EUROPEAN COMMISSION
DG Competition

Case M.10343 - DISCOVERY / WARNER MEDIA

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 22/12/2021

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EUROPEAN COMMISSION

Brussels, 22.12.2021
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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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Discovery, Inc.
230 Park Avenue South
New York, NY 10003
USA

Subject: **Case M.10343 – Discovery/WarnerMedia**
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 17 November 2021, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Discovery, Inc. ("**Discovery**", United States of America) acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control over AT&T Inc.'s ("**AT&T**", United States of America) WarnerMedia business segment ("**WarnerMedia**", United States of America)[3] ("**Transaction**").[4] Discovery and

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 For the purpose of this Decision, WarnerMedia includes WarnerMedia, LLC, Home Box Office, Inc., Turner Broadcasting System, Inc., Warner Bros. Entertainment Inc., Historic TW Inc., Warner Media Content Holdings, L.P., WarnerMedia Direct, LLC and Warner Communications LLC. All these companies are incorporated in the United States of America.

4 Publication in the Official Journal of the European Union No C 484, 2.12.2021, p. 7.

WarnerMedia are designated hereinafter as the "**Parties**" and Discovery is referred to as the "**Notifying Party**".

1. THE PARTIES

(2) **Discovery** is a global media company, and parent company of its global media group, that provides original and purchased content, largely non-fiction, to viewers worldwide through multiple distribution platforms, including linear platforms such as pay-TV, FTA, and broadcast TV, authenticated GO applications, digital distribution arrangements, content licensing arrangements and over-the-top ("**OTT**") subscription products. Discovery distributes customized content in the U.S. and over 220 other countries and territories in nearly 50 languages, including a variety of genres such as natural history, sports, general entertainment, food, travel, health and kids. Discovery's global portfolio of networks includes non-fiction TV brands such as Discovery Channel, its most widely distributed global brand, TLC, Animal Planet, Investigation Discovery, and Science Channel. Discovery's international portfolio includes Eurosport, a sports entertainment provider across Europe and broadcaster of the Olympic Games across Europe, TVN, a Polish media company, as well as Discovery Kids, a children's entertainment brand in Latin America. Discovery is listed on the New York Stock Exchange. Discovery is not controlled by any other company and its shares are spread among a number of stockholders.

(3) **WarnerMedia**,[5] formerly known as Time Warner, is a global media and entertainment business currently wholly owned by ultimate parent company AT&T. WarnerMedia's global activities include the development, production, licensing and distribution of feature films, television, gaming and other content over various physical and digital formats. It also produces, licenses and operates various linear and non-linear video programming services, including premium pay-TV services, which are made available both through third party and affiliated distributors on a wholesale basis, as well as on an OTT retail basis. WarnerMedia's business consists primarily of seven core-operating units: (i) Studios & Networks; (ii) News & Sports; (iii) Direct-to-Consumer; (iv) International; (v) Sales & Distribution; (vi) Technology & Operations; and (vii) Corporate Functions. WarnerMedia is owned and controlled by AT&T, a public company listed on the New York Stock Exchange. AT&T is not controlled by any other company or stockholder.

2. THE OPERATION

(4) Pursuant to a Separation and Distribution Agreement and an Agreement and Plan of Merger entered into on 17 May 2021 between Discovery and AT&T, WarnerMedia will be acquired by Discovery and combined with its existing businesses. The Transaction will take place according to the following steps. Following the Transaction, AT&T will not hold any ownership interest or governance right in the merged entity.

(5) Therefore, the Transaction consists of the acquisition of sole control by Discovery over WarnerMedia within the meaning of Article 3(1)(b) of the Merger Regulation.

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5 Form CO, sections 1-5, Annex 4.C contains a full list of business, operations, assets and liabilities that will fall within the scope of this Transaction.

3. UNION DIMENSION

(6) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million (Discovery: EUR […]; WarnerMedia: EUR […]).[6] Each of them has a Union-wide turnover in excess of EUR 250 million (Discovery: EUR […]; WarnerMedia: EUR […]), but each does not achieve more than two-thirds of its aggregate Union-wide turnover within one and the same Member State. The notified operation therefore has a Union dimension pursuant to Article 1(2) of the Merger Regulation.

4. RELEVANT MARKETS

4.1. Introduction

(7) The Transaction concerns all three main levels of the audio-visual ("**AV**") value chain (from upstream to downstream):[7] (i) the production and supply of AV content (including the supply of pre-produced AV content and commissioned AV content), where the Parties both produce, supply, and distribute non-film, audio-visual content, including for TV broadcasting; (ii) the wholesale supply of TV channels, where the Parties are both active in the wholesale aggregation of content rights into TV channels, including for supply to providers of retail TV services, and; (iii) the retail supply of AV services to end customers, where both Parties offer, throughout the EEA, pay TV services.[8]

(8) In addition, the Transaction concerns the sale of advertising on TV channels, where both Parties are active in the supply of advertising space.

4.2. Production and supply of AV content

4.2.1. The Parties' activities

(9) Each of WarnerMedia and Discovery is active in the supply and production, as well as the acquisition, of commissioned TV content for exploitation on media platforms.

(10) With regard to the supply-side of the market, WarnerMedia produces, in the EEA, non-captive, commissioned, content for third parties through a wide variety of

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6 Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.4.2008, p. 1).

7 The Transaction also concerns the market for the licensing of non-broadcasting rights. This market was assessed in a number of previous decisions, including (i) with regards to the market for merchandise licensing, Commission decision of 20 December 2012 in case M.6791 – *The Walt Disney Company/Lucasfilm*; and, (ii) with regards to the market for publishing of gaming software, Commission decision of 12 February 2014 in Case M.7866 – *Activision Blizzard/King* and Commission decision M.10001 – *Microsoft/Zenimax*. Considering all plausible segments and relevant geographic markets, the Parties confirmed that: (i) the combined market shares of the Parties are below 20%; (ii) the individual market share of either Discovery or WarnerMedia remain below 30%; and, (iii) the individual market share of either Discovery or WarnerMedia in any market which would be upstream, downstream or neighbouring the market for the licensing of non-broadcasting rights remain below 30%. Therefore, the Commission concludes that this market is not affected by the Transaction, whether horizontally, vertically or as a result of a conglomerate relation. Accordingly, the Commission will not assess this market further.

8 WarnerMedia, through HBO (including on demand via HBO GO), and Discovery through Joyn+, TVN (i.e., TVN Player and TVN24), Eurosport Player, and GolfTV. Discovery has also recently started rolling out Discovery+ (Discovery's OTT streaming platform) in the EEA, while WarnerMedia's OTT streaming platform HBO Max is not yet available in the EEA (to be launched in 2022).

production companies. Discovery produces original TV programming via its own production studios, Discovery Studios in the U.S. Discovery Studios produces predominantly captive content along with some non-captive content for other channels in the U.S. and outside the EEA. Discovery Studios does not produce content for third parties in the EEA.

(11) As regards the demand-side of the market, WarnerMedia acquired some commissioned TV content from third parties in the EEA to include in its own wholesale channels or retail platforms, but only from content producers located in Czech Republic, Denmark, Finland, France, Germany, Hungary, Italy, Norway, Poland, Portugal, Romania, Slovakia, Spain, and Sweden. Discovery acquired some limited commissioned TV content from third parties in the EEA to include in its own wholesale channels or retail platforms, but only from content providers located in Denmark, Finland, Germany, Ireland, Italy, the Netherlands, Norway, Poland, Spain, and Sweden.

(12) WarnerMedia and Discovery are also active in the licensing and acquisition of pre-produced TV content.

(13) From the supply side, Discovery distributes broadcasting rights to TV content across the EEA, including sports content via the TV channel Eurosport (sub-licensing some of its sports rights for live access, delayed access, or news-only access by channel, country, or region). Discovery is also active in the licensing of pre-produced TV content through the TV channel TVN, which distributes a limited amount of rights to TV content to third parties located in a limited number of EEA Member States. In addition, Discovery has an interest in All3Media, a joint venture with Liberty Global, which distributes rights to a range of content to broadcasters and TV services providers across the EEA, including individual TV content it has produced itself and content produced and obtained from third parties. WarnerMedia generates licensing revenue in all EEA Member States.

(14) From the demand side, Discovery acquires licensing rights from third parties in order to populate its portfolio of TV channels in the EEA. WarnerMedia acquires licensing content with third Parties in the Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Latvia, Lithuania, Norway, Poland, Portugal, Romania, Slovakia, Spain, and Sweden.

4.2.2. Product market definition

4.2.2.1. Past Commission decisions

(15) In previous decisions, the Commission has concluded that there are separate markets for: (i) the production and supply of commissioned AV content (also referred to as *ad hoc* or new content); and (ii) the licensing of broadcasting rights for pre-produced AV content (available off-the-shelf).[9]

(16) With regard to the market for the **production of commissioned AV content**, the Commission has found the product market to be limited to non-captive AV

9 Commission decision of 7 April 2017 in Case M.8354 – *Fox / Sky*, para. 54; Commission decision of 24 February 2015 in Case M.7194 – *Liberty Global / Corelio / W&W / De Vijver Media*, para. 69; Commission decision of 6 November 2018 in Case M.8785 –*The Walt Disney Company / Twenty-First Century Fox*, para. 67; Commission decision of 26 August 2020 in Case M.9299 – *Discovery / Polsat / JV*, para. 50.

production, thereby excluding captive AV production (*i.e.* AV content produced by broadcasters for use on their own TV channels), as this AV content is not offered on the market.[10]

(17) With regard to the market for the **licensing of pre-produced AV content**, the Commission has considered that it may be subdivided by content type, in particular: (i) films, (ii) sports, and (iii) other AV content (*i.e.* all non-sport, non-film content), but ultimately left the market definition open.[11] In addition, the Commission had assessed whether AV content could be further sub-divided by distinguishing between: (i) US and non-US films; (ii) premium and non-premium content; or (iii) scripted and non-scripted content. This question has been left open in previous decisions.[12]

(18) The Commission has also considered further sub-dividing the market for the licensing of pre-produced AV content by exhibition window:[13] (i) subscription-based video on demand ("**SVOD**"); (ii) transactional video on demand ("**TVOD"**),[14] (iii) pay-per-view ("**PPV**"),[15] (iv) first pay TV window, (v) second pay TV window, and (vi) free-to-air ("**FTA**"), but has ultimately left this question open.[16]

4.2.2.2. The Notifying Party's view

(19) The Notifying Party considers that the supply of commissioned TV content and the licensing of pre-produced TV content should be considered as a single market as in-house production, commissioned content and content licensing/acquisition all represent various options for sourcing content.

4.2.2.3. The Commission's assessment

(20) Overall, the market investigation indicated that that Commission can follow the approach taken in previous cases with regard to definition of the market for the production and supply of AV content.

(21) The information gathered during the market investigation does not provide indication that the Commisison should depart from the distinction between the market for the production of commissioned AV content on the one hand, and the

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10 Commission decision of 22 September 2006 in Case M.4353 – *Permira/All3Media Group*, paras. 11-12; Commission decision of 9 October 2014 in Case M.7360 – *21st Century Fox/Apollo/JV*, para. 36; Commission decision of 20 June 2016 in Case M.7865 – *Lov Group/De Agostini/JV*, para. 18; Commission decision of 26 August 2020 in Case M.9299 – *Discovery / Polsat / JV*, para. 50.

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

12 M.8354 – Fox / Sky, para. 55; M.6369 - HBO/Ziggo/HBO Nederland, para. 18; M.7194 – Liberty Global / Corelio / W&W / De Vijver Media, para. 52; M.8785 – The Walt Disney Company / Twenty-First Century Fox, para. 68.

13 The use of the term exhibition windows is not applicable to non-film AV content. Non-film AV content may be broadcast through different exploitation fields (e.g. pay TV, FTA) but the rights do not pass through each method in the same way a newly released film does.

14 TVOD designates a product where a consumer obtains the right to watch a single title within a designated time period (for example 48 hours) through a single payment.

15 PPV designates a product where a consumer obtains the right to watch a single title during a specific time period (for example Sunday between 2.00 pm and 3.45 pm) through a single payment.

16 M.8354 – Fox / Sky, para. 56; M.8785 – The Walt Disney Company / Twenty-First Century Fox, para. 68.

market for the licensing of broadcasting rights for pre-produced AV content on the other hand.[17]

(22) With regards to the market for licensing of broadcasting rights, the market investigation suggested that the segmentation by type of content including (i) films, (ii) sports, and (iii) other AV content (*i.e.* all non-sport, non-film content) remains appropriate. However, one market participant in Italy noted that "*a segmentation between films, sports and other AV content is too broad*".[18]

(23) Similarly, the market investigation confirmed that the segmentation between (i) US and non-US films; (ii) premium and non-premium content; or (iii) scripted and non-scripted content remains relevant..[19] In particular, one market participant in Italy further argued that "*from a marketing point of view, for our purposes, the distinction should be added not so much between US and non-US, but between Italian, European and non-European productions.*"[20]

(24) With regards to the market for licensing of broadcasting rights, the market investigation confirmed that the segmentation by exhibition window remained relevant.[21] In particular with regards to non-linear AV content, market participants confirmed that there are differences in price in terms of content, pricing and contract terms.[22]

(25) In light of the above and for the purpose of this Decision, the Commission considers that the production of commissioned AV content and the licensing of broadcasting rights for AV content constitute two separate product markets. The question whether the market for the licensing of broadcasting rights for AV content can be further segmented according to (i) the type of AV content; (ii) US and non-US films; (iii) premium and non-premium content (iv) scripted and non-scripted content; or, (v) exhibition window can be left open as the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA agreement under any plausible product market definition.

4.2.3. Geographic market definition

4.2.3.1. Past Commission decisions

(26) In past decisions, the Commission has considered the market for the production and supply of AV content (and its relevant segments) to be either national or regional, based on linguistically homogeneous areas.[23]

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17 Responses to questionnaire Q1 – Questionnaires to market participants in the AV sector (Italy), questions 6 and 6.1.

18 Responses to questionnaire Q1 – Questionnaires to market participants in the AV sector (Italy), questions 7.1.

19 For exemple, see responses to questionnaire Q1 – Questionnaires to market participants in the AV sector (Italy), questions 7 and 7.1.

20 Responses to questionnaire Q1 – Questionnaires to market participants in the AV sector (Italy), question 7.1.

21 Notably, the Commission asked market participants whether the following exhibition windows were appropriate for the TV value chain: (i) subscription-based video on demand ("**SVOD**"); (ii) transactional video on demand ("**TVOD**"); (iii) pay-per-view ("**PPV**"); (iv) first pay TV; (v) second pay TV; (vi) free-to-air ("**FTA**").

22 Responses to questionnaire Q1 – Questionnaires to market participants in the AV sector (Italy), questions 9.

23 M.8354 – *Fox / Sky*, para. 69; M.9299 – *Discovery / Polsat / JV*, para. 54.

4.2.3.2. The Notifying Party's view

(27) The Notifying Party considers that the exact scope of the geographic market can be left open even if it does not question the Commission's past decisional practice based on regional, national or linguistic geographic markets.

4.2.3.3. The Commission's assessment

(28) The market investigation confirmed that the geographic scope of licensing agreements is normally national. Overall, market participants confirmed that the market for the production and supply of AV content to be national in scope, or encompassing linguistically homogenous areas.[24]

(29) In light of the foregoing, the Commission does not have indication that it should depart from the approach taken in previosu casesassessment, and concludes, for the purpose of this Decision, that the geographic markets for the production of commissioned AV content and the licensing of broadcasting rights for AV content are either national or correspond with a linguistic areas. In any event, the precise definition of the geographic market can be left open, as the Transaction does not raise serious concerns as to its compatibility with the internal market under any plausible market definition.

4.3. Wholesale supply of TV channels

4.3.1. The Parties' activities

(30) WarnerMedia and Discovery are active in the wholesale supply of TV channels to providers of retail TV services.

(31) WarnerMedia offers a portfolio of wholesale TV channels across the EEA to both FTA and pay TV retailers. WarnerMedia's core offering encompasses a bouquet of predominantly pay TV channels which broadcast scripted fiction programmes directed at children (e.g., for instance with the TV channels Cartoon Network, or Boomerang) and general entertainment (e.g., for instance with the TV channels TNT, TNT Film, or TNT Series).[25] WarnerMedia also distributes Home Box Office ("**HBO**") premium film channels predominantly in Eastern Europe. Finally, WarnerMedia provides CNN International in the EEA, offering FTA news-related content worldwide.

(32) Discovery offers a portfolio of wholesale TV channels across the EEA to both FTA and pay TV retail broadcasters. Discovery's channels mainly constitute pay TV channels, predominantly for unscripted, non-fiction programmes, such as documentaries. In addition to these channels, Discovery's Eurosport is focused solely on sporting content. In Italy, Discovery offers some FTA general entertainment and children's TV channels, including K2 and Frisbee, which it acquired as part of the Switchover Media acquisition in 2013.

24 Responses to questionnaire Q1 – Questionnaires to market participants in the AV sector (Italy), questions 24.

25 In Italy, WarnerMedia operates its FTA TV channels for children through a joint venture Boing S.p.A. ("**Boing**") with Mediaset S.p.A. ("**Mediaset**"). WarnerMedia and Mediaset also operate some Boing channels in Spain.

4.3.2. *Product market definition*

4.3.2.1. Past Commission decisions

(33) In its previous decisions, the Commission has identified a wholesale market for the supply of TV channels. Within that market, in certain decisions, the Commission has further identified two separate product markets for: (i) FTA TV channels, and (ii) pay TV channels.[26] The Commission has further stated that, within the pay TV channels market, there could be different segments for: (i) basic pay TV channels, which are included in the basic subscription fee, and (ii) premium pay TV channels,[27] for which customers pay a premium in addition to their basic subscription fee.

(34) In *Liberty Global / Corelio / W&W / De Vijver Media*, 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 basic pay TV/FTA channels. In that decision, the Commission also considered that there was no need to draw a distinction between linear TV channels and their non-linear ancillary services.[28]

(35) In its previous decisions, the Commission also examined a number of other potential segmentations of the market for the wholesale supply of TV channels but ultimately left the market definition open, as regards: (i) genre or thematic content (films, sports, news, children/youth, and others);[29] and (ii) different means of infrastructure used for the delivery to the consumer (cable, satellite, terrestrial TV and IPTV).[30] In the recent *Telia Company/Bonnier Broadcasting Holding* decision, the Commission considered that the market for the wholesale supply of TV channels should not be further segmented according to the type of infrastructure used for the delivery to the consumer (such as cable, direct to home ("**DTH**"), digital terrestrial television ("**DTT**") and internet protocol television ("**IPTV**")) since the competitive conditions in the market for the wholesale supply of TV channels, and any possible segmentation, would be similar irrespective of the distribution technology and type of infrastructure used for the distribution of the TV channels.[31]

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26 M.7194 – *Liberty Global/Corelio/W&W/De Vijver Media*, paras. 90-91.

27 M.8785 – *The Walt Disney Company / Twenty-First Century Fox*, para. 77; Commission decision of 15 June 2018 in Case M.8861 – *Comcast/Sky*, para. 50; Commission decision of 6 February 2018 in Case M.8665 – *Discovery/Scripps*, paras. 19- 20; M.8354 – *Fox/Sky*, paras. 80- 81.

28 M.7194 – *Liberty Global/Corelio/W&W/De Vijver Media*, paras. 93-94.

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

30 M.7194 – L*iberty Global/Corelio/W&W/De Vijver Media*, para. 98; Commission decision of 18 July 2007 in Case M.4504 – *SFR/Télé 2 France*, para. 44; Commission decision of 26 August 2008 in Case M.5121 – *News Corp/Premiere*, para. 22.

31 Commission decision of 12 November 2019 in Case M.9064 – *Telia Company/ Bonnier Broadcasting Holding,* para. 162.

4.3.2.2. The Notifying Party's view

(36) The Notifying Party does not consider it appropriate to segment the market for the wholesale supply of TV channels between FTA and pay TV, whether basic or premium, between genres, or between means of transmission.

4.3.2.3. The Commission's assessment

(37) The market investigation has yielded mixed results on the definition of the product market for the wholesale supply of TV channels.

(38) In relation to the possible segmentation between FTA and pay TV channels, the market investigation has confirmed that the segmentation is still relevant in a majority of Member States under investigation.[32] In other Member States, the views were mixed or inconclusive.[33]

(39) In relation to the possible segmentation between premium and basic pay TV channels, the market investigation has yielded inconclusive results.[34] This seems to be linked to the absence of a consistent definition of which pay TV channels would qualify as basic and which as premium and to the fact that TV content are distributed to different channels that market themselves both as basic and premium TV channels.[35]

(40) Similarly, the possible segmentation of the market for the wholesale supply of TV channels by genre or thematic content has yielded mixed results depending mainly on the country of operation of the market respondents. For instance, the respondents

32 Response to questionnaire Q1 – Questionnaire to market participants in the AV sector (Italy), question 10 and 10.1; questionnaire Q2 - Questionnaire to market participants in the AV sector (Belgium), questions 6 and 6.1; questionnaire Q3 – Questionnaire to market participants in the AV sector (Denmark) questions 6 and 6.1; questionnaire Q4 – Questionnaire to market participants in the AV sector (France) questions 6 and 6.1; questionnaire Q5 – Questionnaire to market participants in the AV sector (Germany) questions 6 and 6.1; questionnaire Q6 – Questionnaire to market participants in the AV sector (Romania) questions 6 and 6.1; questionnaire Q10 – Questionnaire to market participants in the AV sector (Poland) questions 6 and 6.1; questionnaire Q11 – Questionnaire to market participants in the AV sector (Spain) questions 6 and 6.1.

33 Response to questionnaire Q7 - Questionnaire to market participants in the AV sector (Bulgaria), questions 6 and 6.1; questionnaire Q8 – Questionnaire to market participants in the AV sector (Finland) questions 6 and 6.1; questionnaire Q9 – Questionnaire to market participants in the AV sector (Norway) questions 6 and 6.1.

34 Response to questionnaire Q1 – Questionnaire to market participants in the AV sector (Italy), question 11 and 11.1; questionnaire Q2 - Questionnaire to market participants in the AV sector (Belgium), questions 7 and 7.1; questionnaire Q3 – Questionnaire to market participants in the AV sector (Denmark) questions 7 and 7.1; questionnaire Q4 – Questionnaire to market participants in the AV sector (France) questions 7 and 7.1; questionnaire Q5 – Questionnaire to market participants in the AV sector (Germany) questions 7 and 7.1; questionnaire Q6 – Questionnaire to market participants in the AV sector (Romania) questions 7 and 7.1; questionnaire Q7 - Questionnaire to market participants in the AV sector (Bulgaria), questions 7 and 7.1; questionnaire Q8 – Questionnaire to market participants in the AV sector (Finland) questions 7 and 7.1; questionnaire Q9 – Questionnaire to market participants in the AV sector (Norway) questions 7 and 7.1; questionnaire Q10 – Questionnaire to market participants in the AV sector (Poland) questions 7 and 7.1; questionnaire Q11 – Questionnaire to market participants in the AV sector (Spain) questions 7 and 7.1.

35 Response to questionnaire Q1 – Questionnaire to market participants in the AV sector (Italy), question 12 and 13; questionnaire Q2 - Questionnaire to market participants in the AV sector (Belgium), questions 8 and 9; questionnaire Q3 – Questionnaire to market participants in the AV sector (Denmark) questions 8 and 9; questionnaire Q4 – Questionnaire to market participants in the AV sector (France) questions 8 and 9; questionnaire Q5 – Questionnaire to market participants in the AV sector (Germany) questions 8 and 9; questionnaire Q6 – Questionnaire to market participants in the AV sector (Romania) questions 8 and 9; questionnaire Q8 - Questionnaire to market participants in the AV sector (Bulgaria), questions 8 and 9; questionnaire Q8 – Questionnaire to market participants in the AV sector (Finland) questions 8 and 9; questionnaire Q9 – Questionnaire to market participants in the AV sector (Norway) questions 8 and 9 questionnaire Q10 – Questionnaire to market participants in the AV sector (Poland) questions 8 and 9; questionnaire Q11 – Questionnaire to market participants in the AV sector (Spain) questions 8 and 9.

to the market investigation in Italy, Germany, Finland, Poland and Spain indicated that this segmentation is relevant while the market investigation in other Member States suggests otherwise.[36] In particular in Italy, the market investigation has suggested that the segmentation by genre should be made in addition to the segmentation between wholesale supply of FTA and pay TV channels.[37] For instance, one market participant stressed that "*Broadcasting operators, both pay and FTA, already segmented their cannels also by genre, presumably to segment their audiences and to sell more targeted adv.*"[38]

(41) Furthermore, specifically for Italy, the market investigation has confirmed that it is easy to categorise channels on the basis of their genre and in line with previous Commission decisions which defined the following genre categories: films, sports, news, children/youth, and others.[39] As stated by one market participant: "*it is easy to categorise channels by genre or theme in Italy, as long as we define a residual category that encompasses mainstream programming, meaning a channel which covers multiple genres such as movies, TV series, sports, events, and news.*"[40] In support of this position, the market investigation has indicated that the choice of a retailer of AV services to purchase a channel is based on the channel's genre.[41]

(42) In relation to the possible segmentation according to the distribution technology, the market investigation has indicated that this is no longer a relevant segmentation in the Member States under investigation except Spain.[42]

In all the countries covered by the market investigation,[43] market participants have confirmed that there should be no segmentation between linear TV channels and the ancillary services[44] linked thereto.[45]

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36 Response to questionnaire Q1 – Questionnaire to market participants in the AV sector (Italy), question 15.1; questionnaire Q5 – Questionnaire to market participants in the AV sector (Germany) questions 11; questionnaire Q11 – Questionnaire to market participants in the AV sector (Finland) questions 11; questionnaire Q10 – Questionnaire to market participants in the AV sector (Poland) questions 11; questionnaire Q11 – Questionnaire to market participants in the AV sector (Spain) questions 11.

37 Response to questionnaire Q1 – Questionnaire to market participants in the AV sector (Italy), question 15.1.2.

38 Response to questionnaire Q1 – Questionnaire to market participants in the AV sector (Italy), question 15.1.2.

39 For relevant past decisions of the Commission, see above in paragraph (34).

40 Response to questionnaire Q1 – Questionnaire to market participants in the AV sector (Italy), question 15.1.3 and 15.1.3.1.

41 Response to questionnaire Q1 – Questionnaire to market participants in the AV sector (Italy), question 15.1.4.

42 Response to questionnaire Q1 – Questionnaire to market participants in the AV sector (Italy), question 15.2 and 15.2.1; questionnaire Q2 – Questionnaire to market participants in the AV sector (Belgium), questions 11.2 and 11.2.1; questionnaire Q3 – Questionnaire to market participants in the AV sector (Denmark) questions 11.2 and 11.2.1; questionnaire Q4 – Questionnaire to market participants in the AV sector (France) questions 11.2 and 11.2.1; questionnaire Q5 – Questionnaire to market participants in the AV sector (Germany) questions 11.2 and 11.2.1; questionnaire Q6 – Questionnaire to market participants in the AV sector (Romania) questions 11.2 and 11.2.1; questionnaire Q7 – Questionnaire to market participants in the AV sector (Bulgaria), questions 11.2 and 11.2.1; questionnaire Q8 – Questionnaire to market participants in the AV sector (Finland) questions 11.2 and 11.2.1; questionnaire Q9 – Questionnaire to market participants in the AV sector (Norway) questions 11.2 and 11.2.1; questionnaire Q10 – Questionnaire to market participants in the AV sector (Poland) questions 11.2 and 11.2.1; questionnaire Q11 – Questionnaire to market participants in the AV sector (Spain) questions 11.2 and 11.2.1.

43 The market investigation covers Bulgaria, Belgium, Denmark, Finland, France, Germany, Italy, Norway, Poland, Romania, and Spain.

44 Ancillary services are services or functionalities offered to consumers simultaneously with the linear transmission, such as catch up services, personal video recorder, accessibility of the TV channel's content through the internet and on mobile devices, etc.

(43) In light of the above, the Commission considers that, for the purpose of this Decision, the relevant product market is the market for the wholesale supply of TV channels, including their ancillary services and covering all types of infrastructure. The question whether this product market should be further segmented between FTA and pay TV channels, and in turn whether pay TV channels should be further segmented between basic pay and premium pay TV channels 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. The question whether this product market should be further segmented by genre (i.e., sports, films, children/youth and other) can also 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.

4.3.3. Geographic market definition

4.3.3.1. Past Commission decisions

(44) In its previous decisions, the Commission found the market for the wholesale supply of TV channels to be either national in scope,[46] regional,[47] or delineated by linguistically homogeneous areas encompassing more than one EU Member State.[48]

4.3.3.2. The Notifying Party's arguments

(45) The Notifying Party considers that the exact scope of the geographic market can be left open even if it does not question the Commission's past decisional practice based on regional, national or linguistic geographic markets.

4.3.3.3. The Commission's assessment

(46) Except for Belgium, the market investigation has confirmed that agreements between wholesale suppliers of TV channels and retail suppliers of AV services are negotiated on a national basis.[49] In Belgium, market participants considered that TV

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45 Response to questionnaire Q1 – Questionnaire to market participants in the AV sector (Italy), question 15.3 and 15.3.1; questionnaire Q2 - Questionnaire to market participants in the AV sector (Belgium), questions 11.3 and 11.3.1; questionnaire Q3 – Questionnaire to market participants in the AV sector (Denmark) questions 11.3 and 11.3.1; questionnaire Q4 – Questionnaire to market participants in the AV sector (France) questions 11.3 and 11.3.1; questionnaire Q5 – Questionnaire to market participants in the AV sector (Germany) questions 11.3 and 11.3.1; questionnaire Q6 – Questionnaire to market participants in the AV sector (Romania) questions 11.3 and 11.3.1; questionnaire Q7 - Questionnaire to market participants in the AV sector (Bulgaria), questions 11.3 and 11.3.1; questionnaire Q8 – Questionnaire to market participants in the AV sector (Finland) questions 11.3 and 11.3.1; questionnaire Q9 – Questionnaire to market participants in the AV sector (Norway) questions 11.3 and 11.3.1; questionnaire Q10 – Questionnaire to market participants in the AV sector (Poland) questions 11.3 and 11.3.1; questionnaire Q11 – Questionnaire to market participants in the AV sector (Spain) questions 11.3 and 11.3.1.

46 M.6369 – HBO/Ziggo/HBO Nederland, para. 39; Commission decision of 15 April 2013 in Case M.6880 – Liberty Global/Virgin Media, para. 41; Commission decision of 10 October 2014 in Case M.7000 – Liberty Global/Ziggo, para. 98; M.9299 – Discovery / Polsat / JV, para. 70.

47 M.7197 – Liberty Global/Corelio/W&W/De Vijver Media, para. 106 onwards.

48 M.8354 – Fox / Sky, para. 90 onwards.

49 Response to questionnaire Q1 – Questionnaire to market participants in the AV sector (Italy), question 25 and 25.1; questionnaire Q3 – Questionnaire to market participants in the AV sector (Denmark) questions 12 and 12.1; questionnaire Q4 – Questionnaire to market participants in the AV sector (France) questions 12 and 12.1; questionnaire Q5 – Questionnaire to market participants in the AV sector (Germany) questions 12 and 12.1; questionnaire Q6 – Questionnaire to market participants in the AV sector (Romania) questions 12 and 12.1;

channels are usually targeted at specific audiences on the basis of the language of the channel. As such, agreements tend to be negotiated on the basis the footprint of network retailers.[50]

(47) Similarly, except for Belgium, the market investigation has confirmed that the wholesale suppliers of TV channels are the same across a Member State.[51]

(48) Finally, the market investigation confirmed that the geographic scope of negotiations is not dependent on the genre of the channel being supplied.[52]

(49) In light of the above, for the purpose of this Decision, the Commission concludes that the relevant geographic market for the wholesale supply of TV channels, and all its possible sub-segments is national for all of the countries considered in this decision, and/or regional in scope for Belgium.

4.4. Retail supply of AV services to end customers

4.4.1. The Parties' activities

(50) WarnerMedia and Discovery are active in the retail provision of audio-visual services to end users.

(51) Discovery offers FTA TV services in Austria, Finland, Germany, Ireland, Italy, Poland and Spain. Discovery also offers pay TV services such as Joyn+ (in Germany), TVN (available in Austria, Belgium, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Latvia, Lithuania, Netherlands, Norway, Poland, Portugal, Spain and Sweden), Eurosport Player (available in all EEA Member States), GolfTV (available in all EEA Member States), Discovery+

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questionnaire Q7 - Questionnaire to market participants in the AV sector (Bulgaria), questions 16 and 16.1; questionnaire Q8 – Questionnaire to market participants in the AV sector (Finland) questions 16 and 16.1; questionnaire Q9 – Questionnaire to market participants in the AV sector (Norway) questions 16 and 16.1; questionnaire Q10 – Questionnaire to market participants in the AV sector (Poland) questions 16 and 16.1; questionnaire Q11 – Questionnaire to market participants in the AV sector (Spain) questions 16 and 16.1.

50 Response to questionnaire Q2 – Questionnaire to market participants in the AV sector (Belgium) questions 12 and 12.1.

51 Response to questionnaire Q1 – Questionnaire to market participants in the AV sector (Italy), question 26 and 26.1; questionnaire Q3 – Questionnaire to market participants in the AV sector (Denmark) questions 13 and 13.1; questionnaire Q4 – Questionnaire to market participants in the AV sector (France) questions 13 and 13.1; questionnaire Q5 – Questionnaire to market participants in the AV sector (Germany) questions 13 and 13.1; questionnaire Q6 – Questionnaire to market participants in the AV sector (Romania) questions 13 and 13.1; questionnaire Q7 - Questionnaire to market participants in the AV sector (Bulgaria), questions 17 and 17.1; questionnaire Q8 – Questionnaire to market participants in the AV sector (Finland) questions 17 and 17.1; questionnaire Q9 – Questionnaire to market participants in the AV sector (Norway) questions 17 and 17.1; questionnaire Q10 – Questionnaire to market participants in the AV sector (Poland) questions 17 and 17.1; questionnaire Q11 – Questionnaire to market participants in the AV sector (Spain) questions 17 and 17.1.

52 Response to questionnaire Q1 – Questionnaire to market participants in the AV sector (Italy), question 27 and 27.1; questionnaire Q2 – Questionnaire to market participants in the AV sector (Belgium) questions 14 and 14.1; questionnaire Q3 – Questionnaire to market participants in the AV sector (Denmark) questions 14 and 14.1; questionnaire Q4 – Questionnaire to market participants in the AV sector (France) questions 14 and 14.1; questionnaire Q5 – Questionnaire to market participants in the AV sector (Germany) questions 14 and 14.1; questionnaire Q6 – Questionnaire to market participants in the AV sector (Romania) questions 14 and 14.1; questionnaire Q7 - Questionnaire to market participants in the AV sector (Bulgaria), questions 18 and 18.1; questionnaire Q8 – Questionnaire to market participants in the AV sector (Finland) questions 18 and 18.1; questionnaire Q9 – Questionnaire to market participants in the AV sector (Norway) questions 18 and 18.1; questionnaire Q10 – Questionnaire to market participants in the AV sector (Poland) questions 18 and 18.1; questionnaire Q11 – Questionnaire to market participants in the AV sector (Spain) questions 18 and 18.1.

(Discovery's recent SVOD platform, currently available in the Denmark, Finland, Ireland, Italy, Netherlands, Norway, Spain and Sweden).[53]

(52) WarnerMedia offers retail FTA TV services only in Italy and Spain. WarnerMedia also offers HBO channels as a pay TV service (including on-demand via HBO GO), which is available in Bulgaria, Croatia, Czech Republic, Denmark, Finland, Hungary, Norway, Poland, Romania, Slovakia, Slovenia, Spain, and Sweden. WarnerMedia has also just launched its SVOD platform HBO Max in a handful of countries in the EEA - namely Sweden, Denmark, Norway, Finland and Spain, where HBO Max was launched on 26 October 2021. HBO Max will then be rolled out in 2022 across Central and Eastern Europe, Portugal, as well as the Netherlands, Greece and Iceland.[54]

4.4.2. Product market definition

4.4.2.1. Past Commission decisions

(53) The Commission has in previous cases split the retail supply of AV services in two separate markets: FTA and pay TV,[55] but in other more recent cases has ultimately left open the product market definition.[56] The Commission has also considered whether the market for retail pay AV services should be segmented further according to: (i) premium pay AV vs. basic pay AV services;[57] (ii) distribution technologies (*e.g.* cable, satellite, or terrestrial);[58] and (iii) linear vs non-linear AV services;[59] but ultimately left the market definition open.[60]

(54) ***Distribution technologies***: In *Liberty Global / Corelio / W&W / De Vijver Media*, the Commission recognised that at least retail AV services offered over cable and IPTV form part of the same relevant product market.[61] In the recent *Telia Company/Bonnier Broadcasting Holding* case,[62] the Commission concluded that all the different distribution technologies are part of the same product market.

(55) ***Linear and non-linear services***: In the past, the Commission noted that non-linear services have gradually been integrated to complement TV broadcasters' and retail AV service providers' offerings and enhance the consumer's experience of linear TV

53 Form CO, Chapter 4, paragraphs 33-35.
54 Form CO, Chapter 4, paragraphs 17-32.
55 M.4504 – SFR/Télé 2 France, para. 45.
56 M.8785 –The Walt Disney Company / Twenty-First Century Fox, para. 98; Commission decision of 8 October 2018 in Case M.8842 – Tele2/ComHem, para. 37; M.7000 – Liberty Global/Ziggo, para. 137; M.8665 – Discovery/Scripps, para. 33; M.8354 – Fox/Sky, para. 101; Commission decision of 3 August 2016 in Case M.7978 – Vodafone/Liberty Global/Dutch JV, para. 56; M.7194 – Liberty Global/Corelio/W&W/De Vijver Media, para. 152.
57 M.7194 – Liberty Global/Corelio/W&W/De Vijver Media, para. 119.
58 M.7194 – Liberty Global/Corelio/W&W/De Vijver Media, para. 127; M.5121 – News Corp/Premiere, para. 22; Commission decision of 21 December 2010 in Case M.5932 - News Corp/BskyB, para. 105; M.7000 – Liberty Global/Ziggo, para. 113.
59 M.7194 – Liberty Global/Corelio/W&W/De Vijver Media, para. 124; M.5121 – News Corp/Premiere, para. 21; M.7000 - Liberty Global/Ziggo, paras. 109–110.
60 M.8785 – The Walt Disney Company / Twenty-First Century Fox, para. 93 and case law cited; M.9299 – Discovery / Polsat / JV, para. 82.
61 M.7194 – Liberty Global / Corelio / W&W / De Vijver Media, para. 126.
62 M.9064 – Telia Company/ Bonnier Broadcasting Holding, para. 195.

channels. Most recently, in *NENT/Telenor*, the Commission indicated that linear and non-linear AV services are increasingly regarded as substitutable.[63]

(56) ***Premium and basic pay TV services***: The question whether premium and basic pay TV services constitute separate product markets has been left open in recent cases.[64]

4.4.2.2. The Notifying Party's view

(57) The Notifying Party considers that the Transaction should be assessed on the basis of a single market for the retail supply of AV services, which encompasses all AV services (including linear and non-linear, FTA and pay TV, basic and premium), delivered through all distribution technologies, including OTT to singled welling or multiple dwelling units.

4.4.2.3. The Commission's assessment

(58) The market investigation has yielded mixed results in relation to the market for the retail supply of AV services.

(59) Except for Finland, the market investigation suggested that a segmentation between the retail supply of FTA AV services and pay AV services may no longer be relevant.[65] For instance, one market participant explained that: "*this is not an appropriate driver of segmentation for retail markets, with suppliers characterized by different business models competing to attract viewers' attention.*"[66]

(60) In relation to a possible segmentation of the market for the retail supply of pay AV services, a majority of market respondents considered that it is no longer appropriate to segment the retail market for the supply of pay AV services between basic and premium services.[67] Market participants also indicated that non-linear pay AV services constitute a good alternative to linear pay AV services.[68]

(61) In relation to a possible segmentation of the market for the retail supply of AV services that are advertising funded between linear TV channels (i.e., FTA TV channels) and non-linear FTA AV services (i.e., advertising-based video on demand

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63 Commission decision of 30 April 2020 in Case M.9604 – NENT / Telenor / JV, para. 184.

64 See e.g. M.9799 – Discovery / Polsat / JV, para. 82.

65 Response to questionnaire Q1 – Questionnaire to market participants in the AV sector (Italy), question 17 and 17.1; questionnaire Q7 – Questionnaire to market participants in the AV sector (Bulgaria), questions 12 and 12.1; questionnaire Q8 – Questionnaire to market participants in the AV sector (Finland) questions 12 and 12.1; questionnaire Q9 – Questionnaire to market participants in the AV sector (Norway) questions 12 and 12.1; questionnaire Q10 – Questionnaire to market participants in the AV sector (Poland) questions 12 and 12.1; questionnaire Q11 – Questionnaire to market participants in the AV sector (Spain) questions 12 and 12.1.

66 Response to questionnaire Q1 – Questionnaire to market participants in the AV sector (Italy), question 17.1.

67 Response to questionnaire Q1 – Questionnaire to market participants in the AV sector (Italy), question 18 and 18.1; questionnaire Q7 - Questionnaire to market participants in the AV sector (Bulgaria), questions 13 and 13.1; questionnaire Q8 – Questionnaire to market participants in the AV sector (Finland) questions 13 and 13.1; questionnaire Q9 – Questionnaire to market participants in the AV sector (Norway) questions 13 and 13.1; questionnaire Q10 – Questionnaire to market participants in the AV sector (Poland) questions 13 and 13.1; questionnaire Q11 – Questionnaire to market participants in the AV sector (Spain) questions 13 and 13.1.

68 Response to questionnaire Q1 – Questionnaire to market participants in the AV sector (Italy), question 19 and 19.1; questionnaire Q7 - Questionnaire to market participants in the AV sector (Bulgaria), questions 14 and 14.1; questionnaire Q8 – Questionnaire to market participants in the AV sector (Finland) questions 14 and 14.1; questionnaire Q9 – Questionnaire to market participants in the AV sector (Norway) questions 14 and 14.1; questionnaire Q10 – Questionnaire to market participants in the AV sector (Poland) questions 14 and 14.1; questionnaire Q11 – Questionnaire to market participants in the AV sector (Spain) questions 14 and 14.1.

("**AVOD**")), the market participants considered that such segmentation may not be appropriate.[69]

(62) The market investigation has not yielded any evidence on the segmentation by distribution technology.

(63) In light of the above, the Commission considers that, for the purpose of this Decision, the relevant product market at retail level is the market for the retail supply of AV services encompassing all distribution technologies. The question whether the retail supply of AV services should be further segmented between (i) FTA and pay AV services, as well as the question whether 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 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. The question of whether the market for the retail supply of FTA AV services should be segmented according to linear and non-linear FTA AV services can also 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.

4.4.3. Geographic market definition

4.4.3.1. Past Commission decisions

(64) The Commission has in the past considered that the geographic scope of the market for the retail provision of AV services could be either (i) national, since providers of retail AV services compete on a nation-wide basis; or (ii) limited to the coverage area of each cable operator.[70]

4.4.3.2. The Notifying Party's view

(65) The Notifying Party considers that the Transaction will not raise competition concerns at the retail level regardless of the precise geographic market definition and has provided market data on the basis of national markets, which it considers to fit the narrowest plausible geographic scope in the Commission's precedents.

4.4.3.3. The Commission's assessment

(66) The market investigation has confirmed that the market for the retail supply of AV services is national in scope, due to the fact that these services are offered on a national basis.[71]

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69 Response to questionnaire Q1 – Questionnaire to market participants in the AV sector (Italy), question 20 and 20.1; questionnaire Q7 - Questionnaire to market participants in the AV sector (Bulgaria), questions 15 and 15.1; questionnaire Q8 – Questionnaire to market participants in the AV sector (Finland) questions 15 and 15.1; questionnaire Q9 – Questionnaire to market participants in the AV sector (Norway) questions 15 and 15.1; questionnaire Q10 – Questionnaire to market participants in the AV sector (Poland) questions 15 and 15.1; questionnaire Q11 – Questionnaire to market participants in the AV sector (Spain) questions 15 and 15.1.

70 M.8785 – The Walt Disney Company / Twenty-First Century Fox, para. 100; M.9799 – Discovery / Polsat / JV, para. 86.

71 Response to questionnaire Q1 – Questionnaire to market participants in the AV sector (Italy), question 28 and 28.1; questionnaire Q7 - Questionnaire to market participants in the AV sector (Bulgaria), questions 19 and 19.1;

(67) In light of the above, for the purpose of this Decision, the Commission concludes that the relevant geographic market for the retail supply of AV services, and all its possible sub-segments, is national in scope.

4.5. Sale of advertising space

4.5.1. The Parties' activities

(68) Discovery and WarnerMedia are both suppliers of advertising space on audiovisuals' supports. Discovery and WarnerMedia both sell advertising space on TV and online. From an advertising perspective, the Parties' retail service offerings include limited AVOD options in the EEA.

(69) With regard to the demand-side of the advertising market, i.e., the downstream acquisition of ad space on TV channels and/or national websites, the Parties buy ad*vertising* space mostly through media buyers or media agencies, and to a lesser extent directly and/or within the framework of barter agreements.

(70) In the vast majority of EEA Member States, the Parties sell TV advertising space mainly through third-party advertising sales houses, which represent a multitude of competing channels or platforms and negotiate directly with media buyers or advertisers.

(71) In particular, Discovery sells advertising space in the majority of the EEA Member States, but has no (offline or online advertising) sales in Cyprus, Greece, Iceland, Lithuania, Liechtenstein, Luxembourg, Malta, and Slovakia. WarnerMedia sells advertising space in the majority of the EEA Member States. WarnerMedia does no longer have any advertising revenues from its TV channels in Norway, Denmark and Sweden, since in September 2020 it decided to discontinue its in-house ad sale business in the Nordics with effect from the end of 2020.

4.5.2. Product market definition

4.5.2.1. Past Commission decisions

(72) The Commission has in previous cases established a distinction between (i) online and (ii) offline advertising, on the basis of specificity (i.e. the ability to reach a more targeted audience) and pricing model.[72] Within offline advertising, the Commission has distinguished separate markets for (i) the sale of advertising on TV channels and (ii) for the sale of advertising in newspapers. [73]

questionnaire Q8 – Questionnaire to market participants in the AV sector (Finland) questions 19 and 19.1; questionnaire Q9 – Questionnaire to market participants in the AV sector (Norway) questions 19 and 19.1; questionnaire Q10 – Questionnaire to market participants in the AV sector (Poland) questions 19 and 19.1; questionnaire Q11 – Questionnaire to market participants in the AV sector (Spain) questions 19 and 19.1.

72 Commission decision of 9 September 2014 in Case M.7288 – Viacom/Channel 5Broadcasting, para. 35.

73 Commission decision of 7 July 2005 in Case M.3817 – Wegener/PCM/JV, para. 27; Commission decision of 1 February 1999 in Case M.1401 - Recoletos/Unedisa, paras. 26-28; Commission decision of 21 December 2010 in Case M.5932 – News Corp/ BSkyB, paras. 265 and 266; Commission decision of 6 February 2017 in Case M.8665 – Discovery / Scripps, para. 40.

(73) The market investigation in *Viacom/Channel 5* indicated that the distinction between online advertising and TV advertising is becoming increasingly blurred. [74] Moreover, the question whether advertising placed on FTA channels and on pay TV channels should constitute separate markets has, to date, been left open.

4.5.2.2. The Notifying Party's view

(74) The Notifying Party considers that there is only one market for all TV advertising, with no need to distinguish between advertising on FTA and pay TV channels or advertising on OTT and VOD.

4.5.2.3. The Commission's assessment

(75) Overall, the market investigation indicated that that Commission can follow the approach taken in previous cases with regard to definition of the market for the sale of advertising space.

(76) The market investigation suggested that the segmentation between online and offline advertising, and within the offline advertising segment. A majority of market participants active across the AV value chain indicated that there is a distinct market for the sale of advertising space on TV channels.[75] The market investigation provided mixed responses on whether the market for the sale of advertising space on TV channels should be further segmented between the sale of advertising space on FTA TV channels and pay TV channels.[76]

(77) In light of the above and for the purpose of this Decision, the Commission considers that there is a distinct market for the sale of advertising space on TV channels. The question whether the market for sale of advertising space on TV channels can be further segmented between the the sale of advertising space on FTA TV channels and pay TV channels 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.

4.5.3. Geographic market definition

4.5.3.1. Past Commission decisions

(78) In its previous decisions, the Commission has considered that the market for the supply of TV advertising, including the possible segmentations outlined above, is national in scope.[77]

4.5.3.2. The Notifying Party's view

(79) The Notifying Party does not disagree with the Commission's previous decisions and considers that the market for the supply of TV advertising could be national in scope. In any case, the Notifying Party considers that, for the purpose of this case, the exact geographic market definition can be left open.

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74 M.7288 – Viacom/Channel 5Broadcasting, paras. 38 and 40.

75 Responses to questionnaire Q1 – Questionnaires to market participants in the AV sector (Italy), questions 21 and 21.1.

76 Responses to questionnaire Q1 – Questionnaires to market participants in the AV sector (Italy), questions 22 and 22.1.

77 Among other cases, M.7288 – Viacom/Channel 5Broadcasting, para. 45.

4.5.3.3. The Commission's assessment

(80) The market investigation confirmed that the geographic scope for the purchase or supply of advertising space on TV channels is national in scope.[78]

(81) Therefore, for the purpose of this Decision, the Commission considers that the market for the sale of advertising space on TV is national in scope.

5. COMPETITIVE ASSESSMENT

5.1. Identification of affected markets

5.1.1. Horizontally affected markets

(82) The Parties' activities overlap in most Member States at the various levels of the AV value-chain as well as for the sale of advertising space. However, the market shares of the Parties are limited and the Transaction only gives rise to the following horizontally affected markets:

(a) Sale of advertising space on pay TV channels in Denmark;

(b) Retail supply of non-linear pay AV services in Finland;

(c) Wholesale supply of pay TV channels in Germany;

(d) Wholesale supply of pay TV channels for other content in Germany;

(e) Wholesale supply of TV channels for children content in Italy;

(f) Wholesale supply of FTA TV channels for children content in Italy;

(g) Wholesale supply of pay TV in Norway;

(h) Retail supply of non-linear pay AV services in Norway;

(i) Wholesale supply of TV channels in Poland;

(j) Wholesale supply of pay TV channels in Poland;

(k) Wholesale supply of TV channels for other content in Poland;

(l) Wholesale supply of pay TV channels for other content in Poland;

(m) Sale of advertising space on TV channels in Poland;

(n) Sale of advertising space on pay TV channels in Poland;

(o) Wholesale supply of pay TV in Sweden;

(p) Retail supply of non-linear pay AV services in Sweden; and,

(q) Sale of advertising space on pay TV channels in Sweden.

78 Responses to questionnaire Q1 – Questionnaires to market participants in the AV sector (Italy), questions 29.

5.1.1.1. Denmark

(83) Based on the market shares submitted by the Notifying Party, the Transaction gives rise to the following horizontally affected market:[79]

Table 1: Horizontally affected markets in Denmark (2020)

	Value		
	Discovery	**Warner Media**	**Combined**
Sale of advertising space on pay TV channels	[20-30]%	[0-5]%	[20-30]%

Source: Annex 4 to Chapter 6 of the Form CO

(84) As of September 2020, WarnerMedia has decided to discontinue all its activities for the sale of advertising space on TV channels in Denmark, Norway and Sweden, with effect from the end of 2020. As such, even though the Danish market for the sale of advertising space on pay TV channels market was affected in 2020, it is not relevant for the Commission to further assess this market due to the purely historical nature of the overlap.[80] Therefore, the Commission excludes that the Transaction may give rise to serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement in relation to this market and will not assess it further.

5.1.1.2. Finland

(85) Based on the market shares submitted by the Notifying Party, the Transaction gives rise to the following horizontally affected market:

Table 2: Horizontally affected markets in Finland (2020)

	Value			Volume		
	Discovery	**Warner Media**	**Combined**	**Discovery**	**Warner Media**	**Combined**
Retail supply of non-linear pay AV services	[0-5]%	[20-30]%	[20-30]%	[0-5]%	[20-30]%	[20-30]%

Source: Annex 1 to Chapter 4 of the Form CO

5.1.1.3. Germany

(86) Based on the market shares submitted by the Notifying Party, the Transaction gives rise to the following horizontally affected markets:

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79 For completeness, the Notifying Party has submitted that the market for the retail supply of non-linear pay TV services may be affected since the combined market shares of the Parties in 2018 was [20-30]% . However, the combined market share of the Parties has not exceeded the 20% threshold in 2019 and 2020. Therefore, the Commission excludes that the Transaction may give rise to serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement in relation to this market and will not assess it further.

80 Form CO, Chapter 6, paragraphs 35 and 41.

Table 3: Horizontally affected markets in Germany (2020)

	Value		
	Discovery	**WarnerMedia**	**Combined**
Wholesale supply of pay TV channels	[0-5]%	[10-20]%	[20-30]%
Wholesale supply of pay TV channels for other content	[0-5]%	[10-20]%	[20-30]%

Source: Annex 10 to Chapter 3 of the Form CO

5.1.1.4. Italy

(87) Based on the market shares submitted by the Notifying Party, the Transaction gives rise to the following horizontally affected markets:

Table 4: Horizontally affected markets in Italy (2020)

	Value		
	Discovery	**WarnerMedia**	**Combined**
Wholesale supply of TV channels for children content	[20-30]%	[20-30]%	[50-60]%
Wholesale supply of FTA TV channels for children content	[20-30]%	[20-30]%	[50-60]%

Source: Annex 10 to Chapter 3 of the Form CO

5.1.1.5. Norway

(88) Based on the market shares submitted by the Notifying Party, the Transaction gives rise to the following horizontally affected markets:[81]

Table 5: Horizontally affected markets in Norway (2020)

	Value			Volume		
	Discovery	**Warner Media**	**Combined**	**Discovery**	**Warner Media**	**Combined**
Wholesale supply of pay TV	[20-30]%	[0-5]%	[20-30]%	/	/	/
Retail supply of non-linear pay AV services[82]	/	/	/	[0-5]%	[10-20]%	[20-30]%

Source: Annex 10 to Chapter 3 of the Form CO; Annex 1 to Chapter 4 of the Form CO

81 For completeness, the Notifying Party has submitted that the market for the wholesale supply of TV channels may be affected since the combined market shares of the Parties in 2018 was [20-30]%. However, the combined market share of the Parties has not exceeded the [20-30]% threshold in 2019 and 2020. Therefore, the Commission excludes that the Transaction may give rise to serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement in relation to this market and will not assess it further.

82 The Parties are only active in the market for the retail supply of non-linear pay AV services through their SVOD offering. The Parties are not active in the other segments of the non-linear pay AV services, namely TVOD and PPV offerings. The market shares included in the table correspond to the Parties' market shares in a hypothetical market for the retail supply of SVOD services and are used as proxies for the market for the retail supply of non-linear pay AV services. As the Parties do not offer any TVOD or PPV services, this market may ultimately not be affected. For completeness, the Commission will consider this market as affected in this decision. This reasoning has been applied throughout this decision.

(89) As of September 2020, WarnerMedia has decided to discontinue all its activities for the sale of advertising space on TV channels in Denmark, Norway and Sweden, with effect from the end of 2020.[83] Irrespective of that, the market share of WarnerMedia in any segment of the Norwegian market for the sale of advertising space on TV was [0-5]%.[84] As such, even though the market was affected in 2018 (with an increment of less than [0-5]% brought by WarnerMedia), the Commission excludes that the Transaction may give rise to serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement in relation to this market and will not assess it further.

5.1.1.6. Poland

(90) Based on the market shares submitted by the Notifying Party, the Transaction gives rise to the following horizontally affected markets:

Table 6: Horizontally affected markets in Poland (2020)

	Value		
	Discovery	**WarnerMedia**	**Combined**
Wholesale supply of TV channels	[20-30]%	[0-5]%	[20-30]%
Wholesale supply of pay TV channels	[30-40]%	[0-5]%	[30-40]%
Wholesale supply of TV channels for other content	[20-30]%	[0-5]%	[20-30]%
Wholesale supply of pay TV channels for other content	[20-30]%	[0-5]%	[20-30]%
Sale of advertising space on TV channels	[30-40]%	[0-5]%	[30-40]%
Sale of advertising space on pay TV channels	[20-30]%	[0-5]%	[30-40]%

Source: Annex 10 to Chapter 3 of the Form CO; Annex 4 to Chapter 6 of the Form CO

5.1.1.7. Sweden

(91) Based on the market shares submitted by the Notifying Party, the Transaction gives rise to the following horizontally affected markets:

Table 7: Horizontally affected markets in Sweden (2020)

	Value			Volume		
	Discovery	**Warner Media**	**Combined**	**Discovery**	**Warner Media**	**Combined**
Wholesale supply of pay TV	[20-30]%	[0-5]%	[20-30]%	/	/	/
Retail supply of non-linear pay AV services	/	/	/	[0-5]%	[10-20]%	[20-30]%
Sale of advertising space on pay TV channels	[20-30]%	[0-5]%	[20-30]%	/	/	/

Source: Annex 10 to Chapter 3 of the Form CO; Annex 1 to Chapter 4 of the Form CO; Annex 4 to Chapter 6 of the Form CO

83 Form CO, Chapter 6, paragraphs 35 and 41.

84 Form CO, Chapter 6, Annex 4.

(92) As of September 2020, WarnerMedia has decided to discontinue all its activities for the sale of advertising space on TV channels in Denmark, Norway and Sweden, with effect from the end of 2020. As such, even though the Swedish market for the sale of advertising space on pay TV channels market was affected in 2020, it is not relevant for the Commission to further assess this market due to the purely historical nature of the overlap.[85] Therefore, the Commission excludes that the Transaction may give rise to serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement in relation to this market and will not assess it further.

5.1.2. Non-horizontally affected markets

5.1.2.1. Vertical relationships

(A) Vertically affected markets arising from the relationships between the markets for the production of AV content (upstream), and the markets for the wholesale supply of TV channels (downstream)

(93) The Transaction gives rise to a number of vertically affected markets due to the relationships between the markets for the production of AV content (upstream), and the markets for the wholesale supply of TV channels (downstream), in Finland, Germany, Italy, Poland, and Spain. These vertically affected markets are presented below.

(A.i) Finland

(94) Based on the market shares submitted by the Notifying Party, the Transaction gives rise to the following vertically affected markets in Finland:

Table 8: Vertically affected markets in Finland (2020; 2019 where indicated)

Upstream market	Downstream market
Production of commissioned AV content (2019) **Revenue:** WarnerMedia: [5-10]% (only); **Combined: [5-10]%**	**Wholesale supply of pay TV channels** **TV audience:** Discovery (only): [40-50]%; **Combined: [40-50]%**
	Wholesale supply of pay TV channels for other content **TV audience:** Discovery (only): [70-80]%; **Combined: [70-80]%**

<u>Source</u>: *Annex 3 to Chapter 2 of the Form CO; and Annex 10 to Chapter 3 of the Form CO*

(A.ii) Germany

(95) Based on the market shares submitted by the Notifying Party, the Transaction gives rise to the following vertically affected markets in Germany:

85 Form CO, Chapter 6, paragraphs 35 and 41.

Table 9: Vertically affected markets in Germany (2020; 2019 where indicated)

Upstream market	Downstream market
Production of commissioned AV content (2019) **Revenue:** Discovery: [0-5]%; WarnerMedia: [0-5]%; **Combined**: [0-5]%	**Wholesale supply of pay TV channels for children content** **TV audience:** WarnerMedia (only): [90-100]%; **Combined: [90-100]%**
Production of non-captive commissioned AV content (2019) **Revenue:** Discovery: [0-5]%; WarnerMedia: [0-5]%; **Combined: [5-10]%**	**Wholesale supply of pay TV channels for children content** **TV audience:** WarnerMedia (only): [90-100]%; **Combined: [90-100]%**

<u>Source</u>: Annex 3 to Chapter 2 of the Form CO; and Annex 10 to Chapter 3 of the Form CO

(A.iii) Italy

(96) Based on the market shares submitted by the Notifying Party, the Transaction gives rise to the following vertically affected markets in Italy:

Table 10: Vertically affected markets in Italy (2020; 2019 where indicated)

Upstream market	Downstream market
Production of commissioned AV content (2019) **Revenue:** Discovery: [0-5]% (only); **Combined: [0-5]%**	**Wholesale supply of TV channels for children content** **TV audience:** Discovery: [20-30]%; WarnerMedia: [20-30]%; **Combined:** [50-60]%
	Wholesale supply of FTA TV channels for children content **TV audience:** Discovery: [20-30]%; WarnerMedia: [20-30]%; **Combined: [50-60]%**

<u>Source</u>: Annex 3 to Chapter 2 of the Form CO; and Annex 10 to Chapter 3 of the Form CO

(A.iv) Poland

(97) Based on the market shares submitted by the Notifying Party, the Transaction gives rise to the following vertically affected markets in Poland:

Table 11: Vertically affected markets in Poland (2020; 2019 where indicated)

Upstream market	Downstream market
Production of commissioned AV content (2019) **Revenue:** Discovery (only): [0-5]%; **Combined: [0-5]%**	**Wholesale supply of pay TV channels** **TV audience:** Discovery: [30-40]%; WarnerMedia: [0-5]%; **Combined: [30-40]%**
Production of non-captive commissioned AV content (2019) **Revenue:** Discovery (only): [0-5]%; **Combined: [0-5]%**	**Wholesale supply of pay TV channels** **TV audience:** Discovery: [30-40]%; WarnerMedia: [0-5]%; **Combined: [30-40]%**

<u>Source</u>: Annex 3 to Chapter 2 of the Form CO; Annex 10 to Chapter 3 of the Form CO; and Annex 1 to Chapter 7 of the Form CO

(A.v) Spain

(98) Based on the market shares submitted by the Notifying Party, the Transaction gives rise to the following vertically affected markets in Spain:

Table 12: Vertically affected markets in Spain (2020; 2019 where indicated)

Upstream market	Downstream market
Production of commissioned AV content (2019) **Revenue:** Discovery: [0-5]%; WarnerMedia: [0-5]% **Combined: [0-5]%**	**Wholesale supply of FTA TV channels for children content** **TV audience:** WarnerMedia (only): [30-40]%; **Combined:** [30-40]%
Production of non-captive commissioned AV content (2019) **Revenue:** Discovery: [0-5]%; WarnerMedia: [0-5]%; **Combined: [0-5]%**	**Wholesale supply of FTA TV channels for children content** **TV audience:** WarnerMedia (only): [30-40]%; **Combined: [30-40]%**

<u>Source</u>: Annex 3 to Chapter 2 of the Form CO; and Annex 10 to Chapter 3 of the Form CO

(B) Vertically affected markets arising from the relationships between the markets for the licensing of AV content (upstream), and the markets for the wholesale supply of TV channels (downstream)

(99) The Transaction gives rise to a number of vertically affected markets due to the relationships between the markets for the licensing of AV content (upstream), and the markets for the wholesale supply of TV channels (downstream), in Bulgaria, Finland, Germany, Italy, Poland, Romania, and Spain. These vertically affected markets are presented below.

(B.i) Bulgaria

(100) Based on the market shares submitted by the Notifying Party, the Transaction gives rise to the following vertically affected markets in Bulgaria:

Table 13: Vertically affected markets in Bulgaria (2020)

Upstream market	Downstream market
Licensing of broadcasting rights for Other AV content (i.e. non-Films, non-Sports) **Combined: <20%**	**Wholesale supply of pay TV channels for children content*** **TV audience:** WarnerMedia (only): [30-40]%; **Combined: [30-40]%**
Licensing of broadcasting rights for Sports AV content Discovery (only): <30%; **Combined: <30%**	**Wholesale supply of pay TV channels for children content*** **TV audience:** WarnerMedia (only): [30-40]%; **Combined: [30-40]%**
Licensing of broadcasting rights for Children AV content **Combined: <20%**	**Wholesale supply of pay TV channels for children content*** **TV audience:** WarnerMedia (only): [30-40]%; **Combined: [30-40]%**
Licensing of broadcasting rights for AV content in the first pay exhibition window **Combined: <20%**	**Wholesale supply of pay TV channels for children content*** **TV audience:** WarnerMedia (only): [30-40]%; **Combined: [30-40]%**
Licensing of broadcasting rights for AV content in the second pay exhibition window **Combined: <20%**	**Wholesale supply of pay TV channels for children content*** **TV audience:** WarnerMedia (only): [30-40]%; **Combined: [30-40]%**

* The market shares for the wholesale supply of pay TV channels for children content are exactly equal to the market shares for the wholesale supply of TV channels for children content. We keep the narrowest possible market.

<u>Source</u>: Annex 10 to Chapter 3 of the Form CO; and Notifying Party's reply to RFI 8

(B.ii) Finland

(101) Based on the market shares submitted by the Notifying Party, the Transaction gives rise to the following vertically affected markets in Finland:

Table 14: Vertically affected markets in Finland (2020; 2019 where indicated)

Upstream market	Downstream market
Licensing of broadcasting rights for AV content - excluding sports and news content (2019) **Revenue:** Discovery: [0-5]%; WarnerMedia: [0-5]%; **Combined: [0-5]%**	**Wholesale supply of pay TV channels** **TV audience:** Discovery (only): [40-50]%; **Combined: [40-50]%**
	Wholesale supply of pay TV channels for other content **TV audience:** Discovery (only): [70-80]%; **Combined: [70-80]%**
Licensing of broadcasting rights for Films AV content WarnerMedia (only): <30%; **Combined: <30%**	**Wholesale supply of pay TV channels** **TV audience:** Discovery (only): [40-50]%; **Combined: [40-50]%**
	Wholesale supply of pay TV channels for other content **TV audience:** Discovery (only): [70-80]%; **Combined: [70-80]%**
Licensing of broadcasting rights for US Films AV content WarnerMedia (only): <30%; **Combined: <30%**	**Wholesale supply of pay TV channels** **TV audience:** Discovery (only): [40-50]%; **Combined: [40-50]%**
	Wholesale supply of pay TV channels for other content **TV audience:** Discovery (only): [70-80]%; **Combined: [70-80]%**
Licensing of broadcasting rights for non-US Films AV content WarnerMedia (only): <30%; **Combined: <30%**	**Wholesale supply of pay TV channels** **TV audience:** Discovery (only): [40-50]%; **Combined: [40-50]%**
	Wholesale supply of pay TV channels for other content **TV audience:** Discovery (only): [70-80]%; **Combined: [70-80]%**
Licensing of broadcasting rights for Other AV content (i.e. non Films, non Sports) **Combined: <20%**	**Wholesale supply of pay TV channels** **TV audience:** Discovery (only): [40-50]%; **Combined: [40-50]%**
	Wholesale supply of pay TV channels for other content **TV audience:** Discovery (only): [70-80]%; **Combined: [70-80]%**
Licensing of broadcasting rights for Children AV content **Combined: <20%**	**Wholesale supply of pay TV channels** **TV audience:** Discovery (only): [40-50]%; **Combined: [40-50]%**
	Wholesale supply of pay TV channels for other content **TV audience:** Discovery (only): [70-80]%; **Combined: [70-80]%**
Licensing of broadcasting rights for AV content in the first pay exhibition window **Combined: <20%**	**Wholesale supply of pay TV channels** **TV audience:** Discovery (only): [40-50]%; **Combined: [40-50]%**
	Wholesale supply of pay TV channels for other content **TV audience:** Discovery (only): [70-80]%; **Combined: [70-80]%**

Upstream market	Downstream market
Licensing of broadcasting rights for AV content in the second pay exhibition window **Combined: <20%**	**Wholesale supply of pay TV channels** **TV audience:** Discovery (only): [40-50]%; **Combined: [40-50]%**
	Wholesale supply of pay TV channels for other content **TV audience:** Discovery (only): [70-80]%; **Combined: [70-80]%**

Source: Annex 3 to Chapter 2 of the Form CO; Annex 10 to Chapter 3 of the Form CO; and Notifying Party's reply to RFI 8

(B.iii) Germany

(102) Based on the market shares submitted by the Notifying Party, the Transaction gives rise to the following vertically affected markets in Germany:

Table 15: Vertically affected markets in Germany (2020; 2019 where indicated)

Upstream market	Downstream market
Licensing of broadcasting rights for AV content - excluding sports and news content (2019) **Revenue:** Discovery: [0-5]%; WarnerMedia: [10-20]%; **Combined: [10-20]%**	**Wholesale supply of pay TV channels for children content** **TV audience:** WarnerMedia (only): [90-100]%; **Combined: [90-100]%**
Licensing of broadcasting rights for Other AV content (i.e. non-Films, non-Sports) **Combined: <20%**	**Wholesale supply of pay TV channels for children content** **TV audience:** WarnerMedia (only): [90-100]%; **Combined: [90-100]%**
Licensing of broadcasting rights for Sports AV content Discovery (only): <30%; **Combined: <30%**	**Wholesale supply of pay TV channels for children content** **TV audience:** WarnerMedia (only): [90-100]%; **Combined: [90-100]%**
Licensing of broadcasting rights for Children AV content **Combined: <20%**	**Wholesale supply of pay TV channels for children content** **TV audience:** WarnerMedia (only): [90-100]%; **Combined: [90-100]%**
Licensing of broadcasting rights for AV content in the first pay exhibition window **Combined: <20%**	**Wholesale supply of pay TV channels for children content** **TV audience:** WarnerMedia (only): [90-100]%; **Combined: [90-100]%**
Licensing of broadcasting rights for AV content in the second pay exhibition window **Combined: <20%**	**Wholesale supply of pay TV channels for children content** **TV audience:** WarnerMedia (only): [90-100]%; **Combined: [90-100]%**
Licensing of broadcasting rights for AV content in the FTA exhibition window **Combined: <20%**	**Wholesale supply of FTA TV channels for sports content** **TV audience:** Discovery (only): [40-50]%; **Combined: [40-50]%**

Source: Annex 3 to Chapter 2 of the Form CO; Annex 10 to Chapter 3 of the Form CO; and Notifying Party's reply to RFI 8

(B.iv) Italy

(103) Based on the market shares submitted by the Notifying Party, the Transaction gives rise to the following vertically affected markets in Italy:

Table 16: Vertically affected markets in Italy (2020; 2019 where indicated)

Upstream market	Downstream market
Licensing of broadcasting rights for AV content - excluding sports and news content (2019) **Revenue:** Discovery: [0-5]%; WarnerMedia: [10-20]%; **Combined: [10-20]%**	**Wholesale supply of TV channels for children content** **TV audience:** Discovery: [20-30]%; WarnerMedia: [20-30]%; **Combined: [50-60]%**
	Wholesale supply of FTA TV channels for children content **TV audience:** Discovery: [20-30]%; WarnerMedia: [20-30]%; **Combined: [50-60]%**
Licensing of broadcasting rights for Films AV content WarnerMedia (only): <30%; **Combined: <30%**	**Wholesale supply of TV channels for children content** **TV audience:** Discovery: [20-30]%; WarnerMedia: [20-30]%; **Combined: [50-60]%**
	Wholesale supply of FTA TV channels for children content **TV audience:** Discovery: [20-30]%; WarnerMedia: [20-30]%; **Combined: [50-60]%**
Licensing of broadcasting rights for US Films AV content WarnerMedia (only): <30%; **Combined: <30%**	**Wholesale supply of TV channels for children content** **TV audience:** Discovery: [20-30]%; WarnerMedia: [20-30]%; **Combined: [50-60]%**
	Wholesale supply of FTA TV channels for children content **TV audience:** Discovery: [20-30]%; WarnerMedia: [20-30]%; **Combined: [50-60]%**
Licensing of broadcasting rights for non-US Films AV content WarnerMedia (only): <30%; **Combined: <30%**	**Wholesale supply of TV channels for children content** **TV audience:** Discovery: [20-30]%; WarnerMedia: [20-30]%; **Combined: [50-60]%**
	Wholesale supply of FTA TV channels for children content **TV audience:** Discovery: [20-30]%; WarnerMedia: [20-30]%; **Combined: [50-60]%**
Licensing of broadcasting rights for Other AV content (i.e. non-Films, non-Sports) **Combined: <20%**	**Wholesale supply of TV channels for children content** **TV audience:** Discovery: [20-30]%; WarnerMedia: [20-30]%; **Combined: [50-60]%**
	Wholesale supply of FTA TV channels for children content **TV audience:** Discovery: [20-30]%; WarnerMedia: [20-30]%; **Combined: [50-60]%**
Licensing of broadcasting rights for Sports AV content Discovery (only): <30%; **Combined: <30%**	**Wholesale supply of TV channels for children content** **TV audience:** Discovery: [20-30]%; WarnerMedia: [20-30]%; **Combined: [50-60]%**
	Wholesale supply of FTA TV channels for children content **TV audience:** Discovery: [20-30]%; WarnerMedia: [20-30]%; **Combined: [50-60]%**

Upstream market	Downstream market
Licensing of broadcasting rights for Children AV content **Combined: <20%**	**Wholesale supply of TV channels for children content** **TV audience:** Discovery: [20-30]%; WarnerMedia: [20-30]%; **Combined: [50-60]%**
	Wholesale supply of FTA TV channels for children content **TV audience:** Discovery: [20-30]%; WarnerMedia: [20-30]%; **Combined: [50-60]%**
Licensing of broadcasting rights for AV content in the FTA exhibition window **Combined: <20%**	**Wholesale supply of TV channels for children content** **TV audience:** Discovery: [20-30]%; WarnerMedia: [20-30]%; **Combined: [50-60]%**
	Wholesale supply of FTA TV channels for children content **TV audience:** Discovery: [20-30]%; WarnerMedia: [20-30]%; **Combined: [50-60]%**

Source: Annex 3 to Chapter 2 of the Form CO; Annex 10 to Chapter 3 of the Form CO; and Notifying Party's reply to RFI 8

(B.v) Poland

(104) Based on the market shares submitted by the Notifying Party, the Transaction gives rise to the following vertically affected markets in Poland:

Table 17: Vertically affected markets in Poland (2020; 2019 where indicated)

Upstream market	Downstream market
Licensing of broadcasting rights for AV content - excluding sports and news content (2019) **Revenue:** Discovery: [0-5]%; WarnerMedia: [0-5]%; **Combined: [0-5]%**	**Wholesale supply of pay TV channels** **TV audience:** Discovery: [30-40]%; WarnerMedia: [0-5]%; **Combined: [30-40]%**
Licensing of broadcasting rights for Films AV content WarnerMedia (only): <30%; **Combined: <30%**	**Wholesale supply of pay TV channels** **TV audience:** Discovery: [30-40]%; WarnerMedia: [0-5]%; **Combined: [30-40]%**
Licensing of broadcasting rights for US Films AV content WarnerMedia (only): <30%; **Combined: <30%**	**Wholesale supply of pay TV channels** **TV audience:** Discovery: [30-40]%; WarnerMedia: [0-5]%**Combined: [30-40]%**
Licensing of broadcasting rights for non-US Films AV content WarnerMedia (only): <30%; **Combined: <30%**	**Wholesale supply of pay TV channels** **TV audience:** Discovery: [30-40]%; WarnerMedia: [0-5]%; **Combined: [30-40]%**
Licensing of broadcasting rights for Other AV content (i.e. non-Films, non-Sports) **Combined: <20%**	**Wholesale supply of pay TV channels** **TV audience:** Discovery: [30-40]%; WarnerMedia: [0-5]%; **Combined: [30-40]%**
Licensing of broadcasting rights for Sports AV content Discovery (only): <30%; **Combined: <30%**	**Wholesale supply of pay TV channels** **TV audience:** Discovery: [30-40]%; WarnerMedia: [0-5]%; **Combined: [30-40]%**
Licensing of broadcasting rights for Children AV content **Combined: <20%**	**Wholesale supply of pay TV channels** **TV audience:** Discovery: [30-40]%; WarnerMedia: [0-5]%; **Combined: [30-40]%**
Licensing of broadcasting rights for AV content in the first pay exhibition window **Combined: <20%**	**Wholesale supply of pay TV channels** **TV audience:** Discovery: [30-40]%; WarnerMedia: [0-5]%; **Combined: [30-40]%**

Upstream market	Downstream market
Licensing of broadcasting rights for AV content in the second pay exhibition window **Combined: <20%**	**Wholesale supply of pay TV channels** **TV audience:** Discovery: [30-40]%; WarnerMedia: [0-5]%; **Combined: [30-40]%**

<u>Source</u>: Annex 3 to Chapter 2 of the Form CO; Annex 10 to Chapter 3 of the Form CO; and Notifying Party's reply to RFI 8

(B.vi) Romania

(105) Based on the market shares submitted by the Notifying Party, the Transaction gives rise to the following vertically affected markets in Romania:

Table 18: Vertically affected markets in Romania (2020; 2019 where indicated)

Upstream market	Downstream market
Licensing of broadcasting rights for AV content - excluding sports and news content (2019) **Revenue:** Discovery: [0-5]%; WarnerMedia: [0-5]%; **Combined: [0-5]%**	**Wholesale supply of pay TV channels for children content*** **TV audience:** WarnerMedia (only): [30-40]%; **Combined: [30-40]%**
Licensing of broadcasting rights for Other AV content (i.e. non-Films, non-Sports) **Combined: <20%**	**Wholesale supply of pay TV channels for children content*** **TV audience:** WarnerMedia (only): [30-40]%; **Combined: [30-40]%**
Licensing of broadcasting rights for Sports AV content Discovery (only): <30%; **Combined: <30%**	**Wholesale supply of pay TV channels for children content*** **TV audience:** WarnerMedia (only): [30-40]%; **Combined: [30-40]%**
Licensing of broadcasting rights for Children AV content **Combined: <20%**	**Wholesale supply of pay TV channels for children content*** **TV audience:** WarnerMedia (only): [30-40]%; **Combined: [30-40]%**
Licensing of broadcasting rights for AV content in the first pay exhibition window **Combined: <20%**	**Wholesale supply of pay TV channels for children content*** **TV audience:** WarnerMedia (only): [30-40]%; **Combined: [30-40]%**
Licensing of broadcasting rights for AV content in the second pay exhibition window **Combined: <20%**	**Wholesale supply of pay TV channels for children content*** **TV audience:** WarnerMedia (only): [30-40]%; **Combined: [30-40]%**

* The market shares for the wholesale supply of pay TV channels for children content are exactly equal to the market shares for the wholesale supply of TV channels for children content. We keep the narrowest possible market.

<u>Source</u>: Annex 3 to Chapter 2 of the Form CO; Annex 10 to Chapter 3 of the Form CO; and Notifying Party's reply to RFI 8

(B.vii) Spain

(106) Based on the market shares submitted by the Notifying Party, the Transaction gives rise to the following vertically affected markets in Spain:

Table 19: Vertically affected markets in Spain (2020; 2019 where indicated)

Upstream market	Downstream market
Licensing of broadcasting rights for AV content - excluding sports and news content (2019) **Revenue:** Discovery: [0-5]%; WarnerMedia: [5-10]%; **Combined: [5-10]%**	**Wholesale supply of FTA TV channels for children content** **TV audience:** WarnerMedia (only): [30-40]%; **Combined: [30-40]%**

Upstream market	Downstream market
Licensing of broadcasting rights for Other AV content (i.e. non-Films, non-Sports) **Combined: <20%**	**Wholesale supply of FTA TV channels for children content** **TV audience:** WarnerMedia (only): [30-40]%; **Combined: [30-40]%**
Licensing of broadcasting rights for Sports AV content Discovery (only): <30%; **Combined: <30%**	**Wholesale supply of FTA TV channels for children content** **TV audience:** WarnerMedia (only): [30-40]%; **Combined: [30-40]%**
Licensing of broadcasting rights for Children AV content **Combined: <20%**	**Wholesale supply of FTA TV channels for children content** **TV audience:** WarnerMedia (only): [30-40]%; **Combined: [30-40]%**
Licensing of broadcasting rights for AV content in the FTA exhibition window **Combined: <20%**	**Wholesale supply of FTA TV channels for children content** **TV audience:** WarnerMedia (only): [30-40]%; **Combined: [30-40]%**

Source: Annex 3 to Chapter 2 of the Form CO; Annex 10 to Chapter 3 of the Form CO; and Notifying Party's reply to RFI 8

(C) Vertically affected markets arising from the relationships between the markets for the wholesale supply of TV channels (upstream), and the markets for the retail supply of AV services (downstream)

(107) The Transaction gives rise to a number of vertically affected markets due to the relationships between the markets for the wholesale supply of TV channels (upstream), and the markets for the retail supply of AV services (downstream), in Bulgaria, Finland, Italy, Norway, Poland, Romania, Spain, and Sweden. These vertically affected markets are presented below.

(C.i) Bulgaria

(108) Based on the market shares submitted by the Notifying Party, the Transaction gives rise to the following vertically affected markets in Bulgaria:

Table 20: Vertically affected markets in Bulgaria (2020)

Upstream market	Downstream market
Wholesale supply of pay TV channels for children content* **TV audience:** WarnerMedia (only): [30-40]%; **Combined: [30-40]%**	**Retail supply of pay AV services** **Revenue:** Discovery: [0-5]%; WarnerMedia: [0-5]%; **Combined: [0-5]%**
	Retail supply of non-linear pay AV services (SVOD) **Subscription:** Discovery: [0-5]%; WarnerMedia: [0-5]%; **Combined: [5-10]%**

* The market shares for the wholesale supply of pay TV channels for children content are exactly equal to the market shares for the wholesale supply of TV channels for children content. We keep the narrowest possible market.

Source: Annex 10 to Chapter 3 of the Form CO; and Annex 1 to Chapter 4 of the Form CO

(C.ii) Finland

(109) Based on the market shares submitted by the Notifying Party, the Transaction gives rise to the following vertically affected markets in Finland:

Table 21: Vertically affected markets in Finland (2020)

Upstream market	Downstream market
Wholesale supply of pay TV channels **TV audience:** Discovery (only): [40-50]%; **Combined: [40-50]%**	**Retail supply of pay AV services** **Revenue:** Discovery: [0-5]%; WarnerMedia: [5-10]%; **Combined: [5-10]%**
	Retail supply of non-linear pay AV services (SVOD) **Subscription:** Discovery: [0-5]%; WarnerMedia: [20-30]%; **Combined: [20-30]%**
Wholesale supply of pay TV channels for sports content* **TV audience:** Discovery (only): [40-50]%; **Combined: [40-50]%**	**Retail supply of pay AV services** **Revenue:** Discovery: [0-5]%; WarnerMedia: [5-10]%; **Combined: [5-10]%**
	Retail supply of non-linear pay AV services (SVOD) **Subscription:** Discovery: [0-5]%; WarnerMedia: [20-30]%; **Combined: [20-30]%**
Wholesale supply of pay TV channels for other content **TV audience:** Discovery (only): [70-80]%; **Combined [70-80]%**	**Retail supply of pay AV services** **Revenue:** Discovery: [0-5]%; WarnerMedia: [5-10]%; **Combined: [5-10]%**
	Retail supply of non-linear pay AV services (SVOD) **Subscription:** Discovery: [0-5]%; WarnerMedia: [20-30]%; **Combined: [20-30]%**

* The market shares for the wholesale supply of pay TV channels for sports content are exactly equal to the market shares for the wholesale supply of TV channels for sports content. We keep the narrowest possible market.

Source: Annex 10 to Chapter 3 of the Form CO; and Annex 1 to Chapter 4 of the Form CO

(C.iii) Italy

(110) Based on the market shares submitted by the Notifying Party, the Transaction gives rise to the following vertically affected markets in Italy:

Table 22: Vertically affected markets in Italy (2020)

Upstream market	Downstream market
Wholesale supply of TV channels for children content **TV audience:** Discovery: [20-30]%; WarnerMedia: [20-30]%; **Combined: [50-60]%**	**Retail supply of pay AV services** **Revenue:** Discovery (only): [0-5]%; **Combined: [0-5]%**
	Retail supply of non-linear pay AV services (SVOD) **Subscription:** Discovery (only): [0-5]%; **Combined: [0-5]%**
	Retail supply of non-linear FTA AV services (AVOD) **Revenue:** Discovery (only): [0-5]%; **Combined: [0-5]%**
Wholesale supply of FTA TV channels for children content **TV audience:** Discovery: [20-30]%; WarnerMedia: [20-30]%; **Combined: [50-60]%**	**Retail supply of pay AV services** **Revenue:** Discovery (only): [0-5]%; **Combined: [0-5]%**
	Retail supply of non-linear pay AV services (SVOD) **Subscription:** Discovery (only): [0-5]%; **Combined: [0-5]%**
	Retail supply of non-linear FTA AV services (AVOD) **Revenue:** Discovery (only): [0-5]%; **Combined: [0-5]%**

Source: Annex 10 to Chapter 3 of the Form CO; and Annex 1 to Chapter 4 of the Form CO

(C.iv) Norway

(111) Based on the market shares submitted by the Notifying Party, the Transaction gives rise to the following vertically affected markets in Norway:

Table 23: Vertically affected markets in Norway (2020)

Upstream market	Downstream market
Wholesale supply of pay TV channels for sports content* **TV audience:** Discovery (only): [40-50]%; **Combined: [40-50]%**	**Retail supply of pay AV services** **Revenue:** Discovery: [0-5]%; WarnerMedia: [0-5]%; **Combined: [5-10]%**
	Retail supply of non-linear pay AV services (SVOD) **Subscription:** Discovery: [0-5]%; WarnerMedia: [10-20]%; **Combined: [20-30]%**

* The market shares for the wholesale supply of pay TV channels for sports content are exactly equal to the market shares for the wholesale supply of TV channels for sports content. We keep the narrowest possible market.

<u>Source</u>: Annex 10 to Chapter 3 of the Form CO; and Annex 1 to Chapter 4 of the Form CO

(C.v) Poland

(112) Based on the market shares submitted by the Notifying Party, the Transaction gives rise to the following vertically affected markets in Poland:

Table 24: Vertically affected markets in Poland (2020)

Upstream market	Downstream market
Wholesale supply of TV channels for news content **TV audience:** Discovery (only): [40-50]%; **Combined: [40-50]%**	**Retail supply of pay AV services** **Revenue:** Discovery: [0-5]%; WarnerMedia: [0-5]%; **Combined: [0-5]%**
	Retail supply of non-linear pay AV services (SVOD) **Subscription:** Discovery: [0-5]%; WarnerMedia: [0-5]%; **Combined: [5-10]%**
Wholesale supply of pay TV channels **TV audience:** Discovery: [30-40]%; WarnerMedia: [0-5]%; **Combined: [30-40]%**	**Retail supply of pay AV services** **Revenue:** Discovery: [0-5]%; WarnerMedia: [0-5]%; **Combined: [0-5]%**
	Retail supply of non-linear pay AV services (SVOD) **Subscription:** Discovery: [0-5]%; WarnerMedia: [0-5]%; **Combined: [5-10]%**
Wholesale supply of pay TV channels for sports content **TV audience:** Discovery (only): [30-40]%; **Combined: [30-40]%**	**Retail supply of pay AV services** **Revenue:** Discovery: [0-5]%; WarnerMedia: [0-5]%; **Combined: [0-5]%**
	Retail supply of non-linear pay AV services (SVOD) **Subscription:** Discovery: [0-5]%; WarnerMedia: [0-5]%; **Combined: [5-10]%**
Wholesale supply of pay TV channels for news content **TV audience:** Discovery (only): [70-80]%; **Combined: [70-80]%**	**Retail supply of pay AV services** **Revenue:** Discovery: [0-5]%; WarnerMedia: [0-5]%; **Combined: [0-5]%**
	Retail supply of non-linear pay AV services (SVOD) **Subscription:** Discovery: [0-5]%; WarnerMedia: [0-5]%; **Combined: [5-10]%**

<u>Source</u>: Annex 10 to Chapter 3 of the Form CO; and Annex 1 to Chapter 4 of the Form CO

(C.vi) Romania

(113) Based on the market shares submitted by the Notifying Party, the Transaction gives rise to the following vertically affected markets Romania:

Table 25: Vertically affected markets in Romania (2020)

<table>
<tr><th>Upstream market</th><th>Downstream market</th></tr>
<tr><td rowspan="2">Wholesale supply of pay TV channels for children content*
TV audience: WarnerMedia (only): [30-40]%; Combined: [30-40]%</td><td>Retail supply of pay AV services
Revenue: Discovery: [0-5]%; WarnerMedia: [0-5]%; Combined: [0-5]%</td></tr>
<tr><td>Retail supply of non-linear pay AV services (SVOD)
Subscription: Discovery: [0-5]%; WarnerMedia: [0-5]%; Combined: [5-10]%</td></tr>
</table>

* The market shares for the wholesale supply of pay TV channels for children content are exactly equal to the market shares for the wholesale supply of TV channels for children content. We keep the narrowest possible market.

<u>Source</u>: Annex 10 to Chapter 3 of the Form CO; and Annex 1 to Chapter 4 of the Form CO

(C.vii) Spain

(114) Based on the market shares submitted by the Notifying Party, the Transaction gives rise to the following vertically affected markets in Spain:

Table 26: Vertically affected markets in Spain (2020)

<table>
<tr><th>Upstream market</th><th>Downstream market</th></tr>
<tr><td rowspan="3">Wholesale supply of FTA TV channels for children content
TV audience: WarnerMedia (only): [30-40]%; Combined: [30-40]%</td><td>Retail supply of pay AV services
Revenue: Discovery: [0-5]%; WarnerMedia: [0-5]%; Combined: [0-5]%</td></tr>
<tr><td>Retail supply of non-linear pay AV services (SVOD)
Revenue: Discovery: [0-5]%; WarnerMedia: [5-10]%; Combined: [5-10]%</td></tr>
<tr><td>Retail supply of non-linear FTA AV services (AVOD)
Revenue: Discovery (only): [0-5]%; Combined: [0-5]%</td></tr>
<tr><td rowspan="2">Wholesale supply of pay TV channels for sports content
TV audience: Discovery (only): [40-50]%; Combined: [40-50]%</td><td>Retail supply of pay AV services
Revenue: Discovery: [0-5]%; WarnerMedia: [0-5]%; Combined: [0-5]%</td></tr>
<tr><td>Retail supply of non-linear pay AV services (SVOD)
Revenue: Discovery: [0-5]%; WarnerMedia: [5-10]%; Combined: [5-10]%</td></tr>
</table>

<u>Source</u>: Annex 10 to Chapter 3 of the Form CO; and Annex 1 to Chapter 4 of the Form CO

(C.viii) Sweden

(115) Based on the market shares submitted by the Notifying Party, the Transaction gives rise to the following vertically affected markets in Sweden:

Table 27: Vertically affected markets in Sweden (2020)

<table>
<tr><th>Upstream market</th><th>Downstream market</th></tr>
<tr><td rowspan="3">Wholesale supply of TV channels for news content
TV audience: WarnerMedia (only): [40-50]%; Combined: [40-50]%</td><td>Retail supply of pay AV services
Revenue: Discovery: [0-5]%; WarnerMedia: [5-10]%; Combined: [5-10]%</td></tr>
<tr><td>Retail supply of non-linear pay AV services (SVOD)
Subscription: Discovery: [0-5]%; WarnerMedia: [10-20]%; Combined: [20-30]%</td></tr>
<tr><td>Retail supply of non-linear FTA AV services (AVOD)
Revenue: Discovery (only): [0-5]%; Combined: [0-5]%</td></tr>
<tr><td rowspan="2">Wholesale supply of pay TV channels for news content
TV audience: WarnerMedia (only): [90-100]%; Combined: [90-100]%</td><td>Retail supply of pay AV services
Revenue: Discovery: [0-5]%; WarnerMedia: [5-10]%; Combined: [5-10]%</td></tr>
<tr><td>Retail supply of non-linear pay AV services (SVOD)
Subscription: Discovery: [0-5]%; WarnerMedia: [10-20]%; Combined: [20-30]%</td></tr>
</table>

Source: Annex 10 to Chapter 3 of the Form CO; and Annex 1 to Chapter 4 of the Form CO

5.1.2.2. Affected markets arising from conglomerate relationships between the possible markets for the wholesale supply of TV channles for news, sports, children and other content

(116) Based on the market shares provided by the Notifying Party, the Transaction gives rise to various conglomerate relationships between the Parties on a number of affected possible markets at the level of the wholesale supply of TV channels for news, sports, children and other content in several Member States.

(A) Belgium

(117) In Belgium, the conglomerate relationships are the ones included in the following table that indicates that the Parties have shares over 30% in the following possible markets: Discovery with [50-60]% in the possible market for the wholesale supply of pay TV channels for sports content.

Table 28: Conglomerate affected markets in Belgium (2020)

Affected possible markets	Audiences Shares		
	Discovery	Warner Media	Combined
Wholesale supply of pay TV channels for sports content	[50-60]%	/	[50-60]%
Wholesale supply of pay TV channels for news content	/	[10-20]%	[10-20]%

Source: Annex 10 to Chapter 3 of the Form CO; and Annex 1 to Chapter 4 of the Form CO

(B) Bulgaria

(118) In Bulgaria, the conglomerate relationships are the ones included in the following table that indicates that the Parties have shares over 30% in the following possible market: WarnerMedia with [30-40]% in the possible market for the wholesale supply of pay TV channels for children content.

Table 29: Conglomerate affected markets in Bulgaria (2020)

Affected possible markets	Audiences Shares		
	Discovery	Warner Media	Combined
Wholesale supply of pay TV channels for children content	/	[30-40]%	[30-40]%
Wholesale supply of pay TV channels for other content	[10-20]%	/	[10-20]%
Wholesale supply of pay TV channels for sports content	[20-30]%	/	[20-30]%

Source: Annex 10 to Chapter 3 of the Form CO; and Annex 1 to Chapter 4 of the Form CO

(C) France

(119) In France, the conglomerate relationships are the ones included in the following table that indicates that the Parties have shares over 30% in the following possible market: Discovery with [30-40]% in the possible market for the wholesale supply of pay TV channels for sports content.

Table 30: Conglomerate affected markets in France (2020)

Affected possible markets	Audiences Shares		
	Discovery	Warner Media	Combined
Wholesale supply of pay TV channels for sports content	[30-40]%	/	[30-40]%
Wholesale supply of pay TV channels for children content	/	[20-30]%	[20-30]%
Wholesale supply of pay TV channels for other content	[5-10]%	[0-5]%	[10-20]%

Source: Annex 10 to Chapter 3 of the Form CO; and Annex 1 to Chapter 4 of the Form CO

(D) Germany

(120) In Germany, the conglomerate relationships are the ones included in the following table that indicates that the Parties have shares over 30% in the following possible markets: (i) WarnerMedia with [90-100]% of the possible market for the wholesale supply of pay TV channels for children content, and (ii) Discovery with [40-50]% in the possible market for the wholesale supply of FTA TV channels for sports content.

Table 31: Conglomerate affected markets in Germany (2020)

Affected possible markets	Audiences Shares		
	Discovery	Warner Media	Combined
Wholesale supply of pay TV channels for children content	/	[90-100]%	[90-100]%
Wholesale supply of FTA TV channels for sports content	[40-50]%	/	[40-50]%
Wholesale supply of pay TV channels for other content	[0-5]%	[20-30]%	[20-30]%
Wholesale supply of pay TV channels for other content	[0-5]%	/	[0-5]%

Source: Annex 10 to Chapter 3 of the Form CO; and Annex 1 to Chapter 4 of the Form CO

(E) Italy

(121) In Italy, the conglomerate relationships are the ones included in the following table that indicates that the Parties have shares over 30% in the following possible market: the merged entity with [50-60]% in the possible market for the wholesale supply of linear FTA TV channels for children content.

Table 32: Conglomerate affected markets in Italy (2020)

Affected possible markets	Audiences Shares		
	Discovery	Warner Media	Combined
Wholesale supply of linear FTA TV channels for children content	[20-30]%	[20-30]%	[50-60]%
Wholesale supply of pay TV channels for children content	/	[20-30]%	[20-30]%
Wholesale supply of FTA TV channels for other content	[5-10]%	/	[5-10]%
Wholesale supply of pay TV channels for sports content	[5-10]%	/	[5-10]%
Wholesale supply of pay TV channels for other content	[0-5]%	/	[0-5]%

Source: Annex 10 to Chapter 3 of the Form CO; and Annex 1 to Chapter 4 of the Form CO

(F) Norway

(122) In Norway, the conglomerate relationships are the ones included in the following table that indicates that the Parties have shares over 30% in the following possible market: Discovery with [40-50]% in the possible market for the wholesale supply of pay TV channels for sports content.

Table 33: Conglomerate affected markets in Norway (2020)

Affected possible markets	Audiences Shares		
	Discovery	Warner Media	Combined
Wholesale supply of pay TV channels for sports content	[40-50]%	/	[40-50]%
Wholesale supply of pay TV channels for children content	/	[10-20]%	[10-20]%

Source: Annex 10 to Chapter 3 of the Form CO; and Annex 1 to Chapter 4 of the Form CO

(G) Poland

(123) In Poland, the conglomerate relationships are the ones included in the following table that indicates that the Parties have shares over 30% in the following possible markets: (i) Discovery with [70-80]% in the possible market for the wholesale supply of pay TV channels for news content, and (ii) Discovery with [30-40]% in the possible market for the wholesale supply of pay TV channels for sports content.

Table 34: Conglomerate affected markets in Poland (2020)

Affected possible markets	Audiences Shares		
	Discovery	Warner Media	Combined
Wholesale supply of pay TV channels for news content	/	[70-80]%	[70-80]%

Affected possible markets	Audiences Shares		
	Discovery	Warner Media	Combined
Wholesale supply of pay TV channels for sports content	[30-40]%	/	[30-40]%
Wholesale supply of FTA TV channels for other content	[20-30]%	/	[20-30]%
Wholesale supply of pay TV channels for other content	[20-30]%	[0-5]%	[20-30]%
Wholesale supply of pay TV channels for children content	/	[10-20]%	[10-20]%

Source: Annex 10 to Chapter 3 of the Form CO; and Annex 1 to Chapter 4 of the Form CO

(H) Romania

(124) In Romania, the conglomerate relationships are the ones included in the following table that indicates that the Parties have shares over 30% in the following possible market: WarnerMedia with [30-40]% in the possible market for the wholesale supply of pay TV channels for children content.

Table 35: Conglomerate affected markets in Romania (2020)

Affected possible markets	Audiences Shares		
	Discovery	Warner Media	Combined
Wholesale supply of pay TV channels for children content	/	[30-40]%	[30-40]%
Wholesale supply of pay TV channels for sports content	[10-20]%	/	[10-20]%
Wholesale supply of pay TV channels for other content	[0-5]%	[0-5]%	[0-5]%

Source: Annex 10 to Chapter 3 of the Form CO; and Annex 1 to Chapter 4 of the Form CO

(I) Spain

(125) In Spain, the conglomerate relationships are the ones included in the following table that indicates that the Parties have shares over 30% in the following possible markets: (i) Discovery with [40-50]% in the possible market for the wholesale supply of pay TV channels for sports content, and (ii) WarnerMedia with [30-40]% in the possible market for the wholesale supply of FTA TV channels for children content.

(126)

Table 36: Conglomerate affected markets in Spain (2020)

Affected possible markets	Audiences Shares		
	Discovery	Warner Media	Combined
Wholesale supply of pay TV channels for sports content	[40-50]%	/	[40-50]%
Wholesale supply of FTA TV channels for children content	/	[30-40]%	[30-40]%
Wholesale supply of pay TV channels for other content	[0-5]%	[10-20]%	[10-20]%

Source: Annex 10 to Chapter 3 of the Form CO; and Annex 1 to Chapter 4 of the Form CO

5.1.3. Conclusion

(127) Each of these potential effects is discussed in turn in the following sections. After setting out the analytical framework (section [5.2]) and the market shares in the relevant markets and possible sub-segments (section [5.3]), the Commission will first assess the potential horizontal non-coordinated effects stemming from the Transaction (section [5.4]). Then the Commission will assess the potential vertical effects of the Transaction (section [5.5]). Finally, the Commission will assess the potential conglomerate effects stemming from the Transaction (section [5.6]).

5.2. Analytical Framework

(128) Under Article 2(2) and (3) of the Merger Regulation, the Commission must assess whether a proposed concentration would significantly impede effective competition in the internal market or in a substantial part of it, in particular through the creation or strengthening of a dominant position.

(129) In this respect, a merger may entail horizontal and/or non-horizontal (namely, vertical or conglomerate) effects. Horizontal effects are those deriving from a concentration where the undertakings concerned are actual or potential competitors of each other in one or more of the relevant markets concerned. Vertical effects are those deriving from a concentration where the undertakings concerned are active on different or multiple levels of the supply chain. Conglomerate effects are those deriving from a concentration where the undertakings concerned are in a relationship which is neither horizontal nor vertical. A concentration may involve all three types of effects. In such a case, the Commission will appraise horizontal and non-horizontal effects in accordance with the guidance set out in the relevant notices, that is to say the Horizontal Merger Guidelines[86] and the Non-Horizontal Merger Guidelines.[87]

(130) In assessing the competitive effects of a merger, the Commission compares the competitive conditions that would result from the notified merger with the conditions that would have prevailed without the merger. In most cases the competitive conditions existing at the time of the merger constitute the relevant comparison for evaluating the effects of a merger. However, in some circumstances, the Commission may take into account future changes to the market that can reasonably be predicted.[88]

5.3. Market shares[89]

(131) According to the Horizontal Merger Guidelines and the Non-Horizontal Merger Guidelines,[90] in the assessment of the effects of a merger, market shares constitute a

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86 Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings ("Horizontal Merger Guidelines"), OJ C31, 5.2.2004, p. 5.

87 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, 190.2008.

88 Horizontal Merger Guidelines, paragraph 9; Non-Horizontal Merger Guidelines, paragraph 20.

89 In this section, the calculation of market shares in the market for the wholesale supply of TV channels in all countries is made on the basis of an average of quarterly market shares provided by the Notifying Party. Therefore, due to the rounding, the sum of market shares presented in the “Combined” or “Total market” row may insignificantly differ from an arithmetic sum.

90 Horizontal Merger Guidelines, paragraph 14; Non-Horizontal Merger Guidelines, paragraph 24.

useful first indication of the structure of the markets at stake and of the competitive importance of the relevant market players.

(132) In the following recitals, the Commission presents the market shares of the Parties to the Transaction and their competitors, in all horizontally affected markets where the Parties have combined market shares above 20%, and all non-horizontally affected markets where the Parties have an individual or combined market share above 30%.

5.3.1. Belgium

5.3.1.1. Wholesale supply of pay TV channels for sports content

(133) The following table presents the market shares (by volume) on the market for the wholesale supply of pay TV channels for sports content in Belgium.

Table 37: Market shares on the market for the wholesale supply of pay TV channels for sports content in Belgium (2018-2020)

	2018	2019	2020
Market shares in volume (share of audience)			
Discovery	[40-50]%	[40-50]%	[50-60]%
Combined	**[40-50]%**	**[40-50]%**	**[50-60]%**
Telenet	[40-50]%	[50-60]%	[30-40]%
Other	[0-5]%	[0-5]%	[10-20]%
Total market	100%	100%	100%

Source: *Annex 10 to Chapter 3 of the Form CO*

(134) The Belgian market for the wholesale supply of pay TV channels for sports content is split between Discovery and Telenet with one or the other leading depending on the events being shown. Eleven is the main other competitor. Since WarnerMedia is not active in the market, the Transaction will not affect the current market structure.

5.3.2. Bulgaria

(135) Wholesale supply of pay TV channels for children content

(136) The following table presents the market shares (by volume) on the market for the wholesale supply of pay TV channels for children content in Bulgaria.

Table 38: Market shares on the market for the wholesale supply of pay TV channels for children content in Bulgaria (2018-2020)

	2018	2019	2020
Market shares in volume (share of audience)			
WarnerMedia	[30-40]%	[30-40]%	[30-40]%
Combined	**[30-40]%**	**[30-40]%**	**[30-40]%**
ViacomCBS	[30-40]%	[40-50]%	[50-60]%
Disney	[20-30]%	[10-20]%	[10-20]%
Other	[0-5]%	[0-5]%	/
Total market	100%	100%	100%

Source: *Annex 10 to Chapter 3 of the Form CO*

(137) ViacomCBS is the largest player on the Bulgarian market for the wholesale supply of pay TV channels for children content with market shares above 50% in 2020. WarnerMedia is the second largest competitor with around [30-40]% market share in the same year. Disney is the third largest competitor, however its market share has been decreasing and went from [20-30]% in 2018 to [10-20]% in 2020. Following

this decrease, ViacomCBS's market share increased by almost [10-20] percentage points between 2018 and 2020, while WarnerMedia's market shares increased by only [0-5] percentage points between 2018 and 2020. Since Discovery is not active in the market, the Transaction will not affect the current market structure.

5.3.3. Finland

5.3.3.1. Retail supply of non-linear pay AV services

(138) The following table presents the market shares (both by value and volume) on the market for the retail supply of non-linear pay AV services in Finland.

Table 39: Market shares on the market for the retail supply of non-linear pay AV services in Finland (2018-2020)

	2018	**2019**	**2020**
Market shares in value (EUR)			
Discovery	[0-5]%	[0-5]%	[0-5]%
WarnerMedia	[20-30]%	[20-30]%	[20-30]%
Combined	**[20-30]%**	**[20-30]%**	**[20-30]%**
Netflix	[40-50]%	[30-40]%	[30-40]%
Viaplay	[10-20]%	[20-30]%	[20-30]%
Ruutu+	[5-10]%	[5-10]%	[5-10]%
C More	[0-5]%	[0-5]%	[5-10]%
Amazon Prime Video	[0-5]%	[0-5]%	[0-5]%
Disney+	/	/	[0-5]%
Others	[0-5]%	[0-5]%	[0-5]%
Total market	100%	100%	100%
Market shares in volume (number of subscribers)			
Discovery	[0-5]%	[0-5]%	[0-5]%
WarnerMedia	[20-30]%	[20-30]%	[20-30]%
Combined	**[20-30]%**	**[20-30]%**	**[20-30]%**
Netflix	[40-50]%	[40-50]%	[30-40]%
Viaplay	[5-10]%	[10-20]%	[10-20]%
Ruutu+	[10-20]%	[10-20]%	[5-10]%
Disney+	/	/	[5-10]%
Apple TV+	/	[0-5]%	[0-5]%
Amazon Prime Video	[0-5]%	[0-5]%	[0-5]%
C More	[0-5]%	[0-5]%	[0-5]%
Canal Digital	[0-5]%	[0-5]%	[0-5]%
DAZN	/	/	[0-5]%
Others	[0-5]%	[0-5]%	[0-5]%
Total market	100%	100%	100%

Source: Annex 1 to Chapter 4 of the Form CO

(139) Prior to the Transaction, WarnerMedia represents the second largest market player, with a market share of approximately [20-30]% by value and [20-30]% by volume. Discovery is a very small market participant, with market shares below [0-5]% both by value and by volume. The largest retail supply of non-linear pay TV services is Netflix, with market shares consistently above [30-40]%, both by value and volume. Other relevant market participants with market shares exceeding 5% include Viaplay and Ruutu+.

5.3.3.2. Wholesale supply of pay TV channels

(140) The following table presents the market shares (by volume) on the market for the wholesale supply of pay TV channels in Finland.

Table 40: Market shares on the market for the wholesale supply of pay TV channels in Finland (2018-2020)

	2018	2019	2020
Market shares in volume (share of audience)			
Discovery	[90-100]%	[90-100]%	[40-50]%
Combined	**[90-100]%**	**[90-100]%**	**[40-50]%**
Bonnier	/	[0-5]%	[0-5]%
BBC	/	[0-5]%	[0-5]%
Disney	/	[0-5]%	[5-10]%
Government (DE)	/	[0-5]%	[0-5]%
Other	/	[0-5]%	[40-50]%
Total market	100%	100%	100%

Source: *Annex 10 to Chapter 3 of the Form CO*

(141) Discovery is the largest player on the Finnish market for the wholesale supply of pay TV channels, with pay TV channels such as Eurosport and Discovery Channel. The identified alternative suppliers in the market (listed as 'Other') do not have market shares exceeding 5%. Since WarnerMedia is not active in the market, the Transaction will not affect the current market structure.

5.3.3.3. Wholesale supply of pay TV channels for sports content

(142) The following table presents the market shares (by volume) on the market for the wholesale supply of pay TV channels for sports content in Finland.

Table 41: Market shares on the market for the wholesale supply of pay TV channels for sports content in Finland (2018-2020)

	2018	2019	2020
Market shares in volume (share of audience)			
Discovery	[90-100]%	[90-100]%	[40-50]%
Combined	**[90-100]%**	**[90-100]%**	**[40-50]%**
Bonnier	/	[0-5]%	[0-5]%
Other	/	[0-5]%	[50-60]%
Total market	100%	100%	100%

Source: *Annex 10 to Chapter 3 of the Form CO*

(143) In the Finnish market for the wholesale supply of pay TV channels for sports content, the number one player is Discovery, which is active through its pay TV channel Eurosport. The identified alternative supplier in the market (listed as 'Other') is Bonnier, which has a market share below [0-5]% in 2020. Since WarnerMedia is not active in the market, the Transaction will not affect the current market structure.

5.3.3.4. Wholesale supply of pay TV channels for other content

(144) The following table presents the market shares (by volume) on the market for the wholesale supply of pay TV channels for other content in Finland.

Table 42: Market shares on the market for the wholesale supply of pay TV channels for other content in Finland (2018-2020)

	2018	2019	2020
Market shares in volume (share of audience)			
Discovery	[90-100]%	[90-100]%	[70-80]%
Combined	**[90-100]%**	**[90-100]%**	**[70-80]%**
BBC	/	[0-5]%	[20-30]%
Other	/	[0-5]%	/
Total market	100%	100%	100%

Source: Annex 10 to Chapter 3 of the Form CO

(145) The number one player on the Finnish market for the wholesale supply of pay TV channels for other content is Discovery, which is active through its pay TV channel Discovery Channel. The identified alternative supplier in the market (not identified as 'Other') is BBC, which has a market share around [20-30]% in 2020. BBC reached [0-5]% market share when entering the market in 2019, and gained almost [20-30] percentage points between 2019 and 2020, at the expense of Discovery. Since WarnerMedia is not active in the market, the Transaction will not affect the current market structure.

5.3.4. France

5.3.4.1. Wholesale supply of pay TV channels for sports content

(146) The following table presents the market shares (by volume) on the market for the wholesale supply of pay TV channels for sports content in France.

Table 43: Market shares on the market for the wholesale supply of pay TV channels for sports content in France (2018-2020)

	2018	2019	2020
Market shares in volume (share of audience)			
Discovery	[20-30]%	[20-30]%	[30-40]%
Combined	**[20-30]%**	**[20-30]%**	**[30-40]%**
beIN	[40-50]%	[20-30]%	[20-30]%
Canal+	[20-30]%	[20-30]%	[20-30]%
NextRadio	[5-10]%	[10-20]%	[10-20]%
Other	[5-10]%	[0-5]%	[0-5]%
Total market	100%	100%	100%

Source: Annex 10 to Chapter 3 of the Form CO

(147) The French market for the wholesale supply of pay TV channels for sports content is split between four players with market shares that can fluctuate signigicantly over time depending on the content rights each one of them are holding from one season to the next. In that context, NextRadio is the up and coming player while beIN has been losing half of its market shares over the last three years. Since WarnerMedia is not active in the market, the Transaction will not affect the current market structure.

5.3.5. Germany

5.3.5.1. Wholeasle supply of pay TV channels

(148) The following table presents the market shares (by volume) on the market for the wholesale supply of pay TV channels in Germany.

Table 44: Market shares on the market for the wholesale supply of pay TV channels in Germany (2018-2020)

	2018	2019	2020
Market shares in volume (share of audience)			
Discovery	[0-5]%	[0-5]%	[0-5]%
WarnerMedia	[10-20]%	[10-20]%	[10-20]%
Combined	**[10-20]%**	**[10-20]%**	**[20-30]%**
Sky Group	[20-30]%	[30-40]%	[20-30]%
NBCU	[10-20]%	[10-20]%	[10-20]%
Disney	[10-20]%	[10-20]%	[10-20]%
RTL Group	[5-10]%	[5-10]%	[5-10]%
Hearst	[0-5]%	[0-5]%	[0-5]%
Sony	[0-5]%	/	/
Other	[5-10]%	[5-10]%	[5-10]%
Total market	100%	100%	100%

Source: *Annex 10 to Chapter 3 of the Form CO*

(149) On the German market for the wholesale supply of pay TV channels the largest player is Sky Group, with around [30-40]% market shares. Depending on the year, the second largest market participant used to be NBCU but since 2020, it became WarnerMedia. Discovery has a very limited market shares and ranks sixth in the market for the wholesale supply of pay TV channels in Germany. As a result of the Transaction, the merged entity would be the second market player after Sky Group.

5.3.5.2. Wholesale supply of pay TV channels for sports content

(150) The following table presents the market shares (by volume) on the market for the wholesale supply of FTA TV channels for sports content in Germany.

Table 45: Market shares on the market for the wholesale supply of FTA TV channels for sports content in Germany (2018-2020)

	2018	2019	2020
Market shares in volume (share of audience)			
Discovery	[40-50]%	[40-50]%	[40-50]%
Combined	**[40-50]%**	**[40-50]%**	**[40-50]%**
Constantin Medien	[50-60]%	[50-60]%	[50-60]%
Total market	100%	100%	100%

Source: *Annex 10 to Chapter 3 of the Form CO*

(151) The German market for the wholesale supply of FTA TV channels for sports content is split between Constantin Medien, the market leader, and Discovery. Since WarnerMedia is not active in the market, the Transaction will not affect the current market structure.

5.3.5.3. Wholesale supply of pay TV channels for children content

(152) The following table presents the market shares (by volume) on the market for the wholesale supply of pay TV channels for children content in Germany.

Table 46: Market shares on the market for the wholesale supply of pay TV channels for children content in Germany (2018-2020)

	2018	2019	2020
Market shares in volume (share of audience)			
WarnerMedia	[90-100]%	[90-100]%	[90-100]%
Combined	**[90-100]%**	**[90-100]%**	**[90-100]%**
Total market	100%	100%	100%

<u>Source</u>: *Annex 10 to Chapter 3 of the Form CO*

(153) WarnerMedia is the largest player on the German market for the wholesale supply of pay TV channels for children content, and is active on the market with the pay TV channels Boomerang and Cartoon Network, which hold [90-100]% of the market with no alternative supplier. Since Discovery is not active in the market, the Transaction will not affect the current market structure.

5.3.5.4. Wholeasle supply of pay TV channels for other content

(154) The following table presents the market shares (by volume) on the market for the wholesale supply of pay TV channels for other content in Germany.

Table 47: Market shares on the market for the wholesale supply of pay TV channels for other content in Germany (2018-2020)

	2018	2019	2020
Market shares in volume (share of audience)			
Discovery	[0-5]%	[0-5]%	[0-5]%
WarnerMedia	[10-20]%	[10-20]%	[10-20]%
Combined	**[10-20]%**	**[10-20]%**	**[20-30]%**
NBCU	[30-40]%	[30-40]%	[30-40]%
Disney	[20-30]%	[20-30]%	[20-30]%
RTL Group	[10-20]%	[5-10]%	[5-10]%
Hearst	[5-10]%	[5-10]%	[5-10]%
Sony	[0-5]%	/	/
Other	[5-10]%	[5-10]%	[0-5]%
Total market	100%	100%	100%

<u>Source</u>: *Annex 10 to Chapter 3 of the Form CO*

(155) The largest player on the German market for the wholesale supply of pay TV channels for other content is NBCU, with more than 30% market shares. The second largest market participant is Disney. Discovery has a very limited market shares and ranks sixth in the market for the wholesale supply of pay TV channels for other content in Germany. As a result of the Transaction, the merged entity would be the third market player after NBCU and Disney.

5.3.6. Italy

5.3.6.1. Wholesale supply of TV channels for children content

(156) The following table presents the market shares (by volume) on the market for the wholesale supply of TV channels for children content in Italy.

Table 48: Market shares on the market for the wholesale supply of TV channels for children content in Italy (2018-2020)

	2018	2019	2020
Market shares in volume (share of audience)			
Discovery	[20-30]%	[20-30]%	[20-30]%
WarnerMedia	[20-30]%	[20-30]%	[20-30]%
Combined	**[40-50]%**	**[50-60]%**	**[50-60]%**
RAI	[20-30]%	[20-30]%	[20-30]%
ViacomCBS	[10-20]%	[10-20]%	[10-20]%
De Agostini	[0-5]%	[0-5]%	[0-5]%
Disney	[0-5]%	[0-5]%	/
Sony	[0-5]%	[0-5]%	/
Total market	100%	100%	100%

Source: *Annex 10 to Chapter 3 of the Form CO*

(157) In 2020, WarnerMedia was the market leader in the Italian market for the wholesale supply of TV channels for children content, closely followed by RAI and Discovery. The rest of the market is divided between ViacomCBS and De Agostini. The merged entity would become the market leader with a market share exceeding 50%.

5.3.6.2. Wholesale supply of FTA TV channels for children content

(158) The following table presents the market shares (by volume) on the market for the wholesale supply of FTA TV channels for children content in Italy.

Table 49: Market shares on the market for the wholesale supply of FTA TV channels for children content in Italy (2018-2020)

	2018	2019	2020
Market shares in volume (share of audience)			
Discovery	[20-30]%	[20-30]%	[20-30]%
WarnerMedia	[20-30]%	[20-30]%	[20-30]%
Combined	**[50-60]%**	**[50-60]%**	**[50-60]%**
RAI	[30-40]%	[30-40]%	[20-30]%
ViacomCBS	[10-20]%	[10-20]%	[10-20]%
Sony	[0-5]%	[0-5]%	/
Total market	100%	100%	100%

Source: *Annex 10 to Chapter 3 of the Form CO*

(159) In 2020, RAI was the market leader in the Italian market for the wholesale supply of FTA TV channels for children content, closely followed by WarnerMedia and Discovery. Since Sony is no longer active on the market for the wholesale supply of FTA TV channels for children content in Italy, the only remaining market participant is ViacomCBS with [10-20]% market shares. The merged entity would become the market leader with a market share exceeding 50%.

5.3.7. Norway

5.3.7.1. Wholesale supply of pay TV channels

(160) The following table presents the market shares (by volume) on the market for the wholesale supply of pay TV channels in Norway.

Table 50: Market shares on the market for the wholesale supply of pay TV channels in Norway (2018-2020)

	2018	2019	2020
Market shares in volume (share of audience)			
Discovery	[20-30]%	[20-30]%	[20-30]%
WarnerMedia	[0-5]%	[0-5]%	[0-5]%
Combined	**[20-30]%**	**[20-30]%**	**[20-30]%**
Egmont	[50-60]%	[50-60]%	[40-50]%
NENT	[10-20]%	[10-20]%	[10-20]%
Disney	[0-5]%	[0-5]%	[0-5]%
BBC	[0-5]%	[0-5]%	[0-5]%
ViacomCBS	[0-5]%	[0-5]%	[0-5]%
Hearst	[0-5]%	[0-5]%	[0-5]%
Bonnier	[0-5]%	[0-5]%	[0-5]%
Other	[0-5]%	[0-5]%	[0-5]%
Total market	100%	100%	100%

Source: Annex 10 to Chapter 3 of the Form CO

(161) The market leader in the Norwegian market for the wholesale supply of pay TV channels is Egmont with approximately [50-60]% market shares. Discovery is the second market player, significantly behind Egmont. WarnerMedia has a very limited market presence as the sixth player on the market. The merged entity would be the second market participant, significantly behind Egmont.

5.3.7.2. Wholesale supply of pay TV channels for sports content

(162) The following table presents the market shares (by volume) on the market for the wholesale supply of pay TV channels for sports content in Norway.

Table 51: Market shares on the market for the wholesale supply of pay TV channels for sports content in Norway (2018-2020)

	2018	2019	2020
Market shares in volume (share of audience)			
Discovery	[40-50]%	[40-50]%	[40-50]%
Combined	**[40-50]%**	**[40-50]%**	**[40-50]%**
Egmont	[30-40]%	[30-40]%	[30-40]%
NENT	[10-20]%	[10-20]%	[10-20]%
AMC	[0-5]%	[0-5]%	[0-5]%
Other	[0-5]%	[0-5]%	[0-5]%
Total market	100%	100%	100%

Source: Annex 10 to Chapter 3 of the Form CO

(163) Discovery is the largest player on the Norwegian market for the wholesale supply of pay TV channels for sports content with [40-50]% market share. The number two actor in the market is Egmont with around [30-40]% market shares, followed by NENT with around [10-20]% market share in 2020. Since WarnerMedia is not active in the market, the Transaction will not affect the current market structure.

5.3.7.3. Retail supply of non-linear pay AV services

(164) The following table presents the market shares (both by value and) on the market for the retail supply of non-linear pay AV services in Norway.

Table 52: Market shares on the market for the retail supply of non-linear pay AV services in Norway (2018-2020)

	2018	2019	2020
Market shares in value (EUR)			
Discovery	[0-5]%	[0-5]%	[0-5]%
WarnerMedia	[10-20]%	[10-20]%	[10-20]%
Combined	**[10-20]%**	**[10-20]%**	**[10-20]%**
Viaplay	[20-30]%	[30-40]%	[30-40]%
TV2	[30-40]%	[20-30]%	[20-30]%
Netflix	[20-30]%	[20-30]%	[20-30]%
Amazon Prime Video	[0-5]%	[0-5]%	[0-5]%
Disney+	/	/	[0-5]%
DAZN	/	/	[0-5]%
Others	[0-5]%	[0-5]%	[0-5]%
Total market	100%	100%	100%
Market shares in volume (number of subscribers)			
Discovery	[0-5]%	[0-5]%	[0-5]%
WarnerMedia	[20-30]%	[20-30]%	[10-20]%
Combined	**[20-30]%**	**[20-30]%**	**[20-30]%**
Netflix	[30-40]%	[30-40]%	[20-30]%
Viaplay	[10-20]%	[10-20]%	[10-20]%
TV2	[10-20]%	[10-20]%	[10-20]%
Disney+	/	/	[5-10]%
Canal Digital	[5-10]%	[5-10]%	[0-5]%
Apple TV+	/	[0-5]%	[0-5]%
Amazon Prime Video	[0-5]%	[0-5]%	[0-5]%
DAZN	/	/	[0-5]%
Others	[0-5]%	[0-5]%	[0-5]%
Total market	100%	100%	100%

Source: *Annex 1 to Chapter 4 of the Form CO*

(165) The largest player on the Norwegian market for the retail supply of non-linear pay TV services is Viaplay by value, with market shares consistently above 20% (and above 30% since 2019) and by Netflix by volume, with market shares consistently above [20-30]% by volume. By value, WarnerMedia represents the fourth largest market participants behind Viaplay, TV2 and Netflix. By volume, WarnerMedia is the second largest market participant. Discovery has limited market presence by being the fifth largest market participant by value, far behind WarnerMedia, and the sixth market participant by volume. The merged entity would be the fourth largest market participant by value and the second largest by volume.

5.3.8. Poland

5.3.8.1. Wholesale supply of TV channels

(166) The following table presents the market shares (by volume) on the market for the wholesale supply of TV channels in Poland.

Table 53: Market shares on the market for the wholesale supply of TV channels in Poland (2018-2020)

	2018	2019	2020
Market shares in volume (share of audience)			
Discovery	[20-30]%	[20-30]%	[20-30]%
WarnerMedia	[0-5]%	[0-5]%	[0-5]%
Combined	**[20-30]%**	**[20-30]%**	**[20-30]%**

	2018	2019	2020
Market shares in volume (share of audience)			
TVP	[20-30]%	[30-40]%	[20-30]%
Polsat	[20-30]%	[20-30]%	[20-30]%
Puls	[5-10]%	[5-10]%	[5-10]%
ViacomCBS	[0-5]%	[0-5]%	[0-5]%
Disney	[0-5]%	[0-5]%	[0-5]%
Vivendi	[0-5]%	[0-5]%	[0-5]%
Hearst	[0-5]%	[0-5]%	[0-5]%
Sony	[0-5]%	[0-5]%	[0-5]%
BBC	[0-5]%	[0-5]%	[0-5]%
NBCU	[0-5]%	[0-5]%	[0-5]%
AMC	[0-5]%	[0-5]%	[0-5]%
4Fun Media	[0-5]%	[0-5]%	[0-5]%
Euronews	[0-5]%	[0-5]%	[0-5]%
Other	[0-5]%	[0-5]%	[5-10]%
Total market	100%	100%	100%

Source: Annex 10 to Chapter 3 of the Form CO

(167) The market leader in the Polish market for the wholesale supply of TV channels is TVP, closely followed by Polsat and Discovery. The rest of the market is fragmented and WarnerMedia is the ninth market participant. Due to the very limited market shares increment, the merged entity will be the second market participant after TVP and closely followed by Polsat.

5.3.8.2. Wholesale supply of pay TV channels

(168) The following table presents the market shares (by volume) on the market for the wholesale supply of pay TV channels in Poland.

Table 54: Market shares on the market for the wholesale supply of pay TV channels in Poland (2018-2020)

	2018	2019	2020
Market shares in volume (share of audience)			
Discovery	[30-40]%	[30-40]%	[30-40]%
WarnerMedia	[0-5]%	[0-5]%	[0-5]%
Combined	**[30-40]%**	**[30-40]%**	**[30-40]%**
Polsat	[20-30]%	[20-30]%	[20-30]%
ViacomCBS	[5-10]%	[5-10]%	[5-10]%
TVP	[5-10]%	[5-10]%	[5-10]%
Disney	[5-10]%	[5-10]%	[5-10]%
Vivendi	[5-10]%	[5-10]%	[0-5]%
Hearst	[0-5]%	[0-5]%	[0-5]%
Sony	[0-5]%	[0-5]%	[0-5]%
BBC	[0-5]%	[0-5]%	[0-5]%
NBCU	[0-5]%	[0-5]%	[0-5]%
AMC	[0-5]%	[0-5]%	[0-5]%
Euronews	[0-5]%	[0-5]%	[0-5]%
Other	[5-10]%	[5-10]%	[10-20]%
Total market	100%	100%	100%

Source: Annex 10 to Chapter 3 of the Form CO

(169) The market leader in the Polish market for the wholesale supply of pay TV channels is Discovery with more than 30% market shares. The second market player is Polsat, with more than 20% market shares. The rest of the market is fragmented and WarnerMedia is the seventh market participant. The Transaction will only bring about a very limited market share increment and will therefore only strengthen the merged entity to a limited extent with regards to Polsat..

5.3.8.3. Wholesale supply of TV channels for other content

(170) The following table presents the market shares (by volume) on the market for the wholesale supply of TV channels for other content in Poland.

Table 55: Market shares on the market for the wholesale supply of TV channels for other content in Poland (2018-2020)

	2018	2019	2020
Market shares in volume (share of audience)			
Discovery	[20-30]%	[20-30]%	[20-30]%
WarnerMedia	[0-5]%	[0-5]%	[0-5]%
Combined	**[20-30]%**	**[20-30]%**	**[20-30]%**
TVP	[20-30]%	[20-30]%	[20-30]%
Polsat	[20-30]%	[20-30]%	[20-30]%
Puls	[5-10]%	[5-10]%	[5-10]%
Disney	[0-5]%	[0-5]%	[0-5]%
ViacomCBS	[0-5]%	[0-5]%	[0-5]%
Hearst	[0-5]%	[0-5]%	[0-5]%
Vivendi	[0-5]%	[0-5]%	[0-5]%
Sony	[0-5]%	[0-5]%	[0-5]%
NBCU	[0-5]%	[0-5]%	[0-5]%
BBC	[0-5]%	[0-5]%	[0-5]%
AMC	[0-5]%	[0-5]%	[0-5]%
4Fun Media	[0-5]%	[0-5]%	[0-5]%
Other	[5-10]%	[5-10]%	[5-10]%
Total market	100%	100%	100%

Source: Annex 10 to Chapter 3 of the Form CO

(171) The market leader in the Polish market for the wholesale supply of TV channels for other content is TVP, closely followed by Polsat and Discovery. The rest of the market is fragmented and WarnerMedia is the eleventh market participant. Due to the very limited market shares increment, the merged entity will be the third market participant after TVP and Polsat.

5.3.8.4. Wholesale supply of pay TV channels for other content

(172) The following table presents the market shares (by volume) on the market for the wholesale supply of pay TV channels for other content in Poland.

Table 56: Market shares on the market for the wholesale supply of pay TV channels for other content in Poland (2018-2020)

	2018	2019	2020
Market shares in volume (share of audience)			
Discovery	[20-30]%	[20-30]%	[20-30]%
WarnerMedia	[0-5]%	[0-5]%	[0-5]%
Combined	**[20-30]%**	**[20-30]%**	**[20-30]%**
Polsat	[10-20]%	[20-30]%	[10-20]%
TVP	[10-20]%	[10-20]%	[10-20]%
Disney	[5-10]%	[5-10]%	[5-10]%
ViacomCBS	[0-5]%	[5-10]%	[0-5]%
Hearst	[0-5]%	[0-5]%	[0-5]%
Vivendi	[5-10]%	[5-10]%	[5-10]%
Sony	[0-5]%	[0-5]%	[0-5]%
NBCU	[0-5]%	[0-5]%	[0-5]%

	2018	2019	2020
Market shares in volume (share of audience)			
BBC	[0-5]%	[0-5]%	[0-5]%
AMC	[0-5]%	[0-5]%	[0-5]%
Other	[10-20]%	[10-20]%	[10-20]%
Total market	100%	100%	100%

Source: Annex 10 to Chapter 3 of the Form CO

(173) The market leader on the Polish market for the wholesale supply of pay TV channels for other content is Discovery with more than 20% market shares. The second market player is Polsat, with approximately [10-20]% market shares. The third market participant is TVP with approximately [10-20]% market shares. The rest of the market is fragmented and WarnerMedia is the eleventh market participant. The Transaction will only bring about a very limited market share increment and will therefore only strengthen the merged entity to a limited extent with regards to Polsat.

5.3.8.5. Wholesale supply of TV channels for news content

(174) The following table presents the market shares (by volume) on the market for the wholesale supply of TV channels for news content in Poland.

Table 57: Market shares on the market for the wholesale supply of TV channels for news content in Poland (2018-2020)

	2018	2019	2020
Market shares in volume (share of audience)			
Discovery	[40-50]%	[40-50]%	[40-50]%
Combined	**[40-50]%**	**[40-50]%**	**[40-50]%**
TVP	[40-50]%	[40-50]%	[40-50]%
Polsat	[10-20]%	[10-20]%	[10-20]%
BBC	[0-5]%	[0-5]%	[0-5]%
Euronews	[0-5]%	[0-5]%	[0-5]%
Other	[0-5]%	[0-5]%	[0-5]%
Total market	100%	100%	100%

Source: Annex 10 to Chapter 3 of the Form CO

(175) The two largest players on the Polish market for the wholesale supply of TV channels for news content are Discovery and TVP, which both had market shares around [40-50]% in 2020. The number three actor in the market is Polsat which had market share of [10-20]% in 2020. All the other suppliers active in the market have market shares below [0-5]%. Since WarnerMedia is not active in the market, the Transaction will not affect the current market structure.

5.3.8.6. Wholesale supply of pay TV channels for sports content

(176) The following table presents the market shares (by volume) on the market for the wholesale supply of pay TV channels for sports content in Poland.

Table 58: Market shares on the market for the wholesale supply of pay TV channels for sports content in Poland (2018-2020)

	2018	2019	2020
Market shares in volume (share of audience)			
Discovery	[30-40]%	[30-40]%	[30-40]%
Combined	**[30-40]%**	**[30-40]%**	**[30-40]%**
Polsat	[40-50]%	[50-60]%	[40-50]%
Vivendi	[10-20]%	[10-20]%	[10-20]%
AMC	[0-5]%	[0-5]%	[0-5]%

	2018	2019	2020
Market shares in volume (share of audience)			
NBCU	[0-5]%	[0-5]%	[0-5]%
Other	[0-5]%	[0-5]%	[0-5]%
Total market	100%	100%	100%

Source: Annex 10 to Chapter 3 of the Form CO

(177) The largest player on the Polish market for the wholesale supply of pay TV channels for sports content is Polsat with market share around [40-50]% in 2020. Discovery holds the number two position with a market share of [30-40]% in 2020, followed by Vivendi with a market share of [10-20]% in 2020. The number five in the market is AMC, with a market share of [0-5]% in 2020, and all the other suppliers active in the market have less than [0-5]% market share. Since WarnerMedia is not active in the market, the Transaction will not affect the current market structure.

5.3.8.7. Wholesale supply of pay TV channels for news content

(178) The following table presents the market shares (by volume) on the market for the wholesale supply of pay TV channels for news content in Poland.

Table 59: Market shares on the market for the wholesale supply of pay TV channels for news content in Poland (2018-2020)

	2018	2019	2020
Market shares in volume (share of audience)			
Discovery	[70-80]%	[70-80]%	[70-80]%
Combined	**[70-80]%**	**[70-80]%**	**[70-80]%**
Polsat	[20-30]%	[20-30]%	[20-30]%
BBC	[0-5]%	[0-5]%	[0-5]%
Euronews	[0-5]%	[0-5]%	[0-5]%
Other	/	/	[0-5]%
Total market	100%	100%	100%

Source: Annex 10 to Chapter 3 of the Form CO

(179) The largest player on the Polish market for the wholesale supply of pay TV channels for news content is Discovery, which had a market share around [70-80]% in 2020. The number two actor in the market is Polsat with a market share of [20-30]% in 2020. All the other suppliers active in the market have market shares below [0-5]%. Since WarnerMedia is not active in the market, the Transaction will not affect the current market structure.

5.3.8.8. Sale of advertising space on TV channels

(180) The following table presents the market shares (by value) on the market for the sale of advertising space on TV channels in Poland. As the Parties were unable to provide market shares of competitors on the basis of revenue, the market shares indicated below are calculated as a share of spend. Therefore, the market shares indicated below are slightly different from those identified above in Table 6.[91]

91 The "Other" category also includes channels represented on the market by each of Discovery, Polsat and TVP through brokerage services. The Commission considers that this alternative market shares methodology correctly captures the effects of the Transaction on the market for the sale of advertising space on TV channels in Poland.

Table 60: Market shares on the market for the sale of advertising space on TV channels in Poland (2018-2020)

	2018	2019	2020
Market shares in value (share of spend)			
Discovery	[30-40]%	[30-40]%	[30-40]%
Polsat	[30-40]%	[30-40]%	[20-30]%
TVP	[10-20]%	[20-30]%	[20-30]%
Other[92]	[10-20]%	[10-20]%	[10-20]%
Total market	100%	100%	100%

Source: *Annex 10 to Chapter 3 of the Form CO*

(181) The market leader in the Polish market for the sale of advertising space on TV channels in Poland is Discovery with more than 30% market shares, closely followed by Polsat. TVP is the third market participant with approximately [20-30]% market shares.

5.3.8.9. Sale of advertising space on pay TV channels

(182) The following table presents the market shares (by value) on the market for the sale of advertising space on pay TV channels in Poland. As the Parties were unable to provide market shares of competitors on the basis of revenue, the market shares indicated below are calculated as a share of spend. Therefore, the market shares indicated below are slightly different from those identified above in table Table 6.[93]

Table 61: Market shares on the market for the sale of advertising space on pay TV channels in Poland (2018-2020)

	2018	2019	2020
Market shares in value (share of spend)			
Discovery	[20-30]%	[20-30]%	[20-30]%
Polsat	[10-20]%	[10-20]%	[10-20]%
TVP	[0-5]%	[0-5]%	[0-5]%
Other[94]	[50-60]%	[50-60]%	[50-60]%
Total market	100%	100%	100%

Source: *Annex 10 to Chapter 3 of the Form CO*

(183) The market leader in the Polish market for the sale of advertising space on TV channels in Poland is Discovery with approximately [20-30]% market shares, followed by Polsat. TVP is the third market participant with approximately [0-5]% market shares.

5.3.9. Romania

5.3.9.1. Wholesale supply of pay TV channels for children content

(184) The following table presents the market shares (by volume) on the market for the wholesale supply of pay TV channels for children content in Romania.

92 This includes WarnerMedia's market shares which the Notifying Party was unable to single out on the basis of share of spend.

93 The "Other" category also includes channels represented on the market by each of Discovery, Polsat and TVP through brokerage services. The Commission considers that this alternative market shares methodology correctly captures the effects of the Transaction on the market for the sale of advertising space on pay TV channels in Poland.

94 This includes WarnerMedia's market shares which the Notifying Party was unable to single out on the basis of share of spend.

Table 62: Market shares on the market for the wholesale supply of pay TV channels for children content in Romania (2018-2020)

	2018	2019	2020
Market shares in volume (share of audience)			
WarnerMedia	[30-40]%	[30-40]%	[30-40]%
Combined	**[30-40]%**	**[30-40]%**	**[30-40]%**
ViacomCBS	[20-30]%	[20-30]%	[30-40]%
Disney	[30-40]%	[20-30]%	[20-30]%
AMC	[10-20]%	[10-20]%	[10-20]%
Other	[0-5]%	/	[0-5]%
Total market	100%	100%	100%

Source: Annex 10 to Chapter 3 of the Form CO

(185) The largest players on the Romanian market for the wholesale supply of pay TV channels for children content are WarnerMedia and ViacomCBS with market shares around [30-40]% and [30-40]% respectively in 2020. Disney is the third largest competitor, with a market share of [20-30]% in 2020, and is followed by AMC with a market share of [10-20]% in 2020. Since Discovery is not active in the market, the Transaction will not affect the current market structure

5.3.10. Spain

5.3.10.1. Wholesale supply of FTA TV channels for children content

(186) The following table presents the market shares (by volume) on the market for the wholesale supply of FTA TV channels for children content in Spain.

Table 63: Market shares on the market for the wholesale supply of FTA TV channels for children content in Spain (2018-2020)

	2018	2019	2020
Market shares in volume (share of audience)			
WarnerMedia	[20-30]%	[20-30]%	[30-40]%
Combined	**[20-30]%**	**[20-30]%**	**[30-40]%**
RTVE	[40-50]%	[40-50]%	[40-50]%
Disney	[20-30]%	[20-30]%	[20-30]%
Regional	[0-5]%	[0-5]%	[0-5]%
Total market	100%	100%	100%

Source: Annex 10 to Chapter 3 of the Form CO

(187) The largest player on the Spanish market for the wholesale supply of FTA TV channels for children content is RTVE with a market share around [40-50]% in 2020. WarnerMedia is the number two in the market with a market share around [30-40]% in 2020, and is followed by Disney with a market share of around [20-30]% in 2020. The number four in the market is Regional which had a market share of [0-5]% in 2020. Since Discovery is not active in the market, the Transaction will not affect the current market structure

5.3.10.2. Wholesale supply of pay TV channels for sports content

(188) The following table presents the market shares (by volume) on the market for the wholesale supply of pay TV channels for sports content in Spain.

Table 64: Market shares on the market for the wholesale supply of pay TV channels for sports content in Spain (2018-2020)

	2018	2019	2020
Market shares in volume (share of audience)			
Discovery	[10-20]%	[20-30]%	[40-50]%
Combined	**[10-20]%**	**[20-30]%**	**[40-50]%**
Telefonica	[5-10]%	[30-40]%	[50-60]%
DAZN group	/	/	/
Mediapro	[70-80]%	[20-30]%	/
La Liga	[0-5]%	[0-5]%	/
Total market	100%	100%	100%

Source: *Annex 10 to Chapter 3 of the Form CO*

(189) The largest player on the Spanish market for the wholesale supply of pay TV channels for sports content is Telefonica with a market share around [50-60]% in 2020. Discovery is the number two in the market with a market share around [40-50]% in 2020. Since WarnerMedia is not active in the market, the Transaction will not affect the current market structure.

5.3.11. Sweden

5.3.11.1. Wholesale supply of pay TV channels

(190) The following table presents the market shares (by volume) on the market for the wholesale supply of pay TV channels in Sweden.

Table 65: Market shares on the market for the wholesale supply of pay TV channels in Sweden (2018-2020)

	2018	2019	2020
Market shares in volume (share of audience)			
Discovery	[10-20]%	[20-30]%	[20-30]%
WarnerMedia	[0-5]%	[0-5]%	[0-5]%
Combined	**[20-30]%**	**[20-30]%**	**[20-30]%**
NENT	[30-40]%	[30-40]%	[30-40]%
Bonnier	[20-30]%	[20-30]%	[20-30]%
Disney	[5-10]%	[0-5]%	[0-5]%
ViacomCBS	[0-5]%	[0-5]%	[0-5]%
BBC	[0-5]%	[0-5]%	[0-5]%
Hearst	[0-5]%	[0-5]%	[0-5]%
RTVE	[0-5]%	[0-5]%	[0-5]%
TV2	[0-5]%	[0-5]%	[0-5]%
Other	[0-5]%	[0-5]%	[0-5]%
Total market	100%	100%	100%

Source: *Annex 10 to Chapter 3 of the Form CO*

(191) The market leader in the Swedish market for the wholesale supply of pay TV channels is NENT, with approximately [30-40]% market shares. Bonnier is the second market player, with approximately [20-30]% market shares. Discovery is the third market participant with approximately [20-30]% market shares. The rest of the market is fragmented, with WarnerMedia being the sixth market participant. The merged entity will be the third market participant.

5.3.11.2. Wholesale supply of TV channels for news content

(192) The following table presents the market shares (by volume) on the market for the wholesale supply of TV channels for news content in Sweden.

Table 66: Market shares on the market for the wholesale supply of TV channels for news content in Sweden (2018-2020)

	2018	2019	2020
Market shares in volume (share of audience)			
WarnerMedia	[10-20]%	[10-20]%	[40-50]%
Combined	**[10-20]%**	**[10-20]%**	**[40-50]%**
SVT	[80-90]%	[80-90]%	[50-60]%
Other	[0-5]%	[0-5]%	[0-5]%
Total market	100%	100%	100%

Source: Annex 10 to Chapter 3 of the Form CO

(193) The largest player on the Swedish market for the wholesale supply of TV channels for news content is dominated by SVT with a market share around [50-60]% in 2020, and the number two in the market is WarnerMedia which reached a market share of [40-50]% in 2020.[95] Since Discovery is not active in the market, the Transaction will not affect the current market structure.

5.3.11.3. Wholesale supply for pay TV channels for news content

(194) The following table presents the market shares (by volume) on the market for the wholesale supply of pay TV channels for news content in Sweden.

Table 67: Market shares on the market for the wholesale supply of pay TV channels for news content in Sweden (2018-2020)

	2018	2019	2020
Market shares in volume (share of audience)			
WarnerMedia	[90-100]%	[90-100]%	[90-100]%
Combined	**[90-100]%**	**[90-100]%**	**[90-100]%**
Other	[5-10]%	[5-10]%	[5-10]%
Total market	100%	100%	100%

Source: Annex 10 to Chapter 3 of the Form CO

(195) The largest market player on the Swedish market for the wholesale supply of TV channels for news content is WarnerMedia with a market share around [90-100]% in 2020. Since Discovery is not active in the market, the Transaction will not affect the current market structure.

5.3.11.4. Retail supply of non-linear pay AV services

(196) The following table presents the market shares (both by value and) on the market for the retail supply of non-linear pay AV services in Norway.

95 The Commission observes that WarnerMedia's high market share in the news segment in 2020 corresponds to an unusual high peak, which can be explained by the occurrence of the US Presidential election in 2020.

Table 68: Market shares on the market for the retail supply of non-linear pay AV services in Sweden (2018-2020)

	2018	2019	2020
Market shares in value (EUR)			
Discovery	[0-5]%	[0-5]%	[0-5]%
WarnerMedia	[10-20]%	[10-20]%	[10-20]%
Combined	**[10-20]%**	**[10-20]%**	**[10-20]%**
Netflix	[30-40]%	[40-50]%	[40-50]%
Viaplay	[30-40]%	[20-30]%	[20-30]%
C More	[10-20]%	[10-20]%	[10-20]%
Amazon Prime Video	[0-5]%	[0-5]%	[0-5]%
Disney+	/	/	[0-5]%
DAZN	/	/	/
Others	[0-5]%	[0-5]%	[0-5]%
Total market	100%	100%	100%
Market shares in volume (number of subscribers)			
Discovery	[0-5]%	[0-5]%	[0-5]%
WarnerMedia	[20-30]%	[20-30]%	[10-20]%
Combined	**[20-30]%**	**[20-30]%**	**[20-30]%**
Netflix	[40-50]%	[30-40]%	[20-30]%
Viaplay	[10-20]%	[20-30]%	[20-30]%
C More	[5-10]%	[5-10]%	[5-10]%
Apple TV+	/	[0-5]%	[5-10]%
Disney+	/	/	[0-5]%
Amazon Prime Video	[0-5]%	[0-5]%	[0-5]%
Canal Digital	[0-5]%	[0-5]%	[0-5]%
Boxer	[0-5]%	[0-5]%	[0-5]%
DAZN	/	/	[0-5]%
Others	[5-10]%	[5-10]%	[0-5]%
Total market	100%	100%	100%

Source: *Annex 1 to Chapter 4 of the Form CO*

(197) The Swedish market for the retail supply of non-linear pay TV services is dominated by Netflix both by value and volume. The second market participant is Viaplay with market shares of approximately [20-30]% both by volume and by value. The third market participant is WarnerMedia. The merged entity will be the second market participant by volume and the third market participant by value.

5.4. Horizontal Assessment

(198) The Horizontal Merger Guidelines considers that concentrations which, by reason of the limited market share of the undertakings concerned, are not liable to impede effective competition may be presumed to be compatible with the common market. Without prejudice to Articles 101 and 102 of the TFEU, an indication to this effect exists, in particular, where the market share of the undertakings concerned does not exceed 25 % either in the common market or in a substantial part of it.[96]

(199) Furthermore, the Horizontal Merger Guidelines indicate that the Commission is unlikely to identify horizontal competition concerns in a market with a post-merger HHI[97] below 1 000. Such markets normally do not require extensive analysis.

96 Horizontal Merger Guidelines, paragraph 18. See also recital 32 of the Merger Regulation.

97 The Herfindahl-Hirschman Index ("**HHI**") is calculated by summing the squares of the individual market shares of all the firms in the market. The HHI gives proportionately greater weight to the market shares of the larger firms. Although it is best to include all firms in the calculation, lack of information about very small firms may not be important because such firms do not affect the HHI significantly. While the absolute level of the HHI can

Similarly, the Commission is unlikely to identify horizontal competition concerns in a merger with a post-merger HHI between 1 000 and 2 000 and a delta below 250, or a merger with a post-merger HHI above 2 000 and a delta below 150, except where (i) a merger involved a potential entrant or a recent entrant with a small market share; (ii) one or more merging parties are important innovators in ways not reflected in market shares; (iii) there are significant cross-shareholdings among the market participants; (iv) one of the merging firms is a maverick firm with a high likelihood of disrupting coordinated conduct; (v) indications of part or ongoing coordination, or facilitating practices, are present; and, (vi) one of the merging parties has a pre-merger market share of 50% or more.[98]

(200) A merger giving rise to significant impediment of effective competition may do so as a result of the creation or strengthening of a dominant position in the relevant markets. Moreover, mergers in oligopolistic markets involving the elimination of important constraints that the parties previously exerted on each other, together with a reduction of competitive pressure on the remaining competitors, may also result in a significant impediment to effective competition, even in the absence of dominance.[99]

(201) In fact, the Horizontal Merger Guidelines describe horizontal non-coordinated[100] effects as follows: "*A merger may significantly impede effective competition in a market by removing important competitive constraints on one or more sellers who consequently have increased market power. The most direct effect of the merger will be the loss of competition between the merging firms. For example, if prior to the merger one of the merging firms had raised its price, it would have lost some sales to the other merging firm. The merger removes this particular constraint. Non-merging firms in the same market can also benefit from the reduction of competitive pressure that results from the merger, since the merging firms' price increase may switch some demand to the rival firms, which, in turn, may find it profitable to increase their prices. The reduction in these competitive constraints could lead to significant price increases in the relevant market.*"[101]

(202) The Horizontal Merger Guidelines list a number of factors which may influence whether or not significant horizontal non-coordinated effects are likely to result from a merger, such as the large market shares of the merging firms, the fact that the merging firms are close competitors, the limited possibilities for customers to switch suppliers, or the fact that the merger would eliminate an important competitive

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give an initial indication of the competitive pressure in the market post-merger, the change in the HHI (known as the "**Delta**") is a useful proxy for the change in concentration directly brought about by the merger.

98 Horizontal Merger Guidelines, paragraphs 19-20.

99 Horizontal Merger Guidelines, paragraph 25.

100 The Commission, as evidenced by the market investigation, does not consider that the Transaction could give rise to coordinated effects in any of the horizontally affected markets as a result of the Transaction, due to (i) the very limited market shares increments in most horizontally affected markets; (ii) the existence of several competitors with assymetric market shares, different geographic focuses and financing models and methods; (iii) the existence of numerous market players at all the levels of the value chain; (iv) the increased innovation on the market in terms of customer reach and content produced; and, (v) the constraints exercised by the levels of the value chain on one another (for example, since the wholesale supply of TV channels is an intermediate market, wholesalers would be constrained by AV content producers and retailers). Therefore, even in the markets with higher market shares increments, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market as a result of coordinated effects.

101 Horizontal Merger Guidelines, paragraph 24.

force.[102] That list of factors applies equally regardless of whether a merger would create or strengthen a dominant position, or would otherwise significantly impede effective competition due to non-coordinated effects. Furthermore, not all of these factors need to be present to make significant non-coordinated effects likely and it is not an exhaustive list.[103]

(203) In addition, the Horizontal Merger Guidelines describe a number of factors, which could counteract the harmful effects of the merger on competition, including the likelihood of buyer power, the entry of new competitors on the market, and efficiencies.

5.4.1. Introductory remarks

(204) During the market investigation, some market participants have expressed concerns that the Parties may benefit from an increased bargaining power as a result of the Transaction, notably due to the merged entity's market shares in the markets for the licensing of broadcasting rights and wholesale supply of TV channels.

(205) With regards to the market for the licensing of broadcasting rights (including all plausible segments), the Commission notes that the Transaction does not give rise to any horizontally affected markets in any Member State. This implies either that in any segment of the market for the licensing of broadcasting rights, the Parties would not have a combined market share in excess of 20% or that the Transaction does not give rise to any horizontal market share increase. The Notifying Party further confirmed that there are no instances where either Discovery or WarnerMedia individually have a market share in excess of 30% in any segment of the market for the licensing of broadcasting rights.[104] This implies that there are alternative providers supplying at least 70% of the market. Therefore, even if the Transaction were to increase the Parties' bargaining power, the Commission excludes this could increase the market power of the merged entity.

(206) With regards to the market for the wholesale supply of TV channels, the Commission notes that any significant degree of bargaining power would only be possible if the Parties had a significant combined market share in the overall market for the wholesale supply of TV channels, without considering segmentations by genre. However, in all countries except Poland, the Transaction either (i) does not lead to a combined market shares of the Parties exceeding 20%; or, (ii) to any market share increment. Therefore, the Commission excludes that the Transaction may significantly increase the Parties' market power with regards to the market for wholesale supply of TV channels. For an assessment of the Polish market and all other horizontally affected markets, the Commission refers to its assessment below which explains why the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market as a result of horizontal effects.

102 Horizontal Merger Guidelines, paragraphs 27 and following.
103 Horizontal Merger Guidelines, paragraph 26.
104 See Notifying Party's response to RFI 8, question 2.

5.4.2. Finland

5.4.2.1. Market for the retail supply of non-linear AV services in Finland

(A) Notifying Party's views

(207) The Notifying Party submits that the Transaction would not raise competitive concerns in the market for the retail supply of non-linear AV services in Finland for the following reasons.

(208) First, the Notifying Party submits that the Transaction results in a negligeable market shares increment.[105]

(209) Second, the Notifying Party submits that the retail services offered by the Parties do not compete particularly closely.[106]

(210) Third, the Notifying Party submits that the Parties face strong competition from many sources, including commercial and publicly funded broadcasters, third-party pay TV, SVOD and other OTT platforms.[107]

(211) Fourth, the Notifying Party submits that consumers are willing to switch between different retail offerings.[108] This is notably due to the insignificance and reduction in switching costs and to changing consumer habits who rely on multiple retail TV services.

(B) Commission's assessment

(212) The Commission considers that the Transaction does not raise horizontal concerns in the market for the retail supply of non-linear AV services in Finland, for the following reasons.

(213) First, the Parties' combined market shares remain moderate and consistently below 20%. In particular, the combined market shares of the Parties in 2020 was of [20-30]% by volume and of [20-30]% by value.

(214) Second, the Transaction only gives rise to an insignificant market shares increment. Indeed, in 2020, WarnerMedia already accounted for [20-30]% market shares by volume and [20-30]% by value whereas Discovery only accounted for [0-5]% market shares by volume and [0-5]% by value. The limited change brought along by the merger is further evidenced by HHI calculations. Indeed, when considering the market shares by value, the Delta remains consistently below 50. When considering the market shares by volume, the Delta remains consistently below 10.

(215) Third, the Commission notes that after the Transaction, there will remain numerous alternative retailers of non-linear pay TV services such as Netflix (with a market share of approximately [30-40]% by volume and value in 2020), Viaplay (with a market share of approximately [10-20]% by volume and [20-30]% by value in 2020), Ruutu+ (with a market share of approximately [10-20]% by volume and value in 2020), Disney+ (with a market share of approximately [0-5]% by volume in 2020),

105 Form CO, Chapter 4, paragraphs 122-124.

106 Form CO, Chapter 4, paragraphs 125-126.

107 Form CO, Chapter 4, paragraphs 127-151.

108 Form CO, Chapter 4, paragraphs 152-157.

Apple TV, Amazon Prime and C More (each with market shares of approximately [0-5]% by volume in 2020). Other smaller market participants include Canal Digital and DAZN.

(216) Finally, the Commission notes that it has not received any substantiated complaints from the respondents to the market investigation regarding the market for the retail supply of non-linear AV services in Finland.

(217) Therefore, for the reasons set out above, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market as a result of horizontal effects on the market for the retail supply of non-linear pay AV services in Finland and all plausible market segmentations thereof.

5.4.3. Germany

5.4.3.1. Market for the wholesale supply of pay TV channels in Germany

(A) Notifying Party's views

(218) The Notifying Party submits that the Transaction would not raise competitive concerns in the market for the wholesale supply of pay TV channels in Germany for the following reasons.

(219) First, the Notifying Party submit that German FTA broadcasting regulations and the broad availability of FTA TV channels severely constrain the market position of pay TV operators.[109]

(220) Second, the Notifying Party submits that the Transaction will give rise to an insignificant increment in the market for the wholesale supply of pay TV channels in Germany.[110]

(221) Third, the Notifying Party submits that the Parties are not each other's closest competitors.[111]

(222) Fourth, the Notifying Party submits that the merged entity will continue to be constrained by large competitors,[112] including by on demande services such as AVOD and SVOD platforms.

(223) Fifth, the Notifying Party submits that the merged entity will continue to be constrained by large customers.[113]

(B) Commission's assessment

(224) The Commission considers that the Transaction does not raise horizontal concerns in the market for the wholesale supply of pay TV channels in Germany, for the following reasons.

109 Form CO, Chapter 3, paragraphs 92-100.
110 Form CO, Chapter 3, paragraphs 101-102.
111 Form CO, Chapter 3, paragraphs 103-108.
112 Form CO, Chapter 3, paragraphs 109-113.
113 Form CO, Chapter 3, paragraphs 114-120.

(225) First, the Parties' combined market shares remain moderate and consistently below 25% when considering volume-based market shares since 2018.

(226) Second, the Transaction only gives rise to an insignificant market shares increment. Indeed, in 2020, WarnerMedia already accounted for [10-20]% market shares by volume whereas Discovery only accounted for [0-5]% market shares by volume. Therefore, the change on the market brought about by the Transaction is insignificant.

(227) Third, the Commission notes that after the Transaction, there will remain numerous alternative wholesale suppliers of pay TV channels such as Sky Group (with a market share of approximately [20-30]% by volume in 2020), NBCU (with a market share of approximately [10-20]% by volume in 2020), Disney (with a market share of approximately [10-20]% by volume in 2020), RTL Group (with a market share of approximately [5-10]% by volume in 2020), and Hearst (with market shares of approximately [0-5]% by volume in 2020).

(228) Finally, the Commission notes that it has not received any substantiated complaints from the respondents to the market investigation regarding the market for the wholesale supply of pay TV channels in Germany.

(229) Therefore, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market as a result of horizontal effects on the market for the wholesale supply of pay TV channels in Germany and all plausible market segmentations thereof.

5.4.3.2. Market for the wholesale supply of pay TV channels for other content in Germany

(A) Notifying Party's views

(230) The Notifying Party submits that the Transaction would not raise competitive concerns in the market for the wholesale supply of pay TV channels for other content in Germany for the following reasons.

(231) First, the Notifying Party submit that German FTA broadcasting regulations and the broad availability of FTA TV channels severely constrain the market position of pay TV operators.[114]

(232) Second, the Notifying Party submits that the Transaction will give rise to an insignificant increment in the market for the wholesale supply of pay TV channels for other content in Germany.[115]

(233) Third, the Notifying Party submits that the Parties are not each other's closest competitors.[116]

(234) Fourth, the Notifying Party submits that the merged entity will continue to be constrained by large competitors,[117] including by on demande services such as AVOD and SVOD platforms.

114 Form CO, Chapter 3, paragraphs 92-100.
115 Form CO, Chapter 3, paragraphs 101-102.
116 Form CO, Chapter 3, paragraphs 103-108.

(235) Fifth, the Notifying Party submits that the merged entity will continue to be constrained by large customers.[118]

(B) Commission's assessment

(236) The Commission considers that the Transaction does not raise horizontal concerns in the market for the wholesale supply of pay TV channels for other content in Germany, for the following reasons.

(237) First, the Parties' combined market shares remain moderate and consistently below 25% when considering volume-based market shares since 2018, and were even below 20% in 2018 and 2019.

(238) Second, the Transaction only gives rise to a limited market shares increment. Indeed, in 2020, WarnerMedia already accounted for [10-20]% market shares by volume whereas Discovery only accounted for [0-5]% market shares by volume. The limited change brought along by the merger is further evidenced by HHI calculations. Indeed, when considering the market shares by value, the Delta remains consistently below 150.

(239) Third, the Commission notes that after the Transaction, there will remain numerous alternative wholesale suppliers of pay TV channels for other content such as NBCU (with a market share of approximately [30-40]% by volume in 2020), Disney (with a market share of approximately [20-30]% by volume in 2020), RTL Group (with a market share of approximately [10-20]% by volume in 2020), Hearst (with a market share of approximately [5-10]% by volume in 2020).

(240) Finally, the Commission notes that it has not received any substantiated complaints from the respondents to the market investigation regarding the market for the wholesale supply of pay TV channels for other content in Germany.

(241) Therefore, for the reasons set out above, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market as a result of horizontal effects on the market for the wholesale supply of pay TV channels for other content in Germany and all plausible market segmentations thereof.

5.4.4. Italy

5.4.4.1. Market for the wholesale supply of TV channels for children content in Italy

(A) Notifying Party's views

(242) The Notifying Party submits that the Transaction would not raise competitive concerns in the market for the wholesale supply of FTA TV channels for children content in Italy for the following reasons.

(243) First, the Notifying Party submits that the merged entity will be constrained by large competitors. This includes competition from suppliers of pay TV and FTA channels and on demand services.[119]

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117 Form CO, Chapter 3, paragraphs 109-113.

118 Form CO, Chapter 3, paragraphs 114-120.

(244) Second, the Notifying Party submits that the Parties are not each other's closest competitors.[120]

(245) Third, the Notifying Party submits that the merged entity will be constrained by large customers.[121]

(246) Fourth, the Notifying Party submits that the merged entity will neither have the incentive nor the ability to put FTA content behind a pay-wall.[122]

(247) Fifth, the Notifying Party submits that there are specific sectoral regulations in Italy governing TV channels specifically targeted at children.

(248) On 2 December 2021, the Notifying Party provided the Commission with additional evidence on all of these points ("**Additional Submission**"). Notably, the Additional Submission provides evidence on the reasons why the Notifying Party would have no ability and no incentive to put FTA TV channels for children content behind a pay-wall.

(249) First, the Notifying Party notes that the content shown on FTA TV channels is generally pre-existing content which tends to be shown first on pay TV and then, on second or third windowing, on FTA channels.

(250) Second, the Notifying Party submits that if moving children content currently shown on FTA TV channels behind a pay-wall would be a commercially viable strategy, WarnerMedia would have already done so by moving content on its pay TV channels for children content Boomerang and Cartoon Network.

(251) Third, the Notifying Party notes that for content acquired from third parties, any change in model would require the acquisition of pay TV rights and therefore an expansion of existing licensing agreements. […].

(252) Fourth, WarnerMedia is committed to continue developing Boing […].

(B) Commission's assessment

(253) The Parties' activities only overlap in the narrower market for the wholesale supply of FTA TV channels for children content in Italy. For the reasons set out in section 5.4.4.2 below, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market as a result of horizontal effects on the market for the wholesale supply of TV channels for children content in Italy and all plausible market segmentations thereof.

5.4.4.2. Market for the wholesale supply of FTA TV channels for children content in Italy

(A) Notifying Party's views

(254) The Notifying Party submit that the Transaction would not raise competitive concerns in the market for the wholesale supply of FTA TV channels for children content in Italy for the following reasons.

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119 Form CO, Chapter 3, paragraphs 140-159.

120 Form CO, Chapter 3, paragraphs 160-180.

121 Form CO, Chapter 3, paragraphs 181-184.

122 Form CO, Chapter 3, paragraphs 185-191.

(255) First, the Notifying Party submits that the merged entity will be constrained by large competitors. This includes competition from suppliers of pay TV and FTA channels and on demand services.[123]

(256) Second, the Notifying Party submits that the Parties are not each other's closest competitors.[124]

(257) Third, the Notifying Party submits that the merged entity will be constrained by large customers.[125]

(258) Fourth, the Notifying Party submits that the merged will neither have the incentive nor the ability to put FTA content behind a pay-wall.[126]

(259) Fifth, the Notifying Party submits that there are specific sectoral regulations in Italy governing TV channels specifically targeted at children.[127]

(260) On 2 December 2021, the Notifying Party provided the Commission with additional views on all of these points ("**Additional Submission**"). Notably, the Additional Submission provides evidence on the reasons why the Notifying Party would have no ability and no incentive to put FTA TV channels for children content behind a pay-wall.

(261) First, the Notifying Party notes that the content shown on FTA TV channels is generally pre-existing content which tends to be shown first on pay TV channels and then, on second or third windowing, on FTA channels.

(262) Second, the Notifying Party submits that if moving children content currently shown on FTA TV channels behinda pay-wall would make sense commercially, WarnerMedia would have already done so by moving content on its pay TV channels for children content Boomerang and Cartoon Network.

(263) Third, the Notifying Party notes that the for content acquired from third parties, any change in model would require the acquisition of pay TV rights and therefore an expansion of existing licensing agreements. […].

(264) Fourth, WarnerMedia is committed to continue developing Boing […].

(B) Commission's assessment

(265) The Commission considers that the Transaction does not raise horizontal concerns in the market for the wholesale supply of FTA TV channels for children content in Italy, for the following reasons.

(266) First, the Commission notes that despite the high combined market shares of the Parties, there will still be alternative suppliers of FTA TV channels carrying content for children in Italy. In particular, RAI, the Italian public broadcaster will continue to be active on the market for the wholesale supply of FTA TV channels for children content with a market share of approximately [30-40]% as well as ViacomCBS, with

123 Form CO, Chapter 3, paragraphs 140-159.
124 Form CO, Chapter 3, paragraphs 160-180.
125 Form CO, Chapter 3, paragraphs 181-184.
126 Form CO, Chapter 3, paragraphs 185-191.
127 Form CO, Chapter 3, paragraphs 192-200.

a market share of approximately [10-20]%. Accordingly, the market investigation confirmed that there are sufficient alternatives of wholesale suppliers of FTA TV channels for children content in Italy beyond the Parties.[128]

(267) Second, the market investigation found that FTA TV channels operated by Discovery and by WarnerMedia (through Boing) are not the closest competitors.[129] In particular, while K2 (operated by Discovery) and Boing (operated by WarnerMedia through Boing) are regularly ranked as close competitors, Frisbee (Discovery's other FTA TV channel for children) is perceived to be closer to RAI Yoyo. One market participant further considered that Frisbee's second closest competitor to be DeA Junior, a pay TV channel operated by De Agostini. During the market investigation, one market participant stressed that "*in FTA Discovery and the JV (Mediaset/Warner) compete for the same audience, but with a different offer in term of contents and editorial positioning*".[130] Therefore, after the Transaction, there would still be sufficient alternative FTA TV channels from other providers with similar focus to those of the Parties.

(268) Third, a majority of market participants who responded to the market investigation have confirmed that OTT platforms represent an alternative offering to FTA TV channels for children content.[131] In *Telia Company/Bonnier Broadcasting Holding*, the Commission considered that "*players like Netflix and HBO offering non-linear premium AV services at the retail level exercise an indirect competitive constraint on Bonnier Broadcasting's premium pay TV non-sports channels active at the wholesale level.*"[132] One market participant explained that: "*A direct to consumer service may operate on a subscription fee model or on an advertising supported model, whilst the FTA channel will be free to the consumer. Both offerings may not be entirely substitutable for consumers (children), or at least in one direction. For example, a direct to consumer service which is available for no additional fee (but may include adverts) may be more comparable to a FTA channel than a direct to consumer services which is available for an additional subscription fee.*"[133]

(269) In this regard, the Commission considers that in Italy, AVOD platforms with specific children content are able to exercise an indirect competitive constraint on the merged entity's FTA TV channels for children content since these are both audiovisual services provided for free to end-consumers.

(270) In the Additional Submission, the Notifying Party indicated that "*AVOD is the most comparable service to FTA in terms of business model*".[134] The Notifying Party provided an extensive list of current providers, other than the Parties, of AVOD services in Italy. The Notifying Party notably lists RaiPlay, Mediaset Play, Youtube, Youtube Kids, Samsung TV Plus, Pluto TV and Rakuten TV as third party suppliers of AVOD platforms with specific children content. Therefore, the Commission

128 Response to questionnaire Q1 – Questionnaire to market participants in the AV sector (Italy), question 33 and 33.1.

129 Response to questionnaire Q1 – Questionnaire to market participants in the AV sector (Italy), question 32.

130 Response to questionnaire Q1 – Questionnaire to market participants in the AV sector (Italy), question 32.1.

131 Response to questionnaire Q1 – Questionnaire to market participants in the AV sector (Italy), question 35.2 and 35.2.1.

132 Decision of the Commission of 29 April 2020 in case M.9064 – Telia Company/Bonnier Broadcasting Holding, recital 1227.

133 Response to questionnaire Q1 – Questionnaire to market participants in the AV sector (Italy), question 35.2.1.

134 Additional submission, page 18.

considers that the combined market shares in the market for the wholesale supply of the Parties are over-representative of the market power that could be exercised by the merged entity.

(271) Fourth, given the specificities of the distribution of FTA TV channels in Italy, the Commission considers that it is easy for consumers to switch to another TV channel. Indeed, in Italy, FTA TV channels are supplied directly by wholesalers to end consumers through DTT.[135] Accordingly, any viewer of Discovery's K2 or Frisbee channels or WarnerMedia's Boing, Cartoonito and Boing Plus channels has access to all the TV channels of RAI and to ViacomCBS's channel Super!. As all FTA TV channels for children are freely available to every household, switching from one channel to another is easy, timely and cost-free for consumers. Accordingly, any content degradation or discontinuance of the channels would shift end consumers to other FTA TV channels.

(272) Fifth, the Commission notes that the results of the market investigation have indicated that market entry in unlikely and that, going forward, the merged entity may have the ability and incentive to discontinue its FTA TV channels for children content to end consumers or put the content currently aired on those channels behind a pay-wall (either on pay TV channels or on a SVOD platform). However, Commission also notes that the exit of either Discovery or WarnerMedia[136] or a degradation of the quality of content supplied to end consumers through their FTA TV channels for children content is unlikely due to the constraints exercised by (i) Mediaset over WarnerMedia; and, (ii) TV advertisers over Discovery. Indeed, as explained by a market participant, the incentive to move an FTA TV channel behind a pay-wall is chiefly determined by the sufficient presence of advertisement revenue that can be generated.[137]

(273) With regards to Discovery, the Commission notes that the third party content acquired by Discovery is currently only acquired for an FTA TV window. Therefore, in order to be able to put the content acquired behind a pay-wall, Discovery would need to amend its licensing agreements and increase its spending for content without necessarily being able to negotiate sufficient carriage feed with retail suppliers of pay AV services or obtaining subscription revenues from its SVOD platform.

(274) With regards to WarnerMedia, the Commission notes that on 13 December 2021, the Notifying Party submitted an additional paper providing additional information on the arrangements concerning Boing ("**Additional Submission on Boing**"). The Additional Submission on Boing explains that Boing is jointly controlled by Mediaset (with a 51% shareholding) and WarnerMedia (with a 49% shareholding).[138] [DETAILS ON THE AGREEMENTS BETWEEN WARNERMEDIA AND MEDIASET].[139] With regards the acquisition of content, WarnerMedia supplies approximately […]% of the content aired on Boing channels.

135 DTT technology is freely available in Italy and reached almost all households, including with high-definition content without the need to have a subscription with a retail provider of AV services. For the very limited areas not covered with DTT technology, Tivùsat provides free DTH coverage. Therefore, in Italy, all households can have access to FTA TV channels for free without needing to have a subscription with a TV retailer. In this section, DTT should be understood as covering DTH distribution technology as well where DTT is unavailable.

136 Response to questionnaire Q1 – Questionnaire to market participants in the AV sector (Italy), question 34.

137 Minutes of the conference call with ViacomCBS, paragraph 10.

138 Additional Submission on Boing, page 2.

139 Additional Submission on Boing, page 2.

Other suppliers include […]. The content supplied by WarnerMedia only relates to FTA rights […].[140] The broadcasting rights are usually supplied […] after these have been aired on WarnerMedia's pay TV channels.[141] […].

(275) Therefore, the Commission notes that WarnerMedia's FTA TV channels for children content available in Italy are solely supplied through Boing with Mediaset. The commercial agreements for the supply of content between WarnerMedia and Boing last at least, until […].[142] As part of these commercial agreements, Mediaset is tasked with the sale of the advertisement space on the Boing Channels, […]. As such, the Commission considers that Mediaset will maintain an incentive to ensure that the content supplied by the merged entity will be of sufficient quantity and quality to attract advertisement revenues.[143] Futhermore, the Commission notes that Mediaset will have effective means to ensure that such objectives are maintained through its […].

(276) In any event, assuming that the merged entity were to have the ability and incentive to discontinue its FTA TV channels and put them behind a pay-wall, the Commission notes that this would not concern the three channels operated by Boing, which represent the full market share increment brought by WarnerMedia to the merged entity. Indeed, the commercial agreements currently in place will continue to run until […]. Therefore, the merged entity will not have the ability to use its market power to put the Boing channels (which represent the full market share increment brought by WarnerMedia) behind a pay-wall in Italy before the expiration of the commercial agreements between WarnerMedia and Boing.[144]

(277) Therefore, for the reasons set out above, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market as a result of horizontal effects on the market for the wholesale supply of FTA TV channels for children content in Italy and all plausible market segmentations thereof.

140 Additional Submission on Boing, page 5.

141 Additional Submission on Boing, pages 4-5.

142 In this regard, the Notifying Party notes that, should the Parties decide against renewing the commercial agreements with Boing in […]. Therefore, the agreement to supply content to Boing will continue well into […]. The Commission notes that this would give Mediaset sufficient time to arrange for supply agreements for content for Boing channels with alternative providers of children content, which already account for 50% of the content aired on Boing channels. See the Additional Submission on Boing, page 6.

143 The Commission also notes that, since WarnerMedia already operates, on a stand-alone basis, pay TV channels which already broadcast the content visible on Boing channels, if it made commercial sense to maintain such content behind a pay-wall, WarnerMedia would already have done so. Second, the Notifying Party has provided evidence suggesting that after the launch of HBO Max in Spain, WarnerMedia renewed its commercial agreements with the Spanish channels of Boing.

144 Regardless, the Commission notes that FTA TV channels for children are not a core part of wholesaler's business, notably because of regulatory restrictions on the sale of advertising space on children TV channels. In particular, during a pre-notification call with the Commission on 21 October 2021, Mediaset stated that "In general, the children market revolves around a diversification of the offer. From a business continuity perspective, however, the children segment is not a large part of Mediaset's revenues. Indeed, due to regulatory constraints, the amount of advertising that can be included in children TV channels is limited." See the non-confidential minutes of the pre-notification call with Mediaset of 21 October 2021, paragraph 24.

5.4.5. Norway

5.4.5.1. Market for the wholesale supply of pay TV channels in Norway

(A) Notifying Party's views

(278) The Notifying Party submits that the Transaction would not raise competitive concerns in the market for the wholesale supply of pay TV channels in Norway for the following reasons.

(279) First, the Notifying Party submits that the Transaction will give rise to an insignificant market shares increment.[145]

(280) Second, the Notifying Party submits that the Parties are not each other's closest competitors.[146]

(281) Third, the Notifying Party submits that the merged entity will be constrained by large competitors.[147]

(282) Fourth, the Notifying Party submits that the merged entity will be constrained by large customers.[148]

(B) Commission's assessment

(283) The Commission considers that the Transaction does not raise horizontal concerns in the market for the wholesale supply of pay TV channels in Norway, for the following reasons.

(284) First, the Parties' combined market shares remain moderate and consistently below 25% when considering volume-based market shares.

(285) Second, the Transaction only gives rise to an insignificant market shares increment. Indeed, in 2020, Discovery already accounted for [20-30]% market shares by volume whereas WarnerMedia only accounted for [0-5]% market shares by volume. The limited change brought along by the merger is further evidenced by HHI calculations. Indeed, when considering the market shares by volume, the Delta remains below 100 and often below 50.

(286) Third, the Commission notes that after the Transaction, there will remain numerous alternative wholesale suppliers of pay TV channels such as Egmont (with a market share of approximately [50-60]% by volume in 2020), NENT (with a market share of approximately [10-20]% by volume in 2020), Disney (with a market share of approximately [0-5]% by volume in 2020), BBC (with a market share of approximately [0-5]% by volume in 2020). Other market participants include Hearst and TV4Media (previously, Bonnier Broadcasting).

(287) Finally, the Commission notes that it has not received any substantiated complaints from the respondents to the market investigation regarding the market for the wholesale supply of pay TV channels in Norway.

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145 Form CO, Chapter 3, paragraphs 208-213.

146 Form CO, Chapter 3, paragraphs 214-223.

147 Form CO, Chapter 3, paragraphs 224-228.

148 Form CO, Chapter 3, paragraphs 229-231.

(288) Therefore, for the reasons set out above, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market as a result of horizontal effects on the market for the wholesale supply of pay TV channels in Norway and all plausible market segmentations thereof.

5.4.5.2. Market for the retail supply of non-linear AV services in Norway

(A) Notifying Party's views

(289) The Notifying Party submits that the Transaction would not raise competitive concerns in the market for the retail supply of non-linear AV services in Norway for the following reasons.

(290) First, the Notifying Party submits that the Transaction results in a negligeable market shares increment.[149]

(291) Second, the Notifying Party submits that the retail services offered by the Parties do not compete particularly closely.[150]

(292) Third, the Notifying Party submits that the Parties face strong competition from many sources, including commercial and publicly funded broadcasters, third-party pay TV, SVOD and other OTT platforms.[151]

(293) Fourth, the Notifying Party submits that consumers are willing to switch between different retail offerings.[152] This is notably due to the insignificance and reduction in switching costs and to changing consumer habits who rely on multiple retail TV services.

(B) Commission's assessment

(294) The Commission considers that the Transaction does not raise horizontal concerns in the market for the retail supply of non-linear AV services in Norway, for the following reasons.

(295) First, the Parties' combined market shares remain moderate and consistently below 20% when considering value-based market shares. When considering volume-based market shares, the combined market shares of the Parties have consistently been below 25% since 2018.

(296) Second, the Transaction only gives rise to an insignificant market shares increment. Indeed, in 2020, WarnerMedia already accounted for [10-20]% market shares by volume whereas Discovery only accounted for [0-5]% market shares by volume. The limited change brought along by the merger is further evidenced by HHI calculations. Indeed, when considering the market shares by volume, the Delta remained below 150 in 2018 and 2019, whereas the pre-Transaction and post-Transaction HHI in 2020 dropped below 2 000 with a Delta of 156.

149 Form CO, Chapter 4, paragraphs 122-124.
150 Form CO, Chapter 4, paragraphs 125-126.
151 Form CO, Chapter 4, paragraphs 127-151.
152 Form CO, Chapter 4, paragraphs 152-157.

(297) Third, the Commission notes that after the Transaction, there will remain numerous alternative retailers of non-linear pay TV services such as Netflix (with a market share of approximately [20-30]% by volume in 2020), Viaplay (with a market share of approximately [10-20]% by volume in 2020), TV2 (with a market share of approximately [10-20]% by volume in 2020), Disney+ (with a market share of approximately [5-10]% by volume in 2020), Apple TV, Amazon Prime and C More (each with market shares of approximately [0-5]% by volume in 2020).

(298) Finally, the Commission notes that it has not received any substantiated complaints from the respondents to the market investigation regarding the market for the retail supply of non-linear AV services in Norway.

(299) Therefore, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market as a result of horizontal effects on the market for the retail supply of non-linear pay AV services in Norway and all plausible market segmentations thereof.

5.4.6. Poland

5.4.6.1. Market for the wholesale supply of TV channels in Poland

(A) Notifying Party's views

(300) The Notifying Party submits that the Transaction would not raise competitive concerns in the market for the wholesale supply of TV channels in Poland for the following reasons.

(301) First, the Notifying Party submits that the Transaction will give rise to an insignificant market shares increment.[153]

(302) Second, the Notifying Party submits that the Parties are not each other's closest competitors.[154]

(303) Third, the Notifying Party submits that the merged entity will be constrained by large competitors.[155]

(304) Fourth, the Notifying Party submits that the merged entity will be constrained by large customers.[156]

(B) Commission's assessment

(305) The Commission considers that the Transaction does not raise horizontal concerns in the market for the wholesale supply of TV channels in Poland, for the following reasons.

(306) First, the Parties' combined market shares remain moderate and consistently below 30% when considering volume-based market shares.

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153 Form CO, Chapter 3, paragraphs 244-245.

154 Form CO, Chapter 3, paragraphs 246-253.

155 Form CO, Chapter 3, paragraphs 254-262.

156 Form CO, Chapter 3, paragraphs 263-265.

(307) Second, the Transaction only gives rise to an insignificant market shares increment. Indeed, in 2020, Discovery already accounted for [20-30]% market shares by volume whereas WarnerMedia only accounted for [0-5]% market shares by volume. The limited change brought along by the merger is further evidenced by HHI calculations. Indeed, when considering the market shares by volume, the Delta remains consistently below 55.

(308) Third, the Commission notes that after the Transaction, there will remain numerous alternative wholesale suppliers of TV channels such as TVP (with a market share of approximately [30-40]% by volume in 2020), Polsat (with a market share of approximately [20-30]% by volume in 2020), TV Puls (with a market share of approximately [5-10]% by volume in 2020), ViacomCBS (with a market share of approximately [0-5]% by volume in 2020). Other market participants include Disney, Vivendi, Hearst, Sony, BBC, NBCU, AMC, 4Fun Media and Euronews.

(309) Finally, the Commission notes that it has not received any substantiated complaints from the respondents to the market investigation regarding the market for the wholesale supply of TV channels in Poland.

(310) Therefore, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market as a result of horizontal effects on the market for the wholesale supply of TV channels in Poland and all plausible market segmentations thereof.

5.4.6.2. Market for the wholesale supply of pay TV channels in Poland

(A) Notifying Party's views

(311) The Notifying Party submits that the Transaction would not raise competitive concerns in the market for the wholesale supply of pay TV channels in Poland for the following reasons.

(312) First, the Notifying Party submits that the Transaction will give rise to an insignificant market shares increment.[157]

(313) Second, the Notifying Party submits that the Parties are not each other's closest competitors.[158]

(314) Third, the Notifying Party submits that the merged entity will be constrained by large competitors.[159]

(315) Fourth, the Notifying Party submits that the merged entity will be constrained by large customers.[160]

157 Form CO, Chapter 3, paragraphs 244-245.
158 Form CO, Chapter 3, paragraphs 246-253.
159 Form CO, Chapter 3, paragraphs 254-262.
160 Form CO, Chapter 3, paragraphs 263-265.

(B) Commission's assessment

(316) The Commission considers that the Transaction does not raise horizontal concerns in the market for the wholesale supply of pay TV channels in Poland, for the following reasons.

(317) First, the Parties' combined market shares remain moderate and consistently below 40% when considering volume-based market shares.

(318) Second, the Transaction only gives rise to an insignificant market shares increment. Indeed, in 2020, Discovery already accounted for [30-40]% market shares by volume whereas WarnerMedia only accounted for [0-5]% market shares by volume. Therefore, the change on the market brought about by the Transaction is insignificant.

(319) Third, the Commission notes that after the Transaction, there will remain numerous alternative wholesale suppliers of pay TV channels such as Polsat (with a market share of approximately [20-30]% by volume in 2020), ViacomCBS (with a market share of approximately [5-10]% by volume in 2020), TVP (with a market share of approximately [5-10]% by volume in 2020), Disney (with a market share of approximately [5-10]% by volume in 2020). Other market participants include Vivendi, Hearst, Sony, BBC, NBCU, AMC and Euronews.

(320) Finally, the Commission notes that it has not received any substantiated complaints from the respondents to the market investigation regarding the market for the wholesale supply of pay TV channels in Poland.

(321) Therefore, for the reasons set out above, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market as a result of horizontal effects on the market for the wholesale supply of pay TV channels in Poland and all plausible market segmentations thereof.

5.4.6.3. Market for the wholesale supply of TV channels for other content in Poland

(A) Notifying Party's views

(322) The Notifying Party submits that the Transaction would not raise competitive concerns in the market for the wholesale supply of TV channels for other content in Poland for the following reasons.

(323) First, the Notifying Party submits that the Transaction will give rise to an insignificant market shares increment.[161]

(324) Second, the Notifying Party submits that the Parties are not each other's closest competitors.[162]

(325) Third, the Notifying Party submits that the merged entity will be constrained by large competitors.[163]

161 Form CO, Chapter 3, paragraphs 244-245.

162 Form CO, Chapter 3, paragraphs 246-253.

163 Form CO, Chapter 3, paragraphs 254-262.

(326) Fourth, the Notifying Party submits that the merged entity will be constrained by large customers.[164]

(B) Commission's assessment

(327) The Commission considers that the Transaction does not raise horizontal concerns in the market for the wholesale supply of TV channels for other content in Poland, for the following reasons.

(328) First, the Parties' combined market shares remain moderate and consistently below 25% when considering volume-based market shares.

(329) Second, the Transaction only gives rise to an insignificant market shares increment. Indeed, in 2020, Discovery already accounted for [20-30]% market shares by volume whereas WarnerMedia only accounted for [0-5]% market shares by volume. The limited change brought along by the merger is further evidenced by HHI calculations. Indeed, when considering the market shares by volume, the Delta remains consistently below 30.

(330) Third, the Commission notes that after the Transaction, there will remain numerous alternative wholesale suppliers of TV channels such as TVP (with a market share of approximately [20-30]% by volume in 2020), Polsat (with a market share of approximately [20-30]% by volume in 2020), TV Puls (with a market share of approximately [5-10]% by volume in 2020), Disney (with a market share of approximately [0-5]% by volume in 2020). Other market participants include ViacomCBS, Hearst, Vivendi, Sony, NBCU, BBC, AMC and 4Fun Media.

(331) Finally, the Commission notes that it has not received any substantiated complaints from the respondents to the market investigation regarding the market for the wholesale supply of TV channels for other content in Poland.

(332) Therefore, for the reasons set out above, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market as a result of horizontal effects on the market for the wholesale supply of TV channels for other content in Poland and all plausible market segmentations thereof.

5.4.6.4. Market for the wholesale supply of pay TV channels for other content in Poland

(A) Notifying Party's views

(333) The Notifying Party submits that the Transaction would not raise competitive concerns in the market for the wholesale supply of pay TV channels for other content in Poland for the following reasons.

(334) First, the Notifying Party submits that the Transaction will give rise to an insignificant market shares increment.[165]

(335) Second, the Notifying Party submits that the Parties are not each other's closest competitors.[166]

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164 Form CO, Chapter 3, paragraphs 263-265.

165 Form CO, Chapter 3, paragraphs 244-245.

(336) Third, the Notifying Party submits that the merged entity will be constrained by large competitors.[167]

(337) Fourth, the Notifying Party submits that the merged entity will be constrained by large customers.[168]

(B) Commission's assessment

(338) The Commission considers that the Transaction does not raise horizontal concerns in the market for the wholesale supply of pay TV channels for other content in Poland, for the following reasons.

(339) First, the Parties' combined market shares remain moderate and consistently below 25% when considering volume-based market shares.

(340) Second, the Transaction only gives rise to an insignificant market shares increment. Indeed, in 2020, Discovery already accounted for [20-30]% market shares by volume whereas WarnerMedia only accounted for [0-5]% market shares by volume. The limited change brought along by the merger is further evidenced by HHI calculations. Indeed, when considering the market shares by volume, the Delta remains consistently below 110.

(341) Third, the Commission notes that after the Transaction, there will remain numerous alternative wholesale suppliers of pay TV channels for other content such as Polsat (with a market share of approximately [20-30]% by volume in 2020), TVP (with a market share of approximately [10-20]% by volume in 2020), Disney (with a market share of approximately [5-10]% by volume in 2020), ViacomCBS (with a market share of approximately [5-10]% by volume in 2020). Other market participants include Hearst, Vivendi, Sony, NBCU, BBC and AMC.

(342) Finally, the Commission notes that it has not received any substantiated complaints from the respondents to the market investigation regarding the market for the wholesale supply of pay TV channels for other content in Poland.

(343) Therefore, for the reasons set out above, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market as a result of horizontal effects on the market for the wholesale supply of pay TV channels for other content in Poland and all plausible market segmentations thereof.

5.4.6.5. Market for the sale of advertising space on TV channels in Poland

(A) Notifying Party's views

(344) The Notifying Party submits that the Transaction would not raise competitive concerns in the market for the sale of advertising space on TV channels in Poland for the following reasons.

166 Form CO, Chapter 3, paragraphs 246-253.

167 Form CO, Chapter 3, paragraphs 254-262.

168 Form CO, Chapter 3, paragraphs 263-265.

(345) First, the Notifying Party submits that the Transaction results in a negligeable market shares increment.[169]

(346) Second, the Notifying Party submits that buyers will continue to constrain the merged entity.[170]

(347) Third, the Notifying Party submits that there are sufficient alternative of large suppliers of advertising space on TV channels in Poland.[171]

(348) Fourth, the Notifying Party considers that online advertising is steadily growing in Poland.[172]

(349) Finally, the Notifying Party considers that there are regulatory requirements in Poland that would constrain the Parties' advertising activities.[173]

(B) Commission's assessment

(350) The Commission considers that the Transaction does not raise horizontal concerns in the market for the sale of advertising space on TV channels in Poland, for the following reasons.

(351) First, the Parties' combined market shares remain moderate and have been consistently declining since 2018, from [40-50]% in 2018 to approximately [30-40]% in 2020.

(352) Second, the Transaction only gives rise to an insignificant market shares increment. Indeed, in 2020, Discovery already accounted for [30-40]% market shares by value whereas WarnerMedia only accounted for [0-5]% market shares by value. Therefore, the change on the market brought about by the Transaction is insignificant.

(353) Third, there will remain alternative large sellers of advertising space on TV channels in Poland, including Polsat (with approximately [30-40]% market shares in 2020), TVP (with approximately [30-40]% market shares in 2020) and other sellers which account for approximately [10-20]% of the market.

(354) Finally, the Commission notes that it has not received any substantiated complaints from the respondents to the market investigation regarding the market for the sale of advertising space on TV channels in Poland.

(355) Therefore, for the reasons set out above, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market as a result of horizontal effects on the market for the sale of advertising space on TV channels in Poland and all plausible market segmentations thereof.

169 Form CO, Chatper 6, paragraph 103.
170 Form CO, Chatper 6, paragraph 106.
171 Form CO, Chatper 6, paragraph 107.
172 Form CO, Chatper 6, paragraph 113.
173 Form CO, Chatper 6, paragraph 114.

5.4.6.6. Market for the sale of advertising space on pay TV channels in Poland

(A) Notifying Party's views

(356) The Notifying Party submits that the Transaction would not raise competitive concerns in the market for the sale of advertising space on pay TV channels in Poland for the following reasons.

(357) First, the Notifying Party submits that the Transaction results in a negligeable market shares increment.[174]

(358) Second, the Notifying Party submits that buyers will continue to constrain the merged entity.[175]

(359) Third, the Notifying Party submits that there are sufficient alternative of large suppliers of advertising space on pay TV channels in Poland.[176]

(360) Fourth, the Notifying Party considers that online advertising is steadily growing in Poland.[177]

(361) Finally, the Notifying Party considers that there are regulatory requirements in Poland that would constrain the Parties' advertising activities.[178]

(B) Commission's assessment

(362) The Commission considers that the Transaction does not raise horizontal concerns in the market for the sale of advertising space on pay TV channels in Poland, for the following reasons.

(363) First, the Parties' combined market shares remain moderate and have been consistently declining since 2018, from [30-40]% in 2018 to approximately [30-40]% in 2020.

(364) Second, the Transaction only gives rise to an insignificant market shares increment. Indeed, in 2020, Discovery already accounted for [20-30]% market shares by value whereas WarnerMedia only accounted for [0-5]% market shares by value. Therefore, the change on the market brought about by the Transaction is insignificant.

(365) Third, there will remain alternative large sellers of advertising space on pay TV channels in Poland, including Polsat (with approximately [10-20]% market shares in 2020), TVP (with approximately [0-5]%) and other smaller sellers which account for approximately [50-60]% of the market. Smaller sellers include hundreds of small pay TV networks owned by players other than Discovery, TVP and Polsat.[179]

(366) Finally, the Commission notes that it has not received any substantiated complaints from the respondents to the market investigation regarding the market for the sale of advertising space on pay TV channels in Poland.

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174 Form CO, Chatper 6, paragraph 103.
175 Form CO, Chatper 6, paragraph 106.
176 Form CO, Chatper 6, paragraph 107.
177 Form CO, Chatper 6, paragraph 113.
178 Form CO, Chatper 6, paragraph 114.
179 Form CO, Chatper 6, paragraph 110.

(367) Therefore, for the reasons set out above, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market as a result of horizontal effects on the market for the sale of advertising space on pay TV channels in Poland and all plausible market segmentations thereof.

5.4.7. Sweden

5.4.7.1. Market for the wholesale supply of pay TV channels in Sweden

(A) Notifying Party's views

(368) The Notifying Party submits that the Transaction would not raise competitive concerns in the market for the wholesale supply of pay TV channels in Sweden for the following reasons.

(369) First, the Notifying Party submits that the Transaction will give rise to an insignificant market shares increment.[180]

(370) Second, the Notifying Party submits that the Parties are not each other's closest competitors.[181]

(371) Third, the Notifying Party submits that the merged entity will be constrained by large competitors.[182]

(372) Fourth, the Notifying Party submits that the merged entity will be constrained by large customers.[183]

(B) Commission's assessment

(373) The Commission considers that the Transaction does not raise horizontal concerns in the market for the wholesale supply of pay TV channels in Sweden, for the following reasons.

(374) First, the Parties' combined market shares remain moderate and consistently below 25% when considering volume-based market shares.

(375) Second, the Transaction only gives rise to an insignificant market shares increment. Indeed, in 2020, Discovery already accounted for [20-30]% market shares by volume whereas WarnerMedia only accounted for [0-5]% market shares by volume. The limited change brought along by the merger is further evidenced by HHI calculations. Indeed, when considering the market shares by volume, the Delta remains consistently below 125.

(376) Third, the Commission notes that after the Transaction, there will remain numerous alternative wholesale supply of pay TV channels such as NENT (with a market share of approximately [30-40]% by volume in 2020), TV4Media (with a market share of approximately [20-30]% by volume in 2020), Disney and Viacom CBS (each with a market share of approximately [0-5]% by volume in 2020). Other market participants include BBC, Hearst, RTVE and TV2.

180 Form CO, Chapter 3, paragraphs 270-272.
181 Form CO, Chapter 3, paragraphs 273-278.
182 Form CO, Chapter 3, paragraphs 279-283.
183 Form CO, Chapter 3, paragraphs 284-286.

(377) Finally, the Commission notes that it has not received any substantiated complaints from the respondents to the market investigation regarding the market for the wholesale supply of pay TV channels in Sweden.

(378) Therefore, for the reasons set out above, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market as a result of horizontal effects on the market for the wholesale supply of pay TV channels in Sweden and all plausible market segmentations thereof.

5.4.7.2. Market for the retail supply of non-linear AV services in Sweden

(A) Notifying Party's views

(379) The Notifying Party submits that the Transaction would not raise competitive concerns in the market for the retail supply of non-linear AV services in Sweden for the following reasons.

(380) First, the Notifying Party submits that the Transaction results in a negligeable market shares increment.[184]

(381) Second, the Notifying Party submits that the retail services offered by the Parties do not compete particularly closely.[185]

(382) Third, the Notifying Party submits that the Parties face strong competition from many sources, including commercial and publicly funded broadcasters, third-party pay TV, SVOD and other OTT platforms.[186]

(383) Fourth, the Notifying Party submits that consumers are willing to switch between different retail offerings.[187] This is notably due to the insignificance and reduction in switching costs and to changing consumer habits who rely on multiple retail TV services.

(B) Commission's assessment

(384) The Commission considers that the Transaction does not raise horizontal concerns in the market for the retail supply of non-linear AV services in Sweden, for the following reasons.

(385) First, the Parties' combined market shares remain moderate and consistently below 20% when considering value-based market shares. When considering volume-based market shares, the combined market shares of the Parties have consistently been below 25% since 2018.

(386) Second, the Transaction only gives rise to an insignificant market shares increment. Indeed, in 2020, WarnerMedia already accounted for [10-20]% market shares by volume whereas Discovery only accounted for [0-5]% market shares by volume. The limited change brought along by the merger is further evidenced by HHI

184 Form CO, Chapter 4, paragraphs 122-124.

185 Form CO, Chapter 4, paragraphs 125-126.

186 Form CO, Chapter 4, paragraphs 127-151.

187 Form CO, Chapter 4, paragraphs 152-157.

calculations. Indeed, when considering the market shares by volume, the Delta remained consistently below 150 since 2018.

(387) Third, the Commission notes that after the Transaction, there will remain numerous alternative retailers of non-linear pay TV services such as Netflix (with a market share of approximately [20-30]% by volume in 2020), Viaplay (with a market share of approximately [20-30]% by volume in 2020), C More (with a market share of approximately [5-10]% by volume in 2020), AppleTV+ (with a market share of approximately [5-10]% by volume in 2020), Amazon Prime Video (with a market share of approximately [0-5]% by volume in 2020), Canal Digital Video (with a market share of approximately [0-5]% by volume in 2020). Other smaller market participants include Boxer and DAZN.

(388) Finally, the Commission notes that it has not received any substantiated complaints from the respondents to the market investigation regarding the market for the retail supply of non-linear AV services in Sweden.

(389) Therefore, for the reasons set out above, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market as a result of horizontal effects on the market for the retail supply of non-linear pay AV services in Sweden and all plausible market segmentations thereof.

5.5. Vertical Assessment

5.5.1. Introduction

(390) In this Section, the Commission will assess whether the proposed Transaction would give rise to foreclosure in any of the markets that are vertically affected. A merger is said to result in foreclosure where actual or potential rivals' access to supplies or markets is hampered or eliminated as a result of the Transaction, thereby reducing these companies' ability and/or incentive to compete.[188]

(391) Two forms of foreclosure can be distinguished. The first is where the merger is likely to raise the costs of downstream rivals by restricting their access to an important input (input foreclosure). The second is where the merger is likely to result in foreclosure of upstream rivals by restricting their access to a sufficiently large customer base (customer foreclosure).

(392) Input foreclosure arises where, post-merger, the merged entity would be likely to restrict access to the products or services that it would have otherwise supplied absent the merger, thereby raising its downstream rivals' costs by making it harder for them to obtain supplies of the input under similar prices and conditions as absent the merger.[189]

(393) 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

188 Non-Horizontal Merger Guidelines, paragraph 29.

189 Non-Horizontal Merger Guidelines, paragraph 31.

incentive to do so, and third, whether a foreclosure strategy would have a significant detrimental effect on competition downstream.[190]

(394) Customer foreclosure may occur when a supplier integrates with an important customer in the downstream market. 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.[191]

(395) In assessing the likelihood of an anticompetitive customer foreclosure scenario, the Commission examines the three following cumulative elements: 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 intertwined.[192]

5.5.2. *Vertically affected markets arising from the relationships between the markets for the production of AV content (upstream), and the markets for the wholesale supply of TV channels (downstream)*

(396) The Transaction gives rise to affected markets arising from the relationships between the markets for the production of AV content (upstream), and the markets for the wholesale supply of TV channels (downstream) in Finland, Germany, Italy, Poland, and Spain. In each of these Member States, the market investigation led to very similar outcomes with respect to all of the relevant vertically affected markets, and irrespective of any possible market segmentation. In light of the results of the market investigation, in the following recitals, the Commission provides a joint assessment of the risk of anticompetitive foreclosure that could arise from the relationships between the markets for the production of AV content (upstream), and the markets for the wholesale supply of TV channels (downstream), in Finland, Germany, Italy, Poland, and Spain.

5.5.2.1. Identification of the vertically affected markets in the relevant Member States

(A) Finland

(397) In Finland, the upstream market for the production of commissioned AV content (where only Warner Media is active with a presence of [5-10]% in revenue) is vertically affected due to its connection with the downstream markets for (i) the wholesale supply of pay TV channels (where only Discovery is active with [40-50]% market share in TV audience), and (ii) the wholesale supply of pay TV channels for other content (where only Discovery is active with [70-80]% market share in TV audience).

(B) Germany

(398) In Germany, the upstream market for the production of commissioned AV content (where the Parties' marginal combined market share is [0-5]% in revenue), and the

190 Non-Horizontal Merger Guidelines, paragraph 32.
191 Non-Horizontal Merger Guidelines, paragraph 58.
192 Non-Horizontal Merger Guidelines, paragraph 59.

upstream market for the production of non-captive commissioned AV content (where the Parties' combined market share is [5-10]% in revenue) are vertically affected due to their connection with the downstream market for the wholesale supply of pay TV channels for children content (where only WarnerMedia is active with [90-100]% market share in TV audience).

(C) Italy

(399) In Italy, the upstream market for the production of commissioned AV content (where only Discovery is active with a marginal presence of less than [0-5]% in revenue) is vertically affected due to its connection with the downstream markets for (i) the wholesale supply of TV channels for children content (where the Parties' combined market share is [50-60]% in TV audience), and (ii) the wholesale supply of FTA TV channels for children content (where the Parties' combined market share is [50-60]% in TV audience).

(D) Poland

(400) In Poland, the upstream market for the production of commissioned AV content (where only Discovery is active with a marginal market share of [0-5]% in revenue), and the upstream market for the production of non-captive commissioned AV content (where only Discovery is active with a marginal market share of [0-5]% in revenue), are vertically affected due to their connection with the downstream market for the wholesale supply of pay TV channels (where the Parties' combined market share is [30-40]% in TV audience).

(E) Spain

(401) In Spain, the upstream market for the production of commissioned AV content (where he Parties' marginal combined market share is [0-5]% in revenue), and the upstream market for the production of non-captive commissioned AV content (where he Parties' marginal combined market share is [0-5]% in revenue) are vertically affected due to their connection with the downstream market for the wholesale supply of FTA TV channels for children (where only WarnerMedia is active with a market share of [30-40]% in TV audience).

5.5.2.2. The Notifying Party's view

(402) As regards input foreclosure, the Notifying Party notes that, for all the countries considered, due to the merged entity's limited presence in the upstream markets post-Transaction, there is no risk of input foreclosure.

(403) As regards customer foreclosure, the Notifying Party notes that, for all the countries considered, the merged entity would have neither the ability nor the incentive to pursue a total or partial customer foreclosure strategy, and that any such customer foreclosure strategies would have no significant effect on effective competition.

(404) From the outset, the Notifying Party submits that already today and independently of the Transaction, both Parties are active at several levels of the audio-visual content supply chain, in Finland, Germany, Italy, Poland and Spain. Notwithstanding this vertical integration, there has not been any evidence to date of any foreclosure concerns, and this will not change post-Transaction. The Parties both already own a portfolio of channels in addition to being present upstream in the production of

commissioned AV content, and external commissioned AV content, and that therefore, there is a significantly reduced set of pre-existing customer relationships between the Parties as individual broadcasters, and third-party producers of commissioned TV content.

(405) Additionally, the Notifying Party notes that, in all the relevant countries, the merged entity will not be able to afford to pursue a customer foreclosure strategy, as this would reduce the breadth and quality content offered and included in its TV channels, and undermine the attractiveness of its wholesale channels. Any increment in market share resulting from the Transaction will not beget a commensurate increase in the merged entity's market and bargaining power, especially since the Parties and other wholesale suppliers of TV channels are operating in an increasingly competitive environment, and will continue to require a broad content line-up to retain their customers.

(406) Post-Transaction, the merged entity's OTT platforms would, if anything, provide an incentive to the Parties to increase their acquired audio-visual content from upstream rival producers, both with regard to its OTT platforms and in its capacity as a broadcaster. Ensuring the distribution of a wide range of third-party content via its TV channels, the merged entity will attract additional customers for its OTT platforms. Ensuring the distribution of third-party audio-visual content from rival upstream producers via its TV channels is therefore likely to increase demand for its own flagship OTT products, which constitute a core rationale of the Transaction, and applies to all countries where the Parties are active.

(407) Lastly, the Notifying Party observes that, in all of the relevant countries, AV content produced upstream is increasingly available via non-traditional services delivered via the internet instead of being broadcasted, and that all of these services offer viewers the option to stream TV channels live, as well as interactive and on-demand video streaming services. Therefore, any refusal to acquire commissioned content from competing providers would not have any material impact (foreclosure effects). Rival content providers can supply content to the wide variety of companies active post-Transaction on the and retail markets, including OTT platforms, as well as set up their own retail platform.

5.5.2.3. The Commission's assessment

(408) With respect to the risk of input foreclosure, the Commission observes that, in all of the relevant Member States, the presence of the merged entity in the upstream markets is small and therefore, that the merged entity would not have the ability to engage in input foreclosure after the Transaction.

(409) With respect to the risk of customer foreclosure, the Commission considers that, in all of the relevant Member States, a number of factors indicate that the merged entity would likely have no ability, nor incentive, to foreclose access to the downstream market for the wholesale supply of TV channels, irrespective of any possible market definition.

(A) Ability to engage in total or partial customer foreclosure

(410) The Commission considers that, in all of the relevant Member States, the merged entity will not have the ability to engage in foreclosure by restricting access to the merged entity's TV channels, irrespective of any possible market definition, to rival

suppliers active in the upstream markets for the market for the production of commissioned AV content, and external commissioned AV content, for the following reasons.

(411) First, the Commission's investigation in Germany, Finland, Italy, and Poland, suggests that the Transaction would likely have no material impact on the markets for the production of AV content. In Spain, where the market investigation yields mixed results, market participants raised concerns related to input foreclosure rather than customer foreclosure. Additionally, in all of these countries no market participants put forward evidence suggesting that the Transaction would affect any of the potential segments differently.[193]

(412) Second, for customer foreclosure to be a concern, the vertical merger must involve a company which is an important customer with a significant degree of market power in the downstream market.[194] Except for Finland, in all of the vertical links considered, there is always one Party that is present both upstream and downstream. Therefore, for those countries, the Commission observes that the affected vertical relationship is pre-existing to the Transaction, and there is no evidence of a customer foreclosure strategy currently in place. Additionally, considering the very limited market shares (and increments when relevant) in the upstream markets, there is no evidence to suggest that the Transaction will alter the existing risk of anticompetitive customer foreclosure in any of the relevant Member State.

(413) Third, competition concerns regarding customer foreclosure are unlikely to arise when there is a sufficiently large customer base, at present or in the future, that is likely to turn to other suppliers active in the upstream market.[195] In that regard, the market for the wholesale supply of TV channels, irrespective of any possible market definition, is not a necessary intermediary for undertakings active in the markets for the production of commissioned AV content, and external commissioned AV content, to make their product available to end consumers. Notably, recent technological advances and evolving consumers' habits have largely affected the landscape of the distribution of AV content. Indeed, the Commission observes that digitalisation has lowered entry barriers to the distribution of content, such that content producers can easily reach viewers through Direct to Consumers (DTC) technologies (e.g., for instance through the internet by supplying their content to an OTT AV retailer). The traditional distribution infrastructure (involving for instance TV towers, cable systems, etc.), which requires AV content to be aggregated into TV channels before being supplied, is no longer a necessary means of distribution for AV content to reach consumers.[196]

193 Responses to questionnaire Q1 – Questionnaires to market participantsnparticipants in the AV sector (Italy), question 49; Responses to questionnaire Q5 – Questionnaires to market participants in the AV sector (Germany), question 21; Responses to questionnaire Q8 – Questionnaires to market participants in the AV sector (Finland), question 27; Responses to questionnaire Q10 – Questionnaires to market participants in the AV sector (Poland), question 27; Responses to questionnaire Q11 – Questionnaires to market participants in the AV sector (Spain), question 27.

194 Non-Horizontal Merger Guidelines, paragraph 60.

195 Non-Horizontal Merger Guidelines, paragraph 60.

196 NERA, The Impact of Online Video Distribution on the Global Market for Digital Content, 3, available at https://www.nera.com/content/dam/nera/publications/2019/NERA-The-Impact-of-Online-Video-Distribution.pdf.

(414) Moreover, in all of the relevant Member States, the market investigation confirmed that the traditional three-layer classification[197] fails to properly take into account the markets dynamics resulting from Direct-to-Consumer broadcasting, as the frontiers between the different layers are becoming increasingly blurred as a consequence of the global market trend for vertical integration. In particular, in Germany, one respondent explained that: "*the respective levels of the value chain obviously mix with one another, because the upstream market […] also engages in the downstream market for the retail supply of AV services towards end-customers […]. Therefore, in particular the upstream market also competes with the intermediate and the downstream market for end-customer products for AV content.*"[198] In Finland, one respondent indicated that: "*the content owners, such as film studios and sports rights owners are building their own direct-to-consumer retail offerings, "bypassing" broadcasters, competing broadcasters and teleoperators.*"[199]

(415) Furthermore, in Italy one respondent explained that: "*the competitive landscape has changed considerably in the recent past. More specifically, the downstream market for the retail supply of AV services should no longer be segmented according to traditional drivers; and vertical integration is now widespread, which in turn has implications on the availability of AV content to be purchased at the upstream and intermediate levels of the supply chain.*"[200] In Spain, one respondent also stated that: "*We consider that the frontiers between the different models or markets of AV content are becoming more and more blurred*"[201] Finally in Poland, one respondent indicated that: "*The traditional value chain […] is more and more challenged by market developments and changing consumer behaviour, particularly the switch to non-linear and OTT viewing. Content providers are increasingly by-passing channel providers and traditional distribution platforms and offering their content directly to the consumer via an app on an OTT basis*."[202]

(416) Fourth, the market investigation showed that market participants active in the production of commissioned content, and external commissioned content, in the Member States concerned, are largely vertically integrated and also active in the retail market, such that any third party is not an absolute necessity for them to make their content available to end consumers. This is for instance the case of RAI - Radiotelevisione italiana S.p.A., Sky Italia, Telecom Italia (TIM) in Italy;[203] of Deutsche Telekom AG, ARD, The Walt Disney Company, or Sky Deutschland GmbH in Germany;[204] or of NBC Universal, and Radio Television Española (RTVE) in Spain.[205]

(417) Therefore, the Commission considers that, in all of the relevant Member States, there are sufficient economic alternatives for the upstream rivals to sell their output, without incurring significantly higher costs, and that the merged entity would lack

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197 The three layer classification is defined in paragraph (7) of this decision. It comprises i) the production and supply of AV content; (ii) the wholesale supply of TV channels, and; (iii) the retail supply of AV services to end customers.

198 Responses to questionnaire Q5 – Questionnaires to market participants in the AV sector (Germany), questions 5, 5.1, 5.2.

199 Responses to questionnaire Q8 – Questionnaires to market participants in the AV sector (Finland), question 5.1.

200 Responses to questionnaire Q1 – Questionnaires to market participants in the AV sector (Italy), question 5.1.

201 Responses to questionnaire Q11 – Questionnaires to market participants in the AV sector (Spain), question 5.1.

202 Responses to questionnaire Q10 – Questionnaires to market participants in the AV sector (Poland), question 5.1.

203 Responses to questionnaire Q1 – Questionnaires to market participants in the AV sector (Italy), question 4.

204 Responses to questionnaire Q5 – Questionnaires to market participants in the AV sector (Germany), question 4.

205 Responses to questionnaire Q11 – Questionnaires to market participants in the AV sector (Spain), question 4.

the ability to engage into a customer foreclosure strategy, irrespective of the market definition.

(B) Incentive to engage in total or partial customer foreclosure

(418) The Commission considers that, in all of the relevant Member States, the merged entity will likely not have the incentives to engage in foreclosure by restricting access to the merged entity's TV channels, irrespective of any possible market definition, to rival suppliers active in the upstream markets for the market for the production of commissioned AV content, and external commissioned AV content, for the following reasons.

(419) First, in all of the countries considered, the presence of the Parties upstream in the markets for the production of commissioned content, and external commissioned content, is very limited, and therefore that the current incentives to acquire content from upstream producers will remain largely unchanged post-Transaction. More particularly, the Commission observes that the market for the retail supply of AV services is very dynamic. Retail suppliers have strong incentives to provide access to a large variety and volume of content, more specifically to original content, in order to be sufficiently competitive in the market. In particular, in 2015 the European Audiovisual Observatory (EAO) already observed that: "*The provision of original content for the online world is a relatively new development, which appears to be growing exponentially, alongside the other market indicators. New content is of particular value for competing SVOD operators in order to create new brands of programming and distinguish them from other services.*"[206] During the market investigation, a large majority of market participants confirmed that the need for original and comprehensively attractive content to efficiently compete at all level of the AV value chain is still relevant today.

(420) Second, if the merged entity plans to further develop its OTT activities on the market for the retail supply of AV services in Finland, Germany, Italy, Poland, and Spain, it will have incentive post-Transaction to acquire a wide range of content to consolidate the service and attract a broad range of viewers, and would lack the incentive to engage into a customer foreclosure strategy.

(421) In any event, given the lack of ability to foreclose, it is not necessary to conclude as to whether the merged entity will have the incentive to implement a strategy aimed at foreclosing competing rivals active in the market for the production of commissioned content, and external commissioned content, from accessing its TV channels, irrespective of any possible market definition, in Finland, Germany, Italy, Poland, and Spain.

(C) Conclusion

(422) In view of the above, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to potential customer foreclosure with respect to:

(a) the vertical relationships between the markets for the production of commissioned AV content and the production of non-captive commissioned

206 D. Kevin, "Investments in original content by audiovisual services", EAO, November 2015, page 43, available at https://rm.coe.int/16807835ca.

content (upstream), and the markets for the wholesale supply of pay TV channels and pay TV channels for other content (downstream) in Finland;

(b) the vertical relationships between the markets for the production of commissioned AV content and the production of non-captive commissioned content (upstream), and the market for the wholesale supply of pay TV channels for children content (downstream) in Germany;

(c) the vertical relationships between the market for the production of commissioned AV content (upstream), and the markets for the wholesale supply of TV channels for children content and FTA TV channels for children content (downstream) in Italy;

(d) the vertical relationships between the markets for the production of commissioned AV content and the production of non-captive commissioned content (upstream), and the market for the wholesale supply of pay TV channels (downstream) in Poland; and

(e) the vertical relationships between the markets for the production of commissioned AV content and the production of non-captive commissioned content (upstream), and the market for the wholesale supply of FTA TV channels for children content (downstream) in Spain.

5.5.3. Vertically affected markets arising from the relationships between the markets for the licensing of AV content (upstream), and the markets for the wholesale supply of TV channels (downstream)

(423) The Transaction gives rise to affected markets arising from the relationships between the markets for the licensing of AV content (upstream), and the markets for the wholesale supply of TV channels (downstream) in Bulgaria, Finland, Germany, Italy, Poland, Romania, and Spain. In each of these Member States, the market investigation led to very similar outcomes with respect to all of the relevant vertically affected markets, and irrespective of any possible market segmentation. In light of the results of the market investigation, in the following recitals, the Commission provides a joint assessment of the risk of anticompetitive foreclosure that could arise from the relationships between the markets for the licensing of AV content (upstream), and the markets for the wholesale supply of TV channels (downstream), in Bulgaria, Finland, Germany, Italy, Poland, Romania, and Spain.

5.5.3.1. Identification of the vertically affected markets in the relevant Member States

(A) Bulgaria

(424) In Bulgaria, the following markets are vertically affected due to their connection with the downstream market for the wholesale supply of pay TV channels for children content (where only WarnerMedia is active with [30-40]% market shares): (i) the upstream markets for the licensing of broadcasting rights for other AV content (where the Parties' combined market share is below 20%), (ii) the licensing of broadcasting rights for sports AV content (where only Discovery is active with market share below 30%), (iii) the licensing of broadcasting rights for children AV content (where the Parties' combined market share is below 20%), (iv) the licensing of broadcasting rights for AV content in the first pay exhibition window (where the Parties' combined market share is below 20%), and (v) the licensing of broadcasting

rights for AV content in the second pay exhibition window (where the Parties' combined market share is below 20%).

(B) Finland

(425) In Finland, the following upstream markets are vertically affected due to their connection with the downstream markets for: (i) the wholesale supply of pay TV channels (where only Discovery is active with [40-50]% market share), and (ii) the wholesale supply of pay TV channels for other content (where only Discovery is active with [70-80]% market share) (i) the licensing of broadcasting rights for AV content (excluding sports and news content, and where the Parties' combined market share is [0-5]%), (ii) the licensing of broadcasting rights for films AV content (where only WarnerMedia is active with market share below 30%), (iii) the licensing of broadcasting rights for US films AV content (where only WarnerMedia is active with market share below 30%), (iv) the licensing of broadcasting rights for non-US films AV content (where only WarnerMedia is active with market share below 30%), (v) the licensing of broadcasting rights for other AV content (where only the Parties' combined market share is below 20%), (vi) the licensing of broadcasting rights for children AV content (where only the Parties' combined market share is below 20%), (vii) the licensing of broadcasting rights for AV content in the first pay exhibition window (where the Parties' combined market share is below 20%), and (viii) the licensing of broadcasting rights for AV content in the second pay exhibition window (where the Parties' combined market share is below 20%).

(C) Germany

(426) In Germany, the following upstream markets are vertically affected due to their connection with the downstream market for the wholesale supply of pay TV channels for children content (where only WarnerMedia is active with [90-100]% market share): (i) the licensing of broadcasting rights for AV content (excluding sports and news content, and where the Parties' combined market share is [10-20]%), (ii) the licensing of broadcasting rights for films AV content (where only WarnerMedia is active with market share below 30%), (iii) the licensing of broadcasting rights for US films AV content (where only WarnerMedia is active with market share below 30%), (iv) the licensing of broadcasting rights for non-US films AV content (where only WarnerMedia is active with market share below 30%), (v) the licensing of broadcasting rights for other AV content (where only the Parties' combined market share is below 20%), (vi) the licensing of broadcasting rights for children AV content (where only the Parties' combined market share is below 20%), (vii) the licensing of broadcasting rights for AV content in the first pay exhibition window (where the Parties' combined market share is below 20%), and (viii) the licensing of broadcasting rights for AV content in the second pay exhibition window (where the Parties' combined market share is below 20%).

(D) Italy

(427) In Italy, the following upstream markets are vertically affected due to their connection with the downstream markets for (i) the wholesale supply of TV channels for children content (where the Parties' combined market share is [50-60]%), and (ii) the wholesale supply of FTA TV channels for children content (where the Parties' combined market share is [50-60]%): (i) the licensing of broadcasting rights for AV content (excluding sports and news content, and where the Parties' combined market share is [10-20]%), (ii) the licensing of broadcasting rights for films AV

content (where only WarnerMedia is active with market share below 30%), (iii) the licensing of broadcasting rights for US films AV content (where only WarnerMedia is active with market share below 30%), (iv) the licensing of broadcasting rights for non-US films AV content (where only WarnerMedia is active with market share below 30%), (v) the licensing of broadcasting rights for other AV content (where only the Parties' combined market share is below 20%), (vi) the licensing of broadcasting rights for children AV content (where only the Parties' combined market share is below 20%), (vii) the licensing of broadcasting rights for sports AV content (where only Discovery is active with share below 30%), and (viii) the licensing of broadcasting rights for AV content in the FTA exhibition window (where the Parties' combined market share is below 20%).

(E) Poland

(428) In Poland, the following upstream markets are vertically affected due to their connection with the downstream market for the wholesale supply of pay TV channels (where the Parties' combined market share is [30-40]%): (i) the licensing of broadcasting rights for AV content (excluding sports and news content, and where the Parties' combined market share is [0-5]%), (ii) the licensing of broadcasting rights for films AV content (where only WarnerMedia is active with market share below 30%), (iii) the licensing of broadcasting rights for US films AV content (where only WarnerMedia is active with market share below 30%), (iv) the licensing of broadcasting rights for non-US films AV content (where only WarnerMedia is active with market share below 30%), (v) the licensing of broadcasting rights for other AV content (where only the Parties' combined market share is below 20%), (vi) the licensing of broadcasting rights for children AV content (where only the Parties' combined market share is below 20%), (vii) the licensing of broadcasting rights for sports AV content (where only Discovery is active with share below 30%), (viii) the licensing of broadcasting rights for AV content in the first pay exhibition window (where the Parties' combined market share is below 20%), and (ix) the licensing of broadcasting rights for AV content in the second pay exhibition window (where the Parties' combined market share is below 20%).

(F) Romania

(429) In Romania, the following upstream markets are vertically affected due to their connection with the downstream market for the wholesale supply of pay TV channels for children (where the Parties' combined market share is [30-40]%): (i) the licensing of broadcasting rights for AV content (excluding sports and news content, and where the Parties' combined market share is [0-5]%), (ii) the licensing of broadcasting rights for other AV content (where only the Parties' combined market share is below 20%), (iii) the licensing of broadcasting rights for children AV content (where only the Parties' combined market share is below 20%), (iv) the licensing of broadcasting rights for sports AV content (where only Discovery is active with share below 30%), (v) the licensing of broadcasting rights for AV content in the first pay exhibition window (where the Parties' combined market share is below 20%), and (vi) the licensing of broadcasting rights for AV content in the second pay exhibition window (where the Parties' combined market share is below 20%).

(G) Spain

(430) In Spain, the following upstream markets are vertically affected due to their connection with the downstream market for the wholesale supply of FTA TV channels children (where the Parties' combined market share is [30-40]%): (i) the licensing of broadcasting rights for AV content (excluding sports and news content, and where the Parties' combined market share is [5-10]%), (ii) the licensing of broadcasting rights for other AV content (where only the Parties' combined market share is below 20%), (iii) the licensing of broadcasting rights for children AV content (where only the Parties' combined market share is below 20%), (iv) the licensing of broadcasting rights for sports AV content (where only Discovery is active with share below 30%), and (v) the licensing of broadcasting rights for AV content in the FTA exhibition window (where the Parties' combined market share is below 20%).

5.5.3.2. The Notifying Party's view

(431) As regards input foreclosure, the Notifying Party notes that, for all the countries considered, due to the merged entity's limited presence in the upstream markets post-Transaction, there is no risk of input foreclosure.

(432) As regards customer foreclosure, the Notifying Party notes that, for all the countries considered, the merged entity would have neither the ability nor the incentive to pursue a total or partial customer foreclosure strategy, and that any such customer foreclosure strategies would have no significant effect on effective competition.

(433) From the outset, the Notifying Party submits that already today and independently of the Transaction, both Parties are active at several levels of the audio-visual content supply chain, in Bulgaria, Finland, Germany, Italy, Poland, Romania, and Spain. Notwithstanding this vertical integration, there has not been any evidence to date of any foreclosure concerns, and this will not change post-Transaction. The Parties both already own a portfolio of channels in addition to being present upstream in the licensing of broadcasting rights for AV content, including all possible market definition, and that therefore, there is a significantly reduced set of pre-existing customer relationships between the Parties as individual broadcasters, and third-party licensers of broadcasting rights for AV content.

(434) Additionally, the Notifying Party notes that, in all the relevant countries, the merged entity will not be able to afford to pursue a customer foreclosure strategy, as this would reduce the breadth and quality content offered and included in its TV channels, and undermine the attractiveness of its wholesale channels. Any increment in market share resulting from the Transaction will not beget a commensurate increase in the merged entity's market and bargaining power, especially since the Parties and other wholesale suppliers of TV channels are operating in an increasingly competitive environment, and will continue to require a broad content line-up to retain their customers.

(435) Post-Transaction, the merged entity's OTT platforms would, if anything, provide an incentive to the Parties to increase their acquired audio-visual content from upstream rival licensers, both with regard to its OTT platforms and in its capacity as a broadcaster. Ensuring the distribution of a wide range of third-party content via its TV channels, the merged entity will attract additional customers for its OTT platforms. Ensuring the distribution of third-party audio-visual content from rival

upstream licensers via its TV channels is therefore likely to increase demand for its own flagship OTT products, which constitute a core rationale of the Transaction, and applies to all countries where the Parties are active.

(436) Lastly, the Notifying Party observes that, in all of the relevant countries, AV content licensed upstream is increasingly available via non-traditional services delivered via the internet instead of being broadcasted, and that all of these services offer viewers the option to stream TV channels live, as well as interactive and on-demand video streaming services. Therefore, any refusal to acquire commissioned content from competing licensers would not have any material impact (foreclosure effects). Rival AV content licenser can supply content to the wide variety of companies active post-Transaction on the and retail markets, including OTT platforms, as well as set up their own retail platform.

5.5.3.3. The Commission's assessment

(A) Ability to engage in total or partial customer foreclosure

(437) The Commission considers that, in all of the relevant Member States and irrespective of any possible market definition, the merged entity will not have the ability to engage in foreclosure by restricting access to the merged entity's TV channels, to rival suppliers active in the upstream markets for the licensing of AV content, for the following reasons.

(438) First, in all of the relevant Member States, the market investigation yields mixed results as regards the impact of the Transaction on the markets for the licencing of AV content. However, the majority of the concerns raised relate to input foreclosure rather than customer foreclosure.[207]

(439) Second, competition concerns regarding customer foreclosure are unlikely to arise when there is a sufficiently large customer base, at present or in the future, that is likely to turn to other suppliers active in the upstream market.[208] In that regard, the market for the wholesale supply of TV channels, irrespective of any possible market definition, is not a necessary intermediary for undertakings active in the markets for the licensing of AV content, irrespective of the market definition, to make their product available to end consumers. Notably, recent technological advances and evolving consumers' habits have largely affected the landscape of the distribution of AV content. Digitalisation has lowered entry barriers to the distribution of content, such that content licensors can easily reach viewers through Direct to Consumers (DTC) technologies (e.g., for instance through the internet by supplying their content to an OTT AV retailer). The traditional distribution infrastructure (involving for instance TV towers, cable systems, etc.), which requires AV content to be

207 Responses to questionnaire Q1 – Questionnaires to market participants in the AV sector (Italy); Responses to questionnaire Q5 – Questionnaires to market participants in the AV sector (Germany); Responses to questionnaire Q6 – Questionnaires to market participants in the AV sector (Romania); Responses to questionnaire Q7 – Questionnaires to market participants in the AV sector (Bulgaria); Responses to questionnaire Q8 – Questionnaires to market participants in the AV sector (Finland); Responses to questionnaire Q10 – Questionnaires to market participants in the AV sector (Poland); Responses to questionnaire Q11 – Questionnaires to market participants in the AV sector (Spain).

208 Non-Horizontal Merger Guidelines, paragraph 60.

aggregated into TV channels before being supplied, is no longer a necessary means of distribution for AV content to reach consumers.[209]

(440) Moreover, in all of the relevant Member States, the market investigation confirmed that the traditional three-layer classification fails to properly take into account the markets dynamics resulting from Direct-to-Consumer broadcasting, as the frontiers between the different layers are becoming increasingly blurred as a consequence of the global market trend for vertical integration. In particular, in Germany, one respondent explained that: "*the respective levels of the value chain obviously mix with one another, because the upstream market […] also engages in the downstream market for the retail supply of AV services towards end-customers […]. Therefore, in particular the upstream market also competes with the intermediate and the downstream market for end-customer products for AV content.*"[210] In Finland, one respondent indicated that: "*the content owners, such as film studios and sports rights owners are building their own direct-to-consumer retail offerings, "bypassing" broadcasters, competing broadcasters and teleoperators.*"[211]

(441) Furthermore, in Italy one respondent explained that: "*the competitive landscape has changed considerably in the recent past. More specifically, the downstream market for the retail supply of AV services should no longer be segmented according to traditional drivers; and vertical integration is now widespread, which in turn has implications on the availability of AV content to be purchased at the upstream and intermediate levels of the supply chain.*"[212] In Spain, one respondent also provided that: "*We consider that the frontiers between the different models or markets of AV content are becoming more and more blurred*"[213] Finally in Poland, one respondent indicated that: "*The traditional value chain […] is more and more challenged by market developments and changing consumer behaviour, particularly the switch to non-linear and OTT viewing. Content providers are increasingly by-passing channel providers and traditional distribution platforms and offering their content directly to the consumer via an app on an OTT basis*."[214][215]

(442) Third, from the market investigation, the Commission understands that, in the Member States concerned, market participants active in the licensing of broadcasting rights for AV content, irrespective of the market definition, are largely vertically integrated and also active in the retail market, such that any third party is not an absolute necessity for them to make their content available to end consumers. This is for instance the case of RAI - Radiotelevisione italiana S.p.A., Sky Italia, Telecom Italia (TIM) in Italy;[216] of Deutsche Telekom AG, ARD, The Walt Disney Company,

209 NERA, The Impact of Online Video Distribution on the Global Market for Digital Content, 3, available at https://www.nera.com/content/dam/nera/publications/2019/NERA-The-Impact-of-Online-Video-Distribution.pdf.

210 Responses to questionnaire Q5 – Questionnaires to market participants in the AV sector (Germany), questions 5, 5.1, 5.2.

211 Responses to questionnaire Q8 – Questionnaires to market participants in the AV sector (Finland), question 5.1.

212 Responses to questionnaire Q1 – Questionnaires to market participants in the AV sector (Italy), question 5.1.

213 Responses to questionnaire Q11 – Questionnaires to market participants in the AV sector (Spain), question 5.1.

214 Responses to questionnaire Q10 – Questionnaires to market participants in the AV sector (Poland), question 5.1.

215 Responses to questionnaire Q6 – Questionnaires to market participants in the AV sector (Romania), and Responses to questionnaire Q7 – Questionnaires to market participants in the AV sector (Bulgaria), also confirm the views that the market is undergoing rapid changes with respect to the ways content is supplied to end-consumers.

216 Responses to questionnaire Q1 – Questionnaires to market participants in the AV sector (Italy), question 4.

or Sky Deutschland GmbH in Germany;[217] or of NBC Universal, and Radio Television Española (RTVE) in Spain.[218]

(443) Therefore, the Commission considers that, in all of the relevant Member States, there are sufficient economic alternatives for the upstream rivals to sell their output, without incurring significantly higher costs, and that the merged entity would lack the ability to engage into a customer foreclosure strategy, irrespective of the market definition.

(B) Incentive to engage in total or partial customer foreclosure

(444) The Commission considers that, in all of the relevant Member States, the merged entity will likely not have the incentives to engage in foreclosure by restricting access to the merged entity's TV channels, irrespective of any possible market definition, to rival suppliers active in the upstream markets for the market for the licensing of AV content, irrespective of the market definition, for the following reasons.

(445) First, in all of the countries considered, the presence of the Parties upstream in the markets for the licensing of AV content, irrespective of the market definition, is not sufficient to provide market power, and therefore that the current incentives to acquire content from upstream producers will remain largely unchanged post-Transaction. More particularly, the market for the retail supply of AV services is very dynamic, and retail suppliers have strong incentives to provide access to a large variety and volume of content, more specifically to original content, in order to be sufficiently competitive in the market. In particular, in 2015 the European Audiovisual Observatory (EAO) already observed that: "*The provision of original content for the online world is a relatively new development, which appears to be growing exponentially, alongside the other market indicators. New content is of particular value for competing SVOD operators in order to create new brands of programming and distinguish them from other services.*"[219] During the market investigation, a large majority of market participants confirmed that the need for original and comprehensively attractive content to efficiently compete at all level of the AV value chain is still relevant today.

(446) Second, if the merged entity plans to further develop its OTT activities on the market for the retail supply of AV services in Bulgaria, Finland, Germany, Italy, Poland, Romania, and Spain, it will have incentive post-Transaction to acquire a wide range of content to consolidate the service and attract a broad range of viewers, and would lack the incentive to engage into a customer foreclosure strategy.

(447) In any event, given the lack of ability to foreclose, it is not necessary to conclude as to whether the merged entity will have the incentive to implement a strategy aimed at foreclosing competing rivals active in the market for the licensing of AV content, irrespective of the market definition, from accessing its TV channels, irrespective of any possible market definition, in Bulgaria, Finland, Germany, Italy, Poland, Romania, and Spain.

217 Responses to questionnaire Q5 – Questionnaires to market participants in the AV sector (Germany), question 4.

218 Responses to questionnaire Q11 – Questionnaires to market participants in the AV sector (Spain), question 4.

219 D. Kevin, "Investments in original content by audiovisual services", EAO, November 2015, page 43, available at https://rm.coe.int/16807835ca.

(C) Conclusion

(448) In view of the above, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to potential customer foreclosure with respect to:

(a) the vertical relationship between the markets for (i) the licensing of broadcasting rights for other AV content (excluding sports and news content), (ii) the licensing of broadcasting rights for sports AV content, (iii) the licensing of broadcasting rights for children AV content, (iv) the licensing of broadcasting rights for AV content in the first pay exhibition window, and (v) the licensing of broadcasting rights for AV content in the second pay exhibition window, (all upstream); and the market for the wholesale supply of pay TV channels for children content (downstream), in Bulgaria.

(b) the vertical relationship between the markets for (i) the licensing of broadcasting rights for AV content (excluding sports and news content), (ii) the licensing of broadcasting rights for films AV content, (iii) the licensing of broadcasting rights for US films AV content, (iv) the licensing of broadcasting rights for non-US films AV content, (v) the licensing of broadcasting rights for other AV content, (vi) the licensing of broadcasting rights for children AV content, (vii) the licensing of broadcasting rights for AV content in the first pay exhibition window, and (viii) the licensing of broadcasting rights for AV content in the second pay exhibition window, (all upstream); and the markets for (i) the wholesale supply of pay TV channels, and (ii) the wholesale supply of pay TV channels for other content, (all downstream), in Finland;

(c) the vertical relationship between the markets for (i) the licensing of broadcasting rights for AV content (excluding sports and news content), (ii) the licensing of broadcasting rights for films AV content, (iii) the licensing of broadcasting rights for US films AV content, (iv) the licensing of broadcasting rights for non-US films AV content, (v) the licensing of broadcasting rights for other AV content, (vi) the licensing of broadcasting rights for children AV content, (vii) the licensing of broadcasting rights for AV content in the first pay exhibition window, and (viii) the licensing of broadcasting rights for AV content in the second pay exhibition window, (all upstream); and the market for the wholesale supply of pay TV channels for children content (downstream), in Germany.

(d) the vertical relationship between the markets for (i) the licensing of broadcasting rights for AV content (excluding sports and news content), (ii) the licensing of broadcasting rights for films AV content, (iii) the licensing of broadcasting rights for US films AV content, (iv) the licensing of broadcasting rights for non-US films AV content, (v) the licensing of broadcasting rights for other AV content, (vi) the licensing of broadcasting rights for children AV content, (vii) the licensing of broadcasting rights for sports AV content, and (viii) the licensing of broadcasting rights for AV content in the FTA exhibition window, (all upstream); and the markets for (i) the wholesale supply of TV channels for children content, and (ii) the wholesale supply of FTA TV channels for children content, (all downstream), in Italy.

(e) the vertical relationship between the markets for (i) the licensing of broadcasting rights for AV content (excluding sports and news content), (ii) the licensing of broadcasting rights for films AV content, (iii) the licensing of broadcasting rights for US films AV content, (iv) the licensing of broadcasting rights for non-US films AV content, (v) the licensing of broadcasting rights for other AV content, (vi) the licensing of broadcasting rights for children AV content, (vii) the licensing of broadcasting rights for sports AV content, (viii) the licensing of broadcasting rights for AV content in the first pay exhibition window, and (ix) the licensing of broadcasting rights for AV content in the second pay exhibition window, (all upstream); and the market for the wholesale supply of pay TV channels (downstream), in Poland.

(f) the vertical relationship between the markets for (i) the licensing of broadcasting rights for AV content (excluding sports and news content), (ii) the licensing of broadcasting rights for other AV content, (iii) the licensing of broadcasting rights for children AV content, (iv) the licensing of broadcasting rights for sports AV content, (v) the licensing of broadcasting rights for AV content in the first pay exhibition, and (vi) the licensing of broadcasting rights for AV content in the second pay exhibition window, (all upstream); and the market for the wholesale supply of pay TV channels for children (downstream), in Romania.

(g) the vertical relationships between the markets for (i) the licensing of broadcasting rights for AV content (excluding sports and news content), (ii) the licensing of broadcasting rights for other AV content, (iii) the licensing of broadcasting rights for children AV content, (iv) the licensing of broadcasting rights for sports AV content, and (v) the licensing of broadcasting rights for AV content in the FTA exhibition window, (all upstream); and the market for the wholesale supply of FTA TV channels children (downstream), in Spain.

5.5.4. Vertically affected markets arising from the relationships between the markets for the wholesale supply of TV channels (upstream), and the markets for the retail supply of AV services (downstream)

5.5.4.1. Bulgaria

(449) In Bularia, the upstream market for the wholesale supply of pay TV channels for children content (where only Warner Media is active with [30-40]% market share in TV audience) is vertically affected due to its connection with the downstream markets for (i) the retail supply of pay AV services (where the Parties' combined market share is [0-5]% in revenue), and (ii) the retail supply of non-linear pay AV services or SVOD services (where the Partie's combined market share is [5-10]% in subscriptions).

(A) The Notifying Party's view

(450) As regards customer foreclosure, the Notifying Party notes that, due to the merged entity's limited presence in the downstream markets post-Transaction, there is no risk of customer foreclosure.

(451) As regards input foreclosure, the Notifying Party notes that the merged entity would have neither the ability nor the incentive to pursue a total or partial input foreclosure strategy, and that any such input foreclosure strategies would have no significant effect on effective competition.

(452) From the outset, the Notifying Party submits that already today and independently of the Transaction, both Parties are active at several levels of the audio-visual content supply chain. Notwithstanding this vertical integration, there has not been any evidence to date of any foreclosure concerns, and this will not change post-Transaction. There is only one Party present in the upstream market, and both Parties are present pre-Transaction in the downstream markets, such that there are no new link created by the Transaction. This means that the Transaction does not create (or, if there was any ability pre-Transaction, add to) the ability to engage in vertical foreclosure.

(453) Additionally, the Notifying Party argues that, to sustain a theory of harm based on input foreclosure, the increase in the downstream share would need to be sufficient to create an incentive to engage in vertical foreclosure post-Transaction. By contrast, the Transaction leads to only a modest increase in downstream share and hence it not plausible in the Parties' view that such a modest increase could create such an incentive to foreclose.

(B) The Commission's assessment

(454) With respect to the risk of customer foreclosure, the Commission observes that the presence of the merged entity in the downstream market is below 30% and therefore, that the merged entity would not have the ability to engage in input foreclosure after the Transaction.

(455) With respect to the risk of input foreclosure, the Commission considers that a number of factors indicate that the merged entity would likely have no ability, nor incentive, to foreclose access to the upstream market for the wholesale supply of pay TV channels for children content.

(B.i) Ability to engage in total or partial input foreclosure

(456) The Commission considers that the merged entity will not have the ability to engage in foreclosure by restricting access to the merged entity's pay TV channels for children content, to rival retailers active downstream in the retail supply of pay AV services, and the retail supply of non-linear pay AV services (SVOD services), for the following reasons.

(457) First, input foreclosure may raise competition problems only if it concerns an important input for the downstream product, for instance because it is a critical component, or because it is a significant source of product differentiation.[220] The affected vertical relationship links an upstream market as narrowly defined on the basis of its thematic content, with downstream markets which, to the contrary, include various types of thematic content. During the market investigation, a majority of the respondents explained that the segmentation of TV channels by thematic content is not relevant to assess the situation in Bulgaria today, and that

220 Non-Horizontal Merger Guidelines, paragraph 34.

there are many TV channels offered in the market which are not specialised by genre. Additionally, none of the market participants considered that TV channels specialised in content targeted to children constitute an input of particular importance to compete in the market for the retail supply of AV services.[221] This suggests that pay TV channels specialized in content targeted to children cannot be considered to be particularly important inputs for the downstream markets for (i) the retail supply of pay AV services, and (ii) the retail supply of non-linear pay AV services (or SVOD services) in Bulgaria.

(458) Second, for an input foreclosure concern to arise, the vertically integrated firm resulting from the merger must have a significant degree of market power in the upstream market, such that reducing access to the merged entity's upstream product could negatively affect the overall availability of inputs or the downstream markets in terms of price or quality.[222] However, the Transaction will not strengthen the merged entity's position in the relevant upstream market because only WarnerMedia is active in the wholesale supply of pay TV channels for children content, with a market share that is below 40%, and therefore not in itself representative of a very large market position.[223] Additionally, the presence of sufficient existing or potential alternatives in the market for the wholesale supply of TV channels for children content is supported by the market investigation where one respondent explained that: "*broadcasters [of non-genre specific TV channels can easily start producing specialized TV channels – they already have different types of content and can easily acquire further content of a given genre – provided that this is profitable due to the current market situation.*"[224]

(459) Third, the Commission observes that the affected vertical relationship is pre-existing to the Transaction, as WarnerMedia is also active in the downstream markets, and there is no evidence of an input foreclosure strategy currently in place. Additionally, considering the very limited combined market shares and increments in the two downstream markets considered, there is no evidence to suggest that the Transaction will alter any existing risk of anticompetitive input foreclosure.

(460) Therefore, the Commission considers that there are sufficient economic alternatives for the downstream rivals to have adequate access to inputs, without incurring significantly higher costs, and that the merged entity would lack the ability to engage into an input foreclosure strategy.

(B.ii) Incentive to engage in total or partial input foreclosure

(461) The Commission considers that the merged entity will likely not have the incentives to engage in foreclosure by restricting access to the merged entity's pay TV channels for children content, to rival suppliers active in the downtream markets for (i) the retail supply of pay AV services and (ii) the retail supply of non-linear pay AV services.

221 Responses to questionnaire Q7 – Questionnaires to market participants in the AV sector (Bulgaria), questions 11, 11.1, 11.1.1, 14.2, and 14.2.1.

222 Non-Horizontal Merger Guidelines, paragraph 35 and 36.

223 Horizontal Merger Guidelines, paragraph 17.

224 Responses to questionnaire Q7 – Questionnaires to market participants in the AV sector (Bulgaria), question 11.1.1.

(462) The presence of the Parties downstream in the markets the retail supply of pay AV services, and the retail supply of non-linear pay AV services (or SVOD services), is very limited, and therefore that the current incentives to supply content to downstream retailers will remain largely unchanged post-Transaction. More particularly, the Commission observes that the Parties would bear the full cost of a hypothetical input foreclosure strategy, but would reap only a small fraction of any hypothetical benefits with such a low combined share in the downstream markets (below [5-10]%). The Parties' low combined share suggests that customers switching from an AV retail supplier that the Parties tried to foreclose would be more likely to switch to rivals than to the merged entity.

(463) In any event, given the lack of ability to foreclose, it is not necessary to conclude as to whether the merged entity will have the incentive to implement a strategy aimed at foreclosing competing downstream rivals active in the markets for the retail supply of pay AV services, and the retail supply of non-linear pay AV services (or SVOD services), from accessing its pay TV channels for children content in Bulgaria.

(B.iii) Conclusion

(464) In view of the above, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to potential input foreclosure with respect to the vertical relationships between the market for the wholesale supply of pay TV channels for children content (upstream), and the markets for (i) the retail supply of pay AV services, and (ii) the retail supply of non-linear pay AV services or SVOD services, (downstream) in Bulgaria.

5.5.4.2. Finland

(465) In Finland, the upstream markets for (i) the wholesale supply of pay TV channels (where only Discovery is active with [40-50]% market share in TV audience), (ii) the wholesale supply of pay TV channels for sports content (where only Discovery is active with [40-50]% market share in TV audience), and (iii) the wholesale supply of pay TV channels for other content (where only Discovery is active with [70-80]% market share in TV audience); are vertically affected due to their connection with the downstream markets for (i) the retail supply of pay AV services (where the Parties' combined market share is [5-10]% in revenue), and (ii) the retail supply of non-linear pay AV services (or SVOD services) (where the Partie's combined market share is [20-30]% in subscriptions).

(A) The Notifying Party's view

(466) As regards customer foreclosure, the Notifying Party notes that, due to the merged entity's limited presence in the downstream markets post-Transaction (always below 30%), there is no risk of customer foreclosure.

(467) As regards input foreclosure, the Notifying Party notes that the merged entity would have neither the ability nor the incentive to pursue a total or partial input foreclosure strategy, and that any such input foreclosure strategies would have no significant effect on effective competition.

(468) From the outset, the Notifying Party submits that already today and independently of the Transaction, both Parties are active at several levels of the audio-visual content

supply chain. Notwithstanding this vertical integration, there has not been any evidence to date of any foreclosure concerns, and that this will not change post-Transaction. There is only one Party present in the upstream market, and both Parties are present pre-Transaction in the downstream markets, such that there is no new link created by the Transaction. This means that the Transaction does not create (or, if there was any ability pre-Transaction, add to) the ability to engage in vertical foreclosure.

(469) Additionally, the Notifying Party argues that, to sustain a theory of harm based on input foreclosure, the increase in the downstream share would need to be sufficient to create an incentive to engage in vertical foreclosure post-Transaction. By contrast, the Transaction leads to only a modest increase in downstream share (notably in the market for the retail supply of pay AV services) and hence it is not plausible in the Parties' view that such a modest increase could create such an incentive to foreclose.

(470) With respect to the market for the retail supply of non-linear pay AV services (or SVOD services), where the merged entity's market share will be slightly higher, the Notifying Party submits that in Finland, the Parties do not supply downstream SVOD competitors with linear channels. Therefore, the Parties have no ability to engage in input foreclosure. The Notifying Party also argues that in any event, retail platforms can source their content (in the form of programs, formats, series, films, etc. and not merely TV channels) from a wide range of sources, locally or internationally, and hence that wholesale suppliers of TV channels are constrained by a multitude of AV suppliers.[225]

(B) The Commission's assessment

(471) With respect to the risk of customer foreclosure, the Commission observes that the presence of the merged entity in the downstream market is below 30% and therefore, that the merged entity would not have the ability to engage in customer foreclosure after the Transaction.

(472) With respect to the risk of input foreclosure, the Commission considers that a number of factors indicate that the merged entity would likely have no ability, nor incentive, to foreclose access to the upstream markets for (i) the wholesale supply of pay TV channels, (ii) the wholesale supply of pay TV channels for sports content, and (iii) the wholesale supply of pay TV channels for other content.

(B.i) Ability to engage in total or partial input foreclosure

(473) The Commission considers that the merged entity will not have the ability to engage in foreclosure by restricting access to the merged entity's pay TV channels, pay TV channels for sports content, and pay TV channels for other content; to rival retailers active downstream in the retail supply of pay AV services, and the retail supply of non-linear pay AV services (SVOD services), for the following reasons.

(474) First, input foreclosure may raise competition problems only if it concerns an important input for the downstream product, for instance because it is a critical component, or because it is a significant source of product differentiation.[226] Except for the upstream markets for the wholesale supply of pay TV channels, the affected

225 Chapter 7 to the Form CO, paragraph 131.
226 Non-Horizontal Merger Guidelines, paragraph 34.

vertical relationships link upstream markets which are narrowly defined on the basis of their thematic content, with downstream markets which, to the contrary, include various type of thematic content. During the market investigation, a majority of the respondents explained that the segmentation of TV channels by thematic content is not relevant to assess the situation in Finland today, and that there are many TV channels offered in the market which are not specialised by genre. Additionally, none of the market participants raised the concern that TV channels specialised in sports content and/or other content constitute an input of particular importance to compete in the market for the retail supply of AV services.[227] This suggest that pay TV channels specialized in sports content and/or other content cannot be considered to be particularly important inputs for the downstream markets for (i) the retail supply of pay AV services, and (ii) the retail supply of non-linear pay AV services (or SVOD services) in Finland.

(475) Second for input foreclosure to be a concern, the vertically integrated firm resulting from the merger must have a significant degree of market power in the upstream market, such that reducing access to the merged entity's upstream product could negatively affect the overall availability of inputs or the downstream markets in terms of price or quality.[228] However, the Transaction will not strengthen the merged entity's position in the relevant upstream markets because only Discovery is active in (i) the wholesale supply of pay TV channels, (ii) the wholesale supply of pay TV channels for sports content, and (iii) the wholesale supply of pay TV channels for other content. Additionally, the Commission observes that the affected vertical relationship is pre-existing to the Transaction, as Discovery is also active in the downstream markets, and there is no evidence of an input foreclosure strategy currently in place.

(476) Third, considering the very limited combined market shares and increments on the the downstream market for the retail supply of pay AV services, there is no evidence to suggest that the Transaction will alter the existing risk of anticompetitive input foreclosure.

(477) Fourth, the downstream market for the retail supply of non-linear pay AV services (SVOD services), where the Parties have a higher combined market share, is a relatively recent and dynamic market which has been largely impacted by the technological advances (e.g., internet accessibility), and evolving consumer habits (e.g., consumption of on demand content). TV channels do not represent the most important input for retailers of SVOD services, which can also acquire valuable input in the form of un-aggregated content directly from other actors active in the market for the production of AV content or the market for the licensing of AV content. The market investigation also confirmed that the traditional three-layer classification fails to properly take into account the markets dynamics resulting from Direct-to-Consumer services, as the frontiers between the different layers are becoming increasingly blurred as a consequence of the global market trend for vertical integration. In particular, one respondent explained that: "*Examples of the recent and significant changes in the AV value chain are […] SVOD providers like Netflix competing directly with pay TV for end-costumers and operating as vertically integrated service providers […]; and Broadcasters operating in retail with their*

227 Responses to questionnaire Q3 – Questionnaires to market participants in the AV sector (Finland), questions 11.1 and 11.1.1.

228 Non-Horizontal Merger Guidelines, paragraph 35 and 36.

own DtC (direct to consumer) streaming services (digital subscriptions), thereby bypassing traditional distributors for end-customer relationships."[229]

(478) Therefore, the Commission considers that there are sufficient economic alternatives for the downstream rivals to have adequate access to inputs, without incurring significantly higher costs, and that the merged entity would lack the ability to engage into an input foreclosure strategy.

(B.ii) Incentive to engage in total or partial input foreclosure

(479) The Commission considers that the merged entity will likely not have the incentives to engage in foreclosure by restricting access to the merged entity's pay TV channels, pay TV channels for sports content, and pay TV channels for other content, to rival suppliers active in the downstream markets for (i) the retail supply of pay AV services and (ii) the retail supply of non-linear pay AV services, for the following reasons.

(480) First, the presence of the Parties , and therefore the current incentives to supply content to downstream retailers on the downstream market for the retail supply of pay AV serviceswill remain largely unchanged post-Transaction. More particularly, the Commission observes that the Parties would bear the full cost of a hypothetical input foreclosure strategy, but would reap only a small fraction of any hypothetical benefits with such a low combined share in the downstream markets (around [5-10]%). The Parties' low combined share suggests that customers switching from an AV retail supplier that the Parties tried to foreclose would be more likely to switch to rivals than to the merged entity.

(481) Second, both Parties are active on to the downstream market for the retail supply of non-linear pay AV services (or SVOD services), where the Parties have a higher combined market share, through platforms of very differentiated focus. Discovery only has [0-5]% market share with the Discovery+ and Eurosport Player SVOD services, focusing on general entertainment and sports content. WarnerMedia has [20-30]% market share with the SVOD services associated with HBO, focusing on premium films and TV series content. Post-Transacion, any additional market power downstream would come from WarnerMedia's SVOD services. Additionally, WarnerMedia's SVOD services are not likely to benefit from Discovery's TV channels which, due to their focus, would not represent a critical input. Therefore, the current incentives to supply content to downstream retailers will remain largely unchanged post-Transaction. More particularly, the Commission observes that the Parties would bear the full cost of a hypothetical input foreclosure strategy, but would reap only a small fraction of any hypothetical benefits, as Discovery's TV channels are not likely to lead to a significant increase in the number of subscribers of the merged entity's SVOD services.

(482) In any event, given the lack of ability to foreclose, it is not necessary to conclude as to whether the merged entity will have the incentive to implement a strategy aimed at foreclosing competing downstream rivals active in the markets for the retail supply of pay AV services, and the retail supply of non-linear pay AV services (or SVOD services), from accessing its pay TV channels, pay TV channels for sports content, and pay TV channels for other content, in Finland.

229 Responses to questionnaire Q3 – Questionnaires to market participants in the AV sector (Finland), question 5.1.

(B.iii) Conclusion

(483) In view of the above, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to potential input foreclosure with respect to the vertical relationships between the markets for (i) the wholesale supply of pay TV channels (upstream), (ii) the wholesale supply of pay TV channels for sports content (upstream), and (iii) the wholesale supply of pay TV channels for other content (upstream); and the markets for (i) the retail supply of pay AV services (downstream), and (ii) the retail supply of non-linear pay AV services (or SVOD services) (downstream), in Finland.

5.5.4.3. Italy

(484) In Italy, the upstream markets for (i) the wholesale supply of TV channels for children content (where the Parties' combined market share is [50-60]% in TV audience), and (ii) the wholesale supply of FTA TV channels for children content (where the Parties' combined market share is [50-60]% in TV audience); are vertically affected due to their connection with the downstream markets for (i) the retail supply of pay AV services (where only Discovery is active with [0-5]% market share revenue), (ii) the retail supply of non-linear pay AV services (or SVOD services) (where only Discovery is active with [0-5]% market share in subscriptions), and (iii) the retail supply of non-linear FTA AV services (or AVOD services) (where only Discovery is active with [0-5]% market share Revenue).

(A) The Notifying Party's view

(485) As regards customer foreclosure, the Notifying Party notes that, due to the merged entity's limited presence in the downstream markets post-Transaction, there is no risk of customer foreclosure.

(486) As regards input foreclosure, the Notifying Party notes that the merged entity would have neither the ability nor the incentive to pursue a total or partial input foreclosure strategy, and that any such input foreclosure strategies would have no significant effect on effective competition.

(487) From the outset, the Notifying Party submits that already today and independently of the Transaction, both Parties are active at several levels of the audio-visual content supply chain. Notwithstanding this vertical integration, there has not been any evidence to date of any foreclosure concerns, and this will not change post-Transaction. There is only one Party present in the upstream market, and both Parties are present pre-Transaction in the downstream markets, such that there is no new link created by the Transaction. This means that the Transaction does not create (or, if there was any ability pre-Transaction, add to) the ability to engage in vertical foreclosure.

(488) Additionally, the Notifying Party argues that, to sustain a theory of harm based on input foreclosure, the increase in the downstream share would need to be sufficient to create an incentive to engage in vertical foreclosure post-Transaction. By contrast, the Transaction leads to only a modest increase in downstream share and hence it is not plausible in the Parties' view that such a modest increase could create such an incentive to foreclose.

(B) The Commission's assessment

(489) With respect to the risk of customer foreclosure, the Commission observes that the presence of the merged entity in the downstream market is below 30% and therefore, that the merged entity would not have the ability to engage in customer foreclosure after the Transaction.

(490) With respect to the risk of input foreclosure, the Commission considers that a number of factors indicate that the merged entity would likely have no ability, nor incentive, to foreclose access to the upstream markets for (i) the wholesale supply of TV channels for children content, and (ii) the wholesale supply of FTA TV channels for children content.

(B.i) Ability to engage in total or partial input foreclosure

(491) The Commission considers that the merged entity will not have the ability to engage in foreclosure by restricting access to the merged entity's pay TV channels for children content, to rival retailers active downstream in the retail supply of pay AV services, the retail supply of non-linear pay AV services (SVOD services), and the retail supply of non-linear FTA AV services (AVOD services), for the following reasons.

(492) First, input foreclosure may raise competition problems only if it concerns an important input for the downstream product, for instance because it is a critical component, or because it is a significant source of product differentiation.[230] The affected vertical relationships link upstream markets which are narrowly defined on the basis thematic content, with downstream markets which, to the contrary, include various type of thematic content. During the market investigation, although a majority of the respondents explained that the segmentation of TV channels by thematic content could be relevant to assess the situation in Italy today, the market investigation also suggested that providers of retail AV services wish to offer a complementary range of genres, and have flexibility regarding the composition of their offering.[231] This suggests that TV channels specialized in content targeted to children cannot be considered to be particularly important inputs for the downstream markets for (i) the retail supply of pay AV services, (ii) the retail supply of non-linear pay AV services (or SVOD services), and (iii) the retail supply of non-linear FTA AV services (or AVOD services) in Italy.

(493) Second, for input foreclosure to be a concern, the vertically integrated firm resulting from the merger must have a significant degree of market power in the upstream market, such that reducing access to the merged entity's upstream product could negatively affect the overall availability of inputs or the downstream markets in terms of price or quality.[232] However, as already explained in Section 5.4.4, the Transaction will not strengthen the merged entity's position in the relevant upstream markets, notably due to the existence of sufficient alternative suppliers, the competitive constraint exercised by retail AVOD service on FTA TV channels, and the fact that WarnerMedia's FTA TV channels for children content available in Italy

230 Non-Horizontal Merger Guidelines, paragraph 34.

231 Responses to questionnaire Q1 – Questionnaires to market participants in the AV sector (Italy), question 15.1 and 15.1.1.

232 Non-Horizontal Merger Guidelines, paragraph 35 and 36.

are solely supplied through Boing with Mediaset, [DURATION OF THE AGREEMENT BETWEEN WARNERMEDIA AND MEDIASET].

(494) Third, the Commission observes that the affected vertical relationship is pre-existing to the Transaction, as Discovery is also active in the downstream markets, and there is no evidence of an input foreclosure strategy currently in place. Additionally, considering the very limited combined market shares and increments in the two downstream markets considered, there is no evidence to suggest that the Transaction will alter the existing risk of anticompetitive input foreclosure.

(495) Therefore, the Commission considers that the merged entity would lack the ability to engage into an input foreclosure strategy.

(B.ii) Incentive to engage in total or partial input foreclosure

(496) The Commission considers that the merged entity will likely not have the incentives to engage in foreclosure by restricting access to the merged entity's TV channels for children content and FTA TV channels for children content, to rival suppliers active in the downtream markets for (i) the retail supply of pay AV services and (ii) the retail supply of non-linear pay AV services.

(497) The presence of the Parties downstream in the markets the retail supply of pay AV services, and the retail supply of non-linear pay AV services (or SVOD services), is very limited, and therefore that the current incentives to supply content to downstream retailers will remain largely unchanged post-Transaction. More particularly, the Commission observes that the Parties would bear the full cost of a hypothetical input foreclosure strategy, but would reap only a small fraction of any hypothetical benefits with such a low combined share in the downstream markets (below [0-5]%). The Parties' low combined share suggests that customers switching from an AV retail supplier that the Parties tried to foreclose would be more likely to switch to rivals than to the merged entity.

(498) In any event, given the lack of ability to foreclose, it is not necessary to conclude as to whether the merged entity will have the incentive to implement a strategy aimed at foreclosing competing downstream rivals active in the markets for the retail supply of pay AV services, and the retail supply of non-linear pay AV services (or SVOD services), from accessing its TV channels for children content and FTA TV channels for children content in Italy.

(B.iii) Conclusion

(499) In view of the above, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to potential input foreclosure with respect to the vertical relationships between the markets for (i) the wholesale supply of TV channels for children content (upstream), (ii) the wholesale supply of FTA TV channels for children content (upstream); and (i) the retail supply of pay AV services (downstream), (ii) the retail supply of non-linear pay AV services (or SVOD services) (downstream), and (iii) the retail supply of non-linear FTA AV services (or AVOD services) (downstream), in Italy.

5.5.4.4. Norway

(500) In Norway, the upstream market for the wholesale supply of pay TV channels for sports content (where only Discovery is active with [40-50]% market share in TV audience), is vertically affected due to its connection with the downstream markets for (i) the retail supply of pay AV services (where the Parties' combined market share is [5-10]% in Revenue), and (ii) the retail supply of non-linear pay AV services (or SVOD services) (where the Partie's combined market share is [20-30]% in subscriptions).

(A) The Notifying Party's view

(501) As regards customer foreclosure, the Notifying Party notes that, due to the merged entity's limited presence in the downstream markets post-Transaction, there is no risk of customer foreclosure.

(502) As regards input foreclosure, the Notifying Party notes that the merged entity would have neither the ability nor the incentive to pursue a total or partial input foreclosure strategy, and that any such input foreclosure strategies would have no significant effect on effective competition.

(503) From the outset, the Notifying Party submits that already today and independently of the Transaction, both Parties are active at several levels of the audio-visual content supply chain. Notwithstanding this vertical integration, there has not been any evidence to date of any foreclosure concerns, and that this will not change post-Transaction. There is only one Party present in the upstream market, and both Parties are present pre-Transaction in the downstream markets, such that there is no new link created by the Transaction. This means that the Transaction does not create (or, if there was any ability pre-Transaction, add to) the ability to engage in vertical foreclosure.

(504) Additionally, the Notifying Party argues that, to sustain a theory of harm based on input foreclosure, the increase in the downstream share would need to be sufficient to create an incentive to engage in vertical foreclosure post-Transaction. By contrast, the Transaction leads to only a modest increase in downstream share (notably in the market for the retail supply of pay AV services) and hence it is not plausible in the Parties' view that such a modest increase could create such an incentive to foreclose.

(505) With respect to the market for the retail supply of non-linear pay AV services (or SVOD services), where the merged entity's market share will be slightly higher, the Notifying Party submits that in Norway, the Parties do not supply downstream SVOD competitors with linear channels. Therefore, the Parties have no ability to engage in input foreclosure. The Notifying Party also argues that in any event, retail platforms can source their content (in the form of programs, formats, series, films, etc. and not merely TV channels) from a wide range of sources, locally or internationally, and hence that wholesale suppliers of TV channels are constrained by a multitude of AV suppliers.[233]

233 Chapter 7 to the Form CO, paragraph 165.

(B) The Commission's assessment

(506) With respect to the risk of customer foreclosure, the Commission observes that the presence of the merged entity in the downstream market is below 30% and therefore, that the merged entity would not have the ability to engage in customer foreclosure after the Transaction.

(507) With respect to the risk of input foreclosure, the Commission considers that a number of factors indicate that the merged entity would likely have no ability, nor incentive, to foreclose access to the upstream market for the wholesale supply of pay TV channels for sports content.

(B.i) Ability to engage in total or partial input foreclosure

(508) The Commission considers that the merged entity will not have the ability to engage in foreclosure by restricting access to the merged entity's pay TV channels for sports content, to rival retailers active downstream in the retail supply of pay AV services, and the retail supply of non-linear pay AV services (SVOD services), for the following reasons.

(509) First, input foreclosure may raise competition problems only if it concerns an important input for the downstream product, for instance because it is a critical component, or because it is a significant source of product differentiation.[234] The affected vertical relationships link one upstream market which is narrowly defined on the basis of its thematic content, with downstream markets which, to the contrary, include various type of thematic content. During the market investigation, a majority of the respondents explained that the segmentation of TV channels by thematic content is not relevant to assess the situation in Norway today, and that there are many TV channels offered in the market which are not specialised by genre. Additionally, none of the market participants raised the concern that TV channels specialised in sports content constitute an input of particular importance to compete in the market for the retail supply of AV services.[235] This suggest that pay TV channels specialized in sports content cannot be considered to be particularly important inputs for the downstream markets for (i) the retail supply of pay AV services, and (ii) the retail supply of non-linear pay AV services (or SVOD services) in Norway.

(510) Second for input foreclosure to be a concern, the vertically integrated firm resulting from the merger must have a significant degree of market power in the upstream market, such that reducing access to the merged entity's upstream product could negatively affect the overall availability of inputs or the downstream markets in terms of price or quality.[236] However, the Transaction will not strengthen the merged entity's position in the relevant upstream markets because only Discovery is active in the wholesale supply of pay TV channels for sports content. Additionally, the Commission observes that the affected vertical relationship is pre-existing to the Transaction, as Discovery is also active in the downstream markets, and there is no evidence of an input foreclosure strategy currently in place.

234 Non-Horizontal Merger Guidelines, paragraph 34.

235 Responses to questionnaire Q9 – Questionnaires to market participants in the AV sector (Norway), questions 11.1 and 11.1.1.

236 Non-Horizontal Merger Guidelines, paragraph 35 and 36.

(511) Third, with respect to the downstream market for the retail supply of pay AV services, considering the very limited combined market shares and increments on the market, there is no evidence to suggest that the Transaction will alter the existing risk of anticompetitive input foreclosure.

(512) Fourth, the downstream market for the retail supply of non-linear pay AV services (SVOD services), where the Parties have a higher combined market share, is a relatively recent and dynamic market which has been largely impacted by the technological advances (e.g., internet accessibility), and evolving consumer habits (e.g., consumption of on demand content). TV channels do not represent the most important input for retailers of SVOD services, which can also acquire valuable input in the form of un-aggregated content directly from other actors active in the market for the production of AV content or the market for the licensing of AV content. The market investigation also confirmed that the traditional three-layer classification fails to properly take into account the markets dynamics resulting from Direct-to-Consumer services, as the frontiers between the different layers are becoming increasingly blurred as a consequence of the global market trend for vertical integration.[237]

(513) Therefore, the Commission considers that there are sufficient economic alternatives for the downstream rivals to have adequate access to inputs, without incurring significantly higher costs, and that the merged entity would lack the ability to engage into an input foreclosure strategy.

(B.ii) Incentive to engage in total or partial input foreclosure

(514) The Commission considers that the merged entity will likely not have the incentives to engage in foreclosure by restricting access to the merged entity's pay TV channels for sports content, to rival suppliers active in the downtream markets for (i) the retail supply of pay AV services and (ii) the retail supply of non-linear pay AV services, for the following reasons.

(515) First, the presence of the Parties, and therefore the current incentives to supply content to downstream retailers will remain largely unchanged post-Transaction on the downstream market for the retail supply of pay AV services, . More particularly, the Commission observes that the Parties would bear the full cost of a hypothetical input foreclosure strategy, but would reap only a small fraction of any hypothetical benefits with such a low combined share in the downstream markets (below [5-10]%). The Parties' low combined share suggests that customers switching from an AV retail supplier that the Parties tried to foreclose would be more likely to switch to rivals than to the merged entity.

(516) Second, both Parties are active in the market on the downstream market for the retail supply of non-linear pay AV services (or SVOD services), where the Parties have a higher combined market share, through platforms of very differentiated focus. Discovery only has [10-20]% market share with the Discovery+ and Eurosport Player SVOD services, focusing on general entertainment and sports content. WarnerMedia has [10-20]% market share with the SVOD services associated with HBO, focusing on premium films and TV series content. Post-Transacion, any

237 Responses to questionnaire Q9 – Questionnaires to market participants in the AV sector (Norway), questions 5.1 and 5.2.

additional market power downstream would come from WarnerMedia's SVOD services. Additionally, WarnerMedia's SVOD services are not likely to beneficiate from Discovery's TV channels which, due to their focus, would not represent a critical input. Therefore, the current incentives to supply content to downstream retailers will remain largely unchanged post-Transaction. More particularly, the Commission observes that the Parties would bear the full cost of a hypothetical input foreclosure strategy, but would reap only a small fraction of any hypothetical benefits, as Discovery's TV channels are not likely to lead to a significant increase in the number of subscribers of the merged entity's SVOD services.

(517) In any event, given the lack of ability to foreclose, it is not necessary to conclude as to whether the merged entity will have the incentive to implement a strategy aimed at foreclosing competing downstream rivals active in the markets for the retail supply of pay AV services, and the retail supply of non-linear pay AV services (or SVOD services), from accessing its pay TV channels, pay TV channels for sports content, and pay TV channels for other content, in Norway.

(B.iii) Conclusion

(518) In view of the above, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to potential input foreclosure with respect to the vertical relationships between the market for the wholesale supply of pay TV channels for sports content (upstream); and (i) the retail supply of pay AV services (downstream), and (ii) the retail supply of non-linear pay AV services (or SVOD services) (downstream), in Norway.

5.5.4.5. Poland

(519) In Poland, the upstream markets for (i) the wholesale supply of TV channels for news content (where only Discovery is active with [40-50]% market share in TV audience), (ii) the wholesale supply of pay TV channels (where the Parties' combined market share is [30-40]% in TV audience), (iii) the wholesale supply of pay TV channels for sports content (where only Discovery is active with [30-40]% market share in TV audience), and (iv) the wholesale supply of pay TV channels for news content (where only Discovery is active with [70-80]% market share in TV audience), are vertically affected due to their connection with the downstream markets for (i) the retail supply of pay AV services (where the Parties' combined market share is [0-5]% in revenue), and (ii) the retail supply of non-linear pay AV services (or SVOD services) (where the Partie's combined market share is [5-10]% in subscriptions).

(A) The Notifying Party's view

(520) As regards customer foreclosure, the Notifying Party notes that, due to the merged entity's limited presence in the downstream markets post-Transaction, there is no risk of customer foreclosure.

(521) As regards input foreclosure, the Notifying Party notes that the merged entity would have neither the ability nor the incentive to pursue a total or partial input foreclosure strategy, and that any such input foreclosure strategies would have no significant effect on effective competition.

(522) From the outset, the Notifying Party submits that already today and independently of the Transaction, both Parties are active at several levels of the audio-visual content supply chain. Notwithstanding this vertical integration, there has not been any evidence to date of any foreclosure concerns, and this will not change post-Transaction. There is at least one Party present in the upstream markets, and both Parties are present pre-Transaction in the downstream markets, such that there is no new link created by the Transaction. This means that the Transaction does not create (or, if there was any ability pre-Transaction, add to) the ability to engage in vertical foreclosure.

(523) Additionally, the Notifying Party argues that, to sustain a theory of harm based on input foreclosure, the increase in the downstream share would need to be sufficient to create an incentive to engage in vertical foreclosure post-Transaction. By contrast, the Transaction leads to only a modest increase in downstream share and hence it not plausible in the Parties' view that such a modest increase could create such an incentive to foreclose.

(B) The Commission's assessment

(524) With respect to the risk of customer foreclosure, the Commission observes that the presence of the merged entity in the downstream market is below 30% and therefore, that the merged entity would not have the ability to engage in customer foreclosure after the Transaction.

(525) With respect to the risk of input foreclosure, the Commission considers that a number of factors indicate that the merged entity would likely have no ability, nor incentive, to foreclose access to the upstream markets for (i) the wholesale supply of TV channels for news content, (ii) the wholesale supply of pay TV channels, (iii) the wholesale supply of pay TV channels for sports content, and (iv) the wholesale supply of pay TV channels for news content.

(B.i) Ability to engage in total or partial input foreclosure

(526) The Commission considers that the merged entity will not have the ability to engage in foreclosure by restricting access to the merged entity's TV channels for news content, pay TV channels, pay TV channels for sports content, and pay TV channels for news content, to rival retailers active downstream in the retail supply of pay AV services, and the retail supply of non-linear pay AV services (SVOD services), for the following reasons.

(527) First, input foreclosure may raise competition problems only if it concerns an important input for the downstream product, for instance because it is a critical component, or because it is a significant source of product differentiation.[238] Except for the wholesale supply of pay TV channels, the affected vertical relationships link upstream markets which are narrowly defined on the basis of thematic content, with downstream markets which, to the contrary, include various type of thematic content. During the market investigation, a majority of the respondents explained that the segmentation of TV channels by thematic content is not relevant to assess the situation in Poland today.[239] This suggests that specialised TV channels should

238 Non-Horizontal Merger Guidelines, paragraph 34.

239 Responses to questionnaire Q10 – Questionnaires to market participants in the AV sector (Poland), questions 11 and 11.1.

not be considered to be particularly important inputs for the downstream markets for (i) the retail supply of pay AV services, and (ii) the retail supply of non-linear pay AV services (or SVOD services) in Poland.

(528) Second, for input foreclosure to be a concern, the vertically integrated firm resulting from the merger must have a significant degree of market power in the upstream market, such that reducing access to the merged entity's upstream product could negatively affect the overall availability of inputs or the downstream markets in terms of price or quality.[240] However, the Transaction will not strengthen the merged entity's position in the relevant upstream market as the Commission observes that the affected vertical relationship is pre-existing to the Transaction. Indeed, whenever one Party is active upstream, it is also active in the downstream markets, and there is no evidence of an input foreclosure strategy currently in place. Additionally, considering the very limited combined market shares and increments in the downstream markets considered, there is no evidence to suggest that the Transaction will alter the existing risk of anticompetitive input foreclosure.

(529) Third, from the market shares provided by the Parties, the Commission observes that in all of the relevant upstream markets where the merged entity will be active in Poland, several alternative suppliers will continue to exercise sufficient competitive constraint on the Parties. More particularly, the competitor Polsat will represent a major competitor to the merged entity in in the upstream markets for (i) the wholesale supply of TV channels for news content, (ii) the wholesale supply of pay TV channels, (iii) the wholesale supply of pay TV channels for sports content, and (iv) the wholesale supply of pay TV channels for news content. [241]

(530) Therefore, the Commission considers that there are sufficient economic alternatives for the downstream rivals to have adequate access to inputs, without incurring significantly higher costs, and that the merged entity would lack the ability to engage into an input foreclosure strategy.

(B.ii) Incentive to engage in total or partial input foreclosure

(531) The Commission considers that the merged entity will likely not have the incentives to engage in foreclosure by restricting access to the merged entity's TV channels for news, pay TV channels, pay TV channels for news content, and pay TV channels for sports content, to rival suppliers active in the downtream markets for (i) the retail supply of pay AV services and (ii) the retail supply of non-linear pay AV services.

(532) The presence of the Parties downstream in the markets the retail supply of pay AV services, and the retail supply of non-linear pay AV services (or SVOD services), is very limited, and therefore the current incentives to supply content to downstream retailers will remain largely unchanged post-Transaction. More particularly, the Commission observes that the Parties would bear the full cost of a hypothetical input foreclosure strategy, but would reap only a small fraction of any hypothetical benefits with such a low combined share in the downstream markets (below [5-10]%). The Parties' low combined share suggests that customers switching from an AV retail supplier that the Parties tried to foreclose would be more likely to switch to rivals than to the merged entity.

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240 Non-Horizontal Merger Guidelines, paragraph 35 and 36.

241 See the relevant market shares in Section 5.3.8 of this decision.

(533) In any event, given the lack of ability to foreclose, it is not necessary to conclude as to whether the merged entity will have the incentive to implement a strategy aimed at foreclosing competing downstream rivals active in the markets for the retail supply of pay AV services, and the retail supply of non-linear pay AV services (or SVOD services), from accessing its TV channels for news content, pay TV channels, pay TV channels for news content, and pay TV channels for sports content, in Poland.

(B.iii) Conclusion

(534) In view of the above, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to potential input foreclosure with respect to the vertical relationships between the markets for (i) the wholesale supply of TV channels for news content (upstream), (ii) the wholesale supply of pay TV channels (upstream), (iii) the wholesale supply of pay TV channels for sports content (upstream), and (iv) the wholesale supply of pay TV channels for news content (upstream); and (i) the retail supply of pay AV services (downstream), and (ii) the retail supply of non-linear pay AV services (or SVOD services) (downstream), in Poland.

5.5.4.6. Romania

(535) In Romania, the upstream market for the wholesale supply of pay TV channels for children content (where only WarnerMedia is active with [30-40]% market share in TV audience), is vertically affected due to its connection with the downstream markets for (i) the retail supply of pay AV services (where the Parties' combined market share is [0-5]% in revenue), and (ii) the retail supply of non-linear pay AV services (or SVOD services) (where the Parties' combined market share is [5-10]% in subscriptions).

(A) The Notifying Party's view

(536) As regards customer foreclosure, the Notifying Party notes that, due to the merged entity's limited presence in the downstream markets post-Transaction, there is no risk of customer foreclosure.

(537) As regards input foreclosure, the Notifying Party notes that the merged entity would have neither the ability nor the incentive to pursue a total or partial input foreclosure strategy, and that any such input foreclosure strategies would have no significant effect on effective competition.

(538) From the outset, the Notifying Party submits that already today and independently of the Transaction, both Parties are active at several levels of the audio-visual content supply chain. Notwithstanding this vertical integration, there has not been any evidence to date of any foreclosure concerns, and that this will not change post-Transaction. There is only one Party present in the upstream market, and both Parties are present pre-Transaction in the downstream markets, such that there is no new link created by the Transaction. This means that the Transaction does not create (or, if there was any ability pre-Transaction, add to) the ability to engage in vertical foreclosure.

(539) Additionally, the Notifying Party argues that, to sustain a theory of harm based on input foreclosure, the increase in the downstream share would need to be sufficient

to create an incentive to engage in vertical foreclosure post-Transaction. By contrast, the Transaction leads to only a modest increase in downstream share and hence it not plausible in the Parties' view that such a modest increase could create such an incentive to foreclose.

(B) The Commission's assessment

(540) With respect to the risk of customer foreclosure, the Commission observes that the presence of the merged entity in the downstream market is below 30% and therefore, that the merged entity would not have the ability to engage in customer foreclosure after the Transaction.

(541) With respect to the risk of input foreclosure, the Commission considers that a number of factors indicate that the merged entity would likely have no ability, nor incentive, to foreclose access to the upstream market for the wholesale supply of pay TV channels for children content.

(B.i) Ability to engage in total or partial input foreclosure

(542) The Commission considers that the merged entity will not have the ability to engage in foreclosure by restricting access to the merged entity's pay TV channels for children content, to rival retailers active downstream in the retail supply of pay AV services, and the retail supply of non-linear pay AV services (SVOD services), for the following reasons.

(543) First, input foreclosure may raise competition problems only if it concerns an important input for the downstream product, for instance because it is a critical component, or because it is a significant source of product differentiation.[242] The affected vertical relationship links an upstream market narrowly defined on the basis of its thematic content, with downstream markets which, to the contrary, include various type of thematic content. During the market investigation, a majority of the respondents explained that the segmentation of TV channels by thematic content is not relevant to assess the situation in Romania today, and that there are many TV channels offered in the market which are not specialised by genre. Additionally, non of the market participants consider that TV channels specialised in content targeted to children constitute an input of particular importance to compete in the market for the retail supply of AV services.[243] This suggest that pay TV channels specialized in content targeted to children cannot be considered to be particularly important inputs for the downstream markets for (i) the retail supply of pay AV services, and (ii) the retail supply of non-linear pay AV services (or SVOD services) in Romania.

(544) Second for input foreclosure to be a concern, the vertically integrated firm resulting from the merger must have a significant degree of market power in the upstream market, such that reducing access to the merged entity's upstream product could negatively affect the overall availability of inputs or the downstream markets in terms of price or quality.[244] However, the Transaction will not strengthen the merged entity's position in the relevant upstream market because only WarnerMedia is active in the wholesale supply of pay TV channels for children content, with a

242 Non-Horizontal Merger Guidelines, paragraph 34.

243 Responses to questionnaire Q6 – Questionnaires to market participants in the AV sector (Romania), questions 11.1 and 11.1.1.

244 Non-Horizontal Merger Guidelines, paragraph 35 and 36.

market share that is below 40%, and therefore not in itself representative of a very large market position.[245] Additionally, the presence of sufficient existing or potential alternatives in the market for the wholesale supply of TV channels for children content is supported by the market investigation where one respondent explained that: "*there is a high degree of supply-side substitutability regarding channel content. Wholesale suppliers of TV channels in Romania tend to produce both general TV channels (which are not genre-specific) and specialized TV channels.*", and indicated that: "*Many of the channels offered on the market do not specialize in certain genre, but they offer a mix of general interest content, which includes (among others) films, content for youth, sports and news*."[246]

(545) Third, the Commission observes that the affected vertical relationship is pre-existing to the Transaction, as WarnerMedia is also active in the downstream markets, and there is no evidence of an input foreclosure strategy currently in place. Additionally, considering the very limited combined market shares and increments on the two downstream markets considered, there is no evidence to suggest that the Transaction will alter the existing risk of anticompetitive input foreclosure.

(546) Therefore, the Commission considers that there are sufficient economic alternatives for the downstream rivals to have adequate access to inputs, without incurring significantly higher costs, and that the merged entity would lack the ability to engage into an input foreclosure strategy.

(B.ii) Incentive to engage in total or partial input foreclosure

(547) The Commission considers that the merged entity will likely not have the incentives to engage in foreclosure by restricting access to the merged entity's pay TV channels for children content, to rival suppliers active in the downtream markets for (i) the retail supply of pay AV services and (ii) the retail supply of non-linear pay AV services, for the following reason.

(548) First, the presence of the Parties downstream in the markets the retail supply of pay AV services, and the retail supply of non-linear pay AV services (or SVOD services), is very limited, and therefore that the current incentives to supply content to downstream retailers will remain largely unchanged post-Transaction. More particularly, the Commission observes that the Parties would bear the full cost of a hypothetical input foreclosure strategy, but would reap only a small fraction of any hypothetical benefits with such a low combined share in the downstream markets (below [5-10]%). The Parties' low combined share suggests that customers switching from an AV retail supplier that the Parties tried to foreclose would be more likely to switch to rivals than to the merged entity.

(549) In any event, given the lack of ability to foreclose, it is not necessary to conclude as to whether the merged entity will have the incentive to implement a strategy aimed at foreclosing competing downstream rivals active in the markets for the retail supply of pay AV services, and the retail supply of non-linear pay AV services (or SVOD services), from accessing its pay TV channels for children content in Romania.

245 Horizontal Merger Guidelines, paragraph 17.

246 Responses to questionnaire Q6 – Questionnaires to market participants in the AV sector (Romania), question 11.1.1.

(B.iii) Conclusion

(550) In view of the above, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to potential input foreclosure with respect to the vertical relationships between the markets for the wholesale supply of pay TV channels for children content (upstream); and (i) the retail supply of pay AV services (downstream), and (ii) the retail supply of non-linear pay AV services (or SVOD services) (downstream), in Romania.

5.5.4.7. Spain

(551) In Spain, the upstream markets for (i) the wholesale supply of FTA TV channels for children content (where only WarnerMedia is active with [30-40]% market share in TV audience), and (ii) the wholesale supply of pay TV channels for sports content (where only Discovery is active with [40-50]% market share in TV audience); are vertically affected due to their connection with the downstream markets for (i) the retail supply of pay AV services (where the Parties' combined market share is [0-5]% in revenue), and (ii) the retail supply of non-linear pay AV services (or SVOD services) (where the Parties' combined market share is [5-10]% in revenue).

(552) Furthermore, the wholesale supply of FTA TV channels for children content (where only WarnerMedia is active with [30-40]% market share in TV audience), is also vertically affected due to its connection the wholesale supply of non-linear FTA AV services (or AVOD services) (where only Discovery is active with [0-5]% market share in revenue).

(A) The Notifying Party's view

(553) As regards customer foreclosure, the Notifying Party notes that, due to the merged entity's limited presence in the downstream markets post-Transaction, there is no risk of customer foreclosure.

(554) As regards input foreclosure, the Notifying Party notes that the merged entity would have neither the ability nor the incentive to pursue a total or partial input foreclosure strategy, and that any such input foreclosure strategies would have no significant effect on effective competition.

(555) From the outset, the Notifying Party submits that already today and independently of the Transaction, both Parties are active at several levels of the audio-visual content supply chain. Notwithstanding this vertical integration, there has not been any evidence to date of any foreclosure concerns, and that this will not change post-Transaction. There is only one Party present in the upstream market, and both Parties are present pre-Transaction in the downstream markets, such that there is no new link created by the Transaction. This means that the Transaction does not create (or, if there was any ability pre-Transaction, add to) the ability to engage in vertical foreclosure.

(556) Additionally, the Notifying Party argues that, to sustain a theory of harm based on input foreclosure, the increase in the downstream share would need to be sufficient to create an incentive to engage in vertical foreclosure post-Transaction. By contrast, the Transaction leads to only a modest increase in downstream share and hence it not plausible in the Parties' view that such a modest increase could create such an incentive to foreclose.

(B) The Commission's assessment

(557) With respect to the risk of customer foreclosure, the Commission observes that the presence of the merged entity in the downstream market is below 30% and therefore, that the merged entity would not have the ability to engage in customer foreclosure after the Transaction.

(558) With respect to the risk of input foreclosure, the Commission considers that a number of factors indicate that the merged entity would likely have no ability, nor incentive, to foreclose access to the upstream markets for (i) the wholesale supply of FTA TV channels for children content, and (ii) the wholesale supply of pay TV channels for sports content.

(B.i) Ability to engage in total or partial input foreclosure

(559) The Commission considers that the merged entity will not have the ability to engage in foreclosure by restricting access to the merged entity's FTA TV channels for children content and pay TV channels for sports content, to rival retailers active downstream in the retail supply of pay AV services, the retail supply of non-linear pay AV services (SVOD services), and the retail supply of non-linear FTA AV services (AVOD services), for the following reasons.

(560) First, input foreclosure may raise competition problems only if it concerns an important input for the downstream product, for instance because it is a critical component, or because it is a significant source of product differentiation.[247] The affected vertical relationships link upstream markets wich are narrowly defined on the basis of its thematic content, with downstream markets which, to the contrary, include various type of thematic content. The market investigation yielded mixed results as to whether the segmentation of TV channels by thematic content is relevant or not to assess the situation in Spain today, and a few market participants considered that sports content could constitute a relevant segmentation in the market in Spain. However, none of the market participants consider that TV channels specialised in content targeted to children constitute an input of particular importance to compete in the market for the retail supply of AV services.[248] This suggests that FTA TV channels specialized in content targeted to children, cannot be considered to be particularly important inputs for the downstream markets for (i) the retail supply of pay AV services, (ii) the retail supply of non-linear pay AV services (or SVOD services), and the retail supply of non-linear FTA AV services (or AVOD services), in Spain.

(561) Second, for input foreclosure to be a concern, the vertically integrated firm resulting from the merger must have a significant degree of market power in the upstream market, such that reducing access to the merged entity's upstream product could negatively affect the overall availability of inputs or the downstream markets in terms of price or quality.[249] However, with respect to FTA TV channels specialized in children content, the Transaction will not strengthen the merged entity's position in the relevant upstream market because only WarnerMedia is active in the wholesale supply of pay TV channels for children content, with a market share that

247 Non-Horizontal Merger Guidelines, paragraph 34.

248 Responses to questionnaire Q11 – Questionnaires to market participants in the AV sector (Spain), questions 11.1, and 11.1.1.

249 Non-Horizontal Merger Guidelines, paragraph 35 and 36.

is below 40%, and therefore not in itself representative of a very large market position.[250]

(562) With respect to pay TV channels specialized in sports content, while sports has been identified as a relevant segmentation to assess the market in Spain by a few respondents to the market investigation, sufficient alternatives to Discovery's pay TV channels specialised in sports currently exist in the market. For instance in 2020, Telefónica was the number one actor in the market for the supply of pay TV channels specialised in sports content with [50-60]% market share. The Commission also observes that, based on the market shares submitted by the Notifying Party, in the first two quarters of 2021, the market shares of both Discovery and Telefónica decreased as the DAZN group entered the market, with [0-5]% market shares in the first quarter of 2021, and [30-40]% market shares in the second quarter (just below Telefónica, which had [30-40]% market share in the second quarter of 2021, and Discovery, which had [30-40]%).[251] This suggests that Discovery does not hold enough market power to significantly affect the overall market's access to pay TV channels specialised in sports, following a potential foreclosure strategy.

(563) Additionally, the Commission observes that, when considering the market for the supply of both pay and FTA TV channels specialised in sports in Spain, there are a several other actors in the market with substantial market shares such as Mediapro (with [40-50]% market share in 2020), and RTVE (with [20-30]% market share in 2020), while Discovery only has [5-10]% market share in that market in 2020. The market investigation, further suggests that FTA TV channels also exercise competitive constraint on pay TV channels, [252] and therefore that Discovery's mrket share in the supply of pay TV channels specialised in sports is not indicative of a high market power in the narrow segmentation for sports content.

(564) Third, the Commission observes that the affected vertical relationship is pre-existing to the Transaction, as with respect to FTA TV channels for children, WarnerMedia is also active in the downstream markets, and with respect to pay TV channels for sports content, Discovery is also active in the downstream markets, and there is no evidence of an input foreclosure strategy currently in place. Additionally, considering the very limited combined market shares and increments on the downstream markets considered, there is no evidence to suggest that the Transaction will alter the existing risk of anticompetitive input foreclosure.

(565) Therefore, the Commission considers that there are sufficient economic alternatives for the downstream rivals to have adequate access to inputs, without incurring significantly higher costs, and that the merged entity would lack the ability to engage into an input foreclosure strategy.

(B.ii) Incentive to engage in total or partial input foreclosure

(566) The Commission considers that the merged entity will likely not have the incentives to engage in foreclosure by restricting access to the merged entity's FTA TV channels for children content and pay TV channels for sports content, to rival suppliers active in the downtream markets for (i) the retail supply of pay AV

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250 Horizontal Merger Guidelines, paragraph 17.

251 Annex 10 to Chapter 3 of the Form CO.

252 Responses to questionnaire Q11 – Questionnaires to market participants in the AV sector (Spain), questions 6.1 and 21.

services, (ii) the retail supply of non-linear pay AV services, and (iii) the retail supply of non-linear FTA AV services.

(567) The presence of the Parties downstream in the markets the retail supply of pay AV services, the retail supply of non-linear pay AV services (or SVOD services), and the retail supply of non-linear FTA AV services (or AVOD services), is very limited, and therefore that the current incentives to supply content to downstream retailers will remain largely unchanged post-Transaction. More particularly, the Commission observes that the Parties would bear the full cost of a hypothetical input foreclosure strategy, but would reap only a small fraction of any hypothetical benefits with such a low combined share in the downstream markets (below [5-10]%). The Parties' low combined share suggests that customers switching from an AV retail supplier that the Parties tried to foreclose would be more likely to switch to rivals than to the merged entity..

(568) In any event, given the lack of ability to foreclose, it is not necessary to conclude as to whether the merged entity will have the incentive to implement a strategy aimed at foreclosing competing downstream rivals active in the markets for the retail supply of pay AV services, and the retail supply of non-linear pay AV services (or SVOD services), from accessing its pay TV channels for children content in Spain.

(B.iii) Conclusion

(569) In view of the above, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to potential input foreclosure with respect to the vertical relationships between the markets for (i) the wholesale supply of FTA TV channels for children content (upstream), and (ii) the wholesale supply of pay TV channels for sports content (upstream); and (i) the retail supply of pay AV services (downstream), and (ii) the retail supply of non-linear pay AV services (or SVOD services) (downstream), in Spain.

(570) The Commission also concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to potential input foreclosure with respect to the vertical relationships between the markets for the wholesale supply of FTA TV channels for children content (upstream); and the retail supply of non-linear FTA AV services (or AVOD services) (downstream), in Spain.

5.5.4.8. Sweden

(571) In Sweden, the upstream markets for (i) the wholesale supply of TV channels for news content (where only WarnerMedia is active with [40-50]% market share in TV audience), and (ii) the wholesale supply of pay TV channels for news content (where only WarnerMedia is active with [90-100]% market share in TV audience); are vertically affected due to their connection with the downstream markets for (i) the retail supply of pay AV services (where the Parties' combined market share is [5-10]% in revenue), and (ii) the retail supply of non-linear pay AV services (or SVOD services) (where the Partie's combined market share is [20-30]% in subscriptions).

(572) Furthermore, the wholesale supply of TV channels for news content (where only WarnerMedia is active with [40-50]% market share in TV audience) is vertically affected due to its connection with the retail supply of non-linear FTA AV services

(or AVOD services) (where only Discovery is active with [0-5]% market share in revenue).

(A) The Notifying Party's view

(573) As regards customer foreclosure, the Notifying Party notes that, due to the merged entity's limited presence in the downstream markets post-Transaction (always below 30%), there is no risk of customer foreclosure.

(574) As regards input foreclosure, the Notifying Party notes that the merged entity would have neither the ability nor the incentive to pursue a total or partial input foreclosure strategy, and that any such input foreclosure strategies would have no significant effect on effective competition.

(575) From the outset, the Notifying Party submits that already today and independently of the Transaction, both Parties are active at several levels of the audio-visual content supply chain. Notwithstanding this vertical integration, there has not been any evidence to date of any foreclosure concerns, and that this will not change post-Transaction. There is only one Party present in the upstream market, and both Parties are present pre-Transaction in the downstream markets, such that there is no new link created by the Transaction. This means that the Transaction does not create (or, if there was any ability pre-Transaction, add to) the ability to engage in vertical foreclosure.

(576) Additionally, the Notifying Party argues that, to sustain a theory of harm based on input foreclosure, the increase in the downstream share would need to be sufficient to create an incentive to engage in vertical foreclosure post-Transaction. By contrast, the Transaction leads to only a modest increase in downstream share (notably in the market for the retail supply of pay AV services) and hence it is not plausible in the Parties' view that such a modest increase could create such an incentive to foreclose.

(577) With respect to the market for the retail supply of non-linear pay AV services (or SVOD services), where the merged entity's market share will be slightly higher, the Notifying Party submits that in Sweden, the Parties do not supply downstream SVOD competitors with linear channels. Therefore, the Parties have no ability to engage in input foreclosure. The Notifying Party also argues that in any event, retail platforms can source their content (in the form of programs, formats, series, films, etc. and not merely TV channels) from a wide range of sources, locally or internationally, and hence that wholesale suppliers of TV channels are constrained by a multitude of AV suppliers.[253]

(B) The Commission's assessment

(578) With respect to the risk of customer foreclosure, the Commission observes that the presence of the merged entity in the downstream market is below 30% and therefore, that the merged entity would not have the ability to engage in customer foreclosure after the Transaction.

(579) With respect to the risk of input foreclosure, the Commission considers that a number of factors indicate that the merged entity would likely have no ability, nor

253 Additional submission to the Form CO on non-horizontals, received on 26 November 2021.

incentive, to foreclose access to the upstream markets for (i) the wholesale supply of TV channels for news content, and (ii) the wholesale supply of pay TV channels for news content.

(B.i) Ability to engage in total or partial input foreclosure

(580) The Commission considers that the merged entity will not have the ability to engage in foreclosure by restricting access to the merged entity's TV channels for news content and pay TV channels for news content; to rival retailers active downstream in the retail supply of pay AV services, the retail supply of non-linear pay AV services (SVOD services), and the retail supply of non-linear FTA AV services (AVOD services), for the following reasons.

(581) First, input foreclosure may raise competition problems only if it concerns an important input for the downstream product, for instance because it is a critical component, or because it is a significant source of product differentiation.[254] The affected vertical relationships link upstream markets which are narrowly defined on the basis of their thematic content, with downstream markets which, to the contrary, include various type of thematic content, and TV channels specialized in news content cannot be considered to be particularly important inputs for the downstream markets for (i) the retail supply of pay AV services, (ii) the retail supply of non-linear pay AV services (or SVOD services), and (iii) the retail supply of non-linear FTA AV services (or AVOD services), in Sweden.

(582) Second, for input foreclosure to be a concern, the vertically integrated firm resulting from the merger must have a significant degree of market power in the upstream market, such that reducing access to the merged entity's upstream product could negatively affect the overall availability of inputs or the downstream markets in terms of price or quality.[255] However, the Transaction will not strengthen the merged entity's position in the relevant upstream markets because only WarnerMedia is active in (i) the wholesale supply of TV channels for news content, and (ii) the wholesale supply of pay TV channels for news content. Additionally, the Commission observes that the affected vertical relationship is pre-existing to the Transaction, as WarnerMedia is also active in the downstream markets, and there is no evidence of an input foreclosure strategy currently in place.

(583) Third, considering the very limited combined market shares and increments on the downstream markets for the retail supply of pay AV services, and the retail supply of non-linear FTA AV services, there is no evidence to suggest that the Transaction will alter the existing risk of anticompetitive input foreclosure.

(584) Fourth, the retail supply of non-linear pay AV services (SVOD services), where the Parties have a higher combined market share, is a relatively recent and dynamic market which has been largely impacted by the technological advances (e.g., internet accessibility), and evolving consumer habits (e.g., consumption of on demand content). TV channels do not represent the most important input for retailers of SVOD services, which can also acquire valuable input in the form of un-aggregated content directly from other actors active in the market for the production of AV content or the market for the licensing of AV content, such that the traditional three-

254 Non-Horizontal Merger Guidelines, paragraph 34.

255 Non-Horizontal Merger Guidelines, paragraph 35 and 36.

layer classification fails to properly take into account the market dynamics resulting from Direct-to-Consumer services, as the frontiers between the different layers are becoming increasingly blurred as a consequence of the global market trend for vertical integration.

(585) Moreover, the Commission observes that WarnerMedia's high market share in the news segment in 2020 corresponds to an unusual high peak, which can be explained by the occurrence of the US Presidential election in 2020. First, the Commission notes there are not many channels available in the narrow market for TV channels specialised in news content in Sweden. Indeed, the main TV channel, and only FTA TV channel specialised in news content, is the SVT TV channel which has market shares above [80-90]% in the market for the wholesale supply of TV channels specialised in news content both in 2018 and 2019. WarnerMedia's channel, CNN, is the other main TV channel specialised in news in Sweden and is a pay TV channel, which had market shares around [10-20]% both in 2018 and 2019, and only reached [40-50]% in the second quarter of 2020.[256] From the market shares provided by the Parties, the Commission understands that CNN's market share in the second quarter of 2021 was equal to [10-20]% in the market for the wholesale supply of TV channel for news content, which suggests that Discovery does not hold significant market power in the provision of news TV channels.

(586) Therefore, the Commission considers that there are sufficient economic alternatives for the downstream rivals to have adequate access to inputs, without incurring significantly higher costs, and that the merged entity would lack the ability to engage into an input foreclosure strategy.

(B.ii) Incentive to engage in total or partial input foreclosure

(587) The Commission considers that the merged entity will likely not have the incentives to engage in foreclosure by restricting access to the merged entity's TV channel CNN, to rival suppliers active in the downtream markets for (i) the retail supply of pay AV services, (ii) the retail supply of non-linear pay AV services, and (iii) the retail supply of non-linear FTA AV services, for the following reasons.

(588) First, on the downstream markets for the retail supply of pay AV services and the retail supply of retail supply of non-linear FTA AV services, the presence of the Parties, and therefore the current incentives to supply content to downstream retailers will remain largely unchanged post-Transaction. More particularly, the Commission observes that the Parties would bear the full cost of a hypothetical input foreclosure strategy, but would reap only a small fraction of any hypothetical benefits with such a low combined share in the downstream markets (below [5-10]%). The Parties' low combined share suggests that customers switching from an AV retail supplier that the Parties tried to foreclose would be more likely to switch to rivals than to the merged entity.

(589) Second, both Parties are active in the market through platforms of very differentiated focus on the downstream market for the retail supply of non-linear pay AV services (or SVOD services), where the Parties have a higher combined market share. Discovery only has [0-5]% market share with the Discovery+ and Eurosport Player SVOD services, focusing on general entertainment and sports content. WarnerMedia

256 Annex 10 to Chapter 3 of the Form CO

has [10-20]% market share with the SVOD services associated with HBO, focusing on premium films and TV series content. Post-Transacion, any additional market power downstream would come from WarnerMedia's SVOD services. Additionally, WarnerMedia's SVOD services are not likely to beneficiate from the CNN TV channel which, due to its focus, would not represent a critical input. Therefore, the current incentives to supply content to downstream retailers will remain largely unchanged post-Transaction. More particularly, the Commission observes that the Parties would bear the full cost of a hypothetical input foreclosure strategy, but would reap only a small fraction of any hypothetical benefits, as Discovery's TV channel is not likely to lead to a significant increase in the number of subscribers of the merged entity's SVOD services.

(590) In any event, given the lack of ability to foreclose, it is not necessary to conclude as to whether the merged entity will have the incentive to implement a strategy aimed at foreclosing competing downstream rivals active in the markets for the retail supply of pay AV services, and the retail supply of non-linear pay AV services (or SVOD services), from accessing its pay TV channels, pay TV channels for sports content, and pay TV channels for other content, in Sweden.

(B.iii) Conclusion

(591) In view of the above, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to potential input foreclosure with respect to the vertical relationships between the markets for (i) the wholesale supply of TV channels for news content (upstream), and (ii) the wholesale supply of pay TV channels for news content (upstream); and (i) the retail supply of pay AV services (downstream), and (ii) the retail supply of non-linear pay AV services (or SVOD services) (downstream), in Sweden.

(592) The Commission also concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to potential input foreclosure with respect to the vertical relationships between the markets for the wholesale supply of TV channels for news content (upstream); and the retail supply of non-linear FTA AV services (or AVOD services) (downstream), in Sweden.

5.6. Conglomerate Assessment

(593) The Non-Horizontal Guidelines[257] indicate that competition concerns can arise in circumstances where a merger involves companies that are active in closely related markets. While in the majority of circumstances conglomerate mergers will not lead to any competition problems, in certain circumstances they can lead to anticompetitive effects. One such example is when the combination of products in related markets would give the merged entity the ability and incentive to leverage a strong market position in one of the markets to the other market by means of tying or bundling. Where tying or bundling is likely to lead to a reduction in actual or potential rivals' ability or incentive to compete it may reduce competitive pressure on the merged entity, allowing it to increase prices.

(594) The Commission's assessment of conglomerate effects, in light of the results of the market investigation, is set out in the following recitals. For this purpose, consistent

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

with paragraph 94 of the Non-Horizontal Merger Guidelines, in relation to each of these practices, the Commission examines, (i) whether the merged entity would have, post-transaction, the ability to foreclose its rivals, (ii) whether it would have the incentive to do so, and (iii) whether a foreclosure strategy would have an overall negative impact on effective competition.

5.6.1. Belgium

5.6.1.1. Possible foreclosure of competing wholesale suppliers of TV channels for news, sports, children and other content

(595) In the present section, the Commission analyses whether the Parties would have the ability and incentive to foreclose rival wholesale suppliers of TV channels for news, sports, children and other content in Belgium by engaging in potential tying or bundling strategies, then assesses whether such foreclosure strategies would have an impact on effective competition in those possible markets in Belgium.

(A) The Notifying Party's views

(A.i) Ability to foreclose

(596) The Notifying Party submits that the Parties have no ability to foreclose competitors in Belgium and that the Transaction will not give them this ability for the following reasons.

(597) First, the Notifying Party submis that the possible markets where the Parties, alone or collectively, have more than a 30% market share do not constitute relevant product markets from a market definition perspective and, consequently, the market shares calculated are artificial and in no way a display of any possible market power on the side of the merged entity.

(598) Irrespective of the above element, the Notifying Party adds that the Parties' shares of those possible relevant markets do not establish any market power that the merged entity would allegedly enjoy because it would own one or more "must have" channels that it would use to leverage that power onto other possible content genre markets. In that respect, the Notifying Party further submits that the absence of a "must have" channel for the Parties in Belgium is the fact that, while being a fairly successful sports channels supplier, Eurosport is not retained in the respective channel line-up of both Orange and VOO, two of the largest pay TV distributors in Belgium. The Notifying Party therefore concludes that the Parties do not control any "must have channel" in Belgium and that without such a "must have" channel, the Parties cannot engage in anticompetitive leveraging strategies.

(599) The Parties continue to face strong competition in the sports content segment of the market such as Telenet and Eleven.[258]

(A.ii) Incentive to foreclose

(600) The Notifying Party considers that the Parties have no incentive to engage in foreclosure strategies and that the Transaction will not give them any incentive to do so primarily given the competitive constraint that non-linear alternatives impose on

258 Notifying Party's response to Q1 of RFI 9 on 11 December 2021.

linear TV. The Notifying Party submits that, if the Parties were to attempt to engage in a foreclosure strategy through leveraging practices and thereby attempt to make a pay TV provider take extra channels (at extra cost), that pay TV provider could either, if it decided to take the bundle, increase prices to its own customers, or, if it decided not to take the bundle, drop certain channels and reduce its offering accordingly. The Notifying Party submits that either reaction by the pay TV services provider could result in end-users leaving that linear TV service for another one. However, the Notifying Party argues that there is no reason to believe that those end-users exiting the degraded service as a result of the Parties alleged anti-competitive leveraging practices, would actually switch to the merged entity's own non-linear services post-Transaction given, in particular, its (very) low market shares at retail level in Belgium ([0-5]% combined).[259]

(A.iii) Effects on competition

(601) The Notifying Party submits that there will be no adverse effects on competition in the markets affected by the conglomerate relationships in Belgium as the Parties will not have the ability or the incentive to engage in anti-competitive leveraging.

(B) Commission's assessment

(B.i) Ability to foreclose

(602) The Commission considers that the merged entity will not have the ability to engage in foreclosure strategies by leveraging its potential market power in the possible markets for the wholesale supply of TV channels for news and/or sports content to the possible markets for the wholesale supply of TV channels for children and/or other content in Belgium for the reasons set out below.

(603) In the Commission's market investigation, a number of respondents considered that, as a result of the Transaction, the merged entity would have the ability to degrade the terms and conditions at which they purchase TV channels through anti-competitive bundling/tying practices.[260]

(604) According to these respondents, such practices would entail forcing purchasers to take packages/bundles of TV channels/programmes including less desired/performing channels through the leveraging of premium channels. Some respondents further argued that this "all or nothing" practice would also result in marginalising other suppliers, thereby progressively reducing choice and quality in addition to increased prices.[261]

(605) The Commission considers that these concerns are not justified, as there is no indication that any of the Parties' channels on their own could be considered as a "must have" asset in Belgium. Even if, when considered exclusively on a genre basis, one of the Parties might have a high share of such possible markets like Discovery in the wholesale supply of channels for sports content with its Eurosport channel, none of the respondents to the Commission's market investigation mentioned that such channel would constitute a "must have" channel due to the fact that most of the popular sporting events (such as, for instance, the matches of

259 Form CO, Chapter 7, Annex 1.

260 Responses to questionnaire Q2 – Questionnaire to market participants in the AV sector (Belgium), question 19.

261 Responses to questionnaire Q2 – Questionnaire to market participants in the AV sector (Belgium), question 20.

Belgium's national football team or the Tour de France and the annual cycling classics) are broadcast on generalist (essentially public) channels. Consequently, the results of the Commission's market investigation did not indicate that the Eurosport channel could be used in the context of anti-competitive leveraging strategies.

(606) Excluding the Eurosport channel discussed in the preceding paragraph, the Transaction only adds one genre, that of channels for other content, to WarnerMedia's pre-Transaction portfolio of channels. In addition, the merged entity's market share on that possible market is (very) low (at [5-10]%). This confirms the absence of ability of the Parties, as a result of the Transaction, to engage in anti-competitive leveraging practices across their channels portfolio.

(607) For the reasons set out above, the Commission concludes that the merged entity would not have the ability to engage in foreclosure strategies by leveraging its potential market power in the possible markets for the wholesale supply of TV channels for news and/or sports content to the possible markets for the wholesale supply of TV channels for children and/or other content in Belgium.

(B.ii) Incentive to foreclose

(608) The Commission considers that the merged entity will not have the incentive to engage in foreclosure strategies by leveraging its potential market power in the possible markets for the wholesale supply of TV channels for news and/or sports content to the possible markets for the wholesale supply of TV channels for children and/or other content in Belgium for the reasons set out below.

(609) The Commission considers that any such attempt would be mostly counter-productive and unprofitable for the Parties for the following main reasons: (i) the customers that the Parties would try to harm could decide to drop the Parties' channels and find alternative individual and/or bundled content options from competitors of the Parties[262], and/or (ii) the customers that the Parties would try to harm could decide to take the unfavourable bundle, increase the prices to their own end customers/viewers and see these leave for other offline or online alternative retail TV services without the guarantee for the Parties that such customers would choose their own retail service given the Parties' limited market share[263] of the retail market in Belgium ([0-5]% combined). This very low market share can be considered as inversely proportionate to the losses of revenues and profitability the merged entity would incur should it decide to pursue such hypothetical strategy.

(610) For the reasons set out above, the Commission concludes that the merged entity would not have the incentive to engage in foreclosure strategies by leveraging its potential market power in the possible markets for the wholesale supply of TV channels for sports content to the possible markets for the wholesale supply of TV channels for children, news and/or other content in Belgium.

262 This is confirmed by a customer responding to questionnaire Q2 – Questionnaire to market participants in the AV sector (Belgium), question 20.1 and indicating "*Wholesale supply of TV channels: [respondent] currently has separate deals with Discovery, and WarnerMedia. After the Transaction this will be reduced to one. [Respondent] still has deals with more than 50 other broadcasters*".

263 Form CO, Chapter 7, Annex 1.

(B.iii) Effects on competition

(611) The Commission considers that due to the lack of ability and incentive, it is not necessary to conclude on the question whether any foreclosure strategy as a result of conglomerate relationships brought about by the Transaction in Belgium would have a negative impact on effective competition.

(612) In any event, the Commission considers that a potential foreclosure strategy of competing wholesale suppliers of TV channels in Belgium would have no significant detrimental effect on competition because (i) bundling being recognized by the respondents to the Commission's market investigation as a common practice in the industry,[264] customers will always be able to rely on alternative packaged deals, whether larger or narrower in scope, from other international and local suppliers that will continue to offer significant competition to the merged entity at all genre levels in Belgium, and (ii) customers that would find it more constraining from a commercial perspective to deal with the merged entity on the markets for the wholesale supply of TV channels for the various types of content, could always decide to develop counter-strategies such as creating or commissioning content for their own use as a number of market players have done over the last few years.

(C) Conclusion

(613) In light of the above, the Commission concludes that the Transaction does not raise serious doubts as to the compatibility with the internal market with respect to any possible foreclosure practices resulting from the conglomerate relationships between the Parties' activities on the wholesale supply of TV channels for sports, news, children and other content under any of the alternative product markets in Belgium given the lack of ability, incentive or possible effects of such strategy to foreclose competing wholesale suppliers of such TV channels.

5.6.2. Bulgaria

5.6.2.1. Possible foreclosure of competing wholesale suppliers of TV channels for children, sports and other content

(614) In the present section, the Commission analyses whether the Parties would have the ability and incentive to foreclose rival wholesale suppliers of TV channels for children, sports and other content in Bulgaria by engaging in possible tying or bundling strategies, then assesses whether such foreclosure strategies would have an impact on effective competition in those markets in Bulgaria.

(A) The Notifying Party's views

(A.i) Ability to foreclose

(615) The Notifying Party submits that the Parties have no ability to foreclose competitors in Bulgaria and that the Transaction will not give them this ability for the reasons set out below.

264 Responses to questionnaire Q2 – Questionnaire to market participants in the AV sector (Belgium), questions 17 and 18.

(616) The Notifying Party submits that the possible markets where the Parties, alone or collectively, have more than a 30% market share do not constitute relevant product markets from a market definition perspective and, consequently, the market shares calculated are artificial and in no way a display of any possible market power on the side of the merged entity.

(617) Irrespective of the above element, the Notifying Party adds that the Parties' shares of those possible relevant markets do not establish any market power that the merged entity would allegedly enjoy because it would own one or more "must have" channels that it would use to leverage that power onto other possible genre markets. The Notifying Party submits, in that respect, that, with [30-40]%, the Parties' market shares on the possible relevant market for the wholesale supply of TV channels for children content is merely above the threshold beyond which the Commission considers the possible anti-competitive effects of conglomerate relationships between neighbouring markets and that, as such, that level of market share cannot logically be considered as a position of possible market power that would, in turn, enable leveraging strategies. In that respect, the Notifying Party adds that, when all genres are part of one and the same market, the merged entity's market share of the pay TV channels in Bulgaria is only [10-20]% and just [0-5]% in the overall (pay and FTA) TV channels segment. The Notifying Party therefore submits that, irrespective of how the markets are segmented, the merged entity does not own any "must have" channel in Bulgaria and is consequently not able to engage in any foreclosure strategy based on the leveraging of market power.

(618) The Notifying Party further submits that the merged entity faces competition in the wholesale supply of TV channels in Bulgaria from large multinational companies such as MTG (with [20-30]%), CME (with [20-30]%), Disney (with [10-20]%), ViacomCBS (with [5-10]%) and others local and regional players[265] and, that, as a consequence, the merged entity can hardly be considered as enjoying any position of market power with such numerous and well established competitors.

(A.ii) Incentive to foreclose

(619) The Notifying Party considers that the Parties have no incentive to engage in foreclosure strategies and that the Transaction will not give them any incentive to do so primarily given the competitive constraint that non-linear alternatives impose on linear TV. The Notifying Party submits that, if the Parties were to attempt to engage in a foreclosure strategy through leveraging practices and thereby attempt to make a pay TV provider take extra channels (at extra cost), that pay TV provider could either, if it decided to take the bundle, increase prices to its own customers, or, if it decided not to take the bundle, drop certain channels and reduce its offering accordingly. The Notifying Party submits that either reaction by the pay TV services provider could result in end-users leaving that linear TV service for another one. However, the Notifying Party argues that there is no reason to believe that those end-users exiting the degraded service as a result of the Parties alleged anti-competitive leveraging practices, would actually switch to the merged entity's own non-linear services post-Transaction given, in particular, its (very) low market shares at retail

265 Form CO, Chapter 3, Annex 2.

level in Bulgaria ([5-10]% combined on the SVOD segment of the retail TV services market and [0-5]% of the overall subscription pay TV services).[266]

(A.iii) Effects on competition

(620) The Notifying Party submits that there will be no adverse effects on competition in the markets affected by the conglomerate relationships in Bulgaria as the Parties will not have the ability or the incentive to engage in ant-icompetitive leveraging.

(B) Commission's assessment

(B.i) Ability to foreclose

(621) The Commission considers that the merged entity will not have the ability to engage in foreclosure strategies by leveraging its potential market power in the possible markets for the wholesale supply of TV channels for children content to the possible markets for the wholesale supply of TV channels for sports and/or other content in Bulgaria for the reasons set out below.

(622) First, the results of the Commission's market investigation were rather neutral with respect to the merged entity's ability to degrade the terms and conditions at which customers purchase TV channels through hypothetical anti-competitive bundling/tying practices in Bulgaria, as most respondents did not expect changes following the Transaction.[267]

(623) Second, none of the Parties' channels on their own can be considered as a "must have" asset in Bulgaria given the Parties' limited market shares on those possible individual genres markets. Indeed, even when considered exclusively on a genre basis, with the single exception of their share of [30-40]% on the possible market for the wholesale supply of pay TV channels for children content, the Parties' market shares all remain below the thresholds relevant for the identification of conglomerate relationships. As such, the Parties' position on the children content genre, which is the only addition of genre, as a result of the Transaction, to Discovery's sports and other content channels, can hardly be considered as a display of market power and hence a strong basis from which such power could be leveraged onto the other genres where the Parties are active (sports and other content channels).

(624) Therefore, the Commission concludes that the merged entity would not have the ability to engage in foreclosure strategies by leveraging its potential market power in the possible markets for the wholesale supply of TV channels for children content to the possible markets for the wholesale supply of TV channels for sports and/or other content in Bulgaria.

(B.ii) Incentive to foreclose

(625) The Commission considers that the merged entity will not have the incentive to engage in foreclosure strategies by leveraging its potential market power in the possible markets for the wholesale supply of TV channels for children content to the possible markets for the wholesale supply of TV channels for sports and/or other content in Bulgaria for the reasons set out below.

266 Form CO, Chapter 7, Annex 1.

267 Responses to questionnaire Q7 – Questionnaire to market participants in the AV sector (Bulgaria), question 28.

(626) The Commission considers that the Parties do not have the incentive to engage in such practices as any such attempt would be mostly counter-productive and unprofitable for the Parties for the following main reasons: (i) the customers that the Parties would try to harm could decide to drop the Parties' channels and find alternative individual and/or bundled content options from competitors of the Parties such as ViacomCBS and/or Disney which are large rivals of the merged entity on the wholesale supply of TV channels for children content in Bulgaria[268], and/or (ii) the customers that the Parties would try to harm could decide to take the unfavourable bundle, increase the prices to their own end customers/viewers and see these leave for other offline or online alternative retail TV services without the guarantee for the Parties that such customers would choose their own retail service given the Parties' limited market shares[269] of the retail market in Bulgaria ([5-10]% combined on the SVOD segment of the retail TV services market and [0-5]% of the overall subscription pay TV services). These limited market shares can be considered as inversely proportionate to the losses of revenues and profitability the merged entity would incur should it decide to pursue such hypothetical strategy.

(627) Therefore, the Commission concludes that the merged entity would not have the incentive to engage in foreclosure strategies by leveraging its potential market power in the possible markets for the wholesale supply of TV channels for children content to the possible markets for the wholesale supply of TV channels for sports and/or other content in Bulgaria.

(B.iii) Effects on competition

(628) The Commission considers that due to the lack of ability and incentive, it is not necessary to conclude on the question whether any foreclosure strategy as a result of conglomerate relationships brought about by the Transaction in Bulgaria would have a negative impact on effective competition.

(629) In any event, the Commission considers that a potential foreclosure strategy of competing wholesale suppliers of TV channels in Bulgaria would have no significant detrimental effect on competition because, bundling being recognized by the respondents to the Commission's market investigation as a common practice in the industry[270]. (i) customers will always be able to rely on alternative packaged deals, whether larger or narrower in scope, from other international and local suppliers that will continue to offer significant competition to the merged entity at all genre levels in Bulgaria, and (ii)customers that would find it more constraining from a commercial perspective to deal with the merged entity on the markets for the wholesale supply of TV channels for the various types of content, could always decide to develop counter-strategies such as creating or commissioning content for their own use as a number of market players have done over the last few years.

(C) Conclusion

(630) In light of the above, the Commission concludes that the Transaction does not raise serious doubts as to the compatibility with the internal market with respect to any

268 ViacomCBS is actually the leading supplier of children channels in Bulgaria with [50-60]% (2020), almost twice as much as the merged entity' share.

269 Form CO, Chapter 7, Annex 1.

270 Responses to questionnaire Q7 – Questionnaire to market participants in the AV sector (Bulgaria), questions 26 and 27.

possible foreclosure practices resulting from the conglomerate relationships between the Parties' activities on the wholesale supply of TV channels for children, sports and other content under any of the alternative product markets in Bulgaria given the lack of ability, incentive or possible effects of such strategy to foreclose competing wholesale suppliers of such TV channels.

5.6.3. France

5.6.3.1. Possible foreclosure of competing wholesale suppliers of TV channels for sports, children and other content

(631) In the present section, the Commission analyses whether the Parties would have the ability and incentive to foreclose rival wholesale suppliers of TV channels for sports, children and other content in France by engaging in potential tying or bundling strategies, then assesses whether such foreclosure strategies would have an impact on effective competition in those markets in France.

(A) The Notifying Party's views

(A.i) Ability to foreclose

(632) The Notifying Party submits that the Parties have no ability to foreclose competitors in France and that the Transaction will not give them this ability for the following reasons.

(633) The Notifying Party submits that the possible markets where the Parties, alone or collectively, have more than a 30% market share do not constitute relevant product markets from a market definition perspective and, consequently, the market shares calculated are artificial and in no way a display of any possible market power on the side of the merged entity.

(634) Irrespective of the above element, the Notifying Party adds that the Parties' shares of those possible relevant markets do not establish any market power that the merged entity would allegedly enjoy because it would own one or more "must have" channels that it would use to leverage that power onto other possible genre markets. The Notifying Party submits, in that respect, that, with [30-40]%, the Parties' market shares on the possible relevant market for the wholesale supply of TV channels for sports content is merely above the threshold beyond which the Commission considers the possible anti-competitive effects of conglomerate relationships between neighbouring markets and that, as such, that level of market share cannot logically be considered as a position of possible market power that would, in turn, enable leveraging strategies. In that respect, the Notifying Party adds that, when all genres are part of one and the same market, the merged entity's market share of the pay TV channels in France is only [10-20]% and in competition with other strong pay TV players including Next Radio TV (with [20-30]%), the RTL Group (with [10-20]%), Mediawan (with [10-20]%), Viacom CBS (with [5-10]%) and others.[271]

(635) The Notifying Party therefore submits that, irrespective of how the markets are segmented, the merged entity does not own any "must have" channel in France and

271 Notifying Party's response to Q9 of RFI 7 on 16 November 2021.

is consequently not able to engage in any foreclosure strategy based on the leveraging of market power.

(A.ii) Incentive to foreclose

(636) The Notifying Party considers that the Parties have no incentive to engage in foreclosure strategies and that the Transaction will not give them any incentive to do so primarily given the competitive constraint that non-linear alternatives impose on linear TV. The Notifying Party submits that if the Parties were to attempt to engage in a foreclosure strategy through leveraging practices and thereby attempt to make a pay TV provider take extra channels (at extra cost), that pay TV provider could either, if it decided to take the bundle, increase prices to its own customers, or, if it decided not to take the bundle, drop certain channels and reduce its offering accordingly. The Notifying Party submits that either reaction by the pay TV service provider could result in end-users leaving that linear TV service for another one. However, the Notifying Party argues that there is no reason to believe that those end-users exiting the degraded service as a result of the Parties alleged anti-competitive leveraging practices, would actually switch to the merged entity's own non-linear services post-Transaction given, in particular, its (very) low market shares at retail level in France ([0-5]% combined on the SVOD segment of the retail TV services market and [0-5]% of the overall subscription pay TV services).[272]

(A.iii) Effects on competition

(637) The Notifying Party submits that there will be no adverse effects on competition in the markets affected by the conglomerate relationships in France as the Parties will not have the ability or the incentive to engage in anti-competitive leveraging.

(B) Commission's assessment

(B.i) Ability to foreclose

(638) The Commission considers that the merged entity will not have the ability to engage in foreclosure strategies by leveraging its potential market power in the possible markets for the wholesale supply of TV channels for sports content to the possible markets for the wholesale supply of TV channels for children and/or other content in France for the following reasons.

(639) The Commission's market investigation indicated that a number of respondents considered that, as a result of the Transaction, the merged entity would have the ability to degrade the terms and conditions at which they purchase TV channels through anti-competitive bundling/tying practices.[273]

(640) According to these respondents, such practices would entail forcing purchasers to take packages/bundles of TV channels/programmes including less desired/performing channels through the leveraging of premium channels/programmes. Some respondents further argued that this "all or nothing" practice would also result in marginalising other suppliers, thereby progressively

272 Form CO, Chapter 7, Annex 1.

273 Responses to questionnaire Q4 – Questionnaire to market participants in the AV sector (France), question 19.

reducing choice and quality (as well as cultural diversity) in addition to increased prices.[274]

(641) The Commission considers however that these concerns are not justified, as there is no indication that any of the Parties' channels/programmes on their own could be considered as a "must have" asset in France given the Parties' limited market shares on those possible individual genres markets. Indeed, even when considered exclusively on a genre basis, with the single exception of their share of [30-40]% on the possible market for the wholesale supply of pay TV channels for sports content, the Parties' market shares all remain below the thresholds relevant for the identification of conglomerate relationships. As such, the Parties' position on the sports content genre can hardly be considered as a display of market power and hence a strong basis from which such power could be leveraged onto the other genres where the Parties are active (children and other content channels).

(642) Therefore, the Commission concludes that the merged entity would not have the ability to engage in foreclosure strategies by leveraging its potential market power in the possible markets for the wholesale supply of TV channels for sports content to the possible markets for the wholesale supply of TV channels for children and/or other content in France.

(B.ii) Incentive to foreclose

(643) The Commission considers that the merged entity will not have the incentive to engage in foreclosure strategies by leveraging its potential market power in the possible markets for the wholesale supply of TV channels for sports content to the possible markets for the wholesale supply of TV channels for children and/or other content in France .

(644) The Commission considers that any such attempt would be mostly counter-productive and unprofitable for the Parties for the following main reasons: (i) the customers that the Parties would try to harm could decide to drop the Parties' channels and find alternative individual and/or bundled content options from competitors of the Parties[275], and/or (ii) the customers that the Parties would try to harm could decide to take the unfavourable bundle, increase the prices to their own end customers/viewers and see these leave for other offline or online alternative retail TV services without the guarantee for the Parties that such customers would choose their own retail service given the Parties' limited market shares[276] of the retail market in France ([0-5]% combined on the SVOD segment of the retail TV services market and [0-5]% of the overall subscription pay TV services). These very low market shares can be considered as inversely proportionate to the losses of revenues and profitability the merged entity would incur should it decide to pursue such hypothetical strategy.Therefore, the Commission concludes that the merged entity would not have the incentive to engage in foreclosure strategies by leveraging its potential market power in the possible markets for the wholesale supply of TV

274 Responses to questionnaire Q4 – Questionnaire to market participants in the AV sector (France), question 20.

275 In that respect, a customer responding to Question 17.1 of Questionnaire 4 for France indicates that the Transaction does not change the situation much as, already pre-Transaction, "*[it] can not have access to Discovery's portfolio of premium brands in France as long as they are still provided to [another customer] on an exclusive basis*".

276 Form CO, Chapter 7, Annex 1.

channels for sports content to the possible markets for the wholesale supply of TV channels for children and/or other content in France.

(B.iii) Effects on competition

(645) The Commission considers that due to the lack of ability and incentive, it is not necessary to conclude on the question whether any foreclosure strategy as a result of conglomerate relationships brought about by the Transaction in France would have a negative impact on effective competition.

(646) In any event, the Commission considers that a potential foreclosure strategy of competing wholesale suppliers of TV channels in France would have no significant detrimental effect on competition because, bundling being recognized by the respondents to the Commission's market investigation as a common practice in the industry[277], (i) customers will always be able to rely on alternative packaged deals, whether larger or narrower in scope, from other international and local suppliers that will continue to offer significant competition to the merged entity at all genre levels in France, and (ii) customers that would find it more constraining from a commercial perspective to deal with the merged entity on the markets for the wholesale supply of TV channels for the various types of content, could always decide to develop counter-strategies such as creating or commissioning content for their own use as a number of market players have done over the last few years.

(C) Conclusion

(647) In light of the above, the Commission concludes that the Transaction does not raise serious doubts as to the compatibility with the internal market with respect to any possible foreclosure practices resulting from the conglomerate relationships between the Parties' activities on the wholesale supply of TV channels for sports, children and other content under any of the alternative product markets in France given the lack of ability, incentive or possible effects of such strategy to foreclose competing wholesale suppliers of such TV channels.

5.6.4. Germany

5.6.4.1. Possible foreclosure of competing wholesale suppliers of TV channels for sports, children and other content

(648) In the present section, the Commission analyses whether the Parties would have the ability and incentive to foreclose rival wholesale suppliers of TV channels for sports, children and other content in Germany by engaging in potential tying or bundling strategies, then assesses whether such foreclosure strategies would have an impact on effective competition in those markets in Germany.

277 Responses to questionnaire Q4 – Questionnaire to market participants in the AV sector (France), questions 17 and 18.

(A) The Notifying Party's views

(A.i) Ability to foreclose

(649) The Notifying Party submits that the Parties have no ability to foreclose competitors in Germany and that the Transaction will not give them this ability for the reasons set out below.

(650) First, the Notifying Party submits that the possible markets where the Parties, alone or collectively, have more than a 30% market share do not constitute relevant product markets from a market definition perspective and, consequently, the market shares calculated are artificial and in no way a display of any possible market power on the side of the merged entity.

(651) Irrespective of the above element, the Notifying Party adds that the Parties' shares of those possible relevant markets do not establish any market power that the merged entity would allegedly enjoy because it would own one or more "must have" channels that it would use to leverage that power onto other possible genre markets. In that respect, the Notifying Party further submits that the Parties' market shares of [90-100]% on the possible relevant market for the wholesale supply of pay TV channels for children content (with WarnerMedia's Boomerang and Cartoon Network channels) is vastly overestimated. The Notifying Party indeed considers that, in Germany, pay TV is particularly closely constrained by FTA TV due to German FTA broadcasting regulations and the broad availability of FTA channels which, in addition to the pay TV competitors[278], share almost [80-90]% of the audiences via important FTA players such as ARD-ZDF, RTL Group and ProSiebenSat.1 Media.[279] The Notifying Party therefore rather submits that the merged entity' share of all linear children's TV channels in Germany (pay TV and FTA) is only approximately [0-5]%[280] and hence nowhere near that of Disney ([30-40]%), ARD-ZDF ([10-20]%), ViacomCBS ([10-20]%) or the RTL Group ([10-20]%).[281]

(A.ii) Incentive to foreclose

(652) The Notifying Party considers that the Parties have no incentive to engage in foreclosure strategies and that the Transaction will not give them any incentive to do so primarily given the competitive constraint that non-linear alternatives impose on linear TV. The Notifying Party submits that if the Parties were to attempt to engage in a foreclosure strategy through leveraging practices and thereby attempt to make a pay TV provider take extra channels (at extra cost), that pay TV provider could either, if it decided to take the bundle, increase prices to its own customers, or, if it decided not to take the bundle, drop certain channels and reduce its offering accordingly. The Notifying Party submits that either reaction by the pay TV services provider could result in end-users leaving that linear TV service for another one. However, the Notifying Party argues that there is no reason to believe that those end-users exiting the degraded service as a result of the Parties alleged anti-competitive leveraging practices, would actually switch to the merged entity's own non-linear

278 Such as NBCU, Disney, Sky Group, RTL Group and Hearst.

279 Form CO, Chapter 3, paragraph 91.

280 [0-5]% in Q4/2020. See Form CO, Chapter 3, Annex 2 (Germany).

281 Form CO, Chapter 3, Annex 2 (Germany).

services post-Transaction given, in particular, its (very) low market shares at retail level in Germany (maximum of [0-5]% combined).[282]

(A.iii) Effects on competition

(653) The Notifying Party submits that there will be no adverse effects on competition in the markets affected by the conglomerate relationships in Germany as the Parties will not have the ability or the incentive to engage in anti-competitive leveraging.

(B) Commission's assessment

(B.i) Ability to foreclose

(654) The Commission considers that the merged entity will not have the ability to engage in foreclosure strategies by leveraging its potential market power in the possible markets for the wholesale supply of TV channels for children and/or sports content to the possible markets for the wholesale supply of TV channels for other content in Germany for the reasons set out below.

(655) In the Commission's market investigation a number of respondents considered that, as a result of the Transaction, the merged entity would have the ability to degrade the terms and conditions at which they purchase TV channels through anti-competitive bundling/tying practices.[283]

(656) According to these respondents, such practices would entail forcing purchasers to take packages/bundles of TV channels/programmes including less desired/performing channels through the leveraging of premium channels/programmes. Some respondents further argued that this "all or nothing" practice would also result in marginalising other suppliers, thereby progressively reducing choice and quality in addition to increased prices.[284]

(657) The Commission considers that these concerns are not justified, as there is no indication that any of the Parties' channels/programmes on their own could be considered as a "must have" asset in Germany. Even if, when considered exclusively on a genre basis, one of the Parties might have a high share of such possible markets such as WarnerMedia in the wholesale supply of pay TV channels for children content (with [90-100]%), the market investigation's results did not confirm that such channel would constitute a "must have" channel, let alone that it could be used in the context of anti-competitive strategies.

(658) Excluding WarnerMedia's two children channels discussed in the preceding paragraph and already dismissed as "must have" channels, the Transaction only adds two genres of content to WarnerMedia's pre-Transaction portfolio of channels, that of channels for sports content with Discovery's Eurosport and that of Discovery's other genre content channels. While the Eurosport channel claims a sizeable market share of around [40-50]% from a sports genre perspective ([40-50]% in 2020), that alone does not make it a "must have" channel. Furthermore, the merged entity is not even the leading player on the wholesale supply of TV channels for sports content as Constantin Medien has a significantly superior share with [50-60]% (2020) of that

282 Form CO, Chapter 7, Annex 1.

283 Responses to questionnaire Q5 – Questionnaire to market participants in the AV sector (Germany), question 19.

284 Responses to questionnaire Q5 – Questionnaire to market participants in the AV sector (Germany), question 20.

possible market. Additionally, Discovery's market shares on the possible market for the wholesale supply of channels for other content remains very low at below [0-5]%. Those elements together contribute to confirming the absence of ability of the Parties, as a result of the Transaction, to engage in anti-competitive leveraging practices across their channels portfolio.

(659) Therefore, the Commission concludes that the merged entity would not have the ability to engage in foreclosure strategies by leveraging its potential market power in the possible markets for the wholesale supply of TV channels for children and/or sports content to the possible markets for the wholesale supply of TV channels for other content in Germany.

(B.ii) Incentive to foreclose

(660) The Commission considers that the merged entity will not have the incentive to engage in foreclosure strategies by leveraging its potential market power in the possible markets for the wholesale supply of TV channels for children and/or sports content to the possible markets for the wholesale supply of TV channels for other content in Germany for the reasons set out below.

(661) The Commission considers that any such attempt would be mostly counter-productive and unprofitable for the Parties for the following main reasons: (i) the customers that the Parties would try to harm could decide to drop the Parties' channels and find alternative individual and/or bundled content options from competitors of the Parties[285], and/or (ii) the customers that the Parties would try to harm could decide to take the unfavourable bundle, increase the prices to their own end customers/viewers and see these leave for other offline or online alternative retail TV services without the guarantee for the Parties that such customers would choose their own retail service given the Parties' limited market share[286] of the retail market in Germany (maximum of [0-5]% combined). This low market share can be considered as inversely proportionate to the losses of revenues and profitability the merged entity would incur should it decide to pursue such hypothetical strategy.

(662) Therefore, the Commission concludes that the merged entity would not have the incentive to engage in foreclosure strategies by leveraging its potential market power in the possible markets for the wholesale supply of TV channels for children and/or sports content to the possible markets for the wholesale supply of TV channels for other content in Germany.

(B.iii) Effects on competition

(663) The Commission considers that due to the lack of ability and incentive, it is not necessary to conclude on the question whether any foreclosure strategy as a result of conglomerate relationships brought about by the Transaction in Germany would have a negative impact on effective competition.

285 In that respect, a customer responding to questionnaire Q5 – Questionnaire to market participants in the AV sector (Germany), question 19.1 indicates that "the AV sector is intensely competitive at each level of the supply chain and will remain so post-Transaction, with numerous alternatives available to the TV channels of Discovery and/or WarnerMedia".

286 Form CO, Chapter 7, Annex 1.

(664) In any event, the Commission considers that a potential foreclosure strategy of competing wholesale suppliers of TV channels in Germany would have no significant detrimental effect on competition because, bundling being recognized by the respondents to the Commission's market investigation as a common practice in the industry[287], (i) customers will always be able to rely on alternative packaged deals, whether larger or narrower in scope, from other international and local suppliers that will continue to offer significant competition to the merged entity at all genre levels in Germany, and (ii) customers that would find it more constraining from a commercial perspective to deal with the merged entity on the markets for the wholesale supply of TV channels for the various types of content, could always decide to develop counter-strategies such as creating or commissioning content for their own use as a number of market players have done over the last few years.

(C) Conclusion

(665) In light of the above, the Commission concludes that the Transaction does not raise serious doubts as to the compatibility with the internal market with respect to any possible foreclosure practices resulting from the conglomerate relationships between the Parties' activities on the wholesale supply of TV channels for children, sports and other content under any of the alternative product markets in Germany given the lack of ability, incentive or possible effects of such strategy to foreclose competing wholesale suppliers of such TV channels.

5.6.5. Italy

5.6.5.1. Possible foreclosure of competing wholesale suppliers of TV channels for children, sports and other content

(666) In the present section, the Commission analyses whether the Parties would have the ability and incentive to foreclose rival wholesale suppliers of TV channels for children, sports and other content in Italy by engaging in potential tying or bundling strategies, then assesses whether such foreclosure strategies would have an impact on effective competition in those markets in Italy.

(A) The Notifying Party's views

(A.i) Ability to foreclose

(667) The Notifying Party submits that the Parties have no ability to foreclose competitors in Italy and that the Transaction will not give them this ability for the reasons set out below.

(668) The Notifying Party submits that the possible markets where the Parties, alone or collectively, have more than a 30% market share do not constitute relevant product markets from a market definition perspective and, consequently, the market shares calculated are artificial and in no way a display of any possible market power on the side of the merged entity.

(669) Irrespective of the above element, the Notifying Party adds that the Parties' shares of those possible relevant markets do not establish any market power that the merged

287 Responses to questionnaire Q5 – Questionnaire to market participants in the AV sector (Germany), questions 17 and 18.

entity would allegedly enjoy because it would own one or more "must have" channels that it would use to leverage that power onto other possible genre markets. The Notifying Party submits, in that respect, that, with [50-60]%, the Parties' market shares on the possible relevant market for the wholesale supply of FTA TV channels for children content, while significantly above the threshold beyond which the Commission considers the possible anti-competitive effects of conglomerate relationships between neighbouring markets, that level of market share cannot be considered as a position of possible market power that would, in turn, enable leveraging strategies. In that respect, the Notifying Party adds that, when all genres are part of one and the same market, the merged entity's market share of the FTA TV channels in Italy is slightly below [5-10]% and significantly behind market leaders RAI (with [40-50]%) and Mediaset (with [30-40]%).[288]

(670) The Notifying Party therefore submits that, irrespective of how the markets are segmented, the merged entity does not own any "must have" channel in Italy.

(671) In addition, the Notifying Party submits that children in Italy spend a significant proportion of their time watching content on channels other than children's FTA channels as well as AVOD streaming services which both dilutes any hypothetical market power of the Parties in that specific genre. In addition, the Notifying Party argues that WarnerMedia's share of that possible relevant market is primarily attributable to its channels Boing and Boing Plus through the joint venture with Mediaset and concludes, in that respect, that any potential foreclosure strategy by the Parties would therefore be constrained by Mediaset's presence as a partner in that joint venture.[289]

(672) Based on the above, the Notifying Party submits that, irrespective of how the markets are segmented, the merged entity is not able to engage in any foreclosure strategy based on the leveraging of market power.

(A.ii) Incentive to foreclose

(673) The Notifying Party considers that the Parties have no incentive to engage in foreclosure strategies and that the Transaction will not give them any incentive to do so primarily given the competitive constraint that non-linear alternatives, such as, for instance, AVOD services, impose on linear TV, and FTA channels in particular. The Notifying Party submits that if the Parties were to attempt to engage in a foreclosure strategy through leveraging practices and thereby attempt to make a pay TV provider take extra channels (at extra cost), that pay TV provider could either, if it decided to take the bundle, increase prices to its own customers, or, if it decided not to take the bundle, drop certain channels and reduce its offering accordingly. The Notifying Party submits that either reaction by the pay TV services provider could result in end-users leaving that linear TV service for another one. However, the Notifying Party argues that there is no reason to believe that those end-users exiting the degraded service as a result of the Parties alleged anti-competitive leveraging practices, would actually switch to the merged entity's own non-linear services post-Transaction given, in particular, its very low market shares at retail level in

288 Notifying Party's response to Q1 of RFI 9 on 11 December 2021.

289 Notifying Party's response to Q1 of RFI 9 on 11 December 2021.

Italy ([0-5]% combined on the SVOD segment of the retail TV services market and [0-5]% of the overall subscription pay TV services).[290]

(A.iii) Effects on competition

(674) The Notifying Party submits that there will be no adverse effects on competition in the markets affected by the conglomerate relationships in Italy as the Parties will not have the ability or the incentive to engage in ant-icompetitive leveraging.

(B) Commission's assessment

(B.i) Ability to foreclose

(675) The Commission considers that the merged entity will not have the ability to engage in foreclosure strategies by leveraging its potential market power in the possible markets for the wholesale supply of TV channels for children content to the possible markets for the wholesale supply of TV channels for sports and/or other content in Italy for the reasons set out below.

(676) The Commission considers that there is no indication in the results of its market investigation that the merged entity will have the ability to engage in foreclosure practices through tying/bundling on the market for wholesale supply of channels in Italy that would result in a degradation of the terms and conditions at which customers purchase TV channels.[291]

(677) Indeed, for the reasons set out above in section 5.4.4.2, the Commission's assessment of the merged entity's relatively high market share on the possible market for the wholsesale supply of FTA TV channels for children content has confirmed that the Transaction does not raise serious doubts as to its compatibility with the internal market as a result of horizontal effects on the market for the wholesale supply of FTA TV channels for children content in Italy.

(678) On that basis, it can be considered that the merged entity will not own a "must have" asset on that possible market in Italy and that, in turn, it will not have the ability to leverage any market power onto the other genres where the Parties are active in Italy (sports and other content channels).

(679) Therefore, the Commission concludes that the merged entity would not have the ability to engage in foreclosure strategies by leveraging its potential market power in the possible markets for the wholesale supply of TV channels for children content to the possible markets for the wholesale supply of TV channels for sports and/or other content in Italy.

(B.ii) Incentive to foreclose

(680) The Commission considers that the merged entity will not have the incentive to engage in foreclosure strategies by leveraging its potential market power in the possible markets for the wholesale supply of TV channels for children content to the possible markets for the wholesale supply of TV channels for sports and/or other content in Italy for the reasons set out below.

290 Form CO, Chapter 7, Annex 1.

291 Responses to questionnaire Q1 – Questionnaire to market participants in the AV sector (Italy), question 47.

(681) The Commission considers that any such attempt would be mostly counter-productive and unprofitable for the Parties for the following main reasons: (i) the customers that the Parties would try to harm could decide to drop the Parties' channels and find alternative individual and/or bundled content options from competitors of the Parties, and/or (ii) the customers that the Parties would try to harm could decide to take the unfavourable bundle, increase the prices to their own end customers/viewers and see these leave for other offline or online alternative retail TV services without the guarantee for the Parties that such customers would choose their own retail service given the Parties' very low market shares[292] at retail level in Italy ([0-5]% combined on the SVOD segment of the retail TV services market and [0-5]% of the overall subscription pay TV services). These very low market shares can be considered as inversely proportionate to the losses of revenues and profitability the merged entity would incur should it decide to pursue such hypothetical strategy.Therefore, the Commission concludes that the merged entity would not have the incentive to engage in foreclosure strategies by leveraging its potential market power in the possible markets for the wholesale supply of TV channels for children content to the possible markets for the wholesale supply of TV channels for sports and/or other content in Italy.

(B.iii) Effects on competition

(682) The Commission considers that due to the lack of ability and incentive, it is not necessary to conclude on the question whether any foreclosure strategy as a result of conglomerate relationships brought about by the Transaction in Italy would have a negative impact on effective competition.

(683) In any event, the Commission considers that a potential foreclosure strategy of competing wholesale suppliers of TV channels in Italy would have no significant detrimental effect on competition because, bundling being recognized by the respondents to the Commission's market investigation as a common practice in the industry[293], (i) customers will always be able to rely on alternative packaged deals, whether larger or narrower in scope, from other international and local suppliers that will continue to offer significant competition to the merged entity at all genre levels in Italy, and (ii) customers that would find it more constraining from a commercial perspective to deal with the merged entity on the markets for the wholesale supply of TV channels for the various types of content, could always decide to develop counter-strategies such as creating or commissioning content for their own use as a number of market players have done over the last few years.

(C) Conclusion

(684) In light of the above, the Commission concludes that the Transaction does not raise serious doubts as to the compatibility with the internal market with respect to any possible foreclosure practices resulting from the conglomerate relationships between the Parties' activities on the wholesale supply of TV channels for children, sports and other content under any of the alternative product markets in Italy given the lack of ability, incentive or possible effects of such strategy to foreclose competing wholesale suppliers of such TV channels.

292 Form CO, Chapter 7, Annex 1.

293 Responses to questionnaire Q1 – Questionnaire to market participants in the AV sector (Italy), questions 45 and 46.

5.6.6. Norway

5.6.6.1. Possible foreclosure of competing wholesale suppliers of TV channels for sports and children content

(685) In the present section, the Commission analyses whether the Parties would have the ability and incentive to foreclose rival wholesale suppliers of TV channels for sports and children content in Norway by engaging in potential tying or bundling strategies, then assesses whether such foreclosure strategies would have an impact on effective competition in those markets in Norway.

(A) The Notifying Party's views

(A.i) Ability to foreclose

(686) The Notifying Party submits that the Parties have no ability to foreclose competitors in Norway and that the Transaction will not give them this ability for the reasons set out below.

(687) First, the Notifying Party submits that the possible markets where the Parties, alone or collectively, have more than a 30% market share do not constitute relevant product markets from a market definition perspective and, consequently, the market shares calculated are artificial and in no way a display of any possible market power on the side of the merged entity.

(688) Irrespective of the above element, the Notifying Party adds that the Parties' shares of those possible relevant markets do not establish any market power that the merged entity would allegedly enjoy because it would own one or more "must have" channels that it would use to leverage that power onto other possible genre markets. The Notifying Party submits, in that respect, that, with [40-50]%, the Parties' market shares on the possible relevant market for the wholesale supply of TV channels for sports content may look high but do not necessarily equate to a position of market power that would, in turn, enable leveraging strategies. Indeed, according to the Notifying Party, Discovery's faces stong competitors on that specific genre in Norway such as, among others, Egmont (with [30-40]%) and NENT (with [10-20]%). The Notifying Party argues that the market shares of the merged entity's competitors alone are sufficient to indicate the lack of market power.

(689) The Notifying further submits that the lack of the "must have" nature of Discovery's Eurosport channels in Norway is further illustrated by the fact that, while it currently owns the rights to Norway's "Eliteserien" football competition, these will be held by Egmont's TV2 channels from 2023 until 2028. In that context, the Notifying Party adds that it is its other competitior, NENT, that owns the rights to the English Premier League.[294] The mere fact that the merged entity will not own any of those very important rights can hardly make its Eurosport channel a "must have" in Norway.

(690) The Notifying Party therefore submits that, irrespective of how the markets are segmented, the merged entity does not own any "must have" channel in Norway and is consequently not able to engage in any foreclosure strategy based on the leveraging of market power.

294 https://media.sportbusiness.com/2020/02/nents-colossal-premier-league-deal-shakes-up-nordic-market/

(A.ii) Incentive to foreclose

(691) The Notifying Party considers that the Parties have no incentive to engage in foreclosure strategies and that the Transaction will not give them any incentive to do so primarily given the competitive constraint that non-linear alternatives impose on linear TV. The Notifying Party submits that if the Parties were to attempt to engage in a foreclosure strategy through leveraging practices and thereby attempt to make a pay TV provider take extra channels (at extra cost), that pay TV provider could either, if it decided to take the bundle, increase prices to its own customers, or, if it decided not to take the bundle, drop certain channels and reduce its offering accordingly. The Notifying Party submits that either reaction by the pay TV services provider could result in end-users leaving that linear TV service for another one. However, the Notifying Party argues that there is no reason to believe that those end-users exiting the degraded service as a result of the Parties alleged anti-competitive leveraging practices, would actually switch to the merged entity's own non-linear services post-Transaction given, in particular, its limited market shares at retail level in Norway ([20-30]% combined on the SVOD segment of the retail TV services market and [10-20]% of the overall subscription pay TV services).[295]

(A.iii) Effects on competition

(692) The Notifying Party submits that there will be no adverse effects on competition in the markets affected by the conglomerate relationships in Norway as the Parties will not have the ability or the incentive to engage in anti-competitive leveraging.

(B) Commission's assessment

(B.i) Ability to foreclose

(693) The Commission considers that the merged entity will not have the ability to engage in foreclosure strategies by leveraging its potential market power in the possible markets for the wholesale supply of TV channels for sports content to the possible markets for the wholesale supply of TV channels for children content in Norway for the reasons set out below.

(694) The Commission considers that there is no indication that the merged entity will have the ability to engage in foreclosure practices through tying/bundling on the market for wholesale supply of channels in Norway.

(695) First, the results of the Commission's market investigation were rather neutral with respect to the merged entity's ability to degrade the terms and conditions at which customers purchase TV channels through hypothetical anti-competitive bundling/tying practices in Norway, as most respondents did not expect changes following the Transaction.[296]

(696) Second, none of the Parties' channels on their own can be considered as a "must have" asset in Norway. First of all, the merged entity's activity on the wholesale supply of TV channels for children content, which is the only addition of genre as a result of the Transaction to Discovery's Eurosport channel, is limited to [10-20]% of that possible market and, as such, shows no indication of any market power. Then,

295 Form CO, Chapter 7, Annex 1.

296 Responses to questionnaire Q9 – Questionnaire to market participants in the AV sector (Norway), question 26.

with respect to the Eurosport channel itself, despite its relatively high share ([40-50]%) of the possible market for the wholesale supply of TV channels for sports content, it can not either be considered as a must have channel given (i) the specialist nature of that channel[297], and (ii) the very strong competition it faces from Egmont (the owner of TV2) and NENT that are both investing heavily in attractive sports content rights.Finally, with regards to the only major sporting event for which Discovery holds rights, the Olympics, Discovery is contractually obliged to license out at least 100 hours of content for the Winter Olympics, and 200 hours of content for the Summer Olympics. That is an additional element that contribute to Eurosport's lack of exclusive or "must have" channel nature.

(697) Therefore, the Commission concludes that the merged entity would not have the ability to engage in foreclosure strategies by leveraging its potential market power in the possible markets for the wholesale supply of TV channels for sports content to the possible markets for the wholesale supply of TV channels for children content in Norway.

(B.ii) Incentive to foreclose

(698) The Commission considers that the merged entity will not have the incentive to engage in foreclosure strategies by leveraging its potential market power in the possible markets for the wholesale supply of TV channels for sports content to the possible markets for the wholesale supply of TV channels for children content in Norway for the reasons set out below.

(699) The merged entity's incentive to engage in hypothetical anti-competitive practices through bundling and tying strategies in Norway is very limited to the extent that, other than in sports channels, the merged entity is only active in the wholesale supply of channels for children content in Norway. Consequently, should the merged entity have the incentive to leverage its position in the possible market for the wholesale supply of channels for sports content, it could only do it onto the possible market for the wholesale supply of channels for children content. Admittedly, while always possible in theory, the much reduced scope (i.e., two genres only) of any possible anti-competitive bundle by the merged entity limits the attractiveness of any hypothetical bundling strategy involving those two genres.

(700) Notwithstanding the above, the Commission considers that the Parties do not have the incentive to engage in such practices as any such attempt would be mostly counter-productive and unprofitable for the Parties for the following main reasons: (i) the customers that the Parties would try to harm could decide to drop the Parties' channels and find alternative individual and/or bundled content options from competitors of the Parties, and/or (ii) the customers that the Parties would try to harm could decide to take the unfavourable bundle, increase the prices to their own end customers/viewers and see these leave for other offline or online alternative retail TV services without the guarantee for the Parties that such customers would choose their own retail service given the Parties' limited market share of the retail

297 Eurosport position itself as a "specialist" rather than a "generalist" sports channel. With the exception of the Olympic Games for which Discovery currently holds the rights until 2024, Eurosport does not own rights to other "high profile" events and, apart from its deal for the Olympics, Eurosport generally has relatively low licensing costs.

market in Norway ([20-30]% combined on the SVOD segment of the retail TV services market and [10-20]% of the overall subscription pay TV services).[298]

(701) Therefore, the Commission concludes that the merged entity would not have the incentive to engage in foreclosure strategies by leveraging its potential market power in the possible markets for the wholesale supply of TV channels for sports content to the possible markets for the wholesale supply of TV channels for children content in Norway.

(B.iii) Effects on competition

(702) The Commission considers that due to the lack of ability and incentive, it is not necessary to conclude on the question whether any foreclosure strategy as a result of conglomerate relationships brought about by the Transaction in Norway would have a negative impact on effective competition.

(703) In any event, the Commission considers that a potential foreclosure strategy of competing wholesale suppliers of TV channels in Norway would have no significant detrimental effect on competition because, bundling being recognized by the respondents to the Commission's market investigation as a common practice in the industry, (i) customers will always be able to rely on alternative packaged deals, whether larger or narrower in scope, from other international and local suppliers that will continue to offer significant competition to the merged entity at all genre levels in Norway, and (ii) customers that would find it more constraining from a commercial perspective to deal with the merged entity on the markets for the wholesale supply of TV channels for the various types of content, could always decide to develop counter-strategies such as creating or commissioning content for their own use as a number of market players have done over the last few years.

(C) Conclusion

(704) In light of the above, the Commission concludes that the Transaction does not raise serious doubts as to the compatibility with the internal market with respect to any possible foreclosure practices resulting from the conglomerate relationships between the Parties' activities on the wholesale supply of TV channels for children and sports content under any of the alternative product markets in Norway given the lack of ability, incentive or possible effects of such strategy to foreclose competing wholesale suppliers of such TV channels.

5.6.7. Poland

5.6.7.1. Possible foreclosure of competing wholesale suppliers of TV channels for news, sports, children and other content

(705) In the present section, the Commission analyses whether the Parties would have the ability and incentive to foreclose rival wholesale suppliers of TV channels for news, sports, children and other content in Poland by engaging in potential tying or bundling strategies, then assesses whether such foreclosure strategies would have an impact on effective competition in those markets in Poland.

298 Form CO, Chapter 7, Annex 1.

(A) The Notifying Party's views

(A.i) Ability to foreclose

(706) The Notifying Party submits that the Parties have no ability to foreclose competitors in Poland and that the Transaction will not give them this ability for the reasons set out below.

(707) First, the Notifying Party submits that the possible markets where the Parties, alone or collectively, have more than a 30% market share do not constitute relevant product markets from a market definition perspective and, consequently, the market shares calculated are artificial and in no way a display of any possible market power on the side of the merged entity.

(708) Irrespective of the above element, the Notifying Party adds that the Parties' shares of those possible relevant markets do not establish any market power that the merged entity would allegedly enjoy because it would own one or more "must have" channels that it would use to leverage that power onto other possible genre markets.

(709) Indeed, according to the Notifying Party, while the merged entity' share (i.e., with its CNN International channel) of the possible market for the wholesale supply of pay TV channels for news content may seem significant, it cannot be considered as a "must have" channel in Poland as (i) there is a high number of news TV channels available in Poland[299] (first and most importantly, local news TV channels which inevitably constitute the main source of news at country level, given the prominence of the local coverage in news reporting), (ii) international news channels such as BBC World, Bloomberg TV and CNBC which, similarly to CNN, report news (in English) with largely a global appeal and are widely available in Poland, (iii) general FTA and pay TV channels also broadcast a large amount of (local) news content, and […].[300]

(710) The Notifying Party equally considers that the Eurosport channel is not a "must have" channel in Poland as (i) it does not own the rights for the local "Ekstraklasa" football league which, on its own is worth about 3 times more than all of Eurosport's licensing rights in Poland, (ii) sports content shown on Eurosport is also shown on Eurosport Player, Discovery's OTT offering in Poland, and can, consequently, not be considered as an exclusive "must have" asset for pay TV services providers to the extent that their customers could access it elsewhere, and (iii) while Eurosport owns the rights to the World Cup skiing season, it is obligated by local Polish regulations to broadcast the ski jumping and cross country skiing events on an FTA basis on the Polish television, which it does on its own TVN and Metro FTA channels in Poland.[301] Finally, with regards to the only major sporting event for which Discovery holds rights, the Olympics, Discovery is contractually obliged to license out at least 100 hours of content for the Winter Olympics, and 200 hours of content for the Summer Olympics. That is an additional element that contribute to Eurosport's lack of exclusive or "must have" channel nature in Poland.

299 Tvn, TVP 1, TVP 2, TVP 3, TVP Info, Polsat news, Deutsche Welle CNBC, BBC World, France 24, Bloomberg TV, KBS World, Euronews.

300 [INFORMATION RELATED TO WARNERMEDIA'S NEWS CHANNELS DISTRIBUTION STRATEGY DURING NEGOTIATIONS WITH POLISH LICENSEES].

301 This obligation has historically been covered through the sublicense of the relevant FTA rights to TVP. The rationale [INFORMATION RELATED TO DISCOVERY'S COMMERCIAL STRATEGY IN POLAND].

(711) The Notifying Party therefore submits that, irrespective of how the markets are segmented, the merged entity does not own any “must have” channel in Poland and is consequently not able to engage in any foreclosure strategy based on the leveraging of market power.

(A.ii) Incentive to foreclose

(712) The Notifying Party considers that the Parties have no incentive to engage in foreclosure strategies and that the Transaction will not give them any incentive to do so primarily given the competitive constraint that non-linear alternatives impose on linear TV. The Notifying Party submits that if the Parties were to attempt to engage in a foreclosure strategy through leveraging practices and thereby attempt to make a pay TV provider take extra channels (at extra cost), that pay TV provider could either, if it decided to take the bundle, increase prices to its own customers, or, if it decided not to take the bundle, drop certain channels and reduce its offering accordingly. The Notifying Party submits that either reaction by the pay TV services provider could result in end-users leaving that linear TV service for another one. However, the Notifying Party argues that there is no reason to believe that those end-users exiting the degraded service as a result of the Parties alleged anti-competitive leveraging practices, would actually switch to the merged entity’s own non-linear services post-Transaction given, in particular, its limited market shares at retail level in Poland ([5-10]% combined on the SVOD segment of the retail TV services market and [0-5]% of the overall subscription pay TV services).[302]

(A.iii) Effects on competition

(713) The Notifying Party submits that there will be no adverse effects on competition in the markets affected by the conglomerate relationships in Poland as the Parties will not have the ability or the incentive to engage in anti-competitive leveraging.

(B) Commission’s assessment

(B.i) Ability to foreclose

(714) The Commission considers that the merged entity will not have the ability to engage in foreclosure strategies by leveraging its potential market power in the possible markets for the wholesale supply of TV channels for news and/or sports content to the possible markets for the wholesale supply of TV channels for children and/or other content in Poland for the reasons set out below.

(715) First, the Commission takes into account the remedy that conditioned its approval decision of the Discover/Scripps[303] transaction in February of 2018 and which guarantees the availability of Discovery’s leading news channels in Poland to all pay TV services providers at retail level until February 2025.[304]

302 Form CO, Chapter 7, Annex 1.

303 Decision pursuant to Article 6(1)(b) in conjunction with Article 6(2) in case M.8665 – Discovery/Scripps of 6 February 2018.

304 The Commitments consist in an obligation to offer retail pay TV distributors in Poland the right to distribute TVN24 and/or TVN24 BiS on a non-exclusive and unbundled basis, for inclusion in a basic pay TV package on reasonable commercial terms (and in standard definition, high definition or any other future format that these channels are available in, including ancillary rights offered by these channels).

(716) Second, the Commission considers that there is no indication in the results of its market investigation that the merged entity will have the ability to engage in foreclosure practices through tying/bundling on the market for wholesale supply of channels in Poland that would result in a degradation of the terms and conditions at which customers purchase TV channels.[305]

(717) Indeed, none of the Parties' channels on their own can be considered as a "must have" asset in Poland. Indeed, even when considered exclusively on a genre basis, with the exceptions of the merged entity' share of [70-80]% on the possible market for the wholesale supply of pay TV channels for news content and its share of [30-40]% on the market for the wholesale supply of pay TV channels for sports content, the merged entity's market shares all remain below the thresholds relevant for the identification of conglomerate relationships.

(718) Regarding TVN24, the merged entity's flagship news channel(s) in Poland, taking into account the comments, in paragraph (716) above, they are available on reasonable commercial terms to all pay TV services providers in Poland. Regarding the CNN channel, the results of the market investigation did not consider it as a "must have" channel in Poland as (i) it does not represent the main source of news for the viewers among the many national and local news and generalist channels in Poland, (ii) its viewership is limited due to the lack of local language dubbing, and (ii) it faces the competition of various alternative similar international news channels such as Sky News, Euronews, France 24 and BBC World for instance.

(719) Regarding Eurosport, it positions itself as a "specialist" channel rather than a generalist sports channel with attractive high-level content as (i) it does not, for instance, include Poland's national football league in its line-up, (ii) outside of the Olympics (which it must, contractually, sublicense to some of its competitors), it does not own rights to other large worldwide famous sports events such as the World Cup, the Tour de France or the Formula 1 championship, (iii) its market shares fluctuate significantly quarter by quarter[306] depending on what content/events Eurosport is actually broadcasting, and (iii) Eurosport faces competition from a number of local and international channels such as Polsat, TVP and Vivendi/Canal+. This last fact is illustrated by Eurosport's market share decrease (in the second quarter of 2020) to as low as [10-20]% while Polsat Sport, and Vivendi/Canal+ reported market shares of [50-60]% and [20-30]% respectively over the same period on the wholesale supply of pay TV channels for sports content, not taking into account the [90-100]% share of TVP Sports on the wholesale supply of FTA TV channels for sports content in Poland.[307] This last fact illustrates the very volatile nature of the possible market for the wholesale supply of TV channels for sports content in Poland and the fact that the Parties do not necessarily have a consistent market position to exploit in that genre.

(720) Therefore, the Commission concludes that the merged entity would not have the ability to engage in foreclosure strategies by leveraging its potential market power in the possible markets for the wholesale supply of TV channels for news and/or sports

305 Responses to questionnaire Q10 – Questionnaire to market participants in the AV sector (Poland), questions 26 and 28.

306 In Q1/2020 it had a [40-50]% market share while in Q2/2020 and Q3/2020 it had [10-20]% and [20-30]% respectively. Similar fluctuations apply to the first half of 2021.

307 Form CO, Chapter 7, Annex 1.

content to the possible markets for the wholesale supply of TV channels for children and/other content in Poland.

(B.ii) Incentive to foreclose

(721) The Commission considers that the merged entity will not have the incentive to engage in foreclosure strategies by leveraging its potential market power in the possible markets for the wholesale supply of TV channels for news and/or sports content to the possible markets for the wholesale supply of TV channels for children and/or content in Poland for the reasons set out below.

(722) The Commission considers that any such attempt would be mostly counter-productive and unprofitable for the Parties for the following main reasons: (i) the customers that the Parties would try to harm could decide to drop the Parties' channels and find alternative individual and/or bundled content options from competitors of the Parties, and/or (ii) the customers that the Parties would try to harm could decide to take the unfavourable bundle, increase the prices to their own end customers/viewers and see these leave for other offline or online alternative retail TV services without the guarantee for the Parties that such customers would choose their own retail service given the Parties' limited market shares[308] at retail level in Poland ([5-10]% combined on the SVOD segment of the retail TV services market and [0-5]% of the overall subscription pay TV services). These limited market shares can be considered as inversely proportionate to the losses of revenues and profitability the merged entity would incur should it decide to pursue such hypothetical strategy.

(723) Therefore, the Commission concludes that the merged entity would not have the incentive to engage in foreclosure strategies by leveraging its potential market power in the possible markets for the wholesale supply of TV channels for news and/or sports content to the possible markets for the wholesale supply of TV channels for children and/or other content in Poland.

(B.iii) Effects on competition

(724) The Commission considers that due to the lack of ability and incentive, it is not necessary to conclude on the question whether any foreclosure strategy as a result of conglomerate relationships brought about by the Transaction in Poland would have a negative impact on effective competition.

(725) In any event, the Commission considers that a potential foreclosure strategy of competing wholesale suppliers of TV channels in Poland would have no significant detrimental effect on competition because, bundling being recognized by the respondents to the Commission's market investigation as a common practice in the industry, (i) customers will always be able to rely on alternative packaged deals, whether larger or narrower in scope, from other international and local suppliers that will continue to offer significant competition to the merged entity at all genre levels in Poland, and (ii) customers that would find it more constraining from a commercial perspective to deal with the merged entity on the markets for the wholesale supply of TV channels for the various types of content, could always decide to develop

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counter-strategies such as creating or commissioning content for their own use as a number of market players have done over the last few years.

(C) Conclusion

(726) In light of the above, the Commission concludes that the Transaction does not raise serious doubts as to the compatibility with the internal market with respect to any possible foreclosure practices resulting from the conglomerate relationships between the Parties' activities on the wholesale supply of TV channels for news, sports, children and other content under any of the alternative product markets in Poland given the lack of ability, incentive or possible effects of such strategy to foreclose competing wholesale suppliers of such TV channels.

5.6.8. Romania

5.6.8.1. Possible foreclosure of competing wholesale suppliers of TV channels for children, sports and other content

(727) In the present section, the Commission analyses whether the Parties would have the ability and incentive to foreclose rival wholesale suppliers of TV channels for children, sports and other content in Romania by engaging in potential tying or bundling strategies, then assesses whether such foreclosure strategies would have an impact on effective competition in those markets in Romania.

(A) The Notifying Party's views

(A.i) Ability to foreclose

(728) The Notifying Party submits that the Parties have no ability to foreclose competitors in Romania and that the Transaction will not give them this ability for the reasons set out below.

(729) First, the Notifying Party submits that the possible markets where the Parties, alone or collectively, have more than a 30% market share do not constitute relevant product markets from a market definition perspective and, consequently, the market shares calculated are artificial and in no way a display of any possible market power on the side of the merged entity.

(730) Irrespective of the above element, the Notifying Party adds that the Parties' shares of those possible relevant markets do not establish any market power that the merged entity would allegedly enjoy because it would own one or more "must have" channels that it would use to leverage that power onto other possible genre markets. The Notifying Party submits, in that respect, that, with [30-40]%, the Parties' market shares on the possible relevant market for the wholesale supply of TV channels for children content is merely above the threshold beyond which the Commission considers the possible anti-competitive effects of conglomerate relationships between neighbouring markets and that, as such, that level of market share cannot logically be considered as a position of possible market power that would, in turn, enable leveraging strategies. In that respect, the Notifying Party adds that, when all genres are part of one and the same market, the merged entity's market share of the pay TV channels in Romania is only [5-10]% and in competition with other strong

regional and international pay TV players including Intact Media (with [30-40]%), CME (with [20-30]%), Dogan (with [10-20]%) and others.[309]

(731) The Notifying Party therefore submits that, irrespective of how the markets are segmented, the merged entity does not own any "must have" channel in Romania and is consequently not able to engage in any foreclosure strategy based on the leveraging of market power.

(A.ii) Incentive to foreclose

(732) The Notifying Party considers that the Parties have no incentive to engage in foreclosure strategies and that the Transaction will not give them any incentive to do so primarily given the competitive constraint that non-linear alternatives impose on linear TV. The Notifying Party submits that if the Parties were to attempt to engage in a foreclosure strategy through leveraging practices and thereby attempt to make a pay TV provider take extra channels (at extra cost), that pay TV provider could either, if it decided to take the bundle, increase prices to its own customers, or, if it decided not to take the bundle, drop certain channels and reduce its offering accordingly. The Notifying Party submits that either reaction by the pay TV services provider could result in end-users leaving that linear TV service for another one. However, the Notifying Party argues that there is no reason to believe that those end-users exiting the degraded service as a result of the Parties alleged anti-competitive leveraging practices, would actually switch to the merged entity's own non-linear services post-Transaction given, in particular, its (very) low market shares at retail level in Romania ([5-10]% combined on the SVOD segment of the retail TV services market and [0-5]% of the overall subscription pay TV services).[310]

(A.iii) Effects on competition

(733) The Notifying Party submits that there will be no adverse effects on competition in the markets affected by the conglomerate relationships in Romania as the Parties will not have the ability or the incentive to engage in anticompetitive leveraging.

(B) Commission's assessment

(B.i) Ability to foreclose

(734) The Commission considers that the merged entity will not have the ability to engage in foreclosure strategies by leveraging its potential market power in the possible markets for the wholesale supply of TV channels for children content to the possible markets for the wholesale supply of TV channels for sports and/or other content in Romania for the reasons set out below.

(735) The Commission's market investigation indicated that a number of respondents considered that, as a result of the Transaction, the merged entity would have the ability to degrade the terms and conditions at which they purchase TV channels through anti-competitive bundling/tying practices.[311]

309 Notifying Party's response to Q9 of RFI 7 on 16 November 2021.

310 Form CO, Chapter 7, Annex 1.

311 Responses to questionnaire Q6 – Questionnaire to market participants in the AV sector (Romania), question 19.

(736) According to these respondents, such practices would entail forcing purchasers to take packages/bundles of TV channels/programmes including less desired/performing channels through the leveraging of premium channels/programmes. Some respondents further argued that this "all or nothing" practice would also result in marginalising other suppliers, thereby progressively reducing choice and quality in addition to increased prices.[312]

(737) The Commission considers however that these concerns are not justified, as there is no indication that any of the Parties' channels/programmes on their own could be considered as a "must have" asset in Romania given the Parties' limited market shares on those possible individual genres markets. Indeed, even when considered exclusively on a genre basis, with the single exception of their share of [30-40]% on the possible market for the wholesale supply of pay TV channels for children content, the Parties' market shares all remain below the thresholds relevant for the identification of conglomerate relationships. As such, the Parties' position on the children content genre can hardly be considered as a display of market power and hence a strong basis from which such power could be leveraged onto the other genres where the Parties are active (sports and other content channels).

(738) Therefore, the Commission concludes that the merged entity would not have the ability to engage in foreclosure strategies by leveraging its potential market power in the possible markets for the wholesale supply of TV channels for children content to the possible markets for the wholesale supply of TV channels for sports and/or other content in Romania.

(B.ii) Incentive to foreclose

(739) The Commission considers that the merged entity will not have the incentive to engage in foreclosure strategies by leveraging its potential market power in the possible markets for the wholesale supply of TV channels for children content to the possible markets for the wholesale supply of TV channels for sports and/or other content in Romania for the reasons set out below.

(740) The Commission considers that the Parties do not have the incentive to engage in such practices as any such attempt would be mostly counter-productive and unprofitable for the Parties for the following main reasons: (i) the customers that the Parties would try to harm could decide to drop the Parties' channels and find alternative individual and/or bundled content options from competitors of the Parties, and/or (ii) the customers that the Parties would try to harm could decide to take the unfavourable bundle, increase the prices to their own end customers/viewers and see these leave for other offline or online alternative retail TV services without the guarantee for the Parties that such customers would choose their own retail service given the Parties' limited market shares of the retail market in Romania ([5-10]% combined on the SVOD segment of the retail TV services market and [0-5]% of the overall subscription pay TV services).[313] These limited market shares can be considered as inversely proportionate to the losses of revenues and profitability the merged entity would incur should it decide to pursue such hypothetical strategy.

312 Responses to questionnaire Q6 – Questionnaire to market participants in the AV sector (Romania), question 20.

313 Form CO, Chapter 7, Annex 1.

(741) Therefore, the Commission concludes that the merged entity would not have the incentive to engage in foreclosure strategies by leveraging its potential market power in the possible markets for the wholesale supply of TV channels for children content to the possible markets for the wholesale supply of TV channels for sports and/or other content in Romania.

(B.iii) Effects on competition

(742) The Commission considers that due to the lack of ability and incentive, it is not necessary to conclude on the question whether any foreclosure strategy as a result of conglomerate relationships brought about by the Transaction in Romania would have a negative impact on effective competition.

(743) In any event, the Commission considers that a potential foreclosure strategy of competing wholesale suppliers of TV channels in Romania would have no significant detrimental effect on competition because, bundling being recognized by the respondents to the Commission's market investigation as a common practice in the industry[314], (i) customers will always be able to rely on alternative packaged deals, whether larger or narrower in scope, from other international and local suppliers that will continue to offer significant competition to the merged entity at all genre levels in Romania, and (ii) customers that would find it more constraining from a commercial perspective to deal with the merged entity on the markets for the wholesale supply of TV channels for the various types of content, could always decide to develop counter-strategies such as creating or commissioning content for their own use as a number of market players have done over the last few years.

(C) Conclusion

(744) In light of the above, the Commission concludes that the Transaction does not raise serious doubts as to the compatibility with the internal market with respect to any possible foreclosure practices resulting from the conglomerate relationships between the Parties' activities on the wholesale supply of TV channels for children, sports and other content under any of the alternative product markets in Romania given the lack of ability, incentive or possible effects of such strategy to foreclose competing wholesale suppliers of such TV channels.

5.6.9. Spain

5.6.9.1. Possible foreclosure of competing wholesale suppliers of TV channels for sports, children and other content

(745) In the present section, the Commission analyses whether the Parties would have the ability and incentive to foreclose rival wholesale suppliers of TV channels for sports, children and other content in Spain by engaging in potential tying or bundling strategies, then assesses whether such foreclosure strategies would have an impact on effective competition in those markets in Spain.

314 Responses to questionnaire Q6 – Questionnaire to market participants in the AV sector (Romania), questions 17 and 18.

(A) The Notifying Party's views

(A.i) Ability to foreclose

(746) The Notifying Party submits that the Parties have no ability to foreclose competitors in Spain and that the Transaction will not give them this ability for the reasons set out below.

(747) First, the Notifying Party submits that the possible markets where the Parties, alone or collectively, have more than a 30% market share do not constitute relevant product markets from a market definition perspective and, consequently, the market shares calculated are artificial and in no way a display of any possible market power on the side of the merged entity.

(748) Irrespective of the above element, the Notifying Party adds that the Parties' shares of those possible relevant markets do not establish any market power that the merged entity would allegedly enjoy because it would own one or more "must have" channels that it would use to leverage that power onto other possible genre markets. In that respect, the Notifying Party considers that the Eurosport channel is not a "must have" channel in Spain as (i) it does not own the rights for the local "La Liga" football league which, on its own, is worth about close to 200 times more than all of Eurosport's licensing rights for one year in Spain, (ii) with regards to the only major sporting event for which Discovery holds rights, the Olympics, Discovery is contractually obliged to license out at least 100 hours of content for the Winter Olympics, and 200 hours of content for the Summer Olympics, which contributes to Eurosport's lack of exclusive or "must have" channel nature, and (iii) when all genres are part of one and the same market, Eurosport's overall market share of all channels is just [0-5]% of all channels in Spain.[315]

(749) The Notifying Party therefore submits that, irrespective of how the markets are segmented, the merged entity does not own any "must have" channel in Spain and is consequently not able to engage in any foreclosure strategy based on the leveraging of market power.

(A.ii) Incentive to foreclose

(750) The Notifying Party considers that the Parties have no incentive to engage in foreclosure strategies and that the Transaction will not give them any incentive to do so primarily given the competitive constraint that non-linear alternatives impose on linear TV. The Notifying Party submits that if the Parties were to attempt to engage in a foreclosure strategy through leveraging practices and thereby attempt to make a pay TV provider take extra channels (at extra cost), that pay TV provider could either, if it decided to take the bundle, increase prices to its own customers, or, if it decided not to take the bundle, drop certain channels and reduce its offering accordingly. The Notifying Party submits that either reaction by the pay TV services provider could result in end-users leaving that linear TV service for another one. However, the Notifying Party argues that there is no reason to believe that those end-users exiting the degraded service as a result of the Parties alleged anti-competitive leveraging practices, would actually switch to the merged entity's own, non-linear services post-Transaction given, in particular, its limited market shares at retail level

315 Notifying Party's response to Q2 of RFI 9 on 11 December 2021.

in Spain ([5-10]% combined on the SVOD segment of the retail TV services market and [0-5]% of the overall subscription pay TV services).[316]

(A.iii) Effects on competition

(751) The Notifying Party submits that there will be no adverse effects on competition in the markets affected by the conglomerate relationships in Spain as the Parties will not have the ability or the incentive to engage in anti-competitive leveraging.

(B) Commission's assessment

(B.i) Ability to foreclose

(752) The Commission considers that the merged entity will not have the ability to engage in foreclosure strategies by leveraging its potential market power in the possible markets for the wholesale supply of TV channels for sports and/or children content to the possible markets for the wholesale supply of TV channels for other content in Spain for the reasons set out below.

(753) The Commission considers that there is no indication in the results of its market investigation that the merged entity will have the ability to engage in foreclosure practices through tying/bundling on the market for wholesale supply of channels in Spain which would result in a degradation of the terms and conditions at which customers purchase TV channels.[317]

(754) None of the Parties' channels on their own can be considered as a "must have" asset in Spain. Indeed, even when considered exclusively on a genre basis, with the exceptions of the merged entity' share of [40-50]% on the possible market for the wholesale supply of pay TV channels for sports content and its share of [30-40]% on the market for the wholesale supply of FTA TV channels for children content, the merged entity's market shares all remain below the thresholds relevant for the identification of conglomerate relationships.

(755) With respect to the merged entity's position on the possible market for the FTA TV channels for children content, which is merely above the threshold considered by the Commission in the context of conglomerate relationships (with [30-40]%), it can hardly be considered as a display of market power and hence a strong basis from which such power could be leveraged onto the other genres where the Parties are active (essentially other content channels) as the merged entity faces significant competition on that possible market from, among others, RTVE (with [40-50]%) and The Walt Disney Company (with [20-30]%). Furthermore, should all children channels be lumped together, the merged entity's market share would decrease to [20-30]%.[318]

(756) With respect to Eurosport, it positions itself as a "specialist" channel rather than a generalist sports channel with attractive high-level content as (i) it does not for instance propose Spain's national football league (La Liga) in its line-up, (ii) outside of the Olympics (which it must, contractually, sublicense to some of its competitors), it does not own rights to other large worldwide famous sports events such as the

316 Form CO, Chapter 7, Annex 1.

317 Responses to questionnaire Q11 – Questionnaire to market participants in the AV sector (Spain), questions 26 and 28.

318 Notifying Party's response to Q1 of RFI 9 on 11 December 2021.

World Cup, the Tour de France or the Formula 1 championship, (iii) its market shares fluctuate significantly quarter by quarter[319] depending on what content/events Eurosport is actually broadcasting, and (iii) Eurosport faces competition from a number of local and international channels such as Telefonica/Movistar, Mediapro and the DAZN Group, depending on where the La Liga rights end up. This last fact illustrates the very volatile nature of the possible market for the wholesale supply of TV channels for sports content in Spain and the fact that the Parties do not necessarily have a consistent market position to exploit in that genre.[320]

(757) Therefore, the Commission concludes that the merged entity would not have the ability to engage in foreclosure strategies by leveraging its potential market power in the possible markets for the wholesale supply of TV channels for sports and/or children content to the possible markets for the wholesale supply of TV channels for other content in Spain.

(B.ii) Incentive to foreclose

(758) The Commission considers that the merged entity will not have the incentive to engage in foreclosure strategies by leveraging its potential market power in the possible markets for the wholesale supply of TV channels for sports and/or children content to the possible markets for the wholesale supply of TV channels for other content in Spain for the reasons set out below.

(759) The Commission considers that any such attempt would be mostly counter-productive and unprofitable for the Parties for the following main reasons: (i) the customers that the Parties would try to harm could decide to drop the Parties' channels and find alternative individual and/or bundled content options from competitors of the Parties, and/or (ii) the customers that the Parties would try to harm could decide to take the unfavourable bundle, increase the prices to their own end customers/viewers and see these leave for other offline or online alternative retail TV services without the guarantee for the Parties that such customers would choose their own retail service given the Parties' limited market shares[321] at retail level in Spain ([5-10]% combined on the SVOD segment of the retail TV services market and [0-5]% of the overall subscription pay TV services). These limited market shares can be considered as inversely proportionate to the losses of revenues and profitability the merged entity would incur should it decide to pursue such hypothetical strategy.

(760) Therefore, the Commission concludes that the merged entity would not have the incentive to engage in foreclosure strategies by leveraging its potential market power in the possible markets for the wholesale supply of TV channels for sports and/or children content to the possible markets for the wholesale supply of TV channels for other content in Spain.

(B.iii) Effects on competition

(761) The Commission considers that due to the lack of ability and incentive, it is not necessary to conclude on the question whether any foreclosure strategy as a result of

319 In Q1/2020 it had a [40-50]% market share while in Q2/2020 and Q3/2020 it had [10-20]% and [20-30]% respectively. Similar fluctuations apply to the first half of 2021.

320 Notifying Party's response to Q1 of RFI 9 on 11 December 2021.

321 Form CO, Chapter 7, Annex 1.

conglomerate relationships brought about by the Transaction in Spain would have a negative impact on effective competition.

(762) In any event, the Commission considers that a potential foreclosure strategy of competing wholesale suppliers of TV channels in Spain would have no significant detrimental effect on competition because, bundling being recognized by the respondents to the Commission's market investigation as a common practice in the industry, (i) customers will always be able to rely on alternative packaged deals, whether larger or narrower in scope, from other international and local suppliers that will continue to offer significant competition to the merged entity at all genre levels in Spain, and (ii) customers that would find it more constraining from a commercial perspective to deal with the merged entity on the markets for the wholesale supply of TV channels for the various types of content, could always decide to develop counter-strategies such as creating or commissioning content for their own use as a number of market players have done over the last few years.

(C) Conclusion

(763) In light of the above, the Commission concludes that the Transaction does not raise serious doubts as to the compatibility with the internal market with respect to any possible foreclosure practices resulting from the conglomerate relationships between the Parties' activities on the wholesale supply of TV channels for sports, children and other content under any of the alternative product markets in Spain given the lack of ability, incentive or possible effects of such strategy to foreclose competing wholesale suppliers of such TV channels.

6. CONCLUSION

(764) 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