



EUROPEAN COMMISSION  
DG Competition

***Case M.9064 - TELIA COMPANY / BONNIER  
BROADCASTING***

Only the English text is available and authentic.

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

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Decision on the implementation of the  
commitments - Purchaser approval  
Date: 18/05/2020



## EUROPEAN COMMISSION

Brussels, 18.05.2020  
C(2020) 3367 final

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

TELIA COMPANY AB  
169 94 Solna  
Stockholm  
Sweden

**Subject: Case M.9064 – Telia Company / Bonnier Broadcasting  
Approval of Discovery as OTT Purchaser following your letter of  
24.04.2020**

Dear Sir/Madam,

#### **1. FACTS AND PROCEDURE**

- (1) By decision of 12 November 2019 (“the Decision”) adopted pursuant to Article 8(2) of the Merger Regulation<sup>1</sup> and Article 57 of the Agreement on the European Economic Area (“EEA Agreement”), the Commission declared the operation by which Telia Company AB (“Telia”) acquires sole control of Bonnier Broadcasting Holding AB (“Bonnier Broadcasting”) (the “Transaction”) compatible with the internal market and the EEA Agreement, subject to conditions and obligations

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<sup>1</sup> Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings.

(the “Commitments”). Telia and Bonnier Broadcasting<sup>2</sup> will hereafter be referred to as “the Parties” and the combination of the two post-Transaction will be referred to as the “Combined Group”.

- (2) The Commitments essentially consist of: (i) a commitment to license, on fair, reasonable and non-discriminatory (“FRAND”) terms, Bonnier Broadcasting’s free-to-air (“FTA”) and basic pay TV channels, including ancillary rights, to TV distributors in each of Sweden and Finland; (ii) a commitment to license, on FRAND terms, Bonnier Broadcasting’s premium pay TV sports channels and the Liiga channels owned by the Combined Group, including ancillary rights, to TV distributors in each of Sweden and Finland; (iii) a commitment to license standalone over-the-top (“OTT”) rights to one other market player in each of Sweden and Finland; (iv) a commitment not to limit access to the merged entity’s standalone streaming services and applications over the internet (advertising-based video on demand (“AVOD”) / subscription-based video on demand (“SVOD”)) for end users; (v) a commitment not to discriminate when offering TV advertising space, including to sell advertising space on FRAND terms to providers of telecommunication services, fixed internet access services and TV distribution services in each of Sweden and Finland and to maintain TV advertising space for acquisition by such players; and (vi) a commitment to maintain information barriers between, on the one hand, the merged entity’s TV broadcasting and advertising business and, on the other hand, the merged entity’s TV distribution business and telecoms business with regard to the confidential information concerning competitors in TV distribution, mobile telecommunication services and fixed internet access services and broadcasters.
- (3) The present decision concerns the third commitment of the above-described package: the commitment to license standalone OTT rights to one other market player in each of Sweden and Finland (the “OTT Commitment” and the “OTT Purchaser” or “OTT Purchasers”).
- (4) The scope of the OTT Commitment covers the licensing of standalone OTT rights, which consist of the rights to include the Bonnier Broadcasting FTA/basic channels, the Bonnier Broadcasting premium sports channels and the Liiga channels, including ancillary OTT rights, in a distribution service over the open internet without requiring that the customers have a TV service subscription. The commitment to license the standalone OTT rights will be for an initial period of [1-5] years with an option to renew the term for a further period of [1-5] years, for a total up to the duration of the Commitments (10 years), subject to the Commission’s approval following consultation with the monitoring trustee.<sup>3</sup>
- (5) The OTT Commitment does not include a right for the OTT Purchaser to sublicense, create the perception of a new channel, undermine channel branding or prevent advertising revenue monetization.<sup>4</sup>

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<sup>2</sup> After the implementation of the Transaction, all of Telia’s TV business including the business of Bonnier Broadcasting was consolidated within TV 4 Media AB. Therefore, Bonnier Broadcasting will hereinafter also be referred to as “TV4 Media”.

<sup>3</sup> Commitments, paragraph 23.

<sup>4</sup> Commitments, paragraph 24.

- (6) The OTT Commitment includes an anti-circumvention clause, pursuant to which Telia has agreed to not knowingly do anything that has the effect of reducing the quality of the standalone OTT rights, which will be assessed in light of market developments in the relevant country and according to a combination of metrics.<sup>5</sup>
- (7) Through the OTT Commitment Telia has also committed to not prevent the OTT Purchaser from providing a standalone OTT service that includes the Combined Group's TV channels as per the standalone OTT rights to be bundled with other services, such as fixed broadband. Telia has also committed to facilitate interoperability among such services according to terms in current agreements and market practice.<sup>6</sup>
- (8) The OTT Commitment furthermore provides that the OTT Purchaser should satisfy a set of criteria ("Purchaser Criteria") in order to be approved by the Commission.<sup>7</sup> The criteria that the OTT Purchaser must satisfy consist of the following:
  - (a) The OTT Purchaser must be independent of and unconnected to the Combined Group and its "affiliated undertakings";<sup>8</sup>
  - (b) The OTT Purchaser must have the financial resources, proven expertise and incentive to maintain and develop its OTT TV service as a viable and active competitive force in competition with the Parties and other competitors;
  - (c) The OTT Purchaser in Sweden must own or have OTT standalone rights [...] with (i) a share higher than [0-20]% in the most recent year for which data is available based on the data published by MMS<sup>9</sup> among FTA/basic TV channels in Sweden, or (ii) a share higher than [0-20]% in the most recent year for which data is available among premium pay sports TV channels in Sweden. The OTT Purchaser in Finland must own or have OTT standalone rights [...] with (i) a share higher than [0-20]% in the most recent year for which data is available among FTA/basic TV channels in Finland (based on data published by Finnpanel) or (ii) a share higher than [0-20]% in the most recent year for which data is available among premium pay sport TV channels in Finland;
  - (d) The acquisition of the standalone OTT rights by an OTT Purchaser must neither be likely to create, in the light of the information available to the Commission, *prima facie* competition concerns, nor give the risk that the implementation of the Commitments will be delayed.

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<sup>5</sup> Commitments, paragraph 25.

<sup>6</sup> Commitments, paragraph 26.

<sup>7</sup> Commitments, paragraph 27; Commission notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004, paragraph 48.

<sup>8</sup> "Affiliated undertakings" is defined in the Commitments as "*undertakings controlled by the Parties and/or by the ultimate parents of the Parties, whereby the notion of control shall be interpreted pursuant to Article 3 of the Merger Regulation and in light of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings.*"

<sup>9</sup> Mediamätning i Skandinavien AB, which publishes viewing data to the media industry in Sweden.

- (9) Under the Commitments, the Commission must approve the OTT Purchaser and the licensing agreement with the OTT Purchaser.<sup>10</sup> For this approval, Telia must demonstrate, and the Commission needs to verify, that the OTT Purchaser fulfils the Purchaser Criteria and that the standalone OTT rights have been licensed in a manner consistent with the Decision and the Commitments.
- (10) Under the Commitments, Telia committed to enter into a binding licensing agreement with an OTT Purchaser in Sweden and Finland within [0-12] months of the date of the adoption of the Decision (the “Licensing Agreement Period”).<sup>11</sup> Pursuant to paragraph 30 of the Commitments, Telia committed to undertake certain procedural steps to enter into a licensing agreement with an OTT Purchaser, namely: (a) to present a list of potential OTT Purchasers to the Commission on the date [...], at the latest, (b) on the direction of the Commission, to invite [...] potential OTT Purchasers that the Commission considers acceptable to negotiate an offer, (c) to proceed to negotiate with at least [...] of these potential OTT Purchasers and send the monitoring trustee a progress report once a month, or as requested by the monitoring trustee, and (d) to present a proposed agreement to the Commission for final confirmation within [0-12] months from the date of the adoption of the Decision (the “Proposed Agreement Period”) .<sup>12</sup>
- (11) Telia also committed, pursuant to the Commitments, to appoint a monitoring trustee to carry out the functions specified in the Commitments for a monitoring trustee.<sup>13</sup>
- (12) On 4 December 2019, Telia appointed as monitoring trustee, Advolis S.A. (the “Monitoring Trustee”), which was approved by the Commission on that same day.
- (13) On 12 November 2019, Telia indicated to the Commission that it proposed to initiate discussions for the licensing of standalone OTT rights with [...] in Sweden, and with [...] in Finland and other TV distributors meeting the Purchaser Criteria in line with paragraph 30(a) of the Commitments. On the same day, the Commission allowed Telia to initiate discussions with the potential OTT Purchasers proposed by Telia.
- (14) During the course of [...], Telia continued negotiations with the potential OTT Purchasers and sent monthly reports to the Monitoring Trustee in line with paragraph 30(c) of the Commitments.
- (15) On [...], that is to say within the last month of the Proposed Agreement Period, Telia requested a [...] extension of the Proposed Agreement Period, that is to say from [...] till [...].
- (16) On [...], the Monitoring Trustee provided to the Commission its reasoned opinion on Telia’s request for an extension of the Proposed Agreement Period. The Monitoring Trustee recommended that the extension be granted on the condition that the Monitoring Trustee oversee the negotiation process and that Telia negotiate with potential OTT Purchasers purely on the standalone OTT rights.

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<sup>10</sup> Commitments, paragraphs 27 and 28.

<sup>11</sup> Commitments, paragraph 29.

<sup>12</sup> Commitments, paragraph 30.

<sup>13</sup> Commitments, paragraph 39.

- (17) On [...], Telia submitted to the Commission [...] proposed agreements with Discovery Communications Europe Limited to license standalone OTT rights to Discovery Communications Europe Limited in each of Sweden and Finland (“OTT Agreements”) under paragraph 30(d) of the Commitments.
- (18) On [...], Discovery Communications Europe Limited provided the Commission with a business plan for its proposed use of the standalone OTT rights.
- (19) On [...], in accordance with paragraph 82 of the Commitments, the Commission issued a decision extending, upon request by Telia, the deadline for the Proposed Agreement Period by [...], i.e. until [...].
- (20) On [...], that is to say within the last month of the Licensing Agreement Period, Telia requested a [...] extension of the Licensing Agreement Period, that is to say from [...] until [...].
- (21) On [...], the Monitoring Trustee provided to the Commission its reasoned opinion on Telia’s request for an extension of the Licensing Agreement Period.
- (22) On [...], in accordance with paragraph 82 of the Commitments, the Commission issued a decision extending, upon request by Telia, the deadline for the Licensing Agreement Period by [...], i.e. until [...].
- (23) On [...], in accordance with paragraph 82 of the Commitments, the Commission issued a decision extending the deadline for the Licensing Agreement Period by [...] working days, i.e. until [...] on its own initiative, due to the circumstances that comprise the Covid-19 pandemic.
- (24) On [...], Telia provided the Commission with a revised draft of the OTT Agreements. Later on [...], Telia provided the Commission with a further revised draft of the OTT Agreements.
- (25) During the purchaser approval process, the Commission held several conference calls with each of Telia and Discovery Communications Europe Limited and sent several requests for information to each of Telia and Discovery Communications Europe Limited.
- (26) By email of [...], Telia proposed Discovery Communications Europe Limited, which belongs to the Discovery Group (“Discovery”) as the OTT Purchaser for both Sweden and Finland, for approval by the Commission and submitted a final version of the further revised OTT Agreements entered into between Telia and Discovery Communications Europe Limited on [...] (the “Proposed Agreement”). The Proposed Agreement replaces the initial OTT Agreements entered into between Telia and Discovery Communications Europe Limited on [...].<sup>14</sup>
- (27) On [...], Telia also provided to the Commission a reasoned proposal explaining how the licensing of standalone OTT rights in the Proposed Agreement complied with to the Commitments (“Reasoned Proposal”).

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<sup>14</sup> The agreement entered into between Telia and Discovery Communications Europe Limited on [...] covers the licensing of standalone OTT rights for both Sweden and Finland, and replaces the two earlier agreements entered into between Telia and Discovery Communications Europe Limited on [...], which covered, respectively, Sweden and Finland.

- (28) On [...], Discovery Communications Europe Limited provided to the Commission a further revised business plan for its acquisition of the standalone OTT rights from the Combined Group.

## **2. ASSESSMENT OF THE PROPOSED PURCHASER**

- (29) Discovery is an American-based global media company that provides content to consumers in 220 countries and territories around the world. Discovery provides content across multiple distribution platforms, including linear platforms such as pay television, FTA, and various digital distribution platforms around the world. Discovery has a broad content portfolio in the EEA that includes (i) non-fiction TV channels through its global brands (such as Discovery, Animal Planet); (ii) sports entertainment channels through Eurosport International (“Eurosport”); and (iii) across the Nordic region (Denmark, Finland, Norway and Sweden), a number of TV channels that feature non-fictional content, as well as locally produced entertainment programmes, sports, scripted series and movies from major studios through SBS Discovery Media AS.
- (30) In Sweden and Finland, Discovery is active in the wholesale supply of TV channels. Discovery is the third largest wholesale supplier of FTA and basic pay TV channels in Sweden by audience share.<sup>15</sup> In Sweden, Discovery supplies its channels to the main TV distributors (Telia, Telenor, Tele2) for distribution via IPTV, cable, DTH and DTT. Discovery also supplies its channels for distribution via OTT to Telia and Tele2. In Finland, Discovery is the fourth largest wholesale supplier of FTA and basic pay TV channels, and the largest wholesale supplier of basic pay TV channels<sup>16</sup> and supplies its channels to Telia.
- (31) Additionally, Discovery is active as a retail supplier of AV services through its OTT services, Dplay and Eurosport Player in Europe, including in Sweden and Finland. Dplay is offered to consumers as an AVOD and as an SVOD service whereas Eurosport Player is offered upon pay subscription as an SVOD service. Dplay provides end users with access to a range of non-linear AV content (films, series and documentaries) as well as Discovery’s linear TV channels. Eurosport Player offers viewers access to live streaming and non-linear viewing of sports content as well as linear viewing of all Eurosport channels.

### **2.1. Independence from the Parties**

- (32) The OTT Purchaser must be independent of and unconnected to the Combined Group and its “affiliated undertakings”.<sup>17</sup>
- (33) The Commission considers that Discovery is independent of and not connected to Telia including Bonnier Broadcasting in light of the following reasons: (i) Telia is a publicly listed company with its largest shareholder being the Swedish state (38.4% shareholding)<sup>18</sup> and Discovery is a publicly listed company<sup>19</sup>; (ii) there is no overlap

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<sup>15</sup> Figures for 2018; Decision, paragraph 420; Table 2.

<sup>16</sup> Figures for 2018: Decision, Table 9.

<sup>17</sup> Commitments, paragraph 27(a).

<sup>18</sup> <https://www.teliacompany.com/en/investors/share-related-information/shareholdings/>

<sup>19</sup> Discovery Communications Europe Limited is ultimately controlled by Discovery Inc, a company that is listed on the New York Stock Exchange.

of significant shareholders between Telia and Discovery, including Telia's shareholder the Swedish State; (iii) there are no shared members of their boards of directors (iv) the commercial relationship between Telia and Discovery are conducted at arm's length with Telia as a distributor and Discovery as a broadcaster.<sup>20</sup>

## **2.2. Financial resources, proven expertise and incentive to maintain and develop the standalone OTT rights business as a viable and active competitive force**

- (34) The OTT Purchaser must have the financial resources, proven expertise and incentive to maintain and develop the standalone OTT rights as a viable and active competitive force.<sup>21</sup>
- (35) The Commission considers that Discovery has the financial resources to maintain and develop the standalone OTT rights business as a viable and effective competitive force. Discovery is part of a global media group with a solid presence as a content provider/broadcaster in 220 countries and territories. Discovery continues to expand its content offering having recently financed the acquisition of the rights to Allsvenskan and Superettan (the top Swedish football leagues).
- (36) The Commission also considers that Discovery has the proven expertise and incentive to maintain and develop the standalone OTT rights business.
- (37) First, Discovery is active in all levels of the AV media chain from content production and licensing, to the wholesale supply of TV channels and retail activities in the provision of OTT services through its DPlay and Eurosport Player services. Dplay has around [...] subscribers across the Nordics with a growth of around 55% year on year of its premium subscriptions.<sup>22</sup> Dplay is considered by Telia to be [a competitor to Bonnier Broadcasting's OTT services].<sup>23</sup>
- (38) Second, Discovery is investing in growing the competitiveness of its OTT services. This is evidenced by its acquisition of broadcasting rights to the Olympics across Europe for the period 2018-2024 and its acquisition of Swedish football leagues Allsvenskan and Superettan for the period 2020 to 2025.
- (39) Third, Discovery already offers a range of packages to end consumers through its existing OTT services, which it can combine with the standalone OTT rights to enhance the diversity and strength of its offering. Discovery currently offers three basic packages on Dplay in Sweden (Underhållning, Live and Total) and two basic packages on Dplay in Finland (Dplay+ and Dplay Total) which include a combination of series, comedies, documentaries and sports.

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<sup>20</sup> For completeness, there are some limited relationships between Discovery and TV4 which both have some ownership in MMS (Mediamätning i Skandinavien AB, which publishes viewing data to the media industry in Sweden) and also some limited relationships owing to the fact that [there may have been a limited content relationship in the past between Discovery and TV4].

<sup>21</sup> Commitments, paragraph 27(b).

<sup>22</sup> Mediavision, Nordic Video Insight fall 2019.

<sup>23</sup> Reasoned Proposal, section 2.2.2.2.



### **2.3. Ownership of OTT standalone rights or access to OTT standalone rights [...]**

#### *2.3.1. Sweden*

- (40) The OTT Purchaser in Sweden must own or have OTT standalone rights from [...] with (i) a share higher than [0-20]% in the most recent year for which data is available based on the data published by MMS among FTA/basic TV channels in Sweden, or (ii) a share higher than [0-20]% in the most recent year for which data is available among premium pay sports TV channels in Sweden.<sup>24</sup>
- (41) Discovery owns and operates several of its own TV channels (Kanal 5, Kanal 9 and Kanal 11) in Sweden. It has also acquired the premium sport rights to Allsvenskan and Superettan, the top Swedish football leagues. Discovery has a share of approximately 12% for FTA/basic TV channels in Sweden, based on data published by MMS for 2019.<sup>25</sup>
- (42) Therefore, Discovery has a share exceeding [0-20]% in the most recent year for which data is available based on the data published by MMS among FTA/basic TV channels in Sweden.

#### *2.3.2. Finland*

- (43) The OTT Purchaser in Finland must own or have OTT standalone rights [...] with (i) a share higher than [0-20]% in the most recent year for which data is available among FTA/basic TV channels in Finland (based on data published by Finnpanel) or (ii) a share higher than [0-20]% in the most recent year for which data is available among premium pay sport TV channels in Finland.<sup>26</sup>
- (44) Discovery owns and operates its own TV channels in Finland, for example the channels TV5, Kutoonen and Friei. Based on data published by Finnpanel for 2019. Discovery has a share of approximately 9% for FTA/basic TV channels in Finland.<sup>27</sup>
- (45) Therefore, Discovery has a share exceeding [0-20]% in the most recent year for which data is available based on the data published by Finnpanel.

### **2.4. Absence of *prima facie* competition concerns or risk that the implementation of the Commitments will be delayed**

- (46) The acquisition of the standalone OTT rights by the OTT Purchaser must neither be likely to create, in the light of the information available to the Commission, *prima facie* competition concerns, nor give the risk that the implementation of the Commitments will be delayed.<sup>28</sup> The acquisition of the standalone OTT rights by Discovery will not create *prima facie* competition concerns nor give rise to the risk that the implementation of the Commitments will be delayed.

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<sup>24</sup> Commitments, paragraph 27(c).

<sup>25</sup> [http://mms.se/wp-content/uploads/\\_dokument/rapporter/tvtittande/ar/%C3%85srapporter/%C3%85srapport%202019.pdf](http://mms.se/wp-content/uploads/_dokument/rapporter/tvtittande/ar/%C3%85srapporter/%C3%85srapport%202019.pdf).

<sup>26</sup> Commitments, paragraph 27(c).

<sup>27</sup> <https://www.finnpanel.fi/en/tulokset/tv/vuosi/sharev/viimeisin/>.

<sup>28</sup> Commitments, paragraph 27(d).

- (47) First, while Discovery is a strong competitor in the provision of OTT services (a segment of the market for the retail supply of TV services) in Sweden and Finland and is regarded by Telia [as an OTT competitor of TV4 Media], it has a modest position in the possible market for the retail supply of AV services in Sweden and Finland.<sup>29</sup> Rival competitors in the retail supply of AV services, including the Combined Group ([10-20]% in Sweden and [10-20]% in Finland), in Sweden Tele 2 ([30-40]%) and Netflix ([10-20]%), and in Finland, Elisa ([20-30]%) and DNA ([20-30]%), will continue to exert a competitive constraint on Discovery.<sup>30</sup> When looking at the segment for the provision of OTT services only, Discovery will continue to face constraints from much larger rival players such as Netflix ([40-50]% in Sweden and [40-50]% in Finland), HBO ([20-30]% in Sweden and [10-20]% in Finland), NENT ([10-20]% in Sweden and [10-20]% in Finland) and others.<sup>31</sup> Therefore, the licensing of the standalone OTT rights to Discovery is not likely to create *prima facie* competition concerns on the possible retail markets (and segments) for the supply of AV services in Sweden and Finland.
- (48) The Commission also notes that the acquisition of standalone OTT rights by Discovery can be expected to have a procompetitive effect when looking at the possible market for the retail supply of AV services via OTT. Post-Transaction there will remain many alternative providers of OTT services in Sweden and Finland, including offerings from NENT, Netflix and HBO Nordic in Sweden and Elisa, DNA, Netflix, NENT and HBO in Finland. The acquisition of standalone OTT rights by Discovery will make it better positioned to be able to compete with these rival suppliers.
- (49) In addition, the Commission also notes that the licensing of the standalone OTT rights to Discovery will improve its competitiveness in OTT channel aggregation. The licensing of standalone OTT rights to Discovery in Sweden and Finland is consistent with the counterfactual scenario that the Commission has outlined in the Decision, in which Bonnier Broadcasting would have licensed standalone OTT rights to one other purchaser in each Sweden and Finland. Discovery has its own OTT channels as well as the relevant experience and incentive to become a significant aggregator of TV channels and TV content over the internet. The acquisition of the standalone OTT rights by Discovery will ensure that an additional player will be able to compete with the Combined Group in the provision of OTT channel aggregation services, as would have likely been the case absent the Transaction.
- (50) Finally, the Proposed Agreement is foreseen to enter into force within [...] of this decision approving the OTT Purchaser.<sup>32</sup> Therefore, the risk that the implementation of the Commitments could be delayed has been adequately addressed. The Commission is not aware of any regulatory approvals that are a necessary precondition to Discovery being able to exploit the standalone OTT rights.

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<sup>29</sup> Discovery has [Confidential].

<sup>30</sup> Decision, Table 11.

<sup>31</sup> Decision, Table 4.

<sup>32</sup> Proposed Agreement, clause [...].

### **3. ASSESSMENT OF THE PROPOSED AGREEMENT**

(51) The Commission considers that the manner in which the standalone OTT rights are licensed under the Proposed Agreement is consistent with the terms of the Commitments and the Decision for the reasons set out below. In particular, the Commission assesses in the sections below:

- (a) Whether the scope of the Proposed Agreement is suitable to address the competition concerns set out in the Decision;
- (b) Whether the Proposed Agreement is forward looking and ensures that the OTT Purchaser will be an active and competitive force in the future;
- (c) Whether the Proposed Agreement will allow the OTT Purchaser to effectively compete against the Combined Group; and
- (d) Whether the Proposed Agreement allows the OTT Purchaser to provide bundled services.

#### **3.1. The scope of the Proposed Agreement is suitable to address the competition concerns set out in the Decision**

(52) The scope of the Proposed Agreement is suitable to address the competition concerns set out in the Decision and is consistent with the Commitments.

- (a) Channels and ancillary rights to be licensed are consistent with the Commitments

(53) The Proposed Agreement covers the licensing of standalone OTT rights for all TV4 Media FTA/basic channels (corresponding to “BB FTA/Basic Channel” in the Commitments), TV4 Premium sports channels (corresponding to “BB Premium Sports Channel” in the Commitments), the Liiga channel package (corresponding to “Liiga Channel Package” in the Commitments) and ancillary rights as required by the definition of “Ancillary OTT Rights” in the Commitments.<sup>33</sup>

(54) The definition of TV4 Media FTA/basic channels and TV4 premium sports channels under the Proposed Agreement includes, respectively (i) all current and future linear FTA and basic pay TV channels in simulcast versions, owned by the Combined Group, in each of Sweden and Finland, and (ii) all current and future linear premium sports channels in simulcast versions owned by the Combined Group (excluding the Liiga channel package) and carrying a significant sports right,<sup>34</sup> in each Sweden and Finland. Therefore, channels not currently available at the time that the Proposed Agreement is signed, are also included within the scope of the licensed OTT rights. Similarly, additional ancillary rights, if and when they become available in the future, are included in the scope of the licensed ancillary OTT rights (having regard to the definition of Ancillary OTT Rights in the Proposed Agreement).<sup>35</sup>

- (b) The term of the Proposed Agreement is consistent with the Commitments

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<sup>33</sup> Commitments, Section A.

<sup>34</sup> “Significant Sports Right” is defined in the Proposed Agreement, section “Definitions”.

<sup>35</sup> Commitments, Section A.

- (55) The term of the Proposed Agreement is [...] years,<sup>36</sup> in line with the Commitments,<sup>37</sup> with an option for Discovery to prolong the agreement for additional periods of [...] years each time subject to the Commission's approval. In order to prolong the duration of the Proposed Agreement, Discovery is required to provide notice to Telia of the prolongation and Telia is obligated under the Commitments to accept a prolongation provided that Discovery complies with the notice requirements set out in clause 2(b) of the Proposed Agreement.<sup>38</sup>

(c) The Proposed Agreement includes an anti-circumvention clause consistent with the Commitments

- (56) The Proposed Agreement includes an anti-circumvention clause, as provided for in the Commitments,<sup>39</sup> which prevents TV4 Media from knowingly doing anything that has the effect of reducing the quality of the standalone OTT rights, for example by knowingly removing significant content from the standalone OTT rights.<sup>40</sup>

(c) Conclusion

- (57) For the reasons set out above, the Commission considers that the Proposed Agreement is suitable to address the competition concerns set out in the Decision and is consistent with the Commitments, in particular as regards the definition of the channels, ancillary rights, the term of the Proposed Agreement and anti-circumvention measures.

### **3.2. The Proposed Agreement is forward looking and ensures that the OTT Purchaser will be an active and competitive force in the future**

- (58) The Proposed Agreement is flexible enough to take account of changes in market practice and changes in the manner in which the TV4 Media channels are made available to end customers.

(a) Flexibility in [technical features] helps to ensure that Discovery's offering remains competitive

- (59) First, [details on flexibility in some technical features provided in the Proposed Agreement].<sup>41</sup> This ensures that Discovery's OTT Service is able to compete on a level footing with the Combined Group.

(b) Ancillary rights include future services consistent with the Commitments

- (60) Second, the definition of ancillary OTT rights, as briefly indicated above at paragraph (53), is broad and means (i) ancillary services relevant to OTT distribution (Catch-up, Start-over, 4K resolution (if and when available), AirPlay, ChromCase), provided that the service is based on content that is transmitted on a linear channel in Sweden and Finland and (ii) any future service, functionality or feature included in Telia's TV Service, in Sweden and Finland, provided that such future service is

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<sup>36</sup> Proposed Agreement, clause [...].

<sup>37</sup> Commitments, paragraph 23.

<sup>38</sup> Proposed Agreement, clause [...].

<sup>39</sup> Commitments, clause 25.

<sup>40</sup> Proposed Agreement, clause [...].

<sup>41</sup> Proposed Agreement, clause [...].

offered to end users in connection with the Linear transmission of the content on a linear channel.<sup>42</sup> Therefore, not only present, but also future ancillary OTT services that become available by the Combined Group are included within the scope of the Proposed Agreement for Discovery's benefit. .

(c) [...] flexibility helps to ensure that Discovery's offering remains competitive against rival offerings

(61) Third, the TV4 Media FTA/basic channels will be offered by Discovery (to end customers)[...].<sup>43</sup> If market practice shifts in relation to the minimum number of TV4 Media FTA/basic channels that are included in individual subscriptions in Sweden and/or Finland as appropriate, then the minimum number of TV4 Media FTA/Basic Channels that must be included in the add-on package will also change accordingly. [...]

(62) The TV4 Media premium sports channels and the Liiga channel package will also each be licensed to Discovery together with the TV4 Media FTA/basic channels in Sweden and Finland. [...] If market practice shifts such that the minimum number of TV4 Media FTA/basic channels that the Combined Group licenses changes, then the minimum number of TV4 Media FTA/basic channels that Discovery must offer as an add-on together with the TV4 Media premium sports channel package and the Liiga channel package will change accordingly. In this way, [...] ensures that the Proposed Agreement is future proof [...].

(d) Conclusion

(63) For the reasons set out above, the Commission considers that the Proposed Agreement is flexible enough to take account of changes in market practice and changes in the manner in which the Combined Group makes available the TV4 Media channels to end customers, so that Discovery's OTT service offering remains competitive in the market.

### **3.3. The Proposed Agreement will enable the OTT Purchaser to compete effectively against the Combined Group**

(64) The terms of the Proposed Agreement enable the OTT Purchaser to compete effectively with the Combined Group,<sup>44</sup> having regard to the Commission's own assessment and its analysis of the business plan submitted by Discovery.

(a) Fees payable by Discovery to the Combined Group are fair and reasonable

(65) The structure of the fees that Discovery must pay for the OTT rights in Sweden and Finland is in line with how fees of most traditional distribution agreements are structured. There is a component fee for the TV4 Media FTA/basic channels<sup>45</sup> that is based on a cost per subscription model, and component fees for the TV4 Media

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<sup>42</sup> Proposed Agreement, Section "Definitions".

<sup>43</sup> Proposed Agreement, clause [...].

<sup>44</sup> The Commission's notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004, paragraph 47 provides that the "intended effect of the divestiture will only be achieved if and once the business is transferred to a suitable purchaser in whose hands it will become an *active competitive force in the market*." [emphasis added]

<sup>45</sup> Payment of taxes [...] are performed in line with market practice [...].

premium sports channels and Liiga channel package that are based on a revenue share model.<sup>46</sup> The fees operate in a cumulative manner such that if Discovery wishes to offer an add-on package comprising, for example, both the TV4 Media FTA/basic channels and the TV4 Media premium sports channels, then it will pay TV4 Media the cost per subscriber for the TV4 Media FTA/basic channels in addition to its share of the recommended retail price for the TV4 Media premium sports channels.

- (66) The fees that Discovery will pay to Telia for the licensing of the standalone OTT rights in Sweden and Finland will allow Discovery to profitably compete with the Combined Group having regard to [...].<sup>47</sup> [Details on Discovery's business plan].<sup>48</sup> The Commission has also undertaken a profitability assessment, which shows that Discovery can obtain a reasonable margin on the TV4 Media premium sports channels [...].<sup>49</sup> The profitability assessment undertaken by the Commission shows that [...] Discovery would be able to obtain a margin of approximately [...]%. Such margin would enable Discovery to actively compete by offering discounts or including additional content.<sup>50</sup>
- (67) Regarding the fees for the TV4 Media FTA/basic channels, the cost per subscriber will be adjusted [in a manner agreed by both parties]. This is consistent with market practice [...].
- (68) [The Proposed Agreement provides for changes to the recommended retail price for the TV4 Media premium sports channels and the Liiga channel package].<sup>51</sup>
- (69) [A campaign discount mechanism has been put in place].<sup>52</sup> This mechanism ensures that Discovery can compete effectively with the Combined Group [...].
- (b) Fees payable by Discovery to the Combined Group allow for flexibility in the package that Discovery makes available to end-consumers
- (70) Regarding the TV4 Media FTA/basic channels, the Proposed Agreement provides Discovery with package flexibility [...].<sup>53</sup> [...] in line with market practice, [...]. The Commission considers that the cost per subscription for the TV4 Media FTA/basic channels in Sweden and Finland will enable Discovery to compete effectively against the Combined Group, considering the Combined Group's retail prices.

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<sup>46</sup> Payment of taxes for the fee for Premium Sports Channels and Liiga Channel Package are performed in line with market practice. See Proposed Agreement, Schedule [...].

<sup>47</sup> In relation to the recommended retail price for the TV4 Media premium sports channels in Sweden, the Commission satisfied itself that the fee charged to Discovery was reasonable and reflected a fair market value [...].

<sup>48</sup> In Sweden, according to its business plan, Discovery plans to offer [Confidential]

<sup>49</sup> Email from the Commission to Telia dated 17 April 2020. Attachment titled "Deal memo\_Profitability analysis\_20200417".

<sup>50</sup> Email from the Commission to Telia dated 17 April 2020. Attachment titled "Deal memo\_Profitability analysis\_20200417".

<sup>51</sup> Proposed Agreement, Schedule [...].

<sup>52</sup> Proposed Agreement, Schedule [...].

<sup>53</sup> Proposed Agreement, clause [...].

(c) Conclusion

- (71) For the reasons set out above, the Commission considers that the terms of the Proposed Agreement enable Discovery to compete effectively with the Combined Group, having regard in particular to the fees under which Discovery will license the standalone OTT rights and the flexible manner in which Discovery can package the channels for distribution to end-consumers.

**3.4. The Proposed Agreement allows the OTT Purchaser to provide bundled services**

- (72) The Proposed Agreement allows the OTT Purchaser to offer bundles comprising the standalone OTT rights incorporated in the OTT Purchaser's own OTT service offering on the one hand, with other services, such as fixed broadband, on the other hand.<sup>54</sup> This is consistent with the Commitments, which provide that Telia shall procure that the Combined Group will not prevent the OTT Purchaser from providing a standalone OTT service that includes the Combined Group's TV channels as per the standalone OTT rights to be bundled with other services, such as fixed broadband.<sup>55</sup> The Commitments further impose an obligation on Telia to procure that the Combined Group facilitates interoperability among such services according to terms in current agreements and market practice.<sup>56</sup>
- (73) In particular, the Proposed Agreement includes a clarification [...] that includes the standalone OTT rights to be bundled with other services, such as fixed broadband [...]. [Discovery is allowed to partner with third party providers of retail mobile telecommunication services and retail fixed internet access services and offer bundled services under certain conditions].
- (74) [...] Discovery must not allow any third party to offer services based on the standalone OTT rights (i.e., not as part of Discovery's OTT service), irrespective of whether such services are sold individually or as part of a bundle [...].<sup>57</sup>
- (75) As outlined above, the Proposed Agreement allows the OTT Purchaser to offer bundles comprising the standalone OTT rights incorporated in the OTT Purchaser's own OTT service offering on the one hand, with other services, such as fixed broadband, on the other hand. At the same time, the Proposed Agreement protects the scope of the OTT rights licensed to Discovery [through certain conditions]. Such consent is to be given or withheld at TV4 Media's sole discretion.<sup>58</sup>

**4. CONCLUSION**

- (76) On the basis of the above assessment and for the above-mentioned reasons, the Commission approves Discovery as a suitable OTT Purchaser in Sweden and Finland.

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<sup>54</sup> Proposed Agreement, clause 12(b)(ii).

<sup>55</sup> Commitments, paragraph 26.

<sup>56</sup> Commitments, paragraph 26.

<sup>57</sup> Proposed Agreement, paragraph 12(b)(ii).

<sup>58</sup> Proposed Agreement, paragraph 12(a).

- (77) On the basis of the Proposed Agreement, the Commission further concludes that the Combined Group's standalone OTT rights will be licensed to Discovery in a manner consistent with the Commitments.
- (78) This decision only constitutes approval of the proposed purchaser identified herein and of the Proposed Agreement. This decision does not constitute a confirmation that Telia has complied with the Commitments.
- (79) This decision is based on paragraphs 23 to 29 of the Commitments attached to the Commission Decision of 12 November 2019.

*For the Commission*

*(Signed)*  
*Olivier GUERSENT*  
*Director-General*