



EUROPEAN COMMISSION
DG Competition

Case M.9676 - LOV GROUP / BANIJAY / ESG

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 30/06/2020

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EUROPEAN COMMISSION

Brussels, 30.06.2020
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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.9676 – Lov Group/Banijay/ESG
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004¹ and Article 57 of the Agreement on the European Economic Area²**

Dear Sir or Madam,

- (1) On 25 May 2020, the Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which Lov Group Invest (“Lov Group”, France) acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of the whole of both Banijay Group (“Banijay”, France), which is currently jointly controlled by Lov Group and DeAgostini, and Endemol Shine Group (“ESG”, the Netherlands), which is currently jointly controlled by Apollo Management and The Walt Disney Company (the “Transaction”).³ Lov Group is hereinafter also referred to as the “Notifying Party”. Lov Group, Banijay and ESG are together 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 183, 3.6.2020, p. 11.

1. THE PARTIES

- (2) **Lov Group** is a French holding company. Lov Group is active in the production of audiovisual (“AV”) content in Europe via Banijay, as well as in the online gambling and luxury hotels sectors.
- (3) **Banijay** is active in the production and distribution of content for television (“TV”) and digital platforms (AV content). Banijay creates and produces general entertainment content for broadcasters in Europe, the United States, India, Australia, New Zealand and Russia and licenses pre-produced content and formats around the world mostly through its UK-based distribution arm Banijay Rights. Banijay is currently jointly controlled by Lov Group and DeAgostini.
- (4) **ESG** is an international producer and distributor of AV content. ESG develops general entertainment content and licenses its portfolio to third parties through its UK-based subsidiary Endemol Shine International, which mainly licenses pre-produced content, and its Dutch subsidiary Endemol Shine IP, which mainly licenses formats.⁴ ESG is currently jointly controlled by Apollo Management and The Walt Disney Company.

2. THE OPERATION

- (5) The Transaction concerns the acquisition of sole control over both Banijay and ESG by Lov Group.
- (6) First, pursuant to a share purchase agreement dated 25 October 2019 (“SPA”), Banijay, via its subsidiary Banijay Entertainment, will acquire 100% of the share capital of ESG. Second, upon completion of the acquisition of ESG by Banijay, the control over Banijay will change from the current joint control by Lov Group and DeAgostini to sole control by Lov Group via its holding company Lov Group Invest, through a decrease in DeAgostini’s shareholding. DeAgostini will thus only retain a minority shareholding that will not provide it with joint control.
- (7) These two transactions are interdependent within the meaning of paragraphs 38 *et seq.* of the Commission’s Consolidated Jurisdictional Notice and, as a result, form a single concentration for the purposes of Article 3 of the EUMR.
- (8) First, both transactions have as their common result the acquisition of ultimate exclusive control by Lov Group.
- (9) Second, the two transactions are linked by condition. [BUSINESS SECRET].⁵
- (10) Third, further proof of the interdependence between both transactions follows from the simultaneous conclusion of the relevant agreements. The SPA and the DeA MoU were both executed on 25 October 2019.

⁴ A format is the overall concept and branding of a copyrighted AV show. The most common type of formats are those in the TV genres of game shows and reality shows, many of which are remade in multiple markets with local contestants. Examples include “Who Wants to Be a Millionaire?” and “Big Brother”.

⁵ [BUSINESS SECRET].

- (11) Therefore, the Transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

3. EU DIMENSION

- (12) The Transaction does not have EU dimension pursuant to Article 1(2) of the Merger Regulation. However, the undertakings concerned have a combined aggregate world-wide turnover of more than EUR 2 500 million (Lov Group: [...]; Banijay: EUR [...]; ESG: EUR [...]). In each of at least three Member States, the combined aggregate turnover is more than EUR 100 million. In each of these Member States, the aggregate turnover of each of the undertaking concerned is more than EUR 25 million (France: Lov Group: EUR [...]; Banijay: EUR [...]; ESG: EUR [...]; Germany: Lov Group: EUR [...]; Banijay: EUR [...]; ESG: EUR [...]; Italy: Lov Group: EUR [...]; Banijay: EUR [...]; ESG: EUR [...]). The aggregated EU-wide turnover of each of the undertakings concerned was more than EUR 100 million (Lov Group: EUR [...]; Banijay: EUR [...]; ESG: EUR [...]), but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State.
- (13) Therefore, the Transaction has an EU dimension pursuant to Article 1(3) of the Merger Regulation.

4. MARKET DEFINITION

4.1. Overview of the audiovisual value chain

- (14) The present case relates to the areas of (i) the production of AV content, (ii) the licensing of broadcasting rights for such content, and (iii) the wholesale supply of TV channels, where Banijay and ESG are active. Affected markets arise only with respect to area (i).
- (15) In its past decisional practice⁶, the Commission has distinguished the following levels in the value chain for AV-related content:
- (a) the production of AV content, i.e. the sourcing of AV content by broadcasters, streaming and channel operators on a “commissioned”/tailor-made basis (see Section 4.2 below);
 - (b) the licensing of broadcasting rights relating to AV content, i.e. the acquisition of broadcasting rights by broadcasters, streaming and channel operators for pre-existing AV content or rights to formats (see Section 4.2 below);
 - (c) the wholesale supply of TV channels by TV channel editors to TV channel retailers; and
 - (d) the retail supply of AV services to end customers.

⁶ Commission decision of 7 April 2017, Case M.8354, Fox/Sky, para. 29; Commission decision of 16 September 2014, Case M.7282, Liberty Global/Discovery/All3Media, para. 12; Commission decision of 21 December 2010, Case M.5932, News Corp/BSkyB, para. 29.

- (16) TV production companies produce AV content either (i) for internal use on their own TV channels or video-on-demand services if they are vertically integrated broadcasters (i.e., captive TV production), or (ii) for supply to third-party customers (i.e., non-captive TV production). Third-party customers are typically broadcasters or, alternatively, non-traditional platforms, i.e. Over-The-Top ("OTT") platforms that order AV content from TV production companies. This level of the value chain concerns the licensing of broadcasting rights relating to pre-existing AV content, i.e., AV content that has been previously produced and is subsequently made available "off-the-shelf" by the rights holder (so-called "pre-produced" AV content).
- (17) The Transaction relates to levels (a) and (b) identified above, since Banijay and ESG are mainly active in the production of AV content and in the distribution/licensing of AV content rights and not in the downstream levels of the AV content value chain.⁷
- (18) As indicated, only the horizontal overlaps at level (a) are assessed in the present as affected markets arise only in this respect

4.2. Production of AV content and licensing of broadcasting rights for AV content

- (19) From a demand perspective, the production/commissioning of non-captive AV content and the licensing/acquisition of AV content rights relating to externally produced content represent alternative ways through which downstream operators (e.g., TV channels wholesalers, vertically integrated TV services retailers, OTT providers) may acquire AV content, and could, therefore, be considered substitutable.⁸
- (20) Moreover, the possible sub-segmentations of the market for the *licensing* of AV content rights adopted by the Commission in previous decisions are applicable to the *production* of AV content.
- (21) For these reasons, and in line with past decisional practice, the market definition for the production of non-captive AV content and the licensing of AV content rights is examined jointly in the present decision.

4.2.1. Product market definition

4.2.1.1. Commission's decisional practice

- (22) In its past decisional practice, the Commission has assessed a potential segmentation of the markets for the production/commissioning of non-captive AV content and the licensing/acquisition of AV content rights according to both (a) the model for supplying/acquiring AV content and/or (b) the type of AV content being supplied/acquired.
- (23) With reference to the model for supplying/acquiring AV content, the Commission concluded that the production of AV content and the licensing of broadcasting rights

⁷ Banijay and ESG are also very marginally active in the production of films.

⁸ Commission decision of 9 October 2014, Case M.7360, 21st Century Fox/Apollo/JV, para 40; Commission decision of 16 September 2014, Case M.7282, Liberty Global/Discovery/All3Media, para. 41; Commission decision of 22 September 2006, Case M.4353, Permira/All3Media Group, para. 9.

for AV content⁹ appear to belong to separate relevant product markets.¹⁰ However, the Commission left open the question whether the market for the production of AV content is to be further segmented between commissioned production and supply of production services. The Commission also found the market for the production of AV content to be limited to non-captive production (as opposed to captive production, i.e. AV content produced for captive or in-house use on the producer's own channels, which is therefore not offered on the merchant market).¹¹

- (24) With reference to the type of AV content, in its past decisional practice, the Commission has identified separate markets for (i) films, (ii) sports and (iii) other AV content within the markets for both the production of AV content and the licensing of broadcasting rights.¹²
- (25) The Commission has also considered distinguishing the market for other AV content further according to whether it presents scripted and non-scripted content (with scripted AV content being produced on an existing script, story or character, while non-scripted AV content is content not based on a script, for example game shows, reality shows and talent shows). Within the scripted and non-scripted sub-segments, the Commission has already considered a further sub-segmentation according to genre (drama, comedy, documentaries, kids' programs, reality shows, talk shows, talent shows, factual entertainment, etc.).¹³
- (26) The Commission has further considered further sub-dividing the market for the licensing of broadcasting rights for AV content by exhibition window: (i) subscription video on demand ("SVOD"); (ii) transactional video on demand ("TVOD"); (iii) pay-per-view ("PPV"); (iv) first pay-TV window; (v) second pay-TV window; and (vi) FTA, but left the market definition open.¹⁴

4.2.1.2. The Notifying Party's views

- (27) In respect to the market for the production and commissioning of AV content and the licensing of broadcasting rights for AV content, the Notifying Party provides the following arguments.

⁹ A production company licenses to a distributor or TV channels supplier the broadcasting rights for ready-made AV content that it has produced previously.

¹⁰ Commission decision of 20 January 2016, Case M.7865, Lov Group Invest/De Agostini/JV, para. 30; Commission decision of 16 May 2014, Case M.7282, Liberty Global/Discovery/All3Media, para. 41.

¹¹ Commission decision of 22 September 2006, Case M.4353, Permira/All3Media Group, para. 11; Commission decision of 11 July 2000, Case M.1943, Telefonica/Endemol, para 9.

¹² Commission decision of 21 December 2011, Case M.6369, HBO/Ziggo/HBO Netherlands, para. 18; Commission decision of 15 April 2013, Case M.6880, Liberty Global/Virgin Media, para. 18-19; Commission decision of 16 May 2014, Case M.7282, Liberty Global/Discovery/All3Media, para. 42; Commission decision of 9 October 2014, Case M.7360, 21st Century Fox/Apollo/JV, para. 42; Commission decision of 20 January 2016, Case M.7865, Lov Group Invest/De Agostini/JV, para. 30 and 37; Commission decision of 7 April 2017, Case M.8354, Fox/Sky, para. 63.

¹³ Case M.7282, Liberty Global/Discovery/All3Media, para. 45; Case M.7865, Lov Group Invest/De Agostini/JV, para. 31.

¹⁴ Commission decision of 15 June 2018, Case M.8861 Comcast/Sky, recitals 35, 39; Commission decision of 24 February 2015 in case M.7194 Liberty Global / Corelio / W&W / De Vijver Media, recital 69; Commission decision of 21 December 2011 in case M.6369 HBO/Ziggo/HBO Nederland, recital 18; Commission decision of 16 September 2014 in case M.7282 Liberty Global/Discovery/All3Media, recitals 46–48; Commission decision of 9 October 2014 in case M.7360 21st Century Fox/Apollo/JV, recitals 45–47, Commission decision of 10 October 2014 in case M.7000 Liberty Global/Ziggo, recitals 38–44.

Captive vs. non-captive production

- (28) The Notifying Party argues that the Commission should assess the effects of the Transaction on a market for the production of TV content including both in-house and externally commissioned production. These two alternative sources of production are, according to the Notifying Party, perfectly substitutable for broadcasters. On this basis, the Notifying Party argues that broadcasters can, and do, easily switch between in-house and external production, in the same way as they can substitute one external producer for another based on the attractiveness of their respective formats and costs.¹⁵

Tailormade vs. production for hire

- (29) The Notifying Party submits that a distinction between production-for-hire and tailormade production does not reflect the reality of the TV production in most EEA Member States as (i) it would be rare that broadcasters develop a format in-house and decide to outsource the production of the content, and (ii) it is rare for broadcasters to acquire a format from one production company and hire another production company to produce the content based on that format. Further, according to the Notifying Party, the typical case when the broadcaster can be said to “own” the format and outsource the production of the programs is when it has been granted a license to that format. According to the Notifying Party, even in these cases, the production companies’ services are never limited to providing purely technical support only, but they would be highly involved in the design and conception of the finished program, such as selecting the cast, or editing the content. Furthermore, production companies would be systematically called upon to submit suggestions as to how to improve and modernize the content of the program. Given this lack of difference in the services provided by the production company depending on whether it or the TV channels suppliers or content platform operators owns the rights to the format produced, these two situations do, in the notifying Party’s view, not form distinct relevant product markets.¹⁶

Segmentation by type of content (within scripted and non-scripted content)

- (30) The Notifying Party considers that segmenting the market for the production of general entertainment TV content and the licensing of broadcasting rights – first segmented by scripted and non-scripted content, which the Notifying Party does not contest – according to genre (drama, comedy, documentaries, kids’ programs, reality shows, talk shows, talent shows, factual entertainment, etc.) is not appropriate. The Notifying Party contends that (i) there is no recognised standard for segmenting between the genres, (ii) some programs have a hybrid nature, (iii) broadcasters decide on the basis of a number of factors which content they chose (budget, attractiveness, etc.), and that (iv) even if different genres can be identified they are largely substitutable as long as they meet the broadcasters budgetary requirements. This is, according to the Notifying Party, demonstrated by the fact that broadcasters may even leave open the genre of a program as long as a given time slot can be occupied, so that time slots used for one type of program may be used for another type of program in the next period. From the supply-side perspective, the Notifying

¹⁵ Form CO, paragraphs 149 to 157.

¹⁶ Form CO, paragraphs 158 to 166.

Party argues that there are no significant barriers to switching between genre, as (i) some genres such as factual entertainment and talk shows do not follow any specific format and may be produced at little cost, and (ii) producers can easily rely on hired talents who can easily switch between genres.¹⁷

Segmentation by exhibition window (licensing of broadcasting rights)

- (31) The Notifying Party considers that the market for the production of TV content should not be segmented according to the exhibition window as it would not be relevant as regards the market for production of TV content. It considers that there is no intrinsic difference between the type of non-film, non-sport content that a TV broadcaster, a TV retailer and/or an OTT platform would source or commission from a TV production company, depending on the exhibition window in which it intends to broadcast such content on Pay TV or on FTA TV. Moreover, after the relevant TV content is produced, the licensor would typically be free to decide to whom to license such content and for what exhibition window and may actually license the same content for different exhibition windows in different territories (or even in the same territory).¹⁸

4.2.1.3. Commission's assessment

- (A) Production of tailor-made AV content vs. licensing of broadcasting rights for pre-produced AV content¹⁹
- (32) In the framework of the market investigation the Commission verified the appropriateness of a distinction between the production of tailor-made AV content on the one hand and the licencing of broadcasting rights for pre-produced AV content on the other hand, as explained at para. 15 above (points (a) and (b), in terms of relevant product market definition. The results of the market investigation indicate that the production of tailor-made AV content and the licensing of broadcasting rights for pre-produced AV content belong to separate relevant product markets.
- (33) First, most of the respondents to the market investigation indicate that there are significant differences in terms of costs between (i) producing tailor-made AV content and (ii) producing AV content and subsequent licencing broadcasting rights for such pre-produced content ("pre-produced").²⁰
- (34) Second, only a minority of the respondents to the market investigation indicated that companies active in the licencing of broadcasting rights for pre-produced AV content (films, sport content and other TV programmes (e.g. documentaries, soap

¹⁷ Form CO, paragraphs 167 to 195.

¹⁸ Form CO, paragraphs 196, 197.

¹⁹ See paragraph 15, points (a) and (b) above.

²⁰ Replies to questionnaire Q1 to Producers – Denmark, question 4; questionnaire Q2 to Broadcasters – Denmark, question 4; questionnaire Q3 to Producers – Finland, question 4; questionnaire Q4 to Broadcasters – Finland, question 4; questionnaire Q5 to Producers – France, question 4; questionnaire Q6 to Broadcasters – France, question 4; questionnaire Q7 to Producers – Italy, question 4; questionnaire Q8 to Broadcasters – Italy, question 4; questionnaire Q9 to Producers – the Netherlands, question 4; questionnaire Q10 to Broadcasters – the Netherlands, question 4; questionnaire Q11 to Producers – Spain, question 4; questionnaire Q12 to Broadcasters – Spain, question 4; questionnaire Q13 to Producers – Sweden, question 4; questionnaire Q14 to Broadcasters – Finland, question 4; questionnaire Q15 to Producers – Sweden, question 4; questionnaire Q16 to Broadcasters – Finland, question 4.

operas)) would be able to start AV content production activities²¹ within a short timeframe and without incurring significant additional costs and vice-versa. The replies to the market investigation also indicate that such a change of activity is unlikely even if a producer owns the format or IPR required.²²

- (35) Third, the majority of respondents to the market investigation indicated that production houses that are specialised in tailor-made production would commonly not be active in the licensing of AV content pre-produced by themselves.²³ By contrast, there was no majority amongst market participants regarding the question whether production houses that are specialised in the production of AV content and subsequent licensing of AV content would or would not commonly be active in the tailor-made production.²⁴ This is a strong indication that the production of tailor-made AV content on the one hand and the licensing of pre-produced AV content on the other hand are not regarded as substitutes from the supply-side perspective.
- (36) On the basis of these findings, the Commission concludes that for the purposes of the present case, pre-produced TV content and tailor-made TV content are

²¹ Including "commissioned production" or "production for hire", as further explained in Section 4.2.1.3 (B) below.

²² Replies to questionnaire Q1 to Producers – Denmark, question 5; questionnaire Q2 to Broadcasters – Denmark, question 5; questionnaire Q3 to Producers – Finland, question 5; questionnaire Q4 to Broadcasters – Finland, question 5; questionnaire Q5 to Producers – France, question 5; questionnaire Q6 to Broadcasters – France, question 5; questionnaire Q7 to Producers – Italy, question 5; questionnaire Q8 to Broadcasters – Italy, question 5; questionnaire Q9 to Producers – the Netherlands, question 5; questionnaire Q10 to Broadcasters – the Netherlands, question 5; questionnaire Q11 to Producers – Spain, question 5; questionnaire Q12 to Broadcasters – Spain, question 5; questionnaire Q13 to Producers – Sweden, question 5; questionnaire Q14 to Broadcasters – Finland, question 5; questionnaire Q15 to Producers – Sweden, question 5; questionnaire Q16 to Broadcasters – Finland, question 5. Replies to questionnaire Q1 to Producers – Denmark, question 6; questionnaire Q2 to Broadcasters – Denmark, question 6; questionnaire Q3 to Producers – Finland, question 6; questionnaire Q4 to Broadcasters – Finland, question 6; questionnaire Q5 to Producers – France, question 6; questionnaire Q6 to Broadcasters – France, question 6; questionnaire Q7 to Producers – Italy, question 6; questionnaire Q8 to Broadcasters – Italy, question 6; questionnaire Q9 to Producers – the Netherlands, question 6; questionnaire Q10 to Broadcasters – the Netherlands, question 6; questionnaire Q11 to Producers – Spain, question 6; questionnaire Q12 to Broadcasters – Spain, question 6; questionnaire Q13 to Producers – Sweden, question 6; questionnaire Q14 to Broadcasters – Finland, question 6; questionnaire Q15 to Producers – Sweden, question 6; questionnaire Q16 to Broadcasters – Finland, question 6.

²³ Replies to questionnaire Q1 to Producers – Denmark, question 7; questionnaire Q2 to Broadcasters – Denmark, question 7; questionnaire Q3 to Producers – Finland, question 7; questionnaire Q4 to Broadcasters – Finland, question 7; questionnaire Q5 to Producers – France, question 7; questionnaire Q6 to Broadcasters – France, question 7; questionnaire Q7 to Producers – Italy, question 7; questionnaire Q8 to Broadcasters – Italy, question 7; questionnaire Q9 to Producers – the Netherlands, question 7; questionnaire Q10 to Broadcasters – the Netherlands, question 7; questionnaire Q11 to Producers – Spain, question 7; questionnaire Q12 to Broadcasters – Spain, question 7; questionnaire Q13 to Producers – Sweden, question 7; questionnaire Q14 to Broadcasters – Finland, question 7; questionnaire Q15 to Producers – Sweden, question 7; questionnaire Q16 to Broadcasters – Finland, question 7.

²⁴ Replies to questionnaire Q1 to Producers – Denmark, question 8; questionnaire Q2 to Broadcasters – Denmark, question 8; questionnaire Q3 to Producers – Finland, question 8; questionnaire Q4 to Broadcasters – Finland, question 8; questionnaire Q5 to Producers – France, question 8; questionnaire Q6 to Broadcasters – France, question 8; questionnaire Q7 to Producers – Italy, question 8; questionnaire Q8 to Broadcasters – Italy, question 8; questionnaire Q9 to Producers – the Netherlands, question 8; questionnaire Q10 to Broadcasters – the Netherlands, question 8; questionnaire Q11 to Producers – Spain, question 8; questionnaire Q12 to Broadcasters – Spain, question 8; questionnaire Q13 to Producers – Sweden, question 8; questionnaire Q14 to Broadcasters – Finland, question 8; questionnaire Q15 to Producers – Sweden, question 8; questionnaire Q16 to Broadcasters – Finland, question 8.

complementary products rather than substitutes from most broadcasters' perspective and therefore belong to separate relevant product markets.

(B) Model for supply/acquisition of AV content

- (37) Production companies can supply tailor-made AV content to downstream players in several ways:²⁵
- Full production/commissioning of AV content (i.e., a TV channels commissions a production company to produce a TV programme, based on a format owned by, or available to, the production company);
 - Supply/acquisition of pure TV production services, or "production for hire" (i.e., TV channels hire a production company to provide the technical means and deliver the finished TV programme based on a format owned by, or available to, the TV channel supplier/TV services retailer/broadcaster itself);
 - In-house production of AV content within the organisation of a vertically integrated supplier of TV channels based on a format owned by, or available to, the supplier itself.
- (38) In the following paragraphs the Commission assesses, on the one hand, whether full production/commissioning of AV content and production for hire form part of the same product market and, on the other hand, whether in-house production of AV content and the production of tailormade AV content form part of the same product market.
- (39) With regard to a potential segmentation between commissioned production and the supply of production for hired services, the Commission considers that these are two complementary supply/acquisition models and therefore belong to different relevant product markets, for the following reasons.
- (40) First, a majority of the respondents to the market investigation indicates that there are significant differences in terms of costs between commissioned production or production for hire.²⁶
- (41) Second, while most of the respondents to the market investigation indicate that companies active in the commissioned production would be able to start offering "production for hire" services within a short timeframe and without incurring

²⁵ See Section 4.2.2.1 above.

²⁶ Replies to questionnaire Q1 to Producers – Denmark, question 9; questionnaire Q2 to Broadcasters – Denmark, question 9; questionnaire Q3 to Producers – Finland, question 9; questionnaire Q4 to Broadcasters – Finland, question 9; questionnaire Q5 to Producers – France, question 9; questionnaire Q6 to Broadcasters – France, question 9; questionnaire Q7 to Producers – Italy, question 9; questionnaire Q8 to Broadcasters – Italy, question 9; questionnaire Q9 to Producers – the Netherlands, question 9; questionnaire Q10 to Broadcasters – the Netherlands, question 9; questionnaire Q11 to Producers – Spain, question 9; questionnaire Q12 to Broadcasters – Spain, question 9; questionnaire Q13 to Producers – Sweden, question 9; questionnaire Q14 to Broadcasters – Finland, question 9; questionnaire Q15 to Producers – Sweden, question 9; questionnaire Q16 to Broadcasters – Finland, question 9.

significant additional costs,²⁷ no such majority exists for the question whether companies could change activities the opposite way.²⁸

- (42) With regard to the question whether in-house production of AV content and the external production of tailor-made AV content form part of the same product market, the Commission considers that those are two distinct complementary models for the following reasons.
- (43) First, most of the respondents to the market investigation indicate that there are significant differences in terms of costs between tailor-made and in-house production.²⁹
- (44) Second, most of the respondents to the market investigation consider, from a broadcaster's point of view, AV content (i) purchased from producers of commissioned AV content (i.e., including commissioned production and production for hire) and (ii) in-house produced content as complementary. Only a small minority of respondents regarded the two options as substitutes.³⁰

²⁷ Replies to questionnaire Q1 to Producers – Denmark, question 10; questionnaire Q2 to Broadcasters – Denmark, question 10; questionnaire Q3 to Producers – Finland, question 10; questionnaire Q4 to Broadcasters – Finland, question 10; questionnaire Q5 to Producers – France, question 10; questionnaire Q6 to Broadcasters – France, question 10; questionnaire Q7 to Producers – Italy, question 10; questionnaire Q8 to Broadcasters – Italy, question 10; questionnaire Q9 to Producers – the Netherlands, question 10; questionnaire Q10 to Broadcasters – the Netherlands, question 10; questionnaire Q11 to Producers – Spain, question 10; questionnaire Q12 to Broadcasters – Spain, question 10; questionnaire Q13 to Producers – Sweden, question 10; questionnaire Q14 to Broadcasters – Finland, question 10; questionnaire Q15 to Producers – Sweden, question 10; questionnaire Q16 to Broadcasters – Finland, question 10.

²⁸ Replies to questionnaire Q1 to Producers – Denmark, question 11; questionnaire Q2 to Broadcasters – Denmark, question 11; questionnaire Q3 to Producers – Finland, question 11; questionnaire Q4 to Broadcasters – Finland, question 11; questionnaire Q5 to Producers – France, question 11; questionnaire Q6 to Broadcasters – France, question 11; questionnaire Q7 to Producers – Italy, question 11; questionnaire Q8 to Broadcasters – Italy, question 11; questionnaire Q9 to Producers – the Netherlands, question 11; questionnaire Q10 to Broadcasters – the Netherlands, question 11; questionnaire Q11 to Producers – Spain, question 11; questionnaire Q12 to Broadcasters – Spain, question 11; questionnaire Q13 to Producers – Sweden, question 11; questionnaire Q14 to Broadcasters – Finland, question 11; questionnaire Q15 to Producers – Sweden, question 11; questionnaire Q16 to Broadcasters – Finland, question 11.

²⁹ Replies to questionnaire Q1 to Producers – Denmark, question 16; questionnaire Q2 to Broadcasters – Denmark, question 16; questionnaire Q3 to Producers – Finland, question 16; questionnaire Q4 to Broadcasters – Finland, question 16; questionnaire Q5 to Producers – France, question 16; questionnaire Q6 to Broadcasters – France, question 16; questionnaire Q7 to Producers – Italy, question 16; questionnaire Q8 to Broadcasters – Italy, question 16; questionnaire Q9 to Producers – the Netherlands, question 16; questionnaire Q10 to Broadcasters – the Netherlands, question 16; questionnaire Q11 to Producers – Spain, question 16; questionnaire Q12 to Broadcasters – Spain, question 16; questionnaire Q13 to Producers – Sweden, question 16; questionnaire Q14 to Broadcasters – Finland, question 16; questionnaire Q15 to Producers – Sweden, question 16; questionnaire Q16 to Broadcasters – Finland, question 16.

³⁰ Replies to questionnaire Q1 to Producers – Denmark, question 18; questionnaire Q2 to Broadcasters – Denmark, question 18; questionnaire Q3 to Producers – Finland, question 18; questionnaire Q4 to Broadcasters – Finland, question 18; questionnaire Q5 to Producers – France, question 18; questionnaire Q6 to Broadcasters – France, question 18; questionnaire Q7 to Producers – Italy, question 18; questionnaire Q8 to Broadcasters – Italy, question 18; questionnaire Q9 to Producers – the Netherlands, question 18; questionnaire Q10 to Broadcasters – the Netherlands, question 18; questionnaire Q11 to Producers – Spain, question 18; questionnaire Q12 to Broadcasters – Spain, question 18; questionnaire Q13 to Producers – Sweden, question 18; questionnaire Q14 to Broadcasters – Finland, question 18;

(45) However, the market investigation provided mixed results regarding the question whether the availability of IPR plays a particular relevance on the decision of broadcasters to produce content in-house,³¹ indicating that the availability of IPR is not the decisive factor when deciding to produce in-house or not. The Commission also notes that most broadcasters contacted in the market investigation indicated that they have in-house production capabilities.³²

(C) Type of AV content supplied/acquired

(46) Distinctions can be made based on a variety of parameters relating to the type of AV content that is being supplied/acquired, including, for example³³:

- Films, sports and other AV content;
- Scripted AV content vs. non-scripted other AV content;
- Potential sub-genres of the “non-scripted other AV content” category, such as documentaries or other informational programmes, news, reality shows, comedy, drama, talk shows, children/youth programs, game shows or other entertainment programmes.
- Potential sub-genres of the “scripted AV content” category, such as drama, kids, documentaries, comedy and other scripted AV content.

(47) The Commission, in its past decisional practice³⁴, has also assessed potential segmentation of licensing of broadcasting rights for AV content, including SVOD, TVOD, PPV, first pay-TV window, second pay-TV window and FTA.

(48) The results of the market investigation regarding the definition of the relevant product market based on the above-mentioned content-related parameters are set out in the following paragraphs.

questionnaire Q15 to Producers – Sweden, question 18; questionnaire Q16 to Broadcasters – Finland, question 18.

³¹ Replies to questionnaire Q1 to Producers – Denmark, question 15; questionnaire Q2 to Broadcasters – Denmark, question 15; questionnaire Q3 to Producers – Finland, question 15; questionnaire Q4 to Broadcasters – Finland, question 15; questionnaire Q5 to Producers – France, question 15; questionnaire Q6 to Broadcasters – France, question 15; questionnaire Q7 to Producers – Italy, question 15; questionnaire Q8 to Broadcasters – Italy, question 15; questionnaire Q9 to Producers – the Netherlands, question 15; questionnaire Q10 to Broadcasters – the Netherlands, question 15; questionnaire Q11 to Producers – Spain, question 15; questionnaire Q12 to Broadcasters – Spain, question 15; questionnaire Q13 to Producers – Sweden, question 15; questionnaire Q14 to Broadcasters – Finland, question 15; questionnaire Q15 to Producers – Sweden, question 15; questionnaire Q16 to Broadcasters – Finland, question 15.

³² Replies to questionnaire Q2 to Broadcasters – Denmark, question 14; questionnaire Q4 to Broadcasters – Finland, question 14; questionnaire Q6 to Broadcasters – France, question 14; questionnaire Q8 to Broadcasters – Italy, question 14; questionnaire Q10 to Broadcasters – the Netherlands, question 14; questionnaire Q12 to Broadcasters – Spain, question 14; questionnaire Q14 to Broadcasters – Finland, question 14; questionnaire Q16 to Broadcasters – Sweden, question 14;;.

³³ See Section 4.2.2.1 above

³⁴ See Section 4.2.2.1 above, including for the definitions.

Films, sports, other AV content

- (49) Regarding possible distinction between films, sports and other AV content, the market investigation in the present case has confirmed that the broad distinction between the licensing of TV broadcasting rights (and, similarly, the production of TV content) for each of these categories is appropriate as both broadcasters and producers support such a distinction.³⁵

Scripted vs. non-scripted other AV content

- (50) The Commission assessed a possible sub-segmentation of "other AV content" into (i) scripted AV content and (ii) non-scripted content in the framework of the market investigation.
- (51) Based on the results of the market investigation, the Commission considers the production of scripted AV content on the one hand and non-scripted AV content on the other hand to be complementary rather than substitutable for the following reasons.
- (52) First, most of the respondents to market investigation consider scripted and non-scripted AV content as complementary products.³⁶
- (53) Second, AV content production houses are usually specialised in the production of only scripted or only non-scripted AV content.³⁷

³⁵ Replies to questionnaire Q1 to Producers – Denmark, question 20; questionnaire Q2 to Broadcasters – Denmark, question 20; questionnaire Q3 to Producers – Finland, question 20; questionnaire Q4 to Broadcasters – Finland, question 20; questionnaire Q5 to Producers – France, question 20; questionnaire Q6 to Broadcasters – France, question 20; questionnaire Q7 to Producers – Italy, question 20; questionnaire Q8 to Broadcasters – Italy, question 20; questionnaire Q9 to Producers – the Netherlands, question 20; questionnaire Q10 to Broadcasters – the Netherlands, question 20; questionnaire Q11 to Producers – Spain, question 20; questionnaire Q12 to Broadcasters – Spain, question 20; questionnaire Q13 to Producers – Sweden, question 20; questionnaire Q14 to Broadcasters – Finland, question 20; questionnaire Q15 to Producers – Sweden, question 17; questionnaire Q16 to Broadcasters – Finland, question 20.

³⁶ Replies to questionnaire Q1 to Producers – Denmark, question 22; questionnaire Q2 to Broadcasters – Denmark, question 22; questionnaire Q3 to Producers – Finland, question 22; questionnaire Q4 to Broadcasters – Finland, question 22; questionnaire Q5 to Producers – France, question 22; questionnaire Q6 to Broadcasters – France, question 22; questionnaire Q7 to Producers – Italy, question 22; questionnaire Q8 to Broadcasters – Italy, question 22; questionnaire Q9 to Producers – the Netherlands, question 22; questionnaire Q10 to Broadcasters – the Netherlands, question 22; questionnaire Q11 to Producers – Spain, question 22; questionnaire Q12 to Broadcasters – Spain, question 22; questionnaire Q13 to Producers – Sweden, question 22; questionnaire Q14 to Broadcasters – Finland, question 22; questionnaire Q15 to Producers – Sweden, question 22; questionnaire Q16 to Broadcasters – Finland, question 22.

³⁷ Replies to questionnaire Q1 to Producers – Denmark, question 24; questionnaire Q2 to Broadcasters – Denmark, question 24; questionnaire Q3 to Producers – Finland, question 24; questionnaire Q4 to Broadcasters – Finland, question 24; questionnaire Q5 to Producers – France, question 24; questionnaire Q6 to Broadcasters – France, question 24; questionnaire Q7 to Producers – Italy, question 24; questionnaire Q8 to Broadcasters – Italy, question 24; questionnaire Q9 to Producers – the Netherlands, question 24; questionnaire Q10 to Broadcasters – the Netherlands, question 24; questionnaire Q11 to Producers – Spain, question 24; questionnaire Q12 to Broadcasters – Spain, question 24; questionnaire Q13 to Producers – Sweden, question 24; questionnaire Q14 to Broadcasters – Finland, question 24; questionnaire Q15 to Producers – Sweden, question 24; questionnaire Q16 to Broadcasters – Finland, question 24.

- (54) Third, most of the respondents to the market investigation indicate that companies active in the production of scripted AV content would not be able to start producing non-scripted AV content within a short timeframe and without incurring significant additional costs and vice-versa.³⁸
- (55) Fourth, most of the respondents to the market investigation consider a TV broadcaster supplying general entertainment channels would not be able to offer its channels without offering non-scripted AV content and relying solely on scripted AV content.³⁹
- (56) Fifth, most of the respondents to the market investigation do not consider non-scripted and scripted AV content to be similar in terms of cost (i.e., average EUR spent per broadcasting hour).⁴⁰
- (57) Lastly, most of the broadcasters that replied to the market investigation indicated that non-scripted content is essential for the profitability of their channels, because without it the channels could not be profitable,⁴¹ so that this type of content is distinguishable from others from a profitability perspective.

³⁸ Replies to questionnaire Q1 to Producers – Denmark, question 24; questionnaire Q2 to Broadcasters – Denmark, question 23; questionnaire Q3 to Producers – Finland, question 23; questionnaire Q4 to Broadcasters – Finland, question 23; questionnaire Q5 to Producers – France, question 23; questionnaire Q6 to Broadcasters – France, question 23; questionnaire Q7 to Producers – Italy, question 23; questionnaire Q8 to Broadcasters – Italy, question 23; questionnaire Q9 to Producers – the Netherlands, question 23; questionnaire Q10 to Broadcasters – the Netherlands, question 23; questionnaire Q11 to Producers – Spain, question 23; questionnaire Q12 to Broadcasters – Spain, question 23; questionnaire Q13 to Producers – Sweden, question 23; questionnaire Q14 to Broadcasters – Finland, question 23; questionnaire Q15 to Producers – Sweden, question 23; questionnaire Q16 to Broadcasters – Finland, question 23.

³⁹ Replies to questionnaire Q1 to Producers – Denmark, question 25; questionnaire Q2 to Broadcasters – Denmark, question 25; questionnaire Q3 to Producers – Finland, question 25; questionnaire Q4 to Broadcasters – Finland, question 25; questionnaire Q5 to Producers – France, question 25; questionnaire Q6 to Broadcasters – France, question 25; questionnaire Q7 to Producers – Italy, question 25; questionnaire Q8 to Broadcasters – Italy, question 25; questionnaire Q9 to Producers – the Netherlands, question 25; questionnaire Q10 to Broadcasters – the Netherlands, question 25; questionnaire Q11 to Producers – Spain, question 25; questionnaire Q12 to Broadcasters – Spain, question 25; questionnaire Q13 to Producers – Sweden, question 25; questionnaire Q14 to Broadcasters – Finland, question 25; questionnaire Q15 to Producers – Sweden, question 25; questionnaire Q16 to Broadcasters – Finland, question 25.

⁴⁰ Replies to questionnaire Q1 to Producers – Denmark, question 26; questionnaire Q2 to Broadcasters – Denmark, question 26; questionnaire Q3 to Producers – Finland, question 26; questionnaire Q4 to Broadcasters – Finland, question 26; questionnaire Q5 to Producers – France, question 26; questionnaire Q6 to Broadcasters – France, question 26; questionnaire Q7 to Producers – Italy, question 26; questionnaire Q8 to Broadcasters – Italy, question 26; questionnaire Q9 to Producers – the Netherlands, question 26; questionnaire Q10 to Broadcasters – the Netherlands, question 26; questionnaire Q11 to Producers – Spain, question 26; questionnaire Q12 to Broadcasters – Spain, question 26; questionnaire Q13 to Producers – Sweden, question 26; questionnaire Q14 to Broadcasters – Finland, question 26; questionnaire Q15 to Producers – Sweden, question 26; questionnaire Q16 to Broadcasters – Finland, question 26.

⁴¹ Replies to questionnaire Q2 to Broadcasters – Denmark, question 27; questionnaire Q4 to Broadcasters – Finland, question 27; questionnaire Q6 to Broadcasters – France, question 27; questionnaire Q7 to Producers – Italy, question 27; questionnaire Q8 to Broadcasters – Italy, question 27; questionnaire Q10 to Broadcasters – the Netherlands, question 27; questionnaire Q12 to Broadcasters – Spain, question 27; questionnaire Q14 to Broadcasters – Finland, question 27; questionnaire Q16 to Broadcasters – Finland, question 27.

Segmentation of other non-scripted AV content by genre

- (58) In the present case it was of particular importance to determine whether the segment “other AV content, non-scripted” has to be sub-segmented on the basis of genres, as the Notifying Party relied on substitutability between genres to argue that the Transaction would not raise competition concerns. The Commission’s market investigation focused on the substitutability between the following genres (by program type) of non-scripted content: programs for children, reality show, quiz show, talent/game show, documentaries/factual entertainment, general entertainment, other non-scripted content.
- (59) Based on the results of the market investigation, the Commission considers that, within non-scripted content, the following genres are substitutable: general entertainment, reality shows, quiz shows, talent/games shows, documentaries/factual entertainment and other non-scripted content; by contrast to programs for children, as further explained in the following paragraphs.
- (60) A majority of the respondents to the market investigation indicated that they consider the genres general entertainment, reality shows, quiz shows, talent/games shows, other non-scripted, documentaries/factual entertainment, talkshows and reality show to be substitutable with each other.⁴² Conversely, the respondents indicated that they do not consider that programs made for children (“kids programs”) are substitutable with any of these genres. Only some respondents consider that - if at all - kids programs could be regarded as potentially substitutable with quiz shows or talent/game shows, but this was clearly not the view of the majority of the respondents.⁴³

Segmentation of scripted AV content by genre

- (61) The Commission also assessed substitutability of genres within scripted content namely drama, kids, documentaries, comedy and other scripted AV content. The results of the market investigation indicate that these genres are substitutable with

⁴² Replies to questionnaire Q1 to Producers – Denmark, question 28; questionnaire Q2 to Broadcasters – Denmark, question 28; questionnaire Q3 to Producers – Finland, question 28; questionnaire Q4 to Broadcasters – Finland, question 28; questionnaire Q5 to Producers – France, question 28; questionnaire Q6 to Broadcasters – France, question 28; questionnaire Q7 to Producers – Italy, question 28; questionnaire Q8 to Broadcasters – Italy, question 28; questionnaire Q9 to Producers – the Netherlands, question 28; questionnaire Q10 to Broadcasters – the Netherlands, question 28; questionnaire Q11 to Producers – Spain, question 28; questionnaire Q12 to Broadcasters – Spain, question 28; questionnaire Q13 to Producers – Sweden, question 28; questionnaire Q14 to Broadcasters – Finland, question 28; questionnaire Q15 to Producers – Sweden, question 28; questionnaire Q16 to Broadcasters – Finland, question 28.

⁴³ Replies to questionnaire Q1 to Producers – Denmark, question 28; questionnaire Q2 to Broadcasters – Denmark, question 28; questionnaire Q3 to Producers – Finland, question 28; questionnaire Q4 to Broadcasters – Finland, question 28; questionnaire Q5 to Producers – France, question 28; questionnaire Q6 to Broadcasters – France, question 28; questionnaire Q7 to Producers – Italy, question 28; questionnaire Q8 to Broadcasters – Italy, question 28; questionnaire Q9 to Producers – the Netherlands, question 28; questionnaire Q10 to Broadcasters – the Netherlands, question 28; questionnaire Q11 to Producers – Spain, question 28; questionnaire Q12 to Broadcasters – Spain, question 28; questionnaire Q13 to Producers – Sweden, question 28; questionnaire Q14 to Broadcasters – Finland, question 28; questionnaire Q15 to Producers – Sweden, question 28; questionnaire Q16 to Broadcasters – Finland, question 28.

each other, including programs for children as this is supported by a majority of the respondents.⁴⁴

4.2.1.4. Conclusion

(62) For the purpose of the present decision, the Commission considers that the relevant product markets for the purposes of the present case are:

- production of tailor-made scripted AV content including all genres. The question whether captive/in-house productions should be excluded or whether this product market should be further segmented into commissioned production or production for hire can be left open as the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement under any plausible product market definition;
- production of tailor-made non-scripted AV content including all genres except kids. The question whether captive/in-house productions should be excluded or whether this product market should be further segmented into commissioned production or production for hire can be left open as the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement under any plausible product market definition.

4.2.2. Geographic market definition

4.2.2.1. Commission's decisional practice

(63) In its past decisional practice, the Commission has found the market for both production of AV content and licensing of AV content rights to be national in scope or broader, i.e., comprising a particular language region.⁴⁵

4.2.2.2. The Notifying Party's view

(64) The Notifying Party submits that these markets tend to become increasingly international notably due to the expansion of global and regional SVOD players, such as Netflix and Amazon Prime Video. The Notifying Party considers that such international contracts cannot be allocated to a specific national market given that this would lead to highly disproportionate results which would not reflect the local entity's market position.

⁴⁴ Replies to questionnaire Q1 to Producers – Denmark, question 29; questionnaire Q2 to Broadcasters – Denmark, question 29; questionnaire Q3 to Producers – Finland, question 29; questionnaire Q4 to Broadcasters – Finland, question 29; questionnaire Q5 to Producers – France, question 29; questionnaire Q6 to Broadcasters – France, question 29; questionnaire Q7 to Producers – Italy, question 29; questionnaire Q8 to Broadcasters – Italy, question 29; questionnaire Q9 to Producers – the Netherlands, question 29; questionnaire Q10 to Broadcasters – the Netherlands, question 29; questionnaire Q11 to Producers – Spain, question 29; questionnaire Q12 to Broadcasters – Spain, question 29; questionnaire Q13 to Producers – Sweden, question 29; questionnaire Q14 to Broadcasters – Finland, question 29; questionnaire Q15 to Producers – Sweden, question 29; questionnaire Q16 to Broadcasters – Finland, question 29.

⁴⁵ Commission decision of 16 September 2014, Case M.7282, Liberty Global/Discovery/All3Media, para. 51; Commission decision of 9 October 2014, Case M.7360, 21st Century Fox/Apollo/JV, para. 49; Commission decision of 20 January 2016, Case M.7865, Lov Group Invest/De Agostini/JV, para. 23 and 44.

4.2.2.3. Commission's assessment

- (65) The market investigation conducted in the present case indicates that the majority of the respondents replied that the geographic scope of the contracts for the production of TV content and for the licensing of broadcasting rights for TV content corresponds to the relevant national territories. A minority of respondents indicated that the scope would be world-wide or cover a specific linguistic region.⁴⁶
- (66) In light of the above, the Commission concludes that there are no indications of any need to depart from the geographic markets defined in previous decisions, namely that the scope of the relevant geographic market for the production and the licensing of AV content is national in scope.

5. COMPETITIVE ASSESSMENT

5.1. Introduction

- (67) The Transaction gives rise to horizontally affected markets concerning the production of tailor-made AV content or certain submarkets thereof in Denmark, Finland, France, Italy, the Netherlands, Norway, Spain and Sweden.
- (68) The relevant product markets and their sub-segmentations amounting to affected markets are set out in the overview table below.

⁴⁶ Replies to questionnaire Q1 to Producers – Denmark, question 31; questionnaire Q2 to Broadcasters – Denmark, question 31; questionnaire Q3 to Producers – Finland, question 31; questionnaire Q4 to Broadcasters – Finland, question 31; questionnaire Q5 to Producers – France, question 31; questionnaire Q6 to Broadcasters – France, question 31; questionnaire Q7 to Producers – Italy, question 31; questionnaire Q8 to Broadcasters – Italy, question 31; questionnaire Q9 to Producers – the Netherlands, question 31; questionnaire Q10 to Broadcasters – the Netherlands, question 31; questionnaire Q11 to Producers – Spain, question 31; questionnaire Q12 to Broadcasters – Spain, question 31; questionnaire Q13 to Producers – Sweden, question 31; questionnaire Q14 to Broadcasters – Finland, question 31; questionnaire Q15 to Producers – Sweden, question 31; questionnaire Q16 to Broadcasters – Finland, question 31.

Table 1 - Table of affected markets by country

Country	<i>Non-scripted excluding captive (overall)</i>	<i>Non-scripted excluding captive (production for hire)</i>	<i>Non-scripted excluding captive (commissioned)</i>	<i>Scripted excluding captive (overall)</i>	<i>Scripted excluding captive (production for hire)</i>	<i>Scripted excluding captive (commissioned)</i>
Denmark	X	X	X			
Finland	X		X			
France			X			
Italy	X		X			
Netherlands	X		X			
Norway	X		X			
Spain	X	X	X	X		X
Sweden	X	X	X	X		X

Source: Form CO, Table 2, paragraph 231.

- (69) The effects of the Transaction on these affected markets are discussed in the sections below.

5.2. Denmark

5.2.1. Introduction

- (70) Banijay is active in the market for the production of scripted and non-scripted AV content in Denmark through Mastiff Denmark, Nordisk Film TV Denmark, Pineapple Entertainment and Respirator. Banijay creates both original formats and adapt internationally successful formats for the Danish market, including scripted and non-scripted . Its flagship programs include the “Go Denmark” franchise, a TV2 talk show, which comprises the editions “Good morning”, “Good Evening”, “Good weekend” and “Good appetite”, as well as the entertainment show “All Against 1” and the factual entertainment show “Sold or Broken”. Banijay is also active via Pineapple Entertainment with the program “The Night Shift” and others, and via Respirator with the shows “Zulu HK” and others.
- (71) ESG operates in Denmark through Metronome Productions A/S, exclusively in the non-scripted segment. Its current programs include the reality show “Luxury Trap”, the entertainment show “MasterChef”, the reality show “Bryggen” and the factual entertainment show “Police Hunt”.

- (72) The Transaction gives rise to (i) horizontally affected markets for the production of externally tailor-made (i.e., excluding captive/in-house content) non-scripted AV content, for the production of externally tailor-made production for hire (i.e., excluding captive/in-house content) non-scripted AV content, and for the production of externally tailor-made commissioned (i.e., excluding captive/in-house content) non-scripted AV content, (ii) non-horizontally affected market in relation to the neighbouring markets for the production of externally tailor-made (i.e., excluding captive/in-house content) scripted and non-scripted AV content in Denmark.

5.2.2. *Notifying Party's view*

- (73) The Notifying Party considers that the Transaction will not raise horizontal competition concerns in Denmark where the Parties' production activities overlap, for the following reasons.
- (74) First, the Notifying Party argues that market shares, especially those excluding in-house production, are inadequate to measure competitive strength and overstate the Parties' market position in the affected markets and segments.⁴⁷
- (75) Second, the Notifying Party emphasises that the merged entity will continue to face competition from a significant number of credible competitors that will continue to exert significant competitive constraints on the merged entity. In addition, the Notifying Party argues that broadcasters have in-house capabilities and, should the merged entity try to impose unfavourable conditions, they would be able to expand self-supply, which further acts as a constraint on the merged entity.
- (76) The Notifying Party further contends that barriers to entry in the market are very low and that therefore the merged entity would be faced with new entry in the event that the merged entity were to increase prices or degrade the quality of its services.
- (77) Finally, the merged entity will face highly sophisticated and concentrated customers holding significant bargaining power. In particular, the Notifying Party considers that broadcasters are capable of imposing strict budget limitations on producers, continuously renegotiate financial conditions throughout the performance of the contract and try to impose unfavourable conditions on the producers of scripted and non-scripted AV content.

5.2.3. *Commission's assessment*

5.2.3.1. Market structure

- (78) The Parties' market shares in the production of tailor-made AV content in Denmark are set out in the table below.
- (79) These shares include the following potential segmentations: (i) including and excluding captive/in-house production from vertically integrated broadcasters, (ii) segmented between "production for hire" and "commissioned production".

⁴⁷ The Notifying Party indicates that market shares by value are more appropriate than market share by volume in the AV industry. The Parties were not able to provide market share data on the basis of volume and only provided value-based market share information.

Table 2 -The Parties' shares of tailor-made programs in 2018 in Denmark by value

	Market Size (EUR million)	Banijay	ESG	Combined
Tailor-made production non-scripted (including captive) -	[...]	[10-20]%	[5-10]%	[10-20]%
Tailor-made production non-scripted (excluding captive) -	[...]	[20-30]%	[10-20]%	[30-40]%
Tailor-made production non-scripted (excluding captive) – production for hire	[...]	[30-40]%	[5-10]%	[30-40]%
Tailor-made production non-scripted (excluding captive) – commissioned production	[...]	[20-30]%	[10-20]%	[30-40]%

Source: Form CO, Annex 6.1.1 - O&O market report 2020.05.07_4889820.2, Annex 1 – Estimated shares work-for-hire vs. commissioned

- (80) Table 2 shows that the Parties have a combined market share of [30-40]% in 2018 in the production of non-scripted AV content, excluding captive and in-house production.
- (81) Table 3 presents the market shares of the Parties' competitors based on 2018 figures.

Table 3 -The Parties' and competitors shares of tailor-made non-scripted programs in 2018 in Denmark by value

Banijay	ESG	Combined	Fremantle	Warner	Monday	ITV	Others
[20-30]%	[10-20]%	[30-40]%	[10-20]%	[5-10]%	[10-20]%	[5-10]%	[30-40]%

Source: Competitor share analysis, RFI 4

5.2.3.2. Horizontal non-coordinated effect in Denmark

- (82) The Commission considers that, for the reasons set out below, the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to horizontal non-coordinated effects in the market for the production of tailor-made non-scripted AV content and its sub-segments in Denmark.
- (83) The results of the market investigation provided conflicting views on whether the Transaction would have a negative or neutral impact on the respondents⁴⁸ and the market for the production of tailor-made non-scripted AV content.⁴⁹ On the one hand, some respondents indicate that the Transaction increases the Parties bargaining power and, since they are unavoidable trading partners due to the relevance of their formats, they could be able to impose unfavourable terms and conditions. On the other hand, other respondents indicate that the Transaction would not have any

⁴⁸ Replies to questionnaire Q4 to Broadcasters – Finland, question 53; questionnaire Q3 to Producers – Finland, question 50.

⁴⁹ Replies to questionnaire Q4 to Broadcasters – Finland, question 54; questionnaire Q3 to Producers – Finland, question 51.

impact on the market. While the bargaining power of the two companies will increase, broadcasters have alternative producers from which they could source content.

- (84) However, there are several reasons why the Commission considers that, despite these views, the Transaction will not raise serious doubts as to its compatibility with the internal market in Denmark.
- (85) First, the Commission notes that the merged entity's relevant combined market share in the relevant segments in Denmark are moderate: [30-40]% in the production of non-scripted AV content excluding captive and in-house production overall, of [30-40]% in the tailormade production for hire and [30-40]% in commissioned production (both excluding captive and in-house production). The markets would not even be affected if captive/in-house production were to be included.
- (86) Second, a number of alternative providers, of which some are global players active in several countries in the EEA, would remain in the market for the production of tailormade non-scripted AV content, excluding captive/in-house production and its sub-segments, post-Transaction, namely Fremantle, ITV, Warner and Monday with market shares of respectively, [10-20]%, [5-10]%, [5-10]% and [10-20]%.
- (87) Third, the results of the market investigation show that the Parties do not represent a significant share of the broadcasters' individual spent in non-scripted AV content by value and volume.⁵⁰ Based on the data submitted by customers, the purchasing shares show that, first, those data are not significantly different compared to the market shares estimates submitted by the Parties, which confirms that the market shares submitted by the Parties reflect the market reality, and, second, that none of the broadcasters is entirely dependent on Banijay and/or ESG.⁵¹
- (88) Fourth, respondents to the market investigation indicate that the main parameters that they consider relevant when procuring or supplying tailormade non-scripted AV content are the price, access to the IPR and access to the creative talent.⁵² When considering such parameters, respondents indicate that other producers in Denmark would have a similar position to Banijay and ESG.⁵³ One respondent considers that other producers, NENT, Monday, Fremantle are equally competitive on price which is driven by market forces. Other respondents indicate that talent is not locked into specific companies and can move around. With respect to access to IPR to significant formats, several respondents indicate that the Parties are significant players. However, respondents indicate that Fremantle also has access to significant content.
- (89) Moreover, respondents to the market investigation indicate that other producers of non-scripted AV content compete closely with Banijay and ESG.⁵⁴ Some

⁵⁰ Annex I to questionnaire Q2 to Broadcasters – Denmark.

⁵¹ Annex I to questionnaire Q8 to Broadcasters – Italy.

⁵² Replies to questionnaire Q2 to Broadcasters – Denmark, question 37; questionnaire Q1 to Producers – Denmark, question 34.

⁵³ Replies to questionnaire Q2 to Broadcasters – Denmark, question 38; questionnaire Q1 to Producers – Denmark, question 35.

⁵⁴ Replies to questionnaire Q2 to Broadcasters – Denmark, questions 42 and 43; questionnaire Q1 to Producers – Denmark, questions 39 and 40.

respondents indicate that Monday, Fremantle and ITV are closer competitors to each of the Parties than the Parties to each other. For example, one respondent notes that Endemol, Fremantle and ITV Studios are the main players commanding similar scale, expertise/skill, talent-base and IPR in the Danish market.

- (90) Fifth, most of the respondents consider likely that a new entrant will start producing non-scripted AV content in Denmark.⁵⁵ One respondent notes that senior production people start up small production entities on a regular basis. Another considers that barriers to entry are extremely low and the entry of new players is likely. Another respondent considers that some big groups such as All3Media or MGM may likely enter in the Nordic market in the next years. One respondent also make the example of a successful entrant United which has been successively bought by the international player ITV.
- (91) Sixth, producers responding to the market investigation indicate that broadcasters have relatively strong bargaining power.⁵⁶ One producer notes that in the market for the production of audio-visual content the broadcaster has a stronger bargaining power than the supplier and that this will remain unchanged post-Transaction. Another producer notes that the Danish production market is a “buyer market”.
- (92) Finally, most of the respondents to the market investigation consider that broadcasters would have counterstrategies should the merged entity worsen the terms and conditions at which it produces tailor-made non-scripted AV content, for example by bundling the sale of non-scripted tailor-made AV content or increasing prices.⁵⁷ Several respondents indicate that broadcasters would still have the possibility to source from alternative producers and that vertically integrated producers would also have the option to produce content in-house. One respondent indicates that it expects broadcasters to buy more from the remaining companies. However, some respondents indicate that counterstrategies would not be viable. For example, expanding in-house productions could be limited by the availability of talent or relevant IPR.
- (93) The ability of broadcasters to rely on in-house production is further supported from an analysis of the market shares including in-house productions. TV2 and DR in-house productions accounted for respectively [10-20]% and [20-30]% of the non-scripted productions in Denmark in 2018.⁵⁸
- (94) In light of the above, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market in Denmark as a result of horizontal unilateral effects in the market for the production of tailor-made non-scripted AV content (both excluding captive and in-house production), including the

⁵⁵ Replies to questionnaire Q2 to Broadcasters – Denmark, question 51; questionnaire Q1 to Producers – Denmark, question 48.

⁵⁶ Replies to questionnaire Q1 to Producers – Denmark, question 41.

⁵⁷ Replies to questionnaire Q2 to Broadcasters – Denmark, question 49; questionnaire Q1 to Producers – Denmark, question 46.

⁵⁸ The data would not significantly change when assessing previous years. In 2017, TV2 and DR in-house productions accounted for respectively [10-20]% and [20-30]% of the non-scripted productions in Denmark. In 2016, TV2 and DR in-house productions accounted for respectively [10-20]% and [20-30]% of the non-scripted productions in Denmark.

narrower market segments for the tailor-made production for hire and commissioned production (both excluding captive and in-house production).

5.2.3.3. Non-horizontal non-coordinated effects in Denmark

- (95) The Non-Horizontal Guidelines⁵⁹ indicate that competition concerns can arise in circumstances where a merger involves companies that are active in closely related markets. While in the majority of circumstances conglomerate mergers will not lead to any competition problems, in certain circumstances they can lead to anticompetitive effects. One such example is when the combination of products in related markets would give the merged entity or the Parties the ability and incentive to leverage a strong market position in one of the markets to the other market by means of tying or bundling. Where tying or bundling is likely to lead to a reduction in actual or potential rivals' ability or incentive to compete it may reduce competitive pressure on the merged entity, allowing it to increase prices.
- (96) In Denmark, Banijay and ESG are also active in the market for the production of tailor-made scripted content with market shares of respectively [5-10]% and [0-5]% by value in 2018 in the market for the production of tailor-made scripted content excluding captive/in-house production. The merged entity would have a market share of [5-10]% in the production of scripted AV content excluding captive/in-house production and [30-40]% in the production of non-scripted AV content excluding captive/in-house production.
- (97) The Commission has therefore assessed the risk of foreclosure of competing producers of tailor-made scripted content by tying or bundling the production of tailor-made non-scripted content in Denmark.
- (98) The Commission considers that the merged entity would lack the ability to foreclose competing producers of tailor-made scripted content by tying or bundling it to the production of tailor-made non-scripted content in Denmark for the following reasons.
- (99) First, as indicated in paragraph (85), the market shares of the merged entity on the market for the production of tailor-made non-scripted excluding captive/in-house production content are moderate.
- (100) Second, as indicated in paragraph (86), alternative producers of non-scripted content excluding captive/in-house production would remain available in the market, including international producers as Fremantle.
- (101) Third, as indicated in paragraph (92), should the merged entity worsen the terms and conditions at which it produces tailor-made non-scripted AV content, for example by bundling the sale of non-scripted tailor-made AV content with scripted tailor-made AV content, most of the respondents consider that broadcasters would have counterstrategies.
- (102) The Commission considers that due to the lack of ability to engage in a foreclosing strategy, it is not needed to assess whether the merged entity would have any incentive or whether any foreclosure strategy would have a negative impact on effective competition.

⁵⁹ Non-Horizontal Merger Guidelines, Section V.A.

- (103) In light of the foregoing, the Commission concludes that the Transaction would not raise serious doubts as to its compatibility with the internal market as a result of the conglomerate relationships between the merged entity's activities as producer of scripted and non-scripted AV content in Denmark.

5.3. Finland

5.3.1. Introduction

- (104) Banijay is active in the market for the production of scripted and non-scripted AV content in Finland through Banijay Finland and Zodiak Finland. It produces entertainment programs for the main Finnish networks. Banijay's flagship shows include the factual entertainment show "The Best Singer" (Nelonen), the reality show "Temptation Island" (Nelonen) and the comedy game "Have I Got News For You" (MTV3) as well as "Presidents First" (Elisa), "Jari and Kari" (YLE) and "Solsidan" (Cmore).
- (105) ESG operates in Finland through Endemol Shine Finland, exclusively in the non-scripted segment. Endemol Shine Finland is active in the Finnish market since 2000 and produces content for several TV channels and brands. Its best known programs include the reality show "Big Brother" (Nelonen), the game show "The Wall Finland", the reality show "The Biggest Loser" (Nelonen), the factual entertainment "Kotoisa – Cosy Homes" (MTV 3), the reality show "Sohvaperunat – Gogglebox" (YLE TV2) and the game show "Hyvat katsojat – Good Evening" (YLE TV2).
- (106) The Transaction gives rise to (i) horizontally affected markets for the production of externally tailor-made (i.e., excluding captive/in-house content) non-scripted AV content and for the production of externally tailor-made commissioned (i.e., excluding captive/in-house content) non-scripted AV content, (ii) non-horizontally affected market in relation to the neighbouring markets for the production of externally tailor-made (i.e., excluding captive/in-house content) scripted and non-scripted AV content in Finland.

5.3.2. Notifying Party's view

- (107) The Notifying Party considers that the Transaction will not raise horizontal competition concerns in Finland where the Parties' production activities overlap, for the following reasons.
- (108) First, the Notifying Party argues that market shares, especially those excluding in-house production, are inadequate to measure competitive strength and overstate the Parties' market position in the affected markets and segments.⁶⁰
- (109) Second, the Notifying Party emphasises that the merged entity will continue to face competition from a significant number of credible competitors that will continue to exert significant competitive constraints on the merged entity. In addition, the Notifying Party argues that broadcasters have in-house capabilities and, should the

⁶⁰ The Notifying Party further indicates that market shares by value are more appropriate than market share by volume in the AV industry. The Parties were not able to provide market share data on the basis of volume and only provided value-based market share information.

merged entity try to impose unfavourable conditions, they would be able to expand self-supply, which further acts as a constraint on the merged entity.

- (110) The Notifying Party further contends that barriers to entry in the market are very low and that therefore the merged entity would be faced with new entry in the event that the merged entity were to increase prices or degrade the quality of its services.
- (111) Finally, the merged entity will face highly sophisticated and concentrated customers holding significant bargaining power. In particular, the Notifying Party considers that broadcasters are capable of imposing strict budget limitations on producers, continuously renegotiate financial conditions throughout the performance of the contract and try to impose unfavourable conditions on the producers of scripted and non-scripted AV content.

5.3.3. Commission's assessment

5.3.3.1. Market structure

- (112) The Parties' market shares in the production of tailor-made AV content in Finland are set out in Table below.
- (113) These shares include the following potential segmentations: (i) including and excluding captive/in-house production from vertically integrated broadcasters, (ii) segmented between "production for hire" and "commissioned production".

Table 4 -The Parties' shares of tailor-made programs in 2018 in Finland by value

	Market Size (EUR million)	Banijay	ESG	Combined
Tailormade production non-scripted (including captive) -	[...]	[5-10]%	[5-10]%	[10-20]%
Tailormade production non-scripted (excluding captive) -	[...]	[20-30]%	[10-20]%	[30-40]%
Tailormade production non-scripted (excluding captive) – production for hire	[...]	[0-5]%	[5-10]%	[5-10]%
Tailormade production non-scripted (excluding captive) – commissioned production	[...]	[20-30]%	[10-20]%	[30-40]%

Source: Form CO, Annex 6.1.1 - O&O market report 2020.05.07_4889820.2, Annex 1 – Estimated shares work-for-hire vs. commissioned

- (114) Table 4 shows that the Parties have a combined market share of [30-40]% in 2018 in the production of non-scripted AV content, excluding captive and in-house production.
- (115) Table 5 presents the market shares of the Parties' competitors based on 2018 figures.

Table 5 -The Parties’ and competitors shares of tailor-made non-scripted programs in 2018 in Finland by value

Banijay	ESG	Combined	Rabbit	Aito Media	ITV	Fremantle	Others
[20-30]%	[10-20]%	[30-40]%	[20-30]%	[5-10]%	[5-10]%	[10-20]%	[20-30]%

Source: Competitor share analysis, RFI 4

5.3.3.2. Horizontal non-coordinated effects in Finland

- (116) The Commission considers that, for the reasons set out below, the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to horizontal non-coordinated effects in the market for the production of tailor-made non-scripted AV content and its sub-segments in Finland.
- (117) First, most of the respondents consider that the Transaction would have a neutral impact on their company⁶¹ and the market for the production of tailor-made non-scripted AV content.⁶² Respondents consider that the production market is highly competitive and the situation would remain unchanged post-Transaction due to the presence of alternative competing producers. Only one respondent notes that the merged entity would have an incentive to increase prices.
- (118) Second, the Commission notes that the merged entity’s relevant combined market share in the relevant segments in Finland are moderate: [30-40]% in the production of non-scripted AV content excluding captive and in-house production overall, of [5-10]% in the tailor-made production for hire and [30-40]% in commissioned production (both excluding captive and in-house production). The markets would not even be affected if captive/in-house production were to be included.
- (119) Third, alternative providers, of which some are global players active in several countries in the EEA, would remain in the market for the production of tailor-made non-scripted AV content, excluding captive/in-house production and its sub-segments post-Transaction, namely Rabbit, ITV, Aito Media and Fremantle with market shares of respectively, [20-30]%, [5-10]%, [5-10]% and [10-20]%.
- (120) Fourth, the results of the market investigation show that the Parties do not represent a significant share of the broadcasters’ spent in non-scripted AV content by value and volume.⁶³ Based on the data submitted by customers, the purchasing shares show that, first, those data are not significantly different compared to the market shares estimates submitted by the Parties, which confirms that the market shares submitted by the Parties reflect the market reality, and, second, that none of the broadcasters is entirely dependent on Banijay and/or ESG.
- (121) Fifth, respondents to the market investigation indicate that the main parameters that they consider relevant when procuring or supplying tailor-made non-scripted AV

⁶¹ Replies to questionnaire Q4 to Broadcasters – Finland, question 53; questionnaire Q3 to Producers – Finland, question 50.

⁶² Replies to questionnaire Q4 to Broadcasters – Finland, question 54; questionnaire Q3 to Producers – Finland, question 51.

⁶³ Annex I to questionnaire Q4 to Broadcasters – Finland.

content are the price and access to prime-time content, followed by access to IPR.⁶⁴ When considering such parameters, respondents indicate that other producers in Finland would have a similar position to Banijay and ESG.⁶⁵ One producer indicate that its strength in Finland is on prime-time programming. Another producers notes that all producers in the Finnish market are equally competitive. Sanoma notes that also local producers are strong in terms of pricing and talent.

- (122) Moreover, respondents to the market investigation indicate that other producers of non-scripted AV content compete closely with Banijay and ESG.⁶⁶ Respondents indicate that Fremantle, ITV and Warner Bros also have a significant catalogue of globally recognized IPR.
- (123) Sixth, most of the respondents consider likely that a new entrant will start producing non-scripted AV content in Finland.⁶⁷ One respondent indicates that barriers to entry are low and it is likely that small independent companies would enter the market but that it is not sure whether they would be competitive vis-à-vis the Parties. Another respondent considers that entry is likely also for international players. In particular, it is likely that a new entrant with a good format with international sales/production history could start producing non-scripted AV content.
- (124) In addition, respondents to the market investigation indicate that broadcasters have relatively strong bargaining power.⁶⁸ One respondent notes that Telia is active across several Scandinavian countries and it has a strong bargaining power. Another respondent notes that Sanoma, by leveraging its position in the television, film, radios, print, music industry and digital media sectors, has a significant bargaining power.
- (125) Finally, most of the respondents to the market investigation consider that broadcasters would have counterstrategies should the merged entity worsen the terms and conditions at which it produces tailor-made non-scripted AV content, for example by bundling the sale of non-scripted tailor-made AV content or increasing prices.⁶⁹ Sanoma and Yle indicate that they are able to work with different producers and the situation would remain unchanged post-Transaction. Similarly, among producers, respondents do not consider the Transaction would have an impact on the Finnish production market.
- (126) In light of the above, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market in Finland as a result of horizontal unilateral effects in the market for the production of . tailor-made non-scripted AV content (both excluding captive and in-house production), including the

⁶⁴ Replies to questionnaire Q4 to Broadcasters – Finland, question 37; questionnaire Q3 to Producers – Finland, question 34.

⁶⁵ Replies to questionnaire Q4 to Broadcasters – Finland, question 38; questionnaire Q3 to Producers – Finland, question 35.

⁶⁶ Replies to questionnaire Q4 to Broadcasters – Finland, questions 42 and 43; questionnaire Q3 to Producers – Finland, questions 39 and 40.

⁶⁷ Replies to questionnaire Q4 to Broadcasters – Finland, question 51; questionnaire Q3 to Producers – Finland, question 48.

⁶⁸ Replies to questionnaire Q4 to Broadcasters – Finland, question 44; questionnaire Q3 to Producers – Finland, question 41.

⁶⁹ Replies to questionnaire Q4 to Broadcasters – Finland, question 49; questionnaire Q3 to Producers – Finland, question 46.

narrower market segments for the tailor-made production for hire and commissioned production (both excluding captive and in-house production)

5.3.3.3. Non-horizontal non-coordinated effects in Finland

- (127) In Finland, Banijay and ESG are also active in the market for the production of tailor-made scripted content with market shares of respectively [5-10]% and [0-5]% by value in 2018 in the market for the production of tailor-made scripted content excluding captive/in-house production. The merged entity would have a market share of [5-10]% in the production of scripted AV content excluding captive/in-house production and [30-40]% in the production of non-scripted AV content excluding captive/in-house production.
- (128) The Commission has therefore assessed the risk of foreclosure of competing producers of tailor-made scripted content by tying or bundling the production of tailor-made non-scripted content in Finland.
- (129) The Commission considers that the merged entity would lack the ability to foreclose competing producers of tailor-made scripted content by tying or bundling it to the production of tailor-made non-scripted content in Finland for the following reasons.
- (130) First, as indicated in paragraph (118), the market shares of the merged entity on the market for the production of tailor-made non-scripted content excluding captive/in-house production are moderate.
- (131) Second, as indicated in paragraph (119), alternative producers of non-scripted content would remain available in the market, including international producers as Fremantle.
- (132) Third, as indicated in paragraph (125), should the merged entity worsen the terms and conditions at which it produces tailor-made non-scripted AV content, for example by bundling the sale of non-scripted tailor-made AV content with scripted tailor-made AV content, most of the respondents consider that broadcasters would have counterstrategies.
- (133) The Commission also considers that due to the lack of ability to engage in a foreclosing strategy, it is not needed to assess whether the merged entity would have any incentive or whether any foreclosure strategy would have a negative impact on effective competition.
- (134) In light of the foregoing, the Commission concludes that the Transaction would not raise serious doubts as to its compatibility with the internal market as a result of the conglomerate relationships between the merged entity's activities as producer of scripted and non-scripted AV content in Finland.

5.4. France

5.4.1. Introduction

- (135) Banijay is present in the market for the production of scripted and non-scripted AV content in France through Adventure Line Productions, Banijay Production Media, Banijay Productions, Banijay Studios France, GÉTÉVÉ, H2O Productions, KM and Terence Films. It produces content based on original formats and adapts

international formats to the French market. Its flagship programs include "Les Marseillais", known internationally as "Party workers", "Touche pas á mon poste", known internationally as "It's only TV", "Temptation Island" as well as "28 minutes".

- (136) ESG operates in France through Endemol Shine France. It produces a range of scripted and non-scripted AV content. Its flagship programs include "Les 12 coups de Midi", "La meilleure boulangerie de France", "Les enfants de la télé" and "Personne n'y avait pensé". In addition, up until 2018 ESG produced the two highly successful shows "the Voice" and "Secret Story" for TF1.
- (137) The Transaction gives rise to horizontally affected markets for the production of externally tailor-made commissioned (i.e., excluding captive/in-house content) non-scripted AV content in France.

5.4.2. *Notifying Party's view*

- (138) The Notifying Party considers that the Transaction will not raise horizontal competition concerns in France where the Parties' production activities overlap, for the following reasons.
- (139) First, the Notifying Party argues that market shares, especially those excluding in-house production, are inadequate to measure competitive strength and overstate the Parties' market position in the affected markets and segments.⁷⁰
- (140) Second, the Notifying Party emphasises that the merged entity will continue to face competition from a significant number of credible competitors that will continue to exert significant competitive constraints on the merged entity. In addition, the Notifying Party argues that broadcasters have in-house capabilities and, should the merged entity try to impose unfavourable conditions, they would be able to expand self-supply, which further acts as a constraint on the merged entity.
- (141) The Notifying Party further contends that barriers to entry in the market are very low and that therefore the merged entity would be faced with new entry in the event that the merged entity were to increase prices or degrade the quality of its services.
- (142) Finally, the merged entity will face highly sophisticated and concentrated customers holding significant bargaining power. In particular, the Notifying Party considers that broadcasters are capable of imposing strict budget limitations on producers, continuously renegotiate financial conditions throughout the performance of the contract and try to impose unfavourable conditions on the producers of scripted and non-scripted AV content.

⁷⁰ The Notifying Party further indicates that market shares by value more appropriate than market share by volume in the AV industry. The Parties were not able to provide market share data on the basis of volume and only provided value-based market share information.

5.4.3. Commission's assessment

5.4.3.1. Market structure

(143) The Parties' market shares in the production of tailor-made AV content in France are set out in the table below.

(144) These shares include the following potential segmentations: (i) including and excluding captive/in-house production from vertically integrated broadcasters, (ii) segmented between "production for hire" and "commissioned production".

Table 6 -The Parties' shares of tailor-made AV programs in 2018 in France by value

	Market Size (EUR million)	Banijay	ESG	Combined
Tailor-made production non-scripted (including captive)	[...]	[5-10]%	[0-5]%	[10-20]%
Tailor-made production non-scripted (excluding captive)	[...]	[10-20]%	[5-10]%	[10-20]%
Tailor-made production non-scripted (excluding captive) – production for hire	[...]	[5-10]%	[0-5]%	[5-10]%
Tailor-made production non-scripted (excluding captive) – commissioned production	[...]	[10-20]%	[5-10]%	[20-30]%

Source: Form CO, Annex 6.1.1 - O&O market report 2020.05.07_4889820.2, Annex 1 – Estimated shares work-for-hire vs. commissioned

(145) The table shows that Parties have a combined market share of [20-30]% in 2018 in the production of non-scripted commissioned AV content.

(146) Table 7 presents the market shares of the Parties' competitors based on 2018 figures.

Table 7 -The Parties' and competitors shares of tailor-made non-scripted programs in 2018 in France by value

Banijay	ESG	Combined	Bangumi	Coyote	SBS	Troisième Œil	Others
[10-20]%	[5-10]%	[10-20]%	[10-20]%	[5-10]%	[5-10]%	[5-10]%	[40-50]%

Source: Competitor share analysis, RFI 4

5.4.3.2. Horizontal non-coordinated effect in France

(147) The Commission considers that, for the reasons set out below, the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to horizontal non-coordinated effects in the market for the production of non-scripted AV content and its sub-segments in France.

- (148) The results of the market investigation provided conflicting views on whether the Transaction would have a negative or neutral impact on the respondents⁷¹ and the market for the production of tailor-made non-scripted AV content⁷² with a minority of respondents indicating that it could be negative.
- (149) However, there are several reasons why the Commission considers that, despite these views, the Transaction will not raise serious doubts as to its compatibility with the internal market in France.
- (150) First, the Commission notes that the merged entity's combined market share in the production of tailor-made non-scripted AV content in France is moderate ([10-20]% and just at the threshold to constitute an affected market), the market share for tailor-made production non-scripted (excluding captive) – commissioned production is [20-30]%. The markets would not even be affected if captive/in-house production were to be included and the Transaction-specific market share increment is low.
- (151) Second, the combined entity will be exposed to competition from important players in the French market for the production of tailor-made non-scripted AV content, excluding captive/in-house production and its sub-segments post-Transaction, such as Bangumi, Troisième Œil, Coyote, SBS Productions with market shares of respectively [10-20]%, [5-10]%, [5-10]%, and a number of other players, many of them having a higher market share than the Transaction-specific market share increment.
- (152) Third the majority of customers consulted in the framework of the market investigation indicates that the Parties do not represent a significant share of the broadcasters' spent in non-scripted AV content.⁷³
- (153) Fourth, the market investigation has shown that, for broadcasters, the most important parameter of competition is the price,⁷⁴ followed by access to IPR and talent, which indicates that access to IP as such is not driving competition, but rather its price, indicating that IPR is generally available in the market. In addition, one customer indicated that *[t]he availability of significant IPR for formats to produce non-scripted AV content is dynamic. While high quality ideas and execution are typically necessary to produce successful content, there is continuous effort to develop new content. Therefore the marketplace [in France] is quite fluid and constantly evolving.*⁷⁵
- (154) Moreover, respondents to the market investigation indicate that other producers of non-scripted AV content compete closely with Banijay and ESG.⁷⁶

⁷¹ Replies to questionnaire Q6 to Broadcasters – France, question 53; questionnaire Q5 to Producers – France, question 50.

⁷² Replies to questionnaire Q6 to Broadcasters – France, question 54; questionnaire Q5 to Producers – France, question 51.

⁷³ Annex I to questionnaire Q6 to Broadcasters – France.

⁷⁴ Replies to questionnaire Q6 to Broadcasters – France, question 37; questionnaire Q5 to Producers – France, question 34.

⁷⁵ Replies to questionnaire Q6 to Broadcasters – France, question 41.1.

⁷⁶ Replies to questionnaire Q6 to Broadcasters – France, questions 42 and 43; questionnaire Q5 to Producers – France, questions 39 and 40.

- (155) Fifth, most of the respondents consider it that a new entrant will likely start producing non-scripted AV content in France in the next 5 years.⁷⁷
- (156) Sixth, respondents to the market investigation indicate that broadcasters have relatively strong bargaining power in France.⁷⁸
- (157) Finally, taking into account the results of the market investigation, the Commission considers that the merged entity is unlikely to start engaging into practices that could limit effective competition by either negatively affecting customers or limiting expansion of competitors in the market for the production of tailor-made non-scripted AV content in France by increasing prices, requiring a higher number of hours of AV content to be purchased or by bundling the sale of non-scripted tailor-made AV content to other content not necessarily desired by the broadcasters post-Transaction.⁷⁹
- (158) The market investigation has also shown that if the merged entity should attempt to worsen the terms and conditions at which it produces tailor-made non-scripted AV content, broadcasters would have appropriate counterstrategies (including to expand production in-house) to overcome such strategies, which is likely to have a significant constraining effect with regard to such strategies.⁸⁰

5.4.3.3. Conclusion

- (159) In light of the above, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market in France as a result of horizontal unilateral effects in the market for the production of tailor-made non-scripted AV content (both excluding captive and in-house production), including the narrower market segments for the tailor-made production for hire and commissioned production (both excluding captive and in-house production).

5.5. Italy

5.5.1. Introduction

- (160) Banijay is active in the market for the production of scripted and non-scripted AV content in Italy through Aurora TV, Banijay Studios Italy, Banijay Italia, Nonpanic, L'Officina, and ITV Movie. Banijay creates both original formats and adapts internationally successful formats for the Italian market. Successful programs include the cooking competition "4 Restaurants" (on Sky Uno) or the factual entertainment series "4 Hotels" (on Sky), as well as the reality show "Hell's Kitchen".

⁷⁷ Replies to questionnaire Q6 to Broadcasters – France, question 51; questionnaire Q5 to Producers – France, question 48.

⁷⁸ Replies to questionnaire Q6 to Broadcasters – France, question 44; questionnaire Q5 to Producers – France, question 41.

⁷⁹ Replies to questionnaire Q6 to Broadcasters – France, question 46; questionnaire Q5 to Producers – France, question 43; Replies to questionnaire Q6 to Broadcasters – France, question 47; questionnaire Q5 to Producers – France, question 44; Replies to questionnaire Q6 to Broadcasters – France, question 48; questionnaire Q5 to Producers – France, question 45.

⁸⁰ Replies to questionnaire Q6 to Broadcasters – France, question 49; questionnaire Q5 to Producers – France, question 46.

- (161) ESG operates in Italy through Endemol Shine Italy. It produces a range of AV content including original formats or the local adaptation of foreign titles for both scripted and non-scripted AV content. Its flagship programs include the reality show “Big Brother”, the cooking shows “MasterChef” and “Ready Steady Cook”, the drama series “L’Allieva”, the game shows “Identity”, “Still Standing”, and “Next One!”, as well as the talent show “Your Face sounds familiar”.
- (162) The Transaction gives rise to (i) horizontally affected markets for the production of externally tailor-made (i.e., excluding captive/in-house content) non-scripted AV content and for the production of externally tailor-made commissioned (i.e., excluding captive/in-house content) non-scripted AV content, (ii) non-horizontally affected market in relation to the neighbouring markets for the production of externally tailor-made (i.e., excluding captive/in-house content) scripted and non-scripted AV content in Italy.

5.5.2. Notifying Party’s view

- (163) The Notifying Party considers that the Transaction will not raise horizontal competition concerns in Italy where the Parties’ production activities overlap, for the following reasons.
- (164) The Notifying Party considers that the Transaction will not raise horizontal competition concerns in France where the Parties’ production activities overlap, for the following reasons.
- (165) First, the Notifying Party argues that market shares, especially those excluding in-house production, are inadequate to measure competitive strength and overstate the Parties’ market position in the affected markets and segments.⁸¹
- (166) Second, the Notifying Party emphasises that the merged entity will continue to face competition from a significant number of credible competitors that will continue to exert significant competitive constraints on the merged entity. In addition, the Notifying Party argues that broadcasters have in-house capabilities and, should the merged entity try to impose unfavourable conditions, they would be able to expand self-supply, which further acts as a constraint on the merged entity.
- (167) The Notifying Party further contends that barriers to entry in the market are very low and that therefore the merged entity would be faced with new entry in the event that the merged entity were to increase prices or degrade the quality of its services.
- (168) Finally, the merged entity will face highly sophisticated and concentrated customers holding significant bargaining power. In particular, the Notifying Party considers that broadcasters are capable of imposing strict budget limitations on producers, continuously renegotiate financial conditions throughout the performance of the contract and try to impose unfavourable conditions on the producers of scripted and non-scripted AV content. (for example, by trying to limit the role of the producer to a role of mere « *line producer* », where the producer is supposed to act as a simple service provider, by giving up any exploitation right on the programs).

⁸¹ The Notifying Party further indicates that market shares by value are more appropriate than market share by volume in the AV industry. The Parties were not able to provide market share data on the basis of volume and only provided value-based market share information.

5.5.3. Commission's assessment

5.5.3.1. Market structure

(169) The Parties' market share in the production of tailor-made AV content in Italy can be seen below in the Table below.

(170) These shares include the following potential segmentations: (i) including and excluding captive/in-house production from vertically integrated broadcasters, (ii) segmented between "production for hire" and "commissioned production".

Table 8 -The Parties' shares of tailor-made programs in 2018 in Italy by value⁸²

	Market Size (EUR million)	Banijay	ESG	Combined
Tailor-made production non-scripted (including captive) -	[...]	[5-10]%	[5-10]%	[10-20]%
Tailor-made production non-scripted (excluding captive) -	[...]	[20-30]%	[10-20]%	[30-40]%
Tailor-made production non-scripted (excluding captive) – production for hire	[...]	[5-10]%	[0-5]%	[5-10]%
Tailor-made production non-scripted (excluding captive) – commissioned production	[...]	[20-30]%	[10-20]%	[40-50]%

(171) Table 8 shows that the Parties have a combined market share [30-40]% in 2018 in the production of non-scripted AV content, excluding captive and in-house production.

(172) Table 9 presents the market shares of the Parties' competitors based on 2018 figures.

Table 9 -The Parties' and competitors shares of tailor-made programs in 2018 in Italy by value

Banijay	ESG	Combined	50 TUSEN	Ballandi	Fascino	CEI	Fremantle	Others
[20-30]%	[10-20]%	[30-40]%	[5-10]%	[5-10]%	[10-20]%	[0-5]%	[10-20]%	[10-20]%

Source: Competitor share analysis, RFI 4

5.5.3.2. Horizontal non-coordinated effects in Italy

(173) The Commission considers that, for the reasons set out below, the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to horizontal non-coordinated effects in the market for the production of tailor-made non-scripted AV content and its sub-segments in Italy.

- (174) The results of the market investigation provided conflicting views on whether the Transaction would have a would have a negative or neutral impact on the respondents⁸³ and the market for the production of tailor-made non-scripted AV content.⁸⁴ On the one hand, most of the producers note that the merged entity will increase control of the market and through the increased bargaining power, it would be able to source IPR for significant formats and creative talent. On the other hand, most of the broadcasters indicate that the Transaction would not have any impact. In particular, such respondents consider that they could either start producing in-house or source from competing providers.
- (175) However, overall, the Commission considers that, despite these views, the Transaction will not raise serious doubts as to its compatibility with the internal market in Italy for the following reasons.
- (176) First, the Commission notes that the merged entity's relevant combined market share in the relevant segments in Italy are moderate: [30-40]% in the production of non-scripted AV content excluding captive and in-house production overall, of [5-10]% in the tailor-made production for hire and [40-50]% in commissioned production (both excluding captive and in-house production). The markets would not even be affected if captive/in-house production were to be included.
- (177) Second, alternative providers would remain in the market for the production of tailor-made non-scripted AV content, excluding captive/in-house production and its sub-segments post-Transaction, including the international producer Fremantle and other producers as Fascino and Ballandi with market shares of respectively, [10-20]%, [10-20]% and [5-10]%.
- (178) Third, the results of the market investigation show that the Parties does not represent a significant share of the broadcasters' spent in non-scripted AV content by value and volume. Based on the data submitted by customers, the purchasing shares show that, first, those data are not significantly different compared to the market shares estimates submitted by the Parties, which confirms that the market shares submitted by the Parties reflect the market reality, and, second, that none of the broadcasters is entirely dependent on Banijay and/or ESG.⁸⁵
- (179) Fourth, respondents to the market investigation indicate that the main parameters they consider relevant when procuring or supplying tailor-made non-scripted AV content are the price, access to the IPR and to the creative talent.⁸⁶ When considering such parameters, respondents indicate that other producers, including Fremantle, in Italy would have a similar position to Banijay and ESG.⁸⁷ For example, one respondent notes that Fascino is owned by one of the most important talents, Ms

⁸³ Replies to questionnaire Q8 to Broadcasters – Italy, question 53; questionnaire Q7 to Producers – Italy, question 50.

⁸⁴ Replies to questionnaire Q8 to Broadcasters – Italy, question 54; questionnaire Q7 to Producers – Italy, question 51.

⁸⁵ Annex I to questionnaire Q8 to Broadcasters – Italy.

⁸⁶ Replies to questionnaire Q8 to Broadcasters – Italy, question 37; questionnaire Q7 to Producers – Italy, question 34.

⁸⁷ Replies to questionnaire Q8 to Broadcasters – Italy, question 38; questionnaire Q7 to Producers – Italy, question 35.

Maria De Filippi. Another respondent indicate that Ballandi, while it mainly relies on IPR licensed from third parties, is competitive in terms of price and access.

- (180) Moreover, respondents to the market investigation indicate that other producers of non-scripted AV content compete closely with Banijay and ESG. Several respondents indicate that Fremantle is the closest competitor to each of Banijay and ESG.⁸⁸
- (181) Fifth, producers responding to the market investigation indicate that broadcasters have relatively strong bargaining power in Italy.⁸⁹
- (182) Finally, most of the respondents to the market investigation consider that broadcasters would have counterstrategies should the merged entity worsen the terms and conditions at which it produces tailor-made non-scripted AV content, for example by bundling the sale of non-scripted tailor-made AV content or increasing prices.⁹⁰ Lux, Fremantle and most broadcasters indicate that broadcasters could increase in-house productions. Only a limited number of respondents indicate that a possible counterstrategy while virtually possible is unrealistic in practice. One broadcaster notes that it would require a substantial business reconversion, higher costs in order to compete and several risks in terms of the return on investments.
- (183) Moreover, the Commission notes that, in the current market practice, broadcasters tend to switch to competing providers or to in-house productions. [BUSINESS STRATEGY].⁹¹ Similarly, Mediaset was able to produce talent and entertainment shows such as “Uomini e Donne” and “Amici” aired in prime time slots through Fascino without sourcing production from global production companies to fill those slots. Mediaset also filled a programming slot originally agreed to be used for a show co-produced with Banijay “Music Farm” with a show produced by Fascino “Amici Vip”.⁹²
- (184) Furthermore, the Commission notes that, in the event Banijay and ESG, entered into multi-annual agreements, those are usually conditioned to minimum audience rates. Minimum audience rates requirements are set forth in performance provisions whereby the commissioning of additional seasons by broadcasters is conditioned on the show generating certain target audience rates: if the audience rates of a season are lower than what the renewal condition requires, broadcasters have the right to cancel the show without prior notice and without being liable in any way towards the producer.⁹³
- (185) The ability of broadcasters to rely on in-house production is further supported from an analysis of the market shares including in-house productions. Mediaset and RAI’s

⁸⁸ Replies to questionnaire Q8 to Broadcasters – Italy, questions 42 and 43; questionnaire Q7 to Producers – Italy, questions 39 and 40.

⁸⁹ Replies to questionnaire Q7 to Producers – Italy, question 41.

⁹⁰ Replies to questionnaire Q8 to Broadcasters – Italy, question 49; questionnaire Q7 to Producers – Italy, question 46.

⁹¹ Parties’ memorandum on broadcasters’ lack of dependency, paragraph 15.

⁹² Parties’ submission on broadcasters’ bargaining power, paragraph 10.

⁹³ Parties’ submission on broadcasters’ bargaining power, paragraph 20.

in-house productions accounted for respectively [20-30]% and [20-30]% of the non-scripted productions in Italy in 2018.⁹⁴

- (186) In light of the above, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market in Italy as a result of horizontal unilateral effects in the market for the production of tailor-made non-scripted AV content (both excluding captive and in-house production), including the narrower market segments for the tailor-made production for hire and commissioned production (both excluding captive and in-house production).

5.5.3.3. Non-horizontal non-coordinated effects in Italy

- (187) In Italy, Banijay and ESG are also active in the market for the production of tailor-made scripted content with market shares of respectively [0-5]% and [0-5]% by value in 2018 in the market for the production of tailor-made scripted content excluding captive/in-house production. The merged entity would have a market share of [5-10]% in the production of scripted AV content excluding captive/in-house production and [30-40]% in the production of non-scripted AV content excluding captive/in-house production.
- (188) In the course of the market investigation, one respondent indicated that, after the Transaction, the merged entity could leverage its increased position in the market for the production of tailor-made non-scripted AV content to increase its presence in the market for the production of tailor-made scripted AV content.
- (189) The Commission has therefore assessed the risk of foreclosure of competing producers of tailor-made scripted content by tying or bundling the production of tailor-made non-scripted content in Italy.
- (190) The Commission considers that the merged entity would lack the ability to foreclose competing producers of tailor-made scripted content by tying or bundling the production of tailor-made non-scripted content in Italy for the following reasons.
- (191) First, as indicated in paragraph (176), the market shares of the merged entity are moderate in the market for the production of tailor-made non-scripted content excluding captive/in-house production.
- (192) Second, as indicated in paragraph (177), alternative producers of non-scripted content would remain available in the market for the production of tailor-made non-scripted content excluding captive/in-house production, including international producers as Fremantle.
- (193) Third, as indicated in paragraph (182), should the merged entity worsen the terms and conditions at which it produces tailor-made non-scripted AV content, for example by bundling the sale of non-scripted tailor-made AV content with scripted tailor-made AV content, most of the respondents consider that broadcasters would have counterstrategies.

⁹⁴ The data would not significantly change when assessing previous years. In 2017, Mediaset and RAI's in-house productions accounted for respectively [20-30]% and [30-40]% of the non-scripted productions in Italy. In 2016, Mediaset and RAI's in-house productions accounted for respectively [20-30]% and [30-40]% of the non-scripted productions in Italy.

- (194) The Commission considers that due to the lack of ability to engage in a foreclosing strategy, it is not needed to assess whether the merged entity would have any incentive or whether any foreclosure strategy would have a negative impact on effective competition.
- (195) In light of the foregoing, the Commission concludes that the Transaction would not raise serious doubts as to its compatibility with the internal market as a result of the conglomerate relationships between the merged entity's activities as producer of scripted and non-scripted AV content in Italy.

5.6. Netherlands

5.6.1. Introduction

- (196) Banijay is marginally active in the market for the production of general entertainment TV content in the Netherlands through Zodiak Netherlands, in the non-scripted segment only. It produces a limited number of non-scripted shows and specializes in factual entertainment, reality content and game shows. Its flagship programs include "Temptation Island VIPS" available on the OTT platform Videoland, "Flat Hunters", aired on RTL4 and "Wife Swap", aired on SBS6.
- (197) ESG is present in the market for the production of general entertainment TV content in the Netherlands through Endemol Shine Nederland BV (including its TVBV label), Simpel Media, NL Film & TV, Human Factor BV. Its flagship programs include the daily soap "Good Times Bad Times", aired on RTL4, the game show "Deal or no deal", aired on SBS6, "1 vs 100", a game show aired on RTL4, the entertainment show "All you need is love" aired on RTL4, factual entertainment programs "Mooiste Meisje", "Hunted" and "I'm leaving", all aired on NPO1 as well as drama programs "SpangaS" and "Mother, I Want to Join the Cabaret", aired on NPO1.
- (198) The Transaction gives rise to horizontally affected markets for the production of externally tailor-made (i.e., excluding captive/in-house content) non-scripted AV content and for the production of externally tailor-made commissioned (i.e., excluding captive/in-house content) non-scripted AV content in the Netherlands.

5.6.2. Notifying Party's view

- (199) The Notifying Party considers that the Transaction will not raise horizontal competition concerns in the Netherlands where the Parties' production activities overlap, for the following reasons.
- (200) First, the Notifying Party argues that market shares, especially those excluding in-house production, are inadequate to measure competitive strength and overstate the Parties' market position in the affected markets and segments.⁹⁵
- (201) Second, the Notifying Party emphasises that the merged entity will continue to face competition from a significant number of credible competitors that will continue to

⁹⁵ The Notifying Party further indicates that market shares by value are more appropriate than market share by volume in the AV industry. The Parties were not able to provide market share data on the basis of volume and only provided value-based market share information.

exert significant competitive constraints on the merged entity. In addition, the Notifying Party argues that broadcasters have in-house capabilities and, should the merged entity try to impose unfavourable conditions, they would be able to expand self-supply, which further acts as a constraint on the merged entity.

- (202) The Notifying Party further contends that barriers to entry in the market are very low and that therefore the merged entity would be faced with new entry in the event that the merged entity were to increase prices or degrade the quality of its services.
- (203) Finally, the merged entity will face highly sophisticated and concentrated customers holding significant bargaining power. In particular, the Notifying Party considers that broadcasters are capable of imposing strict budget limitations on producers, continuously renegotiate financial conditions throughout the performance of the contract and try to impose unfavourable conditions on the producers of scripted and non-scripted AV content.

5.6.3. Commission's assessment

5.6.3.1. Market structure

- (204) The Parties' market shares in the production of tailor-made AV content in the Netherlands are set out in the table below.
- (205) These shares include the following potential segmentations: (i) including and excluding captive/in-house production from vertically integrated broadcaster, (ii) segmented between "production for hire" and "commissioned production".

Table 10 -The Parties' shares of tailor-made programs in 2018 in the Netherlands by value

	Market Size (EUR million)	Banijay	ESG	Combined
Tailormade production non-scripted (including captive)	[...]	[0-5]%	[5-10]%	[5-10]%
Tailormade production non-scripted (excluding captive)	[...]	[0-5]%	[10-20]%	[20-30]%
Tailormade production non-scripted (excluding captive) – production for hire	[...]	[0-5]*%	[10-20]%	[10-20]%
Tailormade production non-scripted on-scripted (excluding captive) – commissioned production	[...]	[0-5]%	[20-30]%	[20-30]%

Source: Form CO, Annex 6.1.1 - O&O market report 2020.05.07_4889820.2, Annex 1 – Estimated shares work-for-hire vs. commissioned

* No overlap

- (206) Table 10 shows that the Parties have a combined market share of [20-30]% in 2018 in the tailor-made production of non-scripted AV content overall and of [20-30]% in

tailormade production of non-scripted - commissioned production (both excluding captive and in-house production).

(207) Table 11 presents the market shares of the Parties' competitors based on 2018 figures.

Table 11 -The Parties' and competitors shares of tailormade non-scripted programs in 2018 in the Netherlands by value

Banijay	ESG	Combined	ITV	Warner	All3Media	Lagardère	Others
[0-5]%	[10-20]%	[20-30]%	[20-30]%	[5-10]%	[5-10]%	[0-5]%	[30-40]%

Source: *Competitor share analysis, RFI 4*

5.6.3.2. Horizontal non-coordinated effects in the Netherlands

(208) The Commission considers that, for the reasons set out below, the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to horizontal non-coordinated effects in the market for the production of non-scripted AV content and its sub-segments in the Netherlands.

(209) The results of the market investigation indicate that a minority of respondents consider that the Transaction would have a negative impact on their company⁹⁶ or the market for the production of tailormade non-scripted AV content.⁹⁷

(210) There are several other reasons why the Commission considers that, despite these views, the Transaction will not raise serious doubts as to its compatibility with the internal market in the Netherlands.

(211) First, the merged entity's combined market share in the production of tailormade non-scripted AV content and tailormade production of non-scripted AV content (commissioned production) in the Netherlands are moderate ([20-30]% and [20-30]% respectively and just above the threshold to constitute an affected market). The market would not even be affected if captive/in-house production were to be included.

(212) Second, a number of alternative players, of which some are global players active in several countries in the EEA, would remain effective in the market for the production of tailormade non-scripted AV content, excluding captive/in-house production and its sub-segments post-Transaction, namely ITV, Warner, All3Media and Lagardère with market shares of respectively [20-30]%, [5-10]%, [5-10]% and [0-5]%. In particular, ITV would have a similar position compared to the merged entity.

(213) Third, the majority of customers consulted in the framework of the market investigation indicates that the Parties does not represent a significant share of the broadcasters' spent in non-scripted AV content.⁹⁸

⁹⁶ Replies to questionnaire Q10 to Broadcasters – Netherlands, question 53; questionnaire Q9 to Producers – Netherlands, question 50.

⁹⁷ Replies to questionnaire Q6 to Broadcasters – France, question 54; questionnaire Q5 to Producers – France, question 51.

- (214) Fourth, the results of the market investigation suggest that the Parties are not each others' closest competitors in the Dutch market for the production of non-scripted AV content.⁹⁹
- (215) Fifth, the Commission also notes that, as set out in Table 8 above, the market share increment attributable to the Transaction in the affected markets is low ([0-5]%).
- (216) Sixth, the market investigation has shown that, for broadcasters, the most important parameter of competition is the price,¹⁰⁰ followed by access to IP and talent, which indicates that access to IP as such is not driving competition, but rather its price, indicating that IPR is generally available in the market.
- (217) Seventh, most of the respondents to the market investigation consider that broadcasters would have counterstrategies should the merged entity worsen the terms and conditions at which it produces tailor-made non-scripted AV content, for example by bundling the sale of non-scripted tailor-made AV content or increasing prices.¹⁰¹
- (218) Moreover, it has to be taken into account that broadcasters are of the view that in-house production by broadcasters is likely to be a significant constraint on the merged entity should it decide to significantly worsen the conditions under which content produced by it is sold.¹⁰²
- (219) In addition, most of the respondents consider it likely that a new entrant will start producing non-scripted AV content in the Netherlands.¹⁰³
- (220) Market participants in the Netherlands, also indicate that broadcasters have some level of bargaining when negotiating contracts with producers.¹⁰⁴

5.6.3.3. Conclusion

- (221) In light of the above, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market in the Netherlands as a result of horizontal unilateral effects in the market for the production of tailor-made non-scripted AV content (both excluding captive and in-house production), including the narrower market segments for the tailor-made production for hire and commissioned production (both excluding captive and in-house production).

⁹⁸ Annex I to questionnaire Q10 to Broadcasters – Netherlands.

⁹⁹ Replies to questionnaire Q10 to Broadcasters – Netherlands, questions 42 and 43; questionnaire Q5 to Producers – France, questions 39 and 40.

¹⁰⁰ Replies to questionnaire Q10 to Broadcasters – France, question 37; questionnaire Q9 to Producers – France, question 34.

¹⁰¹ Replies to questionnaire Q10 to Broadcasters – Netherlands, question 48; questionnaire Q9 to Producers – Netherlands, question 45.

¹⁰² Replies to questionnaire Q10 to Broadcasters – Netherlands, question 19, 49; questionnaire Q9 to Producers – Netherlands, question 46.

¹⁰³ Replies to questionnaire Q10 to Broadcasters – Netherlands, question 51; questionnaire Q9 to Producers – Netherlands, question 48.

¹⁰⁴ Replies to questionnaire Q10 to Broadcasters – Netherlands, question 44; questionnaire Q9 to Producers – Netherlands, question 41.

5.7. Norway

5.7.1. Introduction

- (222) Banijay is active in the market for the production of scripted and non-scripted AV content in Norway through Mastiff Norway, Nordisk Film TV Norway and Screen Media. It produces content based on own formats as well as international and third party formats for the main channels in Norway. Its flagship programs include the reality shows “Paradise Hotel” (TV3) and “71 degrees North” (TV3/Discovery), the factual entertainment show “Crime Scene” (TV4), the talk show “Good Morning Norway” and “Good Evening Norway” (TV2), the factual entertainment programs “The Best Singers” (TV2) and “TV2 Helps you out” (TV2).
- (223) ESG operates in Norway through Rubicon TV. It produces a range of scripted and non-scripted AV content including the drama series “Beforeigners” (HBO Nordics), the reality show “Ex on The Beach” (Discovery), the entertainment show “Luxury Trap” (TV3) and the game show “Eternal Glory” (NRK).
- (224) The Transaction gives rise to horizontally affected markets for the production of externally tailor-made (i.e., excluding captive/in-house content) non-scripted AV content and for the production of externally tailor-made commissioned (i.e., excluding captive/in-house content) non-scripted AV content in Norway.

5.7.2. Notifying Party’s view

- (225) The Notifying Party considers that the Transaction will not raise horizontal competition concerns in Norway where the Parties’ production activities overlap, for the following reasons.
- (226) First, the Notifying Party argues that market shares, especially those excluding in-house production, are inadequate to measure competitive strength and overstate the Parties’ market position in the affected markets and segments.¹⁰⁵
- (227) Second, the Notifying Party emphasises that the merged entity will continue to face competition from a significant number of credible competitors that will continue to exert significant competitive constraints on the merged entity. In addition, the Notifying Party argues that broadcasters have in-house capabilities and, should the merged entity try to impose unfavourable conditions, they would be able to expand self-supply, which further acts as a constraint on the merged entity.
- (228) The Notifying Party further contends that barriers to entry in the market are very low and that therefore the merged entity would be faced with new entry in the event that the merged entity were to increase prices or degrade the quality of its services.
- (229) Finally, the merged entity will face highly sophisticated and concentrated customers holding significant bargaining power. In particular, the Notifying Party considers that broadcasters are capable of imposing strict budget limitations on producers, continuously renegotiate financial conditions throughout the performance of the

¹⁰⁵ The Notifying Party further indicates that market shares by value are more appropriate than market share by volume in the AV industry. The Parties were not able to provide market share data on the basis of volume and only provided value-based market share information.

contract and try to impose unfavourable conditions on the producers of scripted and non-scripted AV content.

5.7.3. Commission's assessment

5.7.3.1. Market structure

(230) The Parties' market share in the production of tailor-made AV content in Norway is set out in the table below.

(231) These shares include the following potential segmentations: (i) including and excluding captive/in-house production from vertically integrated broadcasters, (ii) segmented between "production for hire" and "commissioned production".

Table 12 -The Parties' shares of tailor-made programs in 2018 in Norway by value

	Market Size (EUR million)	Banijay	ESG	Combined
Tailor-made production non-scripted (including captive)	[...]	[5-10]%	[0-5]%	[10-20]%
Tailor-made production non-scripted (excluding captive)	[...]	[10-20]%	[5-10]%	[20-30]%
Tailor-made production non-scripted (excluding captive) – production for hire	[...]	[5-10]%	[5-10]%	[10-20]%
Tailor-made production non-scripted (excluding captive) – commissioned production	[...]	[10-20]%	[5-10]%	[20-30]%

Source: Form CO, Annex 6.1.1 - O&O market report 2020.05.07_4889820.2, Annex 1 – Estimated shares work-for-hire vs. commissioned

(232) Table 12 shows that the Parties have a combined market share of [20-30]% in 2018 in the production of non-scripted AV content, excluding captive and in-house production.

(233) Table 13 presents the market shares of the Parties' competitors based on 2018 figures.

Table 13 -The Parties' and competitors shares of tailor-made non-scripted programs in 2018 in Norway by value

Banijay	ESG	Combined	Nent	Monday	ITV	Fremantle	Others
[10-20]%	[5-10]%	[20-30]%	[30-40]%	[10-20]%	[0-5]%	[5-10]%	[20-30]%

Source: Competitor share analysis, RFI 4

5.7.3.2. Horizontal non-coordinated effects in Norway

(234) The Commission considers that, for the reasons set out below, the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to horizontal non-coordinated effects in the market for the production of tailor-made non-scripted AV content and its sub-segments in Norway.

- (235) First, most of the respondents to the market investigation consider that the Transaction would have a neutral impact on their company¹⁰⁶ on the market for the production of tailor-made non-scripted AV content.¹⁰⁷ One competing producer notes that, notwithstanding the bargaining power and large catalogue of the merged entities, this will not overly hinder the ability of other companies in continuing to secure tailor-made commissioned production and production for-hire from customers in the market.
- (236) Second, the Commission notes that the merged entity's relevant combined market share in the relevant segments in Norway are moderate: [20-30]% in the production of non-scripted AV content excluding captive and in-house production overall, of [10-20]% in the tailor-made production for hire and [20-30]% in commissioned production (both excluding captive and in-house production). The markets would not even be affected if captive/in-house production were to be included.
- (237) Third, alternative providers, of which some are global players active in several countries in the EEA, including NENT, Monday, ITV and Fremantle would remain in the market for the production of tailor-made non-scripted AV content, excluding captive/in-house production and its sub-segments post-Transaction, with market shares of respectively, [30-40]%, [10-20]%, [0-5]% and [5-10]%. In particular, post-Transaction NENT's position will be larger than the merged entity.
- (238) Fourth, the market investigation shows that the Parties do not represent a significant share of the broadcasters' spent in non-scripted AV content by value and volume.¹⁰⁸ Based on the data submitted by customers, the purchasing shares show that, first, those data are not significantly different compared to the market shares estimates submitted by the Parties, which confirms that the market shares submitted by the Parties reflect the market reality and, second, that none of the broadcasters is entirely dependent on Banijay and/or ESG.
- (239) Fifth, respondents to the market investigation indicate that the main parameters they consider relevant when procuring or supplying tailor-made non-scripted AV content are the price, the IPR and talent.¹⁰⁹ When considering such parameters, respondents indicate that other producers in Norway would have a similar position to Banijay and ESG.¹¹⁰ In particular, NENT and Monday are perceived as similar in terms of talent and price. Respondents consider also that ITV has a similar position compared to the Parties in terms of access to IPR for significant formats.

¹⁰⁶ Replies to questionnaire Q12 to Broadcasters – Norway, question 53; questionnaire Q11 to Producers – Norway, question 50.

¹⁰⁷ Replies to questionnaire Q12 to Broadcasters – Norway, question 54; questionnaire Q11 to Producers – Norway, question 51.

¹⁰⁸ Annex I to questionnaire Q12 to Broadcasters – Norway.

¹⁰⁹ Replies to questionnaire Q12 to Broadcasters – Norway, question 37; questionnaire Q11 to Producers – Norway, question 34.

¹¹⁰ Replies to questionnaire Q12 to Broadcasters – Norway, question 38; questionnaire Q11 to Producers – Norway, question 35.

- (240) Sixth, producers responding to the market investigation indicates that other producers also closely compete with Banijay and ESG.¹¹¹ For example, several respondents indicate NENT, ITV and Fremantle also closely compete.
- (241) Moreover, most of the respondents consider likely that a new entrant will start producing non-scripted AV content in Norway.¹¹² Respondents indicate that the Norwegian market is competitive and there are still international players not present that could decide to enter. Moreover, respondents also highlight that there are new companies starting up on a regular basis and indicate Monday, Oslo Company, Plan B and Fremantle as example of successful new entrants in the last years.
- (242) In addition, respondents to the market investigation indicate that broadcasters have relatively a strong bargaining power.¹¹³ One respondent notes that the bargaining power is function of the volume of the content being tailor-made and, therefore, larger broadcasters have higher power to exert pressure on price and other commercial conditions.
- (243) Finally, most of the respondents to the market investigation consider that broadcasters would have counterstrategies should the merged entity worsen the terms and conditions at which it produces commissioned non-scripted AV content, for example by bundling the sale of non-scripted commissioned AV content or increasing prices.¹¹⁴ For example, one of the main broadcaster in Norway, notes that such moves would immediately punish the merged entity since they could expand their in-house productions.

5.7.3.3. Conclusion

- (244) In light of the above, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market in Norway as a result of horizontal unilateral effects in the market for the production of tailor-made non-scripted AV content (both excluding captive and in-house production), including the narrower market segments for the tailor-made production for hire and commissioned production (both excluding captive and in-house production).

5.8. Spain

5.8.1. Introduction

- (245) Banijay is active in the market for the production of scripted and non-scripted AV content in Spain through Cuarzo Producciones, DLO / Magnolia and Portocabo. It produces non-scripted content, including entertainment programs, factual television, talk shows, docu-reality show as well as scripted content, including crime thrillers, comedy, historic drama, family comedy series and miniseries. Its flagship programs include “Viva la vida”, an entertainment program broadcast on Telecinco, and

¹¹¹ Replies to questionnaire Q11 to Producers – Norway, questions 39 and 40.

¹¹² Replies to questionnaire Q12 to Broadcasters – Norway, question 51; questionnaire Q11 to Producers – Norway, question 48.

¹¹³ Replies to questionnaire Q12 to Broadcasters – Norway, question 44; questionnaire Q11 to Producers – Norway, question 41.

¹¹⁴ Replies to questionnaire Q12 to Broadcasters – Norway, question 47; questionnaire Q11 to Producers – Norway, question 44.

“Madrid Directo”, a talk show broadcast on TeleMadrid as well as “Hierro”, broadcast on Movistar+.

- (246) ESG is present in the market for the production of scripted and non-scripted AV content in Spain through Shine Iberia, Zeppelin, Gestmusic and Diagonal TV. ESG produces original TV content and format adaptations on the basis of its own formats as well as third party formats. Its flagship programs include the local adaptation of “*MasterChef*” (and its spin off “*MasterChef Celebrity*”), broadcast on TVE 1 as well as the local adaptation of “Big Brother”, broadcast on Telecinco. Its original flagship programs include “La Catedral del Mar”, aired on Antena 3, and “Amar en tiempos revueltos” aired on TVE 1.
- (247) The Transaction gives rise to horizontally affected markets (i) for the production of externally tailor-made AV non-scripted AV content, for the production of externally tailor-made production for hire (i.e., excluding captive/in-house content) non-scripted AV content, and for the production of externally tailor-made commissioned (i.e., excluding captive/in-house content) non-scripted AV content; (ii) for the production of externally tailor-made AV scripted AV content, for the production of externally tailor-made production for hire (i.e., excluding captive/in-house content) scripted AV content, and for the production of externally tailor-made commissioned (i.e., excluding captive/in-house content) scripted AV content in Spain.

5.8.2. *Notifying Party’s view*

- (248) The Notifying Party considers that the Transaction will not raise horizontal competition concerns in Spain where the Parties’ production activities overlap, for the following reasons.
- (249) First, the Notifying Party argues that market shares, especially those excluding in-house production, are inadequate to measure competitive strength and overstate the Parties’ market position in the affected markets and segments.¹¹⁵
- (250) Second, the Notifying Party emphasises that the merged entity will continue to face competition from a significant number of credible competitors that will continue to exert significant competitive constraints on the merged entity. In addition, the Notifying Party argues that broadcasters have in-house capabilities and, should the merged entity try to impose unfavourable conditions, they would be able to expand self-supply, which further acts as a constraint on the merged entity.
- (251) The Notifying Party further contends that barriers to entry in the market are very low and that therefore the merged entity would be faced with new entry in the event that the merged entity were to increase prices or degrade the quality of its services.
- (252) Finally, the merged entity will face highly sophisticated and concentrated customers holding significant bargaining power. In particular, the Notifying Party considers that broadcasters are capable of imposing strict budget limitations on producers, continuously renegotiate financial conditions throughout the performance of the

¹¹⁵ The Notifying Party further indicates that market shares by value are more appropriate than market share by volume in the AV industry. The Parties were not able to provide market share data on the basis of volume and only provided value-based market share information.

contract and try to impose unfavourable conditions on the producers of scripted and non-scripted AV content.

5.8.3. Commission's assessment

5.8.3.1. Market structure

(253) The Parties' combined market shares in the production of tailor-made AV content in Spain are set out in the table below.

(254) These shares include the following potential segmentations: (i) including and excluding captive/in-house production from vertically integrated broadcasters, (ii) segmented between "production for hire" and "commissioned production".

Table 14 -The Parties' shares of tailor-made programs in 2018 in Spain by value

	Market Size (EUR million)	Banijay	ESG	Combined
Tailor-made production(including captive)	[...]	[0-5]%	[10-20]%	[10-20]%
<i>Total scripted</i>	[...]	[5-10]%	[10-20]%	[20-30]%
<i>Total non-scripted</i>	[...]	[0-5]%	[10-20]%	[10-20]%
Tailor-made production (excluding captive)	[...]	[0-5]%	[10-20]%	[20-30]%
<i>Total scripted</i>	[...]	[5-10]%	[10-20]%	[20-30]%
<i>Total non-scripted</i>	[...]	[0-5]%	[10-20]%	[20-30]%
Tailor-made production non-scripted (excluding captive) – production for hire	[...]	[5-10]%	[10-20]%	[20-30]%
Tailor-made production non-scripted (excluding captive) – commissioned production	[...]	[0-5]%	[10-20]%	[20-30]%
Tailor-made production scripted (excluding captive) – production for hire	[...]	[0-5]%	[20-30]%	[20-30]%
Tailor-made production scripted (excluding captive) – commissioned production	[...]	[5-10]%	[10-20]%	[20-30]%

Source: Form CO, Annex 6.1.1 - O&O market report 2020.05.07_4889820.2, Annex 1 – Estimated shares work-for-hire vs. commissioned

(255) Table 14 shows that the Parties have a combined market share of [20-30]% in the production of non-scripted AV content excluding captive and in-house production overall (total scripted [20-30]%, total non-scripted [20-30]%), of [20-30]% in the tailor-made production for hire and [20-30]% in commissioned production (both excluding captive and in-house production).

(256) Table 15 presents the market shares of the Parties' competitors based on 2018 figures in the production of non-scripted AV content, excluding captive and in-house production.

Table 15 -The Parties' and competitors shares of tailor-made non-scripted programs in 2018 in Spain by value

Banijay	ESG	Combined	Mediaset*	Imagina	7 y Accion	Fremantle	Others
[0-5]%	[10-20]%	[20-30]%	[10-20]%	[10-20]%	[5-10]%	[5-10]%	[20-30]%

Source: Competitor share analysis, RFI 4

* Including Bulldog TV 7% and La fábrica de la tele [5-10].

(257) Table 16 presents the market shares of the Parties' competitors based on 2018 figures in the production of scripted AV content, excluding captive and in-house production.

Table 16 The Parties' and competitors shares of tailor-made scripted programs in 2018 in Spain

Banijay	ESG	Combined	Lagardère (Boomerang)	Plano a Plano	Grupo Ganga	Izen Producciones (Zebra)	Others
[5-10]%	[10-20]%	[20-30]%	[20-30]%	[20-30]%	[10-20]%	[5-10]%	[5-10]%

Source: Competitor share analysis, RFI 4

5.8.3.2. Non-scripted AV content - horizontal non-coordinated effects in Spain

(258) The Commission considers that, for the reasons set out below, the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to horizontal non-coordinated effects in the market for the production of non-scripted AV content and its sub-segments in the Spain.

(259) The results of the market investigation provided diverging views between producers and broadcasters on whether the Transaction would have a negative impact on their company¹¹⁶ or the market for the production of tailor-made non-scripted AV content in Spain,¹¹⁷ but overall less than half the respondents expect such a negative impact.

(260) First, the Commission notes that the merged entity's relevant combined market share in the relevant segments in Spain are moderate: [20-30]% in the production of non-scripted AV content excluding captive and in-house production overall (total non-scripted [20-30]%), of [20-30]% in the tailor-made production for hire and [20-30]% in commissioned production (both excluding captive and in-house production). The market would not even be affected if captive/in-house production were to be included.

(261) Second, a number of alternative providers would remain in the market, for the production of tailor-made non-scripted AV content, excluding captive/in-house

¹¹⁶ Replies to questionnaire Q14 to Broadcasters – Spain, question 72; questionnaire Q13 to Producers – Spain, question 67.

¹¹⁷ Replies to questionnaire Q14 to Broadcasters – Spain, question 73; questionnaire Q13 to Producers – Spain, question 68.

production and its sub-segments post-Transaction, namely Mediaset (Including Bulldog TV [5-10]% and La fábrica de la tele [5-10]) , Imagina ([10-20]%), 7 y Acción ([5-10]%) and Fremantle ([5-10]%).

- (262) Third, the majority of customers consulted in the framework of the market investigation indicates that the Parties do not represent a significant share of the broadcasters' spent in non-scripted AV content.¹¹⁸
- (263) Fourth, although the market investigation indicated the important role of IPR and talent in the negotiations between non-scripted content producers and broadcasters, the market investigation results also show that the also the price is a very central parameter in the negotiations.¹¹⁹
- (264) Fifth, the results of the market investigation indicate that the Parties are not each others' closest competitors in the Spanish market for the production of non-scripted AV content.¹²⁰
- (265) Sixth, most of the respondents consider it likely that a new entrant will start producing non-scripted AV content in Spain.¹²¹
- (266) Moreover, participants in Spain, also indicate that broadcasters have some level of bargaining when negotiating contracts with producers.¹²²
- (267) In addition, based on the results of the market investigation, the Commission considers that the merged entity is unlikely to start engaging into practices that could limit effective competition by either negatively affecting customers or limiting expansion of competitors in the market for the production of tailor-made non-scripted AV content in Spain by increasing prices, requiring a higher number of hours of AV content to be purchased or by bundling the sale of non-scripted tailor-made AV content to other content not necessarily desired by the broadcasters post-Transaction.¹²³
- (268) Finally, the market investigation also indicates that, if the merged entity should attempt to worsen the terms and conditions at which it produces tailor-made non-scripted AV content, broadcasters are likely to have counterstrategies available. Part

¹¹⁸ Annex I to questionnaire Q14 to Broadcasters – Spain.

¹¹⁹ Replies to questionnaire Q14 to Broadcasters – Spain, question 37; questionnaire Q13 to Producers – Spain, question 34.

¹²⁰ Replies to questionnaire Q14 to Broadcasters – Spain, questions 42 and 43; questionnaire Q13 to Producers – Spain, questions 39 and 40.

¹²¹ Replies to questionnaire Q14 to Broadcasters – Spain, question 51; questionnaire Q13 to Producers – Spain, question 48.

¹²² Replies to questionnaire Q14 to Broadcasters – Spain, question 44; questionnaire Q13 to Producers – Spain, question 41.

¹²³ Replies to questionnaire Q14 to Broadcasters – Spain, question 46; questionnaire Q9 to Producers – Spain, question 43; Replies to questionnaire Q14 to Broadcasters – Spain, question 47; questionnaire Q9 to Producers – Spain, question 44; Replies to questionnaire Q14 to Broadcasters – Spain, question 48; questionnaire Q9 to Producers – Spain, question 45.

of this could be to expand in-house production, which may have a constraining effect on the combined entity.¹²⁴

5.8.3.3. Scripted AV content – horizontal non-coordinated effects in Spain

- (269) The Commission considers that, for the reasons set out below, the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to horizontal non-coordinated effects in the market for the production of non-scripted AV content and its sub-segments in Spain.
- (270) First, most of the respondents to the market investigation consider that the Transaction would not have a negative impact on the market for the production of tailor-made scripted AV content.¹²⁵
- (271) Second, the Commission notes that the merged entity's combined market share in the production of tailor-made scripted AV content in Spain is moderate ([20-30]%).
- (272) Third, the combined entity will be exposed to competition from important players in the Spanish market for the production of tailor-made non-scripted AV content, excluding captive/in-house production and its sub-segments post-Transaction, in particular Lagardère (Boomerang) with an almost equal market share of [20-30]%, Plano a Plano with a share of [20-30]%, Grupo Ganga with [10-20]% and several smaller players.
- (273) Moreover, the majority of customers consulted in the framework of the market investigation indicates that the Parties do not represent a significant share of the broadcasters' spent in non-scripted AV content.¹²⁶
- (274) Fourth, the market investigation has shown that Banijay and ESG's portfolios are not particularly relevant for broadcasters to offer attractive scripted programs.¹²⁷
- (275) Fifth, taking into account the results of the market investigation, the Commission considers that the merged entity is unlikely to start engaging into practices that could limit effective competition by either negatively affecting customers or limiting expansion of competitors in the market for the production of tailor-made non-scripted AV content in Spain by increasing prices, requiring a higher number of hours of AV content to be purchased. As regards the possibility of bundling the sale of scripted tailor-made AV content to other content not necessarily desired by the broadcasters post-Transaction the producers are however less optimistic than the producers (ie a slight majority of broadcaster believes that this may be the case).¹²⁸

¹²⁴ Replies to questionnaire Q14 to Broadcasters – Spain, question 49; questionnaire Q13 to Producers – Spain question 46.

¹²⁵ Replies to questionnaire Q14 to Broadcasters – Spain, question 74; questionnaire Q13 to Producers – Spain, question 69.

¹²⁶ Annex I to questionnaire Q14 to Broadcasters – Spain.

¹²⁷ Replies to questionnaire Q14 to Broadcasters – Spain, question 64; questionnaire Q13 to Producers – Spain, question 59.

¹²⁸ Replies to questionnaire Q14 to Broadcasters – Spain, questions 65 to 67; questionnaire Q9 to Producers – Spain, questions 60 to 62.

- (276) However, in this respect the results of the market investigation clearly show that broadcasters would have strategies to counter such behaviour on the supplier side, for example by moving production in-house.¹²⁹
- (277) Sixth, market participants in Spain also indicate that broadcasters have considerable bargaining when negotiating contracts with producers.¹³⁰
- (278) Finally, both broadcasters and producers of scripted content in Spain expect new entry in the market, which can be considered to have a significant constraining effect on the combined entity.¹³¹

5.8.3.4. Conclusion

- (279) In light of the above, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market in Spain as a result of horizontal unilateral effects in the market for the production of tailor-made non-scripted AV content, (both excluding captive and in-house production), nor as a result of horizontal unilateral effects in the market for the production of tailor-made scripted AV content, (both excluding captive and in-house production), including the narrower market segments for the tailor-made production for hire and commissioned production (both excluding captive and in-house production).

5.9. Sweden

5.9.1. Introduction

- (280) Banijay is active in the market for the production of scripted and non-scripted AV content in Sweden through Jarowskij, Mastiff Sweden, Nordisk Film Television Sweden and Yellow Bird. It produces its own formats, as well as international and third-party formats. Its best-known programs include “Solsidan”, which has been adapted in Finland and France, the drama series “The Truth Will Out” (Discovery) and “Hidden” (TV4). Its adaptations of third party formats include the entertainment show “Strictly Come Dancing” (TV4), the reality show “Paradise Hotel” (TV3) and the entertainment show “The Best Singers” (TV4).
- (281) ESG operates in Sweden through Filmlance, Mag5, Meter and Sto-Cph. It produces various scripted and non-scripted programs for TV channels and digital platforms. Its successful productions include the drama series “Bron/Broen” (SVT), “The Sandhamn Murders” (C More/TV4) and “Beck” (TV4) as well as the reality show “Luxury Trap” (TV3), the entertainment show “MasterChef” (TV4), the reality show “Ex on the beach” (Discovery) and “Bake Off Sweden” (TV4).
- (282) The Transaction gives rise to horizontally affected markets (i) for the production of externally tailor-made AV non-scripted AV content, for the production of externally tailor-made production for hire (i.e., excluding captive/in-house content) non-scripted

¹²⁹ Replies to questionnaire Q14 to Broadcasters – Spain, questions 68; questionnaire Q9 to Producers – Spain, questions 63.

¹³⁰ Replies to questionnaire Q14 to Broadcasters – Spain, question 63; questionnaire Q13 to Producers – Spain, question 58.

¹³¹ Replies to questionnaire Q14 to Broadcasters – Spain, question 70; questionnaire Q13 to Producers – Spain, question 65.

AV content, and for the production of externally tailor-made commissioned (i.e., excluding captive/in-house content) non-scripted AV content; (ii) for the production of externally tailor-made AV scripted AV content and for the production of externally tailor-made commissioned (i.e., excluding captive/in-house content) scripted AV content in Sweden.

5.9.2. *Notifying Party's view*

- (283) The Notifying Party considers that the Transaction will not raise horizontal competition concerns in Sweden where the Parties' production activities overlap, for the following reasons.
- (284) First, the Notifying Party argues that market shares, especially those excluding in-house production, are inadequate to measure competitive strength and overstate the Parties' market position in the affected markets and segments.¹³²
- (285) Second, the Notifying Party emphasises that the merged entity will continue to face competition from a significant number of credible competitors that will continue to exert significant competitive constraints on the merged entity. In addition, the Notifying Party argues that broadcasters have in-house capabilities and, should the merged entity try to impose unfavourable conditions, they would be able to expand self-supply, which further acts as a constraint on the merged entity.
- (286) The Notifying Party further contends that barriers to entry in the market are very low and that therefore the merged entity would be faced with new entry in the event that the merged entity were to increase prices or degrade the quality of its services.
- (287) Finally, the merged entity will face highly sophisticated and concentrated customers holding significant bargaining power. In particular, the Notifying Party considers that broadcasters are capable of imposing strict budget limitations on producers, continuously renegotiate financial conditions throughout the performance of the contract and try to impose unfavourable conditions on the producers of scripted and non-scripted AV content.

5.9.3. *Commission's assessment*

5.9.3.1. Market structure

- (288) The Parties' market share in the production of tailor-made AV content in Sweden are set out in the table below.
- (289) These shares include the following potential segmentations: (i) including and excluding captive/in-house production from vertically integrated broadcasters, (ii) segmented between "production for hire" and "commissioned production".

¹³² The Notifying Party further indicates that market shares by value are more appropriate than market share by volume in the AV industry. The Parties were not able to provide market share data on the basis of volume and only provided value-based market share information.

Table 17 -The Parties' shares of tailor-made programs in 2018 in Sweden by value

	Market Size (EUR million)	Banijay	ESG	Combined
Tailor-made production (including captive)	[...]	[5-10]%	[5-10]%	[10-20]%
<i>Total scripted</i>	[...]	[10-20]%	[10-20]%	[20-30]%
<i>Total non-scripted</i>	[...]	[5-10]%	[5-10]%	[10-20]%
Tailor-made production (excluding captive)	[...]	[10-20]%	[10-20]%	[20-30]%
<i>Total scripted</i>	[...]	[10-20]%	[10-20]%	[20-30]%
<i>Total non-scripted</i>	[...]	[10-20]%	[10-20]%	[20-30]%
Tailor-made production non-scripted (excluding captive) – production for hire	[...]	[0-5]%	[10-20]%	[20-30]%
Tailor-made production non-scripted (excluding captive) – commissioned production	[...]	[10-20]%	[10-20]%	[20-30]%
Tailor-made production scripted (excluding captive) – production for hire	[...]	[0-5]%	[0-5]%	[0-5]%
Tailor-made production scripted (excluding captive) – commissioned production	[...]	[10-20]%	[10-20]%	[20-30]%

Source: Form CO, Annex 6.1.1 - O&O market report 2020.05.07_4889820.2

(290) Table 17 shows that the Parties have a combined market share of [20-30]% in 2018 in the production of non-scripted AV content, excluding captive and in-house production and a combined market share of [20-30]% in 2018 in the production of scripted AV content, excluding captive and in-house production.

(291) Table 18 presents the market shares of the Parties' competitors based on 2018 figures in the production of non-scripted AV content, excluding captive and in-house production.

Table 18 -The Parties' and competitors shares of tailor-made non-scripted programs in 2018 in Sweden by value

Banijay	ESG	Combined	Nent	ITV	Warner	Fremantle	Others
[10-20]%	[10-20]%	[20-30]%	[20-30]%	[10-20]%	[5-10]%	[5-10]%	[20-30]%

Source: Competitor share analysis, RFI 4

(292) Table 19 presents the market shares of the Parties' competitors based on 2018 figures in the production of scripted AV content, excluding captive and in-house production.

Table 19 -The Parties’ and competitors shares of tailor-made scripted programs in 2018 in Sweden

Banijay	ESG	Combined	Nent	Anagram	Art&Bob	Others
[10-20]%	[10-20]%	[20-30]%	[10-20]%	[10-20]%	[10-20]%	[30-40]%

Source: Competitor share analysis, RFI 4

5.9.3.2. Non-scripted AV content – horizontal non-coordinated effects in Sweden

- (293) The Commission considers that, for the reasons set out below, the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to horizontal non-coordinated effects in the market for the production of tailor-made non-scripted AV content and its sub-segments in Sweden.
- (294) First, most of the respondents to the market investigation consider the Transaction would have a neutral impact on their company¹³³ and the market for the production of tailor-made scripted AV content.¹³⁴ One respondent notes that the bargaining power of the Parties will increase, however there are other production companies in the market ready to offer similar programming. Another respondent indicates that the Transaction increases the market position of the parties, however, the ability to use it would depend on the countervailing strength of broadcasters and other purchasers of AV content as well as other factors such as the mobility of talent.
- (295) Second, the Commission notes that the merged entity’s relevant combined market share in the relevant segments in Sweden are moderate: [20-30]% in the production of non-scripted AV content excluding captive and in-house production overall, of [20-30]% in the tailor-made production for hire and [20-30]% in commissioned production (both excluding captive and in-house production). The markets would not even be affected if captive/in-house production were to be included.
- (296) Third, alternative providers, of which some are global players active in several countries in the EEA, would remain in the market for the production of tailor-made non-scripted AV content, excluding captive/in-house production and its sub-segments post-Transaction, namely NENT, ITV, Warner and Fremantle with market shares of respectively, [20-30]%, [10-20]%, [5-10]% and [5-10]%.
- (297) Fourth, the results of the market investigation show that the Parties do not represent a significant share of the broadcasters’ spent in non-scripted AV content by value and volume.¹³⁵ Based on the data submitted by customers, the purchasing shares show that, first, those data are not significantly different compared to the market shares estimates submitted by the Parties, which confirms that the market shares submitted by the Parties reflect the market reality, and, second, that none of the broadcasters is entirely dependent on Banijay and/or ESG.

¹³³ Replies to questionnaire Q16 to Broadcasters – Sweden, question 72; questionnaire Q15 to Producers – Sweden, question 67.

¹³⁴ Replies to questionnaire Q16 to Broadcasters – Sweden, question 73; questionnaire Q15 to Producers – Sweden, question 68.

¹³⁵ Annex I to questionnaire Q16 to Broadcasters – Sweden.

- (298) Fifth, respondents to the market investigation indicate that the main parameters that they consider relevant when procuring or supplying tailor-made non-scripted AV content are the price, IPR for significant formats and talent.¹³⁶ When considering such parameters, respondents indicate that other producers, including NENT, ITV and Fremantle, in Sweden would have a similar position to Banijay and ESG.¹³⁷ For example, one respondent notes that the producers listed above are equally competitive on price which is largely driven by market forces and the negotiating strength of broadcasters. Another notes that, similarly to the Parties, ITV, Fremantle also have international catalogues with internationally successful titles. The same respondent also notes that ESG used to be real good at developing own formats but that development department moved to Elk which is part of ITV.
- (299) Moreover, respondents to the market investigation indicate that other producers of non-scripted AV content compete closely with Banijay and ESG. For example, one respondent indicates that Fremantle also has a significant catalogue of globally recognized IPR. Another highlighted that ITV has creative talent similar to the Parties.¹³⁸
- (300) With regard to the possibility to enter the market within a short timeframe and without incurring significant additional costs, the Commission considers that there are conflicting indications provided by market respondents.
- (301) Sixth, respondents to the market investigation indicate that broadcasters have relatively strong bargaining power.¹³⁹ One producer notes that, in the market for the production of audio-visual content, the broadcaster often has a stronger bargaining power than the supplier, and that this will remain unchanged post-Transaction. Another producer notes that this is a “buyer market” since there are only 4 customers and more than 50 producers.
- (302) Finally, most of the respondents to the market investigation consider that broadcasters would have counterstrategies should the merged entity worsen the terms and conditions at which it produces tailor-made non-scripted AV content, for example by bundling the sale of non-scripted tailor-made AV content or increasing prices.¹⁴⁰ For example, one respondent notes that broadcasters could rely on other international production companies, ITV and Fremantle, as well as expanding in-house productions.
- (303) The ability of broadcasters to rely on in-house production is further supported from an analysis of the market shares including in-house productions. NENT, SVT and

¹³⁶ Replies to questionnaire Q16 to Broadcasters – Sweden, question 37; questionnaire Q15 to Producers – Sweden, question 34.

¹³⁷ Replies to questionnaire Q16 to Broadcasters – Sweden, question 38; questionnaire Q15 to Producers – Sweden, question 35.

¹³⁸ Replies to questionnaire Q8 to Broadcasters – Italy, questions 42 and 43; questionnaire Q7 to Producers – Italy, questions 39 and 40.

¹³⁹ Replies to questionnaire Q16 to Broadcasters – Sweden, question 44; questionnaire Q15 to Producers – Sweden, question 41.

¹⁴⁰ Replies to questionnaire Q8 to Broadcasters – Italy, question 49; questionnaire Q7 to Producers – Italy, question 46.

Bonnier in-house productions accounted for respectively [10-20]%, [20-30]% and [5-10]% of the non-scripted productions in Sweden in 2018.¹⁴¹

5.9.3.3. Scripted AV content – horizontal non-coordinated effects in Sweden

- (304) The Commission considers that, for the reasons set out below, the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to horizontal non-coordinated effects in the market for the production of tailor-made non-scripted AV content and its sub-segments in Sweden.
- (305) The results of the market investigation provided conflicting views on whether the Transaction would have a negative or neutral impact on the respondents¹⁴² and the market for the production of tailor-made scripted AV content.¹⁴³
- (306) However, there are several reasons why the Commission considers that, despite these views, the Transaction will not raise serious doubts as to its compatibility with the internal market in Sweden.
- (307) First, the merged entity's combined market share in the Swedish production of tailor-made scripted AV content, excluding captive/in-house production, is moderate ([20-30]%).
- (308) First, the Commission notes that the merged entity's relevant combined market share in the relevant segments in Sweden are moderate: [20-30]% in the production of scripted AV content excluding captive and in-house production overall, of [0-5]% in the tailor-made production for hire and [20-30]% in commissioned production (both excluding captive and in-house production). The markets would not even be affected if captive/in-house production were to be included.
- (309) Second, alternative providers would remain in the market for the production of tailor-made non-scripted AV content, excluding captive/in-house production and its sub-segments post-Transaction, including the international producer NENT, Anagram and Art&Bob with market shares of respectively, [10-20]%, [10-20]% and [10-20]%.
- (310) Third, the market investigation shows that the Parties do not represent a significant share of the broadcasters' spent in scripted AV content by value and volume.¹⁴⁴ Based on the data submitted by customers, the purchasing shares show that, first, those data are not significantly different compared to the market shares estimates submitted by the Parties, which confirms that the market shares submitted by the Parties reflect the market reality, and, second, that none of the broadcasters is entirely dependent on Banijay and/or ESG.

¹⁴¹ The data would not significantly change when assessing previous years. In 2017, NENT, SVT and Bonnier in-house productions accounted for respectively [10-20]%, [20-30]% and [5-10]% of the non-scripted productions in Italy. In 2016, NENT, SVT and Bonnier in-house productions accounted for respectively [10-20]%, [20-30]% and [5-10]% of the non-scripted productions in Sweden.

¹⁴² Replies to questionnaire Q16 to Broadcasters – Sweden, question 72; questionnaire Q15 to Producers – Sweden, question 67.

¹⁴³ Replies to questionnaire Q16 to Broadcasters – Sweden, question 74; questionnaire Q15 to Producers – Sweden, question 69.

¹⁴⁴ Annex I to questionnaire Q7 to Broadcasters – Italy.

- (311) Fourth, respondents to the market investigation indicate that the main parameters that they consider relevant when procuring or supplying tailor-made scripted AV content are the price and talent.¹⁴⁵ When considering such parameters, respondents indicate that other producers in Sweden would have a similar position to Banijay and ESG.¹⁴⁶ One respondent notes that Art and Bob, Anagram and TV4 are competing on a more similar basis. Another respondent indicates that also ITV, FLX and Nexico have similar capabilities, in particular in terms of talent. Moreover, respondents to the market investigation indicate that other producers of non-scripted AV content compete closely with Banijay and ESG.¹⁴⁷
- (312) Fifth, most of the respondents consider likely that a new entrant will start producing scripted AV content in Sweden.¹⁴⁸ Fremantle considers that there is a high demand for scripted content thus it must be considered likely that new entrants will try to develop and produce scripted content. Another respondent notes that the market is still growing and the appetite from the commissioners remain strong.
- (313) Sixth, most of the respondents to the market investigation indicate that broadcasters have relatively a strong bargaining power.¹⁴⁹ One producer notes that in the market for the production of audio-visual content the broadcaster often has a stronger bargaining power than the supplier, and that this will remain unchanged post-Transaction. Another producer notes that this is a “buyer market” since there are only 4 customers and more than 50 producers.
- (314) Finally, most of the respondents to the market investigation consider that broadcasters would have counterstrategies should the merged entity worsen the terms and conditions at which it produces commissioned non-scripted AV content, for example by bundling the sale of non-scripted commissioned AV content or increasing prices.¹⁵⁰ For example, one competing producer notes that broadcasters are unlikely to buy content that does not fit their needs. Two broadcasters consider that they could partner with local producers or expand in-house productions.
- (315) The ability of broadcasters to rely on in-house production is further supported from an analysis of the market shares including in-house productions. NENT, SVT and Bonnier in-house productions accounted for respectively [10-20]%, [10-20]% and [10-20]% of the non-scripted productions in Sweden in 2018.¹⁵¹

¹⁴⁵ Replies to questionnaire Q16 to Broadcasters – Sweden, question 56; questionnaire Q15 to Producers – Sweden, question 51.

¹⁴⁶ Replies to questionnaire Q16 to Broadcasters – Sweden, question 57; questionnaire Q15 to Producers – Sweden, question 52.

¹⁴⁷ Replies to questionnaire Q16 to Broadcasters – Sweden, questions 61 and 62; questionnaire Q15 to Producers – Sweden, questions 56 and 57.

¹⁴⁸ Replies to questionnaire Q16 to Broadcasters – Sweden, question 70; questionnaire Q15 to Producers – Sweden, question 65.

¹⁴⁹ Replies to questionnaire Q16 to Broadcasters – Sweden, question 63; questionnaire Q15 to Producers – Sweden, question 58.

¹⁵⁰ Replies to questionnaire Q16 to Broadcasters – Sweden, question 68; questionnaire Q15 to Producers – Sweden, question 63.

¹⁵¹ The data would not significantly change when assessing previous years. In 2017, NENT, SVT and Bonnier in-house productions accounted for respectively [5-10]%, [10-20]% and [10-20]% of the non-scripted productions in Italy. In 2016, NENT, SVT and Bonnier in-house productions accounted for respectively [10-20]%, [10-20]% and [5-10]% of the non-scripted productions in Sweden.

5.9.3.4. Conclusion

- (316) In light of the above, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market in Sweden as a result of horizontal unilateral effects in the market for the production of tailor-made non-scripted AV content, (both excluding captive and in-house production), nor as a result of horizontal unilateral effects in the market for the production of tailor-made scripted AV content, (both excluding captive and in-house production), including the narrower market segments for the tailor-made production for hire and commissioned production (both excluding captive and in-house production).

6. CONCLUSION

- (317) For the above reasons, the 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