EUROPEAN COMMISSION
DG Competition

Case M.9669 - PPF GROUP / CENTRAL EUROPEAN MEDIA ENTERPRISES

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 06/10/2020

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EUROPEAN COMMISSION

Brussels, 06.10.2020
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PUBLIC VERSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

To the notifying party

Subject: **Case M.9669 – PPF GROUP / CENTRAL EUROPEAN MEDIA ENTERPRISES**
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004[1] and Article 57 of the Agreement on the European Economic Area[2]

Dear Sir or Madam,

(1) On 1 September 2020**,** the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which PPF Group N.V. ("PPF" or the "Notifying Party", Netherlands) proposes to acquire within the meaning of Article 3(1)(b) of the Merger Regulation sole control of the whole of Central European Media Enterprises Ltd. ("CME", Bermuda) (the "Transaction").[3]. PPF and CME are collectively referred to as the "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.

2 OJ L 1, 3.1.1994, p. 3 (the "EEA Agreement").

3 Publication in the Official Journal of the European Union No C 299, 09.09.2020, p. 11.

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1. THE PARTIES

(2) **PPF** is a multinational finance and investment group focusing on financial services, consumer finance, telecommunications, biotechnology, retail services, real estate and agriculture. Through its subsidiaries (namely, O2 CR and CETIN in Czechia, O2 SK in Slovakia and Telenor in Bulgaria), PPF is active in the audio-visual and telecommunications sectors. Its activities include: (i) the acquisition of broadcasting rights to sport events in Czechia and Slovakia; (ii) the wholesale supply of TV channels in Slovakia; (iii) the retail supply of audio-visual services through IPTV and a video on demand ("VOD") platform in Czechia and Slovakia; (iv) the sale of TV advertising space in Czechia; (v) the provision of retail fixed internet access services in Czechia and Slovakia; as well as (vi) the provision of retail telecommunications services in Czechia, Slovakia and Bulgaria. PPF is ultimately owned and controlled by Mr. Petr Kellner.

(3) CME is a media and entertainment company active in TV broadcasting and other media sectors, primarily in Bulgaria, Czechia, Slovakia, Romania and Slovenia. In particular, in Czechia, Slovakia and Bulgaria CME is present respectively through TV Nova, Markiza and bTV in various audio-visual markets. CME's activities include (i) the acquisition of broadcasting rights to pre-produced audio-visual content; (ii) the wholesale supply of free-to-air ("FTA") and pay TV channels; and (iii) the sale of TV advertising space. CME also is marginally active in the supply of retail audio-visual services via a VOD platform. CME is ultimately controlled by AT&T, Inc., which holds an approximately 75% aggregate beneficial ownership interest in CME through its wholly owned subsidiaries Warner Media, LLC, and Time Warner Media Holdings B.V.

2. THE CONCENTRATION

(4) On 27 October 2019, CME and two of PPF's affiliates, TV Bidco B.V. and TV Bermuda Ltd, entered into the Agreement and Plan of the Merger (the "Agreement"). Pursuant to the Agreement, TV Bermuda Ltd. will merge with and into CME, with CME continuing as the surviving company in the merger as a wholly-owned subsidiary of TV Bidco B.V.

(5) As a result of the Transaction, PPF will therefore acquire indirect sole control of CME and its subsidiaries within the sense of Article 3(1)(b) of the Merger Regulation.

3. EU DIMENSION

(6) The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 000 million (PPF: EUR […]; CME: EUR […]). Each of them has an EU-wide turnover in excess of EUR […] (PPF: EUR […]; CME: EUR […]), 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 pursuant to Article 1(2) of the Merger Regulation.

4. RELEVANT MARKETS

4.1. Introduction

(7) As a preliminary remark, the Commission notes that while CME is active in Czechia, Slovakia, Bulgaria, Romania and Slovenia, PPF is not active in any relevant market in Romania and Slovenia. Therefore, the Transaction does not lead to any horizontal or vertical overlaps in these two Member States and they will not be further discussed in this decision.

4.2. The audio-visual value-chain

(8) Audio-visual ("AV") content comprises all products (films, sports, series, shows, live events, documentaries, etc.) that are broadcast via any media. In previous decisions, the Commission has identified different activities in the AV value chain, namely: (i) the production of AV content; (ii) the licensing of broadcasting rights for AV content; (iii) the wholesale supply of TV channels; and (iii) the retail provision of AV services to end customers. In addition, the Transaction relates to: (iv) the sale of TV advertising space; (v) the retail supply of mobile telecommunications services; and (vi) the retail supply of fixed internet access services.

(9) The following sections further describe these levels of the AV value-chain as well as provide an overview of the Parties' activities at each level in Czechia, Slovakia and Bulgaria.

4.3. Market for the licensing of broadcasting rights for pre-produced audio-visual content

4.3.1. Introduction

(10) The upstream level of the value chain concerns the production of new AV content. The parties are not active in this market.

(11) The rights to AV "entertainment products" generally then belong to the creators of the content. These rights-holders license them to (i) TV channel suppliers (TV broadcasters), which then incorporate the AV content into linear TV channels, or (ii) content platform operators, which then retail the AV content to end users on a non-linear basis (that is to say, Pay-Per-View ("PPV") or VOD), including non-traditional platforms, that is to say internet or so-called Over The Top ("OTT") platforms.

(12) TV broadcasters and TV distributors who source content for their TV channels or retail TV services generally have a choice between a number of sourcing models, which can be broadly categorised as follows:

a. Obtaining TV content produced on an "*ad hoc*" basis (that is to say tailor-made), by:

i. Commissioning TV content from a TV production company (which owns the relevant TV format);

ii. Hiring a TV 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 (captive TV production); or

b. Acquiring broadcasting rights from TV production companies for pre-produced TV content (pre-produced TV content, sometimes referred to as off-the-shelf or tape sales).

(13) As regards pre-produced TV content, this upstream level of the value chain concerns the licensing of broadcasting rights relating to pre-existing TV content – that is to say 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) – and broadcasting rights relating to sports events.

(14) The broadcasting rights relating to TV content can belong to one or more of the following: (i) the holder of the rights to the TV format; (ii) the production company that produced the TV content; and (iii) 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, with a right to sub-license.

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

a. In Czechia, PPF, through its subsidiary O2 CR, creates content for its own O2 TV channels.

In Slovakia, O2 CR produces a customized channel for a single customer, Orange a. s. ("Orange"). This channel is produced and distributed under the Orange brand and is built using broadcasting rights for the UEFA Champions League for Slovakia which are owned by O2 CR. O2 CR [information about O2 CR's production activities].

b. CME creates content and licenses the related rights for its own TV channels.

In Czechia, CME neither sells nor licenses its content to third parties; it only provides certain input services to third parties, primarily comprising dubbing and subtitling services.

In Slovakia, CME licenses TV content to third parties to a very limited extent.[4]

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

a. In Czechia, PPF, through O2 CR, purchases broadcasting rights to audio-visual sports related content for its TV channels O2 TV Sport, O2 TV Tenis and O2 TV Fotbal. PPF acquires TV rights to sporting events, such as

[4] The revenues of CME stemming from the licensing of TV content to third parties amounted to approximately EUR [sales data] in 2019.

football, ice hockey, or basketball. The most important sporting events to which PPF acquired broadcasting rights in Czechia are: (i) UEFA Champions League matches for broadcast, (ii) Czech Fortuna Liga (football), (iii) Czech Extraliga (ice hockey), and (iv) WTA.

In Slovakia, O2 CR holds the broadcasting rights for UEFA Champions League matches and for the Czech football and ice hockey leagues.

b. In Czechia, CME acquires various types of content rights, including sports, foreign movies, domestic movies, series, and other rights. In relation to sporting rights, CME focuses on licensing rights to: (i) the U.S. branded sports, such as NHL (ice hockey), NBA (basketball) or UFC (martial arts), (ii) mainstream European sports, (iii) motorbike MOTO GP, and (iv) emerging sports, such as darts or rugby.

In Slovakia, CME acquires various types of content rights, including sports, foreign movies, domestic movies, series, and other rights. In relation to sporting rights, CME focuses on licensing rights to: (i) the U.S. branded sports, such as NHL (ice hockey), NBA (basketball) or UFC (martial arts), (ii) mainstream European sports, (iii) motorbike MOTO GP, and (iv) emerging sports, such as darts or rugby.

4.3.2. Product market definition

4.3.2.1. Commission precedents

(17) With regard to the market for the supply of broadcasting rights, in previous decisions, the Commission has observed that content production companies produce TV content either (i) for internal use through incorporation into their own TV channels or 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).[5] However, the Commission has previously found the product market for the production of TV content to be limited to non-captive TV production, thereby excluding captive TV production, as this TV content is not offered on the market.[6]

(18) With regard to the market for the in-licencing of TV broadcasting rights, the Commission has considered that it may be further subdivided by nature and content type, in particular: (i) premium films; (ii) football events that take place regularly

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5 Commission decision of 9 October 2014 in case M.7360 - *21st Century Fox/Apollo/JV*, paragraph 12; Commission decision of 15 June 2018 in case M.8861 – *Comcast/Sky*, paragraph 11.

6 Commission decision of 24 February 2015 in case M.7194 - *Liberty Global/Corelio/W&W/De Vijver Media*, recital 51; Commission decision of 3 August 1999 in case M.1574 - *Kirch/Mediaset*, paragraph 14; Commission decision of 11 July 2000 in case M.1943 - *Telefónica/Endemol*, paragraph 8; Commission decision of 29 June 2000 in case M.1958 - *Bertelsmann/GBL/Pearson TV*, paragraphs 11–12; Commission decision of 22 September 2006 in case M.4353 - *Permira/All3Media Group*, paragraphs 11–12; Commission decision of 9 October 2014 in case M.7360 - *21st Century Fox/Apollo/JV*, paragraph 36.

(every year); (iii) football events that are played more intermittently;[7] and (iv) other sports.[8]

(19) The Commission has also considered sub-dividing the market for the licensing of broadcasting rights for TV content into: (i) pay TV / FTA audio visual content; (ii) TV content for linear (TV channels) / non-linear broadcast (VOD), or into the more narrowly defined segment of iii) VOD / PPV / first pay TV window / second pay TV window / FTA TV.[9]

4.3.2.2. Notifying Party's view

(20) The Notifying Party submits that the relevant market is the market for the licensing of TV broadcasting rights for (linear) TV channels, with potential further segmentation based on content into the licensing of TV broadcasting rights to (i) football events, and (ii) other sports. The Notifying Party considers that it is irrelevant to consider other market segmentations due to the lack of overlap of Parties activities in these segments and given the substitutability of various rights from the perspective of TV broadcasters.[10]

4.3.2.3. Commission's assessment

(21) The results of the market investigation indicate that most content providers and broadcasters consider that the segmentations adopted in prior Commission decisions (by content type and exhibition window as indicated above) remain relevant.[11]

(22) In any event, for the purpose of this decision, the exact product market definition for the licensing of broadcasting rights can be left open, as the Transaction does not raise serious doubts as to its compatibility with the internal market regardless of whether the market is segmented on the basis of content type or exhibition window as set out above.

4.3.3. Geographic market definition

4.3.3.1. Commission precedents

(23) The Commission has previously considered the market for the licensing of TV broadcasting rights to be either national or regional, based on linguistically homogeneous areas.[12]

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7 Neither PPF nor CME acquire rights for football events played intermittently, therefore this segment will not be further discussed in this decision.

8 Commission decision of 18 July 2019 in case M.8864 - *Vodafone/Certain Liberty Global assets*, recital 322; Commission decision of 30 May 2018 in case M.7000 - *Liberty Global/Ziggo*, paragraph 42; Commission decision of 15 April 2013 in case M.6880 - *Liberty Global/Virgin Media*, paragraph 18.

9 See for instance, Commission decision of 21 December 2011 in case M.6369 - *HBO/Ziggo/HBO Netherland*, paragraph 18.

10 Form CO, paragraph 90.

11 Replies to Questionnaire Q1 to rightsholders, question 4; Replies to Questionnaire Q2 to broadcasters, questions 5 and 5.1.

12 Commission decision of 2 April 2003 in case M.2876 - *Newscorp/Telepiu*, recital 62; Commission decision of 15 April 2013 in case M.6880 - *Liberty Global/Virgin Media*, paragraph 23.

4.3.3.2. Notifying Party's view

(24) The Notifying Party submits that the relevant market should be defined as national in scope because, despite the proximity of the territories of Czechia and Slovakia, tender procedures and languages differ in these countries. The Notifying Party submits that in any event the substantive analysis would not be materially different if the markets were combined into a region encompassing both Czechia and Slovakia.[13]

4.3.3.3. Commission's assessment

(25) The results of the market investigation show that the majority of the respondents license their content on a national basis. For specific content, the licenses sometimes cover smaller or larger areas.[14] Accordingly, most of the respondents among TV broadcasters purchase content nationally or for certain linguistic regions. Broadcasters sometimes also purchase content on an EEA basis.[15] The type of rights that this decision addresses, namely sports rights, are usually tendered and acquired at national level.

(26) Therefore, the Commission considers that, for the purpose of this decision, the geographic market definition for the licensing of broadcasting rights is national in scope.

4.4. Market for the wholesale supply of TV channels

4.4.1. Introduction

(27) TV broadcasters package the AV content that they have acquired or produced in-house into linear TV channels. The demand side of this market comprises TV retailers, which aggregate TV channels and provide them to end users via various distribution infrastructures either on a FTA basis or on a pay TV basis.

(28) At a very general level, FTA channels are TV channels that are available to viewers free of charge. Pay TV channels are channels for which the viewer must pay a subscription fee. Traditionally, FTA channels finance their operations via advertising revenues (with the exception of the publicly-owned TV channels in a number of Member States which are subject to advertising limitations), while pay TV channels generate revenues through subscription fees.

(29) The Commission notes that TV broadcasters are increasingly complementing their traditional linear TV channel offering with non-linear services such as VOD services.

(30) Some TV broadcasters are vertically integrated as they are also active as retail TV operators (TV distributors) in the market for the retail provision of TV services to end users. Other TV broadcasters are not vertically integrated and rely on third party TV distributors to distribute their TV channels at the retail level.

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

13 Form CO, paragraphs 93 - 96.

14 Replies to Questionnaire Q1 to rightsholders, questions 5 and 5.1.

15 Replies to Questionnaire Q2 to broadcasters, questions 7 and 7.1.

a. PPF is not active on the market for the wholesale supply of TV channels in Czechia and Bulgaria. O2 CR incorporates content licensed from third parties as well as its own content into its own O2 TV Sport channels, which it then offers to viewers on its own IPTV platform (O2 TV) in Czechia. O2 CR does not offer these channels to other distributors on the wholesale market.

In Slovakia, O2 CR supplies a customized channel to Orange since 2018.[16]

b. CME supplies TV channels on a wholesale basis to cable, satellite, IPTV and other platform distributors in Czechia, Slovakia and Bulgaria through the following subsidiaries:

i. TV Nova s.r.o. in Czechia under the brand name "TV Nova";

ii. MARKÍZA-SLOVAKIA spol. s.r.o. in Slovakia under the brand name "Markíza";

iii. bTV Media Group EAD in Bulgaria under the brand name "bTV".

In Czechia, CME offers the following channels: nova, nova 2, nova Gold, nova Cinema, nova Action, nova Sport 1, nova Sport 2 and Nova International.

In Slovakia, CME offers the following channels: Markíza, TV Doma, Dajto, nova Sport 1, nova Sport 2 and nova International.

In Bulgaria, CME offers the following channels: bTV, bTV Comedy, bTV Cinema, bTV Action, bTV Lady and Ring.

(32) As regards the demand side of the market:

a. PPF acquires TV channels for its IPTV platform in Czechia and Slovakia.

b. CME is not active on the demand-side of the market.

4.4.2. Product market definition

4.4.2.1. Commission precedents

(33) In previous decisions, the Commission has identified a wholesale market for the supply of TV channels. Within that market, the Commission has identified two separate product markets for: (i) FTA TV channels; and (ii) pay TV channels, pointing to the differences between the financial models of these channels.[17] The

[16] However, the Commission considers that PPF is not active on the market for the wholesale supply of TV channels in Slovakia, for the following reasons. PPF did not supply the channel in the relevant market. It produces a customized channel content for Orange, called Orange Sport, by utilizing its own licensing rights for the UEFA Champions League for Slovakia. Such channel content is supplemented by Slovak football leagues matches, the content rights to which are held by Orange, and certain other events as fillers. The Notifying Party submitted […].

[17] Commission decision of 24 February 2015 in case M.7194 - *Liberty Global/Corelio/W&W/De Vijver Media*, recital 91; Commission decision of 15 April 2013 in case M.6880 - *Liberty Global/Virgin Media*, paragraph 37.

Commission has further concluded that within the pay TV channel market, there are separate markets for: (i) premium pay TV channels; and (ii) basic pay TV channels.[18] The Commission has considered FTA channels to be in the market for basic pay TV channels.[19]

(34) The question whether this market could be sub-divided by channel genre[20], in particular: (i) film; (ii) sport; (iii) news; (iv) youth; and by infrastructure used for transmission[21]: (i) cable; (ii) satellite; (iii) DTT; (iv) IPTV has been left open in previous decisions. The Commission has considered that individual premium sports channels do not form a separate market even if they show sports content that is particularly interesting to the same group of viewers.[22]

4.4.2.2. Notifying Party's view

(35) The Notifying Party submits that the Transaction should be assessed on the basis of the market for the wholesale supply of TV channels. In particular, it considers that it is not relevant to sub-divide the market by channel genre or by infrastructure used for transmission.[23]

4.4.2.3. Commission's assessment

(36) The market investigation did not provide a clear indication of the relevance of the distinctions drawn between FTA and pay TV channels as well as between basic and premium pay TV. Although a number of broadcasters and distributors agreed with these distinctions, several respondents found the difference to be negligible because both channels types compete for the same content. Additionally, respondents found that these channels compete for the same audiences as all pay TV subscribers can access FTA channels. Respondents additionally pointed to the fact that the penetration of premium pay TV services is rather limited in Czechia.[24]

(37) With regard to the distinction between basic pay TV channels and FTA channels, respondents to the market investigation pointed out that in Czechia and in Slovakia basic pay TV mainly shows content that is also available through FTA TV and thus only differs in the infrastructure used for transmission.[25]

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18 Commission decision of 12 November 2019 in case M.9064 - *Telia Company/Bonnier Broadcasting Holding*, recita 157.

19 Commission decision of 24 February 2015 in case M.7194 - *Liberty Global/Corelio/W&W/De Vijver Media*, recital 101.

20 Commission decision of 14 June 2013 in case M.6866 - *Time Warner/CME*, paragraph 46.

21 Commission decision of 18 July 2019 in case M.8864 - *Vodafone/Certain Liberty Global assets*, recital 272.

22 Commission decision of 3 August 2016 in case M.7978 - *Vodafone/Liberty Global/Dutch JV*, paragraph 176; confirmed by General Court judgment of 23 May 2019 in case T-370/17 - *KPN v Commission*, EU:T:2019:354, paragraphs 65 - 90.

23 Form CO, paragraphs 201 and 202.

24 Replies to Questionnaire Q2 to broadcasters, questions 6 and 6.1. Replies to Questionnaire Q3 to distributors, questions 6 and 6.1.

25 Replies to Questionnaire Q3 to distributors, questions 6 and 6.1.

(38) The majority of distributors are of the view that thematic channels are only substitutable with other channels that broadcast the same specific content.[26]

(39) In any event, for the purpose of this decision, the exact product market definition for the wholesale supply of TV channels can be left open, as the Transaction does not raise serious doubts as to its compatibility with the internal market regardless of whether the market is segmented on the basis of channel genre or between FTA TV channels and premium/basic pay TV channels.

4.4.3. Geographic market definition

4.4.3.1. Commission precedents

(40) The Commission has previously considered the market for the wholesale supply of TV channels to be either national or regional, based on linguistically homogeneous areas.[27]

4.4.3.2. The Notifying Party's view

(41) The Notifying Party submits that the relevant geographic market should be defined as national in scope.[28]

4.4.3.3. Commission's assessment

(42) In the present case, the market investigation indicated that the agreements for the wholesale supply of TV channels are, as a general rule, negotiated on a national basis, although they are also sometimes negotiated on a linguistic basis. Exceptionally, agreements are also entered into on a sub-national or EEA basis.[29] This is mainly explained by the fact that TV retailers mostly have a national footprint, and that negotiations take place, and prices are set on a national basis.

(43) In light of the above, the Commission considers that the market for the wholesale supply of TV channels is national.

4.5. Market for the retail supply of audio-visual services

4.5.1. Introduction

(44) In the market for the retail supply of TV services, TV distributors provide end users with TV services, which typically consist of: (i) linear TV channels; and (ii) content aggregated in non-linear services, such as Subscription Video on Demand ("SVOD"), Transactional VOD ("TVOD") and Advertising VOD ("AVOD").

(45) AV distributors either limit themselves to carrying TV channels and making them available to end users, or also act as content aggregators, which 'package' AV channels. The AV services supplied by AV distributors to end users consist of: (i)

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26 Replies to Questionnaire Q3 to distributors, questions 7 and 7.1.

27 Commission decision of 14 June 2013 in case M.6866 - *Time Warner/CME*, paragraph 54.

28 Form CO, paragraph 206.

29 Replies to Questionnaire Q2 to broadcasters, questions 8 and 8.1; Replies to Questionnaire Q3 to distributors, questions 14 and 14.1.

packages of linear TV channels (which they have either acquired or produced themselves); and (ii) content aggregated in non-linear services, such as VOD, SVOD, TVOD and PPV. AV content 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 internet.

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

a. In Czechia, PPF (through its subsidiary O2 CR) operates an IPTV platform (O2 TV). Additionally, it operates a VOD platform as a supplementary service.

In Slovakia, PPF is marginally active on the AV retail market, via the mobile operator O2 SK's digital television offers (O2 TV) over mobile and IPTV platforms.

In Bulgaria, PPF is active through its subsidiary Telenor Bulgaria, which distributes AT&T's "HBO GO" VOD service as an add-on to or part of its mobile tariffs.

b. CME operates a VOD platform, Voyo, in Czechia, Slovakia and Bulgaria and offers an AVOD service on its website.

4.5.2. Product market definition

4.5.2.1. Commission precedents

(47) In previous decisions, the Commission considered the retail provision of FTA TV and pay TV services as separate markets.[30] The Commission also considered whether retail pay TV could be segmented further according to: (i) linear vs non-linear pay TV services[31]; or (ii) premium vs basic pay TV services[32]. With regard to the type of distribution technology, the Commission tends to include different technologies within the same product market, but has ultimately left open the precise market definition.[33]

4.5.2.2. Notifying Party's view

(48) The Notifying Party submits that the Transaction should be assessed on the basis of the market for the retail supply of pay TV services. In particular, the Notifying Party

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30 Commission decision of 21 December 2011 in case M.6369 - *HBO/Ziggo/HBO Netherland*, paragraph 28; Commission decision of 21 December 2010 in case M.5932 - *News Corp/BskyB*, paragraph 99.

31 Commission decision of 24 February 2015 in case M.7194 - *Liberty Global/Corelio/W&W/De Vijver Media*, recital 124; Commission decision of 25 June 2008 in case M.5121 – *News Corp/Premiere*, paragraph 21; Commission decision of 10 October 2014 in case M.7000 - *Liberty Global/Ziggo*, recitals 109 and 110.

32 See for instance, Commission decision of 24 February 2015 in case M.7194 - *Liberty Global/Corelio/W&W/De Vijver Media*, recitals 109-115; Commission decision of 30 May 2018 in case M.7000 - *Liberty Global/Ziggo*, paragraphs 127-137; Commission decision of 15 June 2018 in case M.8861 - *Comcast/Sky*, paragraph 55.

33 Commission decision of 24 February 2015 in case M.7194 - *Liberty Global/Corelio/W&W/De Vijver Media*, recital 126; Commission decision of 25 June 2008 in case M.5121 – *News Corp/Premiere*, paragraph 22; Commission decision of 10 October 2014 in case M.7000 - *Liberty Global/Ziggo*, recitals 113 and 114.

considers that it is irrelevant to consider other market segmentations due to the lack of overlap in these segments and substitutability of the services from the perspective of TV customers.[34]

4.5.2.3. Commission's assessment

(49) The results of the market investigation indicated that all distributors provide both linear and non-linear services.[35] However, respondents indicated that broadcasting rights for linear and non-linear services may be acquired separately or together depending on each individual broadcaster.[36] A majority of distributors did not consider VOD services offered by OTT providers substitutable to pay TV services.[37]

(50) In any event, for the purpose of this decision, the exact product market definition for the retail supply of TV services can be left open, as the Transaction does not raise serious doubts as to its compatibility with the internal market regardless of whether the market is further segmented or not.

4.5.3. Geographic market definition

4.5.3.1. Commission precedents

(51) In its previous decisions, the Commission considered the market for the retail supply of TV services to be national in scope, since suppliers compete on a nationwide basis for the business of end customers, or corresponding to the relevant language area.[38] The Commission found that the market can be limited to the geographic coverage of a supplier's infrastructure.[39]

4.5.3.2. Notifying Party's view

(52) The Notifying Party submits that the relevant geographic market should be defined as national in scope.[40]

4.5.3.3. Commission's assessment

(53) Nothing in the market investigation contradicts the Commission's previous findings that the market is either national, or corresponds to the relevant language area as the distributors offer their services mainly on a national basis.[41] The countries in which the parties are active in retail TV services, namely Czechia, Slovakia, and Bulgaria, also constitute linguistic regions.

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[34] Form CO, paragraph 364.

[35] Replies to Questionnaire Q3 to distributors, question 9.

[36] Replies to Questionnaire Q3 to distributors, questions 10 and 10.1.

[37] Replies to Questionnaire Q3 to distributors, questions 11.

[38] Commission decision of 15 April 2013 in case M.6880 - *Liberty Global/Virgin Media*, paragraph 54; Commission decision of 21 December 2013 in case M.6369 -*HBO/Ziggo/HBO Nederland*, paragraph 40 et. seq.; Commission decision of 21 December 2010 in case M.5932 - *News Corp/BskyB*, paragraph 110; Commission decision of 25 January 2010 in case M. 5734 - *Liberty Global Europe/Unitymedia*, paragraphs 40 and 43.

[39] Commission decision of 15 June 2018 in case M.8861 - *Comcast/Sky*, paragraph 60; Commission decision of 24 February 2015 in case M.7194 – *Liberty Global/Corelio/ W&W/De Vijver Media*, recital 108.

[40] Form CO, paragraph 366.

[41] Replies to Questionnaire Q3 to distributors, question 14.

(54) The Commission considers, for the purposes of this decision, that the relevant geographic market for the retail provision of TV services is national in scope.

4.6. Market for the sale of TV advertising space

4.6.1. Introduction

(55) 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.

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

a. PPF, through its subsidiary O2 CR, sells advertising inventory on its channels in Czechia to a minimal extent as the pay TV channels are financed predominantly from subscription fees.

It is active on the market in Czechia but not in Slovakia and Bulgaria.

b. CME sells advertising inventory on its TV channels in Czechia.

In Slovakia and Bulgaria, CME sells advertising inventory on its TV channels and its AVOD service.

(57) As regards the demand-side of the market, PPF is active as it purchases TV advertising inventory in its function as a retailer of AV, mobile telecommunication and fixed internet access services, but also through other subsidiaries which are not active in the AV or telecommunications sectors.

4.6.2. Product market definition

4.6.2.1. Commission precedents

(58) In its previous decisions, the Commission has distinguished between offline and online advertising and classified these two advertising methods as belonging to separate markets.[42] The Commission has considered in that respect, that TV advertising, as part of the offline advertising market, constitutes a distinct product market, separate from advertising in other forms of media.[43] The Commission has left open the questions, whether in light of the increasing digitization of all media platforms, there is a wider market for sale of advertising space in video format across

42 Commission decision of 11 March 2008 in case M.4731 - *Google/DoubleClick*, recital 45.

43 See, for instance, Commission decision of 24 February 2015 in case M.7194 – *Liberty Global/Corelio/ W&W/De Vijver Media*, recital 140; or Commission decision of 14 June 2013 in case M.6866 - *Time Warner/CME*, paragraphs 62, 64 and 68; Commission decision of 6 February 2018 in case M.8665 – *Discovery/Scripps*, paragraphs 38 - 44; or Commission decision of 15 June 2018 in case M.8861 - *Comcast/Sky*, paragraphs 64 - 75.

platforms and whether advertising on pay TV and FTA TV are part of the same market.[44]

4.6.2.2. Notifying Party's view

(59) The Notifying Party agrees with the Commission precedent definition and submits that the relevant product market should be defined as the market for the sale of TV advertising space.[45]

4.6.2.3. Commission's assessment

(60) The respondents to the market investigation largely confirm that the market for the supply of advertising space should be segmented by type of media, noting the particular importance of TV advertising due to its wide reach and the frequency of advertising. Nevertheless, several purchasers of advertising space observed that the lines between online and offline advertising is becoming increasingly blurred due to the digitization of all media platforms.[46]

(61) The majority of the purchasers of advertising space did not consider procuring advertising space on pay TV channels as an alternative to procuring advertising space on FTA channels but they rather view pay TV and FTA channels as complementary. This is because of the much larger audience share of FTA channels and because the financing model of pay TV channels does not allow them to advertise as frequently as on FTA channels.[47]

(62) Therefore, the Commission considers, 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. For the purpose of this decision, the market for the sale of TV advertising space does not need to be further segmented on the basis of the financing model (FTA or pay TV) because acquirers of advertising space do not view these two different models separately.

4.6.3. Geographic market definition

4.6.3.1. Commission precedents

(63) In its previous decisions, the Commission considered the market for sale of TV advertising space to be national[48] in scope or regional, based on linguistically homogeneous areas encompassing several Member States.[49]

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44 Commission decision of 12 November 2019 in case M.9064 - *Telia/Bonnier Broadcasting*, recital 276; Commission decision of 15 June 2018 in case M.8861 - *Comcast/Sky*, paragraphs 65 and 70.

45 Form CO, paragraph 431.

46 Replies to Questionnaire Q4 to purchasers of TV advertising space, questions 4, 4.1, 5 and 5.1.

47 Replies to Questionnaire Q3 to distributors, questions 17 and 17.1; Questionnaire Q4 to purchasers of TV advertising space, questions 6 and 6.1.

48 Commission decision of 21 December 2011 in case M.6369 - *HBO/Ziggo/HBO Nederland*, paragraph 39; Commission decision of 15 April 2013 in case M.6880 - *Liberty Global/Virgin Media*, paragraph 41; Commission decision of 10 October 2014 in case M.7000 - *Liberty Global/Ziggo*, recital 98.

49 Commission decision of 21 December 2010 in case M.5932 - *News Corp/BskyB*, paragraphs 86–88; Commission decision of 15 April 2013 in case M.6880 - *Liberty Global/Virgin Media*, paragraph 41.

4.6.3.2. Notifying Party's view

(64) The Notifying Party submits that, in accordance with the Commission practice, the relevant geographic market should be defined as national in scope.[50]

4.6.3.3. Commission's assessment

(65) Nothing in the market investigation contradicts the Commission's previous findings that the market is either national, or corresponds to the relevant language area as the purchasers of TV advertising space overwhelmingly procure this advertising inventory on a national basis.[51] The countries in which the parties are active in the sale of TV advertising space, namely Czechia, Slovakia, and Bulgaria, also constitute linguistic regions.

(66) Therefore, for the purposes of this decision, the Commission considers the geographic market definition for the retail provision of TV services is national in scope.

4.7. Market for the retail supply of mobile telecommunications services[52]

4.7.1. Introduction

(67) Mobile telecommunications services for end customers 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.

(68) These services are provided on 2G/GSM, 3G/UMTS and 4G/LTE networks, with the 2G network historically having better coverage and the 3G network being better adapted for larger amounts of data and faster download speeds. 4G/LTE is a mobile technology that increases the speed and capacity of the network and is adapted for improved voice quality and high-speed data transmission from wireless devices, for example, to stream video, Internet TV and to use broadband Internet.

(69) PPF is active on the market for retail mobile telecommunication services in Czechia and in Slovakia, through its portfolio company O2 CR (which wholly owns its subsidiary O2 SK through which O2 CR is active on the market for retail mobile telecommunication services in Slovakia). In Bulgaria, PPF is active on the market through its subsidiary Telenor Bulgaria, which holds a telecommunication license for this territory.

(70) CME is not active on this market.

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50 Form CO, paragraph 433.

51 Replies to Questionnaire Q4 to purchasers of TV advertising space, question 7.

52 In addition to the markets defined below, PPF's subsidiaries are also active in the following telecommunications markets: (i) the market for the retail supply of multiple play services; (ii) the market for fixed line telecommunications services; (iii) the market for business connectivity; and (iv) the market for IT services. However, these markets are not affected by the Transaction.

4.7.2. Product market definition

4.7.2.1. Commission precedents

(71) In previous decisions, the Commission has identified an overall retail market for the mobile telecommunications services constituting a separate market from retail fixed telecommunication services. The Commission examined potential segmentations of the overall retail market for mobile telecommunication services between pre-paid or post-paid services and private customers or business customers as well as based on the type of service or type of network technology, concluding that these did not constitute separate product markets, but rather represent market segments within an overall retail market.[53]

4.7.2.2. Notifying Party's view

(72) The Notifying Party agrees with this market definition and submits that the relevant product market should be defined as the overall retail market for mobile telecommunication services without further segmentation.[54]

4.7.2.3. Commission's assessment

(73) The market investigation in this case has not provided any indication that the Commission should depart from its previous findings. For the purposes of this decision, the Commission will not examine the possible segmentation of the overall market for the retail supply of mobile telecommunication services in relation to the provision of advertising space because the competitive assessment would remain unchanged under all possible segmentations mentioned below in paragraph (74).

(74) Therefore, for the purpose of this decision, the Commission considers that the exact product market definition for the retail supply of mobile telecommunications services can be left open, as the Transaction does not raise serious doubts as to its compatibility with the internal market irrespective of a further segmentation between pre-paid or post-paid services and private customers or business customers as well as based on the type of service or type of network technology .

4.7.3. Geographic market definition

4.7.3.1. Commission precedents

(75) The Commission has previously considered that the market for the retail provision of mobile telecommunication services is national in scope, due to the existing regulatory barriers and the complete national coverage of the operators.[55]

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[53] For instance, Commission decision of 30 May 2017 in case M.8465 – *Vivendi/Telecom Italia*, paragraph 31; Commission decision of 1 September 2016 in case M.7758 - *Hutchison 3G Italy/Wind/JV*, recital 162; Commission decision of 3 August 2016 in case M.7978 - *Vodafone/Liberty Global/Dutch JV*, paragraph 71; Commission decision of 11 May 2016 in case M.7612 - *Hutchison 3G UK/Telefónica UK*, recital 287; Commission decision of 24 October 2014 in case M.7307 – *Electricity Supply Board/Vodafone Ireland/JV*, paragraphs 27 – 30; Commission decision of 2 July 2014 in case M.7018 - *Telefónica Deutschland/E-Plus*, recital 30; Commission decision of 10 October 2014 in case M.7000 - *Liberty Global/Ziggo*, recital 141; Commission decision of 28 May 2014 in case M.6992 - *Hutchison 3G UK/ Telefónica Ireland*, recital 141; Commission decision of 12 December 2012 in case M.6497 - *Hutchison 3G Austria/Orange Austria*, recital 58.

[54] Form CO, paragraph 507.

4.7.3.2. Notifying Party's view

(76) The Notifying Party agrees with this market definition.[56]

4.7.3.3. Commission's assessment

(77) The market investigation in this case has not provided any indication that the Commission should depart from its previous findings.

(78) Therefore, for the purpose of this decision, the Commission considers that the geographic market for the retail supply of mobile telecommunications services is national in scope.

4.8. Market for the retail supply of fixed internet access services

4.8.1. Introduction

(79) In the market for retail fixed internet access services, customers are provided with access to the internet through a fixed telecommunication connection. These services are provided over a fixed network such as cable, copper or fibre infrastructure.

(80) PPF is active on the market for fixed internet access services in Czechia and in Slovakia, through its portfolio company O2 CR in Czechia (with its subsidiary O2 SK active in Slovakia).

(81) CME is not active on this market.

4.8.2. Product market definition

4.8.2.1. Commission precedents

(82) With regard to the market for the retail supply of fixed internet access services, the Commission has considered a number of potential market segmentation, in particular; segmentation by (i) product type, distinguishing between narrowband, broadband and dedicated access; and (ii) distribution mode, distinguishing between xDSL, fiber, cable, and mobile broadband, but ultimately left the market definition open.[57]

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[55] For instance, Commission decision of 16 September 2003 in case M.3245 –*Vodafone/Singlepoint*, paragraphs 16 et seq.; Commission decision of 20 August 2007 in case M.4748 - *T-Mobile/Orange Netherlands*, paragraph 16; Commission decision of 1 March 2010 in case M.5650 *T-Mobile/Orange*, paragraph 26; Commission Decision of 20 September 2013 in case M.6990 - *Vodafone/Kabel Deutschland*, paragraph 218; Commission decision of 10 October 2014 in case M.7000 - *Liberty Global/Ziggo*, recital142 et seq.; Commission decision of 28 May 2014 in case M.6992 -*Hutchison 3G UK/Telefonica Ireland*, recital 141; Commission decision of 15 April 2014 in case M.7109 - *Deutsche Telekom/GTS*, paragraph 43; Commission decision of 1 September 2016 in case M.7758 - *Hutchison 3G Italy/Wind/JV*, recital 166; Commission decision of 3 August 2016 in case M. 7978 *Vodafone/Liberty Global/Dutch JV*, paragraph 76; Commission decision of 11 May 2016 in case M.7612 - *Hutchison 3G UK/Telefónica UK*, recital 289 et seq.

[56] Form CO, paragraph 509.

[57] See Commission decision of 29 June 2010 in case M.5532 - *Carphone Warehouse/Tiscali UK*, paragraphs 7-21; Commission decision of 20 September 2013 in case M.6990 - *Vodafone/Kabel Deutschland*, paragraphs 192-194; Commission decision of 3 August 2016 in case M.7978 - *Vodafone/Liberty Global/Dutch JV*, paragraph 38.

(83) The Commission has also considered segmentation of that market by type of customer, distinguishing between (i) residential customers and small business customers; and (ii) large business customers, concluding that large business customers form a part of business connectivity services because unlike residential and small business customers, their demands require an individual approach.[58] The Commission has further concluded that the market for fixed internet access services should not be segmented according to download speed[59] and that fixed internet services provided through mobile network infrastructure should be excluded from its scope.[60]

4.8.2.2. Notifying Party's view

(84) The Notifying Party submits that the relevant product market should be defined as the overall retail market for the provision of fixed internet access services, including all product types, distribution modes and speed/bandwidths, to residential and small business customers, excluding services provided through mobile network. In particular, it considers that it is not appropriate to sub-divide the market according to the product type and distribution mode since all these products are substitutable with each other. Nonetheless, the Notifying Party submits that the analysis would not be materially different if the market was divided according to the product type and distribution mode.[61]

4.8.2.3. Commission's assessment

(85) The market investigation in this case has not provided any indication that the Commission should depart from its previous findings. For the purposes of this decision, the Commission will not examine the possible segmentation of the overall market for the provision retail fixed internet access services in relation to the provision of advertising space because the competitive analysis would remain unchanged under all possible segmentations mentioned below in paragraph (86).

(86) Therefore, for the purpose of this decision, the Commission considers that the exact product market definition for the retail supply of fixed internet access services can be left open as the Transaction does not raise serious doubts as to its compatibility with the internal market irrespective of a possible segmentation of the market by product type, distribution mode or type of customer

58 See Commission decision of 18 July 2019 in case M.8864 - *Vodafone/Certain Liberty Global Assets*, recital 51.

59 See Commission decision of 29 June 2009 in case M.5532 - *Carphone Warehouse/Tiscali UK*, paragraphs 7-21; Commission decision of 20 September 2013 in case M.6990 - *Vodafone/Kabel Deutschland*, paragraphs 192-194; Commission decision of 3 August 2016 in case M.7978 - *Vodafone/Liberty Global/Dutch JV*, paragraph 38.

60 See Commission decision of 18 July 2019 in case M.8864 - *Vodafone/Certain Liberty Global Assets*, recital 53.

61 Form CO, paragraphs 537, 538 and 540.

4.8.3. Geographic market definition

4.8.3.1. Commission precedents

(87) The Commission has previously considered that the market for the fixed internet access services is national in scope, due to the fact that the supply of upstream wholesale services works on a national basis, and the fact that the pricing policies are mostly national.[62]

4.8.3.2. Notifying Party's view

(88) The Notifying Party agrees with this market definition.[63]

4.8.3.3. Commission's assessment

(89) The market investigation in this case has not provided any indication that the Commission should depart from its previous findings.

(90) Therefore, for the purpose of this decision, the Commission consider that the geographic market definition for the retail supply of fixed internet access services is national in scope.

5. COMPETITIVE ASSESSMENT

5.1. Analytical framework

(91) Under Article 2(2) and Article 2(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.

(92) In this respect, a merger may entail horizontal and/or non-horizontal 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. Non-horizontal effects are those deriving from a concentration where the undertakings concerned are active in different relevant markets.

5.1.1. Horizontal non-coordinated effects

(93) The Horizontal Merger Guidelines[64] 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 the merging firms had raised its price, it would have lost some sales to

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62 See Commission decision of 18 July 2019 in case M.8864 - *Vodafone/Certain Liberty Global Assets*, recital 60.

63 Form CO, paragraph 542.

64 Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings ("Horizontal Merger Guidelines"), OJ C 31, 05.02.2004.

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."[65]

(94) Therefore, a merger giving rise to such non-coordinated effects might significantly impede effective competition by creating or strengthening the dominant position of a single firm, one which, typically, would have an appreciably larger market share than the next competitor post-merger.

(95) 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.[66] 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.[67]

(96) 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, entry and efficiencies.

5.1.2. Vertical effects

(97) According to the Non-Horizontal Merger Guidelines, foreclosure occurs when actual or potential rivals' access to supplies or markets is hampered, thereby reducing those companies' ability and/or incentive to compete. Such foreclosure may discourage entry or expansion of rivals or encourage their exit.[68]

(98) 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 rivals by restricting their access to an important input and customer foreclosure occurs where the merger is likely to foreclose upstream rivals by restricting their access to a sufficient customer base.[69]

(99) In order for foreclosure to be a concern, three conditions need to be met post-merger: (i) the merged entity needs to have the ability to foreclose its rivals[70] ; (ii)

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65 Horizontal Merger Guidelines, paragraph 24.
66 Horizontal Merger Guidelines, paragraphs 27 *et seq.*
67 Horizontal Merger Guidelines, paragraph 26.
68 Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentration between undertakings ("Non-Horizontal Merger Guidelines"), OJ C 265/6, 18.10.2008, paragraphs 29-30.
69 Non-Horizontal Merger Guidelines, paragraph 30.
70 Non-Horizontal Merger Guidelines, paragraphs 33 to 39 and 60 to 67.

the merged entity needs to have the incentive to foreclose its rivals[71]; and (iii) the foreclosure strategy needs to have a significant detrimental effect on the parameters of competition on the downstream market (input foreclosure)[72] or have an adverse impact in the downstream market and harm consumers (customer foreclosure).[73] In practice, these factors are often examined together since they are closely intertwined.[74]

5.2. Horizontally affected markets

(100) The Transaction gives rise to horizontally affected markets in (i) certain segments of the market for the licensing of TV broadcasting rights in Czechia and Slovakia, and (ii) the market for the sale of TV advertising space in Czechia.

5.2.1. Licensing of TV broadcasting rights – Czechia and Slovakia

5.2.1.1. Overall market for the acquisition of broadcasting rights for TV content in Czechia and Slovakia

(101) Both PPF, through its subsidiary O2 Czech Republic, and CME acquire broadcasting rights for AV content for inclusion in their TV channels. Tables 1 to 6[75] below show the segments where the Parties` overlapping activities result in horizontally affected markets in Czechia and Slovakia, namely: (i) the overall market for the acquisition of TV broadcasting rights, (ii) the acquisition of rights to football events, (iii) the acquisition of rights to football events that occur regularly, (iv) the acquisition of rights to other sports, and (v) the acquisition of rights for linear transmission of AV content.

(102) Both Parties acquire TV content rights for inclusion in their TV channels in Czechia and Slovakia.

(103) In Czechia, PPF purchases broadcasting rights to audiovisual sports-related content for its TV channels O2 TV Sport, O2 TV Tenis and O2 TV Fotbal. CME acquires various types of content rights, including sports, foreign movies, domestic movies, series, and other rights. In relation to sporting rights, CME focuses on licensing rights to: (i) the U.S. branded sports, such as NHL (ice hockey), NBA (basketball) or

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71 Non-Horizontal Merger Guidelines, paragraphs 40 to 46 and 68 to 71.

72 Non-Horizontal Merger Guidelines, paragraphs 47 to 57.

73 Non-Horizontal Merger Guidelines, paragraphs 72 to 77.

74 With regard to potential conglomerate effects, is the Commission notes that it is not possible to bundle the wholesale supply of TV channels or the sale of TV advertising space (i.e. CME's main activities) with the supply of retail TV services or retail telecommunication services because these services are sold to different customers. Customers for the wholesale supply of TV channels are the TV services retailers; customers for advertising space are persons or entities that wish to advertise on TV; customers for retail TV services and telecommunication services are the end-consumers. A potential link lies between CME's SVOD platform and PPF's telecommunication services in Czechia. However, SVOD services are typically not sold in a bundle in Czechia and customers of SVOD and telecommunication services do not tend to consider the two services to be connected. Furthermore, neither CME's SVOD platform nor PPF's telecommunications services have market power that could plausibly be leveraged in the context of a conglomerate strategy. For these reasons and as the results of the market investigation did not point to any plausible conglomerate concern, potential conglomerate effects will not be further discussed in this decision.

75 Market shares are calculated on the basis of costs incurred for the acquisition of the rights.

UFC (martial arts), (ii) mainstream European sports , (iii) motorbike MOTO GP, and (iv) emerging sports, such as darts or rugby.

(104) In Slovakia, the Parties are mostly active on the demand side of the market and they only have a limited presence on the supply side. PPF, through O2 CR, has been active on the Slovakian licensing market since 2018. O2 CR, however, is not present in Slovakia. CME acquires various types of content rights, including sports, foreign movies, domestic movies, series, and other rights. In relation to sporting rights, CME focuses on licensing rights to: (i) the U.S. branded sports, such as NHL (ice hockey), NBA (basketball) or UFC (martial arts), (ii) mainstream European sports, (iii) motorbike MOTO GP, and (iv) emerging sports, such as darts or rugby.

Table 1: Market shares for the acquisition of TV broadcasting rights – Czechia and Slovakia (2017-2019)

TV broadcasting rights (%) - Czechia			
	2017	**2018**	**2019**
PPF	[0-5]%	[0-5]%	[0-5]%
CME	[10-20]%	[10-20]%	[10-20]%
Combined	[20-30]%	[20-30]%	[20-30]%
Prima	[10-20]%	[10-20]%	[10-20]%
CT	[40-50]%	[40-50]%	[40-50]%
Other	[10-20]%	[10-20]%	[10-20]%
Total	100%	100%	100%
TV broadcasting rights (%) - Slovakia			
	2017	**2018**	**2019**
PPF	[0-5]%	[0-5]%	[0-5]%
CME	[20-30]%	[20-30]%	[20-30]%
Combined	[20-30]%	[20-30]%	[20-30]%
JOJ	[20-30]%	[20-30]%	[10-20]%
RTVS	[20-30]%	[10-20]%	[20-30]%
Other	[30-40]%	[30-40]%	[30-40]%
Total	100%	100%	100%

Source: Form CO, Table 99

(105) Table 1 shows that when considering the overall market for the acquisition of broadcasting rights for all TV content, the Parties' combined market share is [20-30]% on Czechia and [20-30]% in Slovakia for 2019. The increment brought about by the Transaction is only [0-5]% for Czechia and [0-5]% for Slovakia, and in any event the combined market share is below [20-30]% in both countries. In addition, there is a number of other players that will remain present in both countries, who acquire TV broadcasting rights.

(106) Consequently, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market with regard to the overall market for the acquisition of broadcasting rights for TV content in Czechia and Slovakia.

5.2.1.2. Market for the acquisition of football rights in Czechia and Slovakia

(107) The Parties overlap in the acquisition of rights for football events that occur regularly lead to an affected market both in Czechia and Slovakia. As the Parties are not acquiring rights for football events that occur intermittently, the competitive assessment of the segment for football events that occur regularly (Table 3) in the following paragraphs applies equally to the segment for the acquisition of rights for all football events (Table 2).

Table 2: Market shares for the acquisition of rights for all football events- Czechia and Slovakia (2017-2019)

Rights for all football events (%) - Czechia			
	2017	**2018**	**2019**
PPF	[20-30]%	[30-40]%	[40-50]%
CME	[5-10]%	[0-5]%	[0-5]%
Combined	[20-30]%	[30-40]%	[40-50]%
Digi	[30-40]%	[30-40]%	[40-50]%
CT	[20-30]%	[20-30]%	[5-10]%
AMC	[10-20]%	[5-10]%	[0-5]%
Other	[0-5]%	[0-5]%	[0-5]%
Total	100%	100%	100%
Rights for all football events (%) - Slovakia			
	2017	**2018**	**2019**
PPF	[0-5]%	[20-30]%	[30-40]%
CME	[5-10]%	[0-5]%	[0-5]%

Combined	[5-10]%	[30-40]%	[30-40]%
Digi	[50-60]%	[30-40]%	[40-50]%
Orange	[0-5]%	[10-20]%	[10-20]%
AMC	[10-20]%	[5-10]%	[0-5]%
Other	[0-5]%	[0-5]%	[0-5]%
Total	100%	100%	100%

Source: Form CO, Table 100

Table 3: Market shares for the acquisition of rights for regular football events - Czechia and Slovakia (2017-2019)

	Rights for regular football events (%) - Czechia		
	2017	**2018**	**2019**
PPF	[30-40]%	[40-50]%	[40-50]%
CME	[5-10]%	[0-5]%	[0-5]%
Combined	[30-40]%	[40-50]%	[40-50]%
Digi CZ	[30-40]%	[40-50]%	[40-50]%
CT	[20-30]%	[5-10]%	[5-10]%
AMC	[0-5]%	[0-5]%	[0-5]%
Other	[0-5]%	[0-5]%	[0-5]%
Total	100%	100%	100%
Rights for regular football events (%) - Slovakia			
	2017	**2018**	**2019**
PPF	[0-5]%	[30-40]%	[30-40]%
CME	[5-10]%	[0-5]%	[0-5]%
Combined	[5-10]%	[30-40]%	[30-40]%
Digi	[50-60]%	[40-50]%	[40-50]%
RTVS	[20-30]%	[5-10]%	[5-10]%
Orange	[0-5]%	[10-20]%	[10-20]%

AMC	[5-10]%	[0-5]%	[0-5]%
Other	[0-5]%	[0-5]%	[0-5]%
Total	100%	100%	100%

Source: Form CO, Table 11

(108) Table 3 shows that when considering a market for the acquisition of rights to football evets that occur regularly the Parties' combined market share in Czechia amounted to [40-50]% (PPF [40-50]%, CME [0-5]%) and to [30-40]% (PPF [30-40]%, CME [0-5]%) in Slovakia in 2019. In Czechia, CME's market share has remained stable at [0-5]%- [0-5]% in the period 2017-2019 whereas PPF's market share increased from [20-30]% in 2017 to [40-50]% in 2019. Digi is the other large player on the market with a market share ranging from [30-40]% to [40-50]% in the period 2017-2019. Other acquirers include CT and AMC. CT had [20-30]% in 2017 which dropped to [5-10]% in 2018 and 2019. AMC represented [0-5]% of the market in 2017.

(109) In Slovakia, CME's market share was [5-10]% in 2017 and [0-5]% in 2018-2019. PPF's market share at [30-40]% for 2018-2019. The market leader is Digi with [50-60]% and [40-50]% for 2017 and 2018-2019 respectively, followed by RTVS ([20-30]% in 2017, [5-10]% in 2018-2019), Orange (which had no market share in 2017 but increased its presence to [10-20]% of the market in 2018-2019), and AMC (which represented [5-10]% of the market in 2017 but had a negligible share in 2018-2019).

5.2.1.2.1. Notifying Party's view

(110) The Notifying Party submits that the Transaction will only bring about an immaterial increase to PPF's market share given the limited market share increment both in Czechia and Slovakia. Further, the Notifying Party explains that CME and PPF are not close competitors, while Digi remains PPF's closest competitor in Czechia and Slovakia. In addition, PPF will be constrained post-transaction by strong existing competitors such as CT, AMC, Arena, and Eurosport in Czechia, and RTVS, Orange, AMC, Arena and Eurosport in Slovakia. Lastly, the Notifying Party explains that the merged entity's market share may decrease significantly for the coming seasons given that sports broadcasting rights are tendered in transparent procedures where many strong bidders participate each time.

5.2.1.2.2. Commission's assessment

(A) Czechia

(111) The results of the market investigation are largely neutral vis-à-vis the Transaction. Overall, the large majority of rightsholders consider that the Transaction will have a neutral impact both on the market for the acquisition of football rights and on their own business.[76] They consider that the merged entity will not be in a position to impose less favourable terms when negotiating the acquisition of rights[77] and that competitors will remain able to credibly participate in tenders opposite the merged

[76] Replies to Questionnaire Q1 to rightsholders, questions 17 and 18.

[77] Replies to Questionnaire Q1 to rightsholders, question 13.

entity.[78] From the demand-side, however, two competitors take the view that PPF generally has a decisive advantage in tenders due to the financial strength of the entire PPF group.[79] These competitors consider that pre-transaction PPF has been leveraging its strong financial position, which increases overtime, in order to win tenders.

(112) In particular, a competitor considered that the Transaction would induce significant horizontal effects on the market for the acquisition of broadcasting rights for football events in Czechia. According to its submission, PPF's particularly strong financial position enables it to outbid any other participant to a tender.

(113) However, the Commission considers that the Transaction will not materially affect the market for the acquisition of broadcasting rights for football events that occur regularly in Czechia.

(114) First, the Commission notes that the increment brought about by the Transaction is limited. In Czechia, CME's market share has not exceeded [5-10]% in the period 2017-2019. The addition of this increment will not materially change PPF's position on the segment for the acquisition of rights to football events that occur regularly.

(115) Second, the Parties are not competing to acquire the same sports rights. PPF and CME pursue different strategies, particularly with respect to the distribution of their sports channels, and specialize in different sports. They acquire different content and their channels attract different viewers. In particular, CME holds none of the main Czech football rights (holding only second pick and other rights for the UEFA Europe League 2019/2020) or the national ice hockey championship rights[80] and a very limited set of other rights. As explained in paragraph (103), CME rather focuses on licensing rights to U.S. branded sports, mainstream European sports (e.g., the French Football League, motorbike, and emerging sports, such as darts). CT holds the majority of football rights (both for national and UEFA/Europa leagues as explained below in paragraph (118) (b)) and Digi Sport holds virtually all of the internationally attractive football league rights. Further, the majority of non-football rights are held by CT, Eurosport or Sport 1.

(116) As a result, PPF and CME generally do not meet in tenders for the various sports rights they acquire. Based on bidding data submitted by the Parties PPF and CME [confidential bidding data].

(117) While PPF increased its market share over the period 2017-2019 by successfully competing for the acquisition of attractive football rights, possibly as a result of superior financial capabilities, its very limited competitive interaction with CME pre-merger shows that the Transaction is not likely to materially impact PPF's ability to win tenders post-transaction.

(118) Third, other companies that closely compete with PPF will remain active on the market post-transaction:

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78 Replies to Questionnaire Q1 to rightsholders, question 14.

79 Replies to Questionnaire Q2 to broadcasters, question 30.

80 Respondents to the market investigation explained that ice hockey content in which the national team participates is a very important input in Czechia along with football.

(a) Digi CZ, which holds the broadcasting rights for the English Premier league, German Bundesliga, as well as the Spanish and Italian football leagues, and the ATP (until 2021, after which the ATP rights will be held by Eurosport). The Notifying Party estimates that Digi CZ's market share on the Czech market for the licensing of broadcasting rights for football events ranged between [30-40]% and [40-50]% (from 2017/2018 season to 2019/2020 season).

(b) CT, the Czech public broadcaster, which holds the broadcasting rights for a portion of the UEFA Champions League (highlights and final), Czech football league (4th pick) and Europa League (1st pick) packages, UEFA Euro 2020, including qualifiers of the Czech team, and ice hockey, including the Hockey World Championships, the Olympics, Euro Hockey Tour, certain Czech national team hockey matches, and certain matches of the Czech National Hockey League. The Notifying Party estimates that CT's market share on the Czech market for the licensing of broadcasting rights for football events ranged between [5-10]% and [20-30]% (from the 2017/2018 season to the 2019/2020 season).

(c) AMC Networks Entertainment LLC (Sport 1 and Sport 2 channels), which holds the broadcasting rights to one live match of the Slovak National Hockey League (Tipsport liga), rights for the football qualifiers for the Euro 2020 and the FIFA World Cup 2022 (for all matches excluding the Czech national team), the Portuguese and Turkish football leagues, all Formula One races, NFL and boxing. The Notifying Party estimates that the market share of AMC on the Czech market for the licensing of broadcasting rights for football events ranged between [0-5]% and [10-20]% (from the 2017/2018 season to the 2019/2020 season).

(d) Arena Sport, which holds the broadcasting rights for the Dutch football league.

(e) Discovery's Eurosport channels, which held rights to Major League Soccer USA. Eurosports channels also feature a range of other sports rights, including non-exclusive broadcasting rights to all Alpine and Nordic Ski events (Alpine ski races, Biathlon, Ski jumping/Ski flying, Nordic events), the Olympic Games 2020 and 2022, and the main ATP and WTA tennis tournaments (1000 series and 500 series), and non-exclusive rights for the Tour de France relevant for the Czech market).

(B) Slovakia

(119) The results of the market investigation have been largely neutral vis-à-vis the Transaction. Rightholders consider that the merged entity will not be in a position to impose less favourable terms when negotiating the acquisition of rights[81] and take the view that other entities will be able to credibly participate in tenders opposite the merged entity. Form the demand-side, the majority of broadcasters consider that negotiations are ordinary and on equal footing and are not concerned with the

[81] Replies to Questionnaire Q1 to rightsholders, question 13.

Transaction.[82] Accordingly, the Commission considers that the Transaction will not materially affect the market for the acquisition of broadcasting rights for football events that occur regularly in Slovakia.

(120) First, the Commission notes that the increment brought about by the Transaction is very limited. In Slovakia, CME's market share has not exceeded [0-5]% in the period 2018-2019. The addition of this market share will therefore not materially change PPF's position on the segment for the acquisition of rights to football events that occur regularly.

(121) Second, PPF, through O2 CR, has been active as an acquirer of sports rights on the Slovakian market since 2018. However, O2 CR does not broadcast its O2 TV Sport channels in Slovakia. In order to use the sports content that it acquired – which are often tendered together with broadcasting rights for the Czech market – O2 CR produces a customized channel for Orange, its sole customer in Slovakia. This channel is produced and distributed under the Orange brand and is built around O2 CR rights for the UEFA Champions League and other content owned by Orange.

(122) Third, other companies that closely compete with PPF will remain active on the market post-transaction

(a) Digi SK (a subsidiary of Slovak Telekom/Deutsche Telekom), which holds the broadcasting rights for the English Premier league, German Bundesliga, as well as the Spanish and Italian first league football leagues. The Notifying Party estimates that Digi SK's market share on the Slovak market for the licensing of broadcasting rights for football events ranged between [30-40]% and [50-60]% (from the 2017/2018 season to the 2019/2020 season).

(b) RTVS, the Slovak public broadcaster, which holds the broadcasting rights for the annual Hockey World Championships, games of the national Hockey team (Euro Hockey Challenge), the European Football Championship 2020, the next three years' Slovak National Football Team qualifiers (including UEFA Nations League, the Euro 2020 and the World Cup 2022) on an exclusive basis, and the Olympic Games in 2020. Additionally, RTVS has non-exclusive broadcasting rights for all stages of the Tour de France and Tour de Suisse, and exclusive broadcasting rights for the U21 and U23 Hockey youth team qualifiers. The Notifying Party estimates that the market share of RTVS on the Slovak market for the licensing of broadcasting rights for football events ranged between [5-10]% and [20-30]% (from the 2017/2018 season to the 2019/2020 season).

(c) Orange, which among other rights holds the broadcasting rights for Slovak football league (1st pick, Fortuna liga). The Notifying Party estimates that the market share of Orange on the Slovak market for the licensing of broadcasting rights for football events amount to [10-20]% and [10-20]% in the 2018/2019 and 2019/2020 season, respectively.

(d) AMC Networks Entertainment LLC (Sport 1 and Sport 2), which holds the broadcasting rights to one live match of the Slovak National Hockey League

82 Replies to Questionnaire Q2 to broadcasters Q2, question 30.

(Tipsport liga), rights for the football qualifiers for the Euro 2020 and the FIFA World Cup 2022, Portuguese and Turkish football leagues, Formula One, NFL and boxing. The Notifying Party estimates that the market share of AMC on the Slovak market for the licensing of broadcasting rights for football events ranged between [0-5]% and [10-20]% (from 2017/2018 season to 2019/2020 season).

(e) Arena Sport, which holds the broadcasting rights for the Dutch football league.

(f) Discovery's Eurosport channels, which held the broadcasting rights to Major League Soccer USA. These channels also feature a range of other sports, including non-exclusive broadcasting rights to Alpine and Nordic Ski events, the Olympic Games 2020 and 2022, and the main ATP and WTA tennis tournaments, as well as non-exclusive rights for the Tour de France relevant for the Slovak market.

(123) Consequently, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market with regard to the markets for the acquisition of broadcasting rights for football events and for football events that take place regularly, in Czechia and Slovakia.

5.2.1.3. Market for the acquisition of (i) other sports content and (ii) linear broadcasting rights in Czechia and Slovakia

(124) The Parties overlap in the acquisition of other sports, meaning all sports other than football events. They Parties also overlap in the acquisition of linear broadcasting rights, meaning rights for content that is transmitted via linear broadcasting.

(125) First, with respect to the market for the acquisition of rights for other sports, the Parties' and their main competitors' market shares are the following.

Table 4: Market shares for the acquisition of rights for other sports - Czechia and Slovakia (2017-2019)

Rights for other sports (%) - Czechia			
	2017	**2018**	**2019**
PPF	[5-10]%	[10-20]%	[10-20]%
CME	[10-20]%	[10-20]%	[10-20]%
Combined	[20-30]%	[20-30]%	[30-40]%
CT	[40-50]%	[30-40]%	[30-40]%
AMC	[10-20]%	[10-20]%	[10-20]%
Eurosport	[10-20]%	[10-20]%	[10-20]%
Golf Channel	[0-5]%	[0-5]%	[0-5]%
Other	[5-10]%	[5-10]%	[5-10]%
Total	100%	100%	100%
Rights for other sports (%) - Slovakia			
	2017	**2018**	**2019**
PPF	[0-5]%	[0-5]%	[0-5]%
CME	[20-30]%	[10-20]%	[20-30]%
Combined	[20-30]%	[10-20]%	[20-30]%
Digi	[5-10]%	[0-5]%	[5-10]%
RTVS	[20-30]%	[30-40]%	[20-30]%
AMC	[10-20]%	[10-20]%	[10-20]%
Golf Channel	[0-5]%	[0-5]%	[0-5]%
Other	[5-10]%	[5-10]%	[5-10]%
Total	100%	100%	100%

Source: Parties, Table 101

(126) In Czechia, the Parties' combined market share ranged between [20-30]% and [30-40]% from 2017 to 2019. The merged entity will continue to face competition from credible alternative bidders including private broadcasters and retailers, but also

state-operated broadcasters, who are particularly strong in this segment. In particular, Parties will be constrained by CT, which represented between [30-40]% and [40-50]% of the market between 2017 and 2019, AMC (between [10-20]% and [10-20]% between 2017 and 2019), and Discovery (between [10-20]% and [10-20]% between 2017 and 2019). Lastly, the market investigation did not point to any particular concerns in relation to the segment of other sports in Czechia.

(127) In Slovakia, the increment brought about by the Transaction does not exceed [0-5]%, leading to a combined market share below 25%. Several credible competing buyers or sports rights will remain present in both countries. PPF is a recent entrant, having entered the market in 2018, mainly due to the fact that broadcasting rights are often tendered together for Czechia and Slovakia. Furthermore, PPF's presence in Slovakia is limited to the production of a customized channel for Orange, as described above in paragraph 122. Lastly, the market investigation did not point to any particular concerns in relation to the segment of other sports in Slovakia.

(128) Consequently, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market with regard to the segment for the acquisition of rights for other sports in Czechia and Slovakia.

(129) Second, with respect to the market for the acquisition of linear broadcasting rights, the Parties' and their main competitors' market shares are the following.

Table 5: Market shares for the acquisition of linear broadcasting rights - Czechia and Slovakia (2017-2019)

	Linear broadcasting rights (%) - Czechia		
	2017	**2018**	**2019**
PPF	[0-5]%	[0-5]%	[0-5]%
CME	[10-20]%	[10-20]%	[10-20]%
Combined	[20-30]%	[20-30]%	[20-30]%
Prima	[10-20]%	[10-20]%	[10-20]%
CT	[40-50]%	[40-50]%	[40-50]%
TV Barrandov	[5-10]%	[5-10]%	[5-10]%
Other	[5-10]%	[10-20]%	[5-10]%
Total	100%	100%	100%
	Linear broadcasting rights (%) - Slovakia		
	2017	**2018**	**2019**
PPF	[0-5]%	[0-5]%	[0-5]%
CME	[20-30]%	[20-30]%	[20-30]%
Combined	[20-30]%	[20-30]%	[20-30]%
JOJ	[20-30]%	[20-30]%	[10-20]%
RTVS	[20-30]%	[10-20]%	[20-30]%
TA3	[0-5]%	[0-5]%	[0-5]%
Other	[30-40]%	[30-40]%	[30-40]%
Total	100%	100%	100%

Source: Parties, Tables 71, 84, 99, and 111

(130) Table 5 shows that when considering the segment for the acquisition of linear broadcasting rights, the Parties' combined market share is [20-30]% in Czechia and [20-30]% in Slovakia in 2019. The increment brought about by the Transaction does not exceed [0-5]% for Czechia and [0-5]% for Slovakia, with combined market shares below [20-30]% in each country. In addition, several competing buyers of TV broadcasting rights will remain present in both countries. Lastly, the market

investigation did not point to any particular concerns in relation to the segment of linear broadcasting rights.

(131) Consequently, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market with regard to the segment for the acquisition of linear broadcasting rights in Czechia and Slovakia.

5.2.1.4. Conclusion

(132) In light of the above, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market with regard to the market for the acquisition of TV broadcasting rights and its sub-segments, namely the acquisition of broadcasting rights for football events that take place regularly, the acquisition of broadcasting rights for other sports events, and the acquisition of linear broadcasting rights in Czechia and Slovakia.

5.2.2. Sale of TV advertising space in Czechia

(133) As shown in Table 6 below, CME sells advertising space on its TV channels, while PPF is also marginally active in Czechia.

Table 6: Market shares for the sale of TV advertising space (also on TV linear channels) - Czechia (2017-2019)

Sale of TV advertising space (%) - Czechia			
	2017	**2018**	**2019**
PPF	[0-5]%	[0-5]%	[0-5]%
CME	[50-60]%	[50-60]%	[50-60]%
Combined	[50-60]%	[50-60]%	[50-60]%
Media Club	[30-40]%	[30-40]%	[30-40]%
CT	[5-10]%	[5-10]%	[5-10]%
Other	[0-5]%	[0-5]%	[0-5]%
Total	100%	100%	100%

Source: Form CO, Table 107

(134) Table 6 shows that when considering the market for the sale of TV advertising space in Czechia, the Parties' combined market share amounts [50-60]% for 2019. CME

has a market share of approximately [50-60]%. PPF's market share is negligible. Media Club[83] follows with [30-40]% and CT with [5-10]%.

5.2.2.1. Notifying Party's view

(135) The Notifying Party submits that PPF's market share is below [0-5]%. As the Transaction will not lead to a material market share increment, it will not have a material impact on CME's competitive position.

5.2.2.2. Commission's assessment

(136) The Commission considers that the Transaction will not materially affect the market for the sale of TV advertising space in Czechia.

(137) First, the increment brought about by the Transaction is limited as while CME has a market share of approximately [50-60]%, PPF's share is below [0-5]%. The Parties' position would be similar on the segment for the sale of TV advertising space on linear channels.

(138) Second, whilst CME has a large share for the sale of TV advertising space in Czechia, the Transaction does not materially change the competitive landscape in this market and is unlikely to significantly increase CME's market power because of the limited increment that it generates.

(139) Third, alternative players will remain present in the market for sale of TV advertising space, including Media Club and CT.

(140) Fourth, the market investigation did not point to any horizontal concerns with regard to the combination of the Parties' activities as regards the sale of TV advertising space.

(141) Consequently, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market with regard to the sale of TV advertising space, including the sale of TV advertising space on linear channels.

5.2.2.3. Conclusion

(142) In light of the above, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market with regard to the market for the acquisition of TV advertising space in Czechia and Slovakia.

5.3. Vertically affected markets

(143) The Parties' activities at different levels of the AV value chain and in some telecommunications markets give rise to the following vertically affected markets in Czechia, Slovakia and Bulgaria:

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83 Media Club offers advertising inventory of TV Prima and TV Barrandov in bundles, including other smaller TV broadcasters and other media types.

(a) CME's activities in certain segments of the upstream market for the wholesale supply of TV channels and PPF's activities in the downstream market for the retail supply of AV services in Czechia;

(b) CME's activities in the sale of TV advertising space and PPF's activities in the downstream markets for the retail supply of AV services, retail supply of mobile telecommunications services, and/or retail supply of fixed internet access services in Czechia, Slovakia and Bulgaria.

5.3.1. Market shares

5.3.1.1. Wholesale supply of TV channels

(144) Table 7 sets out CME's and its main competitors' market shares in the segment for the wholesale supply of overall/basic pay TV general entertainment channels in Czechia by revenue and audience share for the years 2017, 2018 and 2019.

Table 7: Market shares for the wholesale supply of overall/basic pay TV general entertainment channels – Czechia

	2017		**2018**		**2019**	
	By revenue (%)	**By audience (%)**	**By revenue (%)**	**By audience (%)**	**By revenue (%)**	**By audience (%)**
CME	[10-20]%	[30-40]%	[10-20]%	[30-40]%	[10-20]%	[30-40]%
Prima	[10-20]%	[20-30]%	[10-20]%	[20-30]%	[10-20]%	[20-30]%
CT	-	[5-10]%	-	[20-30]%	-	[20-30]%
TV Barrandov	[0-5]%	[5-10]%	[0-5]%	[5-10]%	[0-5]%	[5-10]%
Discovery	[20-30]%	-	[20-30]%	-	[20-30]%	-
Sony	[5-10]%	-	[5-10]%	-	[5-10]%	-
AMC	[10-20]%	-	[10-20]%	-	[10-20]%	-
Viasat	[5-10]%	-	[5-10]%	-	[5-10]%	-
Other	[20-30]%	[20-30]%	[20-30]%	[5-10]%	[20-30]%	[5-10]%
Total	100%	100%	100%	100%	100%	100%

Source: Form CO, Table 102.

(145) Table 8 sets out CME's and its main competitors' market shares in the segment for the wholesale supply of FTA general entertainment channels in Czechia by audience share for the years 2017, 2018 and 2019.

Table 8: Market shares for the wholesale supply of FTA general entertainment TV channels – Czechia

	2017 (by audience)	2018 (by audience)	2019 (by audience)
CME	[30-40]%	[30-40]%	[30-40]%
Prima	[20-30]%	[20-30]%	[20-30]%
CT	[20-30]%	[20-30]%	[30-40]%
TV Barrandov	[5-10]%	[5-10]%	[5-10]%
Other	[0-5]%	[0-5]%	[0-5]%
Total	100%	100%	100%

Source: Form CO, Table 103.

(146) Based on Table 7 and Table 8, CME is the main wholesale supplier of FTA/basic pay TV general entertainment channels (by audience) and the second wholesale supplier of basic pay TV general entertainment channels (by revenue) in Czechia. It had a market share of [30-40]% (by audience) in the FTA segment and of [30-40]% (by audience) and [10-20]% (by revenue) in the basic pay TV segment in 2019.

(147) Its main competitors based on audience are CT and Prima. CT had a market share of [30-40]% in the FTA segment and [20-30]% in the basic pay TV segment. Prima had a market share of [20-30]% in the FTA segment and [20-30]% in the basic pay TV segment. The rest of the market is fragmented, with TV Barrandov still having a material market share of [5-10]% both in the FTA and in the basic pay TV segment.

(148) As for the market shares by revenue, the market leader in the basic pay TV segment for general entertainment channels is Discovery with a market share of [20-30]%. The third and fourth largest competitors are AMC and Prima, with market shares of [10-20]% and [10-20]% respectively. Other relevant players include Sony, Viasat and TV Barrandov.

(149) Table 9 sets out CME's and its main competitors' market shares in the segment for the wholesale supply of FTA film TV channels in Czechia by audience share for the years 2017, 2018 and 2019.

Table 9: Market shares for the wholesale supply of FTA film TV channels – Czechia

	2017 (by audience)	2018 (by audience)	2019 (by audience)
CME	[50-60]%	[40-50]%	[30-40]%
Prima	[20-30]%	[30-40]%	[40-50]%
TV Barrandov	[20-30]%	[20-30]%	[20-30]%
Total	100%	100%	100%

Source: Form CO, Table 105.

(150) Table 10 sets out CME's and its main competitors' market shares in the segment for the wholesale supply of basic pay TV film channels in Czechia by revenue and audience share for the years 2017, 2018 and 2019.

Table 10: Market shares for the wholesale supply of basic pay TV film channels – Czechia

	2017		2018		2019	
	By revenue (%)	By audience (%)	By revenue (%)	By audience (%)	By revenue (%)	By audience (%)
CME	[0-5]%	[40-50]%	[5-10]%	[30-40]%	[5-10]%	[30-40]%
Prima	[0-5]%	[10-20]%	[0-5]%	[30-40]%	[5-10]%	[30-40]%
TV Barrandov	[0-5]%	[20-30]%	[0-5]%	[10-20]%	[0-5]%	[10-20]%
Joj	[10-20]%	[5-10]%	[10-20]%	[5-10]%	[10-20]%	[5-10]%
Filmbox	[50-60]%	[0-5]%	[40-50]%	[0-5]%	[40-50]%	[5-10]%
AMC	[20-30]%	[0-5]%	[20-30]%	[0-5]%	[20-30]%	[0-5]%
Viasat	[5-10]%	[0-5]%	[5-10]%	[0-5]%	[5-10]%	[0-5]%
Other	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Total	100%	100%	100%	100%	100%	100%

Source: Form CO, Table 104.

(151) Based on the Tables 9 and 10 above, CME is the second wholesale supplier of FTA/basic pay TV film channels (by audience) and one of the smaller wholesale suppliers of basic pay TV general entertainment channels (by revenue) in Czechia. It

had a market share of [30-40]% (by audience) in the FTA segment and of [30-40]% (by audience) and [5-10]% (by revenue) in the basic pay TV segment in 2019.

(152) CME's market share by audience decreased in the past three years, while its market share by revenues remained constant, but much lower than the market share by audience.

(153) Its main competitors based on audience are Prima and TV Barrandov. Prima was the market leader in 2019 and had a market share of [40-50]% in the FTA segment and [30-40]% in the basic pay TV segment. TV Barrandov had a market share of [20-30]% in the FTA segment and [10-20]% in the basic pay TV segment. The rest of the basic pay TV market is fragmented, with several market players having a material market share of around [5-10]%.

(154) As for the market shares by revenue, the top three players in the basic pay TV segment for film channels are Filmbox, with a market share of [40-50]%, AMC, with a market share of [20-30]% and Joj, with a market share of [10-20]%. Other relevant players include Viasat and Prima.

(155) Prima's market share has increased in the past three years, both in the FTA and in the basic pay TV segment, and both by audience share and by revenues. TV Barrandov's market share, on the other hand, has decreased by audience share and remained constantly low by revenues.

(156) Table 11 sets out CME's and its main competitors' market shares in the segment for the wholesale supply of basic pay TV sports channels in Czechia by revenue and by audience for the year 2019.

Table 11: Market shares for the wholesale supply of basic pay TV sports channels – Czechia (2019)

	By revenues (%)	By audience (%)
CME	[20-30]%	[5-10]%
CT	-	[70-80]%
Eurosport	[30-40]%	[5-10]%
AMC	[10-20]%	[0-5]%
Digi	-	[0-5]%
Sport 5	[10-20]%	-
Arena Sport	[5-10]%	-
Golf Channel	[5-10]%	-
Extreme Sport	[0-5]%	-
Other	-	[5-10]%

Total	100%	100%

Source: Form CO, Tables 30 and 31.

(157) As noted above, PPF produces three sport channels that it does not offer at a wholesale level, but exclusively distributes via its own pay TV platform. The Commission therefore considers that PPF's sports channels are not part of the market for the wholesale supply of TV channels. Nevertheless, the Parties have provided estimates of PPF's market shares on the possible segment for the wholesale supply of pay TV sports channels if captive channels were to be included. Based on these estimates, PPF would have a market share of [5-10]% by revenues and [0-5]% by audience for the possible segment for the wholesale supply of pay TV sports channels in Czechia in 2019[84]. If PPF's, Digi's and Premier captive sports channels were included in the potential segment for the wholesale supply of sports TV channels, the revenue-based combined market share of the Parties would be approximately [20-30]%.[85]

(158) The segment for the wholesale supply of sports TV channels is not vertically affected since the Parties' individual and combined market shares remain below 30% in this segment, as well as any potential segmentations thereof. In particular, the Commission notes that neither Party supplies its channels FTA in Czechia. On the potential pay TV segment, the Parties' individual and combined market shares remain below 30% even when including PPF's captive channels. Within the pay TV segment, PPF's channels would qualify as premium pay TV channels, while CME only supplies sports channels as part of its basic pay TV offering. The Parties have not provided estimates of their market shares in the segment for premium pay TV sports channels, since CME does not have premium pay TV sports channels and PPF does not offer its channels on the market. As for the segment for basic pay TV sports channels, as shown in Table 11, CME's market shares remain below 30% both by revenues and by audience.

(159) However, several market participants have pointed to the importance of CME's sports channels for their retail AV services offerings and expressed concerns that PPF would no longer make them available on the wholesale market post-Transaction. The Commission will therefore assess the likelihood of input foreclosure of CME's sports channels under Section 5.3.2.2 below.

5.3.1.2. Retail supply of AV services

(160) Table 12 sets out PPF's and its main competitors' market shares in the segment for the retail supply of pay TV services in Czechia[86] by value (revenues) and by volume (number of connected households) for the years 2017, 2018 and 2019.

84 Form CO, paragraph 216 and Table 28.

85 Form CO, para. 275.

86 PPF through its mobile operator O2 SK is marginally active on the TV retail market in Slovakia through its offering of O2 TV (digital television) over mobile and ITV platforms. O2 SK has only [number of subscribers] to this service among approx. 1.7 million TV households and 1.56 million Pay TV in Slovakia. PPF is also marginally active in Bulgaria through Telenor IPTV that only offers HBO as an add-on the main mobile subscription with [number of subscribers] out of a total of 3 million Telenor

Table 12: Market shares for the retail supply of pay TV services – Czechia

	2017		2018		2019	
	By value (%)	**By volume (%)**	**By value (%)**	**By volume (%)**	**By value (%)**	**By volume (%)**
PPF/O2 TV	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[20-30]%
UPC	-	[30-40]%	-	[20-30]%	-	[20-30]%
Skylink	-	[30-40]%	-	[20-30]%	-	[20-30]%
Telly (formerly Digi CZ)	-	[5-10]%	-	[5-10]%	-	[5-10]%
Other	-	[10-20]%	-	[10-20]%	-	[10-20]%
Total		100%		100%		100%

Source: Form CO, Tables 92 and 106.

(161) Based on Table 12, PPF's subsidiary, O2 TV, is the third largest supplier of retail pay TV services in Czechia by number of connected households, with a market share of [20-30]% in 2019. Its main competitors are UPC, the market leader, and Skylink, the second largest retailer, with market shares of [20-30]% and [20-30]% (by volume), respectively. The rest of the market is fragmented, with Telly representing a material portion of the market, with a [5-10]% market share (by volume). In this respect, the Commission notes that PPF entered the market in 2015 and that its market share has increased in the past three years. In the same period, Telly's market share has remained constant, while UPC's and Skylink's market shares have decreased.

5.3.1.3. Sale of TV advertising space

(162) In addition to the market shares for Czechia provided in Table 6 above, Tables 13 and 14 set out CME's and its main competitors' market shares by revenues in the market for the sale of TV advertising space on linear channels in Slovakia and Bulgaria for the years 2017, 2018 and 2019.

subscribers. Theses marginal IPTV activities of PPF in Slovakia and Bulgaria will not be further discussed in the context of the competitive assessment of this decision.

Table 13: Market shares for the sale of TV advertising space on linear channels - Slovakia (2017-2019)

	2017	2018	2019
CME	[60-70]%	[60-70]%	[60-70]%
JOJ Group	[30-40]%	[30-40]%	[30-40]%
RTVS	[0-5]%	[0-5]%	[5-10]%
Other	[0-5]%	[0-5]%	[0-5]%
Total	100%	100%	100%

Source: Form CO, Table 107.

Table 14: Market shares for the sale of TV advertising space on linear channels - Bulgaria (2017-2019)

	2017	2018	2019
CME	[50-60]%	[50-60]%	[50-60]%
Nova Broadcasting Group (not part of CME)	[40-50]%	[40-50]%	[40-50]%
BNT	[0-5]%	[0-5]%	[0-5]%
Other	[5-10]%	[5-10]%	[5-10]%
Total	100%	100%	100%

Source: Form CO, Table 107.

(163) Based on the Tables 6, 13 and 14, CME is the market leader (by revenues) in each of Czechia, Slovakia and Bulgaria, with market shares ranging between 50-60% in 2019. In all three Member States, there is one other major player: Media Club in Czechia, with a market share of [30-40]%, the JOJ Group in Slovakia, with a market share of [30-40]%, and the Nova Group in Bulgaria, with a market share of [40-50]%. The rest of the market is fragmented in each of Czechia, Slovakia and Bulgaria.

(164) With regard to Czechia and Slovakia, the Commission notes that the public broadcasters rely predominantly on public funding and are restricted by national legislation as to the type, duration and positioning of advertising on their channels. These restrictions apply to a lesser extent to private TV broadcasters. Because of

these limitations imposed on public broadcasters, their revenues from TV advertising are lower.[87]

5.3.1.4. Retail supply of mobile telecommunications services

(165) Tables 15 to 17 set out PPF's and its main competitors' market shares by value and volume in the market for the retail supply of mobile telecommunications services in Czechia, Slovakia and Bulgaria for the years 2017, 2018 and 2019.

Table 15: Market shares for the retail supply of mobile telecommunications services – Czechia (2017-2019)

	2017		2018		2019	
	By value (%)	By volume (%)	By value (%)	By volume (%)	By value (%)	By volume (%)
PPF (O2 CR)	[30-40]%	[30-40]%	[30-40]%	[30-40]%	[30-40]%	[30-40]%
T-Mobile	[30-40]%	[40-50]%	[30-40]%	[40-50]%	[30-40]%	[30-40]%
Vodafone	[20-30]%	[20-30]%	[20-30]%	[20-30]%	[20-30]%	[20-30]%
Total	100%	100%	100%	100%	100%	100%

Source: Form CO, Table 108.

Table 16: Market shares for the retail supply of mobile telecommunications services – Slovakia (2017-2019)

	2017		2018		2019	
	By value (%)	By volume (%)	By value (%)	By volume (%)	By value (%)	By volume (%)
PPF (O2 SK)	[20-30]%	[20-30]%	[20-30]%	[20-30]%	[20-30]%	[20-30]%
Slovak Telekom	-	[30-40]%	-	[30-40]%	-	[30-40]%
Orange	-	[40-50]%	-	[30-40]%	-	[30-40]%
Swan Mobile	-	[0-5]%	-	[0-5]%	-	[5-10]%
Total		100%		100%		100%

Source: Form CO, Table 108.

[87] Form CO, paragraph 441.

Table 17: Market shares for the retail supply of mobile telecommunications services – Bulgaria (2017-2019)

	2017		2018		2019	
	By value (%)	By volume (%)	By value (%)	By volume (%)	By value (%)	By volume (%)
PPF (Telenor)	[30-40]%	[30-40]%	[30-40]%	[30-40]%	[30-40]%	[30-40]%
A1 (Mobitel)	[30-40]%	[30-40]%	[30-40]%	[30-40]%	[30-40]%	[30-40]%
Vivacom	[20-30]%	[30-40]%	[30-40]%	[30-40]%	[30-40]%	[30-40]%
Total	100%	100%	100%	100%	100%	100%

Source: Form CO, Table 108.

(166) Based on Tables 15 to 17, PPF is the second (in Czechia and Bulgaria) or third (in Slovakia) largest supplier on the retail market for mobile telecommunications services. It held a market share of [30-40]% (by volume) in Czechia, [20-30]% (by volume) in Slovakia and [30-40]% (by volume) in Bulgaria in 2019.

(167) The Commission notes that, in each of Czechia, Bulgaria and Slovakia, the three main retail suppliers of telecommunications services respectively hold approximately one third of the overall market. Moreover, market shares have remained constant in the past three years.

5.3.1.5. Retail supply of fixed internet access services

(168) Table 18 sets out PPF's and its main competitors' market shares by value and volume in the market for the retail supply of mobile telecommunications services in Czechia[88] for the years 2017, 2018 and 2019.

[88] The Commission notes that PPF (O2 SK) is also active on the market for the retail supply of fixed internet access in Slovakia. However, its activities in Slovakia are *de minimis*, resulting in a market share of [0-5]% in 2019.

Table 18: Market shares for the retail supply of fixed internet access – Czechia (2017-2019)

	2017		2018		2019	
	By value (%)	By volume (%)	By value (%)	By volume (%)	By value (%)	By volume (%)
PPF (O2 CR)	[20-30]%	[10-20]%	[20-30]%	[10-20]%	[20-30]%	[10-20]%
T-Mobile	[0-5]%	[0-5]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%
UPC/Vodafone	[10-20]%	[10-20]%	[20-30]%	[20-30]%	[20-30]%	[10-20]%
Wi-Fi providers	[30-40]%	[30-40]%	[20-30]%	[30-40]%	[30-40]%	[30-40]%
Other cable	[10-20]%	[20-30]%	[20-30]%	[20-30]%	[20-30]%	[10-20]%
Other DSL	[5-10]%	[5-10]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Total	100%	100%	100%	100%	100%	100%

Source: Form CO, Table 109.

(169) Based on Table 18, PPF and UPC/Vodafone are the two main retail suppliers of fixed internet access in Czechia, with similar market shares of [20-30]% by revenues and [10-20]% and [10-20]% by volume, respectively. The rest of the market is fragmented, with the particularity that Wi-Fi providers account for a combined market share of [30-40]% by revenues and [30-40]% by volume.

5.3.2. Input foreclosure relating to the wholesale supply of TV channels and the retail supply of AV services in Czechia

(170) The Commission has assessed a potential competition concern whereby the merged entity would leverage CME's position in some possible segments of the market for the wholesale supply of TV channels into the market for the retail supply of AV services where PPF is active[89] and thereby foreclose retail competitors, thus causing harm to consumers.

(171) The Commission has assessed in particular the ability and the incentive of the merged entity to engage in the following practices:

– totally foreclose downstream competitors by ceasing to license all or some of its TV channels to them;

[89] As CME is not active in this segment and PPF is active on the supply of premium retail TV channels, the distinction between premium and basic pay TV channels will not be further discussed.

– partially foreclose downstream competitors by degrading the terms and conditions of the acquisition of TV channels, for example through worse terms and conditions or materially higher carriage fees.

(172) No respondent to the market investigation considered it likely that the merged entity would stop licensing all of its TV channels to competing suppliers of AV services.[90] However, several respondents were concerned that the merged entity may stop licensing some of its TV channels, and in particular its sports channels, to third parties post-Transaction.[91] Moreover, all of the respondents to the market investigation considered it likely that the merged entity would degrade the terms and conditions when licensing all or some of its TV channels to third parties.[92]

(173) The Commission has therefore assessed specifically whether the merged entity would have the ability and incentive to stop licensing its sports channels or degrade the terms and conditions of all or some of its TV channels when licensing them to competing suppliers of retail AV services.

5.3.2.1. The Notifying Party's view

(174) The Notifying Party submits that the merged entity would lack the ability to engage in input foreclosure. It argues that none of CME's channels can be considered to constitute important inputs to downstream competitors. It argues that, in any event, most of CME's channels are part of standard retail TV packages and do not offer unique content.[93] The Notifying Party also indicates that there will remain a sufficient number of wholesale competitors for downstream rivals to have access to alternative inputs, namely the commercial TV broadcasters Prima and Barrandov, as well as the public broadcaster CT.[94]

(175) In addition, the Notifying Party submits that the merged entity would lack the incentive to engage in total input foreclosure. It argues that [confidential data regarding revenues] of CME's revenues in 2019 were generated by television advertising, not by carriage fees. Therefore, CME has an incentive to maximise its reach and not to foreclose downstream distributors. Moreover, the Notifying Party argues that any potential profits that could be generated by a foreclosure strategy could not offset the greater reductions in CME's advertising revenues.[95]

(176) With regard to partial input foreclosure, the Notifying Party argues that CME's bargaining position when negotiating carriage fees will not materially change post-Transaction. This is because CME relies on the broad availability of its channels through all TV retailers and its continued supply over DTT. Due to PPF's limited position on the overall market for the retail supply of AV services, CME's incentives to broadly supply its channels will likely not change post-Transaction.[96]

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[90] Replies to Questionnaire Q3 to distributors, question 23.
[91] Replies to Questionnaire Q3 to distributors, questions 23 to 23.4.
[92] Replies to Questionnaire Q3 to distributors, questions 24 to 24.4.
[93] Form CO, paragraph 685.
[94] Form CO, paragraph 682.
[95] Form CO, paragraphs 691 et seqq.
[96] Form CO, paragraph 700.

(177) Finally, the Notifying Party argues that any total or partial input foreclosure strategy would have a very limited impact on retail TV prices, given the number of alternative providers of TV channels, and therefore any potential impact on competition would be immaterial.[97]

5.3.2.2. The Commission's assessment

(178) For the reasons set out below, the Commission considers that the merged entity will not have the ability and incentive to foreclose competing suppliers of retail AV services by engaging in input foreclosure, e.g. by stopping to supply all or some of CME's channels to PPF's downstream rivals or by increasing the prices or degrading the quality of the channels. Furthermore, even if the merged entity were to engage in input foreclosure, such a strategy would not have a significant detrimental effect on competition.

(A) Ability to engage in input foreclosure

(179) CME holds a [30-40]% audience share in the general entertainment segment, [30-40]% audience share in the FTA general entertainment sub-segment, [30-40]% audience share in the basic pay TV general entertainment sub-segment and [30-40]% audience share in the FTA film channels sub-segment in Czechia.

(180) The Commission notes that in the overall market for the wholesale supply of TV channels and all other plausible segments, CME's audience share remains below 30%. In particular, in the segment for pay TV sports channels, CME has a market share of [10-20]% by revenues and [5-10]% by audience. Even if PPF's captive sports channels were included, the Parties combined market share would remain below 30% both by revenues ([20-30]%) and by audience ([5-10]%). As for the sub-segment for basic pay TV sports channels, CME has a market share of [20-30]% by revenues and [5-10]% by audience.

(181) In respect of the merged entity's ability to engage in input foreclosure, respondents to the market investigation consider that CME holds a leading market position and "*must have*" channels, which are important inputs to compete.[98] This is particularly true with respect to Nova, which is a general entertainment channel and the channel generating the most audience out of CME's portfolio, with a [20-30]% audience share among all FTA and basic pay TV channels.

(182) Additionally, several respondents considered CME's sports channels, Nova Sport 1 and Nova Sport 2, as important inputs to compete, in particular for suppliers of retail pay TV services. They submitted that, due to the importance of FTA distribution in Czechia, pay TV distributors rely on content, and in particular sports channels, to attract customers and distinguish themselves from competitors.[99]

(183) Moreover, most respondents to the market investigation submitted that they had no alternatives to CME's channels. For CME's main channel, Nova, this is due to the level of its audience share; for CME's sports channels, respondents consider that

97 Form CO, paragraphs 701 et seqq.

98 Replies to Questionnaire Q3 to distributors, questions 20 and 20.1.

99 Replies to Questionnaire Q3 to distributors, questions 20 and 20.1.

there would be no alternatives with a similar quality of content.[100] Therefore, most respondents to the market investigation considered their bargaining position to be low when licensing TV channels from CME.[101]

(184) In order to assess whether Nova on the one hand, and Nova Sport 1 and Nova Sport 2 on the other, should be considered as particularly important for distributors of AV services, more than their audience share would suggest, the Commission requested the Parties to provide viewer shares based on different parameters.[102] Table 19 summarizes such information in relation to the total viewing, continuous viewing and prime time viewing of CME's channels and their closest competitors in Czechia.

Table 19: Viewership data of FTA/basic pay TV channels in Czechia (2019, 4+)

	All Day Total time 30 min.	**N**	**All Day Total time 180 min.**	**N**	**All Day Continuous time 30 min.**	**N**	**All Day Continuous tome 180 min.**	**N**	**Prime time Continuous time 30 min.**	**N**	**Prime time Continuous time 180 min.**	**N**
CME	[…]	1	[…]	1	[…]	1	[…]	2	[…]	1	[…]	1
CT	[…]	2	[…]	2	[…]	2	[…]	1	[…]	2	[…]	2
Prima	[…]	3	[…]	3	[…]	3	[…]	3	[…]	3	[…]	3
Barrandov	[…]	4	[…]	4	[…]	4	[…]	4	[…]	4	[…]	4
AMC	[…]	5	[…]	5	[…]	5	[…]	5	[…]	5	[…]	5
Stanice O (Očko Music Channels)	[…]	6	[…]	6	[…]	6	[…]	6	[…]	6	[…]	6

Source: Form CO, Table 124.

(185) The Commission notes that despite CME's strong 2019 all day audience share position for FTA/basic pay TV channels, different viewership metrics described in Table 19 show that CME's position remains comparable to those of CT's and Prima's channels, which rank second and third.

(186) With regard to the general entertainment channels, the data provided by the Parties confirms that CME's general entertainment channels account together for [20-30] of the total audience share, while CT's general entertainment channels account for [20-30] and Prima's channels for [10-20] of the total audience share. Moreover, CME's

[100] Replies to Questionnaire Q3 to distributors, questions 26 and 26.1.

[101] Replies to Questionnaire Q3 to distributors, questions 22 and 22.1.

[102] In line with M.8861 – *Comcast/Sky* and M.7194 - *Liberty Global/Corelio/W&W/De Vijver Media*, 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), (ii) and (iii), the Parties submitted data for (a) 6 minutes, (b) 30 minutes, (c) 60 minutes, (d) 180 minutes. Table 19 presents a summary of the data provided.

main channel Nova has a higher audience share than CT's and Prima's main channels respectively. However, the Commission notes that CME's other general entertainment channels (Nova Action, Nova 2 and Nova Gold) do not represent a significant share of viewership.

Table 20: Audience share general entertainment channels (2019, All Day 4+)

Nova HD	[20-30]
Nova Action HD	[0-5]
Nova 2 HD	[0-5]
Nova Gold HD	[0-5]
ČT1 HD	[10-20]
ČT2 HD	[0-5]
Prima HD	[10-20]
Prima COOL HD	[0-5]
Prima LOVE HD	[0-5]
TV Barrandov HD	[0-5]
JOJ Family HD	[0-5]
Other	[0-5]

Source: The Parties' reply to RFI 11, Table 1 – based on data from Nielsen Admosphere.

(187) With regard to CME's film channel, Nova Cinema, Table 21 below shows that, while it has the highest audience share among Czech film channels, the combined audience share of Prima's film channels is higher. Moreover, as shown in Tables 9 to 10 above, the market share by audience of CME's film channels has decreased continuously both in the FTA and in the basic pay TV segment in the past three years, while the market share by audience of Prima's film channels has increased constantly.

Table 21: Audience share film channels (2019 All Day, 4+)

Nova Cinema (CME)	[0-5]
Prima Crimi	[0-5]
Prima Max	[0-5]
Kino Barrandov	[0-5]
Barrandov Krimi	[0-5]
CS Film	[0-5]
Filmbox	[0-5]
Joj Cinema	[0-5]
Film+	[0-5]
AMC	[0-5]

Source: Form CO, Table 20.

(188) With regard to Nova's sports channels, the Commission considers that CME does not have market power on the upstream sub-segment for the supply of sports channels in Czechia, for the following reasons. Firstly, CME's two channels had a combined market share of [5-10]% by audience and [20-30]% by revenues among basic pay TV sports channels in 2019. A number of competitors have comparable market shares in terms of revenue, namely Eurosport ([30-40]%), AMC ([10-20]%) and Sport 5 ([10-20]%). Secondly, as shown below in Table 22, CME's two sports channels have a combined [0-5]% audience share among all channels. Thirdly, the Parties have provided evidence that the audience shares of the Nova Sport channels will likely decrease in the next four years. This is because their audience share in 2019 was strongly driven by Nova's broadcasting of the Wimbledon tennis tournament, to which Eurosport acquired the exclusive broadcasting rights for 2020 to 2023.[103]

[103] The Notifying Party's reply to RFI 9, Annex 1, pages 3 et seq.

Table 22: Audience share sports channels (2019 All Day, 4+)

CT Sport	[0-5]
Nova Sport 1 (CME)	[0-5]
Nova Sport 2 (CME)	[0-5]
Sport 1	[0-5]
Sport 2	[0-5]

Source: Form CO, Table 27.

(189) Moreover, the Commission notes that the Nova sport channels are not premium pay TV sports channels and that most retailers offer them in their basic pay TV package. Furthermore, CME holds only a limited number of sports rights in Czechia, which do not include the main football rights or the rights to ice hockey events in which the national team participates.Several respondents to the market investigation pointed to the fact that, while CME already had a strong wholesale position pre-Transaction, its bargaining position was limited by its reliance on wholesale sales, in the absence of a direct-to-customer platform. As a result, CME had an incentive to provide a high quality product to all its retail distributors. This would change post-Transaction, since CME would be vertically integrated with PPF's pay TV platform.[104]

(190) In this regard, the Commission notes that PPF had a market share of [20-30]% by number of connected households and [10-20]% by revenues in 2019 on the segment for retail pay TV services in Czechia. The Commission thus considers that PPF's position on the downstream market is too limited to allow the merged entity to rely solely on its services as a supplier of pay TV services. Therefore, the ability of the merged entity to partially foreclose downstream competitors would in any event be limited.

(191) In light of the above, the Commission considers that overall the merged entity would lack the ability to engage in the total or partial input foreclosure strategies considered above.

(B) Incentive to engage in input foreclosure

(192) Several respondents to the market investigation consider that post-Transaction, the merged entity would have the incentive to exclusively supply its sports channels to PPF and not to other suppliers of pay TV services, or to degrade the terms and conditions to which it provides access (e.g. by increasing carriage fees, degrading the quality of content or restricting access to ancillary rights).[105]

[104] Replies to Questionnaire Q3 to distributors, question 24.3.

[105] Replies to Questionnaire Q3 to distributors, questions 23.4 and 24.4.

(193) In addition, one competitor indicates that PPF currently does not sub-licence its TV channels to other distributors, which raises concerns that this practice will continue post-transaction and will extend to CME.

(194) The Notifying Party argues that it will lack the incentive to foreclose competing pay TV operators from CME's TV channels in general, and sports channels in particular. It has submitted economic studies assessing the risk of (i) total and (ii) partial foreclosure of CME's channels in general, as well as (iii) CME's sports channels in particular.[106]

(195) As concerns the total foreclosure of CME's Nova channels,[107] the study assesses whether the merged entity would have an incentive to stop distributing CME's Nova channels on rival pay TV platforms. The study assesses different scenarios (foreclosure of individual pay TV retailers; foreclosure of all pay TV retailers combined, foreclosure of both DTT and rival pay TV platforms) and finds that, under any conceivable strategy, additional retail profits would not suffice to offset carriage and advertising losses. This is because CME's profitability relies significantly on advertising revenues. Therefore, CME has a strong economic incentive to maximize the reach of its channels, an incentive which will not change post-Transaction. If the merged entity would engage in total input foreclosure, it would thus lose a significant amount of advertising revenues and carriage fees, due to O2's limited downstream footprint. On the other hand, the merged entity's increase in retail profit would be limited due to the fact that not all customers would switch distributors, and even those who would all not switch to O2.[108]

(196) In respect of partial foreclosure of CME's Nova channels[109] in the form of higher carriage fees or generally degraded commercial conditions imposed on competing TV retailers, the study posits that the merged entity may internalise the possibility that a blackout of CME's channels on rival TV platforms resulting from a refusal of the merged entity's proposed terms would have a profit-enhancing effect on O2's retail TV business, thus making such blackouts less costly for the merged entity. However, despite the merged entity's improved ability to threaten blackouts, the study finds that, due to O2's limited downstream footprint and the limited number of expected diversion in favour of O2 following a blackout of CME's channels[110], the merged entity's bargaining position would not materially improve post-Transaction.

(197) Finally, in relation to CME's sports channels,[111] the study finds that, in light of those channels' low audience shares, end-customers could not be expected to switch distributors following a blackout. As a result, the merged entity would expect to lose carriage fees without any significant gains to be expected on the retail side. As for partial foreclosure, the study found that CME's bargaining position would not materially change post-Transaction and that in any event, the effects on retail prices

[106] Form CO, Annexes 31 and 32; the Parties' reply to RFI 9, Annex 1.
[107] Form CO, Annex 31.
[108] The study assessed the possible churn based on a TNS survey commissioned by CME in 2015. It assessed the diversion ratios to other distributors using their market shares as a proxy.
[109] Form CO, Annex 32.
[110] The study assessed the possible churn based on a TNS survey commissioned by CME in 2015. It assessed the diversion ratios to other distributors using their market shares as a proxy.
[111] The Notifying Party's reply to RFI 9, Annex 1.

would be even lower than in the case of a partial foreclosure of all of CME's channels.

(198) With regard to CME's sports channels in particular, the Notifying Party also submitted that "*the Nova sport channels do not hold highly attractive rights and are, therefore not valuable as captive production alongside the more valuable sports content O2 already broadcasts on its O2 sports channels*".[112]

(199) A number of PPF's internal documents support the Notifying Party's claim that the merged entity would have no incentive to engage in input foreclosure. In particular, in a presentation for financing banks regarding the Transaction from September 2019[113] and a lender presentation regarding the loan for the Transaction from October 2019[114], PPF has consistently presented long-term plans to its lenders that are based on a wide distribution of CME's channels. PPF's long term planning relies on the growth of CME's advertising revenues and carriage fees revenues in the coming five years.[115] PPF's financial forecasts therefore assume that the merged entity will continue to ensure a broad distribution of CME's main channel Nova, which accounts for most of CME's advertising revenues, as well as of Nova's sports channels, which accounted for [confidential data regarding revenues] of CME's carriage revenues in Czechia in 2019.

(200) With regard to the increase in carriage fees in particular, the Commission notes that given the low audience shares of CME's sports channels and the type of content they broadcast, any increase in carriage fees is unlikely without a service in return (such as an increase in quality and/or the offer of ancillary rights). Therefore, absent other evidence, the Commission considers that any increase in carriage fees would not result from the implementation of a foreclosure strategy.

(C) Impact on effective competition of input foreclosure

(201) Regardless of whether the merged entity has either the ability or the incentive to foreclose competing downstream rivals with regard to the supply of TV channels, the Commission does not consider that such a strategy would have an impact on competition.

(202) As detailed above in paragraphs (144) to (158), there are several providers of FTA and basic pay TV channels that compete with CME's channels and will remain active post-Transaction. In particular with regard to CME's sports channels, even if the merged entity were to adopt a foreclosure strategy, downstream rivals would continue to have access to sufficient alternative sports channels.

(203) As for a partial foreclosure strategy, the Commission notes that CME's carriage fees represent a small amount of the overall carriage fees payed by TV distributors. Moreover, carriage fees payed by TV retailers are relatively small when compared to the level of retail TV fees. Even if the merged entity would decide to increase

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112 The Notifying Party's reply to RFI 9, Annex 1, page 9.
113 Form CO; Annex 4.
114 Form CO, Annex 5.
115 Form CO, Annex 4, slides 97, 103, 104, and Annex 5, slide 30.

carriage fees, it is unlikely that downstream rivals would be significantly impacted and unable to compete effectively post-merger.

5.3.2.3.Conclusion

(204) In light of the above, the Commission considers that the Transaction does not give rise to serious doubts with regard to its compatibility with the internal market as a result of input foreclosure effects to the detriment of competing providers of retail AV services in Czechia.

5.3.3. Customer foreclosure relating to the wholesale supply of TV channels and the retail supply of AV services in Czechia

(205) The Transaction combines CME's activities as a TV broadcaster with PPF's downstream activities as a pay TV retailer in Czechia.

(206) According to the Non-Horizontal Merger Guidelines, a downstream firm being part of a vertical merger may refuse to buy inputs from its rival input suppliers as a result of the Transaction. This incentive to foreclose access to customers downstream may result from the vertical integration of an upstream supplier with an important customer downstream. Due to its downstream presence, the merged entity may foreclose its upstream rivals' access to an important customer base. In turn, this can inhibit upstream rivals to effectively compete.[116]

(207) The Commission has assessed the risk of the following types of customer foreclosure strategies in Czechia: (i) complete foreclosure of rival TV broadcasters through the denial of access to PPF's downstream distribution platform; and (ii) partial customer foreclosure of rival TV broadcasters through for instance a degradation of the quality of the viewer experience for competing channels of PPF's platform or through a reduction in carriage fees.

5.3.3.1.The Notifying Party's view

(208) The Notifying Party submits that, post-Transaction, it would have neither the ability nor the incentive to foreclose the Target's competitors in the market for the wholesale supply of TV channels in Czechia.

(209) As regards ability, the Notifying Party submits that PPF's position on the market for the retail supply of pay TV services is relatively low. The number of end users that watch TV over the Notifying Party's IPTV platform is not large enough to enable PPF post-Transaction to successfully pursue a customer foreclosure strategy.[117]

(210) As regards incentives, the Notifying Party argues that a customer foreclosure strategy would not be profitable, because it would lose customers and not be able to compensate the losses at retail level with potential gains at wholesale level.[118]

[116] Non-Horizontal Merger Guidelines, paragraph 58.

[117] Form CO, paragraphs 706 et seq.

[118] Form Co, paragraph 708.

5.3.3.2. The Commission's assessment

(211) The Commission considers that a potential customer foreclosure strategy is unlikely to have an adverse impact on the downstream markets of the wholesale supply of TV channels and the retail supply of AV services for the following reasons.

(A) Ability to engage in customer foreclosure

(212) The Commission considers that the merged entity would lack the ability to engage in total or partial customer foreclosure to the detriment of competing TV broadcasters.

(213) At the outset, for customer foreclosure to be a concern, the Transaction must involve a company with a significant degree of market power as a customer on the downstream market.

(214) Downstream, PPF is active as a pay TV operator and had a market share of [20-30]% by number of connected households on the segment for the retail supply of pay TV services in Czechia in 2019. In a potential sub-segment for the supply of linear pay TV services, its market share was of [10-20]% by number of connected households.[119] The Commission therefore considers that the merged entity does not have a significant degree of market power as customer of wholesale TV channels in Czechia.

(215) The merged entity has higher market shares on the potential sub-segment of the retail market for supply of AV services through IPTV technology. On this sub-segment, PPF had a [70-80]% market share in 2019. However, this does not translate into significant market power as an acquirer of TV channels, since IPTV operators are only a category of potential customers of TV channels in Czechia. In fact, the Commission notes that in Czechia in 2019, the main distribution technologies were DTT (with a 52% share), satellite (with a 22% share) and cable (with a 16% share), while IPTV had only a share of 11%.[120] The TV channels of all major TV broadcasters (i.e. CME, CT, Prima and Barrandov) were shown on all types of distribution technologies (i.e. DTT, satellite, cable and IPTV).[121]

(216) The majority of respondents to the market investigation confirmed that PPF has a "normal" bargaining position when negotiating to acquire distribution rights for TV channels.[122] Moreover, the majority of respondents to the market investigation does not consider that the merged entity would likely stop licensing TV channels from third parties or degrade the terms and conditions of the acquisition of TV channels from third parties post-Transaction.[123]

(217) However, a few respondents were concerned that the merged entity might stop acquiring certain TV channels from competing TV broadcasters or that it could

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119 In the potential sub-segment for non-linear pay TV services, PPF's market share did not exceed [5-10]% by number of connected households. However, suppliers of non-linear pay TV services do not acquire TV channels, and are therefore not a relevant customer group for TV broadcasters.

120 Form CO, paragraph 916.

121 Form CO, paragraph 230 and Table 19.

122 Replies to Questionnaire Q2 to broadcasters, questions 12 and 12.1.

123 Replies to Questionnaire Q2 to broadcasters, questions 13 and 14.

degrade the terms on which it would acquire third party TV channels (e.g., by negotiating lower carriage fees or offering worse EPG slots).

(218) In this regard, the Commission notes that PPF must comply with the terms of existing distribution agreements with TV broadcasters. These agreements would limit the merged entity to engage in total or partial input foreclosure before the end of their validity, which in most cases [confidential business information].[124]

(219) In addition, the merged entity's ability to offer worse EPG slots is also limited to some extent. While the Commission notes that there is no EPG regulation in Czechia, the merged entity's ability to arbitrarily alter the listing of the channels is limited by non-discrimination clauses in current distribution agreements.

(B) Incentive to engage in customer foreclosure

(220) The Commission also considers that the merged entity would not have the incentive to engage in total or partial foreclosure, for the following reasons.

(221) The Commission notes that pay TV providers have to offer a diverse portfolio of channels in order to maximise their attractiveness for a large number of viewers. The risk of a broad foreclosure strategy not targeting closely competing channels with CME's channels, but including also channels that are not close competitors, can therefore be excluded from the outset.

(222) The Commission considers that potential targets of a total or partial foreclosure strategy could be CT and Prima, who closely compete with CME in the supply of general entertainment channels, as well as Eurosport and AMC, which closely compete with CME in the supply of sports channels (in addition to CT).

(223) With regard to the general entertainment channels, the Commission notes that PPF has licensed general entertainment channels from different broadcasters, including CME, CT and Prima in the past. These channels all belong to a standard basic pay TV package, which is expected by customers. There is no indication that PPF would have the incentive to drop competing general entertainment channels from its offering post-Transaction. Moreover, given that CME's main channel was already the one with the largest audience share pre-Transaction, the Commission considers that PPF's incentives for the allocation of EPG slots would not change.

(224) With regard to sports channels, the Commission notes that, as discussed above, already pre-Transaction, PPF produced three own sports channels, in which it bundled a number of attractive sports rights. Nevertheless, it still purchased sports channels from competitors.[125] The change brought about by the Transaction is the addition of CME's sports channels. Given the fact that CME's sports channels have a relatively small combined audience share of [0-5], the Commission considers that the addition of CME's sports channels will not materially change the incentives of the merged entity to acquire competing sports channels in comparison to the situation pre-merger.

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[124] The Notifying Party's reply to RFI 12, question 4.

[125] Form CO, paragraph 213.

(225) Moreover, the Notifying Party has submitted streaming measurements on the popularity of sport programs streamed on its IPTV platform. Besides its own channels, CT Sport and Eurosport offered the most attractive content, while CME's channels were not even present in the top 15.[126] The merged entity would therefore have an incentive to continue to license third party sport channels that provide content which is attractive for viewers, in order to avoid the risk of customer churn.

(226) Additionally, the Commission notes that a foreclosure strategy would likely not be profitable, given that the merged entity's forecasted downstream losses per customer would exceed the forecasted revenue gains per viewer.[127]

(C) Impact on effective competition of customer foreclosure

(227) The Commission considers that, regardless of whether the merged entity would have the ability or incentive to engage in customer foreclosure, any such strategy would not have any effects on competition in the upstream market for the wholesale supply of TV channels in Czechia. This is because, as discussed above, IPTV is only one of a number of distribution technologies available in Czechia and reaches only 11% of the connected households. Competing TV broadcasters would therefore not only have alternative suppliers of IPTV services to turn to, such as UPC (Vodafone) and T-Mobile Czechia, but also a number of alternative distributors using other types of technologies and offering a sufficiently wide coverage in Czechia.

(228) Finally, in the event that the merged entity would be able to negotiate reduced carriage fees, this would reduce its marginal costs per customer and, if passed through, would lead to lower retail TV fees to the benefit of consumers.

5.3.3.3. Conclusion

(229) On the basis of the paragraphs (211) to (228) above, the Commission considers it unlikely that any potential foreclosure of competitors in the upstream market would have an adverse impact on the downstream markets and would therefore be detrimental to consumers.

5.3.4. *Input foreclosure relating to the sale of TV advertising space and the retail supply of AV and telecommunications services in Czechia, Slovakia and Bulgaria*

5.3.4.1. Introduction

(230) The Transaction combines CME's upstream activities as a supplier of TV advertising space and PPF's downstream activities as a supplier of retail AV and telecommunications services in Czechia, Slovakia and Bulgaria. TV advertising provides a medium through which suppliers of retail AV and telecommunications services can promote their products and services. The Commission therefore considers that TV advertising space is an input for the supply of such services.

(231) The Commission has assessed whether the merged entity would have the ability and incentive to foreclose downstream competitors from the supply of TV advertising space on CME's channels, by either denying them access to TV advertising space or

[126] Reply of the parties to RFI 11, Annex 1.
[127] Reply of the parties to to RFI 11.

by offering better terms and conditions for the supply of TV advertising space to its own subsidiaries than to its competitors, and whether such a strategy would have an impact on effective competition in the downstream markets in Czechia, Slovakia and Bulgaria.

5.3.4.2. The Notifying Party's view

(232) The Notifying Party argues that CME's advertising inventory does not constitute an important input for suppliers of retail AV and telecommunications services. This is because the acquisition of TV advertising space does not represent an important cost factor for these retailers. Moreover, competing retailers could switch to alternative suppliers of TV advertising space or also use other means of advertising, in particular online advertising.[128]

(233) As regards the ability to engage in input foreclosure, the Notifying Party argues that in each Member State, there are alternative TV channels with sufficient inventory and reach to which downstream competitors could switch. In Czechia, this would be the channels of Prima and CT, in Slovakia the channels of JOJ and RTVS and in Bulgaria the AMG and BNT channels. Moreover, the Notifying Party argues that an input foreclosure strategy would merely realign purchase patterns among competing firms.[129]

(234) As regards the incentive to engage in input foreclosure, the Notifying Party argues that a total or partial input foreclosure strategy would not be profitable for the merged entity. The loss of advertising revenues would not be offset by increased sales of PPF's subsidiaries on the downstream markets.[130]

(235) Finally, the Notifying Party argues that a potential input foreclosure strategy would not have any impact on the downstream competitor's ability to compete effectively. This is supported by the fact that only few of PPF's competitors currently purchase TV advertising space from CME in each of Czechia, Slovakia and Bulgaria.[131]

5.3.4.3. The Commission's assessment

(A) Ability to engage in input foreclosure

(236) As set out in Tables 6, 13 and 14, the Commission notes that the Parties had a combined market share of <[50-60]% in Czechia, [60-70]% in Slovakia and [50-60]% in Bulgaria on the market for the sale of TV advertising space in 2019.

(237) Despite its high market shares, the Commission considers that the merged entity will not have the ability to engage in total or partial input foreclosure, for the following reasons.

(238) Firstly, the market investigation confirmed that the acquisition of TV advertising space represented less than 10% of the cost for the supply of retail AV and

[128] Form CO, paragraphs 718-720, 740-742, 758-761, 777-780, 796-799.
[129] Form CO, paragraphs 722, 763, 781.
[130] Form CO, paragraphs 724-728, 746-748, 765-766, 783-785, 802-804.
[131] Form CO, paragraphs 729-730, 749-750, 767-768, 786-787, 805-806.

telecommunications services.[132] More precisely, the Parties estimate that the acquisition of TV advertising space represents less than [confidential financial information] of the total costs of PPF's competitors in telecommunications services.[133] Given that these costs represent the acquisition of TV advertising space on several channels, the Commission considers that the absence of such advertising space on CME's channels alone is unlikely to materially affect the production of retail AV or telecommunications services, or render ineffective the sale of such products to end users.

(239) Secondly, the results of the market investigation did not indicate that retail AV and telecommunications operators purchase advertising space from CME's channels in a significant or exclusive manner, which particularly distinguished CME's channels from other TV channels or means of advertising. As the results of the market investigation indicated, TV distributors and telecommunications operators appear to invest in advertising in several media[134] and, with regard to TV advertising space, they purchase from several TV channels, including, but not only, from CME, in order to reach as many viewers as possible.[135] Therefore, the advertising space available through CME does not appear to distinguish itself from advertising possibilities offered by other TV channels or other advertising venues.

(240) Thirdly, the Commission notes that, in practice, CME has sold TV advertising space only to a limited number of AV and telecommunications services retailers in Czechia in 2019. This indicates that advertising on CME's TV channels is not a pre-requisite for being a competitive supplier of retail AV and telecommunications services.

(241) In Czechia, CME sold TV advertising space to only two competitors of PPF: T-Mobile (a telecommunications operator) and Skylink (a supplier of pay TV services). The combined spending of these two customers amounted to approximately [confidential financial information] in 2019, corresponding to [confidential financial information] of the Czech TV advertising market.[136]

(242) In Slovakia, CME sold TV advertising space to PPF's two main competitors in the market for the retail supply of mobile telecommunications services, Orange Slovensko and Slovak Telekom, but not to PPF. The combined spending of these two customers amounted to approximately EUR [confidential financial information] in 2019, or approximately [confidential financial information] of the TV advertising market in Slovakia.[137]

(243) In Bulgaria, CME sold TV advertising space to all three suppliers of retail mobile telecommunications services (i.e. PPF, A1 (Mobitel) and Vivacom). However, these

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132 Replies to Questionnaire Q3 to distributors, questions 31 and 31.1; replies to Questionnaire Q4 to purchasers of TV advertising space, questions 11 to 11.2.

133 The Parties' reply to RFI 12, question 1a(i).

134 Replies to Questionnaire Q3 to distributors, questions 29 and 29.1; replies to Questionnaire Q4 to purchasers of TV advertising space, questions 9.4 and 11.1.

135 Replies to Questionnaire Q3 to distributors, question 30.

136 Form CO, paragraph 720; the Parties' reply to RFI 12, question 1a(i).

137 The Parties' reply to RFI 10, question 1.

mobile telecommunications operators purchased limited amounts of CME's TV advertising inventory.[138]

(244) Fourthly, in each of Czechia, Slovakia and Bulgaria, at least one other major supplier of TV advertising space, with a comparable offer of TV channels and a comparable reach will remain, as well as multiple smaller, credible suppliers.

(245) In Czechia, the merged entity's main competitor is Media Club, a media agency selling the TV advertising inventory of the Prima and TV Barrandov channels, among others, with a market share of [30-40]%. Additionally, the public broadcaster CT is also active on the market, though to a more limited extent with a market share of [5-10]%.

(246) In Slovakia, the merged entity's main competitor is the JOJ Group, with a market share of [30-40]%, followed by the public broadcaster RTVS with a market share of [5-10]%.

(247) In Bulgaria, the merged entity's main competitor is the Nova Group (which is not part of the Target), with a market share of [40-50]%, followed by BNT with a market share of [0-5]%.

(248) Fifthly, the majority of respondents to the market investigation considered that CME does not have a significant bargaining position when negotiating the sale of TV advertising space.[139] The large majority of respondents to the market investigation did not consider it likely that the merged entity would stop selling TV advertising space to competing suppliers of AV and/or telecommunications services.[140] A number of respondents confirmed that there would be sufficient alternatives on the TV advertising market.[141]

(249) Sixthly, the market investigation was inconclusive as to whether the merged entity would be able to offer better terms and conditions to its own subsidiaries than to competing third parties. Some respondents submitted that the merged entity would have the ability to engage in partial input foreclosure, due to its market power, as well as the fact that advertising contracts are typically of one year duration.[142] Other respondents pointed to the very limited usage of CME's channels by telecommunications companies.[143]

(250) Finally, the Commission notes that in each of Czechia, Slovakia and Bulgaria, the Notifying Party's ability to engage in input foreclosure is limited by the fact that the vast majority of customers negotiate the terms and conditions and buy TV advertising space through media agencies or other intermediaries, and not directly

138 Form CO, paragraph 780.

139 Replies to Questionnaire Q3 to distributors, questions 33 and 33.1; replies to Questionnaire Q4 to purchasers of TV advertising space, questions 13 and 13.1.

140 Replies to Questionnaire Q4 to purchasers of TV advertising space, question 14.

141 Replies to Questionnaire Q3 to distributors, questions 33.1-34.1Questionnaire.

142 Replies to Questionnaire Q3 to distributors, questions 35 and 35.1; replies to Questionnaire Q4 to purchasers of TV advertising space, questions 15 and 15.1.

143 Replies to Questionnaire Q4 to purchasers of TV advertising space, question 15.1.

with the suppliers of TV advertising space.[144] Although media agencies do not acquire advertising space in bulk, they handle and affect the negotiations with the suppliers of advertising space. Thus, media agencies potentially have a higher buyer power, since they are able to leverage the combined purchasing power of their customers. Moreover, CME's current pricing strategy is set by uniformly applicable station policies, which do not differentiate customers according to the industry in which they are active.[145]

(B) Incentive to engage in input foreclosure

(251) Several of respondents to the market investigation considered that the merged entity would have the incentive to reduce the overall TV advertising spend of its own subsidiaries in order to increase their competitiveness on the retail AV and telecommunications markets.[146]

(252) The Commission notes that a total or partial input foreclosure strategy would likely be unprofitable for the merged entity. On the one hand, the merged entity would potentially lose revenues from TV advertising, which are the main source of revenues for CME's main channels. However, the Commission notes that, based on the information provided by the Parties, suppliers of retail AV and telecommunications services do not appear to be important customers of TV advertising space on CME's TV channels. Therefore, the losses in advertising revenues resulting from an input foreclosure strategy targeted at this group of customers would be negligible.

(253) On the other hand, given the fact that the acquisition of TV advertising space represents only a small percentage of the total costs of the provision of retail AV and telecommunications services, increases in advertising costs by the merged entity would not likely materially affect the costs of PPF's competitors. Thus, their ability to compete for customers would not be substantially affected. Given the ability of the competitors to advertise on different channels and media, a potential foreclosure strategy would thus only have a limited impact on the profitability of PPF's activities in these markets. Potential gains on the retail AV and telecommunications markets would therefore be unlikely to offset the losses in advertising revenue.

(254) Additionally, as discussed above in paragraph (200), internal documents provided by the Parties show that PPF's long term planning relies on the continuous growth of CME's advertising revenues.[147] The merged entity therefore does not have an incentive to foreclose customers of TV advertising space. Should it either stop supplying TV advertising space to downstream competitors or offer TV advertising space on better conditions to PPF than to other market participants, the merged entity would incur losses in advertising revenues that would counter its long term strategic plans.

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144 Form CO, paragraph 903; replies to Questionnaire Q4 to purchasers of TV advertising space, questions 13.1: About [confidential financial information] of CME's customers purchase advertising space through media agencies, cf. the Parties' reply to RFI 12, question 1a(iii).

145 The Parties' reply to RFI 12, question 1a(iv).

146 Replies to Questionnaire Q3 to distributors, question 35.2.

147 The Parties' reply to RFI 12, question 1b(i).

(255) Therefore, on balance, the Commission considers that the merged entity would not have an incentive to foreclose competing suppliers of retail AV or telecommunications services.

(C) Impact on effective competition of a potential input foreclosure strategy

(256) Respondents to the market investigation provided mixed responses as to whether advertisers can organise effective TV advertising without access to advertising space on CME's channels. While respondents pointed to CME's strong position in each of Czechia, Slovakia and Bulgaria, they also acknowledged that due to the presence of other main channels, advertisers did have credible alternative options.[148]

(257) Respondents to the market investigation also provided mixed responses as to whether advertisers can reach a sufficient share of target audiences sufficiently quickly and sufficiently frequently by relying only on advertising space from TV channels other than CME's channels. One respondent from Slovakia submitted that while major TV advertisers relied on both major TV broadcasters when planning reach and frequency, smaller advertisers could effectively rely on only one TV group.[149]

(258) As for a partial foreclosure strategy, whereby the merged entity would offer better terms and conditions for the supply of TV advertising space to its own subsidiaries that to its retail AV and telecommunications competitors, some respondents to the market investigation submitted that such a strategy could reduce sales and increase the churn of competing operators.[150] This is because PPF could either offer its services at a lower price or use the savings on advertising spend to invest more on content, thus being able to offer better services to end-customers.

(259) However, the Commission considers that, given that the merged entity would have neither the ability, nor the incentive to engage in a total or partial input foreclosure strategy, the Transaction will not have any impact on effective competition. Firstly, the costs of TV advertising represent only a small amount of the total cost for the provision of retail AV and telecommunications services. Secondly, retail AV and telecommunications operators are able to compete successfully without acquiring TV advertising space on CME's channels, as was the case for several of PPF's competitors already pre-Transaction. Retail suppliers of AV services such as UPC and Telly in Czechia and important retail suppliers of telecommunications services such as Vodafone in Czechia do not currently advertise on CME's channels. In Czechia, O2 CZ did not advertise in CME's channels in 2017 and 2018 and only to a negligible extent in 2019.[151] The Commission therefore considers that the costs of these downstream competitors would not be raised by a potential foreclosure strategy on the part of the merged entity.

5.3.4.4. Conclusion

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148 Replies to Questionnaire Q2 to broadcasters, questions 24 and 24.1.

149 Replies to Questionnaire Q2 to broadcasters, questions 25 and 25.1.

150 Replies to Questionnaire Q3 to broadcasters, question 35.3.

151 In 2019, O2 CZ spent only EUR [confidential financial information] on advertising on CME's channels, the Parties' reply to RFI 12, question 1a(ii).

(260) In light of the above, the Commission considers that the Transaction does not give rise to serious doubts with regard to its compatibility with the internal market as a result of input foreclosure effects to the detriment of competing providers of retail AV and telecommunications services in Czechia, Slovakia and Bulgaria.

5.3.5. Customer foreclosure relating to the sale of TV advertising space and the (i) retail supply of AV and (i) telecommunications services in Czechia, Slovakia and Bulgaria

5.3.5.1.Introduction

(261) The Transaction brings together CME's upstream activities as a supplier of TV advertising space and PPF's downstream activities as a supplier of retail AV and telecommunications services in Czechia, Slovakia and Bulgaria. PPF, as a retailer of TV services and a provider of telecommunication services (mobile and fixed internet), is a customer for CME's TV advertising space in Czechia, Slovakia, and Bulgaria.

(262) The Commission has assessed whether post-transaction PPF will have the ability and the incentive to cease acquiring advertising space from CME's rivals and only advertise its (i) retail TV services and (ii) its telecommunication services on CME's channels, in Czechia, Slovakia and Bulgaria.

5.3.5.2. The Notifying Party's view

(A) Markets for the sale of TV advertising space and the retail supply of AV in Czechia

(263) The Notifying Party submits that post-transaction the merged entity is unlikely to engage into customer foreclosure by restricting the acquisition of advertising space by PPF only on CME's channels.

(264) The Notifying Party will not have the ability post-Transaction to effectively foreclose CME's rivals from supplying TV advertising inventory to PPF. When considering the acquisition of advertising space by retail TV services providers, PPF is not a sufficiently important advertiser because overall retail TV services providers are not important buyers of TV advertising inventory.

(265) The Notifying Party will also not have the incentive to engage in customer foreclosure post-Transaction. In light of the negligible importance of PPF as a buyer of TV advertising inventory, a customer foreclosure strategy would not result in any competitive advantage for the merged entity.

(B) Market for the sale of TV advertising space and the supply of telecommunication services in Czechia, Slovakia and Bulgaria

(266) The Notifying Party submits that post-transaction the merged entity is unlikely to engage into customer foreclosure by restricting the acquisition of advertising space by PPF only on CME's channels.

(267) The Notifying Party will not have the ability post-Transaction to effectively foreclose CME's rivals from supplying TV advertising inventory to PPF. When considering the acquisition of advertising space by telecommunication services

providers, PPF is not a sufficiently important advertiser because providers of telecommunication services are not important buyers of TV advertising inventory.

(268) The Notifying Party will also not have the incentive to engage in customer foreclosure post-Transaction. In light of the negligible importance of PPF as a buyer of TV advertising inventory, a customer foreclosure strategy would not result in any competitive advantage for the merged entity.

5.3.5.3. The Commission's assessment

(269) The Commission considers that a potential customer foreclosure strategy is unlikely to have an adverse impact on the market for the sale of advertising space for the following reasons.

(270) As set out above under paragraph (213), for customer foreclosure to be a concern, the Transaction must involve a company with a significant degree of market power as a customer on the downstream market.

(A) Market for the sale of TV advertising space and the retail supply of AV in Czechia

(271) The majority of the respondents to the market investigation did not raise any concerns with regard to potential customer foreclosure vis-à-vis CME's rivals in the market for the sale of advertising space. Only one respondent to the market investigation raised the issue that post-transaction PPF would cease acquiring advertising space from CME's rivals.[152]

(272) The Commission considers that the merged entity will lack the ability to engage in customer foreclosure because PPF (both as a group and as a retail TV provider) is not an important acquirer of advertising space. In 2019, O2 spent a total of approx. EUR [confidential financial information] on TV advertising in Czechia for the advertising of its entire portfolio, not just for retail AV services, and about [confidential financial information] for advertising in Czechia across all of PPF's subsidiaries.[153] Compared to the total size of the market for TV advertising inventory, these sales only accounted for approx. [confidential financial information], which is insufficient to enable successful customer foreclosure.

(273) Similarly, the Commission considers that the merged entity will also lack the incentive to engage in customer foreclosure because it would not result in any competitive advantage for the Parties. In light of the limited importance of PPF as a buyer of TV advertising inventory for its AV offering, a customer foreclosure strategy could result in additional costs as PPF may have to change its advertising campaigns, abandon its advertising contracts, or forego volume discounts. Given the absence of any benefits stemming from this strategy, the Notifying Party would have no incentive engage in such a strategy.

(274) With regard to the effects of a potential customer foreclosure strategy, the Commission considers that the market for advertising space would not be impacted by such a strategy on the part of PPF. PPF's modest share of spending in advertising

152 Replies to Questionnaire Q2 to broadcasters, questions 23-27.
153 Reply of the parties to RFI 12, question 2a.

compared to the overall market and the existing demand for advertising space by a large number of customers would render any customer foreclosure effort ineffective.

(B) Market for the sale of TV advertising space and the supply of telecommunication services in Czechia, Slovakia and Bulgaria

(275) The results of the market investigation did not point to a customer foreclosure concern in Czechia and Slovakia where O2 is a telecommunication services provider. In Bulgaria, a concern has been raised that Telenor (PPF's telecommunication services provider) could potentially use exclusively CME's advertising space for its advertising needs.[154]

(276) The Commission considers that the merged entity will lack the ability to engage in customer foreclosure because PPF (both as a group and as a telecommunication services provider) is not an important acquirer of advertising space. In 2019, PPF's subsidiaries spent a total of EUR [confidential financial information] on TV advertising space in Czechia.[155] Compared to the total size of the market for TV advertising inventory, these sales only accounted for approx. [confidential financial information], which, as indicated above, is insufficient to enable successful customer foreclosure. Similarly, in Slovakia, O2's spending on TV advertising amounted to approximately EUR [confidential financial information]. PPF spent about EUR [confidential financial information] for advertising in Slovakia across all of its subsidiaries.[156] These sales only accounted for approximately [confidential financial information] of the total size of the market for TV advertising inventory. . Lastly, in Bulgaria, Telenor Bulgaria spent a total (on the entire product portfolio – not just for retail telecommunication services) of approx. EUR [confidential financial information] on TV advertising in Bulgaria. These sales only accounted for approximately [confidential financial information] the total size of the market for TV advertising inventory.

(277) Similarly, the Commission considers that the merged entity will also lack the incentive to engage in customer foreclosure because it would not result in any competitive advantage for the Parties. In light of the negligible importance of PPF as a buyer of TV advertising inventory in relation to its telecommunication services, a customer foreclosure strategy could result in additional costs as PPF may have to change its advertising campaigns, abandon its advertising contracts, or forego volume discounts. Given the absence of any benefits stemming from this strategy, the Notifying Party would have no incentive engage in such a strategy in any of Czechia, Slovakia or Bulgaria.

(278) With regard to the effects of a potential customer foreclosure strategy, the Commission considers that the market for advertising space would not be impacted by such a strategy on the part of PPF. PPF's low spending in advertising compared to the overall market and the existing demand for advertising space by a large number of customers would render any customer foreclosure effort ineffective.

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154 Replies to Questionnaire Q2 to broadcasters, questions 23-27.

155 Reply of the parties to RFI 12, question 2a. Among the subsidiaries, O2 accounted with EUR [confidential financial information] for the largest amount spent on TV advertising, while other subsidiaries (Zonky, Air Bank, Home Credit, Mall Group and Heureka) spent between EUR [confidential financial information].

156 Reply of the parties to RFI 12, question 2a.

5.3.5.2.Conclusion

(279) In light of the above, the Commission therefore concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to full or partial customer foreclosure in Czechia, Slovakia, and Bulgaria on the vertical relationship between the sale of advertising space by CME and the provision of (i) retail TV services and (ii) telecommunication services by PPF.

6. CONCLUSION

(280) 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 and Article 57 of the EEA Agreement.

For the Commission

(Signed)
Margrethe VESTAGER
Executive Vice-President