



EUROPEAN COMMISSION
DG Competition

Case M.10391 – RTL GROUP / TALPA NETWORK

Only the English text is available and authentic.

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

Article 4(4)
Date: 29/09/2021



EUROPEAN COMMISSION

Brussels, 29.9.2021
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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 Where possible the information omitted has been replaced by ranges of figures or a general description.

RTL Group S.A.
43 Boulevard Pierre Frieden
L-1543 Luxembourg
Luxembourg

Authority for Consumers and Markets
Muzenstraat 41
2511 WB The Hague
The Netherlands

Subject: Case M.10391 – RTL GROUP / TALPA NETWORK
Commission decision following a reasoned submission pursuant to Article 4(4) of Regulation No 139/2004¹ for referral of the case to the Netherlands and Article 57 of the Agreement on the European Economic Area.²

Date of filing: 30 August 2021

Legal deadline for response of Member States: 20 September 2021

Legal deadline for the Commission decision under Article 4(4): 4 October 2021

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”).

1. INTRODUCTION

- (1) According to Article 4(4) of the Merger Regulation, before a concentration with Union dimension is notified to the Commission, the notifying party may inform the Commission, by means of a reasoned submission, that the concentration may significantly affect competition in a market within a Member State which presents all the characteristics of a distinct market and may request that the concentration be referred in whole or in part to that Member State.
- (2) On 30 August 2021, the Commission received, by means of a reasoned submission (the “Reasoned Submission”), a referral request pursuant to Article 4(4) of the Merger Regulation with respect to a concentration whereby Bertelsmann SE & Co. KGaA (“Bertelsmann”, Germany), via RTL Group S.A. (“RTL Group”, Luxembourg), is seeking to acquire sole control of Talpa Network B.V. (“Talpa Network”, the Netherlands and together with Bertelsmann, the “Parties”) (the “Transaction”). RTL Group requests: (i) the operation be examined in part by the competent authority of the Netherlands, as regards the impact on the AV/TV value chain in the Netherlands (the “Netherlands AV/TV Transaction”); and (ii) that jurisdiction for the review of the rest of the operation to remain with the Commission.³
- (3) A copy of the Reasoned Submission was transmitted to all Member States on 30 August 2021.
- (4) By letter of 13 September 2021, the Authority for Consumers and Markets (the “ACM”), as the competent authority of the Netherlands, informed the Commission that the Netherlands agrees with the proposed partial referral.

2. THE PARTIES AND THE OPERATION

- (5) **RTL Group:** The RTL Group is a TV broadcaster, content producer and the owner of a digital video network with interests in 67 TV channels, 10 streaming platforms and 38 radio stations in several EU Member States, including Belgium, Germany, France and the Netherlands. The RTL Group is active in the Netherlands through RTL Nederland which broadcasts various TV and digital channels, as well as online VOD platforms. It also provides online and TV advertising space via its sales house Ad Alliance. Bertelsmann is the controlling shareholder of the RTL Group. Bertelsmann is a German private multinational conglomerate corporation active in the media, services and education sectors. Bertelsmann is active through a number of divisions across 50 countries worldwide.
- (6) **Talpa Network:** Talpa Network is a Dutch broadcaster of linear TV that also offers VOD services and sells advertising in the Netherlands. Talpa Network is ultimately beneficially owned and solely controlled by Mr. John de Mol. Talpa Network has subsidiaries in the Netherlands that broadcast TV and radio channels, operate various online platforms and publish magazines and games. Talpa Network also has limited activities in Belgium and recently in Germany.

³ In addition to the relevant markets in the AV/TV value chain described below, there is also vertical relationship between Bertelsmann’s activities upstream in the provision of IT services and solutions, and downstream, Talpa Network’s operation of the e-commerce and auction platforms. This vertical relationship exists in each of the countries where Talpa Network operates e-commerce platforms i.e. the Netherlands, Belgian and Germany. This referral request does not relate to these activities.

- (7) The Transaction will be brought about through an agreed form subscription and contribution agreement, attached to the signing protocol which was signed on 22 June 2021. Pursuant to this agreement, Bertelsmann via the RTL Group, is seeking to acquire sole control of Talpa Network; Talpa Holding N.V., a subsidiary of Talpa Holding, will hold a 30% shareholding in the combined entity with RTL Group indirectly holding a 70% shareholding.
- (8) In addition to its 30% shareholding, Talpa Holdings (i.e. John de Mol) will retain certain governance rights over the combined entity, in particular [...]. Taking into account the overall governance structure of the combined entity and [...], the Commission does not consider that these rights amount to control, and therefore consider that Bertelsmann is acquiring sole control of the combined entity.
- (9) The Transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

3. EU DIMENSION

- (10) The combined aggregate worldwide turnover of all the undertakings concerned is more than EUR 5,000 million and the aggregate Community-wide turnover of each of at least two of the undertakings concerned is more than EUR 250 million. While [...] achieved more than two-thirds of its 2020 turnover in the Netherlands, [...] did not.
- (11) The Transaction therefore has an EU dimension within the meaning of Article 1(2) of the Merger Regulation.

4. ASSESSMENT

- (12) The partial referral request relates to the impact of the Transaction on the AV/TV value chain in the Netherlands.

4.1. Market definition

4.1.1. The production and acquisition of AV/TV content

4.1.1.1. Product market definition

- (13) In previous decisions, the Commission has concluded that there are separate markets for: (i) the production and supply of AV/TV content; and (ii) the licensing of broadcasting rights for pre-produced AV/TV content.⁴
- (14) The Commission has considered possible further segmentations of these markets by various parameters such as:
- (a) content type, in particular: films, sports, and other TV content;⁵

⁴ For example Commission decisions of: 12 November 2019 in case COMP/M.9064 – *Telia Company / Bonnier Broadcasting Holding*, para 121; 6 November 2018 in case COMP/M.8785 – *Disney / Fox*, para 70; 7 April 2017 in case COMP/M.8354 – *Fox / Sky*, para 62; and 24 February 2015 in case COMP/M.7194 – *Liberty Global / Corelio / W&W / De Vijver Media*, para 60.

⁵ For example Commission decisions of: 7 April 2017 in case COMP/M.8354 – *Fox / Sky*, para 67; 21 December 2011 in case COMP/M.6369 – *HBO / Ziggo / HBO Nederland*, paras 18–20; 24 February 2015 in case COMP/M.7194 – *Liberty Global / Corelio / W&W / De Vijver Media*, para 69; and 15 April 2013 in case COMP/M.6880 – *Liberty Global / Virgin Media*, para 19.

- (b) by exhibition window: subscription based video on demand (“SVOD”), transactional video on-demand (“TVOD”), pay-per-view (“PPV”), first pay-TV window and second pay-TV window, and free to air (“FTA”);⁶
 - (c) for the production of general entertainment TV: (i) by genre; (ii) between scripted and non-scripted content; and (iii) between commissioned TV production or TV production for-hire; and⁷
 - (d) for licensing AV content: (i) between premium and non-premium content; or (ii) by scripted and non-scripted content.⁸
- (15) The ACM has previously defined the market for the supply and acquisition of AV/TV content in line with the Commission’s decisions. Within that, the ACM has previously defined a separate market for the independent production of Dutch TV programmes, excluding programmes produced in-house by TV broadcasters, and without differentiating between the different sourcing models as defined by the Commission.⁹ The ACM considered a further segmentation for large-scale Dutch TV programmes.¹⁰
- (16) The Parties submit that no distinction should be made based on: (i) pay-TV and FTA distribution; (ii) linear and non-linear distribution; (iii) content type, or at least not a distinction other than ‘sports’, ‘movies and series’ and ‘other content’, as considered by the Commission; or (iv) exhibition window.
- (17) There is no evidence on the Commission’s file that would indicate the need for the Commission to depart from its previous findings that there are separate markets for: (i) the production and supply of AV/TV content; and (ii) the licensing of broadcasting rights for AV/TV pre-produced TV content; each of which may in turn be further segmented.

4.1.1.2. Geographic market definition

- (18) In previous cases considering the Netherlands, the Commission has considered the market to be limited to the territory of this country.¹¹ When considering Belgium, the Commission left open whether the geographic market is: (i) national; or (ii) regional (the Flemish Region, or the combination of the Flemish Region and the Brussels Capital Region).¹²

⁶ For example Commission decisions of: 24 February 2015 in case COMP/M.7194 - *Liberty Global / Corelio / W&W / De Vijver Media*, para 69; 21 December 2011 in case COMP/M.6369 - *HBO / Ziggo / HBO Nederland*, para 18; 16 September 2014 in case COMP/M.7282 - *Liberty Global / Discovery / All3Media*, paras 46–48; 9 October 2014 in case COMP/M.7360 - *21st Century Fox / Apollo / JV*, para 45–47, 10 October 2014 in case COMP/M.7000 - *Liberty Global / Ziggo*, paras 38–44.

⁷ Commission decision of 20 January 2016 in case COMP/M.7865 - *Lov Group Invest / De Agostini / JV*, para 31.

⁸ Commission decisions of: 6 November 2018 in case COMP/M.8785 - *The Walt Disney Company / Twenty-First Century Fox*, para. 68; and 7 April 2017 in case COMP/M.8354 - *Fox / Sky*, paras 65–66

⁹ ACM Decision of 10 July 2017, Case 17.0453.22 – *Talpa Holding N.V. / Sanoma Image B.V.*, para 63; ACM Decision of 13 August 2007, Case 6126/143 – *RTL / 538*, paras. 29 and 34; ACM Decision of 22 July 2011 Case 7185 – *Sanoma / SBS*, para 52.

¹⁰ ACM Decision of 22 July 2011 Case 7185 – *Sanoma / SBS*, para 53.

¹¹ Commission decision of 30 May 2018 in case COMP/M.7000 - *Liberty Global / Ziggo*, para 89.

¹² Commission decision of 23 November 2018 in case COMP/M.8944 - *Liberty Global / De Vijver Media and Liberty Global (SBS) / Mediahuis / JV*, para 72.

- (19) The ACM has generally found that these markets are geographically limited to the Netherlands, but potentially according to the Dutch linguistic region (including Flanders).¹³
- (20) The Parties submit that the relevant content markets are national in scope and cannot be considered regional in scope (i.e. encompassing both the Netherlands and Flanders).
- (21) There is no evidence on the Commission's file that would indicate the need for the Commission to depart from its previous findings that the Netherlands constitutes a separate geographic market for: (i) the production and supply of AV/TV content; and (ii) the licensing of broadcasting rights for AV/TV pre-produced TV content.

4.1.2. *The wholesale supply of TV channels*

4.1.2.1. Product market definition

- (22) The Commission has previously identified separate product markets for the supply of (i) FTA TV channels; and (ii) pay-TV channels.¹⁴ The Commission has considered segmenting the market for the supply of pay-TV further based on: (a) basic pay-TV and premium pay-TV channels;¹⁵ and (b) based on genre or thematic content.¹⁶
- (23) With regard to the Netherlands specifically, in *Liberty Global/Ziggo* the Commission has found the Netherlands to be primarily a pay-TV market and therefore that a distinction between basic pay-TV and premium pay-TV is more appropriate than a distinction between FTA and pay-TV although ultimately left the exact market definition open.¹⁷
- (24) The ACM has similarly considered two separate product markets for: (i) FTA TV channels; and (ii) pay-TV channels.¹⁸
- (25) The Parties do not consider it appropriate to distinguish between the wholesale supply of FTA and pay-TV channels and that it can be left open as to whether the relevant Dutch product market should be segmented into: (i) the wholesale supply of basic pay-TV channels, with a potential further segmentation into the wholesale supply of: (a) basic general interest channels; and (b) thematic channels; and (ii) the

¹³ ACM (NMa) decision of 28 June 2005 in case 4490/*UPC-Canal+*, paras 42-43, ACM (NMa) decision of 22 July 2011 in case 7185/*Sanoma-SBS*, paras 62-63, ACM (NMa) decision of 13 August 2007 in case 6126/*RTL NL-Radio 538*, paras 39. Regarding TV channels: ACM Decision of 25 February 2005, Case 4490/67 – *UPC / Canal+*, para 59.

¹⁴ See for example Commission Decisions of: 12 August 2020 in case COMP/M.9802 – *Liberty Global / DPG Media / JV*, para 54; 20 September 2013 in case COMP/M.6990 – *Vodafone / Kabel Deutschland*, para 41; 30 May 2018 in case COMP/M.7000 – *Liberty Global / Ziggo*, para 111; 7 April 2017 in case COMP/M.8354 – *Fox / Sky*, para 85.

¹⁵ See for example Commission Decisions of: 6 November 2018 in case COMP/M.8785 – *Disney/Fox*, para 77; 15 June 2018 in case COMP/M.8861 – *Comcast/Sky*, para 50; 6 February 2018 in case COMP/M.8665 – *Discovery/Scripps*, paras 19- 20; and 7 April 2017 in case COMP/M.8354 – *Fox/Sky*, paras 80- 81.

¹⁶ Commission Decision of 7 April 2017, case COMP/M.8354 – *Fox / Sky*, paras 82-83; Commission Decision of 12 November 2019, case COMP/M.9064 – *Telia Company / Bonnier Broadcasting Holding*, para 137.

¹⁷ Commission Decision of 30 May 2018 in case COMP/M.7000 - *Liberty Global / Ziggo*, paras 70-71

¹⁸ ACM Decision of 28 February 2005 in case 4490/67 – *UPC / Canal+*, para 23; ACM Decision of 28 June 2005, Case 4490/155 – *UPC / Canal+*, para 22; Case 3052/150 – *Liberty Media / Casema*, para 101-103.

market for the wholesale supply of premium pay-TV channels, with a potential segmentation into: (a) premium pay-TV sports channels; and (b) premium pay-TV film channels.

- (26) There is no evidence on the Commission's file that would indicate the need for the Commission to depart from its previous findings that there is at least a separate market for the wholesale supply of TV channels, which may in turn be further segmented.

4.1.2.2. Geographic market definition

- (27) When considering the Netherlands, the Commission has considered the market to be limited to the territory of the Netherlands.¹⁹ The Commission has previously considered the relevant geographic market in Belgium to be the footprint of the cable network of the relevant merging party²⁰ but more recently noting that it also may have a larger regional (i.e. Flanders) or national scope.²¹
- (28) The ACM has generally found that these markets are geographically limited to the Netherlands, but potentially according to the Dutch linguistic region (including Flanders).²²
- (29) The Parties submit that the market(s) for the wholesale distribution of TV channels are national in scope.
- (30) There is no evidence on the Commission's file that would indicate the need for the Commission to depart from its previous finding that the Netherlands constitutes a separate geographic market for the wholesale supply of TV channels.

4.1.3. The retail supply of TV services

4.1.3.1. Product market definition

- (31) TV services can be supplied to end customers by means of: (i) packages of linear TV channels; and (ii) content aggregated in non-linear services, such as AVOD, SVOD and TVOD/PPV.²³
- (32) The Commission previously considered a segmentation of the market for the retail supply of TV services into: (i) the retail supply of FTA channels; and (ii) the retail supply of pay-TV channels. Furthermore, the Commission considered a possible segmentation for the retail supply of pay-TV services into: (a) premium and basic pay-TV services; (b) linear and non-linear pay-TV services; and (c) a segmentation based on distribution technologies (e.g. cable, satellite, mobile, OTT, IPTV, or terrestrial), while ultimately leaving the precise market definition open.²⁴

¹⁹ Commission decision of 30 May 2018 in case COMP/M.7000 – *Liberty Global / Ziggo*, para 121.

²⁰ Commission decision of 24 February 2015, case COMP/M.7194 - *Liberty Global / Corelio / W&W / De Vijver Media*.

²¹ Commission decision of 23 November 2018 in Case COMP/M.8944 – *Liberty Global / De Vijver Media and Liberty Global (SBS) / Mediahuis / JV*, para 82.

²² ACM Decision of 25 February 2005, Case 4490/67 – *UPC / Canal+*, para 59.

²³ Commission Decision of 18 July 2007, case COMP/M.4504 – *SFR / Télé 2 France*, para 40; Commission Decision of 25 June 2008, case COMP/M.5121 – *News Corp / Premiere*, para 20.

²⁴ Commission Decision of 19 February 2020, case COMP/M.9559 – *Telefonica / Prosegur / Prosegur Alarmas Espana*, para 66; Commission Decision of 9 September 2019 in case COMP/M.9416 – *Bollore*

- (33) The ACM likewise previously considered a segmentation between FTA channels and pay-TV channels for the retail supply of TV services.²⁵ Moreover, the ACM concluded that PPV, VOD, and near-VOD are all part of the market for the supply of TV services.²⁶ In line with the Commission's decisions, the ACM left open whether the market should be further segmented based on distribution technology.²⁷
- (34) The Parties submit that at the retail level in the Netherlands no distinction should be made between: (i) FTA and pay-TV; (ii) linear and non-linear TV services; (iii) TVOD, AVOD and SVOD; or (iv) distribution technology.
- (35) There is no evidence on the Commission's file that would indicate the need for the Commission to depart from its previous finding there is at least a separate market for the retail supply of TV services, which may in turn be further segmented.

4.1.3.2. Geographic market definition

- (36) When considering the Netherlands, the Commission has considered the market to be limited to the territory of the Netherlands.²⁸ In cases considering Belgium / Flanders, the Commission has considered that the relevant geographic market to be the footprint of the cable network of the relevant merging party.²⁹
- (37) The ACM has generally found that these markets are geographically limited to the Netherlands, but potentially according to the Dutch linguistic region (including Flanders).³⁰
- (38) The Parties submit that the geographic market for the retail supply of TV services is national in scope (i.e. the Netherlands), and not limited to the distribution footprint of a particular operator.
- (39) There is no evidence on the Commission's file that would indicate the need for the Commission to depart from its previous finding that the Netherlands constitutes a separate geographic market for the retail supply of TV services.

4.1.4. The sale of advertising space

4.1.4.1. Product market definition

- (40) The Commission has previously considered separate markets for online and offline advertising.³¹ With regard to offline advertising, the Commission has previously

Group / M7 Group, paras 50-51; Commission Decision of 15 June 2018 in case COMP/M.8861 – *Comcast / Sky*, paras 57-59; Commission Decision of 7 April 2017 in case COMP/M.8354 – *Fox / Sky*, para 101.

²⁵ ACM Decision of 22 July 2011 in Case 7185 – *Sanoma/SBS*, par. 56; ACM Decision of 28 June 2005, Case 4490/155 – *UPC / Canal+*, para 22.

²⁶ ACM Decision of 28 June 2005 in Case 4490/155 – *UPC / Canal+*, para 35.

²⁷ ACM Decision of 28 June 2005 in Case 4490/155 – *UPC / Canal+*, para 41.

²⁸ Commission decision of 30 May 2018 in case COMP/M.7000 – *Liberty Global / Ziggo* para 140.

²⁹ Commission decision of 23 November 2018 in case COMP/M.8944 – *Liberty Global / De Vijver Media and Liberty Global (SBS) / Mediahuis / JV*, para 86; Commission decision of 24 February 2015 in case COMP/M.7194 – *Liberty Global / Corelio / W&W / De Vijver Media*, para 139.

³⁰ ACM Decision of 28 June 2005, Case 4490/155 – *UPC / Canal+*, para 44.

³¹ Commission decision of 9 September 2014 in case COMP/M.7288 *Viacom / Channel 5 Broadcasting*, para 35. Commission Decision of 15 May 2018, case COMP/M.8861 – *Comcast / Sky*, para 64.

defined separate advertising markets on the basis of media channel, segmenting between: (i) TV advertising; (ii) radio advertising; and (iii) print advertising.³²

- (41) The ACM has recently considered that the relevant advertising market corresponded to the media channel in question i.e. that there are separate markets for the supply of TV advertising and for radio advertising.³³
- (42) The Parties submit that in the Netherlands, it is no longer appropriate to define distinct advertising markets by media channel, or more generally between offline and online advertising.
- (43) There is no evidence on the Commission's file that would indicate the need for the Commission to depart from its previous finding there is at least a separate market for the supply of advertising, which may in turn be further segmented.

4.1.4.2. Geographic market definition

- (44) The Commission has previously left the market definition open, stating that the market could be limited to the Flemish Region, the Flemish Region together with the Brussels Capital Region, or was at the most national in scope.³⁴
- (45) The ACM has generally found that these markets are geographically limited to the Netherlands, but potentially according to the Dutch linguistic region (including Flanders).³⁵
- (46) The Parties submit that the geographic scope of the relevant advertising market(s) is national, i.e. limited to the Netherlands, and cannot be considered as regional in scope (i.e. encompassing both the Netherlands and Flanders).
- (47) There is no evidence on the Commission's file that would indicate the need for the Commission to depart from its previous finding that the Netherlands constitutes a separate geographic market for the sale of TV advertising.

³² Commission Decision of 12 August 2020, case COMP/M.9802 – *Liberty Global / DPG Media JV*, paras 102 and 108; Commission Decision of 21 December 2016, case COMP/M.8180 – *Verizon / Yahoo*, paras 22 and 25; Commission Decision of 7 April 2017, case COMP/M.8354 – *Fox / Sky*, para 114; Commission Decision of 12 November 2019, case COMP/M.9064 – *Telia Company / Bonnier Broadcasting Holding*, para 276; Commission Decision of 6 February 2018, case COMP/M.8665 – *Discovery / Scripps*, paras 39-40.

³³ Decision of 10 April 2020, Case ACM/19/038207 – *DPG Media B.V. / Sanoma Media B.V.*, para 62.

³⁴ Commission decision of 23 November 2018 in case COMP/M.8944 – *Liberty Global / De Vijver Media and Liberty Global (SBS) / Mediahuis / JV*, par. 90

³⁵ ACM Decision of 13 August 2007, Case 6126 – *RTL NL/Radio 538*, para 37; ACM Decision of 6 March 2000, Case 1682 – *SBS / Strengholt / Publimusic*, para 18.

4.2. Article 4(4) of the Merger Regulation

- (48) According to the Commission Notice on Case Referral in respect of concentrations (the “Commission Notice on Case Referrals”)³⁶, in order for a referral to be made by the Commission to one or more Member States pursuant to Article 4(4), the following two legal requirements must be fulfilled:
- (a) there must be indications that the concentration may significantly affect competition in a market or markets,³⁷ and
 - (b) the market(s) in question must be within a Member State and present all the characteristics of a distinct market.³⁸
- (49) Moreover, point 20 of the Commission Notice on Case Referrals provides that concentrations with a Community dimension which are likely to affect competition in markets that have a national or narrower than national scope, and the effects of which are likely to be confined to, or have their main economic impact in, a single Member State, are the most appropriate candidate cases for referral to that Member State. This applies in particular to cases where the impact would occur on a distinct market which does not constitute a substantial part of the common market.
- (50) The Commission considers that the conditions for the partial referral of the Netherlands AV/TV Transaction to the Netherlands under Article 4(4) of the Merger Regulation are fulfilled.
- (51) First, the Transaction may significantly affect competition in the Netherlands with regard to the AV/TV value chain.
- (52) The Transaction results in the following horizontal overlaps in the AV/TV value chain:
- (a) The Dutch market for the acquisition of AV/TV content - RTL Group’s market share: [20 – 30]%; Talpa Network’s market share: [10 – 20]%; combined market share: [30 – 40]%.
 - (b) The Dutch market for the wholesale supply of TV channels - RTL Group’s market share: [50 – 60]%; Talpa Network’s market share: [10 – 20]%; combined market share: [70 – 80]%.
 - (c) The Dutch market for the retail supply of TV services, VOD segment - RTL Group’s market share: [5 – 10]%; Talpa Network’s market share: [0 – 5]%; combined market share: approx. [10 – 20]%.
 - (d) The Dutch market for the sale of TV advertising space - RTL Group’s market share: [30 – 40]%; Talpa Network’s market share: [20 – 30]%; combined market share: [60 – 70]%.³⁹

³⁶ OJ L 24, 29.1.2004, p. 1.

³⁷ Further developed in point 17 of the Commission Notice on Case Referrals.

³⁸ Further developed in point 18 of the Commission Notice on Case Referrals.

³⁹ These figures just represent sales of airtime on their own channels. The shares are higher taking into account commission from activities as ad sales houses for the advertising airtime on third party channels.

- (53) The horizontal overlaps in: (i) the Dutch market for the acquisition of AV/TV content; (ii) the Dutch market for the wholesale supply of TV channels; and (iii) the Dutch market for the sale of TV advertising space; each result in affected markets with combined market shares in excess of 20%. The market shares for: (i) the Dutch market for the wholesale supply of TV channels; and (ii) the Dutch market for the sale of TV advertising space; in particular are well in excess of [...]%. As per paragraph 17 of the Commission’s Horizontal Merger Guidelines and well-established case law, market shares of 50% or more are considered to be “*very large*” and may in themselves be evidence of the existence of a dominant market position.
- (54) In addition to potentially horizontally affected markets between the markets referred to in paragraph (53), the Transaction also results in a vertically affected market in the Netherlands in respect of the upstream content production activities of Fremantle Nederland (Bertelsmann), and the downstream acquisition of content by Talpa TV and the RTL Group:
- (a) Upstream: RTL Group’s market share on the Dutch market for the production of AV/TV content: [20 – 30]%; and
 - (b) Downstream: The combined market share on the Dutch market for the acquisition of AV/TV content: [30 – 40]%.
- (55) Second: (i) the Dutch market for the production and acquisition of AV/TV content; (ii) the Dutch market for the wholesale supply of TV channels; (iii) the Dutch market for the retail supply of TV services; and (iv) the Dutch market for the sale of TV advertising space; each present the characteristics of being distinct markets. The Commission and the ACM have previously defined each of the affected markets as being distinct product markets that are geographically distinct from neighbouring areas, as explained above in Section 4.1.

4.3. Additional factors

- (56) In addition to the verification of the legal requirements, point 19 of the Commission Notice on Case Referrals provides that it should also be considered whether referral of the case is appropriate, and in particular whether the competition authority or authorities to which they are contemplating requesting the referral of the case is the most appropriate authority for dealing with the case.
- (57) Point 23 of the Commission Notice on Case Referrals in particular states that consideration should, to the extent possible, be given to whether the NCA(s) to which referral of the case is contemplated possess specific expertise concerning local markets, or be examining, or about to examine, another transaction in the sector concerned.
- (58) In this regard, the Commission notes that the ACM has extensive experience in considering the markets where the Netherlands AV/TV Transaction may significantly affect competition, including investigating cases involving the Parties:

- (a) ACM's decision of 22 July 2011 in which it conditionally cleared the acquisition of joint control of the Dutch activities of SBS Broadcasting Group by Sanoma Image B.V. and Talpa Holding N.V.;⁴⁰
 - (b) ACM's decision of 10 July 2017 in which it unconditionally cleared the acquisition of sole control by Talpa Holding N.V. of Sanoma Image B.V., comprising Talpa Network's current TV activities;⁴¹ and
 - (c) ACM's decision of 2 December 2019 in which the ACM considered whether certain rebates granted by OMS could result in competition concerns on a hypothetical market for spot radio advertising.⁴²
- (59) Moreover, the ACM is currently still monitoring commitments that were applied on Talpa in ACM's decisions of 22 July 2011 (*Sanoma/SBS*) and 2 December 2019 (*OMS*). Therefore, the ACM seems to be the most appropriate authority.

5. REFERRAL

- (60) On the basis of the above considerations and the information provided by the Parties in the Reasoned Submission and given that the Netherlands has expressed its agreement with respect to the partial referral of the Transaction, the partial referral meets the legal requirements set out in Article 4(4) of the Merger Regulation in that the concentration may significantly affect competition in at least a market within a Member State which presents all the characteristics of a distinct market.
- (61) Moreover, the requested partial referral would be consistent with points 19 and 23 of the Commission Notice on Case Referrals, in particular because the ACM appears to be the most appropriate authority to assess the impact of the Transaction on the affected markets in the Netherlands.

6. CONCLUSION

- (62) For the above reasons and given that the Netherlands expressed its agreement with the proposed partial referral of the Transaction with respect to the Netherlands AV/TV Transaction, the Commission has decided to refer the Netherlands AV/TV Transaction to the Netherlands with a view to the application of that Member State's national competition law. This decision is adopted in application of Article 4(4) of the Merger Regulation, Article 6(1) of Protocol 24 to the EEA Agreement and Article 57 of the EEA Agreement.

For the Commission

(Signed)
Olivier GUERSENT
Director-General

⁴⁰ ACM Decision of 22 July 2011, Case 7185 – *Sanoma/SBS*, par. 129.

⁴¹ ACM Decision of 10 July 2017, Case 17.0453.22 – *Talpa Holding N.V./Sanoma Image B.V.*, par. 23.

⁴² ACM Decision of 2 December 2019, Case ACM/19/037273 – *One Media Sales B.V.*