EUROPEAN COMMISSION

DG Competition

Case M.9802 - LIBERTY GLOBAL / DPG MEDIA / JV

Only the English text is available and authentic.

REGULATION (EC) No 139/2004

MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION

Date: 12/08/2020

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EUROPEAN COMMISSION

Brussels, 12.8.2020
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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 parties

Subject: **Case M.9802 – Liberty Global / DPG Media / JV**
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004[1] and Article 57 of the Agreement on the European Economic Area[2]

Dear Sir or Madam,

(1) On 7 July 2020, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Liberty Global plc (‘Liberty Global’, United Kingdom) and DPG Media NV (‘DPG Media’, Belgium) acquire within the meaning of Articles 3(1)(b) and 3(4) of the Merger Regulation joint control of a newly created joint venture (‘JV’, Belgium) (the “Transaction”).[3] Liberty Global and DPG Media are designated hereinafter as the “Notifying Parties” and each individually as “Notifying Party”. The Notifying Parties together with the JV are designated hereinafter 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 233, 15.07.2020, p. 5.

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1. THE PARTIES

(2) **Liberty Global**, through its subsidiary Telenet, is a cable and mobile network operator in Belgium and parts of Luxembourg. Telenet supplies broadband internet, fixed telephony services and cable television ("TV") primarily in Flanders and parts of Brussels, as well as mobile telecommunications services in the whole of Belgium. In addition, Telenet operates (i) Dutch-language pay TV channels and video-on-demand services (*Play*, *Play More* and *Play Sports*), free-to-air TV channels (*Vier, Vijf*, *Zes*), and a radio station (*NRJ Vlaanderen*), (ii) the advertising sales house SBS Sales Belgium, and (iii) the production company Woestijnvis.

(3) **DPG Media** belongs to DPG Media Group, which operates media companies in Belgium, the Netherlands and Denmark. The activities of DPG Media are, in Belgium: (i) the supply of Dutch-language daily newspapers (Het Laatste Nieuws, De Morgen) and magazines (e.g. Dag Allemaal, Goed Gevoel, Humo), (ii) the operation of TV channels (VTM, Q2, Vitaya, CAZ, and VTM Kids), an advertising-based video on demand service (VTM Go) and radio stations (Q-music and Joe), and (iii) the operation of a telecom mobile virtual network (Mobile Vikings).

(4) **The JV** will provide a subscription video on demand ("SVOD") service in Belgium under a new and independent brand focused on Dutch-speaking consumers (i) directly to customers in Belgium via an over the top ("OTT") platform (including website and smart phone app) and (ii) on an exclusive wholesale basis to Telenet, for distribution by Telenet through its cable platform (integrated in Telenet's channel packages and/or set top box interface). The JV will acquire content from the Notifying Parties, third parties, and will also commission new original content for its SVOD service. The JV's offering will primarily consist of local and international films and series. It will neither include (i) sports or adult content, nor (ii) linear channels (of Telenet and/or DPG Media and/or of third parties)[4] and ancillary services linked thereto (e.g. catch up services).

2. THE OPERATION AND THE CONCENTRATION

(5) The Transaction will take place pursuant to a binding Memorandum of Understanding ("MoU") concluded by DPG Media and Telenet on 12 February 2020.

2.1. Joint control

(6) Telenet and DPG Media will each own 50% of the shares of the JV, and have the ability to exercise decisive influence over the JV. In particular, the Notifying Parties will each appoint an equal number of directors. An independent (non-executive) chairman of the board will be appointed by unanimity. The board will decide by simple majority, except for specific items for which approval of each shareholder/director is required (but not of the independent chairman). These include *inter alia* [Details of the JV agreement].[5]

4 Form CO, paragraph 372.

5 Form CO, Annex 5.1.a, MoU, Annex 3

(7) Therefore, as a result of the Transaction, Liberty Global and DPG Media will jointly control the JV within the meaning of Article 3(1)(b) of the Merger Regulation.

2.2. Full-functionality

(8) The JV will be fully functional. First, the JV will employ its own management dedicated to its day-to-day operations, and have access to sufficient resources, including finance, staff and assets that will enable it to operate independently on the market for the retail supply of audiovisual ("AV") services, performing the functions normally carried out by undertakings operating on the same market. In particular, both Parties will contribute to the JV certain content agreements and staff so as to allow the JV to be (both financially and operationally) self-sustaining (through the revenues deriving from its operations with third parties and its own borrowing capacity on the market).

(9) Second, the JV is intended to operate as an autonomous entity and will have its own, independent access to and presence on the markets for (wholesale and retail) supply of SVOD services. Its activities will not be limited to the distribution or sale of its parent companies' products, as the JV will supply its own SVOD offering to end customers, as a fully independent company with its own personnel (20-25 employees). In addition, the JV has negotiated and/or will negotiate agreements with its parents (e.g. a wholesale agreement and IT/back-end services agreement with Telenet; and a long-form video platform agreement with DPG Media) on an arm's length basis, reflecting the normal market conditions it practices with third parties.

(10) Third, the JV and will not only purchase from and/or supply to its own parents. It will have direct contractual relationships with third party licensors and will not be reliant on its parents for licensing relationships. It will also commission original productions from TV production studios, the majority of which will be sourced from third party TV production studios. In addition, the JV will source additional and new SVOD licenses to content mainly from third party content providers.[6]

(11) Finally, the JV is intended to operate on a lasting basis. Due to applicable corporate law restrictions, the shareholders agreement currently has a duration of [Details of the JV shareholder agreement].

(12) Therefore, the Transaction will lead to the creation of a full-function joint venture within the meaning of Article 3(4) of the Merger Regulation.

3. EU DIMENSION

(13) The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 000 million (Liberty Global: EUR 12,277 million; DPG Media: EUR 1,601 million; combined: EUR 13,878 million). Each of them has an EU-wide turnover in excess of EUR 250 million (Liberty Global: EUR 11,082 million; DPG Media: EUR 1,601 million), but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State.

6 The Notifying Parties estimate that the accounting value of individual content licensed from the parents will represent [JV's content portfolio] of the accounting value of the JV's total content portfolio.

(14) The Transaction therefore has a Union dimension pursuant to Article 1(2) of the Merger Regulation.

4. RELEVANT MARKETS

4.1. Introduction

(15) The Transaction concerns all the levels of the AV value chain, namely: (i) the production of AV content; (ii) the licensing of broadcasting rights for individual AV content; (iii) the wholesale supply of TV channels; and (iv) the retail supply of AV services.

(16) Providers of retail AV services offer end users packages of linear and/or non-linear AV services. Linear services are services that broadcast scheduled programs, not streamed by a specific user. Non-linear services, or video-on-demand ("VOD") services, are services provided for the viewing of programmes at the moment chosen by the users and at their individual request, on the basis of a catalogue of programmes. AV services may be offered either on a free-to-air ("FTA") or pay-TV basis. Providers of retail AV services deliver their content to end customers via a number of technical means: (i) traditional networks, such as cable, satellite ("direct-to-home" or "DTH"), internet protocol television ("IPTV"), and to a lesser extent, digital terrestrial TV ("DTT") and/or (ii) the "Over-The-Top" ("OTT") distribution technology which allows AV content to be delivered through the use of open internet.

(17) In addition, the Transaction concerns: (v) the retail supply of fixed internet access services; (vi) the retail supply of mobile telecommunications services; (vii) the retail supply of multiple play services; and (viii) the sale of advertising space.

4.2. The AV value chain

(18) In previous cases, the Commission set out the different levels of the AV value chain as follows: (i) the (upstream) markets for the production and the licensing of AV content, (ii) the (intermediate) market for the wholesale supply of TV channels, and (iii) the (downstream) market for the retail supply of AV services.[7]

(19) The market investigation confirmed that this three-layer classification with regard to the chain of supply of AV content is still applicable today.[8]

4.3. Market for the production of AV content

(20) This part of the value chain concerns the production of new AV content. The supply side of the market comprises AV production companies while the demand side

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7 Commission decisions of 12 November 2019 in case M.9064 – Telia Company/Bonnier Broadcasting Holding, recital 113; of 6 February 2018 in case M.8665 - Discovery/Scripps, recital 12.

8 Responses to questionnaires Q1 to content providers, question 5 ; and Q2 to AV market participants, question 7.

comprises companies (TV broadcasters or content platform operators) that can commission the production of AV content or hire AV production services.[9]

(21) The Parties' activities and those of the JV overlap on the demand side of the market only. On the supply side, while Telenet is active in the production of content through its subsidiary Woestijnvis, and DPG Media is active but exclusively for captive use. DPG Media has no plans to enter the merchant market for the production of TV content in the near future. The JV will not produce any AV content.

4.3.1. *Product market definition*

4.3.1.1. Previous Commission decisions

(22) The Commission has consistently considered that the production of AV content should be distinguished from the licensing of broadcasting rights for AV content.[10] The Commission has also found the product market for the production of TV content to be limited to non-captive TV production, thereby excluding content produced by TV broadcasters for use on their own channels.[11]

(23) In addition, in its 2015 case *Liberty Global/Corelio/W&W/De Vijver Media*, the Commission considered that the market for the production of TV content could be further segmented depending on the type of TV content (that is films, sports or other) or exhibition window (namely SVOD, transaction-based VOD ("TVOD"), Pay Per View ("PPV"), Fist pay TV window, Second pay TV window, FTA), but ultimately left those possible segmentations open.[12] In subsequent cases, the Commission either did not consider further segmentations or left open the question whether the market for the production of AV content should be further segmented. In particular, the question was left open whether the market for production of general entertainment TV content should be further segmented: (i) by genre; (ii) between scripted and non-scripted content; and (iii) between commissioned TV production or TV production for-hire.[13]

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9 In most cases, TV production companies produce TV content tailored to the needs of their customers. However, in some instances, TV production companies are hired by TV broadcasters or content platform operators to simply provide the technical production means and deliver the finished programme based on a TV format owned or acquired by the hiring company (so-called 'production for-hire').

10 Commission decisions of 12 November 2019 in case M.9064 – *Telia Company/Bonnier Broadcasting Holding*, recital 121; of 6 November 2018 in case M.8785 – Disney/Fox, recital 70; of 7 April 2017 in case M.8354 – Fox/Sky, recital 62; of 24 February 2015 in case M.7194 – Liberty Global/Corelio/W&W/De Vijver Media, recital 60.

11 Commission decisions of 20 June 2016 in case M.7865 – Lov Group/De Agostini/JV, recital 18; ; of 9 October 2014 in case M.7360 - 21st Century Fox/Apollo/JV, recital 36; of 22 September 2006 in case M.4353 - Permira/All3Media Group, recitals 11–12.

12 Commission decision of 24 February 2015 in case M.7194 – Liberty Global/Corelio/W&W/De Vijver Media, recital 69. See also Commission decision of 23 November 2018 in case M.8944 - Liberty Global / De Vijver Media and Liberty Global (SBS) / Mediahuis / JV, recital 53.

13 Commission decision of 20 January 2016 in case M.7865 Lov Group Invest/De Agostini/JV, recital 31.

4.3.1.2. Notifying Parties' view

(24) The Notifying Parties submit, in accordance with the Commission's position in case *Liberty Global/Corelio/W&W/De Vijver Media*, that the precise product market definition for the production of AV content can be left open.[14]

4.3.1.3. Commission's assessment

(25) A majority of respondents to the market investigation indicated that, in Belgium, the distinction between the market for the production of AV content on the one hand, and the market for the licensing of broadcasting rights for pre-existing individual AV content on the other hand is at present appropriate.[15] In addition, nothing in the Commission's file gives reasons to depart from the previous approach of considering that the product market for the production of AV content is limited to non-captive AV production. Further, the results of the market investigation were mixed as to whether the market for the production of AV content needs to be subdivided by **content type**[16] or **exhibition window**.[17] Last, nothing in the Commission's file gives reasons to depart from the previous approach that the question whether the market should be further segmented (i) between **scripted and non-scripted** content; and (ii) between **commissioned AV production or AV production for-hire** is to be left open.

(26) In light of the above, the Commission concludes that, for the purpose of this decision and in line with its previous practice, it is appropriate to consider as relevant the market for the non-captive production of AV content, while the question whether that relevant product marked needs to be further sub-segmented on the basis of content type or exhibition windows, or between scripted and non-scripted content, and between commissioned AV production or AV production for-hire can be left open, since the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement under any such plausible product market definitions.

4.3.2. Geographic market definition

4.3.2.1. Previous Commission decisions

(27) In previous cases, the Commission considered that the question whether the geographic scope of the market for the production of TV content was national or regional (the Flemish Region or the combination of the Flemish Region and the Brussels Capital Region) could be left open.[18] The Belgian Competition Authority ("BCA") has either previously considered that the geographic market for the

14 Form CO, paragraph 275.

15 Responses to questionnaires Q1 to content providers, question 6; and Q2 to AV market participants, question 8.

16 Responses to questionnaires Q1 to content providers, question 7.1; and Q2 to AV market participants, question 9.1.

17 Responses to questionnaires Q1 to content providers, question 8.1; and Q2 to AV market participants, question 10.1.

18 Commission decisions of 23 November 2018 in case M.8944 - Liberty Global / De Vijver Media and Liberty Global (SBS) / Mediahuis / JV, recital 75; of 24 February 2015 in case M.7194 – Liberty Global/Corelio/W&W/De Vijver Media, recital 76.

production of Dutch-language TV content was (i) national,[19] or (ii) Telenet's footprint,[20] or (iii) left the exact geographic scope of the market open.[21]

4.3.2.2. Notifying Parties' view

(28) The Notifying Parties submit, in accordance with the Commission's position in case *Liberty Global/Corelio/W&W/De Vijver Media*, that the precise geographic market definition can be left open.[22]

4.3.2.3. Commission's assessment

(29) The results of the market investigation were mixed as to whether the geographic scope of the market for the production of AV content is national or by linguistic area.[23]

(30) In light of the above, the Commission considers that, for the purpose of this decision and in line with its previous practice, the question whether the relevant geographic market for the production of AV content, including all the possible sub-segments, is national or by linguistic area (the Dutch-speaking areas of Belgium), can be left open, since the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement under any such plausible geographic market definitions.

4.4. Market for the licensing of broadcasting rights of pre-existing individual AV content

(31) The Notifying Parties' activities overlap on both the demand and supply side of the market. The JV will be active on the demand side, and have minimal activities on the supply side of the market.[24]

4.4.1. Product market definition

(32) This part of the value chain concerns the licensing of (i) broadcasting rights relating to pre-existing individual AV content, which is made available 'off-the-shelf' by the rights holder, and (ii) broadcasting rights for sports events. The broadcasting rights can belong to either (or a combination of) the rights holder to the AV format, the production company that produced the content, the company that commissioned the production of the content, or a third party distributor to which the rights were licensed by the original owner. The rights holders license rights to AV broadcasters, or content platform operators which retail the content to end-users on a non-linear basis (e.g., SVOD service providers).

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19 BCA decision of 7 September 2011 in case 2011-C/C-24 - De Vijver Media.

20 BCA decision of 13 May 2019 in case BMA-2019-C/C-16 – Telenet/DVM.

21 BCA decision of 6 March 2018 in case BMA-2018-C/C-07 – Mediafin.

22 Form CO, paragraph 275.

23 Responses to questionnaires Q1 to content providers, question 15; and Q2 to AV market participants, question 34.

24 The JV's activities as a supplier of individual content will be limited to the supply of rights in its original TV productions, in other windows (e.g. FTA), which according to the business plan will translate into a market share of less than [0-5]%.

4.4.1.1. Previous Commission decisions

(33) In its 2015 case *Liberty Global/Corelio/W&W/De Vijver Media*, the Commission considered that the market for the licensing of broadcasting rights to TV content could be further segmented depending on the type of TV content or exhibition window, but ultimately left the question open.[25] In subsequent cases, the Commission again considered a further segmentation of the market according to (i) content type (films, sports, other AV content),[26] and (ii) exhibition window,[27] and left the exact market definition open. The question whether AV content could be further sub-divided by distinguishing premium and non-premium content, or scripted and non-scripted content was also left open.[28]

4.4.1.2. Notifying Parties' view

(34) The Notifying Parties submit that the question whether the market for the licensing of individual AV content should be sub-segmented by exhibition window can be left open. However, they submit that this market should be sub-segmented (i) by content type, distinguishing between at least sports rights and other types of content, given - inter alia - the different competitive dynamics of the sale of sports rights, and (ii) according to premium vs. non-premium, given that premium and non-premium content have different economic values and that these types of content are generally offered and negotiated separately by licensors. As to the distinction between scripted and non-scripted content, they submit that it can be left open, in particular since the JV will primarily focus on scripted content.[29]

4.4.1.3. Commission's assessment

(35) The results of the market investigation were mixed as to whether the market for the licensing of broadcasting rights for pre-existing individual AV content needs to be subdivided by content type (films, sports, other),[30] or exhibition windows.[31] In addition, nothing in the Commission's file provided reasons to depart from its previous approach as to whether the market should be further segmented: (i) between scripted and non-scripted content; and (ii) between premium and non-premium content.

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25 Commission decision of 24 February 2015 in case M.7194 – Liberty Global/Corelio/W&W/De Vijver Media, recital 69. See also Commission decision of 23 November 2018 in case M.8944 - Liberty Global/De Vijver Media and Liberty Global (SBS)/Mediahuis/JV, recital 53.

26 Commission decisions of 13 November 2019 in case M.9064 - Telia/Bonnier, recital 125, of 6 November 2018 in case M.8785 - The Walt Disney Company/Twenty-First Century Fox, recital 68; of 15 June 2018 in case M.8861 - Comcast/Sky, recitals 38-39.

27 Commission decisions of 5 September 2019 in case M.9416 - Bolloré Group/M7 Group, recials 32-33; of 6 November 2018 in case M.8785 - The Walt Disney Company/Twenty-First Century Fox, recitals 68-71; of 30 May 2018 in case M.7000 - Liberty Global/Ziggo, recital 79; of 7 April 2017 in case M.8354 - Fox/Sky, recitals 67-68; of 20 January 2016 in case M.7865 - Lov Group Invest/De Agostini/JV, recitals 40 and 43. The BCA also left this segmentation open (BCA decision of 13 May 2019 in case BMA-2019-C/C-16 – Telenet/DVM).

28 Commission decisions of 6 November 2018 in case M.8785 The Walt Disney Company/Twenty-First Century Fox, recital 68; of 7 April 2017 in case M.8354 - Fox/Sky, recitals 65-66.

29 Form CO, paragraphs 307-310.

30 Responses to questionnaires Q1 to content providers, question 7.2; and Q2 to AV market participants, question 9.2.

31 Responses to questionnaires Q1 to content providers, question 8.2; and Q2 to AV market participants, question 10.2.

(36) In light of the above, the Commission considers that, for the purpose of this decision and in line with the previous practice, a relevant market for the licensing of broadcasting rights for pre-existing individual AV content has to be considered, while the question whether this relevant product marked needs to be further sub-segmented on the basis of content type or exhibition windows, or between scripted and non-scripted content, and between premium and non-premium content can be left open, since the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement under any such plausible product market definitions.

4.4.2. Geographic market definition

4.4.2.1. Previous Commission decisions

(37) In previous cases, the Commission left open the question whether the geographic scope of the market for the licensing of broadcasting rights for TV content was national or regional (the Flemish Region or the combination of the Flemish Region and the Brussels Capital Region) left open.[32]

(38) The BCA has either previously (i) decided that the markets for the licensing of premium film or sports content in Belgium had to be divided by language group,[33] (ii) decided that this market was national,[34] or (iii) delineated the geographic market to the footprint of Telenet.[35]

4.4.2.2. Notifying Parties' view

(39) The Notifying Parties submit that the precise scope of the geographic market can be left open.[36]

4.4.2.3. Commission's assessment

(40) According to a majority of respondents to the market investigation, the geographic scope of agreements for the licensing of individual broadcasting rights for AV content is either national or by linguistic area.[37]

(41) In light of the above, the Commission considers that, for the purpose of this decision and in line with its precedents, the question whether the relevant geographic market for the licensing of individual broadcasting rights for AV content, including all the possible sub-segments, is national or by linguistic area (the Dutch-speaking areas of Belgium), can be left open, since the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement under any such plausible geographic market definitions.

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32 Commission decision of 23 November 2018 in case M.8944 - Liberty Global/De Vijver Media and Liberty Global (SBS)/Mediahuis/JV, recital 75; of 24 February 2015 in case M.7194 – Liberty Global/Corelio/W&W/De Vijver Media, recital 76

33 BCA decision of 12 November 2003 in case n°2003-C/C-89 *N.V. Telenet Bidco - N.V. Canal+*.

34 BCA decision of 31 October 2008 in case n° 2008-C/C-57 *Tecteo - BeTV / ACM*.

35 BCA decision of 13 May 2019 in case BMA-2019-C/C-16 – Telenet/DVM.

36 Form CO, paragraph 313.

37 Responses to questionnaires Q1 to content providers, question 15; and Q2 to AV market participants, question 34.

4.5. Wholesale supply of TV channels

(42) The Notifying Parties both supply TV channels. Telenet and DPG Media (through its retail OTT service Stievie, which will be discontinued as of 1 September 2020[38]) are also purchasers of TV channels for their activities on the market for the retail supply of AV services.[39] The JV will not offer or purchase TV channels.

4.5.1. Product market definition

(43) TV broadcasters package the AV content and broadcasting rights for AV content that they have produced in-house or acquired into linear TV channels, which are broadcast to end users either on a FTA basis or on a pay TV basis. Ancillary services have gradually been associated to TV channels in order to complement the TV offering and enhance the viewer experience of traditional linear TV channels.

4.5.1.1. Previous Commission decisions

(44) In its past decisional practice, the Commission identified a wholesale market for the supply of TV channels. Within that market, in certain decisions, the Commission further identified two separate product markets for (i) FTA TV channels, and (ii) pay TV channels.[40] The Commission further stated that within the pay TV channels market, there could be different segments for (i) basic pay TV channels; and (ii) premium pay TV channels,[41] for which end customers pay a premium in addition to their basic subscription fee.

(45) In other decisions, the Commission concluded that at the level of the wholesale supply of TV channels there were two separate product markets, one consisting of the wholesale supply of premium pay TV channels and one consisting of the wholesale supply of FTA and basic pay TV channels.[42] In its decision of 24 February 2015 in case M.7194 – *Liberty Global/Corelio/W&W/De Vijver Media*, the Commission has considered that, given that (i) FTA channels were mostly supplied together with basic pay TV channels, and (ii) the competitive assessment would remain the same even if FTA channels were regarded as belonging to a separate product market from that of basic pay TV, it was not necessary to make a distinction

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[38] Form CO, paragraph 372.

[39] VTM Go only includes DPG Media's TV channels. Through this free AVOD platform, DPG Media offers live access to its own linear TV channels and its radio channel Qmusic, as well as reviewing on demand until approx. 30 days after the linear broadcast. In addition, there is a catalogue with popular, older AV content which can be reviewed, as well as a Kids Corner with content targeted at the younger population. In cooperation with Walter Presents, VTM Go offers a number of international series (Form CO, paragraph 102).

[40] Commission decisions of 20 September 2013 in case M.6990 – Vodafone/Kabel Deutschland, recital 41 (identifying separate markets); of 30 May 2018 in case M.7000 Liberty Global/Ziggo, recital 111 (leaving open the question as to whether FTA and Pay TV belong to separate markets, because of peculiarities of the Dutch TV market); of 7 April 2017 in case M.8354 – Fox / Sky, recital 85 (leaving open the question whether the market for the wholesale supply of TV channels should be further segmented among FTA, basic pay TV and premium pay TV).

[41] Commission decisions of 6 November 2018 in case M.8785 – Disney/Fox, recital 77; of 15 June 2018 in case M.8861 – Comcast/Sky, recital 50; of 6 February 2018 in case M.8665 - Discovery/Scripps, recitals 19- 20; of 7 April 2017 in case M.8354 - Fox/Sky, recitals 80- 81.

[42] Commission decisions of 12 November 2019 in case M.9064 – Telia Company/Bonnier Broadcasting Holding, recital 157; of 24 February 2015 in case M.7194 - Liberty Global/Corelio/W&W/De Vijver Media, recitals 90 and 91.

between FTA and basic pay TV channels on the market for wholesale supply of TV channels in that case.

(46) In addition, in previous decisions including its recent decision of 12 November 2019 in case M.9064 – *Telia Company/Bonnier Broadcasting Holding*, the Commission considered that there was no need to draw a distinction between linear TV channels and their ancillary services, which are licensed by TV broadcasters to TV distributors along with, or in addition to those linear TV channels.[43]

(47) Further, in previous decisions, the Commission examined a number of other potential additional segmentations, including genre or thematic content (such as sports, films, general entertainment, news, youth, and others), and ultimately left the market definition open, in these regards.[44]

(48) Last, in its recent decision of 12 November 2019 in case M.9064 – *Telia Company/Bonnier Broadcasting* Holding, the Commission considered that the market for wholesale supply of TV channels, and any other possible segmentation, should not be further segmented according to the type of infrastructure used for the delivery to the viewer (cable, satellite, terrestrial TV and IPTV).[45]

4.5.1.2. Notifying Parties' view

(49) The Notifying Parties submit that the precise product market definition can be left open, since the JV will not be active in the wholesale supply of TV channels.[46]

4.5.1.3. Commission's assessment

(50) A majority of respondents to the market investigation indicated that it remains appropriate to segment the wholesale supply of TV channels between **FTA and basic pay** TV channels on the one hand, and **premium pay** TV channels on the other hand in Belgium.[47]

(51) In addition, the results of the market investigation indicated that the wholesale supply of pay TV channels could be further divided **according to genre** (e.g., films, sports, youth, general entertainment, news).[48] Indeed, most respondents stressed that distributors would seek to offer a variety of genres to end-customers.

(52) With regard to a possible distinction between linear TV channels and their **ancillary services**, the results of the market investigation did not provide reasons to depart

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[43] Commission decisions of 12 November 2019 in case M.9064 – Telia Company/Bonnier Broadcasting Holding, recital 163; of 24 February 2015 in case M.7194 - Liberty Global/Corelio/W&W/De Vijver Media, recital 94.

[44] Commission decisions of 7 April 2017 in case M.8354 – Fox/Sky, recital 82-83; of 24 February 2015 in case M.7194 - Liberty Global/Corelio/W&W/De Vijver Media, recital 92; of 2 April 2003 in case M.2876 - Newscorp/Telepiù, 2 April 2003, recital 76; of 18 July 2007 in case M.4504 - SFR/Télé 2 France, recitals 41–42; of 26 August 2008 in case M.5121 - News Corp/Premiere, recital 35; of 21 December 2010 in case M.5932 - News Corp/BskyB, recital 81; of 10 October 2014 in case M.7000 - Liberty Global/Ziggo, recital 89.

[45] Commission decision of 12 November 2019 in case M.9064 – Telia Company/Bonnier Broadcasting Holding, recital 162.

[46] Form CO, paragraph 361.

[47] Responses to questionnaire Q2 to AV market participants, question 13.

[48] Responses to questionnaire Q2 to AV market participants, question 14.

from the Commission's previous approach, as the results of the market investigation indicated that ancillary services (e.g., TVE, catch-up, PVR, etc.) are associated to TV channels in Belgium in order to complement the TV offering and enhance the viewer experience of traditional linear channels.[49]

(53) With regard to **distribution technologies**, a majority of respondents to the market investigation considered that the market for the wholesale supply of TV channels should not be further segmented according to distribution forms.[50]

(54) In light of the above, the Commission concludes that, for the purpose of this decision and in line with its precdents, the wholesale supply of FTA/basic pay TV channels, and of premium pay TV channels should be considered as constituting two separate product markets, each including its ancillary services. The Commission also considers that each of these markets should not be further segmented based on the distribution technology of the channel in question. In that respect, the question whether these markets can be further segmented by genre can be left open, since the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement under any such plausible product market definitions.

4.5.2. Geographic market definition

4.5.2.1. Previous Commission decisions

(55) The Commission recently considered that the geographic market for the wholesale supply of TV channels might remain the footprint of Telenet's cable network as in the 2015 case *Liberty Global/Corelio/W&W/De Vijver Media*, but that it also might be enlarged to a regional or national scope. The exact geographic delineation of the market (i.e. whether it corresponds to Telenet's footprint, is regional or national) was left open.[51]

4.5.2.2. Notifying Parties’ view

(56) The Notifying Parties submit that the geographic market for the wholesale supply of TV channels could be Telenet’s footprint, or alternatively regional or national in scope, and that the precise geographic market definition can be left open, since the JV will not be active in the wholesale supply of TV channels.[52]

4.5.2.3. Commission’s assessment

(57) The results of the market investigation indicated that it is still relevant to consider that the relevant geographic markets for both (i) the wholesale supply of FTA/basic

49 Responses to questionnaires Q1 to content providers, question 11; and Q2 to AV market participants, question 18.

50 Responses to questionnaires Q1 to content providers, question 14; and Q2 to AV market participants, question 21.

51 Commission of 23 November 2018 in case M.8944 - Liberty Global / De Vijver Media and Liberty Global (SBS) / Mediahuis / JV, recital 82.

52 Form CO, paragraphs 366-368.

pay TV channels, and (ii) the wholesale supply of premium pay TV channels might be Telenet's footprint, or enlarged to a regional or national scope.[53]

(58) In light of the above, the Commission concludes that, for the purpose of this decision and in light of its previous practice, the relevant geographic market for the wholesale supply of TV channels, including all the possible sub-segments, is either the local footprint of Telenet's cable network, or its enlarged regional or national scopes. In that respect, the Commission considers that the exact geographic market definition (i.e. whether it corresponds to Telenet's footprint, is regional or national) can be left open, since the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement under any such plausible geographic market definitions.

4.6. Retail supply of AV services

(59) The Notifying Parties and the JV supply AV services to end customers.

4.6.1. Product market definition

(60) Retail providers of AV services offer packages of linear AV services and/or non-linear AV services to end customers. Such linear and non-linear AV services can be augmented with ancillary services, such as catch-up TV or TV everywhere. Retail AV services can be delivered to end-users though a number of technical means including cable, satellite, IPTV and OTT.

4.6.1.1. Previous Commission decisions

(61) In its past decisional practice, the Commission considered the retail supply of FTA TV and pay TV as separate markets, but ultimately left open the product market definition.[54] The Commission also considered whether pay TV could be segmented further according to: (i) linear vs non-linear pay TV services;[55] (ii) premium vs basic pay TV services.[56] However, the Commission left open the market definition with regard to each of these potential sub-segments.

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53 Responses to questionnaire Q2 to AV market participants, question 36.

54 Commission decisions; of 6 November 2018 in case M.8785 - Disney/Fox, recital 98; of 8 October 2018 in case M.8842 – Tele2/ComHem, recital 37; of 30 May 2018 in case M.7000 – Liberty Global/Ziggo, recital 137; of 6 February 2018 in case M.8665 - Discovery/Scripps, recital 33; of 7 April 2017 in case M.8354 – Fox/Sky, recital 101; of 3 August 2016 in case M.7978 – Vodafone/Liberty Global/Dutch JV, recital 56; of 24 February 2015 in case M.7194 - Liberty Global/Corelio/W&W/De Vijver Media, recital 152.

55 Commission decisions of 18 July 2019 in case M.8864 - Vodafone/certain Liberty Global assets, recitals 79 and 83; of 6 November 2018 in case M.8785 - Disney/Fox, recital 98; of 8 October 2018 in case M.8842 – Tele2/ComHem, recital 37; of 15 June 2018 in case M. 8861 - Comcast/Sky, recital 59; of 30 May 2018 in case M.7000 – Liberty Global/Ziggo, recital 137; of 6 February 2018 in case M.8665 - Discovery/Scripps, recital 32; of 7 April 2017 in case M.8354 – Fox/Sky, recitals 98 and 101; of 3 August 2016 in case M.7978 – Vodafone/Liberty Global/Dutch JV, recital 58; of 24 February 2015 in case M.7194 - Liberty Global/Corelio/W&W/De Vijver Media, recital 124.

56 Commission decisions of 18 July 2019 in case M.8864 - Vodafone/certain Liberty Global assets, recitals 79 and 83; of 6 November 2018 in case M.8785 - Disney/Fox, recitals 94 and 98; of 15 June 2018 in case M. 8861 - Comcast/Sky, recital 59. of 30 May 2018 in case M.7000 – Liberty Global/Ziggo, recitals 135 and 137; of 6 February 2018 in case M.8665 - Discovery/Scripps, recital 33; of 7 April 2017 in case M.8354 - Fox/Sky, recitals 100-101; of 24 February 2015 in case M.7194 - Liberty Global/Corelio/W&W/De Vijver Media, recital 119.

(62) In addition, the Commission considered a possible segmentation of the market for the retail supply of AV services according to distribution technology (for example, cable, OTT, satellite, IPTV or terrestrial). In its decisions of 12 November 2019 in case M.9064 – *Telia Company/Bonnier Broadcasting Holding*, and of 30 May 2018 in case M.7000 – *Liberty Global/Ziggo*, the Commission considered that all the different distribution technologies were part of the same product market,[57] while leaving the exact product market definition open in a number of other decisions.[58]

4.6.1.2. Notifying Parties' view

(63) The Notifying Parties submit that the relevant product market should include all distribution technologies including OTT.[59] In addition, they submit that the question whether the relevant product market should (i) be further segmented between the retail supply of basic pay and premium pay TV channels, and (ii) include non-linear services, can be left open.[60] The Notifying Parties also submit that if linear and non-linear AV services are not regarded as part of the same market, non-linear offers do at least exert some competitive pressure on more traditional AV offers.[61]

4.6.1.3. Commission's assessment

(64) A majority of respondents to the market investigation indicated that the retail provision of **FTA/basic pay AV services** currently constitutes a market separate from the retail provision of **premium pay AV services** in Belgium.[62]

(65) The results of the market investigation were mixed as regards a possible segmentation between **linear and non-linear pay AV services**.[63] Indeed, some respondents indicated that the market for the retail supply of AV services should be further segmented between linear services (namely TV channels) and non-linear services, such as SVOD, as pure OTT non-linear offers are an alternative to linear offers for a limited, bespoke group of customers only, and the SVOD success is more likely to become an alternative to premium pay AV service while complementing basic pay AV services. One other respondent claimed that linear and non-linear services are part of the same markets given that both types of services provide access to identical programming, and compete for viewing time.

(66) As regards **distribution technologies**, a majority of respondents to the market investigation considered that end customers perceive the distribution forms (e.g.

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57 Commission decisions of 12 November 2019 in case M.9064 – Telia Company/Bonnier Broadcasting Holding, recital 200; of 30 May 2018 in case M.7000 – Liberty Global/Ziggo, recital 137. See also Commission decision of 21 December 2010 in case M.5932 - News Corp/BskyB, recital 105.

58 Commission decisions of 18 July 2019 in case M.8864 - Vodafone/certain Liberty Global assets, recitals 80, 81 and 83; of 6 November 2018 in case M.8785 - Disney/Fox, recital 98; of 8 October 2018 in case M.8842 – Tele2/ComHem, recital 37; of 6 February 2018 in case M.8665 - Discovery/Scripps, recital 33; of 7 April 2017 in case M.8354 – Fox/Sky, recitals 99 and 101; of 3 August 2016 in case M.7978 – Vodafone/Liberty Global/Dutch JV, recital 62.

59 Form CO, paragraph 384.

60 Form CO, paragraphs 386 and 390.

61 Form CO, paragraph 392.

62 Responses to questionnaire Q2 to AV market participants, questions 22 and 23.

63 Responses to questionnaire Q2 to AV market participants, questions 25 and 30.

cable, IPTV, satellite, terrestrial, or OTT) through which they access AV content in Belgium as alternative to each other.[64]

(67) In light of the foregoing, the Commission concludes that, for the purpose of this decision and in light of its previous practice, the relevant product market at retail level is to be considered the market for the retail supply of AV services encompassing all distribution technologies. Moreover, the Commission considers that, in any case, the question whether the retail supply of AV services should be further segmented between (i) FTA and pay AV services can be left open, as well as also the question whether in turn the retail supply of pay AV services should be segmented according to (ii) linear and non-linear pay AV services, and (iii) premium and basic pay AV services can be left open, since the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement under any such plausible product market definitions.

4.6.2. *Geographic market definition*

4.6.2.1. Previous Commission decisions

(68) In previous decisions, the Commission considered that the relevant geographic market for the retail provision of TV services to end users was the footprint of Telenet's cable network.[65]

4.6.2.2. Notifying Parties' view

(69) The Notifying Parties consider that there are strong indicators for a national geographic market, since cable operators such as Telenet compete with retail AV providers such as Proximus and Orange, which are active nationally and apply uniform pricing across all regions of Belgium.[66]

4.6.2.3. Commission's assessment

(70) The results of the market investigation indicated that it is still relevant to consider that the relevant geographic market for the retail supply of AV services to end users is Telenet's footprint.[67]

(71) In light of the foregoing, the Commission concludes that, for the purpose of this decision and account taken of its previous decisional practice, the relevant geographic market for the retail supply of AV services, including all possible sub-segments, is the one encompassing Telenet's footprint.

4.7. Retail supply of fixed internet access services

(72) Only Telenet is active as a retail supplier of fixed internet access services.

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64 Responses to questionnaire Q2 to AV market participants, question 31.

65 Commission decisions of 23 November 2018 in case M.8944 - Liberty Global / De Vijver Media and Liberty Global (SBS) / Mediahuis / JV, paragraph 86; of 24 February 2015 in case M.7194 Liberty Global/Corelio/W&W/De Vijver Media, paragraph 139.

66 Form CO, paragraph 395.

67 Responses to questionnaire Q2 to AV market participants, question 38.

4.7.1. *Product market definition*

4.7.1.1. Previous Commission decisions

(73) In recent cases, the Commission considered but ultimately left open possible segmentations according to (i) product type (distinguishing narrowband, broadband, and dedicated access), and (ii) distribution technology (distinguishing xDSL, fibre, cable). Moreover, the Commission acknowledged that the retail market for fixed internet access services should not be divided according to download speed.[68]

(74) The Commission also considered, but ultimately left open, possible segmentations as to customer type, distinguishing between residential and small business customers, on the one hand, and larger business and public authorities, on the other hand.[69]

4.7.1.2. Notifying Party's view

(75) The Notifying Parties do not provide any views as to the relevant product market definition.

4.7.1.3. Commission's assessment

(76) With regard to a possible segmentation of the market for the retail provision of fixed internet access services according to product and customer type or according to distribution technology (that is to say, xDSL, cable or fibre), nothing in the Commission's file provided reason to depart from its approach in previous cases.

(77) In light of the foregoing, the Commission does not depart from its previous assessment, and concludes, for the purposes of this Decision, that the exact scope of the product market definition in relation to the provision of retail fixed internet access services 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.

4.7.2. *Geographic market definition*

4.7.2.1. Previous Commission decisions

(78) In its previous decisions, the Commission concluded that the retail market for the provision of fixed internet services was national in scope.[70]

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[68] Commission decisions of 12 November 2019 in case M.9064 – Telia Company/Bonnier Broadcasting Holding, recital 218; of 8 October 2018 in case M.8842 – Tele2/Com Hem, paragraph 26; of 3 August 2016 in case M.7978 – Vodafone/Liberty Global/Dutch JV, recital 38; of 20 September 2013 in case M.6990 - Vodafone/Kabel Deutschland, recital 194.

[69] Commission decisions of 8 October 2018 in case M.8842 - Tele2/Com Hem, paragraph 26; of 7 October 2016 in case M.8131 - Tele2 Sverige/TDC Sverige, recital 32; of 19 May 2015 in case M.7421 - Orange/Jazztel, recital 42; of 10 October 2014 in case M.7000 - Liberty Global/Ziggo, recital 132.

[70] Commission decisions of 12 November 2019 in case M.9064 – Telia Company/Bonnier Broadcasting Holding, recital 239; of 8 October 2018 in case M.8842 – Tele2/Com Hem; of 3 August 2016 in case M.7978 – Vodafone/Liberty Global/Dutch JV, recital 40; of 20 September 2013 in case M.6990 - Vodafone/Kabel Deutschland, recital 197.

4.7.2.2. Notifying Party's view

(79) The Notifying Parties submit that the market for the retail supply of fixed internet access services should be regarded as national.[71]

4.7.2.3. Commission's assessment

(80) The market investigation did not provide any indication that the Commission should depart from its findings in previous cases, according to which the geographic market should be national.

(81) In light of the foregoing, the Commission concludes that it is appropriate not to depart from its previous practice, and considers that, for the purpose of this decision, the relevant market for the provision of fixed internet services is national in scope.

4.8. Retail supply of mobile telecommunication services

(82) Both Telenet and DPG Media are active as suppliers of retail mobile telecommunication services. Telenet operates a mobile telecommunication network covering the entire territory of Belgium, and DPG Media operates as a Mobile Virtual Network Operator ("MVNO") under the brand Mobile Vikings. MVNOs are operators without their own network, which require access to a network of a Mobile Network Operator ("MNO") in order to provide retail mobile services to end customers.

4.8.1. Product market definition

4.8.1.1. Previous Commission decisions

(83) The Commission has previously considered that there is an overall retail market for mobile telecommunications services constituting a separate market from retail fixed telecommunication services.[72] The Commission did not further segment the overall retail mobile market based on the type of service (voice calls, SMS, MMS, mobile internet data services), or the type of network technology (for example, 2G/3G/4G). The Commission considered distinctions within the overall retail market for mobile telecommunication services between pre-paid or post-paid services and private customers or business customers, concluding that these did not constitute separate product markets but represent rather market segments within an overall retail market.[73]

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[71] Form CO, paragraph 437.

[72] Commission decisions of 8 October 2018 in case M.8842 – Tele2/Com Hem, paragraph 10; of 11 May 2016 in case M.7612 – Hutchison 3G UK/Telefónica UK, recital 252; of 10 October 2014 in case M.7000 – Liberty Global/Ziggo, recital 141; of 2 July 2014 in case M.7018 – Telefónica Deutschland/E-Plus, recital 64.

[73] Commission decisions of 8 October 2018 in case M.8842 – Tele2/Com Hem, recital 47; of 1 September 2016 in case M.7758 – Hutchison 3G Italy/Wind/JV, recitals 149 and 161; of 3 August 2016 in case M.7978 – Vodafone/Liberty Global/Dutch JV, recital 74; of 11 May 2016 in case M.7612 – Hutchison 3G UK/Telefónica UK, recitals 255, 261, 270, 279, 287; of 2 July 2014 in case M.7018 – Telefónica Deutschland/E-Plus, recitals 31 to 55; of 10 October 2014 in case M.7000 – Liberty Global/Ziggo, recital 141; of 28 May 2014 in case M.6992 – Hutchison 3G UK/Telefónica Ireland, recital 141; of 12 December 2012 in case M.6497 – Hutchison 3G Austria/Orange Austria, recital 58.

4.8.1.2. Notifying Parties' view

(84) The Notifying Parties do not provide any views as to the relevant product market definition.

4.8.1.3. Commission's assessment

(85) Nothing in the Commission's file indicated that the market for retail supply of mobile telecommunications services should be further segmented according to the type of services, the type of customers or the network technology used.

(86) In light of the foregoing, the Commission concludes that it is appropriate to not depart from its previous practice, and considers that, for the purpose of this decision, the relevant product market is the overall retail market for mobile telecommunications services without any further segmentations.

4.8.2. Geographic market definition

4.8.2.1. Previous Commission decisions

(87) In its previous decisions, the Commission concluded that the retail market for the provision of mobile telecommunications services was national in scope.[74]

4.8.2.2. Notifying Parties' view

(88) The Notifying Parties do not provide any views as to the relevant geographic market definition.

4.8.2.3. Commission's assessment

(89) The market investigation in the present case did not provide any indication that the Commission should depart from its previous findings.

(90) In light of the foregoing, the Commission concludes that it is appropriate to not depart from its previous practice, and considers that, for the purpose of this decision, the relevant market for the retail provision of mobile telecommunications services is national in scope.

4.9. Retail supply of multiple play bundles

(91) Only Telenet is active as a provider of multiple play bundles.

4.9.1. Product market definition

(92) The term "multiple play" relates to offers comprising two or more of the following services provided to retail consumers: mobile telecommunication services, fixed

[74] Commission decisions of 8 October 2018 in case M.8842 – Tele2/Com Hem, recital 49; of 1 September 2016 in case M.7758 – Hutchison 3G Italy/Wind/JV, recital 166; of 3 August 2016 in case M.7978 – Vodafone/Liberty Global/Dutch JV, recital 76; of 11 May 2016 in case M.7612 – Hutchison 3G UK/Telefónica UK, recital 293; of 10 October 2014 in case M.7000 – Liberty Global/Ziggo, recital 143; of 2 July 2014 in case M.7018 – Telefónica Deutschland/E-Plus, recital 74; in case M.6497 – Hutchison 3G Austria/Orange Austria, recital 73; in case M.5650 – T Mobile/Orange UK, recitals 25-26; of 28 May 2014 in case M.6992 – Hutchison 3G UK/Telefónica Ireland, recital 164.

telephony, fixed internet access and TV services. Multiple play comprising two, three or four of these services is referred to as dual play ("2P"), triple play ("3P") and quadruple play ("4P") respectively.

4.9.1.1. Previous Commission decisions

(93) In previous decisions, the Commission has considered but ultimately left open the question as to whether there exist one or more multiple play markets, which are distinct from each of the underlying individual telecommunication services.[75] Moreover, in previous decisions, the Commission has noted that due to different services, delivered over different infrastructures (fixed for dual play and triple play or fixed and mobile for quadruple play), that are included in the different multiple play bundles, instead of one possible market for multiple play, there could be several possible multiple play markets: a market for fixed bundles (dual play, and triple play) and another separate market for fixed-mobile convergence bundles. The Commission has also noted that the possibility for several mobile subscriptions to be included in a quadruple play bundle further complicates the picture.[76]

4.9.1.2. Notifying Parties' view

(94) The Notifying Parties submit that the question whether a separate market for multiple play bundles including retail TV services exists can be left open, as (i) the JV will not be active on any possible multiple play markets, and (ii) with a few exceptions,[77] Telenet does not include SVOD services in its multiple play bundles with a TV component in Belgium, and has no immediate plans to change the bundle line up.[78]

4.9.1.3. Commission's assessment

(95) The market investigation in the case at hand provided no clear evidence as to the substitutability between multiple play services on the one hand and combinations of standalone services on the other hand.

(96) In light of the foregoing, the Commission concludes that it is appropriate not to depart from its previous decisional practice, and considers that, for the purpose of this decision, the question as to whether there exist one or more multiple play markets which are distinct from each of the underlying individual telecommunications services can be left open, since the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement under any such plausible product market definitions.

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75 Commission decisions of 8 October 2018 in case M.8842 – Tele2/Com Hem, recital 60; of 3 August 2016 in case M.7978 – Vodafone/Liberty Global/Dutch JV, recital 108; of 4 February 2016 in case M.7637 – Liberty Global/BASE Belgium, recital 96; of 19 May 2015 in case M.7421 – Orange/Jazztel, recitals 86 and 91.

76 Commission decisions of 8 October 2018 in case M.8842 – Tele2/Com Hem, recital; of 3 August 2016 in case M.7978 – Vodafone/Liberty Global/Dutch JV, recital 107.

77 Telenet has historically not included its SVOD offerings in its multiple play bundles. Play and Play More are offered as additional paid options to Telenet's retail AV subscribers. The only exception is Yugo, a bundle consisting of a fixed internet subscription, a number of linear TV channels and the SVOD service Play. [number of Yugo subscribers in 2019] (Form CO, paragraph 658 and footnote 517).

78 Form CO, paragraph 417.

4.9.2. Geographic market definition

4.9.2.1. Previous Commission decisions

(97) In previous decisions, the Commission considered that the geographic scope of any possible retail market for multiple play services would be national since the components of the multiple play offers are offered individually at a national level, and the bundling of the services would not change the geographic scope of the components.[79]

4.9.2.2. Notifying Parties' view

(98) The Notifying Parties submit that the question whether a separate market for multiple play bundles including retail TV services exists in Belgium can be left open.[80]

4.9.2.3. Commission's assessment

(99) The market investigation in the present case did not provide any indication that the Commission should depart from its findings in previous cases.

(100) In light of the foregoing, the Commission concludes that it is appropriate not to depart from its previous decisional practice, and considers that, for the purpose of this decision, any possible market for the retail supply of multiple play services would be national in scope.

4.10. Supply of advertising: (i) TV advertising, (ii) radio advertising and (iii) online advertising

(101) The Notifying Parties are both active in the supply of TV advertising on the Dutch-language TV channels in Flanders. Both Telenet and DPG Media sell advertising space on their own FTA TV channels (Vier, Vijf, Zes for Telenet and VTM, Q2, Vitaya, CAZ, CAZ 2 and VTM Kids for DPG Media). Both of them act as sales representatives for third party TV channels. Both parties are active in the selling of online advertising space, namely on websites related to their TV channels and publications. In addition, DPG Media is active in the supply of radio advertising space. It sells advertising space on its own traditional radio channels (mainly Qmusic and Joe, and, to a more limited extent, on the digital radio channels it operates). The Notifying Parties and the JV will also be active as purchasers of such advertising space.

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79 Commission decisions of 3 August 2016 in case M.7978 – Vodafone/Liberty Global/Dutch JV, paragraphs 112; of 19 May 2015 in case M.7421 - Orange/Jazztel, recitals 89-90; of 10 October 2014 in case M.7000 - Liberty Global/Ziggo, recitals 152-153; of 20 September 2013 in case M.6990 - Vodafone/Kabel Deutschland, paragraphs 263-265; of 16 June 2011 in case M.5900 - LGI/KBW, paragraphs 183-186.

80 Form CO, paragraph 417.

4.10.1. Product market definitions

4.10.1.1. Previous Commission decisions

(102) The Commission has previously defined the sale of advertising space on TV, the sale of advertising space on radio and the sale of advertising space on websites as distinct product markets, rather than forming part of a wider advertising market (incorporating, among others, also print advertising).[81]

(103) With respect to the market for TV advertising, the Commission has also considered whether sales of advertising space on pay TV and FTA TV channels are part of the same market, and whether the sale of advertising space on AVOD services is part of the same market as the sale of advertising space on TV channels. It ultimately left this question open.[82]

(104) The BCA has previously defined a separate market for the sale of advertising space on national TV channels and a separate market for the sale of advertising space on national radio channels, i.e. covering the entire Belgian territory. In these decisions, it also limited the markets to Dutch-language advertisements.[83] In 2018, the BCA also found strong indications to conclude that a separate market for online adverisements may exist and conducted its analysis on that basis.[84]

4.10.1.2. Notifying Parties' view

(105) The Notifying Parties submit that the fact that the Commission has defined radio advertising and TV advertising as separate product markets does not mean that they are not subject to competitive pressures from advertising on other media, notably online advertising.[85] They consider that the market has evolved significantly towards online advertising (leading to an erosion of the importance of traditional media for advertising), and that a separate market for the sale of online advertising space should be determined.[86]

(106) In addition, the Notifying Parties consider that the market for TV advertising should not be further segmented between the sale of advertising space on Pay and FTA TV channels. Furthermore, the Parties believe that the sale of advertising space on

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[81] Commission decisions of 24 February 2015 in Case M.7194 Liberty Global/Corelio/W&W/De Vijver Media, paragraph 143; of 21 December 2016 in Case M.8180 Verizon/Yahoo, paragraphs 22 and 25; of 7 April 2017 in Case M/8354 Fox/Sky, paragraph 114; of 12 November 2019 in Case M.9064 Telia Company/Bonnier Broadcasting Holding, paragraph 276; of 6 February 2018 in Case M.8665 Discovery/Stripps, paragraphs 39-40.

[82] Commission Decision of 12 November 2019 in Case M.9064 Telia Company/Bonnier Broadcasting Holding, paragraph 276.

[83] BCA decision of 7 September 2011 in Case 2011-C/C-24, De Vijver Media NV/Waterman&Waterman Comm.VA, Corelio NV, Sanoma Corporation, paragraph 30; BCA Decision of 28 January 2016 in Case 2016-C/C-03, Jim Mobile/Medialaan; BCA Decision of 26 April 2017 in Case 2017-C/C-14, Mediahuis 3.0, paragraph 23; BCA Decision of 13 May 2019 in Case 2019-C/C-16, Telenet Group BVBA/De Vijver Media NV, paragraph 219.

[84] BCA Decision of 6 March 2018 in case BMA-C/C-07, *Mediafin*, paragraphs 192-193.

[85] Form CO, paragraphs 499 and 530.

[86] Form CO, paragraph 515.

AVOD services should be considered as part of the online advertising market (for sale of advertising space on Dutch-language websites).[87]

4.10.1.3. Commission's assessment

(107) The market investigation in the present case did not provide any indication that the Commission should depart from its findings in previous cases. The majority of respondents responding to this question indicated that these findings (distinction of **online vs. offline** advertising and segmentation of advertising market by **media channel**) are still accurate in Belgium today.[88]

(108) In light of the foregoing, the Commission concludes that, for the purpose of this decision and to follow its previous decisional practice, the market for TV advertising, the market for radio advertising and the market for online advertising constitute separate markets. The Commission also concludes that the question whether the market for TV advertising includes both Pay and FTA TV channels and/or AVOD services or whether it can be divided into those two segments can be left open, since the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement under any such plausible product market definitions.

4.10.2. Geographic market definitions

4.10.2.1. Previous Commission decisions

(109) The Commission previously considered that the geographic markets for (i) TV advertising, (ii) radio advertising and (iii) online advertising are either national or regional (along linguistic lines; in Belgium concerning the Flemish region, potentially including the Brussels-capital region).[89] The BCA has previously determined the geographic scope of the TV and radio advertising markets as comprising the Flemish Community (and left open the exact geographic scope of the online advertising market).[90]

4.10.2.2. Notifying Parties' view

(110) The Notifying Parties did not provide any views on the geographic scope of these advertising markets.

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87 Form CO, paragraph 500.

88 Responses to Questionnaire Q2 to AV market participants, questions 32-33 ; Responses to Questionnaire Q3 to purchasers of advertising space, questions 5-6.

89 Commission Decision of 14 June 2013 in Case M.6866 Time Warner/CME, paragraph 63; Commission Decision of 24 February 2015 in Case M.7194 Liberty Global/Corelio/W&W/De Vijver Media, paragraph 147; Commission Decision of 21 December 2016 in Case M.8180 Verizon/Yahoo, paragraph 27; Commission Decision of 6 February 2018 in Case M.8665 Discovery/Scripps, paragraph 43.

90 BCA Decision of 7 September 2011 in Case n°2011-C/C-24, *De Vijver Media NV/Waterman &Waterman Comm. VA, Corelio NV, Sanoma Corporation*, paragraph 30; BCA Decision of 28 January 2016 in Case BMA-2016-C/C-03 *Jim Mobile/Medialaan*, paragraphs 81 to 84 and 88 to 90; BCA Decision of 26 April 2017 in Case BMA-2017-C/C-14 *Mediahuis 3.0*, paragraph 23; BCA Decision of 6 March 2018 in case BMA-C/C-07, *Mediafin*, paragraph 197.

4.10.2.3. Commission's assessment

(111) The majority of respondents responding to the question indicated that they sell/purchase advertising on the basis of the linguistic region.[91] One market respondent indicated that "*in practice suppliers of advertising space generally focuss on respectively the Dutch speaking market or the French speaking market*", while another responded that "[l]*anguage is the first criteria when choosing a media channel*."[92] One other market respondent stated that "[t]*his is the most logical approach to try to get the broadest advertising reach*."[93]

(112) In light of the foregoing, the Commission concludes that, for the purpose of this decision, the relevant market for TV, radio and online advertising, including all the possible sub-segments, is regional in scope encompassing the Flemish region and possibly also the Brussels-capital region.

(113) Consequently, the Commission considers it appropriate to assess the possible effects of the Transaction on the markets for the sale of advertising spaces on (i) Dutch language TV channels, (ii) Dutch language radio channels and (iii) Dutch language websites in Belgium, which correspond to the two regional delinations indicated above (Flemish region or the Flemish region and the Brussels-capital region).

5. COMPETITIVE ASSESSMENT

(114) As explained in paragraph 4, the only activity of the JV will be to provide a SVOD service in Belgium.

(115) In order to provide its SVOD service, the JV will acquire content from [JV's commercial strategy]. The JV will not acquire linear channels and ancillary services of the Notifying Parties and/or of third parties.

(116) In order to market its SVOD service, the JV will acquire advertising space from a series of suppliers, [JV's commercial strategy]. The JV's SVOD service will not carry advertising.

(117) The stated rationale of the transaction is to create a local SVOD player that can locally compete with international established players like Netflix and Amazon as well as with future entrants in the SVOD market like Disney and HBO.[94]

5.1. Identification of the affected markets

(118) The Transaction gives rise to the following **horizontally** affected markets:

i. the market for the production of AV content in Flanders (demand side)[95] and possibly more narrowly defined markets;[96]

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91 Responses to Questionnaire Q2 to AV market participants, question 39 ; Responses to Questionnaire Q3 to purchasers of advertising space, question 7.

92 Responses to Questionnaire Q3 to purchasers of advertising space, question 7.1.

93 Responses to Questionnaire Q2 to AV market participants, question 39.1.

94 Form CO, paragraphs 30-31.

ii. the market for the licensing of broadcasting rights for pre-existing individual AV content in Flanders (demand side)[97] and possibly more narrowly defined markets;[98] and

iii. the market for the retail supply of AV services (including SVOD services) in Telenet's footprint and possibly more narrowly defined markets.[99]

(119) The markets under i) and ii), including the possible narrower markets, would also be affected if the geographic market was defined as a) Flanders and the Brussels Capital Region together or as b) Telenet's footprint, both of which largely correspond to the Dutch-speaking part of Belgium. In addition, some of the narrower product markets

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95 There is no affected market for the supply of production of AV content. Telenet has a share of [5-10]% by value (2019), DPG Media's entire AV content production is captive, and the JV will not be active.

96 Such narrower markets include A) markets based on a segmentation by content type (i.e. i) the market for the production of films in Flanders (demand side) ii) the market for the production of sport content in Flanders (demand side) iii) the market for the production of other AV content in Flanders (demand side) B) markets based on a segmentation by exhibition window (i.e. i) the market for the production of AV content for TVOD in Flanders (demand side) ii) the market for the production of AV content for SVOD/first pay TV window in Flanders (demand side) iii) the market for the production of AV content for SVOD library in Flanders (demand side) iv) the market for the production of AV content for FTA window in Flanders (demand side), v) the market for the production of AV content for the premium sports window; C) markets based on the distinction between scripted and non-scripted content (i.e. i) the market for the production of scripted AV content in Flanders (demand side) and the ii) the market for the production of non-scripted AV content in Flanders (demand side); D) markets based on commissioned AV content versus AV content production for hire (i.e. i) the market for the production of commissioned AV content in Flanders (demand side) and the ii) market for the production of AV content for hire in Flanders (demand side); and any combination of the segmentations in A) B) C) or D).

97 There is no affected market for the supply of licensing of individual AV content. Telenet and DPG Media have respective market shares of [0-5]% and [0-5]% by value (2019). For 2023, the following provisional market shares were provided by the Parties: Telenet: [0-5]%, DPG Media: [0-5]%, JV: [0-5]%.

98 Such narrower markets include A) markets based on a segmentation by content type (i.e. i) the market for the licensing of broadcasting rights for films in Flanders (demand side) ii) the market for the licensing of broadcasting rights for sport content in Flanders (demand side) iii) the market for the licensing of broadcasting rights for other content in Flanders (demand side); B) out of the markets based on a segmentation by exhibition window, the i) market for the licenseing of broadcasting rights for content in the SVOD/First pay TV window in Flanders (demand side), the ii) market for the licenseing of broadcasting rights for content in the SVOD library window in Flanders (demand side), and the iii) market for the licenseing of broadcasting rights for content in the FTA window in Flanders (demand side); C) markets based on the distinction between scripted and non-scripted content (i.e. i) the market for the licensing of broadcasting rights for scripted content in Flanders (demand side) and the ii) the market for the licensing of broadcasting rights for non-scripted content in Flanders (demand side); D) markets based premium vs non-premium content (i.e. i) the market for the licensing of broadcasting rights for premium content in Flanders (demand side) and the ii) the market for the licensing of broadcasting righst for non-premium content in Flanders (demand side); and any combination of the segmentations in A) B) C) or D).

99 Such narrower markets include A) the market for the retail supply of pay AV services in Telenet's footprint, distinct from the market for the retail supply of FTA AV services, which is not affected; B) markets based on a segmentation of the retail pay AV services between basic pay and premium pay AV services (i.e. i) the market for the retail supply of basic pay AV services in Telenet's footprint and ii) the market for the retail supply of premium pay AV services in Telenet's footprint); C) markets based on a segmentation of the retail pay AV services between linear and non-linear pay AV services (i.e. i) the market for the retail supply of linear AV services in Telenet's footprint and ii) the market for the retail suplly of non-linear AV services in Telenet's footprint). In addition, if both segmentations B) and C) apply, then two of the four possible markets are affected, namely D) i) the market for the retail supply of linear basic pay AV services in Telenet's footprint and the ii) market for the retail supply of non-linear premium pay AV services in Telenet's footprint.

under ii) would also be affected if the geographic market was defined as c) the whole of Belgium.[100]

(120) In each of these horizontally affected markets, the Notifying Parties will also remain active independently.

(121) The Transaction also gives rise to the following **non-horizontally** affected markets:

i. The upstream market for AV content production in Flanders (supply side), and possible narrower markets,[101] where Telenet is active, due to the combined share of both Notifying Parties and the JV on the downstream market for AV content production in Flanders (demand side) and possible narrower markets[102] (customer foreclosure). The upstream product markets, including the potential narrower markets, would also be affected if the geographic scope of the downstream markets were defined as a) Flanders and

[100] These markets include A) out of the markets based on a segmentation by content type i) the market for the licensing of broadcasting rights for films (demand side) ii) the market for the licensing of broadcasting rights for sport content (demand side) B) out of the markets based on a segmentation by exhibition window, the i) market for the licenseing of broadcasting rights for content in the FTA window C) markets based on the distinction between scripted and non-scripted content (i.e. i) the market for the licensing of broadcasting rights for scripted content (demand side), and the ii) the market for the licensing of broadcasting rights for non-scripted content (demand side); D) markets based on the distinction between premium and non-premium content (i.e. i) the market for the licensing of broadcasting rights for premium content (demand side) and the ii)) the market for the licensing of broadcasting rights for non-premium content (demand side); and any combination of the segmentations in A) B) C) and D).

[101] These markets include A) markets based on a segmentation by content type (i.e. i) the market for the production of films in Flanders (supply side), ii) the market for the production of sport content in Flanders (supply side), iii) the market for the production of other AV content in Flanders (supply side); B) markets based on a segmentation by exhibition window (i.e. i) the market for the production of AV content for the TVOD window in Flanders (suuply side), ii) the market for the production of AV content for the SVOD/first pay TV window in Flanders (supply side), iii) the market for the production of AV content for SVOD library window in Flanders (supply side), iv) the market for the production of AV content for FTA AV window in Flanders (supply side); C) markets based on the distinction between scripted and non-scripted content (i.e. i) the market for the production of scripted AV content in Flanders (supply side) and the ii) the market for the production of non-scripted AV content in Flanders (supply side); D) markets based on commissioned AV content versus AV content production for hire (i.e. i) the market for the production of commissioned AV content in Flanders (supply side) and the ii) market for the production of AV content for hire in Flanders (supply side); and any combination of the segmentations in A) B) C) or D).

[102] These narrower markets include: A) markets based on a segmentation by content type (i.e. i) the market for the production of films in Flanders (demand side) ii) the market for the production of sport content in Flanders (demand side) iii) the market for the production of other AV content in Flanders (demand side); B) markets based on a segmentation by exhibition window (i.e. i) the market for the production of AV content for the TVOD window in Flanders (demand side), ii) the market for the production of AV content for SVOD/first pay TV window in Flanders (demand side), iii) the market for the production of AV content for SVOD library in Flanders (demand side), iv) the market for the production of AV content for FTA window in Flanders (demand side); C) markets based on the distinction between scripted and non-scripted content (i.e. i) the market for the production of scripted AV content in Flanders (demand side) and the ii) the market for the production of non-scripted AV content in Flanders (demand side); D) markets based on commissioned AV content versus AV content production for hire (i.e. i) the market for the production of commissioned AV content in Flanders (demand side) and the ii) market for the production of AV content for hire in Flanders (demand side); and any combination of the segmentations in A) B) C) or D).

the Brussels Capital Region together or as b) Telenet's footprint, both of which largely correspond to the Dutch-speaking part of Belgium.[103]

ii. The upstream market for the licensing of broadcasting rights for pre-existing individual AV content in Flanders (supply side), and possibly more narrowly defined markets,[104] where both Notifying Parties are active, due to the individual or combined share of the Notifying Parties and the JV on the downstream market for the licensing of broadcasting rights for pre-existing individual AV content in Flanders (demand side), or possibly more narrowly defined markets[105] (customer foreclosure). The upstream product markets, including the potential narrower markets, would also be affected if the geographic scope of the downstream markets were defined as a) Flanders and the Brussels Capital Region together or as b) Telenet's footprint, both of which largely correspond to the Dutch-speaking part of Belgium. If the geographic scope of the downstream markets were defined as c) the whole of Belgium, only some of the more narrowly defined upstream markets[106] would be affected.[107]

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103 The geographic market of the upstream markets may also be different, i.e. it could be a) Flanders and the Brussels Capital Region and b) Telenet's footprint; however, this would have no bearing on the fact that they are affected.

104 Such narrower markets include A) markets based on a segmentation by content type (i.e. i) the market for the licensing of broadcasting rights for films in Flanders (supply side) ii) the market for the licensing of broadcasting rights for sport content in Flanders (supply side) iii) the market for the licensing of broadcasting rights for other content in Flanders (supply side); B) markets based on a segmentation by exhibition window (i.e. i) market for the licensing of broadcasting rights for the TVOD window in Flanders (supply side), ii) market for the licensing of broadcasting rights for the SVOD/First pay TV window in Flanders (supply side), iii) market for the licensing of broadcasting rights for the SVOD library window in Flanders (supply side), iv) market for the licensing of broadcasting rights for the FTA window in Flanders (supply side), v) market for the licensing of broadcasting rights for the premium sports window in Flanders (supply side); C) markets based on the distinction between scripted and non-scripted content (i.e. i) the market for the licensing of broadcasting rights for scripted content in Flanders (supply side) and the ii) the market for the licensing of broadcasting rights for non-scripted content in Flanders (supply side); D) markets based on premium vs non-premium content (i.e. i) the market for licensing of broadcasting rights for premium content in Flanders (supply side) and ii) the market for licensing of broadcasting rights for non-premium content in Flanders (supply side); and any combination of the segmentations in A) B) C) or D).

105 Such narrower markets include A) markets based on a segmentation by content type (i.e. i) the market for the licensing of broadcasting rights for films in Flanders (demand side) ii) the market for the licensing of broadcasting rights for sport content in Flanders (demand side) iii) the market for the licensing of broadcasting rights for other content in Flanders (demand side); B) markets based on a segmentation by exhibition window i.e. the i) market for the licenseing of broadcasting rights for content in the TVOD window in Flanders (demand side), ii) market for the licenseing of broadcasting rights for content in the SVOD/First pay TV window in Flanders (demand side), iii) market for the licenseing of broadcasting rights for content in the SVOD library window in Flanders (demand side), iv) market for the licenseing of broadcasting rights for content in the FTA window in Flanders (demand side), v) market for the licenseing of broadcasting rights for content in the premium sports window in Flanders (demand side); C) markets based on the distinction between scripted and non-scripted content (i.e. i) the market for the licensing of broadcasting rights for scripted content in Flanders (demand side) and the ii) the market for the licensing of broadcasting rights for non-scripted content in Flanders (demand side); D) markets based premium vs non-premium content (i.e. i) the market for the licensing of broadcasting righst for premium content in Flanders (demand side) and the ii) the market for the licensing of broadcasting righst for non-premium content in Flanders (demand side); and any combination of the segmentations in A) B) C) or D).

106 These markets include A) out of the markets based on a segmentation by content type i) the market for the licensing of broadcasting rights for films (supply side) ii) the market for the licensing of broadcasting rights for sport content (supply side); B) out of the markets based on the distinction based on exhibition

iii. The downstream market for the retail supply of AV services (including SVOD services) in Telenet's footprint, and possibly more narrowly defined markets,[108] (where both the JV and the Notifying Parties will be active), due to the the Notifying Parties' upstream activities on the market for wholesale supply of FTA/basic pay TV channels, and possible narrower markets,[109] in Telenet's footprint (input foreclosure). The downstream product markets, including the potential narrower markets, would also be affected if the geographic scope of the upstream market were defined as a) Flanders and the Brussels Capital Region together, as b) Flanders or as c) the whole of Belgium.

iv. The market for the retail supply of mobile telecommunication, fixed internet and multiple play services in Belgium, and possibly more narrowly defined markets,[110] where Telenet is active, due to the Parties' strong presence in the market for the retail supply of AV services (including SVOD services) in Telenet's footprint, and possible narrower markets[111] (conglomerate effects).

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windows, the i) market for the licenseing of broadcasting rights for content in the TVOD window (supply side), ii) market for the licenseing of broadcasting rights for content in the FTA window in (supply side), v) market for the licenseing of broadcasting rights for content in the premium sports window (supply side); C) out of the markets based on the distinction between scripted and non-scripted content, the market for the licensing of broadcasting rights for non-scripted content (supply side); D) out of the markets based on the distinction between premium and non-premium content, the market for the licensing of broadcasting rights for premium content (supply side); and any combination of the segmentations in A) B) C) and D).

107 The geographic market of the affected upstream markets may also be different, i.e. it could be a) Flanders and the Brussels Capital Region and b) Telenet's footprint; however, this would have no bearing on the fact that they are affected.

108 Such narrower markets include i) the market for the retail supply of pay AV services in Telenet's footprint, distinct from the market for the retail supply of FTA AV services, which is not affected. If pay AV retail services are further segmented between basic pay and premim pay retail AV services, or between linear and non-linear basic pay AV services, then ii) the market for the retail supply of basic pay AV services in Telenet's footprint and the iii) market for the retail supply of linear pay AV services in Telenet's footprint are also affected. In addition, if both of these segmentations apply, then the iv) market for the retail supply of linear basic pay AV services in Telenet's footprint will be affected and the v)

109 The narrower market would be based on a segmentation by genre. Under such segmenatation the Notifying Parties would have presumptive market power on the market for the wholesale supply of FTA/basic pay general entertainment channels in Telenet's footprint.

110 As the market for the retail supply of mobile telecommunication services is not segmented further, narrower markets include the possible segmentation of fixed internet services according to product type (i.e. i) the market for the retail supply of narrowband fixed internet services in Belgium, ii) the market for the retail supply of broadband fixed internet services in Belgium and iii) the market for the retail supply of dedicated fixed internet services in Belgium) or distribution technology (i.e. the iv) market for the retail supply of fixed internet services via xDSL in Belgium, the v) market for the retail supply of fixed internet services via fibre in Belgium and the vi) market for the retail supply of fixed internet services over cable in Belgium), as well as the possible combinations of these segments (i.e. all combinations narrowband over fibre or cable). Provided multiple play telecommunications markets exist, they can be potentially segmented to the narrower markets of vii) fixed bundles in Belgium and viii) fixed-mobile bundles in Belgium.

111 Such narrower markets include A) the market for the retail supply of pay AV services in Telenet's footprint, distinct from the market for the retail supply of FTA AV services, which is not affected; B) markets based on a segmentation of the retail pay AV services between basic pay and premium pay AV services (i.e. i) the market for the retail supply of basic pay AV services in Telenet's footprint and ii) the market for the retail supply of premium pay AV services in Telenet's footprint); C) markets based on a segmentation of the retail pay AV services between linear and non-linear pay AV services (i.e. i) the market for the retail supply of linear AV services in Telenet's footprint and ii) the market for the retail

v. The market for the the retail supply of AV services (including SVOD services) in Telenet's footprint, and possibly more narrowly defined markets,[112] where Telenet and the JV are active, due to Telenet's strong presence in the retail supply of mobile telecommunication, fixed internet access and multiple play services, and possible narrower markets.[113] (conglomerate effects)

vi. The downstream market for the retail supply of AV services (including SVOD services) in Telenet's footprint, and possibly more narrowly defined markets,[114] where the JV and both Notifying Parties are active, due to the Notifying Parties' upstream activities on the market for the sale of TV advertising space on TV channels in Flanders, as well as the possibly more narrowly defined markets,[115] and DPG Media's upstream activities on the market for the sale of radio advertising space in Flanders (input foreclosure). The downstream product markets, including the potential narrower markets,

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suplly of non-linear AV services in Telenet's footprint). In addition, if both segmentations B) and C) apply, then two of the four possible markets are affected, namely D) i) the market for the retail supply of linear basic pay AV services in Telenet's footprint and the ii) market for the retail supply of non-linear premium pay AV services in Telenet's footprint.

112 Such narrower markets include A) the market for the retail supply of pay AV services in Telenet's footprint, distinct from the market for the retail supply of FTA AV services, which is not affected; B) markets based on a segmentation of the retail pay AV services between basic pay and premium pay AV services (i.e. i) the market for the retail supply of basic pay AV services in Telenet's footprint and ii) the market for the retail supply of premium pay AV services in Telenet's footprint); C) markets based on a segmentation of the retail pay AV services between linear and non-linear pay AV services (i.e. i) the market for the retail supply of linear AV services in Telenet's footprint and ii) the market for the retail suplly of non-linear AV services in Telenet's footprint). In addition, if both segmentations B) and C) apply, then two of the four possible markets are affected, namely D) i) the market for the retail supply of linear basic pay AV services in Telenet's footprint and the ii) market for the retail supply of non-linear premium pay AV services in Telenet's footprint.

113 As the market for the retail supply of mobile telecommunication services is not segmented further, narrower markets include the possible segmentation of fixed internet services according to product type (i.e. i) the market for the retail supply of narrowband fixed internet services in Belgium, ii) the market for the retail supply of broadband fixed internet services in Belgium and iii) the market for the retail supply of dedicated fixed internet services in Belgium) or distribution technology (i.e. the iv) market for the retail supply of fixed internet services via xDSL in Belgium, the v) market for the retail supply of fixed internet services via fibre in Belgium and the vi) market for the retail supply of fixed internet services over cable in Belgium), as well as the possible combinations of these segments (i.e. all combinations narrowband over fibre or cable). Provided multiple play telecommunications markets exist, they can be potentially segmented to the narrower markets of vii) fixed bundles in Belgium and viii) fixed-mobile bundles in Belgium.

114 Such narrower markets include A) the market for the retail supply of pay AV services in Telenet's footprint, distinct from the market for the retail supply of FTA AV services, which is not affected; B) markets based on a segmentation of the retail pay AV services between basic pay and premium pay AV services (i.e. i) the market for the retail supply of basic pay AV services in Telenet's footprint and ii) the market for the retail supply of premium pay AV services in Telenet's footprint); C) markets based on a segmentation of the retail pay AV services between linear and non-linear pay AV services (i.e. i) the market for the retail supply of linear AV services in Telenet's footprint and ii) the market for the retail suplly of non-linear AV services in Telenet's footprint). In addition, if both segmentations B) and C) apply, then two of the four possible markets are affected, namely D) i) the market for the retail supply of linear basic pay AV services in Telenet's footprint and the ii) market for the retail supply of non-linear premium pay AV services in Telenet's footprint.

115 Such markets include the potential subsegments of the market for TV advertising where one or more of the Notifying Parties has a strong presence, i.e. i) the market for the supply of TV advertising space on FTA channels in Flanders including AVOD and ii) the market for the supply of TV advertising space on FTA channels in Flanders excluding AVOD.

would also be affected if the geographic scope of the upstream markets were defined as Flanders and the Brussels Capital Region together, given that in both cases the geographic market corresponds to the Dutch linguistic area in Belgium.

(122) None of these vertical links is newly created by the Transaction since the Notifying Parties are autonomously active in the downstream markets where the JV will be active. The JV will merely give rise to an increase of the combined market share downstream.

(123) The Notifying Parties will remain independently active in a number of the same markets as the JV, notably: (i) the production of AV content (demand side)[116], in particular in the segment for production for hire; (ii) the licensing of individual AV content (supply and demand side), in particular in the first PayTV and library SVOD exhibition window segments; and (iii) the retail supply of AV services, in particular in the non-linear segments. The Notifying Parties will also remain independently active in a number of markets closely related to the activities of the JV, notably: (i) the licensing of individual AV content (supply and demand side), in particular in the FTA, TVOD, Premium Sports and series SVOD segments; (ii) the retail supply of AV services, in particular in the linear segments[117]; (iii) the sale of advertising space on Dutch language TV channels and websites; (iv) the wholesale supply of TV channels; and (v) the retail supply of mobile communications services.

(124) Each of these potential effects is separately discussed in the following sections. After setting out the market shares in the relevant markets and possible sub-segments (section 5.2), the Commission will first assess the potential horizontal non-coordinated effects stemming from the Transaction (section 5.3). Then the Commission will assess the potential non-horizontal effects stemming from the Transaction (section 5.4). Finally, the Commission will assess the potential cooperative effects of the Transaction (section 5.5).

5.2. Market shares

(125) According to the Horizontal Merger Guidelines and the Non-Horizontal Merger Guidelines,[118] in the assessment of the effects of a merger, market shares constitute a useful first indication of the structure of the markets at stake and of the competitive importance of the relevant market players.

[116] On the supply side of this market, DPG Media is only active for captive use and the JV is not active.

[117] Including the supply of library SVOD content.

[118] Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings ("Horizontal Merger Guidelines"), OJ C 31, 05.02.2004, paragraph 14; Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings ("Non-Horizontal Merger Guidelines"), OJ C 265, 18.10.2008, paragraph 24.

5.2.1. *Production of AV content (demand side)*[119]

5.2.1.1. Overall market in Flanders

(126) The Parties' and their main competitors' shares in the market for the acquisition of Dutch-language AV content production in Flanders are summarised in Table 1 below.[120] The Commission notes that the Parties have a significant presence in Belgium with combined market shares by value, exceeding [50-60]%. The Parties submit that the JV will have modest activities on the demand side, which will represent a market share of [5-10]% in 2023. This is also indicated in Table 1.

Table 1: Market shares in the market for the acquisition of AV content production by value in Flanders

Company	Overall market 2019	Overall market 2023
Telenet	[20-30]%	[10-20]%
DPG Media	[30-40]%	[30-40]%
JV	-	[5-10]%
Combined	**[50-60]%**	**[60-70]%**
VRT	[40-50]%	[40-50]%

Source: Form CO table 6.1.3

5.2.1.2. Alternative market definitions

(127) If the product market is unchanged but the geographic scope of the market was defined as a) Flanders and Brussels Capital Region together or b) as Telenet's footprint, the market shares indicated in Table 1 would not change materially. [121]

(128) If the product market was defined more narrowly and separate markets were defined based on the distinction by *exhibition window* (TVOD window, SVOD/first pay TV window, SVOD library window, FTA window and premiums sports window), the market shares would be very similar to those in Table 1.[122] This is because the party purchasing original AV content generally purchases the rights for all exhibition windows at the time of the production agreement.

(129) Likewise, market shares would be similar if separate markets were defined based on the distinction *between commissioned AV production and AV production for hire*, as purchasers are estimated to acquire these types of contents in similar proportions. [123] The only difference to Table 1 is that the JV will not be active in the market for the production of AV content for hire, i.e. it will not purchase such content.

(130) If the market was defined more narrowly and separate markets were defined based on the distinction between *scripted and non-scripted AV production,* the relevant market shares are indicated in Tables 2 and 3.

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[119] The supply side of AV content production is not affected horizontally. It is affected vertically as the Parties' individual or combined downstream share is in excess of 30%. As such, the Notifying Parties individual or combined market shares are only relevant on the downstream, demand side of the AV content production market.

[120] The estimated market shares do not take into account the AV content production spend of Proximus, a number of smaller Flemish/Dutch language broadcasters active in Belgium and international OTT players such as Netflix (that are obliged to invest in AV productions on the basis of the Flemish Media Decree) (Form CO, paragraph 295).

[121] Notifying Parties response to the Commission's Request for Information RFI 12, question 1.a). The shares would decrease somewhat as Telenet's footprint and the Brussels Capital Region would also include French language content purchases, which would dilute slightly the shares indicated.

[122] Notifying Parties response to the Commission's Request for Information RFI 12, question 1.a)

[123] Notifying Parties response to the Commission's Request for Information RFI 12, question 1.a)

Table 2 Market shares in the market for the acquisition of scripted AV content production in Flanders

Company	Market share, 2019
Telenet	[5-10]%
DGP Media	[40-50]%
Combined	**[40-50]%**
VRT	[50-60]%

Source: Notifying Parties response to the Commission's Request for Information RFI 12, question 1.a)

Table 3 Market shares in the market for the acquisition of non-scripted AV content production in Flanders

Company	Market share, 2019
Telenet	[20-30]%
DGP Media	[30-40]%
Combined	**[50-60]%**
VRT	[40-50]%

Source: Notifying Parties response to the Commission's Request for Information RFI 12, question 1.a)

(131) Exact shares are not available for separate markets by *content type* (i.e. separate markets for the production of film content, sport content and other content – demand side). However, given the concentrated nature of the market the combined share of the Notifying Parties are well in excess of 30% in Flanders.[124] Likewise combined market share of the Notifying Parties would be in excess of 30% for any combination of the these segmentations.[125]

(132) In the case of all the alternative product market definitions, the market shares would not change materially if the geographic market was defined as a) Flanders and Brussels Capital Region together or b) as Telenet's footprint.[126]

5.2.2. Licensing of broadcasting rights for pre-existing individual AV content (demand side)

5.2.2.1. Overall market in Flanders

(133) The Parties' and their main competitors' shares in the market for the acquisition of individual AV content in Flanders are summarised in Table 4 below. The Commission notes that the Parties have a significant presence in Belgium, with combined shares, by value, exceeding [50-60]%. The Parties submit that the JV will have a share of around [10-20]% in 2023.

124 Notifying Parties response to the Commission's Request for Information RFI 12, question 1.a)

125 Notifying Parties response to the Commission's Request for Information RFI 12, question 1.a)

126 Notifying Parties response to the Commission's Request for Information RFI 12, question 1.a). The shares would decrease somewhat as Telenet's footprint and the Brussels Capital Region would also include French language content purchases, which would dilute slightly the shares indicated.

Table 4 Market shares in the market for the licensing of broadcasting rights for pre-existing individual AV content in Flanders (demand side, by value)

Company	Overall market 2019	Overall market 2023
Telenet	[40-50]%	[20-30]%
DPG Media	[10-20]%	[10-20]%
JV	-	[10-20]%
Combined	**[50-60]%**	**[50-60]%**
VRT	[5-10]%	[5-10]%
Proximus	[10-20]%	[10-20]%
OTT international	[10-20]%	[20-30]%
Other Dutch-language channels	[0-5]%	[0-5]%

Source: Table 6.1.9 of the Form CO

5.2.2.2. Alternative market definitions

(134) If the product market is unchanged but the geographic scope of the market was defined as a) Flanders and Brussels Capital Region together or b) as Telenet's footprint, the market shares indicated in Table 1 would not change materially. [127]

(135) If the product market was defined more narrowly and separate markets were defined based on the distinction by *content type* (film, sport, other), the resulting market shares are indicated in Table 5. As indicated, market shares would exceed 30 % in all markets defined this way and would be particulary high in films and sports.

Table 5: Market shares in the market for the licensing of broadcasting rights for pre-existing individual AV content by content type (film, sport, others) in Flanders (demand side, by value) in 2019.

	Film	Sport	Other
Telenet	[30-40]%	[50-60]%	[20-30]%
DPG	[20-30]%	[5-10]%	[10-20]%
Combined	**[50-60]%**	**[60-70]%**	**[30-40]%**
VRT	[5-10]%	[10-20]%	[10-20]%
Proximus	[5-10]%	[20-30]%	[10-20]%
Netflix	[20-30]%	[0-5]%	[30-40]%
Amazon Prime	[0-5]%	[0-5]%	[0-5]%
Other Dutch language channels	[0-5]%	[0-5]%	[0-5]%
Total	100%	100%	100%

Source: Notifying Parties response to the Commission's Request for Information RFI 12, question 1.b)

(136) The market shares in Table 5 would not change materially if the geographic market was defined as a) Flanders and the Brussels Capital Region together or as b) Telenet's footprint, both of which largely correspond to the Dutch-speaking part of Belgium. The market shares under a geographic scope corresponding to the whole of Belgium are indicated in Table 6. As indicated by Table 6, the market for film licensing (demand side) and the market for sport licensing (demand side) would still be horizontally affected and the corresponding upstream licensing markets (supply side) would be vertically affected. The market for the licensing of broadcast rights for "other" content would cease to be affected horizontally and the corresponding upstream supply side would also not be affected.

[127] Notifying Parties response to the Commission's Request for Information RFI 12, question 1.b). The shares would decrease somewhat as Telenet's footprint and the Brussels Capital Region would also include French language content purchases, which would dilute slightly the shares indicated.

Table 6: Market shares in the market for the licensing of broadcasting rights for pre-existing individual AV content by content type (film, sport, others) in Belgium (demand side, by value) in 2019.

	Film	Sport	Other
Telenet	[20-30]%	[30-40]%	[10-20]%
DPG	[10-20]%	[0-5]%	[5-10]%
Combined	**[30-40]%**	**[40-50]%**	**[10-20]%**
VRT	[0-5]%	[5-10]%	[5-10]%
Proximus	[10-20]%	[30-40]%	[10-20]%
Netflix	[20-30]%	[0-5]%	[30-40]%
Amazon Prime	[0-5]%	[0-5]%	[0-5]%
Other Dutch language channels	[0-5]%	[0-5]%	[0-5]%
RTBF	[5-10]%	[0-5]%	[5-109%
RTL	[5-10]%	[0-5]%	[5-109%
AB Group	[0-5]%	[0-5]%	[0-5]%
VOO	[5-10]%	[10-20]%	[0-5]%
Orange	[0-5]%	[0-5]%	[0-5]%
Other French language channels	[0-5]%	[0-5]%	[0-5]%
Other OTT (Canal+)	[0-5]%	[0-5]%	[0-5]%
Total	100%	100%	100%

Source: Notifying Parties response to the Commission's Request for Information RFI 12, question 1.b)

(137) If the product market was defined more narrowly and separate markets were defined based on the distinction by *exhibition window* (TVOD window, SVOD/first pay TV window, SVOD library window, FTA window and premiums sports window), the resulting market shares are indicated in Table 7. As indicated in Section 5.1, under such definitions only the market for the licensing of broadcasting rights for AV content in the FTA window would be affected horizontally. However, also as indicated Section 5.1, on the supply side the TVOD, First Pay TV/SVOD, SVOD library, FTA and premium sports windows would all be vertically affected (customer foreclosure).

Table 7: Market shares in the market for the licensing of broadcasting rights for pre-existing individual AV content in different exhibition windows in Flanders (demand side, by value) in 2019.

	Telenet	DPG	Combined	VRT	Proximus	International OTT purchasers	Other Dutch purchasers
TVOD	[60-70]%	[0-5]%	[60-70]%	[0-5]%	[30-40]%	[0-5]%	[0-5]%
First Pay TV / SVOD	[30-40]%	[0-5]%	[30-40]%	[0-5]%	[10-20]%	[50-60]%	[0-5]%
SVOD library	[30-40]%	[0-5]%	[30-40]%	[0-5]%	[10-20]%	[50-60]%	[0-5]%
FTA	[20-30]%	[40-50]%	[70-80]%	[20-30]%	[0-5]%	[0-5]%	[5-10]%
Premium Sports	[60-70]%	[0-5]%	[60-70]%	[0-5]%	[30-40]%	[0-5]%	[0-5]%

Source: Notifying Parties response to the Commission's Request for Information RFI 12, question 1.b)

(138) The market shares in Table 7 would not change materially if the geographic market was defined as a) Flanders and the Brussels Capital Region together or as b) Telenet's footprint, both of which largely correspond to the Dutch-speaking part of Belgium. As indicated in Section 5.1. if the scope of the geographic market was Belgium, only the market for licensing AV content in the FTA window would be horizontally affected on the demand side and only the corresponding TVOD, FTA and premium sports licensing markets on the supply side would be vertically affected.

(139) If the product market was defined more narrowly and separate markets were defined based on the distinction between *scripted and non-scripted content*, the resulting market shares are indicated in Table 8.

Table 8 Market shares in the market for the licensing of broadcasting rights for pre-existing individual scripted and non-scripted AV content in Flanders (demand side, by value) in 2019.

	Scripted content	Non-scripted content
Telenet	[30-40]%	[40-50]%
DPG Media	[10-20]%	[5-10]%
Combined	**[40-50]%**	**[50-60]%**
VRT	[5-10]%	[10-20]%
Proximus	[10-20]%	[10-20]%
Netflix	[20-30]%	[5-10]%
Amazon Prime	[0-5]%	[0-5]%
Other Ducth language channels	[0-5]%	[0-5]%
Total	100%	100%

Source: Notifying Parties response to the Commission's Request for Information RFI 12, question 1.b)

(140) The market shares in Table 8 would not change materially if the geographic market was defined as a) Flanders and the Brussels Capital Region together or as b) Telenet's footprint, both of which largely correspond to the Dutch-speaking part of Belgium. The market shares under a geographic scope corresponding to the whole of Belgium are indicated in Table 9. As indicated in Section 5.1. under this geographic market definition, both of these markets would still be horizontally affected. However, under this geographic market definition only the upstream market for the licensing of broadcasting rights for pre-existing individual non-scripted AV content (supply side) would still be vertically affected (customer foreclosure).

Table 9 Market shares in the market for the licensing of broadcasting rights for pre-existing individual scripted and non-scripted AV content in Belgium (demand side, by value) in 2019.

	Scripted content	Non-scripted content
Telenet	[10-20]%	[20-30]%
DPG Media	[5-10]%	[5-10]%
Combined	**[20-30]%**	**[30-40]%**
VRT	[0-5]%	[5-10]%
Proximus	[10-20]%	[10-20]+[10-20]%
Netflix	[20-30]%	[5-10]+[5-10]%
Amazon Prime	[0-5]%	[0-5]%
Other Ducth language channels	[0-5]%	[0-5]%
RTBF	[5-10]%	[5-10]%
RTL	[5-10]%	[5-10]%
Ab Groupe	[0-5]%	[0-5]%
VOO	[5-10]%	[5-10]%
Orange	[0-5]%	[0-5]%
Other French language channels	[0-5]%	[0-5]%
Other OTT (Canal+)	[0-5]%	[0-5]%
Total	100%	100%

Source: Notifying Parties response to the Commission's Request for Information RFI 12, question 1.b)

(141) If the product market was defined more narrowly and separate markets were defined based on the distinction between *premium and non-premium content*, the resulting market shares are indicated in Table 10.

Table 10 Market shares in the market for the licensing of broadcasting rights for pre-existing individual premium and non-premium AV content in Flanders (demand side, by value) in 2019.

	Premium content	Non-premium content
Telenet	[50-60]%	[20-30]%
DPG Media	[0-5]%	[20-30]%
Combined	**[50-60]%**	**[40-50]%**
VRT	[0-5]%	[20-30]%
Proximus	[10-20]%	[10-20]%
Netflix	[20-30]%	[5-10]%
Amazon Prime	[0-5]%	[0-5]%
Other Ducth language channels	[0-5]%	[0-5]%
Total	100%	100%

Source: Notifying Parties response to the Commission's Request for Information RFI 12, question 1.b)

(142) The market shares in Table 10 would not change materially if the geographic market was defined as a) Flanders and the Brussels Capital Region together or as b) Telenet's footprint, both of which largely correspond to the Dutch-speaking part of Belgium. The market shares under a geographic scope corresponding to the whole of Belgium are indicated in Table 11. As indicated in Section 5.1, under this geographic market definition both of these markets would still be horizontally affected. However, under this geographic market definition only the upstream market for the licensing of broadcasting rights for pre-existing individual premium AV content (supply side) would still be vertically affected (customer foreclosure).

Table 11 Market shares in the market for the licensing of broadcasting rights for pre-existing individual premium and non-premium AV content in Belgium (demand side, by value) in 2019.

	Premium content	Non-premium content
Telenet	[30-40]%	[10-20]%
DPG Media	[0-5]%	[10-20]%
Combined	**[30-40]%**	**[20-30]%**
VRT	[0-5]%	[10-20]%
Proximus	[20-30]%	[10-20]%
Netflix	[20-30]%	[5-10]%
Amazon Prime	[0-5]%	[0-5]%
Other Ducth language channels	[0-5]%	[0-5]%
RTBF	[0-5]%	[10-20]%
RTL	[0-5]%	[10-20]%
Ab Groupe	[0-5]%	[0-5]%
VOO	[5-10]%	[5-10]%
Orange	[0-5]%	[0-5]%
Other French language channels	[0-5]%	[0-5]%
Other OTT (Canal+)	[0-5]%	[0-5]%
Total	100%	100%

Source: Notifying Parties response to the Commission's Request for Information RFI 12, question 1.b

5.2.3. *Wholesale supply of FTA/basic pay TV channels*

5.2.3.1. Overall market in Telenet's footprint

(143) The Parties' and their main competitors' shares for the wholesale supply of FTA/basic pay TV channels by value in Telenet's footprint are summarised in Table 12 below. The Commission notes that the Parties have a market strong position with combined shares of [30-40]%, by value. The only other significant competitor is the public broadcaster VRT.

Table 12 Market sheares in the market for the wholesale supply of TV channels (Telenet's footprint by value)

Company	Market share, 2019
Telenet	[5-10]%
DPG Media	[20-30]%
Combined	**[30-40]%**
VRT	[20-30]%
Others	[30-40]%
Total	100%

Notifying Parties response to the Commission's Request for Information RFI 12, question 1.c)

5.2.3.2. Alternative market definitions

(144) Table 13 summarises the relevant market shares if the product market is unchanged but the geographic scope of the market was defined differently. As shown by Table 13, the market shares would not change materially relative to Telenet's footprint if the geographic market is defined as a) Flanders or b) Flanders and Brussels Capital Region together and all. The combined shares would be significantly lower if the geographic market share was defined as c) Belgium.

Table 13 Market shares in the market for the wholesale supply of FTA/basic pay TV channels under different geographic market definitions by value (2019)

Company	Market share in Flanders	Market share in Flemish and Brussels Capital regions together	Market share Belgium
Telenet	[5-10]%	[5-10]%	[5-10]%
DPG Media	[20-30]%	[20-30]%	[10-20]%
Combined	**[30-40]%**	**[30-40]%**	**[20-30]%**
Others	[60-70]%	[60-70]%	[70-80]%
Total	100%	100%	100%

Source: Notifying Parties response to the Commission's Request for Information RFI 12, question 1.c)

(145) If the market was defined more narrowly and separate markets were defined based on *genre*, the market shares in the general entertainment genre (i.e. in the market for the wholesale supply of FTA/basic pay general entertainment TV channels) would not be materially different from those indicated in Table 12 (for Telenet's footprint) and Table 13 (for Flanders, the Flemish and Brussels Capital regions together and Belgium). This is because the Notifying Parties are either not present in other genres (news, sports or the residual "other" genres[128]) or have minimal viewership/presence (youth/kids genre).[129]

5.2.4. Retail supply of AV services

5.2.4.1. Overall market

(146) The Parties' and their main competitors' shares in the overall market for the retail supply of AV services in Telenet's footprint are included in Table 14 below. Based on the Parties' business plan, in 2023 the JV is expected to have a share of around [5-10]% by value, which is also indicated in Table 14.

[128] The category of "other" genre consists primarily of music channels, see Notifying Parties response to the Commission's Request for Information RFI 12, question 1.c)

[129] Notifying Parties response to the Commission's Request for Information RFI 12, question 1.c)

Table 14 Market shares in the market for the retail supply of AV services in Telenet's footprint by value

	Market share 2019	Market share 2023
Telenet	[50-60]%	[40-50]%
DPG Media	[0-5]%	[0-5]%
JV	-	[5-10]%
Combined	**[50-60]%**	**[50-60]%**
Proximus	[20-30]%	[10-20]%
Orange	[0-5]%	[0-5]%
Netflix	[10-20]%	[10-20]%
Amazon	[0-5]%	[0-5]%
Disney	[0-5]%	[0-5]%
Other	[5-10]%	[5-10]%

Source: Notifying Parties response to the Commission's Request for Information RFI 8

5.2.4.2. Alternative market definitions

(147) If the market was defined more narrowly and separate markets were defined based on FTA AV and pay AV services, the Parties would only be active in the market for the retail supply of pay AV services. Their market share on this market would not be materially different from those indicated in Table 14 as only the French language public broadcaster supplies AV services on an FTA basis[130] and its share in the Telenet's footprint (which largely corresponds to the Dutch speaking parts of Belgium) is necessarily modest.

(148) If the market for the retail supply of pay AV services was further segmented and separate markets were defined for *basic pay AV and premium pay AV services*, the resulting market shares for both markets are included in Table 15 below.

Table 15 - Market shares in the market for the retail supply of basic pay and premium pay AV services in Telenet's footprint (by value)

	Basic pay retail AV services 2019	**Premium pay retail AV services 2019**
Telenet	[70-80]%	[40-50]%
DPG Media (Stievie)	[0-5]%	-
Combined	**[70-80]%**	**[40-50]%**
Proximus	[20-30]%	[5-10]%
Orange	[0-5]%	[0-5]%
Pay Sat	[0-5]%	[0-5]%
Netflix	[0-5]%	[30-40]%
Other OTT (Apple TV, Amazon Prime)	[0-5]%	[5-10]%
Total	100%	100%

Source: Notifying Parties response to the Commission's Request for Information RFI 12, question 1.d)

(149) The Commission notes that currently DPG Media's presence in basic pay retail AV services (and indeed in any retail AV services) is limited to Stievie, an OTT platform with very limited viewership, which will be discontinued as of 1 September 2020.[131] Thus, the horizontal overlap results entirely from the JV, which is not indicated in Table 15 in the absence of a forecast taking these narrower markets as a basis. The Commission also notes that the market shares assume that Netflix's SVOD service is part of the premium pay retail AV services market, although this is not entirely clear on the basis of the market investigation as some respondents consider SVOD

[130] Notifying Parties response to the Commission's Request for Information RFI 12, question 1.d)
[131] Form CO, paragraph 372.

services as a substitute for even basic pay retail AV services.[132] The same applies to the JV's SVOD service.

(150) If the market for the retail supply of pay AV services was further segmented and separate markets were defined for *linear and non-linear (e.g.SVOD)* retail AV services, the market shares in the market for the retail supply of *linear* AV services would be similar to the shares in basic pay retail AV services in Table 15.[133] The Commission notes again that this assumes that non-linear SVOD services do not compete with basic pay retail AV services, which is not certain. The market for the retail supply of non-linear AV services in Telenet's footprint is indicated in Table 16 below.

Table 16 - Market shares in the market for the retail supply of non-linear AV services in Telenet's footprint (by value)

Company	Market share, 2019
Telenet	[30-40]%
DPG Media (VTMGO)	[0-5]%
Combined	**[30-40]%**
Netflix	[50-60]%
Amazon	[5-10]%
Apple TV+	[0-5]%
VRTNU	[0-5]%
Total	100%

Source: Notifying Parties response to the Commission's Request for Information RFI 12, question 1.d)

(151) As regards Table 16, the Commission notes that the JV will add to the Parties' market shares by 2023, even though this is not indicated in the table due to the absence of a forecast taking this hypothetical market as a basis. However, given that the size of this market is much smaller than the overall retail AV services market (in Telenet's footprint), the increment brought about by the JV is will be significantly more than [5-10]% by 2023 if the business plan is realized.

5.2.5. Retail supply of fixed internet services

5.2.5.1. Overall market

(152) The Parties' and their main competitors' shares in the overall market for the retail supply of fixed internat services in Belgium is indicated in Table 17 below. These are volume shares (i.e. share of subscribers) but the Parties estimate that the value based market shares (i.e. market shares based on revenues) for the retail supply of fixed internet access in Belgium are similar to the market shares based on subscribers[134]

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132 See Section 4.6.

133 Notifying Parties response to the Commission's Request for Information RFI 12, question 1.d)

134 Form CO, paragraph 441.

Table 17 Market shares in the market for the retail supply of fixed internet access services in Belgium by volume

Company	Market share, 2019
Telenet	[30-40]%
Proximus	[40-50]%
Orange	[5-10]%
Voo	[10-20]%
Other	[0-5]%
Total	100%

Source: Form CO Table 6.1.22

5.2.5.2. Alternative market definitions

(153) As discussed in Section 4.7., in the case of retail supply of fixed internet services, potentially separate markets could be distinguished based on product type (narrowband, broadband, dedicated line), distribution technology (xDSL, cable or fibre) and customer types (residential, small businesses, large businesses, public authorities).

(154) Of these potential narrower markets, the Notifying Parties have only been able to submit market shares for the broadband segment (product type), the cable segment (distribution technology), and the residential and business customer segments (customer type). These market shares are indicated in Tables 18 and 19 below.

Table 18 Market shares in the market for the retail supply of broadband internet access services in Belgium and in the market for the retail supply of fixed internet via cable in Belgium (by volume)

Company	Broadband 2019 (Belgium)	Cable 2019 (Belgium)
Telenet	**[30-40]%**	**[70-80]%**
Proximus	[40-50]%	[0-5]%
Orange	[5-10]%	[10-20]%
VOO	[10-20]%	[10-20]%
Other	[0-5]%	[0-5]%

Source: Form CO, table 6.1.23

Table 19 Market shares in the market for the retail supply of fixed internet access services to residential customers and business customers in Belgium (2019 by volume)

Company	Residential customers 2019 (Belgium)	Business customers 2019 (Belgium)
Telenet	**[30-40]%**	**[50-60]%**
Proximus	[40-50]%	[30-40]%
Orange	[5-10]%	[5-10]%
VOO	[0-5]%	[0-5]%
Other	[10-20]%	[10-20]%

Source: Form CO, tables 6.1.28 and 6.1.29

5.2.6. Retail supply of mobile telecommunication services

(155) The Parties' and their main competitors' shares in the overall market for the retail supply of mobile telecommunications services in Belgium is indicated in Table 20 below.

Table 20 – Market shares in the market for the retail supply of mobile telecommunication services in Belgium (by volume and by value)

Company	Market share 2019 – Volume	Market share 2019 – Value
Telenet (including wholesale)[135]	[20-30]%	[20-30]%
DPG Media	[0-5]%	[0-5]%
Combined	**[30-40]%**	**[20-30]%**
Proximus	[30-40]%	[40-50]%
Orange	[20-30]%	[20-30]%
VOO	[0-5]%	[0-5]%

Source: Form CO, tables 6.1.34

5.2.7. Retail supply of multiple play bundles

(156) Table 21 below contains the market shares, in Belgium, in the potential markets for i) all multiplay bundles ii) only fix bundles (i.e. double-play and triple play bundles together) and iii) fixed-mobile convergence bundles (quad-play bundles).

Table 21 – Market shares in the potential markets for different multiplay bundles in Belgium (by volume, 2019)

Company	All bundles Market share 2019	Fix bundles only Market share 2019	4-play (3P+M) bundles Market share (2019
Telenet	[30-40]%	[30-40]%	[40-50]%
Proximus	[40-50]%	[40-50]%	[50-60]%
Orange	[5-10]%	[0-5]%	[0-5]%
VOO	[10-20]%	[10-20]%	[5-10]%

Form CO, figures 6.1.e and 6.1 f, Notifying Parties response to the Commission’s Request for Information RFI 12, question 1.e)

5.2.8. Supply of advertising (TV, radio and online advertising markets)

5.2.8.1. TV advertising

Overall market

(157) The Parties’ and their main competitors’ shares in the overall market for the sale of TV advertising space in Flanders is indicated in Table 22 below. This overall market includes the sale of advertsing space from AVOD services.

Table 22 Market share for the sale of TV advertising space in Flanders, including AVOD (2019)

Company	Market share
Telenet	[20-30]%
DPG Media	[60-70]%
Combined	**[90-100]%**
VAR	[5-10]%
Transfer	[0-5]%

Source: Notifying Parties response to the Commission’s Request for Information RFI 12, question 1 f)

Alternative market definitions

(158) If the product market is unchanged but but the geographic scope of the market was defined as a) Flanders and Brussels Capital Region together, the market shares

[135] “Other Telenet Wholesale” refers to the Mobile Virtual Network Operators (MVNOs), and more precisely LycaMobile, Destiny (Fuzer), Vectone, Effortel, United Telecom, Tellink and IP Nexia.

indicated in Table 22 would not change materially as in both cases the market would roughly correspond to the Dutch linguistic area and advertising on Dutch language TV channels.

(159) If the product market is defined more narrowly such that the sale of advertising space on AVOD services is excluded, the resulting market shares are included in Table 23. As shown by Table 23, the market shares do not change materially relative to the overall market.

Table 23 Market share for the sale of TV advertising space in Flanders, excluding AVOD (2019)

Company	Market share
Telenet	[20-30]%
DPG Media	[60-70]%
Combined	**[90-100]%**
VAR	[5-10]%
Transfer	[0-5]%

Source: Notifying Parties response to the Commission's Request for Information RFI 12, question 1 f)

(160) The product market could also be further segmented on the basis of FTA or pay TV channels, i.e. separate markets could be defined for the sale of TV advertising space on FTA channels and for the sale of advertising space on pay TV channels. If this segmentation is applied, the market for the sale of advertising space on pay TV channels is not significant as the content is financed mainly by subscription/license fees.[136] For example the Parties submitted that gross spending on advertsing space on pay TV channels amount to less than [Parties' advertising spend] compared to the total spend on FTA advertising channels.[137] By contrast FTA channels are mainly financed through advertising and thus advertisement spent on these channels is much greater. It follows that the market shares on the market for the sale of TV advertising space on FTA channels is not materially different from the shares included in Table 23 (excuding AVOD) and in Table 22 (including AVOD).

(161) The market shares on the alternative product markets would not change materially if the geographic scope of the market was Flanders and the Brussels Capital Region together[138] as in both cases the market would roughly correspond to the Dutch linguistic area and advertising on Dutch language TV channels.

(162) Thus under all possible market definitions the Parties' combined market share is very high.

5.2.8.2. Radio advertising

(163) Table 24 below presents the market shares on the market for the sale of radio advertising in Flanders.

[136] Notifying Parties response to the Commission's Request for Information RFI 12, question 1 f)
[137] Notifying Parties response to the Commission's Request for Information RFI 12, question 1 f)
[138] Notifying Parties response to the Commission's Request for Information RFI 12, question 1 f)

Table 24 Market share for the sale of radio advertising space in Flanders

Company	Market share
DPG Media	[40-50]%
VAR	[50-60]%
IP Belgium	[5-10]%

Source: Notifying Parties response to the Commission's Request for Information RFI 12, question 1 f)

(164) If the product market is unchanged but but the geographic scope of the market was defined as a) Flanders and Brussels Capital Region together, the market shares indicated in Table 24 would not change materially as in both cases the market would roughly correspond to the Dutch linguistic area in Belgum and advertising on Dutch language radio channels.

5.2.8.3. Online advertising

(165) Table 25 below presents the market shares on the market for the sale of online advertising in Flanders.

Table 25 Market shares in the market for online advertising in Flanders

Company	Market share for the sale of advertising space on Dutch language websites in Belgium (2019)
DPG Media	[5-10]%
Telenet	[0-5]%
Combined	**[10-20]%**
Google	[40-50]%
Facebook	[10-20]%
Other	[20-30]%

Source Form CO, tables 6.1.39-40.

(166) If the product market is unchanged but the geographic scope of the market was defined as a) Flanders and Brussels Capital Region together, the market shares indicated in Table 25 would not change materially as in both cases the market would roughly correspond to the Dutch linguistic area in Belgium and advertising on Dutch language websites.

5.3. Horizontal assessment

5.3.1. Introduction

(167) Article 2 of the Merger Regulation requires the Commission to examine whether notified concentrations are compatible with the internal market, by assessing whether they would significantly impede effective competition in the internal market or in a substantial part of it, in particular through the creation or strengthening of a dominant position.

(168) The Commission Guidelines on the assessment of horizontal mergers under the Merger Regulation (the "Horizontal Merger Guidelines") distinguish between two main ways in which mergers between actual or potential competitors on the same relevant market may significantly impede effective competition, namely non-coordinated effects and coordinated effects.

(169) Non-coordinated effects may significantly impede effective competition by eliminating the competitive constraint imposed by each merging party on the other,

as a result of which the Integrated Company would have increased market power without resorting to coordinated behaviour. The Horizontal Merger Guidelines list a number of factors[139] which may influence whether or not significant non-coordinated effects are likely to result from a merger, such as the large market shares of the merging firms, the fact that the merging firms are close competitors, the limited possibilities for customers to switch suppliers, or the fact that the merger would eliminate an important competitive force. Not all of these factors need to be present for significant non-coordinated effects to be likely. The list of factors, any one of which is not necessarily decisive, is also not an exhaustive list.

5.3.2. *Horizontal non-coordinated effects in the production of AV content (demand side)*[140]

(170) The Notifying Parties' activities and those of the JV significantly overlap on the demand side of the market. The Parties have a 2019 combined market share by value of [50-60]% (Liberty Global: [20-30]%; DPG Media: [30-40]%), and expect to have a in 2023 combined market share by value of [60-70]% (Liberty Global: [10-20]%; DPG Media: [30-40]%; JV: [5-10]%), in the acquisition of Dutch-language AV content production in Belgium.

5.3.2.1. Notifying Parties' view

(171) The Notifying Parties submit that the Transaction does not raise horizontal competition concerns on the basis of any plausible definition of the relevant product and geographic market for the reasons set out below.[141]

(172) First, the Notifying Parties submit that the JV will have modest activities on the demand side of the AV content production market. Its market share would amount to approximately [5-10]% in 2023. Therefore, the scope of the agreements put in place regarding collaboration between the JV and each of its parents regarding AV content production would also be necessarily limited. In addition, [JV's commercial strategy].

(173) Second, the Notifying Parties claim that Telenet and DPG Media's activities on the AV content production market will continue to take place outside of the JV post-Transaction, and that they will continue to be active as independent purchasers of AV content production services.

(174) Third, the Notifying Parties submit that there will continue to be strong buyers on the demand side of the market, such as VRT, Proximus and international providers like Netflix.

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[139] Horizontal Merger Guidelines, paras 24 et seqq.

[140] With regard to horizontal coordinated effects, the Notifying Parties claim that the Transaction will not give rise to any concerns because of the market conditions on the demand side of the market for the production of AV content, namely (i) heterogeneous services, (ii) confidential and bilateral negotiations of AV production agreements, (iii) entry of new buyers, (iv) presence of strong competing buyers, and (v) countervailing bargaining power of some AV production companies which are part of larger international AV production groups (Form CO, paragraph 600). The Commission considers that coordinated effects on this market can be excluded for similar arguments as why cooperative effects are excluded in this market in section 5.5.

[141] Form CO, paragraphs 594-598.

5.3.2.2. Commission's assessment

(175) The Commission considers that the Transaction does not give rise to serious doubts as to its compatibility with the internal market as a result of horizontal effects on the market for the production of AV content (demand side), or any possible narrower affected markets, regardless of precise market definition, for the following reasons.

(176) First, the JV will be a new additional purchaser of AV content production. In 2023, it will only represent [5-10]% of the demand (by value) in the market for the production of Dutch-language AV content in Belgium. Therefore, the merger specific change brought about by the Transaction will be limited.[142]

(177) Second, the results of the market investigation indicated that the JV would have a positive impact on the market for the production of AV content by increasing the demand for AV content.[143] One content provider contended that "*The whole sector, especially the producers,* […] *are welcoming this JV.* […] *Non-linear platforms are growing. International players take over big chunks of the eyeball-market. Something has to be done locally. The only way to stand up locally is by uniting forces. That is what Telenet and DPG are doing.*" Another one claimed that "*If the JV operates completely independently, there will be no increase in bargaining power. The buyer would provide us with an extra opportunity and the sum of windows (JV + on air, in negotiation with producer) could even enable more expensive (mainly scripted) content.*"Another respondent indicated that it hoped the Transaction would create more capacity to purchase AV content and a competitive platform that will attract the viewers.

(178) Third, both Telenet and DPG Media will retain activities on the demand side of the market for AV content production, and will continue to be active as independent purchasers of AV content production services post-Transaction (except for the pay TV and SVOD windows – see paragraph 180 below). Consequently, the Parties' (and the JV's) market power cannot be simply aggregated.

(179) Fourth, the Commission notes that strong alternative purchasers will remain active on the demand side of the market. Indeed, VRT currently represents [40-50]% of the demand (by value) in the market for the production of AV content in Flanders. VRT's market share and thus its purchasing power remains strong under any of the alternative market definitions discussed in Section 5.1 and Section 5.2.1. In addition, the market shares provided in Section 5.2.1 do not take into account the AV content production spend of Proximus, a number of smaller Flemish/Dutch language broadcasters active in Belgium and international OTT players such as Netflix (that are obliged to invest in AV productions on the basis of the Flemish Media Decree).[144]

(180) The Commission notes that most respondents to the market investigation indicated that post-Transaction, the bargaining power of the Parties on the demand side of the market for the production of AV content will significantly change vis-à-vis the

[142] As the JV will purchase scripted content, the increment would be larger if the market was defined as the market for the acquisition of scripted AV content production in Flanders. However, even in that case the market share increase is limited in size, gradual and only expected and not guaranteed.

[143] Responses to questionnaire Q1 to content providers, questions 17.1 and 29.

[144] Form CO, paragraph 295.

supply side of that same market.[145] In this respect, the Commission considers it important that the JV and the Notifiying Parties will be active as independent purchasers of AV content production services post-Transaction.[146] The only situation where there may be a joint acquisition of AV content is in the situation where the JV will acquire both pay TV and SVOD rights and sublicense, at arm's length, the pay TV rights to Telenet.[147] Historically these two exhibition windows have been offered together. However, to the extent that this joint acquisition of rights could potentially lead to increased bargaining power vis-à-vis content providers, the content providers could debundle the two exhibition windows to mitigate any potential increased bargaining power of the Parties.[148]

(181) In light of the above, the Commission concludes that the Transaction does not give rise to serious doubts as to its compatibility with the internal market as a result of horizontal effects on the market for the production of AV content in Flanders (demand side) or on any other alternative product or geographic market discussed in relation to AV content production in Section 5.1. and Section 5.2.1.

5.3.3. Horizontal non-coordinated effects in the market for the licensing of broadcasting rights of pre-existing individual AV content (demand side)[149]

(182) The Notifying Parties' activities and those of the JV overlap on the demand side of the market. The Parties have a 2019 combined market share by value of [50-60]% (Liberty Global: [40-50]%; DPG Media: [10-20]%), and expect to have a in 2023 combined market share by value of [50-60]% (Liberty Global: [20-30]%; DPG Media: [10-20]%; JV: [10-20]%), in the acquisition of broadcasting rights of pre-existing individual AV content for a Dutch-language audience in Belgium.

5.3.3.1. Notifying Parties' view

(183) The Notifying Parties submit that the Transaction does not raise horizontal competition concerns on the basis of any plausible definition of the relevant product and geographic market for the reasons set out below.[150]

(184) First, the Notifying Parties claim that Telenet's market share of around [40-50]% on the demand side is for more than [Parties' sports content spend] determined by its spend on the acquisition of sports content. The JV will not offer any sports content.

[145] Responses to questionnaires Q1 to content providers, question 17; and Q2 to AV market participants, questions 40 and 40.1.

[146] Cooperative effects are assessed in Section 5.5.

[147] Form CO, paragraph 610.

[148] Normally, content providers may also be interested in joint licensing. However, under the assumption that the buyers' bargaining power increases because of joint purchasing, debundling would help counter such pressure.

[149] With regard to horizontal coordinated effects, the Notifying Parties claim that the Transaction will not give rise to any concerns because of the market conditions on the demand side of the market for the licensing of individual AV content, namely (i) heterogeneous products, (ii) confidential and bilateral negotiations of AV content licenses, (iii) entry of new buyers, (iv) presence of strong competing buyers, and (v) strong bargaining power of licensors (in particular major Hollywood studios).(Form CO, paragraph 616). The Commission considers that coordinated effects on this market can be excluded for similar arguments as why cooperative effects are excluded in this market in section 5.5.

[150] Form CO, paragraphs 614-615.

Therefore, the Transaction will not change anything vis-à-vis providers of sports content.

(185) Second, the Notifying Parties submit that (i) several competitors (such as VRT and Proximus) will continue to be strong buyers of individual AV content in Belgium, and (ii) since 2015, additional buyers of individual content have entered or expanded their activities in the market, including Netflix and Amazon, which negotiate multi-country basis, and regularly outbid local players such as Telenet for the acquisition of rights in film and series.

(186) Third, the Notifying Parties claim that the licensors of AV content will continue to have strong bargaining power as far as premium content is concerned. For instance, the Belgian (let alone the Flemish) market would not have any real significance for the major Hollywood studios, while retail suppliers of AV services would be very keen on securing attractive content such as the movies and series offered by the Hollywood majors.

(187) Fourth, the Notifying Parties submit that the Transaction will not lead to increased bargaining power of the Parties or the JV on the market, given that (i) they will continue to be active as separate and independent purchasers of individual AV content post-Transaction, and the Parties will not overlap in the exhibition windows in which the JV will be acquiring individual AV content (i.e. the SVOD and pay TV windows); (ii) while rights in pay TV and SVOD windows are generally negotiated together, any concerns regarding the bundling of negotiations for these rights are not merger-specific since Telenet already bundles its purchases in this respect and DPG Media is not active in these windows; and (iii) licenses for the FTA TV window and the pay TV/SVOD windows are generally negotiated separately, and rights in the FTA TV window will be acquired by the parents whereas rights in the SVOD and pay TV windows will be acquired by the JV.

5.3.3.2. Commission's assessment

(188) The Commission considers that the Transaction does not give rise to serious doubts as to its compatibility with the internal market as a result of horizontal effects on the market for the licensing of broadcasting rights for pre-existing individual AV content (demand side), or on any of the possible alternative affected markets discussed in Sections 5.1 and 5.2.2., for the following reasons.

(189) First, the JV will be a new licensee of individual AV content. In 2023 it will only represent [10-20]% of the demand (by value) in the market for the licensing of Dutch-language AV content in Belgium. Therefore, the merger specific increment brought about by the Transaction will be limited.[151]

(190) Second, both Telenet and DPG Media will retain activities on the demand side of the market for the licensing of individual AV content, and will continue to be active as

[151] As the JV will purchase mainly scripted content, film or content in the SVOD window, if the market was defined more narrowly along these lines (i.e. market for the licensing of broadcasting rights for scripted AV content (demand side); market for the licensing of broadcasting rights for film content (demand side); market for the licensing of broadcasting rights for content in the SVOD window (demand side)) the increment would be larger. However, even in that case the market share increase is limited in size, gradual and only expected and not guaranteed. In any event the parents and the JV will remain independent purchasers. (see paragraph 191)

independent licensees of individual AV content post-Transaction.[152] The only situation where there may be a joint licensing of AV content is in the situation where the JV will acquire both pay TV and SVOD rights and sublicense, at arm's length, the pay TV rights to Telenet.[153] Historically these two exhibition windows have been offered together. However, to the extent that this joint acquisition of rights could potentially lead to increased bargaining power vis-à-vis content providers, the content providers could debundle the two exhibition windows to mitigate any potential increased bargaining power of the Parties.[154]

(191) Third, the Commission notes that strong alternative licensees will remain active on the demand side of the market. Indeed, Proximus and the international OTT players respectively represent [10-20]% and [10-20]% of the demand (by value) in the market for the licensing of broadcasting rights for individual pre-exiting content in Flanders. The international OTT players are expected to represent an increasing share of the demand in the coming years ([20-30]% in 2023). These players will be strong purchasers regardless of which of the alternative market definition discussed in Sections 5.1 and 5.2.2 is used.

(192) In light of the above considerations, the Commission considers that the Transaction does not give rise to serious doubts as to its compatibility with the internal market as a result of horizontal effects on the market for the licensing of individual AV content (demand side), or any possible narrower affected markets, regardless of its precise geographic scope.

5.3.4. Horizontal non-coordinated effects in the retail supply of AV services[155]

The Notifying Parties and the JV's activities overlap in the overall market for the retail supply of AV services (including SVOD services) in Telenet's footprint and in a number of more narrowly defined product markets listed in Section 5.1. The geographic scope of all of these narrower product markets is also Telenet's footprint. On the overall retail AV services market, the Parties have a 2019 combined market share by value of [50-60]% (Liberty Global: [50-60]%; DPG Media: [0-5]%) and expect to have a combined market share of [50-60]% by 2023 (Liberty Global: [40-50]%, JV [5-10]% DPG Media [0-5]%). When considering market shares by volume, the Parties have a 2019 combined market share of [40-50]% (Liberty Global: [40-50]%; DPG Media: [0-5]%), and expect to have in 2023 a combined market share of [30-40]% (Liberty Global: [20-30]%; DPG Media: [0-5]%; JV: [10-20]%), in the retail supply of AV services in Telenet's footprint.[156]

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152 Cooperative effects are assessed in Section 5.5.

153 Form CO, paragraph 610.

154 Normally, content providers may also be interested in joint licensing. However, under the assumption that the buyers' bargaining power increases because of joint purchasing, debundling would help counter such pressure.

155 The Notifying Parties do not provide any specific views relating to horizontal coordinated effects in the retail supply of AV services. The Commission considers that that coordinated effects on this market can be excluded for similar arguments as why cooperative effects are excluded in this market in section 5.5

156 Excluding AVOD services but including SVOD services. The Commission notes that the Notifying Parties' and the JV's activities do not overlap if SVOD services were excluded, as only Telenet is active in that market. However, based on Section 4.6. both AVOD and SVOD services are part of the overall retail AV services market.

5.3.4.1. Notifying Parties' view

(193) The Notifying Parties submit that the Transaction does not raise horizontal competition concerns on the basis of any plausible definition of the relevant product and geographic market for the reasons set out below.[157]

(194) First, the Notifying Parties submit that Telenet and DPG Media are not actual competitors in the market for the retail supply of AV services because DPG Media is today not active in the market, but that DPG Media could be regarded as a potential competitor in respect of the retail provision of SVOD services since it has contemplated the launch of its own SVOD service.

(195) Second, the merger with a potential competitor would not have any significant anti-competitive effects, given that (i) in case of a standalone market entry, it would take DPG Media much longer to acquire the necessary scope and scale to become an effective competitive constraint, and (ii) there will be a sufficient number of actual or potential competitors, including Netflix, Amazon Prime, Apple+, Disney+, HBO Max, with far deeper pockets who will exercise significant competitive pressure on the JV post-Transaction.

5.3.4.2. Commission's assessment

(196) The Commission considers that the Transaction does not give rise to serious doubts as to its compatibility with the internal market as a result of horizontal effects on the market for the retail supply of AV services in Telenet's footprint, or any possible narrower affected markets, for the following reasons.

(197) First, the JV will be a new retail supplier of AV services. In 2023 it will only have a market share of [5-10]% (by value) in the overall market for the retail supply of AV services in Telenet's footprint. Therefore, the merger specific increment of the overlap brought about by the Transaction will be limited.[158]

(198) Second, both Telenet and DPG Media will retain activities in the overall market for the supply of AV services, but DPG Media's activities will remain extremely limited. Indeed, as it will discontinue its linear FTA/basic pay OTT service "Stievie" as of 1 September 2020, DPG Media will only be active through its AVOD offer VTMGO.

(199) Third, the Commission notes that strong players will remain active in the market for the supply of AV services. Indeed, Proximus and international OTT players (i.e., Netflix and Amazon) have respective market shares of [20-30]% and [10-20]% (by value) in the overall market for the retail supply of AV services in Telenet's footprint. The latter are expected to represent an increasing share of the supply in the coming years ([20-30]% in 2023). In addition, Disney has announced that it will

[157] Form CO, paragraphs 630-635 .

[158] As the JV's service will be non-linear, if the market is defined as the market for the retail supply of non-linear AV services, the increment will be higher. Likewise if the market is defined as the market for the retail supply of premium pay or basic pay AV services, the increment will be higher depending on whether SVOD service is a substitute of premium pay or basic pay retail AV services. However, even in that case the market share increase is limited in size, gradual and only expected and not guaranteed.

launch its SVOD service "Disney+" in Belgium on 15 September 2020.[159] These players are strong retail AV services suppliers under any of the alternative market definitions discussed in Section 5.1. and Section 5.2.4. In addition, their market shares on some of these narrower markets (non-linear retail AV services, or premium pay or basic pay retail services depending on whether SVOD is a substitute of premium pay or basic pay retail AV services) is much higher than [20-30]% or [10-20]%.

(200) In light of the above consideration, the Commission considers that the Transaction does not give rise to serious doubts as to its compatibility with the internal market as a result of horizontal effects on the market for the retail supply of AV services in Telenet's footprint, or any possible narrower affected markets.

5.4. Non-horizontal assessment

5.4.1. Introduction

(201) A merger between companies which operate at different levels of the supply chain may significantly impede effective competition if such merger gives rise to foreclosure.[160] Foreclosure occurs where actual or potential competitors' access to supplies or markets is hampered or eliminated as a result of the merger, thereby reducing those companies' ability and/or incentive to compete.[161] Such foreclosure may discourage entry or expansion of competitors or encourage their exit.[162]

(202) The Non-Horizontal Merger Guidelines distinguishes between two forms of vertical foreclosure. Input foreclosure occurs where the merger is likely to raise the costs of downstream competitors by restricting their access to an important input. Customer foreclosure occurs where the merger is likely to foreclose upstream competitors by restricting their access to a sufficient customer base.[163]

(203) In addition, conglomerate mergers are mergers between firms that are in a relationship which is neither purely horizontal (as competitors in the same relevant market) nor vertical (as supplier and customer). In practice, the focus is on mergers between companies that are active in closely related markets (e.g. mergers involving suppliers of complementary products or of products which belong to a range of products that is generally purchased by the same set of customers for the same end use).[164]

5.4.1.1. Input foreclosure

(204) Pursuant to the Non-Horizontal Merger Guidelines, input foreclosure arises where, post-merger, the new entity would be likely to restrict access to the products or services that it would have otherwise supplied absent the merger, thereby raising its

159 See Disney's website : https://preview.disneyplus.com/lu?lang=fr-lu&cid=DTCI-Synergy-DDN-Site-Awareness-Announce-BE-DisneyPlus-DisneyPlus-FR-NavLink-fr.disney.be_Announcement_navbar-NA
160 Non-Horizontal Merger Guidelines, paragraphs 17-18.
161 Non-Horizontal Merger Guidelines, paragraph 18.
162 Non-Horizontal Merger Guidelines, paragraph 29.
163 Non-Horizontal Merger Guidelines, paragraph 30.
164 Non-Horizontal Merger Guidelines, paragraph 91.

downstream rivals' costs by making it harder for them to obtain supplies of the input under similar prices and conditions as absent the merger.[165]

(205) For input foreclosure to be a concern, the vertically integrated firm should have a significant degree of market power in the upstream market. Only when the merged firm has such a significant degree of market power, can it be expected that it will significantly influence the conditions of competition in the upstream market and thus, possibly, the prices and supply conditions in the downstream market.[166]

(206) In assessing the likelihood of an anticompetitive input foreclosure scenario, the Commission examines, first, whether the merged entity would have, post-merger, the ability to substantially foreclose access to inputs, second, whether it would have the incentive to do so, and third, whether a foreclosure strategy would have a significant detrimental effect on competition downstream.[167]

5.4.1.2. Customer foreclosure

(207) Pursuant to the Non-Horizontal Merger Guidelines, customer foreclosure may occur when a supplier integrates with an important customer in the downstream market and because of this downstream presence, the merged entity may foreclose access to a sufficient customer base to its actual or potential rivals in the upstream market (the input market) and reduce their ability or incentive to compete, which in turn, may raise downstream rivals' costs by making it harder for them to obtain supplies of the input under similar prices and conditions as absent the merger. This may allow the merged entity profitably to establish higher prices on the downstream market.[168]

(208) For customer foreclosure to be a concern, a vertical merger must involve a company which is an important customer with a significant degree of market power in the downstream market. If, on the contrary, there is a sufficiently large customer base, at present or in the future, that is likely to turn to independent suppliers, the Commission is unlikely to raise competition concerns on that ground.[169]

(209) In assessing the likelihood of an anticompetitive customer foreclosure scenario, the Commission examines, first, whether the merged entity would have the ability to foreclose access to downstream markets by reducing its purchases from its upstream rivals, second, whether it would have the incentive to reduce its purchases upstream, and third, whether a foreclosure strategy would have a significant detrimental effect on consumers in the downstream market.[170]

5.4.1.3. Conglomerate effects

(210) According to the Non-Horizontal Merger Guidelines, in most circumstances, conglomerate mergers do not lead to competition problems.[171]

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[165] Non-Horizontal Merger Guidelines, paragraph 31.
[166] Non-Horizontal Merger Guidelines, paragraph 35.
[167] Non-Horizontal Merger Guidelines, paragraph 32.
[168] Non-Horizontal Merger Guidelines, paragraph 58.
[169] Non-Horizontal Merger Guidelines, paragraph 61.
[170] Non-Horizontal Merger Guidelines, paragraph 59.
[171] Non-Horizontal Merger Guidelines, paragraph 92.

(211) However, foreclosure effects may arise when the combination of products in related markets may confer on the merged entity the ability and incentive to leverage a strong market position from one market to another closely related market by means of tying or bundling or other exclusionary practices. The Non-Horizontal Merger Guidelines distinguish between bundling, which usually refers to the way products are offered and priced by the merged entity[172] and tying, usually referring to situations where customers that purchase one good (the tying good) are required to also purchase another good from the producer (the tied good).

(212) Tying and bundling as such are common practices that often have no anticompetitive consequences. Nevertheless, in certain circumstances, these practices may lead to a reduction in actual or potential rivals' ability or incentive to compete. Foreclosure may also take more subtle forms, such as the degradation of the quality of the standalone product.[173] This may reduce the competitive pressure on the merged entity allowing it to increase prices.[174]

(213) In assessing the likelihood of such a scenario, the Commission examines, first, whether the merged firm would have the ability to foreclose its rivals,[175] second, whether it would have the economic incentive to do so[176] and, third, whether a foreclosure strategy would have a significant detrimental effect on competition, thus causing harm to consumers.[177] In practice, these factors are often examined together as they are closely intertwined.

(214) In order to be able to foreclose competitors, the merged entity must have a significant degree of market power, which does not necessarily amount to dominance, in one of the markets concerned. The effects of bundling or tying can only be expected to be substantial when at least one of the merging parties' products is viewed by many customers as particularly important and there are few relevant alternatives for that product.[178] Further, for foreclosure to be a potential concern, it must be the case that there is a large common pool of customers, which is more likely to be the case when the products are complementary.[179] Finally, bundling is less likely to lead to foreclosure if rival firms are able to deploy effective and timely counter-strategies, such as single-product companies combining their offers.[180]

(215) The incentive to foreclose rivals through bundling or tying depends on the degree to which this strategy is profitable.[181] Bundling and tying may entail losses or foregone revenues for the merged entity.[182] However, they may also allow the merged entity

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172 Within bundling practices, the distinction is also made between pure bundling and mixed bundling. In the case of pure bundling the products are only sold jointly in fixed proportions. With mixed bundling the products are also available separately, but the sum of the stand-alone prices is higher than the bundled price.
173 Non-Horizontal Merger Guidelines, paragraph 33.
174 Non-Horizontal Merger Guidelines, paragraph 93.
175 Non-Horizontal Merger Guidelines, paragraphs 95 to 104.
176 Non-Horizontal Merger Guidelines, paragraphs 105 to 110.
177 Non-Horizontal Merger Guidelines, paragraphs 111 to 118.
178 Non-Horizontal Merger Guidelines, paragraph 99.
179 Non-Horizontal Merger Guidelines, paragraph 100.
180 Non-Horizontal Merger Guidelines, paragraph 103.
181 Non-Horizontal Merger Guidelines, paragraph 105.
182 Non-Horizontal Merger Guidelines, paragraph 106.

to increase profits by gaining market power in the tied goods market, protecting market power in the tying good market, or a combination of the two.[183]

(216) It is only when a sufficiently large fraction of market output is affected by foreclosure resulting from the concentration that the concentration may significantly impede effective competition. If there remain effective single-product players in either market, competition is unlikely to deteriorate following a conglomerate concentration.[184] The effect on competition needs to be assessed in light of countervailing factors such as the presence of countervailing buyer power or the likelihood that entry would maintain effective competition in the upstream or downstream markets.[185]

5.4.2. Possible foreclosure of competing AV content production companies with respect to the acquisition of AV content production (customer foreclosure)

(217) Downstream, both Notifying Parties and the JV are active in the acquisition of AV content production. Upstream, only Telenet is active in the non-captive production of AV content. The merger specific change brought about by the Transaction is the addition of the JV's downstream activities as a purchaser of AV content production.

(218) Given that the individual or combined market share of the Parties on the demand side of the market for AV content production (i.e. downstream relative to the supply side of AV content production) is above 30%, the Commission has assessed the risk of customer foreclosure strategies in that market, as well as in all markets under any of the possible market definitions discussed in Section 5.1. and Section 5.2.1.[186]

5.4.2.1. Notifying Parties' view

(219) The Notifying Parties submit that the Transaction will not lead to customer foreclosure, whereby the JV or its parents would potentially foreclose competing AV content production companies on the upstream market, given that (i) the JV will have modest activities on the demand side of the AV content production market; (ii) the JV's parents will continue to be active as separate and independent purchasers of AV content post-Transaction, and are already currently vertically integrated with their own production units; (iii) the JV will have no incentive to purchase content exclusively from its parents; and (iv) even in the unlikely hypothesis that the JV would exclusively source AV content production services from its parents, competing AV content production companies would still have access to different alternative potential customers, including VRT and, increasingly, OTT players such as Netflix.[187]

[183] Non-Horizontal Merger Guidelines, paragraph 108.
[184] Non-Horizontal Merger Guidelines, paragraph 113.
[185] Non-Horizontal Merger Guidelines, paragraph 114.
[186] Given that the combined market share of the Parties in the upstream market for the production of AV content is below 30%, including in all possible markets based on alternative market definitions, the Commission has not assessed the risk of input foreclosure of competing purchasers of content AV production.
[187] Form CO, paragraphs 604-607.

5.4.2.2. Commission's assessment

(A) Ability to engage in foreclosure

(220) The Commission considers that the Parties will not have the ability to engage in customer foreclosure of the competing producers of AV content, for the following reasons.

(221) First, the merger specific change brought about by the Transaction on the downstream market will be limited. By 2023, the JV will only represent [5-10]% of the demand (by value) of the production of Dutch-language AV content in Flanders. The Transaction will therefore not significantly change the degree of market power on the downstream market.[188]

(222) Second, the Notifying Parties' activities on the demand side of the market for AV content production will continue outside of the JV post-transaction. Therefore, since the Notifying Parties will continue to separately purchase AV content production services they will rely on such inputs, post-Transaction. The fact that the Notifying Parties remain independent applies regardless of which market definition is retained based on Section 5.1. and Section 5.2.1.

(223) Third, strong alternative purchasers will remain active on the demand side of the market. Indeed, VRT currently represents [40-50]% of the demand (by value) in the market for the production of AV content in Flanders. In addition, the market shares provided in Table 1 do not take into account the AV content production spend of Proximus, a number of smaller Flemish/Dutch language broadcasters active in Belgium and international OTT players such as Netflix (that are obliged to invest in AV productions on the basis of the Flemish Media Decree). Strong players would remain on any of the alternative markets discussed in Section 5.1. and Section 5.2.1 and due to the smaller market size, their share and strength would be greater.

(B) Incentive to engage in foreclosure

(224) The Commission considers that the Parties will not have any incentive to engage in customer foreclosure of competing producers of AV content, for the following reasons.

(225) First, Notifying Parties are already vertically integrated and purchase content from competing content providers.[189] The limited increment brought about by the Transaction on the downstream market is unlikely to change the incentive. [190]

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[188] If certain narrower product market definition applied on the downstream markets (e.g. market for film production (demand side); market for the acquisition of production in the SVOD/first pay TV window (demand side); the market for the acquisition of scripted content (demand side)) the increase in downstream market power would be greater. However, even in that case the market share increase is limited in size, gradual and only expected and not guaranteed.

[189] Form CO, paragraph 606.

[190] As discussed in footnote 188, if certain narrower product market definition applied on the downstream markets, (e.g. market for film production (demand side); market for the acquisition of production in the SVOD/first pay TV window (demand side); the market for the acquisition of scripted content (demand side) the increase in downstream market power would be greater. However, the market share increase would be still limited in size, gradual and only expected and not guaranteed. In addition, the current

(226) Second, the JV will have the interest to offer a wide variety of quality content. To achieve this objective, the JV is planning to work with external production companies. The business plan confirms that the JV is not planning to purchase AV content production services from its parents exclusively. It is clearly spelled out in the JV's business plan that the JV is planning to source content from all relevant stakeholders (including private and public broadcasters and production companies).[191] The Notifying Parties (as well as third party VRT) currently also purchase external AV content production services from third parties notwithstanding their internal production capabilities.[192] This reason applies regardless of which precise market definition is retained based on Section 5.1. and Section 5.2.1.

(C) Impact on effective competition

(227) The Commission considers that due to the lack of ability and incentive, it is not needed to assess whether any foreclosure strategy would have a negative impact on effective competition, which can be presumed to be negligible.

(228) In any event, should the JV decide to exclusively source AV content production services from the parent companies, competing AV content production companies would still have access to different alternative potential customers, including the Notifying Parties, VRT and increasingly also OTT players such as Netflix, which would limit the effects of that decision on competion.[193] This applies regardless of which precise market definition is retained based on Section 5.1. and Section 5.2.1. as there would be strong buyers in any hypothetical market.

(D) Conclusion

(229) In light of the above considerations, the Commission considers that the Transaction does not give rise to serious doubts as to its compatibility with the internal market as a result of possible strategies for customer foreclosure of competing AV content production companies with respect to the acquisition of AV content production, regardless of which product and geographic market definition discussed in Section 5.1. and Section 5.2.1. is retained.

5.4.3. Possible foreclosure of competing AV content production companies with respect to the acquisition of the broadcasting rights for pre-existing individual AV content (customer foreclosure)

(230) Downstream, both Notifying Parties and the JV are active on the demand side of the market for the licensing of broadcasting rights of pre-existing individual AV content.

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vertical integration of the Notifying Parties suggests that regardless of exact market definition, they would continue to purchase content from producers competing with their own upstream entities.

[191] Form CO, Annex 5.1.a. Annex 2 – Business Plan

[192] Form CO, paragraph 606.

[193] Form CO, paragraph 607. In 2018, VRT purchased AV content production services from 61 different external AV content production companies and had a market share on the demand side of [40-50]%. Netflix co-produced the Dutch language series 'Undercover' with VRT and De Mensen. 'Into the Night', Netflix's first Belgian Original series premiered on Netflix on 1 May 2020 . Netflix is also currently working on the co-production projects "The Liberation Route S2' and 'Twee Zomers' which were approved by the Flemish Media Regulator VRM in September 2019 and April 2020 in the context of the regulatory investment obligations. Hence, any decision by the JV to only purchase AV content production services from the production units of its parents would not have a material impact on competition.

Upstream, both Notifying Parties and the JV are active in the licensing of individual AV content to license. The merger specific change brought about by the Transaction is limited to the increment of the JV's (i) downstream activities as a licensee of individual AV content, and (ii) upstream activities as a licensor of such content.

(231) Given that the combined market share of the Parties on the demand side of the market for the licensing of the broadcasting rights for pre-existing individual individual AV content, as well as on a number of markets pursuant to alternative market definitions discussed in Section 5.1. and Section 5.2.2, is above 30%, the Commission has assessed the risk of customer foreclosure strategies.[194]

5.4.3.1. Notifying Parties' view

(232) The Notifying Parties submit that the Transaction will not lead to customer foreclosure, whereby the JV would potentially foreclose competing licensors of individual AV content, given that (i) the JV's market share will amount to around [10-20]% in 2023, and the JV would therefore lack the ability to foreclose access to customers, (ii) the JV will have no incentive to source exclusively from the its parents, and (iii) any attempted foreclosure strategy will have no material impact on competing providers of individual AV content who can also set up their own video on demand platform (as VRT has done) or distribute content through competing SVOD platforms (e.g. Proximus or Netflix).[195]

5.4.3.2. Commission's assessment

(A) Ability to engage in foreclosure

(233) The Commission considers that the Parties will not have the ability to engage in customer foreclosure of competing licensors of individual AV content, for the following reasons.

(234) First, the merger specific change brought about by the Transaction on the downstream market will be limited. The JV will only represent around [10-20]% of the demand (by value) in the market for the licensing of Dutch-language AV content in Belgium by 2023. The Transaction will therefore not significantly change the degree of market power on the downstream market.[196]

(235) Second, the Notifying Parties' activities on the demand side of the market for the licensing of AV content will continue to take place outside of the JV post-transaction. Therefore, the Notifying Parties will continue to be active as separate

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[194] Given that the individual or combined market share of the Parties in the upstream market for the licensing of broadcasting right for pre-existing individual AV content (i.e. on the supply side) is below 30%, including in any markets under any plausible market definition, the Commission has not assessed the risk of input foreclosure of competing licensees of individual AV content.

[195] Form CO, paragraphs 623-626.

[196] If certain narrower product market definition applied on the downstream markets (e.g. market for the licensing of broadcasting rights for fims (demand side); market for the licensing of broadcasting rights for content in the SVOD/first pay TV window (demand side); the market for the licensing of broadcasting rights of scripted content (demand side)) the increase in downstream market power would be greater. However, even in that case the market share increase is limited in size, gradual and only expected and not guaranteed. Further, if the geographic market retained were Belgium, this would cause the increment to be smaller again.

and independent purchasers of AV content production services post-Transaction. The fact that the Notifying Parties remain independent applies regardless of which precise market definition is retained based on Section 5.1. and Section 5.2.2.

(236) Third, strong alternative licensors will remain active on the demand side of the market. Indeed, Proximus and the international OTT players respectively represent [10-20]% and [10-20]% of the demand (by value) in the market for the licensing of Dutch-language AV content. The international OTT players are expected to represent an increasing share of the demand in the coming years ([20-30]% in 2023). Strong players would remain on any of the alternative, narrower product markets discussed in Section 5.1. and Section 5.2.2.

(B) Incentive to engage in foreclosure

(237) The Commission considers that the Parties will not have the incentive to engage in customer foreclosure of competing licensors of individual AV content, for the following reasons.

(238) First, Notifying Parties are already vertically integrated and license content from competing licensors.[197] The limited increment brought about by the Transaction on the downstream market is unlikely to change the incentive.[198]

(239) Second, the JV plans to offer a wide variety of quality content. To achieve this objective, the JV is planning to acquire content from many sources. The business plan confirms[199] that the JV is not planning to license individual AV content from its parents exclusively, but intends to rely on other supply channels. This reason applies regardless of which precise market definition is retained based on Section 5.1. and Section 5.2.2.

(240) Third, as set out in annex 1 to the MoU,[200] the JV would be open to, [JV's commercial strategy], the possibility to enter into agreements with other content providers, such as VRT, to include some of their content on the JV's SVOD platform. This reason also applies regardless of which precise market definition is retained based on Section 5.1. and Section 5.2.2.

(C) Impact on effective competition

(241) The Commission considers that due to the lack of ability and incentive, it is not needed to assess whether any foreclosure strategy would have a negative impact on effective competition.

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[197] Form CO, paragraph 606.

[198] As discussed in footnote 196 if certain narrower product market definition applied on the downstream markets, (e.g. market for the licensing of broadcasting rights for fims (demand side); market for the licensing of broadcasting rights for content in the SVOD/first pay TV window (demand side); the market for the licensing of broadcasting rights of scripted content (demand side)) the increase in downstream market power would be greater. However, the market share increase would be still limited in size, gradual and only expected and not guaranteed. In addition, the current vertical integration of the Notifying Parties suggests that regardless of exact market definition, they would continue to purchase content from licensors competing with their own upstream entities.

[199] Form CO, Annex 5.1.a. Annex 2 – Business Plan

[200] Form CO, Annex 5.1.a. See for example the statement on page 22 of the MoU: "[Details of the JV agreement]".

(242) In any event, even if the JV were to exclusively license individual AV content from the parent companies, competing AV content production companies would still have access to different alternative potential customers, including Proximus and the international OTT players respectively represent [10-20]% and [10-20]% of the demand (by value) in the market for the licensing of AV content in Flanders (demand side). The international OTT players are expected to represent an increasing share of the demand in the coming years ([20-30]% in 2023). The presence of other customers applies regardless of which precise market definition is retained based on Section 5.1. and Section 5.2.2. as there would be strong alternative buyers in any hypothetical market.

(D) Conclusion

(243) In light of the above considerations, the Commission considers that the Transaction does not give rise to serious doubts as to its compatibility with the internal market as a result of possible strategies for customer foreclosure of competing licensors of individual AV content with respect to the acquisition of broadcasting rights to individual AV content, regardless of which precise product and geographic market definition discussed in Section 5.1. and Section 5.2.2. applies.

5.4.4. Possible foreclosure of competing suppliers of retail AV services from accessing the Notifying Parties' TV channels (input foreclosure)[201]

(244) Both Notifying Parties are active in the market for the wholesale supply of FTA/basic pay TV channels. This market is upstream of the overall market for retail AV services where the JV will be active. On the other hand, the JV's offering will be limited to a SVOD service and will not include the linear channels of the Notifying Parties and/or of third parties, nor it will include any ancillary services linked to the linear broadcasting of such channels (e.g. catch up services). The JV will therefore not carry any TV channels.

5.4.4.1. Notifying Parties view

(245) The Notifying Parties submit that the Transaction will not give rise to any vertical competition concerns, including input foreclosure concerns, on this market for the following reasons.[202]

(246) First, the JV will not be active as either a supplier or a purchaser of linear TV channels, and will thereby not carry any linear channels (neither the channels of Telenet and DPG Media nor those of third parties) and it will also not carry any ancillary services which are linked to the linear broadcast of such channels (e.g. catch up services). The Notifying Parties have confirmed that they do not have the

[201] Given that the combined market share of the Parties in the downstream market for the retail supply of AV services is above 30%, the Commission has also considered the risk of customer foreclosure strategies in this market. The Commission considers that, given that the JV will not supply TV channels, there is no change to the incentive regarding any customer foreclosure strategy of competing wholesale suppliers of TV channels with respect to the retail supply of AV services. Therefore, the Commission considers that the Transaction does not give rise to serious doubts as to its compatibility with the internal market as a result of customer foreclosure of competing wholesale suppliers of TV channels with respect to the retail supply of AV services, regardless of the precise product and geographic market definition.

[202] Form CO, paragraphs 627-629.

intention to expand the scope of the JV to include such linear channels and/or ancillary services within the next 10 years.

(247) Second, the Notifying Parties claim that Telenet and DPG Media will continue to exercise their respective activities as suppliers of linear TV channels and ancillary non-linear services separately to their respective customers.

(248) Third, the Notifying Parties draw the Commission's attention onto the fact that, by virtue of Decision 19-CC-16 of the BCA in Telenet Group BVBA/De Vijver Media, Telenet is bound by a commitment to supply its linear basic pay TV channels Vier, Vijf and Zes at FRAND terms to competing suppliers of retail AV services, including OTT players. This commitment covers the linear channels and ancillary rights needed to offer linked services such as a Multiple Screen service, a Catch Up service, a PVR service, a broadcasting on demand service and any other service or functionality offered to subscribers simultaneously with the linear transmission or shortly before or after such transmission (i.e., 7 days before or after or another short customary period) as part of the same channel package. This commitment will remain in effect until May 2026.

5.4.4.2. Commission's assessment

(249) The Commission considers there is no possibility, incentive or likely effects of a hypothetical input foreclosure strategy by Telenet or DPG media of other suppliers of retail AV services with regard to the wholesale supply of TV channels, regardless of the precise product and geographic market definitions (discussed in Section 5.1 and Section 5.2.3.) is retained, as the JV will not be active in the acquisition or supply of TV channels.

(250) The Commission considers that there is nothing in the case file suggesting that the JV will include linear channels in the future.[203] The contractual documents as well as several internal documents[204] submitted by the Notifying Parties exclusively describe the JV's offer as a SVOD service. They do not refer to the inclusion of linear channels.

(251) In particular, Annex 1 of the MoU[205] and Schedule 1 of the Joint Venture Agreement[206] describe the different building blocks of the JV's SVOD offer. Linear channels are not included as part of these building blocks.

(252) Also, the Business Plan of the JV[207] does not consider the inclusion of linear channels and/or ancillary services. The JV's service is exclusively described as a

[203] In any event, if the JV were to include linear channels at any point in the future, such an expansion of the scope of the JV's activities would likely require a new notification as the JV would become active in the market for retail linear AV services and the JV would have to enter into linear carriage agreements with the parents in light of paragraph 107 of the Commission's Consolidated Jurisdictional Notice. The Notifying Parties confirm in paragraph 372 of the Form CO that they do not have the intention to expand to scope of the JV to include such linear channels and/or ancillary services within the next 10 years and should they in the future develop such intentions, they will discuss these intentions and their consequences with the Commission prior to their implementation.

[204] For instance Form CO, Annex 5.4.a.3, Annex 5.4.a.7, Annex 5.4.b.2 and Annex 5.4.b.10.

[205] Form CO, Annex 5.1.a.

[206] Form CO, Annex 5.1.c.

[207] Form CO, Annex 5.1.a. Annex 2 – Business Plan

subscription video on demand service. The competitors which are identified [Details of the JV agreement] are all SVOD services and do not include linear channels. [Details of the JV agreement].

(253) Moreover, Schedule 4 to the Joint Venture Agreement[208] provides that the following constitutes a reserved matter: "[Details of the JV agreement]". Hence, [Details of the JV agreement]. However, Telenet does not have any incentive to accept such expansion, which would position the JV's offer as a potential substitute rather than a complement to Telenet's existing TV platforms and would encourage cord cutting behaviour.

(254) Finally, the Flemish Media Decree requires broadcasters to notify the Flemish Regulator for the Media at least 14 days in advance of the launch of their non-linear television services. Such notification should include a clear description of the services which will be provided. In the event of a future expansion of such services, a new notification will be required. The JV will be subject to this notification requirement and will, as soon as merger control clearance has been obtained and the JV has been launched, submit a notification for non-linear services. This supports the Parties' intention not to include linear services in the offering of the JV.

(255) In any event, pre-Transaction the Notifying Parties provide OTT rights to the TV channels to third parties. Given the JV will not purchase the TV channels, there is no change to the incentives. In addition, by virtue of Decision 19-CC-16 of the BCA in Telenet Group BVBA/De Vijver Media, Telenet is bound by a commitment to supply its linear basic Pay TV channels Vier, Vijf and Zes at FRAND terms to competing providers of retail AV services, including OTT players. This commitment covers the linear channels and ancillary rights needed to offer linked services such as a Multiple Screen service, a Catch Up service, a PVR service, a broadcasting on demand service and any other service or functionality offered to subscribers simultaneously with the linear transmission or shortly before or after such transmission (i.e., 7 days before or after or another short customary period) as part of the same channel package. This commitment will remain in effect until May 2026.[209] Therefore, not providing access to its linear channels would be a breach of its vis-à-vis the BCA.

(256) In light of the above considerations, the Commission considers that the Transaction does not give rise to serious doubts as to its compatibility with the internal market as a result of possible strategies of input foreclosure of competing suppliers of retail AV services with regard to the wholesale supply of TV channels, regardless of the precise product and geographic market definition retained for the upstream market. (as discussed in Section 5.1 and Section 5.2.3.)[210]

5.4.5. Conglomerate non-coordinated effects relating to the Parties' activities in the retail supply of AV services, and Telenet's activities in the retail supply of mobile

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208 Form CO, Annex 5.1.c.

209 Form CO, paragraph 629.

210 This is because, in light of the considerations in Section 5.4.4.2, it is clear that the JV will not be active downstream relative to the wholesale supply of channels regardless of how the latter activity is defined, segmented and what geographic scope it has.

telecommunication, fixed internet access and multiple play services: Possible foreclosure of competing retail suppliers of electronic communication services

(257) As explained in paragraph 4, the JV's SVOD service will be provided (i) directly to customers in Belgium via an OTT platform (including website and smart phone app) and (ii) on an exclusive wholesale basis to Telenet, for distribution by Telenet through its cable platform (integrated in Telenet's channel packages and/or set top box interface).

(258) The Transaction therefore creates a conglomerate relationship between the Parties' activities in the retail supply of AV services, in particular the JV's activities as a supplier of SVOD services, and Telenet's activities as a provider of multiple play bundles, fixed internet access and mobile telecommunication services.

(259) In the present section, the Commission analyses whether the Parties would have the ability and incentive to foreclose rival suppliers of electronic communication services by engaging in a tying or bundling strategy, then assesses whether such a foreclosure strategy would have an impact on effective competition in the markets for the retail supply of fixed internet access, mobile telecommunication and multiple play services.

5.4.5.1. Notifying Parties' view

(260) The Notifying Parties submit that no conglomerate non-coordinated effects will arise from the potential bundling of the JV's SVOD service with Telenet's retail multiple play, fixed internet access or mobile telecommunication services, for the reasons set out below.[211]

(261) The Notifying Parties contend that they and the JV will have <u>no ability</u> to foreclose competing suppliers of electronic communications services. First, DPG Media, which is not active in the markets for retail AV services, fixed internet services or any possible multiple play markets, would have the ability to block any attempt by Telenet to tie the JV's SVOD services exclusively to its retail AV platform and/or electronic communications services. The JV's incentive would be to market its service as widely as possible within Belgium, in order to become a strong competitor to international SVOD services.

(262) Second, the Notifying Parties submit that, even if the JV's SVOD service would do so, the merger-specific change would be minimal, since Telenet is already vertically integrated with its own SVOD services, which are not available on other retail AV services platforms. Further, the Notifying Parties contend that, if anything, the Transaction is reducing (in actual fact eliminating) Telenet's ability to tie or bundle these SVOD services exclusively with its retail AV services or electronic communications services since it will no longer be vertically integrated in this respect and will need its JV partners' consent with such strategy going forward.

(263) Third, the Notifying Parties claim that the JV's SVOD service will not be a "must-have" for competing retail AV providers given, that (i) it will not include sports content or linear channels, (ii) competing providers of retail AV services or electronic communications services will not need access to the JV's product to be

[211] Form CO, paragraphs 651-665.

able to compete with Telenet's bundles as they can set up their own competing films and series SVOD offer, or contract with one or several of the competing SVOD providers to be able to offer similar bundles.

(264) Fourth, Telenet has historically not included its SVOD offerings in its multiple play bundles, with the exception of the Yugo offering.

(265) The Notifying Parties submit that the JV will have no incentive to pursue a tying or bundling strategy, and that, even if it did, there would be no material impact on competition, since (i) Telenet currently does not offer its SVOD services to rival providers of fixed internet services, mobile telecommunication services and/or multiple play services, which do not need access to Telenet's SVOD offer to compete in the market; (ii) rivals' customers will in any case have access to the JV's SVOD service OTT through the JV's direct-to-consumer offering; (iii) rivals can launch their own SVOD offering; (iv) content is only one of the many factors of competition (among which price, speed, and reliability of internet connection) that customers take into account when purchasing bundled products, and (v) and consumers do not expect or need a one-stop-shop.

5.4.5.2. Commission's assessment

(A) Ability to engage in foreclosure

(266) The Commission considers that the Parties will not have the ability to engage in any hypothetical foreclosure strategy of competing providers of retail mobile telecommunication, fixed internet access and multiple play services by bundling the JV's SVOD with Telenet's retail mobile telecommunication, fixed internet access or multiple play services, for the following reasons.

(267) First, the ownership structure of the JV precludes the possibility that such foreclosure strategy could be adopted. The JV will be controlled jointly by Telenet and DPG Media, with the latter not being active on the markets for fixed internet services or any notional multiple play market. Moreover, DPG Media has a very limited presence on the market for mobile telecommunications services with a market share of [0-5]%.

(268) The business plan agreed upon between the Parties,[212] explicitly provides that, while Telenet will have the exclusivity to offer the JV's SVOD services on a wholesale basis on its retail AV platforms, the JV's SVOD services will also be made available independently on the market, on an OTT basis, separately from Telenet's retail AV services and/or electronic communications services. Hence, the JV's SVOD service will be made available on an OTT basis to subscribers of competing providers of electronic communications services such as Proximus and Orange. As a 50% shareholder in the JV, DPG Media will have the ability to block any attempt by Telenet to tie the JV's SVOD services exclusively to its retail AV platform and/or electronic communications services. Moreover, annex 3(i) of the MoU[213] provides that [Details of the JV agreement].

[212] Form CO, Annex 5.1.a., Annex 2
[213] Form CO, Annex 5.1.a.

(269) Second, obtaining the JV's SVOD integrated within Telenet's retail AV platform is not the only way for customers to obtain a "one stop shop".[214] That is because the JV's SVOD offer will be available as an OTT app for all consumers with an internet connection, regardless of the identity of the provider of such connection. The OTT app will be available on the following platforms: smartphones and tablets running on iOS and Android operating systems, Android TV, Apple TV, Chromecast, Samsung Smart TV and LG Smart TV. The JV and/or the Notifying Parties will not have the technical ability - nor the incentive - to block Proximus or Orange customers from downloading the OTT app and/or accessing the JV's SVOD content. E.g., if Proximus customers can access the Google Play Store (the Android users' app store), they can automatically access the JV's app as well and download it on any compatible device.

(270) Accordingly, even if Proximus and Orange are not able to integrate the JV's SVOD product into their own content proposition, their customers will have access to the JV's offer at all times through the platforms listed above. This will enable an experience similar to the "one-stop-shop" experience which Telenet customers will have (e.g. watching on a TV set and/or through an Android set top box).

(271) The customer experience will also be similar to the current experience of Proximus and Orange subscribers in respect of other SVOD offers. The Netflix SVOD offer is, for example, not fully integrated in the Proximus user interface either. Proximus subscribers accessing Netflix content are effectively directed to the Netflix user interface for access to the Netflix content.

(272) Orange is promoting streaming through Chromecast and Apple TV (platforms through which the SVOD service of the JV will also be available) as the most appropriate way to access the SVOD offers of Netflix and others.

(273) Third, alternative SVOD offers remain available such as Netflix, Amazon Prime, Apple and Disney+ with whom competing providers of electronic communications services could partner. The market investigation confirmed that the JV's SVOD service competes with these international SVOD offers.[215] Therefore, competitors of Telenet can develop effective and timely counter strategies and contract with one or several competing SVOD providers.

(274) Fourth, the market investigation confirmed there is sufficient content available.[216] Therefore competitors can set up their own competing SVOD offer, as for instance Proximus has already done. In this respect, the Commission notes that barriers to set up a new non-linear service are significantly lower than those to set up a new linear channel, in particular because there are a significant number of providers of off-the-shelf one-stop-shop online video platforms that a party wishing to launch an online service can choose from (e.g. Datacast, IBM Cloud Video, etc.). These providers offer fairly inexpensive OTT platforms 'as a service', including content ingestion, storage, delivery, user interface, payment integration, etc. It is also fairly

214 Notifying Parties' reply to RFI 10, question 5.

215 Replies to Questionnaire Q2, question 27.

216 Responses to questionnaires Q1 to content providers, question 22.

inexpensive to set up a simple OTT streaming website (using open source software and cloud storage).[217]

(B) Incentive to engage in foreclosure

(275) The Commission considers that the Parties will not have the incentive to engage in foreclosure of competing providers of retail mobile telecommunication, fixed internet access and multiple play services by bundling the JV's SVOD with Telenet's retail mobile telecommunication, fixed internet access or multiple play services, for the following reasons.

(276) DPG Media would not benefit from such a foreclosure strategy. It has a very limited presence on the mobile market and none on the fixed internet market. If it tried to tie the JV's SVOD service to its mobile service, it would forego significant revenues that it is likely to incur by suppling the JV's SVOD services to subscribers of other providers of electronic communications services (mobile service providers). On the contrary, DPG media will have the incentive to make the JV's SVOD services as widely available as possible. As DGP Media has negative control over the JV, this alone suffices to show that such strategies are unlikely to be pursued.

(277) The Commission also notes that Telenet has not historically included its SVOD offers in its multiple play bundles, which indicates that this is not a profitable strategy.

(C) Impact on effective competition

(278) The Commission considers that due to the lack of ability and incentive, there is no need to assess whether a hypothetical foreclosure strategy due to the conglomerate relationships created by the Transaction would have any negative impact on effective competition.

(279) It is sufficient to note that, even if the JV's offer would only be available via Telenet's platform or in bundles with Telenet's electronic communications services, competing providers of such services would have several other business possibilities available to them.

(280) First, competing providers of electronic communications services would be able to market a bundle of TV, mobile and/or broadband services with the JV's SVOD service if they were to enter into a reseller agreement with the JV. In such case, the JV's app could be offered e.g. on the competing provider's decoder itself (such as is currently the case with the Netflix app, which is available on the Proximus decoder as a result of the reseller agreement which has been concluded between both parties).

(281) Entering into a reseller agreement with a connectivity services provider and/or media company (as well as consenting to any possibility of integration of the JV's product by any reseller) is a reserved matter under the Joint Venture Agreement and [Details of the JV agreement].

[217] Form CO, paragraph 770.

(282) Second, competing providers of electronic communications services would be able to market a bundle of TV, mobile and/or broadband services with an alternative SVOD offer. Several other SVOD offers are available.

(D) Conclusion

(283) In light of the above considerations, the Commission considers that the Transaction does not give rise to serious doubts as to its compatibility with the internal market relative to any hypothetical foreclosure strategy resulting from the conglomerate relationships between the Parties' activities with respect to the retail suppliers of AV services, and to Telenet's activities as a retail supplier of fixed internet access, mobile telecommunication and multiple play services, given the lack of possibility, incentive or possible effects of such strategy to foreclose competing retail suppliers of electronic communication services.[218]

5.4.6. Conglomerate non-coordinated effects relating to the Parties' activities in the retail supply of AV services, and Telenet's activities in the retail supply of mobile telecommunication, fixed internet access and multiple play services: Possible foreclosure of competing retail suppliers of OTT SVOD services

(284) The Transaction creates a conglomerate relationship between the Parties' activities in the retail supply of AV services, in particular the JV's activities as a supplier of SVOD services, and Telenet's activities as a provider of multiple play bundles, fixed internet access and mobile telecommunication services.

(285) In the present section, the Commission analyses whether the merged entity would have the ability and incentive to foreclose rival suppliers of OTT SVOD services by engaging in a tying or bundling strategy, then assesses whether each of any foreclosure strategy would have an impact on effective competition in the possible market for the retail supply of SVOD services.

5.4.6.1. Notifying Parties' view

(286) The Notifying Parties contend that the Transaction will give rise to no conglomerate effects relating to the foreclosure of competing OTT SVOD services for the following reasons. (i) rival SVOD suppliers have sufficient alternative providers of retail telecommunication services, fixed services and multiple play services with whom they can partner (Proximus, Orange, MVNOs); (ii) regulation restricts Telenet from degrading its service offering by prohibiting zero rating practices that may favour the JV's SVOD service; (iii) Telenet has an incentive to maintain the relevance of its retail AV services by including content from rival SVOD providers; and (iv) a bundling strategy would have no material impact on competition because it is possible to successfully launch and compete with an OTT SVOD service

[218] Such conclusion applies regardless of regardless of which precise product and geographic market definition discussed in Section 5.1. and Section 5.2.4. applies. This is because the only merger-specific conglomerate relationship is the tying or bundling related to the JV's SVOD offer as opposed to the existing retail AV offers of the Parties. Thus, under any of the market definitions discussed in Section 5.1 and Section 5.2.4, the analysis would focus on whether competing suppliers of fixed internet access, mobile telecommunication and multiple play services could be foreclosed by tying the SVOD offer to the Parties' (and mostly Telenet's) telecommunications services. Thus the analysis would be the same under all the above mentioned market definitions.

without partnering with an electronic telecommunications provider, as the experience of Netflix shows.[219]

5.4.6.2. Commission's assessment

(A) Ability to engage in foreclosure

(287) The Commission considers that the Parties will not have the ability to engage in any hypothetical foreclosure strategy of competing suppliers of OTT SVOD services by bundling the JV's SVOD service with Telenet's retail mobile telecommunication, fixed internet access or multiple play services, for the following reasons.

(288) First, competing SVOD providers in Belgium have sufficient alternative providers of retail mobile telecommunications services, retail fixed services and retail multiple play services remain to partner with. Proximus and Orange both offer fixed internet (with combined market share of [50-60]% in 2019 in Belgium), mobile telecommunications (with a combined market share of [60-70]% in 2019 in Belgium), retail AV services (with combined market share of [20-30]% in the Telenet-footprint in 2019) and multiple play services (with e.g. combined market share of [30-40]% in 4-play bundles in the Telenet footprint in 2019). Other competitors will also remain active in these markets (e.g. TV Vlaanderen in retail AV services and several MVNO's in mobile telecommunications).

(289) Second, competing SVOD providers in Belgium do not need to partner with a provider of retail mobile telecommunications services, retail fixed services and retail multiple play services. This is shown by the fact that set-top-box integration with Proximus and Telenet did not change at all the trajectory of Netflix uptake in Belgium.[220] It appears that SVOD services can launch competitively without an explicit telecoms supplier and only require that the customer has a broadband connection, which most customers do.

(290) Third, the Commission considers that any ability to implement zero rating practices, i.e., not deducting the consumption of data related to the JV's SVOD service from the data volume included in the customer's subscription, would be restricted by the provisions in the Open Internet Regulation.[221] Article 2 thereof foresees that "[p]r*oviders of internet access services shall not engage in traffic management measures […], and in particular shall not block, slow down, alter, restrict, interfere with, degrade or discriminate between specific content, applications or services, or specific categories thereof*". This regulation is enforced by the Belgian federal regulator BIPT. In its recent decision of 12 November in case M.9064 – *Telia Company/Bonnier Broadcasting*, the Commission concluded on similar grounds that the merging parties did not have the ability to foreclose competing OTT providers.[222]

[219] Form CO, paragraphs 666-672.

[220] Ampere analysis, referred to in paragraph 666 of the Form CO

[221] Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services and Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union (Text with EEA relevance)

[222] Commission decisions of 12 November 2019 in case M.9064 – Telia Company/Bonnier Broadcasting Holding, recital 785.

(B) Incentive to engage in foreclosure

(291) The Commission considers that the Parties will not have the incentive to engage in foreclosure of competing suppliers of OTT SVOD services by bundling the JV's SVOD with Telenet's retail mobile telecommunication, fixed internet access or multiple play services, for the following reasons.

(292) First, Telenet will have the incentive to maintain the relevance of its retail AV services for consumers by including relevant content from competing SVOD providers. The Parties have explicitly clarified in article 4.7.5. of the MoU that [Details of the JV agreement]".

(293) Second, the Notifying Parties will also not have the incentive to significantly degrade their service offerings in breach of Open Internet requirements. Infringements of these requirements could trigger administrative fines of up to 5% of their Belgian telecommunications turnover, which would by far exceed the hypothetical benefits of breaching the regulatory requirements.

(C) Impact on effective competition

(294) The Commission considers that due to the lack of ability and incentive, it is not needed to assess whether any foreclosure strategy would have a negative impact on effective competition.

(295) In any event, even if Telenet would exclusively offer the JV's SVOD service, competing SVOD providers would still have access to alternative providers of retail telecommunication services, fixed services and multiple play services with whom they can partner (such as Proximus, Orange and MVNOs) for partnering or to distribute their SVOD service.

(296) As discussed above and in line with the Commission's findings in a previous case,[223] cooperating with providers of fixed internet access services and mobile telecommunications services is not necessary for providers of OTT SVOD services to compete. The example of Netflix shows that it is possible to launch a successful OTT SVOD service without such cooperation.

(297) Finally, an increased number of fixed internet and/or mobile data subscribers have tariff plans with either unlimited data or very high data allowances and only a small minority (less than [0-5]%) exceed such data allowance. This significantly limits the relevance of zero rating practices because these subscribers have sufficient data allowances to consume data thanks to their tariff plans. Allowing these subscribers to deduct the consumption of data related to the JV's OTT SVOD service from the data included in the customer's subscription of fixed or mobile internet access services is therefore not providing a benefit to these subscribers.

(298) VRT raised whether the Transaction could give the Notifying Parties an incentive to favor the JV's on demand content, possibly to the detriment of the findability and visibility of VRT's on demand content, in particular because the Telenet user

[223] Commission decisions of 12 November 2019 in case M.9064 – Telia Company/Bonnier Broadcasting Holding, recital 793.

interface allows Telenet to actively influence and steer viewer preferences by promoting certain content.[224]

(299) The Commission notes that, pre-Transaction, the linear channels of VRT are included in Telenet's entry level basic Pay TV Channel on all its TV-platforms. They have fixed pre-programmed Electronic Programme Guide ("EPG") positions in the EPG on all these platforms. These EPG positions […] and they are also covered by the commitment to the BCA discussed in Section 5.4.4.2.[225]

(300) VRT's near-linear content (e.g. catch up services) is integrated in the Telenet user interface (in a manner that does not materially differ from the integration in the Proximus or Orange user interfaces. The visibility, findability and accessibility of this VRT content is also covered by the commitment to the BCA.

(301) As to VRT's non-linear content, it is present in different forms: (i) Free VOD and Broadcaster TVOD: these appear in the VRT catalogue which is fully integrated in the Telenet user interface. The content and structure of the catalogue are defined by VRT; (ii) VRT library SVOD catalogue 'Net Gemist': VRT owned SVOD service which contains SVOD content of VRT that was aired on their linear channels in the last 7 days. Price: €5.95/month. Integrated in Telenet user interface. Non-exclusive service, also available on Proximus; and (iii) VRT SVOD licensed programs for Play and Play More (non-exclusive): […]. Integrated in the Telenet user interface in the Play and Play More catalogues. […].

(302) The Transaction will not change how VRT's linear TV channels and near-linear content will be integrated in Telenet's AV offering post-Transaction.[226]

(303) VRT's TV channels will continue to be included in Telenet's entry level basic Pay TV package. Inclusion in this entry level package is mandatory as a result of the must carry status of these channels (i.e. they must be included in the package that is most widely available to subscribers in Belgium). The Transaction will also not change the way in which VRT's 'Net Gemist' SVOD services will be integrated in Telenet's AV offerings.[227] The Transaction will not bring about any merger-specific changes in this respect.

(D) Conclusion

(304) In light of the above considerations, the Commission considers that the Transaction does not give rise to serious doubts as to its compatibility with the internal market with reference to any hypothetical strategy resulting from the conglomerate relationships between the Parties' activities as retail suppliers of AV services, and Telenet's activities as retail suppliers of fixed internet access, mobile

[224] Response by VRT to questionnaire Q2 to AV market participants, question 57.2.
[225] Parties' reply to RFI 10, question 2.
[226] Parties' reply to RFI 10, question 2.
[227] For completeness, the same would hold for VRT's Free VOD and Broadcaster TVOD. See Parties' reply to RFI 10, question 2.

telecommunication and multiple play services, given the lack of possible foreclosure of competing retail suppliers of OTT SVOD services.[228]

5.4.7. Possible foreclosure of competing suppliers of SVOD services by denying access to the Notifying Parties' TV advertising and radio advertising space (input foreclosure)

(305) The Notifying Parties are both active on the upstream market for TV advertising, and DPG Media also on the upstream market for radio advertising, while the Notifying Parties and the JV are active in the downstream market for retail supply of AV services.

(306) The merger-specific change brought about by the Transaction is the addition of the JV's downstream activities as supplier of a SVOD service.

(307) Given that the combined market share of the Notifying Parties in the market for TV advertising, (including on the markets pursuant to the plausible alternative market definitions discussed in Section 5.1 and Section 5.2.8), and the market share of DPG Media in the radio advertising market are above 30%, the market for the supply of retail AV services in the Flemish (including the markets pursuant to the plausible alternative market definitions) region is vertically affected (input foreclosure). As the only merger specific change brought about by the Transaction is the addition of the JV's downstream activities as supplier of a SVOD service, the Commission has assessed the risk of foreclosing competing SVOD providers.[229]

5.4.7.1. Notifying Parties' view

(308) The Notifying Parties submit that the Transaction will not lead to any vertical concerns regarding the foreclosure of access to TV/radio advertising space by customers/companies competing with the JV (input foreclosure).[230]

(309) The Notifying Parties claim that they would lack the *ability* to engage in input foreclosure, since, over the period of 2017-2019, not a single competing SVOD provider has acquired TV/radio advertising space from either of the Notifying Parties for the promotion of its SVOD products, whilst Netflix's customer base in Flanders expanded significantly over that period (from 21% to 40%).[231]

(310) In addition, the Notifying Parties claim that, since they will continue to operate as separate and independent suppliers, the Transaction would not materially change the existing market situation. According to the Notifying Parties, post-Transaction,

[228] This conclusion holds regardless of which precise market definition discussed in Section 5.1., Section 5.2.5 and Section 5.2.7 applies. This is because the only merger-specific conglomerate relationship is the tying or bundling related to the JV's SVOD offer. Thus, under all of the market definitions discussed in Section 5.1., Section 5.2.5 and Section 5.2.7, the analysis would focus on whether competing suppliers SVOD services could be foreclosed by tying the SVOD offer to the Parties' (and mostly Telenet's) telecommunications services. Thus the analysis would be the same under all the plausible market definitions relating to fixed internet, multi-play bundles or mobile telecommunications.

[229] The Commission considers that the Notifying Parties will not likely engage in customer foreclosure post-Transaction, since (despite the Parties' high combined share of retail supply of AV services of [50-60]%), they only account for less than [0-5]% of the demand market and the JV's share will most likely also be minimal post-Transaction, given the large amount of companies across a variety of sectors acquiring such advertising space. See Form CO, paragraphs 508-510.

[230] Form CO, paragraph 709.

[231] Form CO, paragraphs 686-692.

significant competitors will remain present on the TV and Radio advertising markets and substantial alternative advertising channels (online, newspapers, magazines) will remain available.[232]

(311) The Notifying Parties consider that they would also lack the *incentive* to engage in an input foreclosure strategy post-Transaction because advertising revenue is critical for them as content-providers. Moreover, the Notifying Parties submit that any input foreclosure strategy is unlikely to be profitable due to the many alternative advertising channels available to competing SVOD providers.[233] In particular, Telenet and DPG Media realised advertising turnover of respectively EUR [Parties' TV and radio advertising sales] and EUR [Parties' TV and radio advertising sales] through the sale of TV advertising space, representing respectively [Parties' TV and radio advertising sales] and [Parties' TV and radio advertising sales] of their total advertising revenue; and DPG Media realised advertising turnover of EUR [Parties' TV and radio advertising sales] through the sale of radio advertising space, representing [Parties' TV and radio advertising sales] of its total advertising revenue.[234]

(312) Even if the Notifying Parties had the ability and incentive to engage in an input foreclosure strategy, they submit that such strategy would not have any *significant detrimental effect* on the marketing strategy and the success of competing SVOD providers as these competing SVOD providers do not rely on TV advertsing to market their services as they already have other preferred advertising channels which they can continue to use.[235]

5.4.7.2. Commission's assessment

(313) The Commission's assessment of anticompetitive input foreclosure, in light of the results of the market investigation, is set out in the following paragraphs. For this purpose, consistent with paragraph 32 of the Non-Horizontal Merger Guidelines, in relation to each of these practices, the Commission examines, (i) whether the Notifying Parties would have the *ability* to foreclose access to inputs (*i.e.* advertising space on TV or radio), (ii) whether they would have the *incentive* to do so, and (iii) whether a foreclosure strategy would have a *significant detrimental effect* on competition in the downstream markets.

(A) Ability to engage in foreclosure

(314) The Commission considers that the Notifying Parties will not have the ability to engage in input foreclosure of competing SVOD players by denying access to their TV/radio advertising space, for the following reasons.

(315) First, even though the Commission cannot exclude that, given the market shares (as shown in Tables 22-24 in Section 5.2.8 above) the Notifying Parties would have a significant degree of market power in the upstream markets for (i) TV advertising and (ii) radio advertising, including all possible sub-segments, the Commission

232 Form CO, 686-687.
233 Form CO, paragraphs 693-707.
234 Form CO, paragraph 693.
235 Form CO, paragraph 708.

considers that access to the Notifying Parties' advertising space has so far not been an important input for competing SVOD players.

(316) Whilst TV/radio advertising space may be considered an "important input" within the meaning of the Non-Horizontal Merger Guidelines[236] for certain downstream activities, in line with the Commission's conclusions in precedent cases,[237] the Commission, in the context of this case, does not consider the Notifying Parties' TV/radio advertising to be a critical or important input for SVOD players competing with the JV downstream.

(317) This is because, as demonstrated by the Notifying Parties, over the past years (2017-2019), not a single competing SVOD provider has acquired TV/radio advertising space from either of the Notifying Parties for the promotion of its SVOD products.[238] Without purchasing any TV/radio advertising space from the Notifying Parties, SVOD players like Netflix have still managed to grow significantly in Flanders during this period.[239]

(318) Second, even though advertisers and AV providers responding to the market investigation confirmed the importance of the parents' advertising channels,[240] it is also clear from the market investigation that international SVOD players like Netflix and Discovery are not concerned about being denied access to advertising space on the parents' channels.[241] Also a local competitor and substantial advertiser on DPG Media's TV and radio channels responding to the market investigation indicated that "*the transaction is not likely to have a detrimental impact on the acquisition of advertising space (also because advertising is still very limited for SVOD service*."

(B) Incentive to engage in foreclosure

(319) For the reasons set out below, the Commission considers that the Notifying Parties will not likely have the incentive to engage in total or partial input foreclosure of their TV/radio advertising space, irrespective of any plausible segmentation of the product market in pay TV and FTA TV; and inclusion or exclusion of AVOD services.

(320) First, the merger-specific change brought about by the Transaction relates to the Notifying Parties jointly controlling an (additional) SVOD service in the downstream market post-Transaction. Both Telenet and DPG Media, however, were already pre-Transaction selling advertising space on the upstream TV/radio advertising markets while supplying retail AV services on the downstream market.

236 Non-Horizontal Merger Guidelines, paragraph 35. For input foreclosure to be a concern, a vertically integrated entity must have a significant degree of market power in the upstream market. It is only in those circumstances that the entity can be expected to have significant influence on the conditions of competition in the upstream market and thus, possibly, on prices and supply conditions in the downstream market.

237 See case M.7023 Publicis/Omnicom (2014), paras ; case M.7194-Liberty Global/Corelio/W&W/De Vijver Media (2015) para 202; case M.9064 – Telia Company / Bonnier Broadcasting Holding (2019), sections 8.5.1.9. and 8.5.2.9.

238 For 2020, the Notifying Parties noted that [Parties' TV and radio advertising sales]. See Form CO, pargraph 686. See also Notifying Parties' response to RFI 11 of 28 July 2020.

239 Customer base in Flanders from 21% to 40% during this period. Form CO, paragraph 686.

240 Responses to Questionnaire Q2 to AV market participants, questions 77-79.

241 Responses to Questionnaire Q2 to AV market participants, questions 77-79.

The Commission thus considers that the Notifying Parties were already vertically integrated pre-Transaction.

(321) Second, with respect to access to the Notifying Parties' advertising space to local players such as Proximus, it noteworthy that Proximus's advertising spend with DPG Media on OTT is [DPG Media's TV and radio advertising sales]. For example, in 2019, Proximus spent EUR [DPG Media's TV and radio advertising sales] on TV/radio advertising with DPG Media for its OTT services, compared to (and representing only [DPG Media's TV and radio advertising sales]) of its total EUR [DPG Media's TV and radio advertising sales] TV/radio advertising spend with DPG Media.[242] Therefore, the Commission considers it unlikely that the Notifying Parties would risk losing the other [DPG Media's TV and radio advertising sales] (EUR [DPG Media's TV and radio advertising sales]) of Proximus's TV/radio advertising spend by enging in an input foreclosure strategy, rendering such input foreclosure strategy unprofitable.

(322) In addition, DPG Media already entered into an agreement with [DPG Media's commercial negotiations]. DPG Media has also entered into an agreement with [DPG Media's commercial negotiations]. DPG Media is also in negotiations with [DPG Media's commercial negotiations].[243] These examples further support the notion that the Notifying Parties will not have the incentive post-Transaction to foreclose access to their advertising space, as they clearly demonstrate DPG Media's willingness to launch advertising campaigns promoting SVOD services which will compete with the JV's offering.

(323) In light of the above, the Commission considers that the Notifying Parties are unlikely to have the incentive to engage in total or partial input foreclosure of their TV/radio advertising space, irrespective of any plausible segmentation of the product market in pay TV and FTA TV; and inclusion or exclusion of AVOD services.

(C) Impact on effective competition

(324) The Commission considers that due to the lack of ability and incentive for the Notifying Parties to engage in an input foreclosure strategy, as set out above, it is not needed to assess whether any foreclosure strategy would have a negative impact on effective competition.

(D) Conclusion

(325) In light of the foregoing, the Commission concludes that the Transaction would not raise serious doubts as to its compatibility with the internal market relative to any hypothetical total or partial input foreclosure strategy of the Notifying Parties' TV and/or radio advertising space. This conclusion holds regardless of which precise market definition discussed in Section 5.1. and Section 5.2.8 is retained in relation to the sale of TV advertising space.[244]

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[242] Form CO, Table 3.6.4.

[243] Notifying Parties' Response to RFI 11 of 28 July 2020.

[244] This is because the only merger-specific change is the new SVOD service of the JV that competes downstream relative to the sale of TV advertising space, where the Parties hold strong position. Thus, under all of the market definitions discussed in Section 5.1 and Section 5.2.8 the analysis would focus on

5.5. Cooperative effects

5.5.1. Introduction

(326) Under Article 2(4) of the Merger Regulation, to the extent that the creation of a joint venture constituting a concentration pursuant to Article 3 has as its object or effect the coordination of the competitive behaviour of undertakings that remain independent, such coordination shall be appraised in accordance with the criteria of Article 101(1) and (3) of the TFEU, with a view to establishing whether or not the operation is compatible with the common market.

(327) Under Article 2(5) of the Merger Regulation, in making this appraisal, the Commission shall take into account in particular: (i) whether two or more parent companies retain, to a significant extent, activities in the same market as the joint venture or in a market which is downstream or upstream from that of the joint venture or in a neighbouring market closely related to this market; and (ii) whether the coordination which is the direct consequence of the creation of the joint venture affords the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the products or services in question.

(328) A restriction of competition under Article 101(1) TFEU is established when the coordination of the parent companies' competitive behaviour is likely and appreciable and results from the creation of the joint venture, be it as its object or its effect.

5.5.2. Notifying Parties' view

(329) The Notifying Parties submit that the creation of the JV will not lead to any coordination between them and the JV, or amongst themselves, because market conditions are not conducive to tacit coordination, confidentiality obligations will be in place to limit the use by the Notifying Parties of confidential information obtained from the JV, and the JV will form a small part of the Notifying Parties' overall businesses.[245]

5.5.3. The Commission's assessment

(330) The Notifying Parties will remain independently active in a number of the same markets as the JV, notably: (i) the market for the production of AV content in Flanders (demand side),[246] its exhibition window segments and the scripted and non-scripted content segments; (ii) the market for the licensing of individual AV content (supply and demand side), as well as the segments for first PayTV and SVOD;[247] and (iii) the market for the retail supply of AV services (including AVOD and

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whether competing suppliers' SVOD services could be foreclosed by refusing advertising space or increasing the cost thereof. Irrespective of the exact market definition retained in TV advertising, the analysis would involve the same steps (ability, incentive and overall impoact) and the substantive arguments in the analysis, as presented in subsections A-C) would not change.

[245] Form CO, paragraph 819-850.

[246] On the supply side of this market, DPG Media is only active for captive use and the JV is not active. The Notifying Parties will also be active (without the JV) in the segment for the production for hire.

[247] The Notifying Parties will also be active (without the JV) in the segments for the licensing of FTA, TVOD, Premium Sports and series SVOD.

SVOD services), as well as the segment for retail supply of non-linear pay AV services.[248]

(331) The Notifying Parties will also remain independently active in a number of markets closely related to the activities of the JV, notably: (i) the market segment for the production of AV content for hire; (ii) the market segments for the licensing of content in the FTA, TVOD, Premium Sports and series SVOD windows; (iii) the market segment for retail supply of linear pay AV services[249]; (iv) the sale of advertising space on TV channels and websites; (v) the wholesale supply of basic pay TV channels; and (vi) the retail supply of mobile communications services.

(332) Against this background, for the reasons set out below, the Commission considers that the Transaction does not give rise to serious doubts as to its compatibility with the internal market as a result of cooperative effects in (i) the market for production of AV content (demand side) and its sub-segments (potential narrower product markets); (ii) the market for licensing of individual AV content (supply and demand side) and its sub-segments (potential narrower product markets); (iii) the market for retail supply of AV services and its sub-segments (potential narrower product markets); (iv) the markets for sale of advertising space on Dutch language TV channels and websites (potential narrower product markets); (v) the market for wholesale supply of basic pay TV channels (potential narrower product markets); and (vi) the market for retail supply of mobile communications services.

(333) First, the Commission observes that the relevant markets are not conducive to coordination between the Parties. The market shares of the Parties are asymmetric and several competitors would remain post-Transaction, which would be likely to disrupt any attempts of the Notifying Parties to coordinate their activities on the relevant markets.

(334) As regards the <u>market for the production of AV content (demand side)</u>, or any of the segments/narrower product markets, Telenet and DPG Media will retain activities on the demand side of this market, with market shares of respectively [20-30]% and [30-40]% in 2019 in the Flemish Region.[250] The JV itself will have modest activities on the demand side of this market, representing an expected market share of [5-10]% by 2023. The Notifying Parties commission TV programmes for their respective FTA channels. AV production agreements are negotiated confidentially and bilaterally. The terms of these agreements are not made public. Hence, there is no transparency regarding the terms of agreements between broadcasters (and retail AV service providers) commissioning AV content on the one hand and AV production companies on the other hand. This makes reaching terms of coordination and

248 The Notifying Parties will also be active (without the JV) in the segment for retail supply of linear AV services.

249 Including the supply of library SVOD content.

250 The Notifying Parties estimate that their respective market shares would not be materially different if separate segments for commissioned TV production versus TV production for hire or separate segments by exhibition window were considered. Telenet and DPG market shares of respectively [5-10]% and [40-50]% for scripted AV content and [20-30]% and [30-40]% for non-scripted AV content. See the Notifying Parties' Response to RFI 12 of 31 July 2020.

monitoring deviations difficult.[251] Competitors such as VRT, with market share of [40-50]%, will remain active in this market post-Transaction.

(335) As regards the market for the licensing of broadcasting rights for (pre-existing) AV content, or any of the segments/narrower product markets, Telenet and DPG Media will license the rights to individual AV content on the supply side, with market shares of respectively approximately [0-5]% and [0-5]% in 2019.[252] The JV is not expected to have a market share exceeding [0-5]%.[253] Furthermore, similar to what is the case for AV production agreements, the individual AV content licenses are negotiated bilaterally and confidentially. Hence, there is no transparency regarding the terms of such license agreements.[254]

(336) Telenet and DPG Media will also retain activities on the demand side of the market for the licensing of individual AV content, with market shares of respectively [40-50]% and [10-20]% in 2019 in the Flemish Region. [255] The JV will only acquire certain content in the Pay TV and SVOD window and will run its content acquisition activities separately from its parents through its own dedicated content teams.[256] Furthermore, this market is characterised by heterogeneous services and confidential and bilateral negotiations of agreements, and its supply side is fragmented.[257] These market characteristics suggest that the market is not transparent. Competitors such as VRT ([5-10]%), Proximus ([10-20]%), Netflix and Amazon Prime ([10-20]%) will remain active in this market post-Transaction.

(337) As regards the market for the retail supply of AV services, and the possible subsegments/narrower potential product markets, both Telenet and DPG Media will retain their activities as suppliers of retail AV services, with market shares of respectively [50-60]% and less than [0-5]% in Telenet's footprint.[258] Contary to its parents, the JV will be active only in the SVOD segment. The overlap between the Notifying Parties, however, will be limited, as DPG Media will exit the market on 1 September 2020 following its prior decision to shut down Stievie. The incentives of the Notifying Parties will remain significantly different on this market, given that DPG Media's VTM GO is a purely advertising based OTT platform (free-of-charge for the viewer), while Telenet operates a subscription based retail AV service over

[251] Form CO, paragraph 600.

[252] This market share relates to Belgium. The market share would be slightly higher, but still low if the geographic market was Flanders. The Notifying Parties estimate that their combined market shares would remain below 20% under any plausible market definition as considered above. See the Notifying Parties' Response to RFI 12 of 31 July 2020.

[253] Form CO, paragraphs 822-825.

[254] Form CO, paragraph 616.

[255] Telenet and DPG Media have market shares of respectively [30-40]% and [20-30]% in the market segment for licensing of Dutch language individul AV content; [60-70]% and [0-5]% in the TVOD segment; [30-40]% and [0-5]% in the First Pay/SVOD and SVOD library segments; [20-30]% and [40-50]% in the FTA segment; and [60-70]% and [0-5]% in the Premium Sports segment. Their respective market shares would be [30-40]% and [20-30]% for film, [50-60]% and [5-10]% for sport, and [20-30]% and [10-20]% for other genres; [40-50]% and [0-5]% for premium content; [20-30]% and [20-30]% for non-premium; [30-40]% and [10-20]% for scripted content; and [40-50]% and [10-20]% for non-scripted content. See the Notifying Parties' Response to RFI 12 of 31 July 2020.

[256] Form CO, paragraph 826.

[257] Form CO, paragraph 616.

[258] Telenet and DPG Media have market shares of respectively [30-40]% and less than [0-5]% in the market segment for non-linear pay AV services and [60-70]% and less than [0-5]% (through Stevie) in the market segment for linear pay AV services.

a traditional TV platform.[259] Furthermore, competitors such as Proximus and Orange, but also Netflix, Amazon and Disney, will remain active in this market post-Transaction.

(338) As regards the market for the sale of TV advertising space on TV channels and websites, the Notifying Parties will continue to sell advertising space on a wide spectrum of media, including advertising space on TV channels ((Telenet [20-30]% vs. DPG Media [60-70]%) and websites (Telenet [0-5]% vs. DPG Media [5-10]%) in the Flemish Region. The JV, as a customer, would not have access to the overall advertising strategies of the Notifying Parties and the Notifying Parties will continue to be active as independent advertising providers post-Transaction. Furthermore, this market is characterised by numerous and opaque rates, due to the many and significant rebates in this sector.[260] Competitors such as VAR ([5-10]%) and Transfer ([0-5]%) will remain active in the market for TV advertising post-Transaction, while players such as Google ([40-50]%) and Facebook ([10-20]%) will remain active in the market for online advertising.

(339) As regards the market for the wholesale supply of basic pay TV channels, Telenet and DPG Media will retain their activities as suppliers of linear TV channels and ancillary non-linear services separately, with market shares of respectively [5-10]% and [20-30]% in Telenet's footprint.[261] The JV will not be active as either a supplier or a purchaser of linear TV channels and/or ancillary non-linear services. Furthermore, this market is characterised by confidential and bilateral negotiations of agreements.[262] In addition, competing broadcasters, such as VRT, or suppliers of retail AV services, such as Proximus and Orange, could jeopardise the effects of any attempt of the Notifying Parties to coordinate their behaviour on this market.[263]

(340) As regards the market for the retail supply of mobile communications services, both Telenet and DPG Media will retain their activities as suppliers of retail mobile telecommunication services, with market shares of respectively [20-30]% and [0-5]% in Belgium.[264] The JV will not be active in this market and would not have access to the overall mobile strategies of its parents. In addition, there are significant differences between the respective market positions of the Notifying Parties on this market, so their incentives in this market would not be aligned. Namely, Telenet is a mobile network operator ("MNO") offering mobile services on the basis of its own mobile network (either standalone or as part of a multiple play package), with a market share of [10-20]% by value in 2019, whilst DPG Media is active in this market as a MVNO using the mobile network of Orange Belgium and offering standalone mobile services exclusively to consumers, with a market share of [0-

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259 See Notifying Parties' Response to RFI 13 of 3 August 2020.

260 Form CO, paragraphs 829-831 and Notifying Parties' Response to RFI 13 of 3 August 2020.

261 The Notifying Parties estimate that, in view of their absence and/or very modest activities in all segments but the general entertainment genre, the market shares identified above in the segment of basic Pay TV channels also provide a good proxy for their market shares on the demand side of the market segment for the wholesale supply of TV channels in the general entertainment genre. See Notifying Parties' Response to RFI 12 of 31 July 2020.

262 These are complex agreements negotiated for relatively long periods of time (i.e. 3 to 5 years). Their terms vary from one broadcaster to another and from one retail AV provider to another, depending on, for example, the rights included (which technologies, which footprint, which ancillary services, …), the business model of the parties, etc. See Notifying Parties' Response to RFI 13 of 3 August 2020.

263 See Notifying Parties' Response to RFI 13 of 3 August 2020.

264 Volume market shares of respectively [20-30]% and [0-5]%.

5]%.[265] Competitors such as Proximus and Orange and other MVNOs will remain active in this market post-Transaction.

(341) Second, the JV represents […] of the activities of the Notifying Parties which makes it unlikely that the Notifying Parties would have any incentive to coordinate their competitive behaviour. Namely, the JV's expected revenues will be […]. According to its business plan, the JV is expected to generate revenues in the range of approximately EUR […] by 2023, which represents approximately […] of Liberty Global's and […] of DPG Media's EU-wide turnover. Even when considering the Notifying Parties' Belgian revenues only, the JV's revenues will still represent only […] of Liberty Global's and […] of DPG Media's revenues.[266] In line with the Commission's conclusions in precedent cases, this suggests that the conduct of the Notifying Parties on the markets is unlikely to be influenced by their cooperation in the JV.[267]

(342) Third, given the diversification of the Notifying Parties' businesses and the relative differences in their business strategies, it is unlikely that their incentives could be effectively aligned. Telenet is in essence a B2C company, providing communication services (broadband internet, fixed telephony services and cable television) to consumers, whilst DPG Media is a B2B company, which finances AV content by providing commercial communication on its media brands to advertisers. Moreover, Telenet is the owner of a fixed cable network covering Flanders and (partially) Brussels and of a mobile network covering the entire territory of Belgium, whilst DPG Media does not own a fixed and/or mobile network and mainly supplies its AV content via licensing deals with operators of such networks.[268]

(343) Fourth, information barriers set out in the Joint Venture Agreement, will make it difficult for the Notifying Parties to coordinate their behaviour post-Trasnsaction.[269] Information barriers will be in place between Notifying Parties on the one hand and the JV on the other hand, and between the Notifying Parties. These information barriers will prevent information flows that could otherwise help to coordinate the retained activities of the Notifying Parties. More specifically, the information barriers will ensure that (i) confidential information relating to the retail supply of library SVOD content services, including the cost per subscriber charged, will not be shared by the JV from one parent to the other; (ii) the Notifying Parties will not use the information obtained from each other in their capacity as contract party/shareholder/director of the JV (in particular for their own business purposes); (iii) the JV will not use information regarding Telenet's retail supply of SVOD services as disclosed in the context of their wholesale agreement ("Chinese walls") and (iv) the JV will not share confidential information about the advertising rates charged by one of its parents with the other parent.[270]

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265 See Notifying Parties' Response to RFI 13 of 3 August 2020.

266 Form CO, paragraphs 799-800.

267 See case M.5841, *Cathay Pacific Airways/Air China/ACC*, para 30; case M.5838, *Bertelsmann/Planeta/Circulo*, paras 69-73; case M.3542, *Sony Pictures,/Disney/ODG/JV*, paras 17-19.

268 See the Notifying Parties' Response to RFI 13 of 3 August 2020.

269 Form CO, Annex 5.1.c.

270 Form Co, paragraphs 833-848.

(344) Fifth, the ongoing growth in the viewing of AV content via OTT platforms[271] will likely undermine attempts at coordination in the markets for the retail supply of AV services between Telenet and DPG Media because such traditional players are required to adjust the way they deliver their content to consumers. Similarly, the growth in non-linear viewing[272] will likely undermine attempts at coordination in the markets for the wholesale supply of TV channels and the growth in online advertising[273] will likely undermine attempts at coordination in the market for the sale of TV advertising space on TV channels.

(345) As already referred to in Section 5.3.2, the Commission notes again that coordinated effects on this market can be excluded for similar arguments as why cooperative effects are excluded in this market in this section.

5.5.4. Conclusion

(346) In conclusion, in light of the above considerations, the Commission considers that the Transaction does not give rise to serious doubts as to the compatibility with the internal market relative to the possibility of coordination as resulting from cooperative effects, with respect to: (i) the market for production of AV content (demand side) and its relevant sub-segments; (ii) the market for licensing of individual AV content (supply and demand side) and its relevant sub-segments ; (iii) the market for retail supply of AV services and its relevant sub-segments; (iv) the markets for sale of advertising space on Dutch language TV channels and websites; (v) the market for wholesale supply of basic pay TV channels; and (vi) the market for retail supply of mobile communications services.

6. CONCLUSION

(347) For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission

(Signed)
Margrethe VESTAGER
Executive Vice-President

[271] Form CO, paragraphs 32-41 and Annex 1.1.a.
[272] Form CO, paragraphs 32-41and Annex 1.1.a.
[273] Form CO, paragraph 465-470.