and production for hire services (i.e. production services on the basis of a format which is acquired separately) could be considered two different market segments with the commissioned production of TV content. In this regard, the results of the market investigation were, however, inconclusive.

(40) Based on the results of the market investigation in the case at hand, the Commission concludes that the production of TV content and the licensing of broadcasting rights for TV content appear to belong to separate relevant product markets. However, the Commission considers that the question whether the market for the production of TV content is to be further segmented between 'full' commissioned production and hiring of production services can be left open because the proposed transaction does not raise serious doubts as to its compatibility with the internal market regardless of the exact product market definition applied.

5.1.1.2. Type of content

(41) The Parties further submit that it would be appropriate to define a single market for the production and supply of audio-visual TV content including all types of

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15 Commission questionnaire Q2 – Questionnaire to TV broadcasters, questions 7–8.

16 Commission questionnaire Q2 – Questionnaire to TV broadcasters, questions 7, 13, 40 and 47.

17 Commission questionnaire Q2 – Questionnaire to TV broadcasters, question 10.

content, *i.e.* sports, movies and other TV content, and also that no distinction should be made between scripted and non-scripted content.[18]

(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.[19]

(43) The results market investigation in the case at hand confirm that a distinction could be made between films, sports and other TV content for the licensing of TV broadcasting rights, and, similarly, for the production of TV content. In particular, the overwhelming majority of TV channel suppliers and producers said that the cost of production and acquisition tend to vary significantly between films, sports events and other TV content (with sports content and premium films being significantly more expensive). Films, sports and other TV content do not appear to be substitutable, as the focus of the channel and the preferences of the target audience play a very important role in the choice of TV content, while cost is only one of the relevant factors. Public service TV channel suppliers also pointed at regulatory constraints on their ability to substitute between different types of content.[20]

(44) The market investigation was not conclusive as regards potential further distinctions of other TV content based on content type, such as between scripted and non-scripted content. In any event, the Commission considers that the question whether production and licensing of audio-visual TV content are to be segmented based on content type 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.

5.1.1.3. Exhibition window

(45) 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 Free To Air ('FTA')).[21]

(46) In a recent case,[22] however, the Commission found that, whilst this distinction corresponds to market practice in the licensing of broadcasting rights for the pre-produced audio-visual content, it is less relevant in relation to the market for the

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18 Scripted TV content is content produced based on an existing script, story or character, *e.g.* dramas and comedies, while non-scripted TV content is content not based on a script, *e.g.* game shows, talent show and reality shows.

19 Commission decision of 21 December 2011 in case M.6369 *HBO / Ziggo / HBO Nederland*; Commission decision of 15 April 2013 in case M.6880 *Liberty Global / Virgin Media.*

20 Commission questionnaire Q1 – Questionnaire to TV production companies, questions 16–18. Commission questionnaire Q2 – Questionnaire to TV broadcasters, questions 16–20.

21 Commission decision of 21 December 2011 in case M.6369 *HBO / Ziggo / HBO Nederland.*

22 Commission decision of 15 September 2014 in case M.7282 *Liberty Global / Discovery / All3Media*.

production of such TV content. It therefore concluded that the market for the production of TV content other than film and sports does not necessarily need to be segmented by exhibition window. As regards the market for the licensing of broadcasting right for general entertainment TV content, the Commission found that, once 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). However the Commission ultimately left the question open.

(47) In the present case, the market investigation did not provide any indication as to the need to depart from the market definition in this recent precedent.

*5.1.2. Geographic market definition*

(48) As regards geographic market definition, consistently with the Commission's precedents,[23] the Notifying Parties submit that the geographic scope of the markets for the supply of TV content would be national or comprise linguistically homogeneous areas.

(49) On the basis of the results of the market investigation, the Commission confirms the precedents. According to the replies to the market investigation, the geographic scope of the contracts for the production/commissioning and for the licensing/acquisition of TV programmes varies depending on the geographic area covered by the TV channel, and is in general national or corresponding to a given language area.[24]

(50) In any event, the Commission considers that the exact scope of the relevant geographic market can be left open as the proposed transaction does not raise serious doubts as to its compatibility with the internal market regardless of the exact geographic market definition.

## 5.2. Retail supply of TV services

*5.2.1. Product market definition*

(51) The Notifying Parties submit that the relevant product market for the assessment of the vertical relationship between the activities of the JV and 21st Century Fox would be the broad market for the acquisition of individual TV content, including all the universe of possible buyers of TV content.

(52) In its past decisions the Commissions has consistently considered the retail supply of TV services to end customers as a separate market segment which is downstream with respect to the production and licencing of TV content. Within the retail supply of TV services, the Commission in past decisions has distinguished between FTA TV services, mainly financed by advertising, and Pay-TV services,

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23 Commission decision of 29 June 2000 in case M.1958 *Bertelsmann / GBL / Pearson TV*; Commission decision of 22 September 2006 in case M.4353 *Permira / All3Media Group*; Commission decision of 15 April 2013 in case M.6880 *Liberty Global / Virgin Media*.

24 Commission questionnaire Q1 – Questionnaire to TV production companies, question 35. Commission questionnaire Q2 – Questionnaire to TV broadcasters, question 30.

mainly financed by subscription fees.[25] It has also distinguished between linear and non-linear TV services.[26] With regard to a possible further segmentation of the market on the basis of the type of transmission infrastructure (*e.g.*, cable, satellite, digital terrestrial, etc.), the Commission looked into this possibility in previous cases, but it did not deem it necessary to proceed to any such segmentation for the assessment of those cases.[27]

(53) The Commission considers that in the present case there is no need to conclude as regard the relevant product market for the retail supply of TV services to end customers as the proposed transaction does not raise serious doubts as to its compatibility with the internal market regardless of the exact product market definition.

*5.2.2. Geographic market definition*

(54) As regards geographic market definition, consistently with the Commission's precedents,[28] the Notifying Parties submit that the geographic scope of the downstream market would be national or comprise linguistically homogeneous areas.

(55) In the present case, the Commission considers that the exact scope of the relevant geographic market can be left open as the proposed transaction does not raise serious doubts as to its compatibility with the internal market regardless of the exact geographic market definition.

## 6. COMPETITIVE ASSESSMENT

### 6.1. Horizontal assessment

(56) The proposed transaction gives rise to horizontal overlaps between the activities of Shine, Endemol and CORE Media in several possible market segments for the production and licensing of TV content in several national markets. However, the Parties' combined market shares remain well below 20% in all possible relevant markets, with two exceptions: (i) the market for 'full' commissioned production of TV content (excluding captive supply) in Sweden and (ii) the market for 'full' commissioned production of TV content (excluding captive supply) in Norway.

(57) On the basis of the data provided by the Notifying Parties, in 2013 the Parties' combined market shares in the market for 'full' commissioned production of TV content in Sweden amounted to [40-50]% by revenues, with an increment of [0-5]% brought by Endemol. The remaining players with market shares above 5%

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25 Commission decision of 21 December 2010 in case M.5932 *News Corp/BSkyB*; Commission decision of 21 December 2011 in case M.6369 *HBO / Ziggo / HBO Nederland*.

26 Commission decision of 21 December 2010 in case M.5932 *News Corp/BSkyB*; Commission decision of 21 December 2011 in case M.6369 *HBO / Ziggo / HBO Nederland*.

27 Commission decision of 21 December 2011 in case M.6369 *HBO / Ziggo / HBO Nederland;* Commission decision of 18 July 2007 in case M.4504 *SFR / Télé 2 France*; Commission decision of 25 June 2008 in case M.5121 *News Corp / Premiere*.

28 Commission decision of 21 December 2010 in case M.5932 *News Corp/BSkyB*; Commission decision of 21 December 2011 in case M.6369 *HBO / Ziggo / HBO Nederland*.

would be Zodiak Media ([10-20]%), Nice Entertainment Group ([10-20]%), Nordisk TV ([10-20]%), and ITV Studios Nordic ([5-10]%).

(58) In Norway, in 2013 the Parties' combined market shares in the market for 'full' commissioned production of TV content amounted to [30-40]% by revenues, with increment of [0-5]% brought by Endemol. The remaining players with market shares above 5% would be Nice Entertainment Group ([30-40]%), Zodiak Media ([10-20]%), Feelgood ([5-10]%) and Nordisk TV ([5-10]%).

(59) Based on the above, the Commission considers that the proposed transaction would bring about limited market share increments both in Sweden and in Norway. Moreover, the overwhelming majority of the respondents to the market investigation do not consider that, pre-merger, Shine and Endemol were each other's closest competitors in Sweden or Norway.[29] This is also confirmed by the analysis of the Parties' internal documents.

(60) In addition, according to the majority of the respondents to the market investigation, post-merger, there will remain sufficient alternative suppliers for commissioned TV content in both Sweden and Norway.[30] The Commission also notes that, on the basis of the information provided by the Notifying Parties, several of these suppliers offer a significant number of TV programmes in the list of top 100 programmes by audience in 2013 in Sweden and Norway, so that these players can be considered as qualitatively relevant alternatives.

(61) Finally, the overwhelming majority of the responding TV channel suppliers also replied that switching between suppliers of TV content is easy in both Sweden and Norway.[31]

(62) In light of the above, the Commission considers that the proposed transaction does not give rise to serious doubts as to its compatibility with the internal market in the affected markets.

### 6.2. Vertical assessment

(63) The proposed transaction gives rise to a vertical relationship between the JV's activities and 21st Century Fox's activities in the retail supply of TV services to end customers in several countries. This vertical relationship would result into affected markets in Italy and Germany. Indeed, in 2013 21st Century Fox accounted for respectively [70-80]% and around [30-40]% by value of the markets for the retail of Pay-TV services in Italy and Germany.

(64) 21st Century Fox carries out its downstream activities in Italy and Germany via Sky Italia and Sky Deutschland. On 25 July 2014, 21st Century Fox entered into a binding sale and purchase agreements with British Sky Broadcasting Group plc to sell its interests in Sky Italia and Sky Deutschland. The transaction was notified to

[29] Commission questionnaire Q1 – Questionnaire to TV production companies, questions 48–50. Commission questionnaire Q2 – Questionnaire to TV broadcasters, questions 35–37.

[30] Commission questionnaire Q1 – Questionnaire to TV production companies, question 51. Commission questionnaire Q2 – Questionnaire to TV broadcasters, question 39.

[31] Commission questionnaire Q2 – Questionnaire to TV broadcasters, questions 37 and 44.

the Commission as case M.7332 BSkyB/Sky Deutschland/Sky Italia and cleared on 11 September 2014.

(65) Once the transaction between 21st Century Fox and British Sky Broadcasting Group plc will be closed no vertical relationship will exist between the activities of the JV and those of 21st Century Fox.[32]

(66) However, competition concerns can be excluded even in the unlikely case that such transaction would not be closed. Indeed, no input or customer foreclose would arise.

(67) As regards input foreclosure, the JV would not have sufficient market power to successfully engage in an input foreclosure strategy vis-à-vis 21st Century Fox downstream competitors. Indeed, the market share of the JV is well below 10 % in any possible market segment for the production and licensing of TV content in Italy and Germany. Moreover, the JV's content is not considered to be 'must-have' by TV broadcasters or retailers to be able to successfully operate in the market. In addition, the vast majority of the respondents to the market investigation in the present considered that the JV would not have an interest to exclusively license/supply audio-visual content to Sky Italia or Sky Deutschland.[33] A respondent indicated that 21st Century Fox will have a strong incentive as well as the capability (given its nature of industrial parent in the JV) to induce the JV to discriminate in favour of Sky Italia and in prejudice to its competitors. However, the Commission notes that even if 21st Century Fox would engage in such behaviour, given the limited activities of the JV in the upstream market in Italy and the presence of alternative suppliers, it is unlikely that any such conduct would have a negative impact on Sky Italia competitors.

(68) As regards customer foreclosure, the Parties would have no ability or incentive to foreclose. Indeed, the limited activities of the JV in Italy and Germany would not be enough to satisfy the content demand of Sky Deutschland and Sky Italia. Moreover, a large majority of the respondents to the market investigation do not consider that, post-transaction, Sky Italia or Sky Deutschland will have an interest to stop sourcing individual audio-visual TV content from other producers/licensors and exclusively rely on the content provided by the JV. The same majority respondents explained their answer with the need for TV broadcasters/retailers to offer a wide variety of content and with the capacity constraints of the joint venture.[34]

(69) In light of the above, the Commission considers that the proposed transaction does not give rise to serious doubts as to its compatibility with the internal market as regards the vertical relationship between the JV's activities in production and

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32 Twenty-First Century Fox owns a minority share of 39.14% of BSkyB's shares (with voting rights capped at 37.19%). It does not have de jure or de facto control over BSkyB. See also Commission decision of 21 December 2010 in case M.5932 *News Corp/BSkyB*.

33 Commission questionnaire Q1 – Questionnaire to TV production companies, questions 61 and 63. Commission questionnaire Q2 – Questionnaire to TV broadcasters, questions 53 and 55.

34 Commission questionnaire Q1 – Questionnaire to TV production companies, questions 60 and 62. Commission questionnaire Q2 – Questionnaire to TV broadcasters, questions 52 and 54.

licensing of TV content and 21st Century Fox's activities in the retail supply of TV services to end customers in Italy and Germany.

## 7. CONCLUSION

(70) 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*