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PUBLIC VERSION

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus […]. Where possible the information omitted has been replaced by ranges of figures or a general description.

To the notifying parties

Subject: **Case M.9604 – NENT/Telenor/JV**
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004[1] and Article 57 of the Agreement on the European Economic Area[2]

Dear Sir or Madam,

(1) On 23 March 2020, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Nordic Entertainment Group AB ("NENT", Sweden) and Telenor ASA ("Telenor", Norway) acquire within the meaning of Articles 3(1)(b) and 3(4) of the Merger Regulation joint control of the joint venture ("JV", Sweden) (the "Transaction").[3] NENT and Telenor are designated hereinafter as the "Notifying Parties" and each individually as "Notifying Party". The Notifying Parties together with the JV are designated hereinafter as the "Parties".

1 OJ L 24, 29.1.2004, p. 1 (the "Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

2 OJ L 1, 3.1.1994, p. 3 (the "EEA Agreement"). 2020/C 108/04

3 Publication in the Official Journal of the European Union No C 108, 1.4.2020, p. 4.

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1. THE PARTIES

(2) **NENT** provides TV distribution services and TV channels in Norway, Sweden, Denmark and Finland. NENT also creates, produces and distributes TV shows, commercials, feature films and branded content. In Sweden, NENT also provides broadband internet services on open fibre networks. Outside the Nordic region,[4] NENT operates production companies in other European countries and sells content to customers worldwide.

(3) **Telenor** provides mobile and fixed telecommunications services and TV distribution services in Norway, Sweden, Denmark and Finland. Outside the EEA, Telenor provides mobile telecommunications services in Asia. Telenor's subsidiary Telenor Satellite AS ("Telenor Satellite") is active in the supply of satellite transponder capacity. Telenor's largest shareholder is the Norwegian state.

(4) The **JV** will be active in the provision of TV distribution services in Norway, Sweden, Denmark and Finland. NENT and Telenor will contribute to the JV their respective retail AV businesses i.e. the satellite and IPTV pay-TV operator and broadband provider of NENT, and the satellite pay TV operator of Telenor.

2. THE OPERATION

(5) On 22 October 2019, Nordic Entertainment Group Sweden Holding AB and Telenor Broadcast Holding AS entered into a Merger Agreement. At closing, NENT will contribute its Viasat Consumer business ("Viasat") to the JV, which will be carved out of NENT prior to closing into a separate corporate structure ("VCB Group") as part of an internal reorganisation of NENT. Telenor will contribute its wholly owned subsidiary, Canal Digital AS ("Canal Digital"), to the JV. Following the closing, the Notifying Parties will each hold 50% of the shares in the JV.

3. THE CONCENTRATION

3.1. Joint control

(6) The Notifying Parties will each hold 50% of the shares in the JV and will each have the ability to exercise decisive influence over the JV. In particular, the Board of the JV will consist of six Board members ("Directors"), with each Notifying Party nominating three Directors. The Notifying Parties will share the right to nominate the Chairman of the Board, with the right alternating between the Notifying Parties on a yearly basis in conjunction with an annual shareholders meeting.[5]

(7) Each Notifying Party can require the replacement of any Director nominated by the other Notifying Party with a new Director. The appointment of the Chief

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4 In the present Decision, the terms "Nordic region", "Nordics" and "Nordic countries" refer to Norway, Sweden, Denmark and Finland.

5 The Chairman shall not have a casting vote. The Notifying Party not nominating the Chairman of the Board that year will be entitled to nominate the Vice Chairman of the Board.

Executive Officer ("CEO") and Chief Financial Officer ("CFO") must be approved by a minimum of two Directors from both of the Notifying Parties and either Notifying Party can request the removal of the CEO and CFO.

(8) The annual budget and business plan (including any amendment, updating, supplementing or replacement of a business plan) requires approval from the Board of the JV, by a minimum of two Directors from both of the Notifying Parties.

(9) Therefore, as a result of the Transaction, NENT and Telenor will jointly control the JV within the meaning of Article 3(1)(b) of the Merger Regulation.

3.2. Full-functionality

(10) The JV will be fully functional. First, the JV will employ its own management dedicated to its day-to-day operations. The JV will also have access to sufficient resources, including finance, staff and tangible and intangible assets that will enable it to operate independently on the market for the retail supply of AV services, performing the functions normally carried out by undertakings operating on the same market.

(11) Second, the JV will operate a TV distribution platform as a fully independent company with its own personnel (sales and marketing, customer service, technical and content negotiation and purchasing teams). Its market-facing activities will include the retail supply of AV services via satellite in each of Norway, Sweden, Finland and Denmark, and via IPTV in Sweden and Norway. The JV will have its own access to, and presence on, the market, and its activities are not limited to the distribution or sale of its parent companies' products.[6]

(12) Third, the JV will be active as an autonomous economic entity and all relationships with the Notifying Parties and their affiliates (including, but not limited to, agreements concerning NENT's content and channels and Telenor's satellite transponder capacity) will be at arm's length on the basis of normal commercial conditions. Moreover, the vast majority of the JV's turnover will be achieved through relationships with third parties.

(13) Finally, the JV is intended to operate on a lasting basis. The Merger Agreement does not provide for finite duration of the JV and the Transaction therefore brings about a lasting change in the structure of the undertakings concerned.

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

4. EU DIMENSION

(15) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million (NENT: EUR 1 420 million; Telenor:

6 In addition to NENT, for example, the JV will acquire content from the main providers of TV channels and content for retail distribution in each of Norway, Sweden, Denmark and Finland. It follows that the JV will be engaged in activities beyond one specific function for the parents.

EUR 11 437 million; combined: EUR 12 857 million).[7] Each of them has an EU-wide turnover in excess of EUR 250 million (NENT: EUR […]; Telenor: EUR […]), but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The notified operation therefore has an EU dimension.

5. RELEVANT MARKETS

5.1. Introduction

(16) The Transaction relates to the two lower levels of the AV value chain, namely (i) the wholesale supply of TV channels where NENT is active and will post-Transaction remain independently active; and (ii) the retail supply of AV services to end customers where the JV will be active but also Telenor will remain active through technologies other than satellite,[8] and NENT will remain active with its OTT offer.

(17) In addition, the Transaction relates to the market for the supply of satellite transponder capacity where Telenor Satellite is active as a supplier and Telenor's Canal Digital and NENT's Viasat are customers.

5.2. Structure of the value chain

(18) In previous cases, the Commission set out the different levels of the TV value chain as follows: (i) the (upstream) markets for the production and the licensing of AV content, (ii) the (intermediate) market for the wholesale supply of TV channels, and (iii) the (downstream) market for the retail supply of TV services.[9] The market investigation[10] confirmed that this three-layer classification remains accurate with regard to AV content.[11]

5.3. Wholesale supply of TV channels

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

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7 Turnover calculated in accordance with Article 5 of the Merger Regulation.

8 Telenor will remain active through (i) cable and IPTV in Norway and Sweden, and (ii) cable, IPTV and OTT in Finland. It will not remain active in Denmark.

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

10 With regard to market definition, given that markets participants were asked the same set of questions for Norway, Sweden, Finland and Denmark, respondents active across the Nordics may have given several times the same responses to some questions. Therefore, for the purpose of analysing the results of the market investigation, the Commission set the following calculation rule: for each question, identical responses of a same respondent are counted once.

11 Responses to questionnaires Q2, Q4, Q6 and Q8 to TV broadcasters in Norway, Sweden, Finland and Denmark, and to questionnaires Q1, Q3, Q5 and Q7 to retail suppliers of AV services in Norway, Sweden, Finland and Denmark, question C.1.

(20) The wholesale supply of TV channels is an intermediate layer between the upstream production and licensing of content, and the downstream retail provision of AV services to end customers.

5.3.1. Product market definition

5.3.1.1. Previous Commission decisions

(21) In its past decisional practice, the Commission identified a wholesale market for the supply of TV channels. Within that market, in certain decisions, the Commission further identified two separate product markets for (i) FTA TV channels, and (ii) pay TV channels.[12] The Commission further stated that within the pay TV channels market, there could be different segments for (i) basic pay TV channels; and (ii) premium pay TV channels,[13] for which end customers pay a premium in addition to their basic subscription fee. In other decisions, including its recent decision of 12 November 2019 in case M.9064 – *Telia Company/Bonnier Broadcasting Holding*, the Commission concluded that at the level of the wholesale supply of TV channels there were two separate product markets, one consisting of the wholesale supply of premium pay TV channels and one consisting of the wholesale supply of FTA and basic pay TV channels.[14]

(22) In addition, in previous decisions including its recent decision of 12 November 2019 in case M.9064 – *Telia Company/Bonnier Broadcasting Holding*, the Commission considered that there was no need to draw a distinction between linear TV channels and their ancillary services, which are licensed by TV broadcasters to TV distributors along with, or in addition to those linear TV channels.[15]

(23) Further, in previous decisions, the Commission examined a number of other potential additional segmentations, including genre or thematic content (such as sports, films, general entertainment, news, youth, and others), and ultimately left the market definition open in these regards.[16]

(24) Last, in its recent decision of 12 November 2019 in case M.9064 – *Telia Company/Bonnier Broadcasting Holding*, the Commission considered that the market for wholesale supply of TV channels, and any other possible

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12 See Commission decisions of 20 September 2013 in case M.6990 – Vodafone/Kabel Deutschland, paragraph 41.

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

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

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

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

segmentation, should not be further segmented according to the type of infrastructure used for the delivery to the viewer (cable, satellite, terrestrial TV and IPTV).[17]

5.3.1.2. The Notifying Parties' view

(25) The Notifying Parties submit that the Transaction should be assessed on the basis of an overall market for wholesale supply of TV channels in all four geographies, and that any segmentation according to (i) pay and FTA TV channels, (ii) genre, (iii) distribution platform, or (iv) premium and basic pay TV channels would be inappropriate.[18]

5.3.1.3. The Commission's assessment

(26) A majority of respondents to the market investigation across the four geographies indicated that it remains appropriate to segment the wholesale supply of TV channels (i) between **FTA and pay** TV channels, and (ii) within pay TV channels between **basic and premium** TV channels continues to be appropriate.[19] However, a number of well-substantiated responses to the market investigation suggested that these segmentations are not clear-cut for the following reasons.

(27) First, some respondents active across the Nordics indicated that, in the countries at stake, it might be relevant to consider FTA, basic pay and premium pay TV channels together. In that respect, some indicated that these types of channels are substitutable from the supply side, given that (i) all TV broadcasters would be able to provide all types of TV channels (Telia),[20] and (ii) they effectively compete with each other for the same content as well as viewers' time, attention and spending (HBO Nordic),[21] while others consider that they are interchangeable from the demand side, as many households switch from one to another when making content choices (The Walt Disney Company).[22]

(28) Second, some respondents considered that it would be more accurate to distinguish between the wholesale supply of (i) FTA and basic pay TV channels on the one hand and (ii) premium pay TV channels on the other hand. In that respect, the Swedish retail provider of AV services Tele2 submitted that for FTA and basic pay TV channels, which have advertising as their main source of income, audience reach is the key variable, while for premium TV channels, which are usually advertising free, the key variable would rather be willingness to pay.[23] Discovery also considered that in Norway, Sweden and Finland, the

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17 Commission decisions of 12 November 2019 in case M.9064 – Telia Company/Bonnier Broadcasting Holding, recital 162.

18 Form CO, paragraphs 177 and 178.

19 Responses to questionnaires Q2, Q4, Q6 and Q8 to TV broadcasters in Norway, Sweden, Finland and Denmark, and to questionnaires Q1, Q3, Q5 and Q7 to retail suppliers of AV services in Norway, Sweden, Finland and Denmark, questions C.2 and C.2.1.

20 Telia's responses to questionnaires Q1, Q3 and Q7 to retail suppliers of AV services in Norway, Sweden and Denmark, and to questionnaire Q4 to TV broadcasters in Sweden, question C.2.1.

21 HBO Nordic's responses to questionnaires Q1, Q3, Q5 and Q7 to retail suppliers of AV services in Norway, Sweden, Finland and Denmark, question C.2.1.

22 The Walt Disney Company's responses to questionnaires Q1 and Q3 to retail suppliers of AV services in Norway and Sweden, and to questionnaires Q2, Q4 and Q6 to TV broadcasters in Norway, Sweden and Finland, question C.2.1.

23 Tele2's response to questionnaire Q3 to retail suppliers of AV services in Sweden, question C.2.3.

division between FTA and basic pay TV (on one hand) and premium pay TV (on the other) is accurate.[24] Indeed, for instance, in Norway, end users essentially need to subscribe to a basic TV package to receive FTA channels.[25]

(29) Third, some respondents to the market investigation considered the distinction between basic pay TV channels, which are part of the basic cable or IPTV subscription, and premium pay TV channels, for which end customers pay a premium in addition to their basic subscription fee, to be blurred.[26] In that respect, TV2 Norge submitted that several TV distributors are introducing point based optional packages, where subscribers may use points to select between a range of TV channels and services that include both traditional basic channels, and channels and services which have traditionally been regarded as "premium content".[27] Notwithstanding this trend, ITV stressed that premium sports and "first run" films should continue to be seen as complements rather than substitutes for pay TV, as they tend to be packaged within narrow genre-specific bundles, premium sports and films TV channels tend to be purchased "through" a basic subscription package, and their content is not included in the subscription offerings of the OTT operators.[28]

(30) Fourth, some market participants stressed the specificities of the Finnish and Danish markets. Indeed, in Finland there would be a limited offer of basic pay TV channels,[29] in view of the national legislative framework, which prevents housing companies from collecting basic TV fees from households.[30] In Denmark, there would be a minor offer of premium pay TV channels.[31]

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

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24 Discovery's responses to questionnaire Q1 to retail suppliers of AV services in Norway, questions C.2.3 and C.2.3.1; to questionnaire Q2 to TV broadcasters in Norway, questions C.2.3 and C.2.3.1; to questionnaire Q3 to retail suppliers of AV services in Sweden, question C.2.1; to questionnaire Q4 to TV broadcasters in Sweden, questions C.2.3 and C.2.1, to questionnaire Q5 to retail suppliers of AV services in Finland, question C.2.1; to questionnaire Q6 to TV broadcasters in Finland, questions C.2.3 and C.2.3.1.

25 Discovery's responses to questionnaire Q1 to retail suppliers of AV services in Norway, question C.2.3.1, and to questionnaire Q2 to TV broadcasters in Norway, question C.2.3.1.

26 ITV's responses to questionnaires Q1 and Q3 to retail suppliers of AV services in Norway and Sweden; RiksTV's response to questionnaires Q1 to retail suppliers of AV services in Norway; HBO Nordic's responses to questionnaires Q1, Q3, Q5 and Q7 to retail suppliers of AV services in Norway, Sweden, Finland and Denmark; TV2 Norge's response to questionnaire Q1 to retail suppliers of AV services in Norway, question C.2.1.

27 TV2 Norge's response to questionnaire Q1 to retail suppliers of AV services in Norway, question C.2.1.

28 ITV's responses to questionnaire Q1 and Q3 to retail suppliers of AV services in Norway and Sweden, question C.2.1.

29 Telia's responses to questionnaire Q5 to retail suppliers of AV services in Finland, and to questionnaire Q6 to TV broadcasters in Finland, question C.2.1; Sanoma's response to questionnaire Q6 to TV broadcasters in Finland, question C.2.1.

30 Sanoma's response to questionnaire Q6 to TV broadcasters in Finland, question C.2.1.

31 TV2 Danmark's and Discovery's responses to questionnaire Q8 to TV broadcasters in Denmark, question C.2.1.

genre as a complement to thematic channels of a different genre. Channels of different genres would thus be complementary.[32]

(32) With regard to a possible segmentation of TV channels **depending on the infrastructure** used for their transmission, the results of the market investigation did not provide reasons to conclude that different means of infrastructure used for the delivery to the viewer (cable, satellite, terrestrial TV and IPTV) could constitute different product markets. Indeed, nothing in the Commission's file indicated that the competitive conditions in the market for the wholesale supply of TV channels, and any possible segmentation, would be different according to the distribution technology and type of infrastructure used for the distribution of the TV channels.

(33) With regard to a possible distinction between linear TV channels and their **ancillary services**, the results of the market investigation did not provide reasons to depart from the Commission's previous approach.

(34) 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 can be further segmented between (i) FTA and pay TV channels, and in turn whether pay TV channels can be further segmented between basic pay and premium pay TV channels, or (i) FTA and basic pay TV channels on the one hand, and premium pay TV channels on the other hand could 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 can be further segmented by genre (e.g., sports, films and series) could 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.

5.3.2. Geographic market definition

5.3.2.1. Previous Commission decisions

(35) In its past decisional practice, the Commission has previously considered that the market for wholesale supply of TV channels could be national,[33] sub-national[34] or potentially comprising a broader linguistically homogeneous area.[35] In its recent decision of 12 November 2019 in case M.9064 – *Telia Company/Bonnier*

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32 Responses to questionnaires Q2, Q4, Q6 and Q8 to TV broadcasters in Norway, Sweden, Finland and Denmark, and to questionnaires Q1, Q3, Q5 and Q7 to retail suppliers of AV services in Norway, Sweden, Finland and Denmark, questions C.3 and C.11.

33 Commission decisions of 6 November 2018 in case M.8785 – Disney/Fox, recital 86; of 7 April 2017 in case M.8354 – Fox/Sky, recital 89; of 21 December 2011 in case M.6369 - HBO/Ziggo/HBO Nederland, recital 39; of 15 April 2013 in case M.6880 - Liberty Global/Virgin Media, recital 41; of 10 October 2014 in case M.7000 - Liberty Global/Ziggo, recital 98.

34 Commission decisions of 7 April 2017 in case M.8354 – Fox/Sky, recital 89; of 24 February 2015 in case M.7194 - Liberty Global/Corelio/W&W/De Vijver Media, recital 108.

35 Commission decisions of 7 April 2017 in case M.8354 – Fox/Sky, recital 89; of 21 December 2010 in case M.5932 - News Corp/BskyB, recitals 86–88; of 15 April 2013 in case M.6880 - Liberty Global/Virgin Media, recital 41.

Broadcasting Holding, the Commission concluded that the market was national in scope.[36]

5.3.2.2. The Notifying Parties' view

(36) The Notifying Parties submit that the market for wholesale supply of TV channels is national.[37]

5.3.2.3. The Commission's assessment

(37) The results of the market investigation indicated that, despite being sometimes negotiated on a regional basis, that is to say, encompassing the Nordic region, the agreements between TV broadcasters and retail suppliers of AV services for the wholesale supply of TV channels are mainly negotiated on a national basis.[38]

(38) 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 in scope.

5.4. Retail supply of AV services

(39) Retail providers of AV services offer packages of linear AV services and/or non-linear AV services to end customers. Such linear and non-linear AV services can be augmented with ancillary services, such as catch-up TV or TV everywhere.

(40) The retail supply of AV services is the lower level in the AV value chain. Retail AV services can be delivered to end-users though a number of technical means including cable, satellite and IPTV. OTT players deliver channels and content in both a linear and non-linear fashion through the use of the open Internet.

5.4.1. Product market definition

5.4.1.1. Previous Commission decisions

(41) In its past decisional practice, the Commission considered the retail supply of FTA TV and pay TV as separate markets, but ultimately left open the product market definition.[39] The Commission also considered whether pay TV could be segmented further according to: (i) linear vs non-linear pay TV services;[40]

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36 Commission decisions of 12 November 2019 in case M.9064 – Telia Company/Bonnier Broadcasting Holding, recital 169.

37 Form CO, paragraph 213.

38 Responses to questionnaires Q2, Q4, Q6 and Q8 to TV broadcasters in Norway, Sweden, Finland and Denmark, and to questionnaires Q1, Q3, Q5 and Q7 to retail suppliers of AV services in Norway, Sweden, Finland and Denmark, question D.1.

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

40 Commission decisions of 18 July 2019 in case M.8864 - Vodafone/certain Liberty Global assets, recitals 79 and 83; of 6 November 2018 in case M.8785 - Disney/Fox, recital 98; of 8 October 2018 in case M.8842 – Tele2/ComHem, recital 37; of 15 June 2018 in case M. 8861 - Comcast/Sky, recital 59; of 30 May 2018 in case M.7000 – Liberty Global/Ziggo, recital 137; of 6 February 2018 in case M.8665 -

(ii) premium vs basic pay TV services.[41] However, the Commission left open the market definition with regard to each of these potential sub-segments.

(42) In addition, the Commission considered a possible segmentation of the market for the retail supply of AV services according to distribution technology (for example, cable, OTT, satellite, IPTV or terrestrial). In its decisions of 12 November 2019 in case M.9064 – *Telia Company/Bonnier Broadcasting Holding*, and of 30 May 2018 in case M.7000 – *Liberty Global/Ziggo*, the Commission considered that all the different distribution technologies were part of the same product market,[42] while leaving the exact product market definition open in a number of other decisions.[43]

(43) In Sweden, Finland, and Denmark retail suppliers of AV content can enter into either collective agreements (with landlords or housing cooperatives, the so-called multiple dwelling units ("MDUs")) or individual agreements (with individual households, the so-called single dwelling units ("SDUs")). In SDUs the end customer typically chooses its own TV distributor and pays directly for its subscription. In MDUs, on the other hand, it is common to have a collective agreement between the landlord / housing association and a single TV distributor / cable operator.

(44) The Commission also previously considered whether retail TV services to SDUs and MDUs form part of the same product market but ultimately left the market definition open.[44]

5.4.1.2. The Notifying Parties' view

(45) The Notifying Parties submit that the Transaction should be assessed on the basis of an overall market for retail supply of TV channels in all four geographies, and that any segmentation according to (i) the type of distribution platform, (ii) pay TV vs FTA TV services, (iii) basic pay and premium pay TV services, (iv) linear vs non-linear services, or (iv) SDUs vs MDUs.[45]

Discovery/Scripps, recital 32; of 7 April 2017 in case M.8354 – Fox/Sky, recitals 98 and 101; of 3 August 2016 in case M.7978 – Vodafone/Liberty Global/Dutch JV, recital 58; of 24 February 2015 in case M.7194 - Liberty Global/Corelio/W&W/De Vijver Media, recital 124.

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

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

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

44 Commission decisions of 6 November 2018 in case M.8785 - Disney/Fox, recital 98; of 8 October 2018 in case M.8842 – Tele2/ComHem, recital 37; of 20 September 2013 in case M.6990 – Vodafone/Kabel Deutschland, recitals 92-96.

45 Form CO, paragraphs 130 and 131.

5.4.1.3. The Commission's assessment

(46) The results of the market investigation were mixed as regards the product market for the retail supply of AV services.

(47) As regards a possible segmentation between **FTA and pay AV services**, some respondents considered that that the retail supply of FTA TV channels and the retail supply of pay TV channels form separate product markets as pay TV bundles tend to bought "through" a package which includes FTA TV. Other respondents stressed that FTA and pay TV channels are often bundled within the same packages, and should therefore be considered as part of the same product market at retail level.[46]

(48) As regards a possible segmentation between **basic and premium pay AV services**, some respondents considered that the retail supply of pay TV services should be further segmented between basic and premium pay AV services, as basic pay TV content tends to be of a "general entertainment" nature while premium content tends to be more niche or genre-specific (e.g., sports, films). Other respondents considered that these are alternative products, notably from the supply-side, and, as such, part of the same product markets.[47]

(49) As regards a possible segmentation between **linear and non-linear pay AV services**, some respondents consider that the market for the retail supply of AV services should be further segmented between linear services (namely TV channels) and non-linear services, such as SVOD.[48] In that respect, TV2 Norge stressed that between 2010 and 2018 in Norway, the number of pay TV households has been stable and reported pay TV revenue has grown, while several SVOD services have been launched in the market. TV2 Norge added that around 90% of SVOD subscribers are also linear pay TV subscribers, and that there would be no sign of steep decline in the linear pay TV market (except for linear premium pay films and series products), while the SVOD market is forecasted to grow.[49] Other respondents, such as HBO Nordic,[50] considered that linear and non-linear services are part of the same markets given that they all compete for consumers' attention and spending.[51]

(50) As regards **distribution technologies**, a majority of respondents to the market investigation considered that the market for the retail supply of AV services should not be further segmented according to distribution forms, given that (i) retail suppliers typically use several platforms to deliver their services,

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46 Responses to questionnaires Q2, Q4, Q6 and Q8 to TV broadcasters in Norway, Sweden, Finland and Denmark, and to questionnaires Q1, Q3, Q5 and Q7 to retail suppliers of AV services in Norway, Sweden, Finland and Denmark, question C.4.

47 Responses to questionnaires Q2, Q4, Q6 and Q8 to TV broadcasters in Norway, Sweden, Finland and Denmark, and to questionnaires Q1, Q3, Q5 and Q7 to retail suppliers of AV services in Norway, Sweden, Finland and Denmark, question C.5.

48 SVOD stands for "Subscription Video On Demand". A SVOD service consists of on-demand access to a catalogue of films, series, sports and/or other AV content for a subscription fee.

49 TV2 Norge's response to questionnaire Q1 to retail suppliers of AV services in Norway, question C.7.1.

50 HBO Nordic's response to questionnaires Q1, Q3, Q5 and Q7 to retail suppliers of AV services in Norway, Sweden, Finland and Denmark, questions C.6.1 and C.7.

51 Responses to questionnaires Q2, Q4, Q6 and Q8 to TV broadcasters in Norway, Sweden, Finland and Denmark, and to questionnaires Q1, Q3, Q5 and Q7 to retail suppliers of AV services in Norway, Sweden, Finland and Denmark, question C.7.

(ii) most households have access to different combinations distribution networks,[52] and (iii) end customers would mainly consider the different distribution forms as alternative to each other.[53]

(51) As regards a possible segmentation between **SDUs and MDUs**, some respondents considered that the retail supply of AV services to SDUs and the retail supply to MDUs belong to distinct product markets notably given (i) differences in terms of pricing, (ii) contract length, and (iii) breath of content. Other respondents simply considered that the distinction is not relevant or needed.[54]

(52) In light of the above, the Commission considers that, for the purpose of this Decision, the relevant product 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 can be left open, as well as the question whether in turn the retail supply of pay AV services should be segmented according to (ii) linear and non-linear pay AV services, (iii) premium and basic pay AV services, and (iv) AV services to MDUs and SDUs, 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.

5.4.2. Geographic market definition

5.4.2.1. Previous Commission decisions

(53) In previous decisions, the Commission considered that the market for the retail provision of TV services is either national, or limited to the geographic coverage of a supplier's cable network.[55] In its recent decision of 12 November 2019 in case M.9064 – *Telia Company/Bonnier Broadcasting Holding*, the Commission concluded that the market was national in scope.[56]

5.4.2.2. The Notifying Parties' view

(54) The Notifying Parties submit that the market for retail supply of AV services is national.[57]

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52 Responses to questionnaires Q2, Q4, Q6 and Q8 to TV broadcasters in Norway, Sweden, Finland and Denmark, and to questionnaires Q1, Q3, Q5 and Q7 to retail suppliers of AV services in Norway, Sweden, Finland and Denmark, question C.9.

53 Responses to questionnaires Q2, Q4, Q6 and Q8 to TV broadcasters in Norway, Sweden, Finland and Denmark, and to questionnaires Q1, Q3, Q5 and Q7 to retail suppliers of AV services in Norway, Sweden, Finland and Denmark, question C.10.

54 Responses to questionnaires Q2, Q4, Q6 and Q8 to TV broadcasters in Norway, Sweden, Finland and Denmark, and to questionnaires Q1, Q3, Q5 and Q7 to retail suppliers of AV services in Norway, Sweden, Finland and Denmark, question C.12.

55 Commission decisions of 6 November 2019 in case M.8785 - Disney/Fox, recital 100; of 6 February 2018 in case M.8665 - Discovery/Scripps, recital 21; of 15 June 2018 in case M. 8861 - Comcast/Sky, recital 63; of 7 April 2017 in case M.8354 - Fox/Sky, recital 106; of 24 February 2015 in case M.7194 - Liberty Global/Corelio/W&W/De Vijver Media, recital 139.

56 Commission decisions of 12 November 2019 in case M.9064 – Telia Company/Bonnier Broadcasting Holding, recital 207.

57 Form CO, paragraph 168.

5.4.2.3. The Commission's assessment

(55) The results of the market investigation indicated that retail suppliers of AV services mainly acquire license rights to distribute AV services at national level.[58] In addition, the market investigation in this case did not provide any new elements justifying a departure from Commission's previous decisional practice.

(56) 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.

5.5. Retail supply of fixed internet access services

5.5.1. Product market definition

5.5.1.1. Previous Commission decisions

(57) In recent cases, the Commission considered but ultimately left open possible segmentations according to (i) product type (distinguishing narrowband, broadband, and dedicated access), and (ii) distribution technology (distinguishing xDSL, fibre, cable). Moreover, the Commission acknowledged that the retail market for fixed internet access services should not be divided according to download speed.[59]

(58) The Commission has also considered possible segmentations as to customer type, distinguishing between (i) residential and small business customers, on the one hand, and larger business and public authorities, on the other hand;[60] and (ii) MDUs such as housing associations or apartment buildings, and SDUs such as individual households.[61]

5.5.1.2. Notifying Party's view

(59) In its initial submission, the Notifying Party submits that there is one overall product market for retail fixed internet access services.[62]

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58 Responses to questionnaires Q2, Q4, Q6 and Q8 to TV broadcasters in Norway, Sweden, Finland and Denmark, and to questionnaires Q1, Q3, Q5 and Q7 to retail suppliers of AV services in Norway, Sweden, Finland and Denmark, question D.1.

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

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

61 Commission decisions of 12 November 2019 in case M.9064 – Telia Company/Bonnier Broadcasting Holding, recital 218; Commission decisions of 19 May 2015 in case M.7421 - Orange/Jazztel, recital 42; of 10 October 2014 in case M.7000 - Liberty Global/Ziggo, recital 132; of 7 October 2016 in case M.8131 - Tele2 Sverige/TDC Sverige, recital 32.

62 Form CO, paragraph 562 and 563.

5.5.1.3. Commission's assessment

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

(61) In light of the foregoing, the Commission does not depart from its previous assessment, and concludes, for the purposes of this Decision, that the exact scope of the product market definition in relation to the provision of retail fixed internet access services can be left open, as the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement under any plausible product market definition.

5.5.2. Geographic market definition

5.5.2.1. Previous Commission decisions

(62) In its previous decisions, the Commission concluded that the retail market for the provision of fixed internet services was national in scope.[63]

5.5.2.2. Notifying Party's view

(63) The Parties submit that the relevant geographic market should be defined as national and not local or broader than national (i.e. Scandinavian or pan-Nordic).[64]

5.5.2.3. Commission's assessment

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

(65) In light of the foregoing, the Commission does not depart from its previous assessment, and concludes, for the purpose of this Decision, that the relevant market for the provision of fixed internet services is national.

5.6. Provision of satellite transponder capacity

(66) Satellite transmission is used for the distribution of TV signals and provision of telecommunication services.[65]

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63 Commission decisions of 12 November 2019 in case M.9064 – Telia Company/Bonnier Broadcasting Holding, recital 239; Commission decisions of 8 October 2018 in case M.8842 – Tele2/Com Hem; of 29 June 2010 in case M.5532 – Carphone Warehouse/Tiscali UK, recital 47; of 29 January 2010 in case M.5730 - Telefonica/Hansenet, recital 28; of 20 September 2013 in case M.6990 - Vodafone/Kabel Deutschland, recital 197; of 3 August 2016 in case M.7978 – Vodafone/Liberty Global/Dutch JV, recital 40.

64 Form CO, paragraph 562 and 563.

65 The focus of the present Decision is on the provision of TV signals, as it is vertically related to the JV's activities in the retail supply of AV services. For completeness, the telecommunication services that can be provided via satellite apart from broadcasting are the following: (i) telephony, (ii) internet connectivity, (iii) private data circuits, (iv) mobility/data mobility services, (v) mobile backhaul and (vi) occasional use

(67) Each satellite transmits signals via a number of transponders and antennas (i.e. beams), which are typically tailored to a frequency band.[66] The function of a satellite transponder is to receive the signal from the uplink, translate the signal in frequency and amplify the signal before routing the signal to a downlink antenna. For the distribution of TV signals, the TV content is fed into an uplink antenna, which in turn is beamed up to a satellite; the signal is then beamed from the satellite down into the receiving customers' dishes. Customers of such broadcasting services can either be TV broadcasters or TV (DTH) distributors.[67] The antennas on board the satellites used to emit the DTH signals are shaped to optimize the footprint to the desired geographical region and such shaping is frequency dependent. There are a number of different satellite frequency bands that are used for different applications, i.e. the C-band, X-band, Ku-band, Ka-band, the Q-band, V-band and the W-band.[68]

(68) In the Nordics, satellite customers have access to satellite transponder services offered by Telenor, via its subsidiary Telenor Satellite ("TS"), and SES ASTRA AB ("SES"), subsidiary of globally active SES ASTRA S.A. ("SES Group"). While TS provides satellite transponder capacity from four satellites (Thor 5, Thor 6, Thor 7 and 10-02[69]) located at the 1°W orbital position, SES provides its services from two satellites (Astra 4A and SES-5) located at the 5°E orbital position. Both operators' satellites mainly carry Ku-bands and a limited number of Ka-bands, while SES' satellites are also equipped with C-bands.

5.6.1. Product market definition

5.6.1.1. Previous Commission decisions

(69) In its past decisional practice, the Commission identified a possible market for the provision of satellite transponder capacity used for distribution of TV signals and telecommunication services (e.g. telephony, data services).[70] The Commission considered that such market may include the provision of uplink services (transmission to the satellite), encoding, and various other technical ground

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(product where a broadcaster in need of contribution of a news story, a concert, a sport event – lasting for shorter transmission periods (i.e. not 24/7/365) could purchase available satellite capacity on a minute-by-minute basis). Notifying Parties' reply to RFI 12, question 9(a).

66 It is possible to introduce a degree of frequency agility by carrying additional hardware in the satellite, but for cost reasons this occurs only exceptionally (Form CO, paragraph 1862).

67 In addition, satellite operators may enter into a separate agreement with a cable operator to give the cable operator the right to use the satellite signals for cable feeding, subject to the cable operator having procured the required content rights. However, drop-off from satellites has generally become very rare in the Nordics, as contribution of TV channels is normally conducted through fibre networks (Notifying Parties' reply to RFI 9, question 9 and to RFI 12, question 6).

68 Form CO, paragraphs 1849-1870.

69 10-02 is co-owned and operated by Intelsat. The 10-02 satellite is primarily used for data transmission as [Confidential information relating to Telenor's satellite business, and details of confidential commercial arrangements between Telenor and Intelsat] (Form CO, Table 31). In addition, Intelsat owns [Confidential information relating to Telenor's satellite business, and details of confidential commercial arrangements between Telenor and Intelsat] transponders on Thor 6 and leases capacity on [Confidential information relating to Telenor's satellite business, and details of confidential commercial arrangements between Telenor and Intelsat] transponders on Thor 5 and Thor 7 from TS, however, it does not currently sell any capacity in the Nordics (Notifying Parties' reply to RFI 9, question 7).

70 Commission decision of 17 December 2018 in case M.9152 – BC Partners/United Group, paragraph 11; Commission decision of 13 October 1999 in case M.1439 Telia / Telenor, recital 266.

services for broadcasting. In the Commission's most recent decision, the precise market definition was left open.[71]

5.6.1.2. The Notifying Parties' view

(70) The Notifying Parties submit that the supply of satellite transponder capacity for broadcasting on the Ku-band and for telecommunication services are distinct product markets.[72] They explain that the Ku-band is the specific frequency band in Europe used for broadcasting, while other frequency bands cannot readily be used for broadcasting. For instance, to use the Ka-band for broadcasting, which has in any case a higher signal attenuation, TS would have to launch a new Ka-band satellite designed to deliver broadcasting services and replace customers' antennas and set-top boxes. In contrast, telecommunication services are provided via the Ku-band as well as the dedicated Ka- and C-bands.

(71) The Notifying Parties argue that the supply of satellite transponder capacity for broadcasting on the Ku-band at the orbital positions of 1°W and 5°E are distinct product markets.[73] On the one hand, TV distributors cannot readily switch to the purchase of capacity from a satellite located at another orbital position due to prohibitively high switching costs.[74] In particular, customers' satellite dishes are pointed towards a specific orbital position such that a switch to another orbital position would involve dish turning. On the other hand, TV broadcasters currently require transmission over both 1°W and 5°E to reach all Nordic satellite customers, as TV-signals transmitted over 1˚W cannot be received by household satellite dishes pointed to 5˚E and vice versa.[75]

5.6.1.3. The Commission's assessment

(72) The market investigation conducted in the present case has not provided clear evidence with regard to the exact delineation of the product market definition.

(73) As regards the question whether satellite transponder capacity used for broadcasting on the Ku-band and telecommunication services via all frequency bands constitute distinct product markets, the market investigation has not resulted in many meaningful responses and the received responses were not consistent.[76] While one satellite operator in principle confirmed the Notifying Parties' view, it also explained that "*large portion of the transponders can be used for various applications, i.e., it is not possible to fully distinguish between transponders for broadcasting versus other applications*".[77] Nevertheless, this satellite operator also indicated that the type of the contracted frequency band (i.e. Ku-, Ka- or C-bands) is one of the main price determining factors.[78] [Confidential

71 Commission decision of 17 December 2018 in case M.9152 – BC Partners/United Group, paragraph 13.

72 Form CO, paragraphs 1870 and 1878.

73 Form CO, paragraphs 1879-1881.

74 According to the Notifying Parties, in case of the Transaction, the migration of Viasat's customers from SES (5°E) to TS (1°W) is a long-term decision which eliminates the duplication of costs, whereas a hypothetical price increase of 5-10% would not induce switching.

75 Post-Transaction, once the dishes of all Nordic satellite customers are turned towards 1°W, broadcasters will no longer require transmission over 5°E.

76 Responses to questionnaire Q9 to satellite customers and competitors, question B.3.

77 SES' non-confidential reply to RFI 1, question 4.

78 SES' non-confidential reply to RFI 2, question 2(c).

strategic information relating to Telenor's satellite business].[79] In contrast, another satellite operator indicated that transponders are not dedicated to, or configured specifically for, one of these two services only.[80] In particular, there seems to be some flexibility with regard to the use of the Ku-band for broadcasting and telecommunication purposes.[81]

(74) As regards the question whether satellites at different orbital positions constitute distinct product markets, the market investigation has not fully confirmed the Notifying Parties' arguments. While the majority of respondents confirmed that switching is a difficult, lengthy and costly process for TV distributors, which requires the repointing of customers' satellite dishes, they also provided several past switching examples between satellite operators in Europe.[82] With regard to TV broadcasters, respondents explained that some smaller channels only require distribution via one satellite platform and thus see suppliers at different orbital positions as substitutes.[83] However, neither TS nor SES indicated that the presence of a competing satellite operator at a different orbital position would be […].[84] At the same time, the Notifying Parties explained in a different context that satellite operators may grant discounted prices for switching customers as support for the migration costs.[85]

(75) The Commission considers that, in any event, for the purposes of this decision, the exact product market definition with regard to the market for satellite transponder capacity can be left open. The question whether the supply of satellite transponder capacity should be further segmented between satellite transponder capacity used for (i) broadcasting (via the Ku-band) and telecommunication services (via all frequency bands) can be left open as well as the question whether the supply of satellite transponder capacity should be segmented between the provision from (ii) orbital position 1°W and orbital position 5°E, 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.

5.6.2. Geographic market definition

5.6.2.1. Previous Commission decisions

(76) The Commission has previously concluded that the geographic scope of the market for satellite transponder capacity only encompassed the Nordic countries, and not the EEA as a whole.[86] In the Commission's most recent decision, the gathered information suggested that the market for the supply of satellite

79 Notifying Parties' reply to RFI 9, question 4.
80 Eutelsat's responses to questionnaire Q9 to satellite customers and competitors, question B.3.
81 Notifying Parties' reply to RFI 15, question 4; SES' non-confidential reply to RFI 2, question 4(b).
82 Responses to questionnaire Q9 to satellite customers and competitors, question B.2.
83 Responses to questionnaire Q9 to satellite customers and competitors, question B.1.
84 Notifying Parties' reply to RFI 9, question 4; SES' non-confidential reply to RFI 2, question 2(c).
85 Notifying Parties' reply to RFI 9, question 15.
86 Commission decision of 13 October 1999 in case M.1439 - Telia/Telenor, recital 284.

transponder capacity is regional in scope, however, the precise market definition was left open.[87]

5.6.2.2. The Notifying Parties' view

(77) The Notifying Parties consider that the geographic scope of the market for the supply of satellite transponder capacity would correspond to the combined footprints of the respective satellites at an orbital position, taking into account the strength of the beam over a particular area and the number of dishes in that area pointed towards the satellites.[88] Accordingly, the geographic market for the supply of satellite transponder capacity for broadcasting at the 1°W orbital position would be at least the Nordics, if not the Nordics and Central and Eastern Europe ("CEE").[89]

5.6.2.3. The Commission's assessment

(78) The results of the market investigation confirmed that it is relevant to look at satellites' combined footprint from an orbital position (technical reach) and the location of the customer base (number of dishes pointed towards an orbital position). The results also confirmed the specific footprints of TS' and SES' satellites provided by the Notifying Parties.[90]

(79) TS' Ku-band transponders for broadcasting at the 1°W orbital position cover the Nordic and CEE region. In the former, TS supplies Canal Digital while it supplies customers in Czechia, Hungary, Romania and Slovakia in the latter. From the 1°W orbital position, TS also covers the Middle East for data services. TS currently does not have any capacity dedicated to [Confidential strategic information relating to Telenor's satellite business].[91]

(80) SES' Ku-band transponders for broadcasting at the 5°E orbital position also cover the Nordic and CEE region. In the former, SES currently supplies Viasat while it supplies customers in Estonia, Latvia, Lithuania and Ukraine in the latter. In addition, from the 5°E orbital position, SES also covers the Middle East and Sub-Saharan Africa for broadcasting, and the whole of Africa for telecommunication services.[92]

(81) Both TS' and SES' satellites have a dedicated number of Nordic and European transponders for broadcasting. The Nordic beam covers the Nordic countries and the Baltics. The European beam covers a wider geographic area, including the

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87 Commission decision of 17 December 2018 in case M.9152 – BC Partners/United Group, paragraph 17 ("*covering Central and Eastern Europe, or more broadly, encompassing Western, Central and Eastern Europe*").

88 Form CO, paragraph 1895.

89 The CEE region covers the following countries in this context: Austria, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Czechia, Estonia, Germany, Hungary, Latvia, Lithuania, Moldova, Montenegro, North Macedonia, Poland, Romania, Russia, Serbia, Slovakia, Slovenia, Switzerland and Ukraine. All of these countries are covered by TS' satellites at the 1°W orbital position and SES' satellites at the 5°E orbital position.

90 Responses to questionnaire Q9 to satellite customers and competitors, questions C.1 and C.2.

91 Form CO, paragraph 1856.

92 Responses to questionnaire Q9 to satellite customers and competitors, question C.2.

Nordic countries as well as the CEE region where the signal strength[93] is the highest. In addition, SES transmits broadcasting services via a Sub-Sahara African beam. Both satellite operators have wider beams for offering telecommunication services, which also cover maritime areas around Europe, such as the Mediterranean See and parts of the Atlantic Ocean.[94]

(82) Satellites have some built-in flexibility to adjust the broadcasting capacity per coverage area.[95] One the one hand, capacity can be flexible between beams, i.e. the satellite operator can configure which beam a given transponder uses (transponder routing flexibility). On the other hand, satellites may have flexible antenna deployment mechanisms which allow antennas to be moved by one (older satellites) or several (modern satellites) degrees (beam location flexibility), however, movement is limited by interference issues with neighbouring satellite operators. Satellite operators decide in the design phase of a satellite whether to include such flexibility on their satellite, with such flexibility having an impact on cost. Both TS and SES confirmed that their satellites at the 1°W and 5°E orbital position [Confidential strategic information relating to Telenor's satellite business].[96] Hence, there is some supply-side substitutability between the transponders and/or beams typically used for different geographic regions.

(83) The overlapping footprints of TS' and SES' satellites from the 1°W and 5°E orbital position suggest a certain degree of homogeneity in the competitive conditions in the Nordic and CEE region. Nevertheless, despite TS' and SES' similar footprints, the supply structure may differ between the Nordic and CEE region depending on the presence of other competitors and the number of dishes pointed towards an orbital position. The latter determines how likely it is that TV broadcasters or TV distributors would switch between orbital positions. The supply structure in the Middle East and Africa seems to be significantly different from the Nordic and CEE region.

(84) In terms of pricing, neither TS nor SES indicated that customers' geographic location is […] in the supply of satellite transponder capacity from the 1°W and 5°E orbital positions.[97]

(85) While the information gathered confirms the regional scope (Nordics, or Nordics and CEE region), the Commission considers that, in any event, for the purposes of this decision, the exact geographic market definition with regard to the market for satellite transponder capacity and its possible sub-segments 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 geographic market definition.

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93 For satellite footprints, different areas can be distinguished according to whether a given satellite antenna emits the same power level (Equivalent Isotropic Radiated Power ("EIRP")). In such areas, viewers can enjoy the same availability of transmission if the same size antenna is used. Up to a certain lower signal strength, the DTH service is usable but users either must accept lower service availability or deploy a larger antenna to compensate for the lower power lever emitted by the satellite. Form CO, paragraph 1858.

94 Notifying Parties' reply to RFI 15, question 5.

95 Notifying Parties' reply to RFI 12, question 2(b).

96 Notifying Parties' reply to RFI 12, question 2(b); SES' non-confidential reply to RFI 2, question 4(c).

97 Notifying Parties' reply to RFI 9, question 4; SES' non-confidential reply to RFI 2, question 2(c).

6. COMPETITIVE ASSESSMENT

6.1. Identification of affected markets

6.1.1. Economic units with an independent power of decision

6.1.1.1. Relationship between the Norwegian state and Telenor

(86) Telenor's largest shareholder is the Norwegian State, which has a 54.7% shareholding interest.[98]

(87) Telenor submits that it is operated independently, and that the Norwegian State does not solely or jointly, exercise any positive or negative, *de jure* or *de facto*, power over strategic decisions of Telenor for the following reasons.

(88) First, the Norwegian State does not determine Telenor's strategic commercial decision making. While the Norwegian State accounts for a majority of votes at Telenor's General Meetings, Telenor considers that certain provisions of the Norwegian Public Limited Liability Companies Act 1997 ("PLLCA") would limit the Norwegian State's ability, as majority owner, to instruct Telenor in a manner inconsistent with its strategy or general activities.[99]

(89) Second, strategic decisions of Telenor (such as approval of budget, business plan, major investments and appointment of senior management) are made by the Board of Directors of Telenor, [Confidential information relating to internal Telenor decision making]. The Norwegian State has not appointed any representative on the Board. As a majority shareholder, the Norwegian State is represented with one out of four members on Telenor's Nomination Committee, which nominates shareholder representatives to Telenor's Corporate Assembly and the Board, as well as the Nomination Committee itself.[100]

(90) The Commission considers that, in any event, it is not necessary for the Commission to reach a definitive conclusion on the independence of Telenor from the Norwegian State as the Transaction does not raise serious doubts as to its compatibility with the internal market regardless of whether or not Telenor has an independent power of decision from the Norwegian state.

6.1.1.2. Relationship between the Norwegian state and NRK

(91) The public broadcaster NRK is fully owned by the Norwegian State.

(92) Telenor submits that the Ministry of Culture holds a 100% shareholding interest in NRK, which is a tax-funded broadcaster. The Norwegian Broadcasting Act authorises NRK to engage in broadcast activities. NRK is obliged to offer public service broadcasting via radio, TV and the Internet to the entire population

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98 The Ministry of Trade, Industry and Fisheries (Nærings- og fiskeidepartementet) ("Ministry of Trade") holds the Norwegian State's 54.0% shareholding interest in Telenor. Form CO, paragraph 51.

99 Section 5-21 of the PLLCA indicates that a general meeting may not adopt any resolution which is suited to give unreasonable benefit at the expense of other shareholders or the company. (see FromCO, Annex 90). Telenor considers that [Confidential strategic views of Telenor in relation to the Norwegian State's ownership stake]. Paragraph 60, Form CO.

100 [Confidential strategic views of Telenor in relation to the Norwegian State's ownership stake]. Form CO, paragraph 69.

covering a broad range of content. NRK is active in the market for (i) the retail supply of AV services through RiksTV, a joint venture with TV2 and its own OTT streaming service; (ii) the wholesale supply of TV channels where NRK provides its channels to TV distributors.

(93) The Commission considers that, in any event, it is not necessary for the Commission to reach a definitive conclusion on the independence of NRK from the Norwegian state as the Transaction does not raise serious doubts as to its compatibility with the internal market regardless of whether or not Telenor has an independent power of decision from the Norwegian state.

6.1.1.3. Conclusion

(94) The Commission considers that the questions whether each of Telenor and NRK makes up a separate economic unit with an independent power of decision from the Norwegian State or whether they belong to the same economic unit can be left open as the Transaction does not raise serious doubts as to its compatibility with the internal market regardless of the answer to these questions.[101]

6.1.2. Affected markets in Norway, Sweden, Finland and Denmark

(95) The Transaction gives rise to the following possible horizontally affected markets:[102]

- in Norway: (i) the overall market for the retail supply of AV services (including or excluding non-linear OTT services), and any of the following possible sub-segments: (ii) the market for the retail supply of pay AV services (including or excluding non-linear OTT services), (iii) the market for the retail supply of basic pay AV services (including or excluding non-linear OTT services), (iv) the market for the retail supply of premium pay AV services (including or excluding non-linear OTT services), (v) the market for the retail supply of pay AV services for MDUs (including or excluding non-linear OTT services), (vi) the market for the retail supply of pay AV services for SDUs (including or excluding non-linear OTT services), (vii) the market for the retail supply of basic pay AV services to MDUs (including or excluding non-linear OTT services), (viii) the market for the retail supply of basic pay AV services to SDUs (including or excluding non-linear OTT services), (ix) the market for the retail supply of premium pay AV services for MDUs (including or excluding non-linear OTT services), and (x) the market for the retail supply of premium pay AV services for SDUs (including or excluding non-linear OTT services);

- in Sweden: (i) the overall market for the retail supply of AV services excluding non-linear OTT services, and any of the following possible sub-segments: (ii) the market for the retail supply of pay AV services (including or excluding non-linear OTT services), (iii) the market for the retail supply of

[101] See Section 6.3.3 for the Commission's assessment of the competitive effects of the Transaction related to potential horizontal non-coordinated effects. See Section 6.4.2.1 for the Commission's assessment of the competitive effects of the Transaction related to potential total or partial foreclosure of competing providers of retail AV services by limiting access to NRK's TV channels.

[102] In these possible markets, the Parties' combined market share including NENT's OTT service and Telenor's retail AV services is above 20% by value in 2018.

basic pay AV services (including or excluding non-linear OTT services), (iv) the market for the retail supply of premium pay AV services (including or excluding non-linear OTT services), (v) the market for the retail supply of pay AV services for MDUs, (vi) the market for the retail supply of pay AV services for SDUs (including or excluding non-linear OTT services);[103] (vii) the market for the retail supply of basic AV services for MDUs (including or excluding non-linear OTT services), (viii) the market for the retail supply of premium AV services for MDUs (including or excluding non-linear OTT services), (ix) the market for the retail supply of basic AV services for SDUs (including or excluding non-linear OTT services), (x) the market for the retail supply of premium AV services for SDUs (including or excluding non-linear OTT services).

- in Finland: (i) the overall market for the retail supply of AV services excluding non-linear OTT services, and any of the following possible sub-segments: (ii) the market for the retail supply of pay AV services (including or excluding non-linear OTT services), (iii) the market for the retail supply of basic pay AV services (including or excluding non-linear OTT services), (iv) the market for the retail supply of pay AV services for MDUs (including or excluding non-linear OTT services), (v) the market for the retail supply of pay AV services for SDUs (including or excluding non-linear OTT services), (vi) the market for the retail supply of basic pay AV services to MDUs (including or excluding non-linear OTT services), (vii) the market for the retail supply of basic pay AV services to SDUs (including or excluding non-linear OTT services), (viii) the market for the retail supply of premium pay AV services to SDUs excluding non-linear OTT services;

- in Denmark: (i) the market for the retail supply of basic AV services for SDUs; and (ii) the market for the retail supply of premium pay AV services for SDUs excluding non-linear OTT services.

(96) The Transaction gives rise to vertically affected markets as a result of (i) NENT's activities in the upstream markets for wholesale supply of TV channels and the JV's activities in the downstream markets for the retail supply of AV services in Norway, Sweden, Finland and Denmark; and (ii) Telenor's activities in the upstream market for the provision of satellite transponder capacity and the JV's activities in the downstream markets for the retail supply of AV services.

(97) Furthermore, both Notifying Parties will remain independently active in a number of the same markets as the JV, notably: (i) the retail supply of AV services in Norway, Sweden and Finland, and (ii) under the alternate scenario, in which Telenor and the Norwegian state are considered part of the same economic unit, the markets for the retail supply of AV services and the wholesale supply of TV channels in Norway.

(98) Each of these potential effects is discussed in turn in the following sections. After setting out the market shares in the relevant markets and possible sub-segments (section 6.2), the Commission will first assess the potential horizontal non-

[103] As regards the possible market for the retail supply of AV services for SDUs in Sweden, the Parties have presented shares including and excluding all revenue generated by dual analogue-digital cable subscribers. This possible market remains horizontally affected in both scenarios.

coordinated effects stemming from the Transaction (section 6.3). Then the Commission will assess the potential non-horizontal effects stemming from the Transaction (section 6.4). Finally, the Commission will assess the potential cooperative effects of the Transaction (section 6.5).

6.2. Market shares

(99) According to the Horizontal Merger Guidelines and the Non-Horizontal Merger Guidelines,[104] in the assessment of the effects of a merger, market shares constitute a useful first indication of the structure of the markets at stake and of the competitive importance of the relevant market players.

6.2.1. TV value chain and fixed broadband services

6.2.1.1. Norway

(A) Wholesale supply of TV channels

(100) Table 1, reproduced below, shows the market shares of NENT and its main competitors in the market for the wholesale supply of TV channels in Norway (based on 2018 data) by share of viewing. NENT's market share (based on 2018 data) was respectively [5-10]% for the wholesale supply of combined FTA/pay TV channels, and [10-20]% for the wholesale supply of pay TV channels and [10-20]% for the wholesale supply of basic pay TV channels, and [20-30]% for the wholesale supply of premium pay TV channels, and [20-30]% for the wholesale supply of premium pay TV sports channels, and [30-40]% for the wholesale supply of premium pay TV non-sports channels.

Table 1: Market shares in 2018
in the market for the wholesale supply of TV channels by share of viewing

	Wholesale supply of FTA and pay-TV channels	Wholesale supply of pay-TV channels	Wholesale supply of FTA and basic pay-TV channels	Wholesale supply of basic pay-TV channels	Wholesale supply of premium pay-TV channels	Wholesale supply of premium sports pay-TV channels	Wholesale supply of premium non-sports pay-TV channels
NENT	**[5-10]**	**[10-20]**	**[5-10]**	**[10-20]**	**[20-30]**	**[20-30]**	**[30-40]**
TV2 Norge	[20-30]	[30-40]	[20-30]	[40-50]	[70-80]	[70-80]	[50-60]
Discovery	[10-20]	[30-40]	[10-20]	[30-40]	-	-	-
Others	[40-50]	[10-20]	[40-50]	[10-20]	-	-	-

Source: Form CO, Annex 68.

(101) Table 2, reproduced below, shows the market shares of NENT and its main competitors in the market for the wholesale supply of TV channels in Norway (based on 2018 data) by value. NENT's market share in 2018 was respectively [10-20]% for the wholesale supply of pay TV channels and [5-10]% for the wholesale supply of basic pay TV channels, and [30-40]% for the wholesale

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

supply of premium pay TV channels, and [40-50]% for the wholesale supply of premium pay TV sports channels, and [20-30]% for the wholesale supply of premium pay TV non-sports channels.

Table 2: Market shares in 2018
in the market for the wholesale supply of TV channels by value

	Wholesale supply of pay-TV channels	Wholesale supply of basic pay-TV channels	Wholesale supply of premium pay-TV channels	Wholesale supply of premium sports pay-TV channels	Wholesale supply of premium non-sports pay-TV channels
NENT	**[10-20]**	**[5-10]**	**[30-40]**	**[40-50]**	**[20-30]**
TV2 Norge	[50-60]	[50-60]	[50-60]	[50-60]	[70-80]
Discovery	[20-30]	[30-40]	-	-	-
Others	[5-10]	[5-10]	[0-5]	[0-5]	-

Source: Form CO, Annex 68.

(B) Retail supply of AV services

(102) Table 3 reproduced below presents the market shares of the Parties in the market for the retail supply of AV services, and any possible sub-segment. The JV will hold a market share of [10-20]% by value in the Norwegian market for the retail supply of AV services (based on 2018 data) and below 30% in all market segments except for the market for the supply of premium pay-TV retail AV services, excluding non-linear OTT providers and the market for the retail supply of premium AV services for SDUs, excluding non-linear OTT players. The Parties will hold a market share of [40-50]% by value in the Norwegian market for the retail supply of AV services (based on 2018 data).

Table 3: Market shares in 2018
in the market for the retail supply of AV services by revenue

	Pay-TV	**Pay-TV (excluding non-linear OTT providers)**	**Basic pay-TV**	**Basic pay-TV (excluding non-linear OTT providers)**	**Premium pay-TV**	**Premium pay-TV (excluding non-linear OTT providers)**	**Pay-TV for MDUs**	**Pay-TV for SDUs**	**Pay-TV for MDUs (excluding non-linear OTT providers)**	**Pay-TV for SDUs (excluding non-linear OTT)**
Canal Digital	[10-20]	[10-20]	[10-20]	[10-20]	[10-20]	[20-30]	[10-20]	[10-20]	[10-20]	[20-30]
Viasat	[0-5]	[0-5]	[0-5]	[0-5]	[5-10]	[10-20]	[0-5]	[0-5]	[0-5]	[5-10]
JV	***[10-20]***	***[20-30]***	***[10-20]***	***[10-20]***	***[20-30]***	***[30-40]***	***[10-20]***	***[20-30]***	***[10-20]***	***[20-30]***
Telenor	[10-20]	[20-30]	[20-30]	[20-30]	[5-10]	[10-20]	[20-30]	[10-20]	[30-40]	[10-20]
Viaplay	[0-5]	-	[0-5]	-	[0-5]	-	[0-5]	[0-5]	-	-
Parties	**[40-50]**	**[40-50]**	**[40-50]**	**[40-50]**	**[30-40]**	**[40-50]**	**[40-50]**	**[40-50]**	**[40-50]**	**[40-50]**
Telia	[10-20]	[10-20]	[10-20]	[10-20]	[5-10]	[5-10]	[10-20]	[10-20]	[20-30]	[10-20]
RiksTV	[10-20]	[10-20]	[10-20[	[10-20]	[0-5]	[5-10]	[5-10]	[10-20]	[5-10]	[10-20]
Non-linear OTT (excluding Viaplay)	[10-20]	-	[0-5]	-	[30-40]	-	[10-20]	[10-20]	-	-
Others	[20-30]	[20-30]	[20-30]	[20-30]	[20-30]	[30-40]	[10-20]	[20-30]	[20-30]	[20-30]

Source: Form CO, Annex 12.

(103) Tables 4 and 5, reproduced below, shows the market shares of the JV and its main competitors in the market for the retail supply of AV services and possible sub-segments by subscribers. The JV would have even a more limited market position with a market share of approximately [10-20]%. The Parties would have a combined market share of [20-30]%.

Table 4: Market shares in 2018
in the market for the retail supply of AV services by subscribers

	Overall market	**Overall market (excluding non-linear OTT providers)**	**Pay-TV**	**Pay-TV (excluding non-linear OTT providers)**	**Basic pay-TV**	**Basic pay-TV (excluding non-linear OTT providers)**
Canal Digital	[5-10]	[10-20]	[5-10]	[10-20]	[10-20]	[10-20]
Viasat	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]
JV	***[10-20]***	***[10-20]***	***[10-20]***	***[10-20]***	***[10-20]***	***[10-20]***
Telenor	[10-20]	[10-20]	[10-20]	[20-30]	[20-30]	[20-30]
Viaplay	*[5-10]*	-	*[5-10]*	-	*[10-20]*	-
Parties	**[20-30]**	**[30-40]**	**[20-30]**	**[30-40]**	**[40-50]**	**[40-50]**
Telia	[10-20]	[10-20]	[10-20]	[10-20]	[10-20]	[10-20]
RiksTV	[5-10]	[5-10]	[5-10]	[5-10]	[5-10]	[10-20]
Non-linear OTT (excluding Viaplay)	[30-40]	-	[30-40]	-	[0-5]	-
Others	[20-30]	[40-50]	[20-30]	[30-40]	[20-30]	[20-30]

Source: Form CO, Annex 12.

(104) The JV's market position would not significantly differ in a market segment for the retail supply of premium pay AV services where it will have a combined market share of approximately [10-20]% in the premium pay market segment excluding non-linear OTT services, such as Netflix. The Parties' combined market share will also be similar and of approximately [20-30]%.

Table 5: Market shares in 2018
in the market for the retail supply of AV services by subscribers

	Premium pay-TV	**Premium pay-TV (excluding non-linear OTT providers)**	**Pay-TV for MDUs**	**Pay-TV for SDUs**	**Pay-TV for MDUs (excluding non-linear OTT providers)**	**Pay-TV for SDUs (excluding non-linear OTT)**
Canal Digital	[0-5]	[10-20]	[0-5]	[10-20]	[5-10]	[20-30]
Viasat	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]
JV	***[5-10]***	***[10-20]***	***[0-5]***	***[10-20]***	***[5-10]***	***[20-30]***
Telenor	[0-5]	[5-10]	[10-20]	[5-10]	[30-40]	[10-20]
Viaplay	*[0-5]*	-	*[5-10]*	*[5-10]*	-	-
Parties	**[10-20]**	**[20-30]**	**[20-30]**	**[20-30]**	**[30-40]**	**[30-40]**
Telia	[5-10]	[5-10]	[10-20]	[5-10]	[20-30]	[10-20]
RiksTV	[0-5]	[0-5]	[0-5]	[5-10]	[0-5]	[10-20]
Non-linear OTT (excluding Viaplay)	[50-60]	-	[30-40]	[30-40]	-	-
Others	[20-30]	[60-70]	[20-30]	[20-30]	[30-40]	[30-40]

Source: Form CO, Annex 12.

(105) Table 6 reproduced below presents the market shares of the Parties in the market for the retail supply of AV services, sub-segmenting the SDUs and MDUs market segment by basic and premium market segment by revenue. The JV will have a higher market position of [40-50]% in the market for the retail supply of premium AV services for SDUs, excluding non-linear OTT players. The Parties will have a higher market position of [50-60]% in the market for the retail supply of premium AV services for SDUs, excluding non-linear OTT players.

Table 6: Market shares in 2018
in the market for the retail supply of AV services for MDUs and SDUs segmented by basic and premium by revenue

	Pay-TV for MDUs (basic)	**Pay-TV for SDUs (basic)**	**Pay-TV for MDUs (excl. non-linear OTT) (basic)**	**Pay-TV for SDUs (excl. non-linear OTT) (basic)**	**Pay-TV for MDUs (premium)**	**Pay-TV for SDUs (premium)**	**Pay-TV for MDUs (excl. non-linear OTT) (premium)**	**Pay-TV for SDUs (excl. non-linear OTT) (premium)**
Canal Digital	[10-20]%	[10-20]%	[10-20]%	[20-30]%	[5-10]%	[10-20]%	[10-20]%	[20-30]%
Viasat	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[5-10]%	[0-5]%	[10-20]%
JV	***[10-20]%***	***[20-30]%***	***[10-20]%***	***[20-30]%***	***[5-10]%***	***[20-30]%***	***[10-20]%***	***[40-50]%***
Telenor	[30-40]%	[10-20]%	[30-40]%	[10-20]%	[10-20]%	[5-10]%	[20-30]%	[5-10]%
Viaplay	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Combined	***[50-60]%***	***[40-50]%***	***[50-60]%***	***[40-50]%***	***[20-30]%***	***[30-40]%***	***[30-40]%***	***[50-60]%***
Telia/Get	[20-30]%	[10-20]%	[20-30]%	[10-20]%	[5-10]%	[5-10]%	[10-20]%	[10-20]%
RiksTV	[5-10]%	[10-20]%	[5-10]%	[10-20]%	[0-5]%	[5-10]%	[0-5]%	[5-10]%
Lyse/Altibox	[5-10]%	[10-20]%	[5-10]%	[10-20]%	[0-5]%	[0-5]%	[0-5]%	[5-10]%
Others	[10-20]%	[10-20]%	[5-10]%	[10-20]%	[60-70]%	[40-50]%	[30-40]%	[20-30]%

Source: RFI 16, Annex 1.

(106) Table 7 reproduced below presents the market shares of the Parties in the market for the retail supply of AV services, sub-segmenting the SDUs and MDUs market segment by basic and premium market segment by revenue. The JV will have a higher market position of [20-30]% in the market for the retail supply of premium AV services for SDUs, excluding non-linear OTT players. The Parties will have a higher market position of [20-30]% in the market for the retail supply of premium AV services for SDUs, excluding non-linear OTT players.

Table 7: Market shares in 2018
in the market for the retail supply of AV services for MDUs and SDUs segmented by basic and premium by subscribers

	Pay-TV for MDUs (basic)	**Pay-TV for SDUs (basic)**	**Pay-TV for MDUs (excl. non-linear OTT) (basic)**	**Pay-TV for SDUs (excl. non-linear OTT) (basic)**	**Pay-TV for MDUs (premium)**	**Pay-TV for SDUs (premium)**	**Pay-TV for MDUs (excl. non-linear OTT) (premium)**	**Pay-TV for SDUs (excl. non-linear OTT) (premium)**
Canal Digital	[5-10]%	[10-20]%	[5-10]%	[20-30]%	[0-5]%	[5-10]%	[0-5]%	[10-20]%
Viasat	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[5-10]%
JV	***[5-10]%***	***[20-30]%***	***[5-10]%***	***[20-30]%***	***[0-5]%***	***[5-10]%***	***[0-5]%***	***[20-30]%***
Telenor	[30-40]%	[10-20]%	[40-50]%	[10-20]%	[0-5]%	[0-5]%	[10-20]%	[0-5]%
NENT	*[10-20]%*	*[10-20]%*	*[0-5]%*	*[0-5]%*	*[0-5]%*	*[0-5]%*	*[0-5]%*	*[0-5]%*
Combined	***[50-60]%***	***[40-50]%***	***[40-50]%***	***[40-50]%***	***[5-10]%***	***[10-20]%***	***[10-20]%***	***[20-30]%***
Telia/Get	[20-30]%	[10-20]%	[20-30]%	[10-20]%	[5-10]%	[0-5]%	[10-20]%	[5-10]%
RiksTV	[0-5]%	[10-20]%	[0-5]%	[10-20]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Lyse/Altibox	[5-10]%	[10-20]%	[10-20]%	[10-20]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Others	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[80-90]%	[80-90]%	[60-70]%	[50-60]%

Source: RFI 16, Annex 1.

6.2.1.2. Sweden

(A) Wholesale supply of TV channels

(107) Table 8, reproduced below, shows the market shares of NENT and its main competitors in the market for the wholesale supply of TV channels in Sweden (based on 2018 data) by share of viewing. NENT's market share (based on 2018 data) was respectively [10-20]% for the wholesale supply of combined FTA/pay TV channels, and [20-30]% for the wholesale supply of pay TV channels and [10-20]% for the wholesale supply of basic pay TV channels, an [50-60]% for the wholesale supply of premium pay TV channels, and [50-60]% for the wholesale supply of premium pay TV sports channels, and [50-60]% for the wholesale supply of premium pay TV non-sports channels.

Table 8: Market shares in 2018
in the market for the wholesale supply of TV channels by share of viewing

	Wholesale supply of FTA and pay-TV channels	Wholesale supply of pay-TV channels	Wholesale supply of FTA and basic pay-TV channels	Wholesale supply of basic pay-TV channels	Wholesale supply of premium pay-TV channels	Wholesale supply of premium sports pay-TV channels	Wholesale supply of premium non-sports pay-TV channels
NENT	**[10-20]**	**[20-30]**	**[10-20]**	**[10-20]**	**[50-60]**	**[50-60]**	**[50-60]**
SVT	[30-40]	-	[30-40]	[50-60]	[40-50]	[40-50]	[40-50]
Telia	[30-40]	[40-50]	[30-40]	[50-60]	-	-	-
Discovery	[10-20]	[20-30]	[10-20]	[20-30]	-	-	-
Others	[5-10]	[10-20]	[5-10]	[5-10]	[0-5]	[0-5]	

Source: Form CO, Annex 68.

(108) Table 9, reproduced below, shows the market shares of NENT and its main competitors in the market for the wholesale supply of TV channels in Sweden (based on 2018 data) by value. NENT's market share (based on 2018 data) was respectively [20-30]% for the wholesale supply of pay TV channels and [10-20]% for the wholesale supply of basic pay TV channels, and [50-60]% for the wholesale supply of premium pay TV channels, and [50-60]% for the wholesale supply of premium pay TV sports channels, and [40-50]% for the wholesale supply of premium pay TV non-sports channels.

Table 9: Market shares in 2018
in the market for the wholesale supply of TV channels by value

	Wholesale supply of pay-TV channels	Wholesale supply of basic pay-TV channels	Wholesale supply of premium pay-TV channels	Wholesale supply of premium sports pay-TV channels	Wholesale supply of premium non-sports pay-TV channels
NENT	**[20-30]**	**[10-20]**	**[50-60]**	**[50-60]**	**[40-50]**
Telia	[40-50]	[40-50]	[40-50]	[40-50]	[40-50]
Discovery	[10-20]	[20-30]	-	-	-
Others	[5-10]	[10-20]	[0-5]	[0-5]	[0-5]

Source: Form CO, Annex 68.

(B) Retail supply of AV services

(109) Table 10, reproduced below, presents the market shares of the Parties in the market for the retail supply of AV services, and any possible sub-segment. The JV will hold a market share of [20-30]% by value in the Swedish market for the retail supply of AV services (based on 2018 data) and below 30% in all market segments except for the market for the supply of premium pay-TV retail AV services, excluding non-linear OTT providers as well as market for the supply of pay-TV retail AV service, excluding non-linear OTT providers as well as the supply of pay-TV retail premium AV services for SDUs, excluding non-linear OTT providers. The Parties will hold a market share of [30-40]% by value in the Swedish market for the retail supply of AV services (based on 2018 data).

Table 10: Market shares in 2018
in the market for the retail supply of AV services by revenue

	Pay-TV	**Pay-TV (excluding non-linear OTT providers)**	**Basic pay-TV**	**Basic pay-TV (excluding non-linear OTT providers)**	**Premium pay-TV sector**	**Premium pay-TV (excluding non-linear OTT providers)**	**Pay-TV for MDUs**	**Pay-TV for SDUs**	**Pay-TV for MDUs (excluding non-linear OTT providers)**	**Pay-TV for SDUs (excluding non-linear OTT)**
Canal Digital	[10-20]	[10-20]	[10-20]	[10-20]	[5-10]	[10-20]	[10-20]	[5-10]	[10-20]	[10-20]
Viasat	[10-20]	[10-20]	[5-10]	[10-20]	[10-20]	[20-30]	[0-5]	[10-20]	[0-5]	[10-20]
JV	***[20-30]***	***[30-40]***	***[20-30]***	***[20-30]***	***[20-30]***	***[30-40]***	***[10-20]***	***[20-30]***	***[10-20]***	***[30-40]***
Telenor	[5-10]	[5-10]	[10-20]	[10-20]	[0-5]	[5-10]	[10-20]	[5-10]	[10-20]	[5-10]
Viaplay	[0-5]	-	[5-10]	-	[0-5]	-	-	[5-10]	-	-
Parties	**[30-40]**	**[30-40]**	**[30-40]**	**[30-40]**	**[20-30]**	**[30-40]**	**[20-30]**	**[30-40]**	**[20-30]**	**[40-50]**
Tele2/ ComHem	[20-30]	[30-40]	[30-40]	[40-50]	[20-30]	[30-40]	[40-50]	[20-30]	[40-50]	[30-40]
Telia	[10-20]	[10-20]	[10-20]	[10-20]	[10-20]	[10-20]	[10-20]	[10-20]	[10-20]	[10-20]
Non-linear OTT (excluding Viaplay)	[20-30]	-	[0-5]	-	[20-30]	-	-	[20-30]	-	-
Others	[5-10	[5-10]	[0-5]	[5-10]	[5-10]	[5-10]	[10-20]	[0-5]	[10-20]	[5-10]

Source: Form CO, Annex 12.

(110) Tables 11 and 12, reproduced below, shows the market shares of the JV and its main competitors in the market for the retail supply of AV services and possible sub-segments by subscribers. The JV would have even a more limited market position with a market share of approximately [5-10]%. The Parties would have a combined market share of [10-20]%.

Table 11: Market shares in 2018
in the market for the retail supply of AV services by subscribers

	Overall market	**Overall market (excluding non-linear OTT providers)**	**Pay-TV**	**Pay-TV (excluding non-linear OTT providers)**	**Basic pay-TV**	**Basic pay-TV (excluding non-linear OTT providers)**
Canal Digital	[0-5]	[5-10]	[0-5]	[5-10]	[0-5]	[5-10]
Viasat	[0-5]	[5-10]	[0-5]	[5-10]	[0-5]	[0-5]
JV	***[5-10]***	***[10-20]***	***[5-10]***	***[10-20]***	***[5-10]***	***[5-10]***
Telenor	[5-10]	[5-10]	[5-10]	[5-10]	[10-20]	[10-20]
Viaplay	*[0-5]*	-	*[0-5]*	-	*[5-10]*	-
Parties	**[10-20]**	**[20-30]**	**[10-20]**	**[20-30]**	**[20-30]**	**[20-30]**
Tele2/ ComHem	[20-30]	[40-50]	[20-30]	[40-50]	[40-50]	[40-50]
Telia	[10-20]	[20-30]	[10-20]	[20-30]	[10-20]	[10-20]
Non-linear OTT (excluding Viaplay)	[30-40]	-	[30-40]	-	[5-10]	-
Others	[10-20]	[10-20]	[5-10]	[10-20]	[5-10]	[10-20]

Source: Form CO, Annex 12.

(111) The JV's market position would not significantly differ in a market segment for the retail supply of premium pay AV services where it will have a combined market share of approximately [10-20]% in the premium pay market segment excluding non-linear OTT services, such as Netflix. The Parties' combined market share will also be similar and of approximately [20-30]%.

Table 12: Market shares in 2018
in the market for the retail supply of AV services by subscribers

	Premium pay-TV	**Premium pay-TV (excluding non-linear OTT providers)**	**Pay-TV for MDUs**	**Pay-TV for SDUs**	**Pay-TV for MDUs (excluding non-linear OTT providers)**	**Pay-TV for SDUs (excluding non-linear OTT)**
Canal Digital	[0-5]	[5-10]	[0-5]	[0-5]	[0-5]	[5-10]
Viasat	[0-5]	[10-20]	[0-5]	[5-10]	[0-5]	[10-20]
JV	***[5-10]***	***[10-20]***	***[0-5]***	***[10-20]***	***[0-5]***	***[20-30]***
Telenor	[0-5]	[0-5]	[10-20]	[0-5]	[10-20]	[5-10]
Viaplay	*[0-5]*	-	-	*5.9*	-	-
Parties	**[10-20]**	**[20-30]**	**[10-20]**	**[10-20]**	**[10-20]**	**[20-30]**
Telia	[10-20]	[30-40]	[50-60]	[10-20]	[50-60]	[30-40]
RiksTV	[10-20]	[20-30]	[10-20]	[5-10]	[10-20]	[20-30]
Non-linear OTT (excluding Viaplay)	[50-60]	-	-	[40-50]	-	-
Others	[10-20]	[20-30]	[10-20]	[5-10]	[10-20]	[10-20]

Source: Form CO, Annex 12.

(112) Table 13 reproduced below presents the market shares of the Parties in the market for the retail supply of AV services, sub-segmenting the SDUs and MDUs market segment by basic and premium market segment by revenue. The JV will have a higher market position of [30-40]% in the market for the retail supply of premium AV services for SDUs, excluding non-linear OTT players. The Parties will have a higher market position of [40-50]% in the market for the retail supply of premium AV services for SDUs, excluding non-linear OTT players.

Table 13: Market shares in 2018
in the market for the retail supply of AV services for MDUs and SDUs segmented by basic and premium by revenue

	Pay-TV for MDUs (basic)	**Pay-TV for SDUs (basic)**	**Pay-TV for MDUs (excl. non-linear OTT) (basic)**	**Pay-TV for SDUs (excl. non-linear OTT) (basic)**	**Pay-TV for MDUs (premium)**	**Pay-TV for SDUs (premium)**	**Pay-TV for MDUs (excl. non-linear OTT) (premium)**	**Pay-TV for SDUs (excl. non-linear OTT) (premium)**
Canal Digital	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[5-10]%	[10-20]%	[10-20]%
Viasat	[0-5]%	[10-20]%	[0-5]%	[10-20]%	[0-5]%	[10-20]%	[0-5]%	[20-30]%
JV	***[10-20]%***	***[20-30]%***	***[10-20]%***	***[20-30]%***	***[10-20]%***	***[20-30]%***	***[10-20]%***	***[30-40]%***
Telenor	[10-20]%	[5-10]%	[10-20]%	[10-20]%	[10-20]%	[0-5]%	[10-20]%	[0-5]%
Viaplay	[0-5]%	[5-10]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Combined	***[20-30]%***	***[40-50]%***	***[20-30]%***	***[30-40]%***	***[20-30]%***	***[30-40]%***	***[20-30]%***	***[40-50]%***
Tele2/Com Hem	[30-40]%	[30-40]%	[30-40]%	[40-50]%	[40-50]%	[20-30]%	[40-50]%	[30-40]%
Telia	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[20-30]%	[5-10]%	[20-30]%	[10-20]%
Others	[20-30]%	[5-10]%	[20-30]%	[0-5]%	[5-10]%	[30-40]%	[5-10]%	[5-10]%

Source: RFI 16, Annex 1.

(113) Table 14 reproduced below presents the market shares of the Parties in the market for the retail supply of AV services, sub-segmenting the SDUs and MDUs market segment by basic and premium market segment by subscribers. The JV will have a higher market position of [20-30]% in the market for the retail supply of basic AV services for SDUs, excluding non-linear OTT players. The Parties will have a higher market position of [30-40]% in the market for the retail supply of basic AV services for SDUs, excluding non-linear OTT players.

Table 14: Market shares in 2018
in the market for the retail supply of AV services for MDUs and SDUs segmented by basic and premium by subscribers

	Pay-TV for MDUs (basic)	**Pay-TV for SDUs (basic)**	**Pay-TV for MDUs (excl. non-linear OTT) (basic)**	**Pay-TV for SDUs (excl. non-linear OTT) (basic)**	**Pay-TV for MDUs (premium)**	**Pay-TV for SDUs (premium)**	**Pay-TV for MDUs (excl. non-linear OTT) (premium)**	**Pay-TV for SDUs (excl. non-linear OTT) (premium)**
Canal Digital	[0-5]%	[5-10]%	[0-5]%	[10-20]%	[0-5]%	[0-5]%	[0-5]%	[5-10]%
Viasat	[0-5]%	[5-10]%	[0-5]%	[10-20]%	[0-5]%	[5-10]%	[0-5]%	[10-20]%
JV	***[0-5]%***	***[10-20]%***	***[0-5]%***	***[20-30]%***	***[0-5]%***	***[5-10]%***	***[0-5]%***	***[20-30]%***
Telenor	[10-20]%	[5-10]%	[10-20]%	[5-10]%	[10-20]%	[0-5]%	[10-20]%	[0-5]%
NENT	*[0-5]%*	*[10-20]%*	*[0-5]%*	*[0-5]%*	*[0-5]%*	*[0-5]%*	*[0-5]%*	*[0-5]%*
Combined	***[10-20]%***	***[30-40]%***	***[10-20]%***	***[30-40]%***	***[10-20]%***	***[10-20]%***	***[10-20]%***	***[20-30]%***
Tele2/Com Hem	[50-60]%	[30-40]%	[50-60]%	[40-50]%	[60-70]%	[5-10]%	[60-70]%	[20-30]%
Telia	[10-20]%	[10-20]%	[10-20]%	[20-30]%	[10-20]%	[5-10]%	[10-20]%	[10-20]%
Sappa	[5-10]%	[0-5]%	[5-10]%	[0-5]%	[5-10]%	[0-5]%	[5-10]%	[0-5]%
Others	[10-20]%	[10-20]%	[10-20]%	[0-5]%	[0-5]%	[70-80]%	[0-5]%	[20-30]%

Source: RFI 16, Annex 1.

(C) Retail supply of fixed internet access services

(114) NENT is also active in the market for the retail supply of fixed internet access services in Sweden. In such market, based on 2018 data, Telia is the market leader with a market share of [30-40]% followed by Tele2 and Telenor with market shares of respectively [20-30]% and [10-20]%. Viasat has a limited market share of [0-5]%.

(115) In the narrower market segment for the supply of fixed internet access services to private customers, based on 2018 data, Telia is the market leader with a market share of [30-40]% followed by Tele2 and Telenor with market shares of respectively [20-30]% and [10-20]%. Viasat has a limited market share of [0-5]%.[105]

[105] Form CO, Table 28.

6.2.1.3. Finland

(A) Wholesale supply of TV channels

(116) Table 15, reproduced below, shows the market shares of NENT and its main competitors in the market for the wholesale supply of TV channels in Finland (based on 2018 data) by share of viewing. NENT's market share (based on 2018 data) was respectively below [0-5]% for the wholesale supply of combined FTA/pay TV channels, and below [30-40]% for the wholesale supply of premium pay TV channels as well as for the wholesale supply of premium pay TV sports channels.

Table 15: Market shares in 2018 in the market for the wholesale supply of TV channels by share of viewing

	Wholesale supply of FTA and pay-TV channels	Wholesale supply of pay-TV channels	Wholesale supply of FTA and basic pay-TV channels	Wholesale supply of basic pay-TV channels	Wholesale supply of premium pay-TV channels	Wholesale supply of premium sports pay-TV channels	Wholesale supply of premium non-sports pay-TV channels
NENT	**[0-5]**	**[10-20]**	**n/a**	**n/a**	**[30-40]**	**[30-40]**	**n/a**
Telia	[20-30]	[20-30]	n/a	n/a	[50-60]	[50-60]	-
Discovery	[5-10]	[0-5]	n/a	n/a	-	-	n/a
Yle	[40-50]	-	n/a	n/a	-	-	n/a
Others	[20-30]	[60-70]	n/a	n/a	[10-20]	[10-20]	n/a

Source: Form CO, Annex 68.

(117) Table 16, reproduced below, shows the market shares of NENT and its main competitors in the market for the wholesale supply of TV channels in Finland (based on 2018 data) by value. NENT's market share (based on 2018 data) was [30-40]% for the wholesale supply of premium pay TV channels, and [30-40]% for the wholesale supply of premium pay TV sports channels, and [30-40]% for the wholesale supply of premium pay TV non-sports channels.

Table 16: Market shares in 2018 in the market for the wholesale supply of TV channels by value

	Wholesale supply of pay-TV channels	Wholesale supply of basic pay-TV channels	Wholesale supply of premium pay-TV channels	Wholesale supply of premium sports pay-TV channels	Wholesale supply of premium non-sports pay-TV channels
NENT	**n/a**	**n/a**	**[30-40]**	**[30-40]**	**[30-40]**
Telia	n/a	n/a	[50-60]	[50-60]	[60-70]
Discovery	n/a	n/a	-	-	-
Others	n/a	n/a	[10-20]	[10-20]	-

Source: Form CO, Annex 68.

(B) Retail supply of AV services

(118) Table 17, reproduced below, presents the market shares of the Parties in the market for the retail supply of AV services, and any possible sub-segment. The JV will hold a market share of [5-10]% by value in the Finnish market for the retail supply of AV services (based on 2018 data) and below 30% in all market segments except for the market for the supply of pay-TV for SDU, excluding non-linear OTT providers.[106] The Parties will hold a market share of [20-30]% by value in the Finnish market for the retail supply of AV services (based on 2018 data).

Table 17: Market shares in 2018 in the market for the retail supply of AV services by revenue

	Pay-TV	**Pay-TV (excluding non-linear OTT providers)**	**Basic pay-TV**	**Basic pay-TV (excluding non-linear OTT providers)**	**Premium pay-TV**	**Premium pay-TV (excluding non-linear OTT providers)**	**Pay-TV for MDUs**	**Pay-TV for SDUs**	**Pay-TV for MDUs (excluding non-linear OTT providers)**	**Pay-TV for SDUs (excluding non-linear OTT)**
Canal Digital	[5-10]	[5-10]	[5-10]	[5-10]	[5-10]	[10-20]	[0-5]	[10-20]	[0-5]	[20-30]
Viasat	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]
JV	***[5-10]***	***[10-20]***	***[5-10]***	***[5-10]***	***[5-10]***	***[10-20]***	***[0-5]***	***[10-20]***	***[0-5]***	***[30-40]***
Telenor	[10-20]	[10-20]	[20-30]	[20-30]	[0-5]	[5-10]	[10-20]	[0-5]	[20-30]	[0-5]
Viaplay	[5-10]	-	[5-10]	-	[5-10]	-	[5-10]	[5-10]	-	-
Parties	**[20-30]**	**[20-30]**	**[30-40]**	**[30-40]**	**[10-20]**	**[10-20]**	**[20-30]**	**[30-40]**	**[20-30]**	**[30-40]**
Telia	[10-20]	[20-30]	[20-30]	[20-30]	[10-20]	[20-30]	[20-30]	[5-10]	[30-40]	[10-20]
Elisa	[10-20]	[20-30]	[20-30]	[20-30]	[5-10]	[10-20]	[20-30]	[5-10]	[20-30]	[5-10]
Non-linear OTT (excluding Viaplay)	[20-30]	-	[0-5]	-	[40-50]	-	[10-20]	[30-40]	-	-
Others	[30-40]	[20-30]	[5-10]	[5-10]	[60-70]	[40-50]	[30-40]	[50-60]	[10-20]	[40-50]

Source: Form CO, Annex 12.

(119) Tables 18 and 19 reproduced below, shows the market shares of the JV and its main competitors in the market for the retail supply of AV services and possible sub-segments by subscribers. The JV would have even a more limited market position with a market share of approximately [0-5]%. The Parties would have a combined market share of [10-20]%.

[106] The JV will have market shares above 30% also in the market segments for the retail supply of basic AV services for SDUs and for the retail supply of basic AV services for SDUs, excluding non-linear OTT . However, Viasat was not active in such market segments before the Transaction. Therefore, there is no merger specific change brought by the Transaction.

Table 18: Market shares in 2018
in the market for the retail supply of AV services by subscribers

	Overall market	**Overall market (excluding non-linear OTT providers)**	**Pay-TV**	**Pay-TV (excluding non-linear OTT providers)**	**Basic pay-TV**	**Basic pay-TV (excluding non-linear OTT providers)**
Canal Digital	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]
Viasat	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]
JV	***[0-5]***	***[0-5]***	***[0-5]***	***[0-5]***	***[0-5]***	***[0-5]***
Telenor	[10-20]	[10-20]	[10-20]	[20-30]	[30-40]	[30-40]
Viaplay	*[0-5]*	-	*[0-5]*	-	*[5-10]*	-
Parties	**[10-20]**	**[20-30]**	**[20-30]**	**[20-30]**	**[30-40]**	**[30-40]**
Telia	[10-20]	[20-30]	[20-30]	[30-40]	[20-30]	[30-40]
Elisa	[10-20]	[10-20]	[10-20]	[20-30]	[20-30]	[20-30]
Non-linear OTT (excluding Viaplay)	[20-30]	-	[20-30]	-	[0-5]	-
Others	[50-60]	[30-40]	[30-40]	[10-20]	[5-10]	[5-10]

Source: Form CO, Annex 12.

(120) The JV's market position would not significantly differ in a market segment for the retail supply of premium pay AV services where it will have a combined market share of approximately [0-5]% in the premium pay market segment excluding non-linear OTT services, such as Netflix. The Parties' combined market share will also be similar and of approximately [10-20]%.

Table 19: Market shares in 2018
in the market for the retail supply of AV services by subscribers

	Premium pay-TV	**Premium pay-TV (excluding non-linear OTT providers)**	**Pay-TV for MDUs**	**Pay-TV for SDUs**	**Pay-TV for MDUs (excluding non-linear OTT providers)**	**Pay-TV for SDUs (excluding non-linear OTT)**
Canal Digital	[0-5]	[0-5]	[0-5]	[5-10]	[0-5]	[10-20]
Viasat	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]
JV	***[0-5]***	***[0-5]***	***[0-5]***	***[5-10]***	***[0-5]***	***[10-20]***
Telenor	[0-5]	[5-10]	[20-30]	[0-5]	[30-40]	[5-10]
Viaplay	*[0-5]*	-	*[0-5]*	*[5-10]*	-	-
Parties	**[5-10]**	**[10-20]**	**[20-30]**	**[10-20]**	**[30-40]**	**[10-20]**
Telia	[10-20]	[30-40]	[20-30]	[10-20]	[30-40]	[20-30]
Elisa	[5-10]	[10-20]	[10-20]	[5-10]	[20-30]	[10-20]
Non-linear OTT (excluding Viaplay)	[50-60]	-	[20-30]	[40-50]	-	-
Others	[70-80]	[30-40]	[30-40]	[60-70]	[10-20]	[40-50]

Source: Form CO, Annex 12.

(121) Table 20 reproduced below presents the market shares of the Parties in the market for the retail supply of AV services, sub-segmenting the SDUs and MDUs market segment by basic and premium market segment by revenue. The JV will have a higher market position of [20-30]% in the market for the retail supply of premium AV services for SDUs, excluding non-linear OTT players. The Parties will have a higher market position of [20-30]% in the market for the retail supply of premium AV services for SDUs, excluding non-linear OTT players.

Table 20: Market shares in 2018
in the market for the retail supply of AV services for MDUs and SDUs segmented by basic and premium by revenue

	Pay-TV for MDUs (basic)	**Pay-TV for SDUs (basic)**	**Pay-TV for MDUs (excl. non-linear OTT) (basic)**	**Pay-TV for SDUs (excl. non-linear OTT) (basic)**	**Pay-TV for MDUs (premium)**	**Pay-TV for SDUs (premium)**	**Pay-TV for MDUs (excl. non-linear OTT) (premium)**	**Pay-TV for SDUs (excl. non-linear OTT) (premium)**
Canal Digital	[0-5]%	[30-40]%	[0-5]%	[40-50]%	[0-5]%	[10-20]%	[5-10]%	[10-20]%
Viasat	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
JV	***[0-5]%***	***[30-40]%***	***[0-5]%***	***[40-50]%***	***[0-5]%***	***[10-20]%***	***[5-10]%***	***[20-30]%***
Telenor/DNA	[20-30]%	[5-10]%	[20-30]%	[10-20]%	[0-5]%	[0-5]%	[5-10]%	[0-5]%
NENT	[0-5]%	[10-20]%	[0-5]%	[0-5]%	[5-10]%	[5-10]%	[0-5]%	[0-5]%
Combined	***[30-40]%***	***[50-60]%***	***[20-30]%***	***[50-60]%***	***[10-20]%***	***[10-20]%***	***[10-20]%***	***[20-30]%***
Telia	[20-30]%	[20-30]%	[30-40]%	[20-30]%	[10-20]%	[0-5]%	[30-40]%	[5-10]%
Elisa	[20-30]%	[10-20]%	[30-40]%	[10-20]%	[5-10]%	[0-5]%	[10-20]%	[0-5]%
Digita	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[5-10]%	[20-30]%	[10-20]%	[40-50]%
others	***[5-10]%***	***[5-10]%***	***[5-10]%***	***[0-5]%***	***[50-60]%***	***[50-60]%***	***[20-30]%***	***[20-30]%***

Source: RFI 16, Annex 1.

(122) Table 21 reproduced below presents the market shares of the Parties in the market for the retail supply of AV services, sub-segmenting the SDUs and MDUs market segment by basic and premium market segment by subscribers. The JV will have a higher market position of [10-20]% in the market for the retail supply of premium AV services for SDUs, excluding non-linear OTT players. The Parties, in the markets where Viasat's and Canal Digital's overlap, will have a higher market position of [20-30]% in the market for the retail supply of basic AV services for SDUs, excluding non-linear OTT players.

Table 21: Market shares in 2018
in the market for the retail supply of AV services for MDUs and SDUs segmented by basic and premium by subscribers

	Pay-TV for MDUs (basic)	**Pay-TV for SDUs (basic)**	**Pay-TV for MDUs (excl. non-linear OTT) (basic)**	**Pay-TV for SDUs (excl. non-linear OTT) (basic)**	**Pay-TV for MDUs (premium)**	**Pay-TV for SDUs (premium)**	**Pay-TV for MDUs (excl. non-linear OTT) (premium)**	**Pay-TV for SDUs (excl. non-linear OTT) (premium)**
Canal Digital	[0-5]%	[10-20]%	[0-5]%	[10-20]%	[0-5]%	[0-5]%	[0-5]%	[10-20]%
Viasat	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
JV	***[0-5]%***	***[10-20]%***	***[0-5]%***	***[10-20]%***	***[0-5]%***	***[0-5]%***	***[0-5]%***	***[10-20]%***
Telenor/DNA	[30-40]%	[5-10]%	[30-40]%	[10-20]%	[5-10]%	[0-5]%	[10-20]%	[0-5]%
NENT	*[0-5]%*	*[20-30]%*	*[0-5]%*	*[0-5]%*	*[0-5]%*	*[0-5]%*	*[0-5]%*	*[0-5]%*
Combined	***[30-40]%***	***[40-50]%***	***[30-40]%***	***[20-30]%***	***[5-10]%***	***[5-10]%***	***[10-20]%***	***[10-20]%***
Telia	[20-30]%	[30-40]%	[20-30]%	[40-50]%	[10-20]%	[0-5]%	[40-50]%	[10-20]%
Elisa	[20-30]%	[10-20]%	[20-30]%	[20-30]%	[5-10]%	[0-5]%	[10-20]%	[0-5]%
Digita	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[5-10]%	[0-5]%	[20-30]%
Others	[5-10]%	[5-10]%	[5-10]%	[0-5]%	[60-70]%	[70-80]%	[20-30]%	[40-50]%

Source: RFI 16, Annex 1.

6.2.1.4. Denmark

(A) Wholesale supply of TV channels

(123) Table 22, reproduced below, shows the market shares of NENT and its main competitors in the market for the wholesale supply of TV channels in Denmark (based on 2018 data) by share of viewing. NENT's market share (based on 2018 data) was respectively [10-20]% for the wholesale supply of combined FTA/pay TV channels, and [10-20]% for the wholesale supply of pay TV channels and [10-20]% for the wholesale supply of basic pay TV channels, and [20-30]% for the wholesale supply of basic pay TV sports channels.

Table 22: Market shares in 2018
in the market for the wholesale supply of TV channels by share of viewing

	Wholesale supply of FTA and pay-TV channels	Wholesale supply of pay-TV channels	Wholesale supply of FTA and basic pay-TV channels	Wholesale supply of basic pay-TV channels	Wholesale supply of basic sports pay-TV channels	Wholesale supply of premium pay-TV channels	Wholesale supply of premium non-sports pay-TV channels
NENT	**[10-20]**	**[10-20]**	**[10-20]**	**[10-20]**	**[20-30]**	**n/a**	**n/a**
DR	[30-40]	-	[30-40]	-	[50-60]	n/a	n/a
TV2 Denmark	[30-40]	[60-70]	[30-40]	[60-70]	n/a	n/a	n/a
Discovery	[10-20]	[10-20]	[5-10]	[10-20]	[20-30]	n/a	n/a
Others	[0-5]	[5-10]	[0-5]	[5-10]	n/a	n/a	n/a

Source: Form CO, Annex 68.

(124) Table 23 reproduced below, shows the market shares of NENT and its main competitors in the market for the wholesale supply of TV channels in Denmark (based on 2018 data) by value. NENT's market share (based on 2018 data) was respectively [30-40]% for the wholesale supply of pay TV channels and [30-40]% for the wholesale supply of basic pay TV channels, and [50-60]% for the wholesale supply of basic pay TV sports channels, and [40-50]% for the wholesale supply of premium pay TV non-sports channels.

Table 23: Market shares in 2018
in the market for the wholesale supply of TV channels by value

	Wholesale supply of pay-TV channels	Wholesale supply of basic pay-TV channels	Wholesale supply of premium pay-TV channels	Wholesale supply of basic sports pay-TV channels	Wholesale supply of premium pay-TV channels	Wholesale supply of premium non-sports pay-TV channels
NENT	**[30-40]**	**[30-40]**	**[40-50]**	**[50-60]**	**[40-50]**	**[40-50]**
TV2 Denmark	[30-40]	[30-40]	-	[10-20]	-	-
Discovery	[10-20]	[10-20]	-	[20-30]	-	-
Others	[10-20]	[5-10]	[50-60]	[0-5]	[50-60]	[50-60]

Source: Form CO, Annex 68.

(B) Retail supply of AV services

(125) Table 24 reproduced below, presents the market shares of the Parties in the market for the retail supply of AV services, and any possible sub-segment. The JV will hold a market share of [5-10]% by value in the Danish market for the

retail supply of AV services (based on 2018 data) and below 30% in all market segments. The Parties will hold a market share of [10-20]% by value in the Danish market for the retail supply of AV services (based on 2018 data).

Table 24: Market shares in 2018
in the market for the retail supply of AV services by revenue

	Pay-TV	**Pay-TV (excluding non-linear OTT providers)**	**Basic pay-TV**	**Basic pay-TV (excluding non-linear OTT providers)**	**Premium pay-TV**	**Premium pay-TV (excluding non-linear OTT providers)**	**Pay-TV for MDUs**	**Pay-TV for SDUs**	**Pay-TV for MDUs (excluding non-linear OTT providers)**	**Pay-TV for SDUs (excluding non-linear OTT)**
Canal Digital	*[0-5]*	*[5-10]*	*[5-10]*	*[5-10]*	*[0-5]*	*[0-5]*	*[0-5]*	*[5-10]*	*[0-5]*	*[5-10]*
Viasat	*[0-5]*	*[0-5]*	*[0-5]*	*[0-5]*	*[5-10]*	*[10-20]*	*[0-5]*	*[5-10]*	*[0-5]*	*[10-20]*
JV	***[5-10]***	***[10-20]***	***[5-10]***	***[10-20]***	***[5-10]***	***[10-20]***	***[0-5]***	***[10-20]***	***[0-5]***	***[10-20]***
Telenor	-	-	-	-	-	-	-	-	-	-
Viaplay	*[0-5]*	-	*[0-5]*	-	*[5-10]*	-	*[0-5]*	*[0-5]*	-	-
Parties	***[10-20]***	***[10-20]***	***[10-20]***	***[10-20]***	***[10-20]***	***[10-20]***	***[5-10]***	***[10-20]***	***[0-5]***	***[10-20]***
TDC	*[40-50]*	*[50-60]*	*[50-60]*	*[50-60]*	*[10-20]*	*[20-30]*	*[50-60]*	*[30-40]*	*[60-70]*	*[30-40]*
Telia	*[0-5]*	*[0-5]*	*[0-5]*	*[0-5]*	*[5-10]*	*[20-30]*	*[0-5]*	*[0-5]*	*[0-5]*	*[0-5]*
Non-linear OTT (excluding Viaplay)	*[10-20]*	-	*[0-5]*	-	*[50-60]*	-	*[10-20]*	*[10-20]*	-	-
Others	*[20-30]*	*[30-40]*	*[30-40]*	*[30-40]*	*[10-20]*	*[30-40]*	*[20-30]*	*[30-40]*	*[20-30]*	*[30-40]*

Source: Form CO, Annex 12.

(126) Tables 25 and 26 reproduced below, shows the market shares of the JV and its main competitors in the market for the retail supply of AV services and possible sub-segments by subscribers. The JV would have even a more limited market position with a market share of approximately [0-5]%. The Parties would have a combined market share of [5-10]%.

Table 25: Market shares in 2018
in the market for the retail supply of AV services by subscribers

	Overall market	**Overall market (excluding non-linear OTT providers)**	**Pay-TV**	**Pay-TV (excluding non-linear OTT providers)**	**Basic pay-TV**	**Basic pay-TV (excluding non-linear OTT providers)**
Canal Digital	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]
Viasat	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]
JV	***[0-5]***	***[0-5]***	***[0-5]***	***[0-5]***	***[0-5]***	***[0-5]***
Telenor	-	-	-	-	-	-
Viaplay	*[5-10]*	-	*[5-10]*	-	*[5-10]*	-
Parties	**[5-10]**	**[0-5]**	**[5-10]**	**[0-5]**	**[10-20]**	**[0-5]**
TDC	[20-30]	[40-50]	[20-30]	[40-50]	[40-50]	[50-60]
Telia	[0-5]	[0-5]	[0-5]	[5-10]	[0-5]	[0-5]
Non-linear OTT (excluding Viaplay)	[30-40]	-	[30-40]	-	[0-5]	-
Others	[20-30]	[40-50]	[20-30]	[40-50]	[30-40]	[40-50]

Source: Form CO, Annex 12.

(127) The JV's market position would not significantly differ in a market segment for the retail supply of premium pay AV services where it will have a combined market share of approximately [10-20]% in the premium pay market segment excluding non-linear OTT services, such as Netflix. The Parties' combined market share will also be similar and of approximately [10-20]%.

Table 26: Market shares in 2018
in the market for the retail supply of AV services by subscribers

	Premium pay-TV	**Premium pay-TV (excluding non-linear OTT providers)**	**Pay-TV for MDUs**	**Pay-TV for SDUs**	**Pay-TV for MDUs (excluding non-linear OTT providers)**	**Pay-TV for SDUs (excluding non-linear OTT)**
Canal Digital	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[5-10]
Viasat	[0-5]	[10-20]	[0-5]	[0-5]	[0-5]	[5-10]
JV	***[0-5]***	***[10-20]***	***[0-5]***	***[5-10]***	***[0-5]***	***[10-20]***
Telenor	-	-	-	-	-	-
Viaplay	*[0-5]*	-	*[5-10]*	*[5-10]*	-	-
Parties	**[0-5]**	**[10-20]**	**[5-10]**	**[10-20]**	**[0-5]**	**[10-20]**
TDC	[0-5]	[10-20]	[30-40]	[10-20]	[50-60]	[20-30]
Telia	[5-10]	[20-30]	[0-5]	[0-5]	[0-5]	[5-10]
Non-linear OTT (excluding Viaplay)	[70-80]	-	[30-40]	[40-50]	-	-
Others	[10-20]	[50-60]	[20-30]	[20-30]	[30-40]	[50-60]

Source: Form CO, Annex 12.

(128) Table 27 reproduced below presents the market shares of the Parties in the market for the retail supply of AV services, sub-segmenting the SDUs and MDUs market segment by basic and premium market segment by revenue. The JV will have a higher market position of [20-30]% in the market for the retail supply of premium AV services for SDUs, excluding non-linear OTT players. The Parties will have a higher market position of [20-30]% in the market for the retail supply of premium AV services for SDUs, excluding non-linear OTT players.

Table 27: Market shares in 2018
in the market for the retail supply of AV services for MDUs and SDUs segmented by basic and premium by revenue

	Pay-TV for MDUs (basic)	**Pay-TV for SDUs (basic)**	**Pay-TV for MDUs (excl. non-linear OTT) (basic)**	**Pay-TV for SDUs (excl. non-linear OTT) (basic)**	**Pay-TV for MDUs (premium)**	**Pay-TV for SDUs (premium)**	**Pay-TV for MDUs (excl. non-linear OTT) (premium)**	**Pay-TV for SDUs (excl. non-linear OTT) (premium)**
Canal Digital	[0-5]%	[5-10]%	[0-5]%	[5-10]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Viasat	[0-5]%	[5-10]%	[0-5]%	[5-10]%	[0-5]%	[5-10]%	[0-5]%	[20-30]%
JV	***[0-5]%***	***[10-20]%***	***[0-5]%***	***[10-20]%***	***[0-5]%***	***[10-20]%***	***[0-5]%***	***[20-30]%***
NENT	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[5-10]%	[0-5]%	[0-5]%	[0-5]%
Combined	***[5-10]%***	***[10-20]%***	***[0-5]%***	***[10-20]%***	***[5-10]%***	***[10-20]%***	***[0-5]%***	***[20-30]%***
TDC	[60-70]%	[40-50]%	[60-70]%	[40-50]%	[10-20]%	[5-10]%	[40-50]%	[10-20]%
Telia	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[5-10]%	[10-20]%	[10-20]%	[20-30]%
Others	[20-30]%	[30-40]%	[20-30]%	[40-50]%	[70-80]%	[60-70]%	[30-40]%	[30-40]%

Source: RFI 16, Annex 1.

(129) Table 28 reproduced below presents the market shares of the Parties in the market for the retail supply of AV services, sub-segmenting the SDUs and MDUs market segment by basic and premium market segment by subscribers. The JV will have a higher market position of [20-30]% in the market for the retail supply of premium AV services for SDUs, excluding non-linear OTT players. The Parties will have a higher market position of [20-30]% in the market for the retail supply of premium AV services for SDUs, excluding non-linear OTT players.

Table 28: Market shares in 2018
in the market for the retail supply of AV services for MDUs and SDUs segmented by basic and premium by subscribers

	Pay-TV for MDUs (basic)	**Pay-TV for SDUs (basic)**	**Pay-TV for MDUs (excl. non-linear OTT) (basic)**	**Pay-TV for SDUs (excl. non-linear OTT) (basic)**	**Pay-TV for MDUs (premium)**	**Pay-TV for SDUs (premium)**	**Pay-TV for MDUs (excl. non-linear OTT) (premium)**	**Pay-TV for SDUs (excl. non-linear OTT) (premium)**
Canal Digital	[0-5]%	[5-10]%	[0-5]%	[5-10]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Viasat	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[5-10]%	[0-5]%	[20-30]%
JV	***[0-5]%***	***[5-10]%***	***[0-5]%***	***[5-10]%***	***[0-5]%***	***[5-10]%***	***[0-5]%***	***[20-30]%***
NENT	*[5-10]%*	*[10-20]%*	*[0-5]%*	*[0-5]%*	*[0-5]%*	*[0-5]%*	*[0-5]%*	*[0-5]%*
Combined	***[5-10]%***	***[20-30]%***	***[0-5]%***	***[5-10]%***	***[0-5]%***	***[5-10]%***	***[0-5]%***	***[20-30]%***
TDC	[50-60]%	[20-30]%	[60-70]%	[30-40]%	[5-10]%	[0-5]%	[20-30]%	[5-10]%
Stofa	[10-20]%	[20-30]%	[10-20]%	[30-40]%	[0-5]%	[0-5]%	[10-20]%	[5-10]%
Waoo!	[5-10]%	[10-20]%	[5-10]%	[10-20]%	[0-5]%	[0-5]%	[5-10]%	[5-10]%
Others	[10-20]%	[10-20]%	[10-20]%	[5-10]%	[80-90]%	[80-90]%	[50-60]%	[50-60]%

Source: RFI 16, Annex 1.

6.2.2. Satellite transponder capacity

6.2.2.1. Nordic region

(130) Table 29 shows TS' and its main competitors' market shares in the supply of satellite transponder capacity from all orbital positions in the Nordic region in 2018 by revenue. TS had a market share of [60-70]% while SES had a market share of [30-40]%. Their market shares were very similar in a market limited to broadcasting (TS: [70-80]%, SES: [20-30]%). TS' captive sales to Canal Digital represented about […]% of its total sales and more than […]% of its sales for broadcasting purposes.

Table 29: Market shares in 2018 in the market for the supply of satellite transponder capacity

	EUR (million)	**%**
TS (1°W)	**[…]**	**[60-70]**
Broadcasting (Canal Digital)	[…]	[50-60]
Broadcasting (other customers)	[…]	[5-10]
Other services	[…]	[5-10]
SES (5°E)	[…]	**[30-40]**
Broadcasting (Viasat)	[…]	[20-30]
Broadcasting (other customers)	[…]	[0-5]
Other services	[…]	[5-10]
Total	[…]	**100**

Source: Form CO, Table 222.

(131) If, instead, the market for satellite transponder capacity were to be segmented by orbital position, TS and SES would have a market share of [90-100]% at 1°W and 5°E, respectively.

6.2.2.2. Nordic and CEE region

(132) Table 30 shows TS' and its main competitors' market shares in the supply of satellite transponder capacity from all orbital positions in the Nordic and CEE region in 2018 by revenue. TS had a market share of [10-20]% while SES had a market share of [20-30]% (from several orbital positions). Their market shares were slightly higher in a market limited to broadcasting (TS: [10-20]%, SES: [20-30]%). TS' captive sales to Canal Digital represented about […]% of its total sales and close to […]% of its sales for broadcasting purposes.

(133) SES supplies the CEE region also from other orbital positions than 5°E, namely from 19.2°E, 23.5°E and 31.5°E. Other satellite operators active in the CEE region are Intelsat (1°W, 45.1°E and 85°E), Eutelsat (13°E, 16°E and 36.0°E), Hellas Sat (39.0°E) and Amos (4°W).

Table 30: Market shares in 2018
in the market for the supply of satellite transponder capacity

	EUR (million)	%
TS (1°W)	**[…]**	**[10-20]**
Broadcasting Nordics (Canal Digital)	[…]	[10-20]
Broadcasting Nordics (other customers)	[…]	[0-5]
Broadcasting CEE (other customers)	[…]	[0-5]
Other services Nordics	[…]	[0-5]
Other services CEE	[…]	[0-5]
Intelsat (1°W)	**[…]**	**[0-5]**
Broadcasting CEE	[…]	[0-5]
Other services CEE	[…]	[0-5]
SES	**[…]**	**[20-30]**
Broadcasting Nordics (Viasat)	[…]	[0-5]
Broadcasting Nordics (other customers)	[…]	[0-5]
Broadcasting CEE (5°E)	[…]	[0-5]
Broadcasting CEE (other orbital positions)	[…]	[10-20]
Other services	[…]	[0-5]
Eutelsat (broadcasting)	**[…]**	**[20-30]**
Intelsat (broadcasting)	**[…]**	**[0-5]**
Hellas Sat (broadcasting)	**[…]**	**[0-5]**
Amos (broadcasting)	**[…]**	**[0-5]**
Competitors Eutelsat, Intelsat, HellaSat, Amos (other services)	**[…]**	[20-30]
Total	**[…]**	**100**

Source: Form CO, Table 225 and Notifying Parties' reply to RFI 15, question 1. Note that the table does not include all satellite operators and DTH platforms in CEE, in particular it does not include some local operators active in Russia,, as the Notifying Parties do not have a comprehensive view on satellite operators active.

(134) If, instead, the market for satellite transponder capacity were to be segmented by orbital position, TS would have an overall market share of about [70-80]% and of close to [90-100]% for broadcasting purposes at 1°W, Intelsat being the other competitor active at 1°W. SES would have a market share of [90-100]% at 5°E.

6.3. Horizontal assessment

6.3.1. Introduction

(135) 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.[107]

(136) In fact, the Horizontal Merger Guidelines describe horizontal non-coordinated 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*."[108]

(137) 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 force.[109] 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.[110]

(138) 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.

6.3.2. Horizontal non-coordinated effects in the retail supply of AV services in Norway

(139) Telenor is active in the retail supply of AV services in Norway via DTH through its wholly owned subsidiary, Canal Digital (which will be contributed to the JV), and via cable and IPTV through the Telenor brand (which will not be contributed to the JV). NENT is active in the retail supply of AV services in Norway via DTH

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107 Horizontal Merger Guidelines, paragraph 25.

108 Horizontal Merger Guidelines, paragraph 24.

109 Horizontal Merger Guidelines, paragraphs 27 and following.

110 Horizontal Merger Guidelines, paragraph 26.

and IPTV through its wholly owned business, Viasat (which will be contributed to the JV), and OTT through Viaplay (which will not be contributed to the JV).

(140) In Section 6.1.1., the Commission considered that the question whether Telenor and NRK belong to the same economic unit or whether they make up separate economic units with an independent power of decision can be left open as the Transaction does not raise serious doubts as to its compatibility with the internal market regardless of the answer to this question.[111] In particular, as regard to a potential horizontal overlap among NRK[112], the Parties and the JV, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market for the following reasons. First, the increment brought by the Transaction would be limited to Viasat's customer base of […] subscribers (approximately [0-5]% of subscribers in the Norwegian market for the retail supply of linear AV services). Second, the Transaction would lead to a reduction of influence over Canal Digital's DTH business which will be jointly owned with NENT. Third, several respondents to the market investigation indicated that Canal Digital and RiksTV were closely competing pre-Transaction[113] and the Transaction would not change the competitive dynamics between Canal Digital and RiksTV. Fourth, RiksTV is jointly owned by TV2, part of the Egmont group, which would have a different incentive and may oppose strategies that may favour Telenor or the JV. Finally, the Transaction would have a limited impact on the trend of switching to fiber-based technology happening in the Norwegian market, presented in Section 6.4.2.1.B.b) where providers of retail AV services through fiber, such as Altibox and Telia, are gaining subscribers vis-à-vis providers of retail AV services through DTH, as the JV, and DTT, as RiksTV.[114].

6.3.2.1. The Notifying Parties' view

(141) The Notifying Parties submit that the Transaction does not raise competition concerns on the basis of any plausible definition of the relevant product market in Norway for the reasons set out below.

(142) First, the Notifying Parties claim that the distribution of pay TV services over DTH is in irreversible structural decline in Norway and across the Nordic region. This would be illustrated by both Telenor's and NENT's DTH platforms losing a substantial number of Norwegian subscribers to competitors which distribute services over other platforms.

(143) Second, the Notifying Parties submit that Viasat has a limited presence in TV distribution in Norway. It would hold a market share in the overall market for retail AV services of less than [0-5]% (by subscribers). In addition, the Transaction would result in a MHHI of 1,827 with a merger increment of 12, and by subscribers the JV would hold a share in excess of 20% only in the possible

111 The Notifying Parties indicate that, in such hypothetical scenario, the Transaction would not have an impact on any markets where NRK would be also active. [Confidential strategic views of Telenor in relation to the Norwegian State's ownership stake].

112 NRK has a 50% share in RiksTV, a provider of retail AV services through DTT technology.

113 Responses to questionnaire Q1 to retail suppliers of AV services in Norway, question F.1.

114 From 2016 to 2018, RiksTV customer base decreased from […] to […] subscribers. In the same period, the JV's combined customer base decreased from approximately […] to […]. In the same period, Altibox's customer base increased from […] to […].

market for the retail supply of pay AV services for SDUs (excluding non-linear OTT services).

(144) Third, the Notifying Parties argue that the JV will face fierce competition from a wide range of AV distributors active in Norway across multiple distribution platforms, including Telenor, Telia/Get, RiksTV, Lyse/Altibox, and a plethora of linear and non-linear OTT services including Netflix, HBO Nordic and TV broadcasters' own services, such as TV2 Norge 's Sumo and Discovery's Dplay.

(145) Fourth, the Notifying Parties stress that, by divesting one-third shareholding interest in the Norwegian DTT pay TV operator, RiksTV, to NRK and TV2, Telenor reduced its overall presence in the retail market in Norway.

(146) Fifth, the Notifying Parties note that the roll-out of high-speed fibre networks is continuing at pace across Norway, and that all Norwegian households should have access to high-speed broadband services in 2023. The Notifying Parties note add that traditional TV viewership continues to decrease as video consumption shifts to streaming services and online platforms.[115]

6.3.2.2. The Commission's assessment

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

(148) First, Canal Digital and Viasat, which mainly offer retail AV services through DTH distribution, are in continued decline in Norway. Indeed, Canal Digital and Viasat's DTH customer bases have respectively decreased by […]% and […]% between January 2016 and July 2019,[116] while the number of subscribers of retail AV services through fibre has increased by 30% between 2016 and 2018. Over the same time period, the number of subscribers receiving AV services via cable, DTH and DTT in Norway has decreased by 17%, 11% and 7%, respectively.[117] These trends suggest a shift towards retail AV services over fibre which would likely continue post-Transaction, and confirm the structural decline of DTH distribution in Norway.

(149) Second, despite the Parties having a relatively strong market position when looking at their 2018 market shares by value, the Commission considers that the factors detailed below limit their market position.[118]

Based on 2018 figures, the Parties will hold a market share by value of (i) [40-50]% in the market for the retail supply of pay AV services (JV: [10-20]%, Telenor: [10-20]%, NENT: [0-5]%), and [40-50]% when excluding non-linear OTT services (JV: [20-30]%, Telenor: [20-30]%), (ii) [40-50]% in the market for the retail supply of basic pay TV services (JV: [10-20]%, Telenor: [20-30]%, NENT: [0-5]%), and [40-50]% excluding non-linear OTT providers

115 Form CO, paragraphs 231, 232 and 298, and Table 5.

116 Form CO, paragraph 408.

117 Form CO, paragraph 391.

118 See market shares for all possible market segments in Section 6.2.1.1.(B) where the combined market shares of the Parties or the JV is above 20%..

(JV: [10-20]%, Telenor: [20-30]%), (iii) [30-40]% in the market for the retail supply of premium pay TV services (JV: [20-30]%, Telenor: [5-10]%, NENT: [0-5]%), and [40-50]% excluding non-linear OTT providers (JV: [30-40]%, Telenor: [10-20]%), (iv) [40-50]% in the market for the retail supply of pay AV services for MDUs (JV: [10-20]%, Telenor: [20-30]%, NENT: [0-5]%), and [40-50]% when excluding non-linear OTT services (JV: [10-20]%, Telenor [30-40]%), (v) [40-50]% in the market for the retail supply of pay AV services for SDUs (JV: [20-30]%, Telenor: [10-20]%, NENT: [0-5]%), and [40-50]% when excluding non-linear OTT services (JV: [20-30]%, Telenor [10-20]%), (vi) [50-60]% in the market for the retail supply of basic pay AV services to MDUs (JV: [10-20]%, Telenor: [30-40]%, NENT: [0-5]%), and [50-60]% when excluding non-linear OTT services (JV: [10-20]%, Telenor: [30-40]%), (vii) [40-50]% in the market for the retail supply of basic pay AV services to SDUs (JV: [20-30]%, Telenor: [10-20]%, NENT: [0-5]%), and [40-50]% when excluding non-linear OTT services (JV: [20-30]%, Telenor: [10-20]%), (viii) [20-30]% in the market for the retail supply of premium pay AV services to MDUs (JV: [5-10]%, Telenor: [10-20]%, NENT: [0-5]%), and [30-40]% when excluding non-linear OTT services (JV: [10-20]%, Telenor: [20-30]%), and (ix) [30-40]% in the market for the retail supply of premium pay AV services to SDUs (JV: [20-30]%, Telenor: [5-10]%, NENT: [0-5]%), and [50-60]% when excluding non-linear OTT services (JV: [40-50]%, Telenor: [5-10]%).

(150) By subscribers, the Parties would generally have a more modest market position, when looking at 2018 market shares by volume in the following possible affected markets: (i) [20-30]% in the overall market for the retail supply of AV services (JV: [10-20]%, Telenor, [10-20]%, NENT: [5-10]%), and [30-40]% when excluding non-linear OTT services (JV: [10-20]%, Telenor: [10-20]%), (ii) [20-30]% in the market for the retail supply of pay AV services (JV: [10-20]%, Telenor: [10-20]%, NENT: [5-10]%), and [30-40]% when excluding non-linear OTT services (JV: [10-20]%, Telenor: [20-30]%), (iii) [40-50]% in the market for the retail supply of basic pay TV services (JV: [10-20]%, Telenor: [20-30]%, NENT: [10-20]%), and [40-50]% excluding non-linear OTT providers (JV: [10-20]%, Telenor: [20-30]%), (iv) [10-20]% in the market for the retail supply of premium pay TV services (JV: [5-10]%, Telenor: [0-5]%, NENT: [0-5]%), and [20-30]% excluding non-linear OTT providers (JV: [10-20]%, Telenor: [5-10]%), (v) [20-30]% in the market for the retail supply of pay AV services for MDUs (JV: [0-5]%, Telenor: [10-20]%, NENT: [5-10]%), and [30-40]% when excluding non-linear OTT services (JV: [5-10]%, Telenor [30-40]%), (vi) [20-30]% in the market for the retail supply of pay AV services for SDUs (JV: [10-20]%, Telenor: [5-10]%, NENT: [5-10]%), and [30-40]% when excluding non-linear OTT services (JV: [20-30]%, Telenor [10-20]%), (vii) [50-60]% in the market for the retail supply of basic pay AV services to MDUs (JV: [5-10]%, Telenor: [30-40]%, NENT: [10-20]%), and [40-50]% when excluding non-linear OTT services (JV: [5-10]%, Telenor: [40-50]%), (viii) [40-50]% in the market for the retail supply of basic pay AV services to SDUs (JV: [20-30]%, Telenor: [10-20]%, NENT: [10-20]%), and [40-50]% when excluding non-linear OTT services (JV: [20-30]%, Telenor: [10-20]%), (ix) [5-10]% in the market for the retail supply of premium pay AV services to MDUs (JV: [0-5]%, Telenor: [0-5]%, NENT: [0-5]%), and [10-20]% when excluding non-linear OTT services

(JV: [0-5]%, Telenor: [10-20]%), and (x) [10-20]% in the market for the retail supply of premium pay AV services to SDUs (JV: [5-10]%, Telenor: [0-5]%, NENT: [0-5]%), and [20-30]% when excluding non-linear OTT services (JV: [20-30]%, Telenor: [0-5]%).

(151) Considering the hypothetical market including non-linear OTT services, OTT players would exercise a competitive constraint on the Parties and the JV. In this respect, it is notable that in Norway there would remain post-Transaction numerous OTT players who would constrain the JV, namely Netflix and HBO Nordic as well as new entrants Disney+ whose OTT service is expected to launch in the second half of 2020 in the Nordics. Further, the results of the market investigation indicated that in Norway SVOD providers exercise a constraint on retail suppliers of premium pay films and series AV services via traditional platforms. Indeed, one Norwegian market participant noted the decline of linear premium pay films and series TV services due to them being substituted by SVOD services such as HBO.[119]

(152) However, even considering the hypothetical market excluding non-linear OTT services, the Transaction would not significantly increase the Parties' market position. The Commission notes that, in the first place, before the Transaction, Telenor and Canal Digital were already part of the same economic entity with approximately […] subscribers. In the second place, the merger specific increment is limited to the […] subscribers brought by Viasat, corresponding to a market share of maximum [0-5]% by value and [0-5]% by subscribers.

(153) Third, the JV would have a limited market position in most of the possible affected markets for the retail supply of AV services in Norway. Based on 2018 figures, the JV will hold a market share by value of (i) [10-20]% in the market for the retail supply of pay AV services, and [20-30]% when excluding non-linear OTT services, (ii) [10-20]% in the market for the retail supply of basic pay AV services, and [10-20]% when excluding non-linear OTT services, (iii) [20-30]% in the market for the retail supply of premium pay AV services, (iv) [10-20]% in the market for the retail supply of pay AV services for MDUs, and [10-20]% when excluding non-linear OTT services, and (v) [20-30]% in the market for the retail supply of pay AV services for SDUs, and [20-30]% when excluding non-linear OTT services, (vi) [10-20]% in the market for the retail supply of basic pay AV services to MDUs, and [10-20]% when excluding non-linear OTT services, (vii) [20-30]% in the market for the retail supply of basic pay AV services to SDUs, and [20-30]% when excluding non-linear OTT services, (viii) [5-10]% in the market for the retail supply of premium pay AV services to MDUs, and [10-20]% when excluding non-linear OTT services, and (ix) [20-30]% in the market for the retail supply of premium pay AV services to SDUs.

(154) By subscribers, the JV would generally have more limited 2018 market shares. Based on 2018 figures, the JV will hold a market share by volume of (i) [10-20]% in the overall market for the retail supply of AV services, and [10-20]% when excluding non-linear OTT services, (ii) [10-20]% in the market for the retail supply of pay AV services, and [10-20]% when excluding non-linear OTT services, (iii) [10-20]% in the market for the retail supply of basic pay AV services, and [10-20]% when excluding non-linear OTT services, (iv) [5-10]% in

[119] TV2 Norge's response to questionnaire Q1 to retail suppliers of AV services in Norway, question C.7.1.

the market for the retail supply of premium pay AV services, and [10-20]% when excluding non-linear OTT services, (v) [0-5]% in the market for the retail supply of pay AV services for MDUs, and [5-10]% when excluding non-linear OTT services, and (vi) [10-20]% in the market for the retail supply of pay AV services for SDUs, and [20-30]% when excluding non-linear OTT services, (vii) [0-5]% in the market for the retail supply of basic pay AV services to MDUs , and [5-10]% when excluding non-linear OTT services, (viii) [20-30]% in the market for the retail supply of basic pay AV services to SDUs, and [20-30]% when excluding non-linear OTT services, (ix) [0-5]% in the market for the retail supply of premium pay AV services to MDUs, and [0-5]% when excluding non-linear OTT services, and (x) [5-10]% in the market for the retail supply of premium pay AV services to SDUs, and [20-30]% when excluding non-linear OTT services.

(155) Fourth, several alternative suppliers of retail AV services, in particular Telia, RiksTV and Altibox, would remain active in any possible affected markets for the retail supply of AV services in Norway. In the market for the retail supply of pay AV services, they would have a 2018 market share by value of [10-20]%, [10-20]% and [10-20]%, respectively.[120] Telia is a well-established telecommunications and media company with a strong presence in the Nordic region. A majority of respondents to the market investigation in Norway considered that sufficient competing providers will continue to exert a constraint on the JV post-Transaction.[121]

(156) Fifth, the trend towards increased fibre and cable distribution has coincided with an observable increase in the coverage of high speed broadband download speeds, thereby enabling high quality OTT viewing in Norway. As shown in Figure 4 below, areas serviced by broadband download speeds of over 10 Mbps have increased from 81% in 2018 to 87% in 2019. This improved infrastructural framework for the provision of IPTV and OTT services means that IPTV and OTT players are likely to exert a growing competitive constraint on the JV in the coming years. In that respect, one Norwegian market participant noted that the SVOD market is forecasted to grow by 13% annually over the 2019-2023 period (Source: PwC Global Entertainment and Media Outlook 2019-2023).[122]

6.3.3. Horizontal non-coordinated effects in the retail supply of AV services in Sweden

(157) Telenor is active in the retail supply of AV services in Sweden via DTH through its wholly owned subsidiary, Canal Digital (which will be contributed to the JV) and via cable and IPTV through the Telenor brand (which will not be contributed to the JV). NENT is active in the retail supply of AV services in Sweden via DTH and IPTV through its wholly owned business, Viasat (which will be contributed to the JV) and OTT through Viaplay (which will not be contributed to the JV).

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120 See market shares for alternative providers for all possible market segments in Section 6.2.1.1.(B).

121 Responses to questionnaires Q1 to retail suppliers of AV services in Norway, and Q2 to TV broadcasters in Norway, question F.5.

122 TV2 Norge's response to questionnaire Q1 to retail suppliers of AV services in Norway, question C.7.1.

6.3.3.1. The Notifying Parties' view

(158) The Notifying Parties submit that the Transaction does not raise competition concerns on the basis of any plausible definition of the relevant product market in Sweden for the reasons set out below.

(159) First, the Notifying Parties claim that the distribution of pay TV services over DTH is in irreversible structural decline in Sweden and across the Nordic region. This would be illustrated by both Telenor's and NENT's DTH platforms losing a substantial number of Swedish subscribers to competitors which distribute services over other platforms.

(160) Second, the Notifying Parties submit that both Canal Digital and Viasat have a limited presence in TV distribution in Sweden, each with market shares in the overall market for retail AV services of less than [5-10]% (by subscribers). In addition, the Transaction would result in a MHHI of 2,265 with a merger increment of 144, and by subscribers the JV would hold a share in excess of 20% only in the possible market for the retail supply of pay AV services for SDUs (excluding non-linear OTT services).

(161) Third, the Notifying Parties argue that the JV will face fierce competition from a wide range of AV distributors active in Sweden across multiple distribution platforms, including Tele2/Com Hem, Telia, Telenor, Sappa and a plethora of linear and non-linear OTT services including Netflix, HBO Nordic and TV broadcasters' own services, such as Discovery's Dplay.

(162) Fourth, the Notifying Parties note that the roll-out of high-speed fibre networks is continuing at pace across Sweden, and has reached 77% of Swedish households at the end of 2018, up from approximately 60% in 2014. They expect this trend to continue for at least two to three years. The Notifying Parties note that traditional TV viewership continues to decrease as video consumption shifts to streaming services and online platforms, including via mobile networks.[123]

6.3.3.2. The Commission's assessment

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

(164) First, Canal Digital and Viasat, which mainly offer retail AV services through DTH distribution, are in continued decline in Sweden. Indeed, Canal Digital and Viasat's DTH customer bases have respectively decreased by […]% and […]% between January 2016 and July 2019,[124] while the number of subscribers of retail AV services through fibre has increased by 33% between 2016 and 2018. Over the same time period, the number of subscribers receiving AV services via cable, DTH and DTT in Sweden has decreased by 10%, 11% and 23%, respectively.[125] These trends suggest a shift towards retail AV services over fibre which would

123 Form CO, paragraphs 550, 551 and 637, and Table 32.
124 Form CO, paragraph 719.
125 Form CO, paragraph 704.

likely continue post-Transaction, and confirm the structural decline of DTH distribution in Sweden.

(165) Second, the Parties would have a moderate to high market position in most of the possible affected markets for the retail supply of AV services in Sweden.[126] Based on 2018 figures, the Parties will hold a market share by value of (i) [30-40]% in the market for the retail supply of pay AV services (JV: [20-30]%, Telenor: [5-10]%, Viaplay: [0-5]%) , and [30-40]% when excluding non-linear OTT services (JV: [30-40]%, Telenor: [5-10]%) (ii) [30-40]% in the market for the retail supply of basic pay AV services (JV: [20-30]%, Telenor: [10-20]%, Viaplay: [5-10]%), and [30-40]% when excluding non-linear OTT services (JV: [20-30]%, Telenor: [10-20]%), (iii) [20-30]% in the market for the retail supply of premium pay AV services (JV: [20-30]%, Telenor [0-5]%, Viaplay: [0-5]%), and [30-40]% when excluding non-linear OTT services (JV: [30-40]%, Telenor: [5-10]%) (iv) [30-40]% in the market for the retail supply of pay AV services for SDUs (JV: [20-30]%; [5-10]%; [5-10]%), and [40-50]% when excluding non-linear OTT services (JV: [30-40]%, Telenor: [5-10]%). Only in the possible market for the retail supply of pay AV services to MDUs are the shares more moderate, at [20-30]% (JV: [10-20]%; Telenor: [10-20]%).[127] Based on market shares shown in Table 14 by subscribers, the Parties would have a combined market position above 20% also in the market for (i) the retail supply of AV services for MDUs, irrespective of a segmentation in basic and premium, either including or excluding non-linear OTT players; and (ii) the retail supply of AV services segmented for SDUs, irrespective of a segmentation in basic and premium, either including or excluding non-linear OTT players. The JV would have a combined market position above 20% exclusively, in the markets of the retail supply of AV services for SDUs, irrespective of a segmentation in basic and premium, either including or excluding non-linear OTT players.

(166) However, when looking by subscribers, the Parties would have more limited 2018 market shares. Based on 2018 figures, the Parties will hold a market share by volume of (i) [20-30]% in the overall market for the retail supply of AV services excluding non-linear OTT services (JV: [10-20]%, Telenor: [5-10]%), (ii) [20-30]% in the market for the retail supply of basic pay AV services (JV: [5-10]%, Telenor: [10-20]%, Viaplay: [5-10]%), and [20-30]% when excluding non-linear OTT services (JV: [5-10]%, Telenor: [10-20]%), (iii) [20-30]% in the market for the retail supply of premium pay AV services excluding non-linear OTT services (JV: [10-20]%, Telenor: [0-5]%), (iv) [20-30]% in the market for the retail supply of AV services for SDUs excluding non-linear OTT services (JV: [20-30]%, Telenor: [5-10]%).[128] Based on market shares shown in Table 14 by subscribers, the Parties would have a combined market position above 20% also in the market segments for (i) the retail supply of basic AV services for SDUs ([30-40]%), (ii) the retail supply of basic

[126] See market shares for all possible market segments in Section 6.2.1.2.(B) where the combined market shares of the Parties or the JV is above 20%..

[127] In an alternative scenario presented by the Notifying Parties, where all dual analogue-digital subscribers are allocated to the MDU segment, the JV's market share for the retail supply of pay AV services for SDUs would be [30-40]%.

[128] In an alternative scenario presented by the Notifying Parties, where all dual analogue-digital subscribers are allocated to the MDU segment, the JV's market share for the retail supply of pay AV services for SDUs would be [10-20]%, and [30-40]% when excluding non-linear OTT services.

AV services for SDUs, excluding non-linear OTT players ([30-40]%), (iii) the retail supply of premium AV services for SDUs, excluding non-linear OTT players ([20-30]%). The JV would have a combined market position above 20% exclusively in the market segments for (i) the retail supply of basic AV services for SDUs, excluding non-linear OTT players ([20-30]%), (iii) the retail supply of premium AV services for SDUs, excluding non-linear OTT players ([20-30]%).

(167) Considering the hypothetical market including non-linear OTT services, OTT players would exercise a competitive constraint on the Parties and the JV. In this respect, it is notable that in Sweden there would remain post-Transaction numerous OTT players who would constrain the JV, namely Netflix and HBO Nordic as well as new entrants Disney+ whose OTT service is expected to launch in the second half of 2020 in the Nordics. In addition, the market investigation indicated that the share of OTT, as well as IPTV, is growing rapidly in Sweden, as the share of linear TV watching is decreasing and the share of non-linear watching is increasing.

(168) However, even considering the hypothetical market excluding non-linear OTT services, the Transaction would not significantly increase the Parties' market position. In the MDU segment, Viasat was scarcely present with approximately […] subscribers, corresponding to a market share of [0-5]% under the narrowest product market definition of the market for the retail supply of retail AV services for MDUs excluding non-linear. In the SDU segment, the Parties will have a higher combined market share of [30-40]% in the market for the retail supply of AV services for SDUs excluding non-linear OTT services. However, in such market segment alternative providers would remain active including Telia, Tele2 and other providers of retail AV services through fibre. First, similarly to Telenor, Telia and Tele2 are also active in the market for the retail supply of fixed internet access and mobile telecommunications services. Second, as indicated above at paragraph 157, in Sweden there is a trend of switching to fibre-based technology. Such trend is partly driven by the "open fibre" model prevalent in Sweden.[129] Open fibre networks reach approximately 1.5 million households in Sweden. Telenor estimates that approximately [60-70]% of the open fibre network is owned by municipalities, approximately [20-30]% by Telia, approximately [10-20]% by IP-Only and approximately [0-5]% of the network by Telenor. Therefore, the Commission considers that alternative operators and technologies to provide retail AV services would remain under the narrowest product market definition.

(169) Third, several alternative suppliers of retail AV services, in particular Tele2 and Telia, would remain active in any possible affected markets for the retail supply of AV services in Sweden. In the market for the retail supply of pay AV services, they would have a 2018 market share by value of [20-30]% and [10-20]%, respectively.[130] Telia is a well established telecommunications and media company with a strong presence in the Nordic region. A majority of respondents

[129] The fibre network in Sweden has a specific characteristic of being either 'open' or 'closed'. In particular, the service levels for the wholesale provision of broadband access services on the open fibre network are 'open' to different providers and ultimately allow ISPs to provide broadband services to end customers without having ownership or control over the respective fibre network. Form CO, paragraph 572.

[130] See market shares for alternative providers for all possible market segments in Section 6.2.1.2.(B).

to the market investigation in Sweden considered that sufficient competing providers will continue to exert a constraint on the JV post-Transaction.[131]

(170) Fourth, the trend noted above in paragraph 157 of increasing roll-out of fibre is providing a growing proportion of Swedish households with access to high-speed broadband services that are needed for the quality viewing of OTT services. It is notable that the share of Swedish households that had access to broadband with download speeds in excess of 100 Mbps was 18% in 2018 with less than 0.1% of households with access to download speeds not exceeding 10Mbps.[132] There is also an observable increase in OTT subscribers in Sweden, growing from around 3 million in 2015 to around 5 million in 2019.[133] This infrastructural framework, with growing fibre services that are making high quality OTT consumption possible, will likely enhance the competitive pressure exerted by OTT players in Sweden in the coming years. Therefore, regardless of the precise product market definition, the competitive pressure exerted by OTT players on the JV will be enhanced in the coming years, exercising an increased constraint on the JV.

6.3.4. Horizontal non-coordinated effects in the retail supply of AV services in Finland

(171) Telenor is active in the retail supply of AV services in Finland via DTH through its wholly owned subsidiary, Canal Digital (which will be contributed to the JV), and via cable, IPTV and OTT through its wholly owned subsidiary, DNA (which will not be contributed to the JV). NENT is active in the retail supply of AV services in Finland via DTH through its wholly owned business, Viasat (which will be contributed to the JV), and OTT through Viaplay (which will not be contributed to the JV).

6.3.4.1. The Notifying Parties' view

(172) The Notifying Parties submit that the Transaction does not raise competition concerns on the basis of any plausible definition of the relevant product market in Finland for the reasons set out below.

(173) First, the Notifying Parties submit that the JV will have a limited presence in TV distribution in Finland, with a market share in the overall market of less than [0-5]% (by subscribers). The overlap between the Parties' contributions to the JV would be *de minimis*. In addition, the Transaction would result in a MHHI of 2,398 with a merger increment of negative 31 (-31).

(174) Second, the Notifying Parties argue that the JV will face fierce competition from a wide range of AV distributors active in Finland across multiple distribution platforms, including Digita, DNA, Telia, Elisa, and a plethora of linear and non-linear OTT services.

(175) Third, the Notifying Parties submit that (i) the Transaction would not give rise to any affected markets in Finland when considering market shares by subscribers, and (ii) even taking into account market shares by revenue, the JV's market share

[131] Responses to questionnaires Q3 to retail suppliers of AV services in Sweden, and Q4 to TV broadcasters in Sweden, question F.5.

[132] Form CO, paragraph 701.

[133] Form CO, Figure 20.

would exceed 20% only in the possible market for the retail supply of pay AV services for SDUs (excluding non-linear OTT services).[134]

6.3.4.2. The Commission's assessment

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

(177) First, the Parties would have a modest market position in the following possible affected markets for the retail supply of AV services in Finland.[135] Based on 2018 figures, the Parties will hold a market share by value of (i) [20-30]% in the market for the retail supply of pay AV services (JV: [5-10]%, Telenor: [10-20]%, NENT: [5-10]%), and [20-30]% when excluding non-linear OTT services (JV: [10-20]%, Telenor: [10-20]%), (ii) [20-30]% in the market for the retail supply of pay AV services for MDUs (JV: [0-5]%, Telenor: [10-20]%, NENT: [5-10]%), and [20-30]% when excluding non-linear OTT services (JV: [0-5]%, Telenor [20-30]%), and (iii) [20-30]% in the market for the retail supply of premium pay AV services to SDUs excluding non-linear OTT services (JV: [20-30]%, Telenor: [0-5]%).

(178) By subscribers, the Parties would also have a modest market position, when looking at 2018 market shares by volume in the following possible affected markets: (i) [20-30]% in the overall market for the retail supply of AV services excluding non-linear OTT services (JV: [0-5]%, Telenor: [10-20]%), (ii) [20-30]% in the market for the retail supply of pay AV services (JV: [0-5]%, Telenor: [10-20]%, NENT: [0-5]%), (iii) [20-30]% in the market for the retail supply of pay AV services for MDUs (JV: [0-5]%, Telenor: [20-30]%, NENT: [0-5]%), (iv) [10-20]% in the market for the retail supply of pay AV services for SDUs (JV: [5-10]%, Telenor: [0-5]%, NENT: [5-10]%), and [10-20]% when excluding non-linear OTT services (JV: [10-20]%, Telenor: [5-10]%), and (v) [10-20]% in the market for the retail supply of premium pay AV services to SDUs excluding non-linear OTT services (JV: [10-20]%, Telenor: [0-5]%).

(179) The Parties would have a higher market share by value of (i) [30-40]%, in the possible market for the retail supply of pay AV services for SDUs (JV: [10-20]%, Telenor: [0-5]%, NENT: [5-10]%), and [30-40]% when excluding non-linear OTT services (JV: [30-40]%, Telenor: [0-5]%), (ii) [30-40]% in the market for the retail supply of basic pay TV services (JV: [5-10]%, Telenor: [20-30]%, NENT: [5-10]%), and [30-40]% excluding non-linear OTT providers (JV: [5-10]%, Telenor: [20-30]%), (iii) [30-40]% in the market for the retail supply of basic pay AV services to MDUs (JV: [0-5]%, Telenor: [20-30]%, NENT: [0-5]%), and [20-30]% when excluding non-linear OTT services (JV: [0-5]%, Telenor: [20-30]%), and (iv) [50-60]% in the market for the retail supply of basic pay AV services to SDUs (JV: [30-40]%, Telenor: [5-10]%, NENT: [10-20]%), and [50-60]% when excluding non-linear OTT services

[134] Form CO, paragraphs 894, 895 and 906, and Table 62.

[135] See market shares for all possible market segments in Section 6.2.1.3.(B) where the combined market shares of the Parties or the JV is above 20%..

(JV: [40-50]%, Telenor: [10-20]%). The Parties would also have a higher market share by volume of (i) [20-30]% in the market for the retail supply of pay AV services excluding non-linear OTT (JV: [0-5]%, Telenor: [20-30]%), (ii) [30-40]% in the market for the retail supply of basic pay TV services (JV: [0-5]%, Telenor: [30-40]%, NENT: [5-10]%), and [30-40]% when excluding non-linear OTT services (JV: [0-5]%, Telenor: [30-40]%), (iii) [30-40]% in the market for the retail provision of pay TV services for MDUs excluding non-linear OTT services (JV: [0-5]%, Telenor: [30-40]%), (iv) [30-40]% in the market for the retail supply of basic pay AV services to MDUs (JV: [0-5]%, Telenor: [30-40]%, NENT: [0-5]%), and [30-40]% when excluding non-linear OTT services (JV: [0-5]%, Telenor: [30-40]%), and (v) [40-50]% in the market for the retail supply of basic pay AV services to SDUs (JV: [10-20]%, Telenor: [5-10]%, NENT: [20-30]%), and [20-30]% when excluding non-linear OTT services (JV: [10-20]%, Telenor: [10-20]%).

(180) Considering the hypothetical market including non-linear OTT services, OTT players would exercise a competitive constraint on the Parties and the JV. In this respect, it is notable that in Finland there would remain post-Transaction numerous OTT players who would constrain the JV, namely Netflix and HBO Nordic as well as new entrants Disney+ whose OTT service is expected to launch in the second half of 2020 in the Nordics. In addition, the market investigation indicated that the share of OTT, as well as IPTV, is growing rapidly in Finland, as the share of linear TV watching is decreasing and the share of non-linear watching is increasing.[136]

(181) However, even considering the hypothetical market excluding non-linear OTT services, the Transaction would not significantly increase the Parties' market position. The Commission notes that Telenor and Canal Digital were already part of the same economic entity, before the Transaction, and the merger specific increment is limited to the […] subscribers brought by Viasat, corresponding to a market share of maximum [0-5]% by revenue and [0-5]% by subscriber under the narrowest product market definition.

(182) Second, the JV would have a limited market position in most of the possible affected markets for the retail supply of AV services in Finland. Based on 2018 figures, the JV will hold a market share by value of (i) [5-10]% in the market for the retail supply of pay AV services, and [10-20]% when excluding non-linear OTT services, (ii) [5-10]% in the market for the retail supply of basic pay AV services, and [5-10]% when excluding non-linear OTT services, (iii) [0-5]% in the market for the retail supply of pay AV services for MDUs, and [0-5]% when excluding non-linear OTT services, (iv) [10-20]% in the market for the retail supply of pay AV services for SDUs, (v) [0-5]% in the market for the retail supply of basic pay AV services to MDUs, and [0-5]% when excluding non-linear OTT services, and (vi) [20-30]% in the retail supply of premium pay AV services to SDUs excluding non-linear OTT services.

(183) By subscribers, the JV would have even more limited 2018 market shares. Based on 2018 figures, the JV will hold a market share by volume of (i) [0-5]% in the overall market for the retail supply of AV services excluding non-linear OTT services, (ii) [0-5]% in the market for the retail supply of pay AV services, and

136 See Digita's response to questionnaire Q5 to retail suppliers of AV services in Finland, question C.10.1.

[0-5]% when excluding non-linear OTT services, (iii) [0-5]% in the market for the retail supply of basic pay AV services, and [0-5]% when excluding non-linear OTT services, (iv) [0-5]% in the market for the retail supply of pay AV services for MDUs, and [0-5]% when excluding non-linear OTT services, (iv) [5-10]% in the market for the retail supply of pay AV services for SDUs, and [10-20]% when excluding non-linear OTT services, (vii) [0-5]% in the market for the retail supply of basic pay AV services to MDUs (including or excluding non-linear OTT services), (vii) [10-20]% in the market for the retail supply of basic pay AV services to SDUs, and [10-20]% when excluding non-linear OTT services, and (viii) [10-20]% in the market for the retail supply of premium pay AV services to SDUs excluding non-linear OTT services.

(184) The JV would have a higher market share by value, of (i) [30-40]%, in the possible market for the retail supply of pay AV services for SDUs excluding non-linear OTT services, and (ii) [30-40]% in the retail supply of basic pay AV services to SDUs, and [40-50]% when excluding non-linear OTT services. Nevertheless, for the reasons set out above in paragraph 180, the Commission considers that regardless of the precise product market definition, the competitive pressure exerted by OTT players on the JV will be enhanced in the coming years, thereby exercising an increased constraint on the JV.

(185) Third, several alternative suppliers of retail AV services, in particular Telia and Elisa would remain active in any possible affected markets for the retail supply of AV services in Finland. In the market for the retail supply of pay AV services, they would have a 2018 market share by value of [10-20]% and [10-20], respectively.[137] Telia is a well established telecommunications and media company with a strong presence in the Nordic region. Elisa is also a strong vertically integrated Finnish player.

6.3.5. Horizontal non-coordinated effects in the retail supply of AV services in Denmark

(186) In Denmark, Telenor is active in the retail supply of AV services in Denmark via DTH through its wholly owned subsidiary, Canal Digital (which will be contributed to the JV). NENT is active in the retail supply of AV services in Denmark via DTH through its wholly owned business, Viasat (which will be contributed to the JV), and OTT through Viaplay (which will not be contributed to the JV).

(187) The combined market position of the JV will be below 20% under any possible market segmentation of the market for the retail supply of AV services except for the market for the retail supply of premium AV services for SDUs excluding non-linear OTT services, where the Parties will have a combined market shares of [20-30]% by subscribers and [20-30]% by revenue, and the market for the retail supply of basic AV services for SDUs, where the Parties would have a combined market shares by subscribers of [20-30]%, of which the JV, [5-10]% and NENT [10-20]% (based on 2018).

[137] See market shares for alternative providers for all possible market segments in Section 6.2.1.3.(B).

6.3.5.1. The Notifying Parties' view

(188) The Notifying Parties submit that the Transaction does not raise competition concerns on the basis of any plausible definition of the relevant product market in Denmark for the reasons set out below.

(189) First, the Notifying Parties submit that the JV will have a limited presence in TV distribution in Denmark.

(190) Second, the Notifying Parties argue that the JV will face fierce competition from a wide range of AV distributors active in Denmark across multiple distribution platforms, including TDC and Stofa, and a plethora of linear and non-linear OTT services.

6.3.5.2. The Commission's assessment

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

(192) First, in the market for the retail supply of basic AV services for SDUs, the Parties would have a combined market shares by subscribers of [20-30]%, of which the JV, [5-10]% and NENT [10-20]% (based on 2018). The Commission considers that the increment brought by the Transaction is limited to Canal Digital's market share of [5-10]% by subscribers, and several alternatives would remain including TDC, Stofa and Waoo! with market shares of respectively [20-30]%, [10-20]% and [10-20]%.

(193) Second, the Parties would have a modest market position in the possible affected market for the retail supply of premium AV services for SDUs excluding non-linear OTT services in Denmark. Based on 2018 figures, the Parties will hold a market share by value of [20-30]% by subscribers and [20-30]% by revenue in this market.[138] As neither Telenor nor NENT would be active in this possible affected market, the JV would hold a similar market share by value of [20-30]% by subscribers and [20-30]% by revenue.

(194) Third, the increment brought by the transaction is limited to the […] subscribers brought by Canal Digital, corresponding to a market share of [0-5]% by revenue and [0-5]% by subscribers in the market for the retail supply of premium AV services for SDUs, excluding non-linear OTT players.

(195) Fourth, several alternative providers would remain available including but not limited to Telia, TDC, Stofa and Waoo! with market shares by subscribers of respectively [20-30]%, [5-10]%, [5-10]% and [5-10]%.[139]

[138] See market shares for all possible market segments in Section 6.2.1.4.(B) where the combined market shares of the Parties or the JV is above 20%..

[139] RFI 16, Annex 1.

6.3.6. Conclusion

(196) In light of the foregoing, the Commission considers that the Transaction does not give rise to serious doubts as to its compatibility with the internal market as a result of horizontal effects on the markets for the retail supply of AV content in Norway, Sweden, Finland and Denmark.

6.4. Non-horizontal assessment

6.4.1. Introduction

(197) A merger between companies which operate at different levels of the supply chain may significantly impede effective competition if such merger gives rise to foreclosure.[140] Foreclosure occurs where actual or potential competitors' access to supplies or markets is hampered or eliminated as a result of the merger, thereby reducing those companies' ability and/or incentive to compete.[141] Such foreclosure may discourage entry or expansion of competitors or encourage their exit.[142]

(198) The Non-Horizontal Merger Guidelines distinguishes between two forms of vertical foreclosure. Input foreclosure occurs where the merger is likely to raise the costs of downstream competitors by restricting their access to an important input. Customer foreclosure occurs where the merger is likely to foreclose upstream competitors by restricting their access to a sufficient customer base.[143]

(199) In addition, conglomerate mergers are mergers between firms that are in a relationship which is neither purely horizontal (as competitors in the same relevant market) nor vertical (as supplier and customer). In practice, the focus is on mergers between companies that are active in closely related markets (e.g. mergers involving suppliers of complementary products or of products which belong to a range of products that is generally purchased by the same set of customers for the same end use).[144]

6.4.1.1. Input foreclosure

(200) Pursuant to the Non-Horizontal Merger Guidelines, input foreclosure arises where, post-merger, the new entity would be likely to restrict access to the products or services that it would have otherwise supplied absent the merger, thereby raising its downstream rivals' costs by making it harder for them to obtain supplies of the input under similar prices and conditions as absent the merger.[145]

(201) For input foreclosure to be a concern, the vertically integrated firm should have a significant degree of market power in the upstream market. Only when the merged firm has such a significant degree of market power, can it be expected that it will significantly influence the conditions of competition in the upstream

140 Non-Horizontal Merger Guidelines, paragraphs 17-18.
141 Non-Horizontal Merger Guidelines, paragraph 18.
142 Non-Horizontal Merger Guidelines, paragraph 29.
143 Non-Horizontal Merger Guidelines, paragraph 30.
144 Non-Horizontal Merger Guidelines, paragraph 91.
145 Non-Horizontal Merger Guidelines, paragraph 31.

market and thus, possibly, the prices and supply conditions in the downstream market.[146]

(202) In assessing the likelihood of an anticompetitive input foreclosure scenario, the Commission examines, first, whether the merged entity would have, post-merger, the ability to substantially foreclose access to inputs, second, whether it would have the incentive to do so, and third, whether a foreclosure strategy would have a significant detrimental effect on competition downstream.[147]

6.4.1.2. Customer foreclosure

(203) Pursuant to the Non-Horizontal Merger Guidelines, customer foreclosure may occur when a supplier integrates with an important customer in the downstream market and because of this downstream presence, the merged entity may foreclose access to a sufficient customer base to its actual or potential rivals in the upstream market (the input market) and reduce their ability or incentive to compete, which in turn, may raise downstream rivals' costs by making it harder for them to obtain supplies of the input under similar prices and conditions as absent the merger. This may allow the merged entity profitably to establish higher prices on the downstream market.[148]

(204) For customer foreclosure to be a concern, a vertical merger must involve a company which is an important customer with a significant degree of market power in the downstream market. If, on the contrary, there is a sufficiently large customer base, at present or in the future, that is likely to turn to independent suppliers, the Commission is unlikely to raise competition concerns on that ground.[149]

(205) In assessing the likelihood of an anticompetitive customer foreclosure scenario, the Commission examines, first, whether the merged entity would have the ability to foreclose access to downstream markets by reducing its purchases from its upstream rivals, second, whether it would have the incentive to reduce its purchases upstream, and third, whether a foreclosure strategy would have a significant detrimental effect on consumers in the downstream market.[150]

6.4.1.3. Conglomerate effects

(206) According to the Non-Horizontal Merger Guidelines, in most circumstances, conglomerate mergers do not lead to competition problems.[151]

(207) However, foreclosure effects may arise when the combination of products in related markets may confer on the merged entity the ability and incentive to leverage a strong market position from one market to another closely related market by means of tying or bundling or other exclusionary practices. The Non-Horizontal Merger Guidelines distinguish between bundling, which usually refers

146 Non-Horizontal Merger Guidelines, paragraph 35.
147 Non-Horizontal Merger Guidelines, paragraph 32.
148 Non-Horizontal Merger Guidelines, paragraph 58.
149 Non-Horizontal Merger Guidelines, paragraph 61.
150 Non-Horizontal Merger Guidelines, paragraph 59.
151 Non-Horizontal Merger Guidelines, paragraph 92.

to the way products are offered and priced by the merged entity[152] and tying, usually referring to situations where customers that purchase one good (the tying good) are required to also purchase another good from the producer (the tied good).

(208) Tying and bundling as such are common practices that often have no anticompetitive consequences. Nevertheless, in certain circumstances, these practices may lead to a reduction in actual or potential rivals' ability or incentive to compete. Foreclosure may also take more subtle forms, such as the degradation of the quality of the standalone product.[153] This may reduce the competitive pressure on the merged entity allowing it to increase prices.[154]

(209) In assessing the likelihood of such a scenario, the Commission examines, first, whether the merged firm would have the ability to foreclose its rivals,[155] second, whether it would have the economic incentive to do so[156] and, third, whether a foreclosure strategy would have a significant detrimental effect on competition, thus causing harm to consumers.[157] In practice, these factors are often examined together as they are closely intertwined.

(210) In order to be able to foreclose competitors, the merged entity must have a significant degree of market power, which does not necessarily amount to dominance, in one of the markets concerned. The effects of bundling or tying can only be expected to be substantial when at least one of the merging parties' products is viewed by many customers as particularly important and there are few relevant alternatives for that product.[158] Further, for foreclosure to be a potential concern, it must be the case that there is a large common pool of customers, which is more likely to be the case when the products are complementary.[159] Finally, bundling is less likely to lead to foreclosure if rival firms are able to deploy effective and timely counter-strategies, such as single-product companies combining their offers.[160]

(211) The incentive to foreclose rivals through bundling or tying depends on the degree to which this strategy is profitable.[161] Bundling and tying may entail losses or foregone revenues for the merged entity.[162] However, they may also allow the merged entity to increase profits by gaining market power in the tied goods

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152 Within bundling practices, the distinction is also made between pure bundling and mixed bundling. In the case of pure bundling the products are only sold jointly in fixed proportions. With mixed bundling the products are also available separately, but the sum of the stand-alone prices is higher than the bundled price.

153 Non-Horizontal Merger Guidelines, paragraph 33.

154 Non-Horizontal Merger Guidelines, paragraph 93.

155 Non-Horizontal Merger Guidelines, paragraphs 95 to 104.

156 Non-Horizontal Merger Guidelines, paragraphs 105 to 110.

157 Non-Horizontal Merger Guidelines, paragraphs 111 to 118.

158 Non-Horizontal Merger Guidelines, paragraph 99.

159 Non-Horizontal Merger Guidelines, paragraph 100.

160 Non-Horizontal Merger Guidelines, paragraph 103.

161 Non-Horizontal Merger Guidelines, paragraph 105.

162 Non-Horizontal Merger Guidelines, paragraph 106.

market, protecting market power in the tying good market, or a combination of the two.[163]

(212) It is only when a sufficiently large fraction of market output is affected by foreclosure resulting from the concentration that the concentration may significantly impede effective competition. If there remain effective single-product players in either market, competition is unlikely to deteriorate following a conglomerate concentration.[164] The effect on competition needs to be assessed in light of countervailing factors such as the presence of countervailing buyer power or the likelihood that entry would maintain effective competition in the upstream or downstream markets.[165]

6.4.2. Possible foreclosure of competing suppliers of retail AV services from accessing NENT's TV channels (input foreclosure)

6.4.2.1. Norway

(213) In Norway, the JV will be active in the retail supply of AV services by combining Canal Digital's DTH business and Viasat's DTH and IPTV activities. NENT will remain active in the wholesale supply of FTA and basic pay TV channels, premium pay TV sports channels and premium pay TV non-sports channels. NENT would also remain active as retail supplier of AV services through its OTT applications, Viaplay. Telenor would also remain active in the retail supply of AV services via cable and IPTV through the Telenor brand (which will not be contributed to the JV).[166] The merger specific change is the addition of Canal Digital's downstream activities to NENT's DTH and IPTV service, Viasat.

(214) The Commission has assessed the risk that NENT would post-Transaction engage in input foreclosure strategies in Norway by either: (i) total input foreclosure of rival providers of retail AV services through the denial of access to NENT's channels; and (ii) partial input foreclosure of rival providers of retail AV services through an increase of carriage fees paid by rival providers to NENT or by significantly degrading the quality of channels licensed to rival providers of AV services (for example, by removing significant content or ancillary rights).

(215) The Commission has assessed the two abovementioned types of input foreclosure strategies for all the types of TV channels, which NENT licenses to retail providers of AV services in Norway, namely: (i) basic pay-TV channels[167], (ii) premium pay TV sports channels, and (iii) premium pay TV non-sports channels.

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163 Non-Horizontal Merger Guidelines, paragraph 108.

164 Non-Horizontal Merger Guidelines, paragraph 113.

165 Non-Horizontal Merger Guidelines, paragraph 114.

166 Telenor does not offer a standalone OTT service in Norway, but Telenor subscribers have access to a TVE service ("T-We"). Paragraph 250, Form CO.

167 NENT supplies its basic pay TV channels as a package. This conclusion is based on demand and supply side factors, which support the view that NENT basic pay TV channels should be treated as a package product. On the demand side, TV distributors purchase a package of NENT's basic pay TV channels in Norway. [Confidential strategic views of NENTs sales policy and strategy] See Annex 55, Form CO. On the supply side, NENT's basic pay TV channels are sold by TV distributors to end-customers as packages including, not only TV3 but also other basic pay TV channels. Accordingly, the demand and supply side analysis of the purchase and supply of NENT's basic pay TV channels shows that NENT's channels constitute a package product. The Commission has therefore made its assessment of anticompetitive input

(216) For the purpose of its assessment, the Commission has considered, as the more likely potential targets of an input foreclosure strategy, the JV's largest competitors in the retail supply of AV services, irrespective of any potential market segmentation. On the basis of the market shares presented in Section 6.2.1.1.(B), in relation to the market for the retail supply of AV services, the main targets of a potential foreclosure strategy are the other main TV distributors, namely Altibox, RiksTV and Telia.

(217) The Commission has conducted its assessment on the basis of all possible downstream market definitions. The question as to whether NENT would have the ability to undertake a total or partial input foreclosure strategy has therefore been undertaken in light of the importance of those channels to TV distributors active in the potential markets for which basic pay TV channels and premium pay TV channels are acquired.[168] The Commission's assessment of the impact of a total or partial foreclosure strategy also applies in respect of the above mentioned possible markets for which TV channels are an important input. Since the importance of NENT's TV channels and the likely impact of foreclosure to those channels as inputs, is at least as significant on the narrower relevant markets as it is on the broader market for the retail provision of AV services, the Commission hereafter, in this section, refers to the 'retail supply of AV services' or 'retail AV services' as shorthand for all possible markets comprising the retail supply of (i) AV services (ii) linear pay AV services, (iii) linear basic pay AV services (iv) linear premium pay AV services, (v) all possible markets (i) to (iv) segmented into MDU and SDU.

(218) In Section 6.1.1, the Commission considered that the question whether Telenor and NRK belong to the same economic unit or whether they make up separate economic units with an independent power of decision can be left open as the Transaction does not raise serious doubts as to its compatibility with the internal market regardless of the answer to this question.[169] In particular, as regard to a potential vertical relationship between NRK and the JV, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market for the following reasons.

(219) First, for the purpose of the assessment of this Decision, the Commission does not consider NRK as a commercial broadcaster like NENT. NRK supplies exclusively FTA channels and, differently from NENT, it does not supply pay TV channels to providers of retail AV services. NRK is Norway's national public

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foreclosure considering NENT's basic pay TV channels as a package therefore including all different genres of basic pay TV channels supplied by NENT in the market.

168 Basic pay TV channels are acquired as an input for the markets for the retail supply of (i) AV services (ii) linear pay AV services, (iii) linear basic pay AV services (iv) all possible markets (i) to (iii) segmented into MDU and SDU. Premium pay TV channels are acquired as an input for the markets for the retail supply of (i) AV services (ii) linear pay AV services, (iii) linear premium pay AV services (iv) all possible markets (i) to (iii) segmented into MDU and SDU.

169 The Notifying Parties indicate that, in such hypothetical scenario, the Transaction would not have an impact on any markets where NRK would be also active. In the market for the wholesale supply of TV channels, the Notifying Parties consider any input foreclosure concern, whereby NRK would refuse to supply or supply its channels at worse terms, as unwarranted. First, NRK's channels are subject to certain "must-carry" obligations. Second, pre-Transaction, NRK was already distributing its channels broadly. Third, Norwegians are obliged to pay for public service broadcasting via a mandatory additional income tax, meaning that it would be politically unacceptable (in fact, inconceivable) for the Norwegian State to limit access to NRK's channels or otherwise degrade the quality of NRK channels to certain distributors.

broadcaster. NRK's FTA TV channels are subject to a "must-carry" obligation[170] and, differently from other TV broadcasters, including NENT, NRK is not dependent on advertising revenues and carriage fees from TV distributors, because it is funded by governmental taxation. NRK's FTA TV channels are available to all retail suppliers of AV services via all type of distribution, including OTT.[171]

(220) Second, Norwegians are obliged to pay for NRK's public service broadcasting via a mandatory additional tax. The Commission does not consider likely that distribution of NRK's TV channels would be limited for customers of competing providers of retail AV services, for example by limiting FTA distribution, while they would still be obliged to pay a tax to receive such channels.

(221) Third, the Commission considers that end customers might still access NRK's content and channels through NRK's retail OTT AV service, NRKTV.

(222) Moreover, the Transaction does not materially change the incentive to implement a foreclosing strategy. Pre-Transaction, NRK was active as FTA supplier with a market share by volume of approximately [40-50]% in the market for the wholesale supply of FTA and Basic pay TV channels. In the downstream market, in 2018 Telenor and Canal Digital have a combined market share of [40-50]% (Telenor: [20-30]%, Canal Digital: [10-20]%) in the market for the retail supply of AV services, excluding non-linear where NRK's channels could be used as an input. Post-Transaction, Telenor will exclusively have a market share of [20-30]% combined with a joint (50%) ownership in the JV with a market share of [20-30]%.

(223) Finally, the Commission considers that NRK was already vertically integrated pre-Transaction[172], and it did not engage into any type of foreclosure strategy vis-à-vis competing providers of retail AV services, such as Telia and Altibox.

(A) The Notifying Parties' view

(224) The Notifying Parties argue that the Transaction will not give NENT the ability and incentive to engage in input foreclosure in Norway. Pre-Transaction, NENT is already vertically integrated as a supplier and distributor of TV channels. Post-Transaction, NENT will remain active as a supplier of TV channels but NENT's vertical integration will be reduced with the transfer of its 100% owned entity, Viasat Consumer, into a joint venture 50% co-owned with Telenor.

(225) With respect to NENT's ability to undertake an input foreclosure strategy, the Notifying Parties consider that NENT [Confidential strategic views of NENTs sales policy and strategy].

(226) Even if NENT had the ability to engage in an input foreclosure strategy by preventing rival TV distributors from offering its TV channels to their customers, the Notifying Parties submit the Transaction does not increase incentives for input foreclosure of NENT's channels from rival distributors. […].

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170 Form CO, paragraph 345.

171 NRK offers its own retail AV OTT service, NRKTV.

172 NRK has a 50% share in RiksTV, a provider of retail AV services through DTT technology.

(227) Even if NENT would have the ability and incentive to engage in an input foreclosure strategy, the Notifying Parties submit that such strategy would not have any significant detrimental effect on effective competition. […].[173] […]

(B) The Commission's assessment

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

a. Ability to engage in input foreclosure

(229) For the reasons set out below, first, the Commission cannot exclude that NENT may have the ability to engage in total or partial input foreclosure of its basic pay TV channels in Norway; second, the Commission considers that NENT will likely have the ability to engage in total or partial input foreclosure of its premium pay TV sports channels in Norway; third, the Commission considers that NENT will not have the ability to engage in total or partial input foreclosure of its premium non-sports pay TV channels in Norway

(230) First, the Commission assesses whether NENT would have a significant degree of market power in the upstream market for the wholesale supply of TV channels, including all possible sub-segments and whether NENT's TV channels can be considered an important input within the meaning of the Non-Horizontal Merger Guidelines.[174]

(231) Table 31, reproduced below, shows the market shares of NENT and its main competitors in the market for the wholesale supply of TV channels in Norway in 2018 by share of viewing. NENT's market share in 2018 was respectively [5-10]% for the wholesale supply of combined FTA/pay TV channels, and [10-20]% for the wholesale supply of pay TV channels and [10-20]% for the wholesale supply of basic pay TV channels, and [20-30]% for the wholesale supply of premium pay TV channels, and [20-30]% for the wholesale supply of premium pay TV sports channels, and [30-40]% for the wholesale supply of premium pay TV non-sports channels.

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[173] M.9064 – Telia / Bonnier Broadcasting Holding, interim text of the non-confidential version of the commitments, available at: https://ec.europa.eu/competition/mergers/cases/additional_data/m9064_3342_3.pdf

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

Table 31: Market shares in 2018
in the market for the wholesale supply of pay TV channels by share of viewing

	Wholesale supply of FTA and pay-TV channels	Wholesale supply of pay-TV channels	Wholesale supply of FTA and basic pay-TV channels	Wholesale supply of basic pay-TV channels	Wholesale supply of premium pay-TV channels	Wholesale supply of premium sports pay-TV channels	Wholesale supply of premium non-sports pay-TV channels
NENT	**[5-10]**	**[10-20]**	**[5-10]**	**[10-20]**	**[20-30]**	**[20-30]**	**[30-40]**
TV2 Norge	[20-30]	[30-40]	[20-30]	[40-50]	[70-80]	[70-80]	[50-60]
Discovery	[10-20]	[30-40]	[10-20]	[30-40]	-	-	-
Others	[40-50]	[10-20]	[40-50]	[10-20]	-	-	-

Source: Form CO, Annex 68.

(232) Table 32, reproduced below, shows the market shares of NENT and its main competitors in the market for the wholesale supply of TV channels in Norway in 2018 by value. NENT's market share in 2018 was respectively [10-20]% for the wholesale supply of pay TV channels and [5-10]% for the wholesale supply of basic pay TV channels, and [30-40]% for the wholesale supply of premium pay TV channels, and [40-50]% for the wholesale supply of premium pay TV sports channels, and [20-30]% for the wholesale supply of premium pay TV non-sports channels.

Table 32: Market shares in 2018
in the market for the wholesale supply of TV channels by value

	Wholesale supply of pay-TV channels	Wholesale supply of basic pay-TV channels	Wholesale supply of premium pay-TV channels	Wholesale supply of premium sports pay-TV channels	Wholesale supply of premium non-sports pay-TV channels
NENT	**[10-20]**	**[5-10]**	**[30-40]**	**[40-50]**	**[20-30]**
TV2 Norge	[50-60]	[50-60]	[50-60]	[50-60]	[70-80]
Discovery	[20-30]	[30-40]	-	-	-
Others	[5-10]	[5-10]	[0-5]	[0-5]	-

Source: Form CO, Annex 68.

(233) With reference to NENT's FTA/basic pay TV channels, the Commission notes that NENT is the third largest broadcaster in the market for the wholesale supply of basic pay TV channels with a market share of [10-20]% by volume and [5-10]% by value. The clear market leader is TV2 Norge with market share by value and volume of respectively [30-40]% and [50-60]%, followed by Discovery with shares of respectively [30-40]% and [30-40]%.

(234) With reference to NENT's premium pay TV sports channels, the Commission considers that, based on the above market shares, there is an indication that NENT has a significant market position in market for the wholesale supply of premium pay TV sports channels in Norway. The only other broadcaster that comes anywhere close to the position of NENT is TV2 Norge.

(235) With reference to NENT's premium pay TV non-sports channels, the Commission considers that, based on the above market shares, there is an indication that NENT has a significant market position in market for the

wholesale supply of premium pay TV non-sports channels in Norway. The only other broadcaster that comes anywhere close to the position of NENT is TV2 Norge.

(236) Second, in order to determine the importance of NENT's pay TV channels for TV distributors, the Commission, in line with past cases[175], analyses in addition to the relevant market shares (i) the proportion of end users who watch the NENT's TV channel (i.e., audience reach) and (ii) the views of market participants on the importance of the NENT's TV channels for AV distribution businesses.

(237) With reference to NENT's basic pay TV channels, NENT is supplying the third most important basic pay TV channel in Norway, TV3 with a reach of [50-60]%.[176] The other most important channels by reach are TV2 Norge supplied by TV2 Norge with a reach of [80-90]% and TVN supplied by Discovery with a reach of [60-70]%. In addition, NENT distributes two other basic pay TV channels, TV6 and Viasat4. [Confidential information about NENT's distributors and sales strategy].

(238) With reference to NENT's premium pay TV sports channels, NENT is supplying the fourth most important premium pay TV channel in Norway, Viasport1 with a reach of [0-5]%.[177] The other most important channels by reach are all supplied by TV2 Norge with a reach of [10-20]%.

(239) With reference to NENT's premium pay TV non-sports channels, none of NENT's channels is among the top five providers of premium pay TV channel in Norway.[178]

(240) Third, the Commission has analysed the views of market participants on the importance of NENT's pay TV channels for retail suppliers of AV services since all competing providers of linear retail AV services are acquiring channels from NENT.[179] [Confidential information about NENT's distributors and sales strategy].[180]

(241) With reference to NENT's basic pay TV channels, respondents consider the channels TV3, TV6 and Viasat 4 as important to compete in the retail market. The three channels are important for the number of viewership, reach or availability of sport content.[181]

(242) With reference to NENT's premium pay TV sports channels, respondents consider the channels Viasport+, Viasport 1, EsportsTV as important to compete in the retail market. Those channels carry unique sport content, such as Champions League which respondents consider as relevant from a viewer's perspective. Respondents did not consider any premium pay TV non-sports channels as important due to the availability of substitutes or since they are based

175 M.9064 – *Telia / Bonnier Broadcasting Holding*, recital 500.

176 Form CO, Annex 38.

177 Form CO, Annex 38.

178 Form CO, Annex 38.

179 Responses to questionnaire Q1 to retail suppliers of AV services in Norway, question E.1.

180 Form CO, Annex 55

181 Responses to questionnaires Q1 to retail suppliers of AV services in Norway and Q2 to TV broadcasters in Norway, question E.4.

on irrelevant content. One respondent also noted the availability of several subscription video on demand services such as Prime Video, Netflix, Viaplay, Apple TV+ and Disney+ (not yet launched in Norway but expected to launch this year) and others which offer high quality premium non-sports content. [182]

(243) Fourth, with reference to the technical ability to implement any foreclosure strategy, most respondents to the market investigation indicate that NENT post-Transaction could either stop licensing certain of its TV channels or degrade the terms and conditions at which it licenses its TV channels.[183] One respondent considers that NENT could decide to limit the offering of certain channels (for example premium sport pay TV channels) or certain distribution rights. Another respondent notes that NENT would pursue a strategy to bypass distributors and have direct relationship with the customers.

(244) In addition, with reference to the Notifying Parties' view that possible contractual limitations may reduce NENT's ability to engage in total or partial input foreclosure, the Commission notes that NENT's agreements with the JV's competing TV *distributors*, Telenor, Telia, Altibox and RiksTV, are expiring respectively [Confidential views of NENTs strategic decisions].[184]

(245) With reference to potential counter-strategies that could be implemented by the JV's downstream competitor, the market investigation provided mixed replies on whether alternative broadcasters from which it would be possible to license TV channels would remain available. Most respondents noted that alternative broadcasters or content providers would be available for content on which basic pay and premium pay TV non-sports channels are based on but it would not be possible to fully replicate the premium sport content supplied by NENT.[185] The Commission however notes that, TV2 Norge, is both the other major supplier of basic and premium pay sports TV channels and indirectly active in the retail supply of AV services.[186] If RiksTV would be denied access to certain channels or right from NENT , TV2 Norge could also deny certain channels or rights to its basic and premium pay sports TV channels to the JV as counter strategy. In light of the above, the Commission considers that, first, there would not likely be effective and timely counter-strategies for rivals to overcome the effects of total or partial input foreclosure of premium pay TV sports channels by NENT post-Transaction. Second, the Commission considers that there would be effective and timely counter-strategies for rivals to overcome the effects of total or partial input foreclosure of premium pay TV non-sports channels by NENT post-Transaction.

(246) In light of the above, first, the Commission cannot exclude that NENT may have the ability to engage in total or partial input foreclosure of its basic pay TV channels in Norway; second, the Commission considers that NENT will likely have the ability to engage in total or partial input foreclosure of its premium pay TV sports channels in Norway; third, the Commission considers that NENT will

182 Responses to questionnaires Q1 to retail suppliers of AV services in Norway and Q2 to TV broadcasters in Norway, question E.4.

183 Responses to questionnaire Q1 to retail suppliers of AV services in Norway, questions E.6 and E.7 and F.5.

184 Annex 55, Form CO. [Confidential information about NENT's distributors and sales strategy].

185 Responses to questionnaire Q1 to retail suppliers of AV services in Norway, question E.9.

186 TV2 Norge has a 50% share in RiksTV, a provider of retail AV services through DTT technology.

not have the ability to engage in total or partial input foreclosure of its premium non-sports pay TV channels in Norway

b. Incentive to engage in input foreclosure

(247) Most of the respondents to the market investigation have indicated that they consider it likely that NENT would either stop licensing all of its channels or certain of its channels to competing TV distributors or reduce the terms and conditions at which it licenses such channels.[187] In particular, respondents notes that the JV will have a much stronger distribution power and, therefore, NENT may have a higher incentive to rely on the JV as distribution platform and that NENT may limit the supply of its channels for certain distribution channels, such as OTT rights. Finally, RiksTV considers that the Transaction increases NENT's incentive to deny access to its channels in certain areas (namely area where customers could subscribe exclusively through DTH or DTT). In such areas, RiksTV would be the only alternative to the JV since broadband speed is more limited and there could be more difficulties in offering retail AV services via OTT.

(248) For the reasons set out below the Commission considers that NENT will not likely have the incentive to engage in total or partial input foreclosure of its TV channels in Norway, irrespective of any plausible segmentation of the product market in basic pay or premium pay sports or premium pay TV non-sports channels.

(249) An input foreclosure strategy would not likely be profitable for NENT if the lost profit in the upstream market from such a strategy, that is to say carriage fees and advertising revenues[188] of the NENT's TV channels, is smaller than the profit gain from being able to expand sales or raise prices in the downstream market for the retail supply of AV services through the JV.

(250) First, the Commission notes that before the Transaction NENT was already a vertically integrated operator active on the one side on the wholesale supply of TV channels and, on the other side, on the retail supply of AV services through its OTT service, Viaplay with approximately […] subscribers in 2018, and its IPTV/DTH service, Viasat with approximately […] subscribers in 2018. Before the Transaction, even though NENT was vertically integrated, NENT distributed its channels widely in the market. This was confirmed by respondents to the market investigation.[189] Moreover, [Confidential information about NENT's distributors and sales strategy].[190]

(251) Second, the merger specific change of the Transaction relates to the increase of NENT's position in the downstream market by acquiring a 50% stake in the JV where Viasat's DTH activities are combined with the Canal Digital's one, and its approximately […] subscribers and by losing 50% control on Viasat's business

[187] Responses to questionnaire Q1 to retail suppliers of AV services in Norway, questions E.6.1.3, E.7.3 and E.8.1.

[188] TV broadcasters generate revenues from the wholesale supply of TV channels mainly from (i) carriage fees obtained from retail AV distributors and, (ii) advertising revenues generated from the sale of advertising space on those channels.

[189] Responses to questionnaire Q1 to retail suppliers of AV services in Norway, question E.1.

[190] Annex 55, Form CO.

and its approximately […] subscribers. As indicated in Section 6.3.2, the Commission considers that the combination of Viasat and Canal Digital's DTH businesses in the retail AV market, or any plausible segmentation, does not raise serious doubts as its compatibility with the internal market. In particular, both Viasat and Canal Digital are experiencing a decline in their customer basis showing the difficulties they have in attracting new customers compared to competing providers of retail AV services relying on fibre for distribution.

(252) As shown in Figure 1 below, Canal Digital lost around […] subscribers – a decrease of approximately […] – in Norway between January 2016 and July 2019 (see Figure 1 below). Over the same time period, Viasat's DTH subscriber base in Norway decreased by almost […]%, or around […] subscribers.

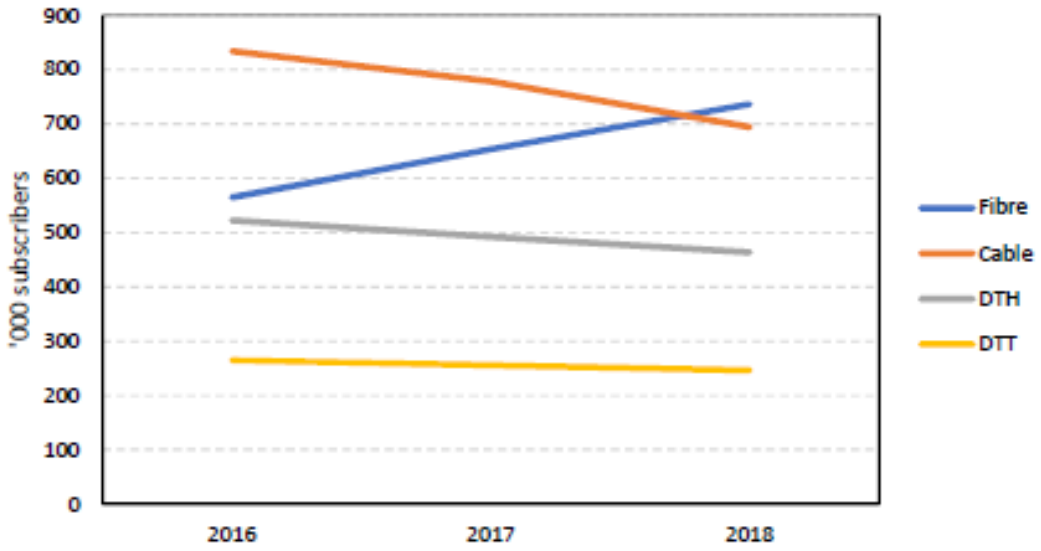
Figure 1: Canal Digital and Viasat DTH subscribers

[Subscriber numbers and reductions in parties' subscriber numbers]

Source: Form CO, Figure 12

(253) As shown in Figure 2, the loss of DTH subscribers seems driven by customers switching to TV services distributed over fibre networks. The number of subscribers receiving TV via fibre in Norway increased by approximately 171 000 between 2016 and 2018 – an increase of 30%. Over the same time period, the number of subscribers receiving TV via cable, DTH and DTT in Norway decreased by 17%, 11% and 7%, respectively.

Figure 2: Subscribers of retail AV services by technology

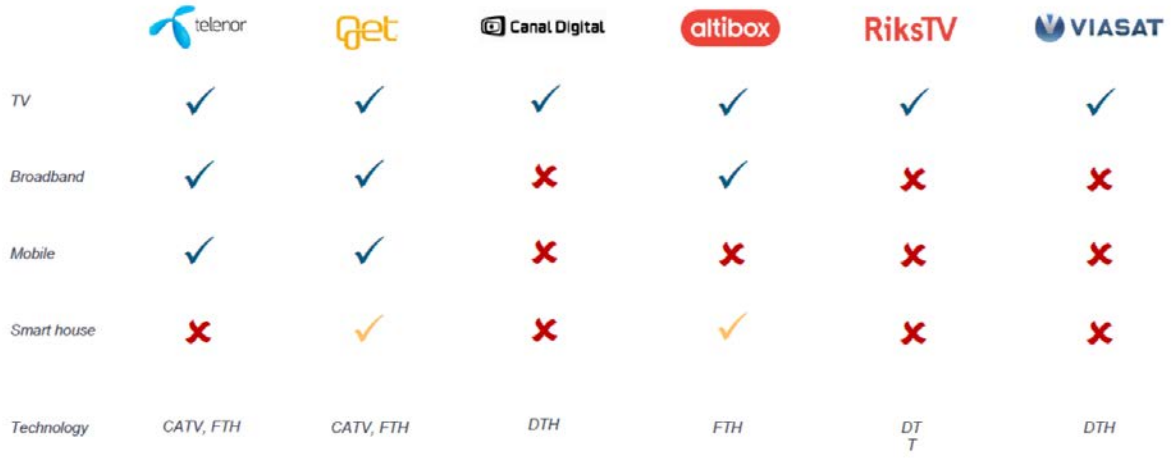


Source: Form CO, Figure 12

(254) The trend of switching to fiber-based technology seems also driven by the ability of providers of retail AV services through fiber to combine their service with fixed internet access services. In Norway, as shown in Figure 3, Canal Digital, Viasat and RiksTV are the only suppliers which offer exclusively retail AV services. The main providers of retail AV services, such as Telenor, Telia (Get) and Altibox are all offering also fixed internet access service.

Figure 3: Offering of retail providers of AV services in Norway

[Non-confidential version of Figure 3]



Source: Form CO, Annex 21, Slide 7

(255) Third, the Commission considers that the number of consumers switching to the JV in case NENT would no longer provide access to its channels would not be significant. NENT's incentive to foreclose depends on the number of new customers and those cancelling their subscription with their current provider of retail AV services ("cord-cutting") and switching to the JV's offering. However, as shown in Figure 2 above, consumers tend to more likely choose fibre as distribution technology for retail AV services over DTH. Moreover, […]% of Telenor's cable TV subscribers (i.e., subscribers of Telenor's retail AV services not contributed to the JV) are also customers of Telenor fixed internet access services.[191]

(256) In case of a blackout of exclusively NENT's TV channels through fiber distribution, customers would have the possibility to keep their current fixed internet access service and retail AV service subscription and continue watching NENT's TV channels, either basic or premium pay, on NENT's OTT service, Viaplay, which would be supplied independently in the market ('cord-shaving"). Based on the above, the Commission notes that switching to the JV's retail AV service would be further constrained by the current market trend in Norway of customers subscribing to fibre based retail AV services and fixed internet access services.

(257) Fourth, the Commission considers that the refusal to supply NENT's TV channels, irrespective of any plausible segmentation, to third-party distributors would greatly reduce NENT's revenue from the sale of advertising airtime on its channels and carriage fees charged to third party distributors. To this end, the Notifying Parties have provided an analysis prepared by an external economic consultant [Confidential information about NENT's distributors and sales strategy].[192] [Confidential information about NENT's distributors and sales strategy].[193] [Confidential information about NENT's distributors and sales

191 Telenor's reply to RFI 14, question 2.

192 Form CO, Annex 39.

193 Notifying Parties' reply to RFI 8, Annex 1 and 3.

strategy][194], [Confidential information about NENT's distributors and sales strategy].

(258) The Commission further notes that it may be unlikely for NENT to recoup any losses from advertising and distribution revenue by expanding revenues from the downstream activities of the JV. In 2018, NENT generated approximately NOK […] as advertising revenue and NOK […] as revenue from carriage fee. The JV's profit margin per user per month is approximately NOK […]. In order to recoup NENT's losses, the JV would need to acquire […] subscribers in one year. However, since NENT will be entitled only to half of the JV's profit, the amount of subscribers should be double for the strategy to be profitable which means almost […] subscribers corresponding to approximately […]% of subscribers of competing providers of retail AV services. This number of additional subscribers to the JV seems unrealistic in light of the structural decline of the JV's main distribution technology DTH.

(259) Fifth, the Commission considers that it would not be relevant to assess whether NENT would have the incentive to refuse to supply OTT rights to NENT's TV channels. NENT would remain active independently in the market for the retail supply of AV services through its OTT service, Viaplay. The JV would combine the Canal Digital's DTH business and Viasat's DTH and IPTV activities. Therefore, the Commission considers that the Transaction does not significantly change NENT's incentive to licence OTT rights to competing providers of retail AV services. The Commission has assessed whether the Transaction would change NENT's incentive to engage into partnership related to its OTT services with the JV's competing providers of retail AV services in Section 6.4.4.1.

(260) Moreover, the Commission considers that the Transaction does not significantly change NENT's incentive to engage into partial foreclosure. While any TV broadcaster would have the incentive to obtain a higher remuneration for the TV channels it is supplying to TV distributors, the increase in the JV's downstream market position does not significantly increase NENT's bargaining position. In particular, NENT would still need to get access to the customer base of competing providers of retail AV services to preserve the advertising revenue from the supply of its channels which accounts for more than […]% of its revenues.

(261) Finally, the Commission has assessed whether NENT would have the incentive to engage in a selective input foreclosure vis-à-vis RiksTV in certain areas where DTT and DTH are the main distribution technology available.[195] First, the Commission notes that NENT has a distribution agreement with RiksTV expiring in […].[196] […] Second, RiksTV is active nationwide and not only in the areas where DTT and DTH are the main distribution technology[197]. Therefore, in case of foreclosure, only a part of RiksTV's customers in the DTT/DTH areas could

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194 As indicated in Section 6.3.2, Telenor is active in the retail supply of AV services in Norway via DTH through its wholly owned subsidiary, Canal Digital (which will be contributed to the JV), and via cable and IPTV through the Telenor brand (which will not be contributed to the JV). Reference to Telenor relates to Telenor's activities excluding Canal Digital.

195 In particular, in such areas, the retail provision of AV services through cable and IPTV would not be available. Moreover, broadband speed would be limited and it would not enable the provision of retail AV services through OTT distribution.

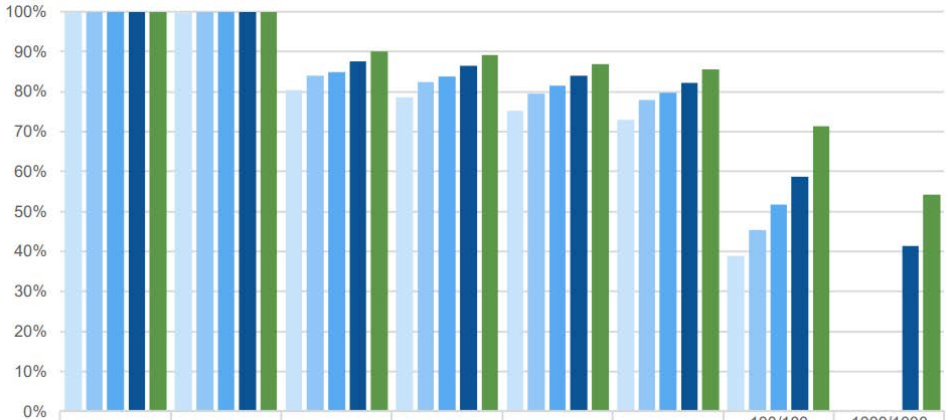
196 […].

197 [Confidential views of NENTs strategic decisions].

switch to the JV. The great part which is available in other areas could switch also to other competing providers of retail AV services.

(262) Third, the Commission notes that fibre and cable coverage is rapidly increasing in Norway and, therefore, in the next two to three years a reduction of areas reachable exclusively by DTT and DTH is expected. As shown in Figure 4 below, areas with a broadband download speed of over 10 Mbps which enables viewing of high quality OTT service increased from 81% in 2017 to 87% in 2019.

Figure 4: Estimated broadband coverage in Norway



	4/0,5 Mbit/s	10/0,8 Mbit/s	25/5 Mbit/s	30/5 Mbit/s	50/10 Mbit/s	100/10 Mbit/s	100/100 Mbit/s	1000/1000 Mbit/s
2015	99.96%	99.92%	80%	79%	75%	73%	39%	
2016	99.98%	99.95%	84%	83%	79%	78%	45%	
2017	99.98%	99.96%	85%	84%	81%	80%	52%	
2018	100.00%	99.99%	88%	87%	84%	82%	59%	41%
2019	100.00%	99.99%	90%	89%	87%	86%	71%	54%

Source: NKOM/Analysys Mason, Bredbåndsdekning 2019 (September 2019).

(263) Moreover, fibre coverage is also significantly increasing reaching a population coverage of 71% in September 2019, a significant increase from a coverage of 59% in 2018, and from 41% in 2015. The increase of fibre coverage is not limited to urban areas. The Norwegian Telecommunication Authority, NKOM, indicated in its report how fibre and high broadband coverage is increasing not only in urban but also rural areas. In particular, NKOM notes that "*the pace of Norwegian fibre development has never been higher. Particularly noteworthy is the strong growth in fibre-based broadband outside of densely populated areas, where about 60,000 new households have been offered fibre over the past year. 45% of households outside urban areas now have fibre coverage, up from 32% in 2018*".[198]

(264) Finally, RiksTV is jointly owned by TV2 Norge and NRK. TV2 Norge is one of the major broadcaster in Norway with market shares over 50% in the wholesale supply of pay TV channels, and any possible sub-segments. [Confidential information about Canal Digital and NENT's distributors and sales strategy]. NENT may have limited incentive to limit the supply of its channels to RiksTV since it may fear that TV2 Norge would engage in similar strategies depriving the JV of a significant input.

[198] NKOM/Analysys Mason, Bredbåndsdekning 2019 (September 2019), available at https://www nkom no/aktuelt/nyheter/_attachment/43103?_ts=16d6cdbb4e1.

(265) In light of the above, the Commission considers that NENT will not likely have the incentive to engage in total or partial input foreclosure of its TV channels in Norway, irrespective of any plausible segmentation of the product market in basic pay or premium pay sports or premium pay TV non-sports channels.

c. Impact on effective competition and conclusion

(266) The Commission considers that due to the lack of ability for premium pay TV non-sports channels and a lack of incentive for all these types of channels, it is not needed to assess whether any foreclosure strategy would have a negative impact on effective competition.

(267) In light of the foregoing, the Commission concludes that the Transaction would not raise serious doubts as to its compatibility with the internal market resulting from total or partial input foreclosure of NENT's TV channels, irrespective of any plausible segmentation[199], in Norway.

6.4.2.2. Sweden

(268) In Sweden, the JV will be active in the retail supply of AV services by combining Canal Digital's DTH business and Viasat's DTH and IPTV activities. NENT will remain active in the wholesale supply of FTA and basic pay TV channels, premium pay TV sports channels and premium pay TV non-sports channels. NENT would also remain active as retail supplier of AV services through its OTT applications, Viaplay. Telenor would remain active in the retail supply of AV services via cable and IPTV through the Telenor brand (which will not be contributed to the JV).[200] The merger specific change is the addition of Canal Digital's downstream activities to NENT's DTH and IPTV service, Viasat.

(269) The Commission has assessed the risk that NENT would post-Transaction engage in input foreclosure strategies in Sweden by either: (i) total input foreclosure of rival providers of retail AV services through the denial of access to NENT's channels; and (ii) partial input foreclosure of rival providers of retail AV services through an increase of carriage fees paid by rival providers to NENT or by significantly degrading the quality of channels licensed to rival providers of AV services (for example, by removing significant content or ancillary rights).

(270) The Commission has assessed the two abovementioned types of input foreclosure strategies for all the types of TV channels, which NENT licenses to retail providers of AV services in Sweden, namely: (i) basic pay-TV channels[201],

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199 NENT's basic pay TV channels include all different genres of basic pay TV channels supplied by NENT in the market. NENT's premium pay sports TV channels include all sports channels supplied by NENT in the market. NENT's premium pay non-sports TV channels include film & series channels supplied by NENT in the market.

200 Telenor does not offer a standalone OTT service in Norway, but Telenor subscribers have access to a TVE service ("Telenor Stream"). Form CO, paragraph 593.

201 NENT supplies its FTA and basic pay TV channels as a package. This conclusion is based on demand and supply side factors, which support the view that NENT FTA and basic pay TV channels should be treated as a package product. On the demand side, TV distributors purchase a package of NENT's FTA and basic pay TV channels in Sweden. [Confidential strategic views of NENTs sales policy and strategy]. See Annex 55, Form CO. On the supply side, NENT's FTA and basic pay TV channels are sold by TV distributors to end-customers as packages including, not only TV3 but also other basic pay TV channels. Accordingly, the demand and supply side analysis of the purchase and supply of NENT's FTA and basic

(ii) premium pay TV sports channels, and (iii) premium pay TV non-sports channels.

(271) For the purpose of its assessment, the Commission has considered, as the more likely potential targets of an input foreclosure strategy, the JV's largest competitors in the retail supply of AV services, irrespective of any potential market segmentation. On the basis of the market shares presented in Section 6.2.1.2.(B), in relation to the market for the retail supply of AV services, the main targets of a potential foreclosure strategy are the other main TV distributors, namely Tele2, Sappa and Telia.

(272) The Commission has conducted its assessment on the basis of all possible downstream market definitions. The question as to whether NENT would have the ability to undertake a total or partial input foreclosure strategy has therefore been undertaken in light of the importance of those channels to TV distributors active in the potential markets for which FTA and basic pay TV channels and premium pay TV channels are acquired.[202] The Commission's assessment of the impact of a total or partial foreclosure strategy also applies in respect of the above mentioned possible markets for which TV channels are an important input. Since the importance of NENT's TV channels and the likely impact of foreclosure to those channels as inputs, is at least as significant on the narrower relevant markets as it is on the broader market for the retail provision of AV services, the Commission hereafter, in this section, refers to the 'retail supply of AV services' or 'retail AV services' as shorthand for all possible markets comprising the retail supply of (i) AV services (ii) linear pay AV services, (iii) linear basic pay AV services (iv) linear premium pay AV services, (v) all possible markets (i) to (iv) segmented into MDU and SDU.

(A) The Notifying Parties' view

(273) The Notifying Parties argue that the Transaction will not give NENT the ability and incentive to engage in input foreclosure in Sweden. Pre-Transaction, NENT is already vertically integrated as a supplier and distributor of TV channels. Post-Transaction, NENT will remain active as a supplier of TV channels but NENT's vertical integration will be reduced with the transfer of its 100% owned entity, Viasat Consumer, into a joint venture 50% co-owned with Telenor.

(274) With respect to NENT's ability to undertake an input foreclosure strategy, the Notifying Parties consider that [confidential information about NENT's distributors and sales strategy].

(275) Even if NENT had the ability to engage in an input foreclosure strategy by preventing rival TV distributors from offering its TV channels to their customers,

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pay TV channels shows that NENT's channels constitute a package product. The Commission has therefore made its assessment of anticompetitive input foreclosure considering NENT's FTA and basic pay TV channels as a package therefore including all different genres of FTA and basic pay TV channels supplied by NENT in the market.

202 FTA and basic pay TV channels are acquired as an input for the markets for the retail supply of (i) AV services (ii) linear pay AV services, (iii) linear basic pay AV services (iv) all possible markets (i) to (iii) segmented into MDU and SDU. Premium pay TV channels are acquired as an input for the markets for the retail supply of (i) AV services (ii) linear pay AV services, (iii) linear premium pay AV services (iv) all possible markets (i) to (iii) segmented into MDU and SDU.

the Notifying Parties submit the Transaction does not increase incentives for input foreclosure of NENT's channels from rival distributors. [Confidential information about NENT's distributors and sales strategy].

(276) Even if NENT would have the ability and incentive to engage in an input foreclosure strategy, the Notifying Parties submit that such strategy would not have any significant detrimental effect on effective competition. [Confidential information about NENT's distributors and sales strategy].[203] [Confidential information about NENT's distributors and sales strategy].

(B) The Commission's assessment

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

a. Ability to engage in input foreclosure

(278) For the reasons set out below, first, the Commission cannot exclude that NENT may have the ability to engage in total or partial input foreclosure of its basic pay TV channels in Sweden; second, the Commission considers that NENT will likely have the ability to engage in total or partial input foreclosure of its premium pay TV sports channels in Sweden; third, the Commission considers that NENT will not have the ability to engage in total or partial input foreclosure of its premium non-sports pay TV channels in Sweden.

(279) First, the Commission assesses whether NENT would have a significant degree of market power in the upstream market for the wholesale supply of TV channels, including all possible sub-segments and whether NENT's TV channels can be considered an important input within the meaning of the Non-Horizontal Merger Guidelines.[204]

(280) Table 33 reproduced below, shows the market shares of NENT and its main competitors in the market for the wholesale supply of TV channels in Sweden in 2018 by share of viewing. NENT's market share in 2018 was respectively [10-20]% for the wholesale supply of combined FTA/pay TV channels, and [20-30]% for the wholesale supply of pay TV channels and [10-20]% for the wholesale supply of basic pay TV channels, and [50-60]% for the wholesale supply of premium pay TV channels, and [50-60]% for the wholesale supply of premium pay TV sports channels, and [50-60]% for the wholesale supply of premium pay TV non-sports channels.

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[203] M.9064 – *Telia / Bonnier Broadcasting Holding*, interim text of the non-confidential version of the commitments, available at: https://ec.europa.eu/competition/mergers/cases/additional_data/m9064_3342_3.pdf

[204] See footnote 176.

Table 33: Market shares in 2018
in the market for the wholesale supply of pay TV channels by share of viewing

	Wholesale supply of FTA and pay-TV channels	Wholesale supply of pay-TV channels	Wholesale supply of FTA and basic pay-TV channels	Wholesale supply of basic pay-TV channels	Wholesale supply of premium pay-TV channels	Wholesale supply of premium sports pay-TV channels	Wholesale supply of premium non-sports pay-TV channels
NENT	**[10-20]**	**[20-30]**	**[20-20]**	**[10-20]**	**[50-60]**	**[50-60]**	**[50-60]**
SVT[205]	[30-40]	[0-5]	[30-40]	[50-60]	[40-50]	[40-50]	[40-50]
Telia	[30-40]	[40-50]	[30-40]	[50-60]	-	-	-
Discovery	[10-20]	[20-30]	[10-20]	[20-30]	-		-
Others	[5-10]	[10-20]	[5-10]	[5-10]	[0-5]	[0-5]	-

Source: Form CO, Annex 68.

(281) Table 34 reproduced below, shows the market shares of NENT and its main competitors in the market for the wholesale supply of TV channels in Sweden in 2018 by value. NENT's market share in 2018 was respectively [20-30]% for the wholesale supply of pay TV channels and [10-20]% for the wholesale supply of basic pay TV channels, and [50-60]% for the wholesale supply of premium pay TV channels, and [50-60]% for the wholesale supply of premium pay TV sports channels, and [40-50]% for the wholesale supply of premium pay TV non-sports channels.

Table 34: Market shares in 2018
in the market for the wholesale supply of TV channels by value

	Wholesale supply of pay-TV channels	Wholesale supply of basic pay-TV channels	Wholesale supply of premium pay-TV channels	Wholesale supply of premium sports pay-TV channels	Wholesale supply of premium non-sports pay-TV channels
NENT	**[20-30]**	**[10-20]**	**[50-60]**	**[50-60]**	**[40-50]**
Telia	[40-50]	[40-50]	[40-50]	[40-50]	[40-50]
Discovery	[10-20]	[20-30]	-	-	-
Others	[5-10]	[10-20]	[0-5]	[0-5]	[0-5]

Source: Form CO, Annex 68.

(282) With reference to NENT's FTA/basic pay TV channels, the Commission notes that NENT is the third largest broadcaster in the market for the wholesale supply of basic pay TV channels with a market share of [10-20]% by volume and [10-20]% by value. The clear market leader is Telia with market share by value and volume of respectively [40-50]% and [30-40]%, followed by Discovery with shares of respectively [20-30]% and [10-20]%.

(283) With reference to NENT's premium pay TV sports channels, the Commission considers that, based on the above market shares, there is an indication that NENT has a significant market position in market for the wholesale supply of premium pay TV sports channels in Sweden. The only other broadcaster that comes anywhere close to the position of NENT is Telia.

[205] SVT is the Swedish national public TV broadcaster. SVT broadcasts four FTA TV channels (SVT1, SVT2, SVT24/SVT Barn, Kunskapskanalen) on digital terrestrial television and via third party pay-TV.

(284) With reference to NENT's premium pay TV non-sports channels, the Commission considers that, based on the above market shares, there is an indication that NENT has a significant market position in market for the wholesale supply of premium pay TV non-sports channels in Sweden. The only other broadcaster that comes anywhere close to the position of NENT is Telia.

(285) Second, in order to determine the importance of NENT's pay TV channels for TV distributors, the Commission, in line with past cases[206], analyses in addition to the relevant market shares (i) the proportion of end users who watch the NENT's TV channel (i.e., audience reach) and (ii) the views of market participants on the importance of the NENT's TV channels for AV distribution businesses.

(286) With reference to NENT's basic pay TV channels, NENT is supplying the third most important basic pay TV channel in Sweden, TV3 with a reach of [50-60]%.[207] The other most important channels by reach are TV4 supplied by Telia with a reach of [70-80]% and Kanal 5 supplied by Discovery with a reach of [50-60]%. In addition, NENT distributes other basic pay TV channels. These channels are not as popular as the TV3 channel but are sold by NENT together in basic pay packages.

(287) With reference to NENT's premium pay TV sports channels, NENT is supplying the most important premium pay sport TV channel in Sweden, Viasat sport Premium with a reach of [5-10]%.[208]

(288) With reference to NENT's premium pay non-sports TV channels, NENT is supplying the most important premium pay sport TV channel in Sweden, Viasat Film Premiere Premium with a reach of [5-10]%.[209]

(289) Third, the Commission has analysed the views of market participants on the importance of NENT's pay TV channels for retail suppliers of AV services since all competing providers of linear retail AV services are acquiring channels from NENT.[210] [Confidential information about NENT's customers].

(290) With reference to NENT's basic pay TV channels, respondents consider almost all FTA and Basic pay TV channels as important to compete in the retail market. The three channels are important for the number of viewership, reach or availability of sport content.[211]

(291) With reference to NENT's premium pay TV sports channels, respondents consider the NENT's channels as important to compete in the retail market. Those channels carry unique sport content, such as hockey and football events which respondents consider as relevant from a viewer's perspective. Respondents did not consider any premium pay TV non-sports channels as important due to the availability of substitutes or since they are based on irrelevant content. One respondent also noted the availability of several subscription video on demand

206 M.9064 – *Telia / Bonnier Broadcasting Holding*, recital 500.

207 Form CO, Annex 38.

208 Form CO, Annex 38.

209 Form CO, Annex 38.

210 Responses to questionnaire Q3 to retail suppliers of AV services in Sweden, question E.1.

211 Responses to questionnaires Q3 to retail suppliers of AV services in Sweden and Q4 to TV broadcasters in Sweden, question E.4.

services such as Prime Video, Netflix, Viaplay, Apple TV+ and Disney+ (not yet launched in Sweden but expected to launch this year) and others which offer high quality premium non-sports content. [212]

(292) Fourth, with reference to the technical ability to implement any foreclosure strategy, respondents to the market investigation had a mixed view on whether NENT post-Transaction could either stop licensing certain of its TV channels or degrade the terms and conditions at which it licenses its TV channels.[213] Tele2 considers that NENT would not engage in such foreclosure strategies.[214] Another respondent indicated that NENT could engage in such practice and that it could decide to distribute its premium channels exclusively through the JV.

(293) In addition, with reference to the Notifying Parties' view that possible contractual limitations may reduce NENT's ability to engage in total or partial input foreclosure, the Commission notes that NENT's agreements with the JV's competing TV *distributors*, Telenor (excluding Canal Digital), Telia, Tele2 and Sappa, are expiring respectively in […], […], […] and […].[215] [Confidential information about NENTs strategic decisions].

(294) With reference to potential counter-strategies that could be implemented by the JV's downstream competitor, the market investigation provided mixed replies on whether alternative broadcasters from which it would be possible to license TV channels would remain available. Most respondents noted that alternative broadcasters or content providers would be available for content on which basic pay and premium pay TV non-sports channels are based on but it would not be possible to fully replicate the premium sport content or TV3 and TV6, basic pay TV channels, supplied by NENT.[216] The Commission however notes that, Telia, is both the other major supplier of basic and premium pay sports TV channels and retail supplier of AV services. If Telia would be denied certain channels or rights (for example OTT rights) from NENT, it could also deny OTT rights to its basic and premium pay sports TV channels to NENT as counter strategy. In light of the above, the Commission considers that, first, there would not likely be effective and timely counter-strategies for certain rivals to overcome the effects of total or partial input foreclosure of premium pay TV sports channels by NENT post-Transaction. Second, the Commission considers that there would be effective and timely counter-strategies for rivals to overcome the effects of total or partial input foreclosure of premium pay TV non-sports channels by NENT post-Transaction.

(295) In light of the above, first, the Commission cannot exclude that NENT may have the ability to engage in total or partial input foreclosure of its FTA and basic pay TV channels in Sweden; second, the Commission considers that NENT will likely have the ability to engage in total or partial input foreclosure of its premium pay TV sports channels in Sweden; third, the Commission considers that NENT will not have the ability to engage in total or partial input foreclosure of its premium non-sports pay TV channels in Sweden

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212 Responses to questionnaires Q3 to retail suppliers of AV services in Sweden and Q4 to TV broadcasters in Sweden, questions E.4 and F.3.

213 Responses to questionnaire Q3 to retail suppliers of AV services in Sweden, questions E.6 and E.7.

214 [Confidential information about NENTs strategic decisions].

215 Form CO, Annex 55.

216 Responses to questionnaire Q3 to retail suppliers of AV services in Sweden, question E.9.

b. Incentive to engage in input foreclosure

(296) Respondents to the market investigation provided mixed replies on whether they consider it likely that NENT would either stop licensing all of its channels or certain of its channels to competing TV distributors or reduce the terms and conditions at which it licenses such channels.[217] One respondent notes that by combining Viasat and Canal Digital's activities, the JV would become a stronger distribution platform in the market for the retail supply of AV service which may incentivize NENT to withhold content to other distributors. However, another respondent considers that it is not obvious that NENT would have such incentive since NENT relies on revenues from carriage fees and advertising generated through partnerships with competing distributors.

(297) For the reasons set out below the Commission considers that NENT will not likely have the incentive to engage in total or partial input foreclosure of its TV channels in Sweden, irrespective of any plausible segmentation of the product market in basic pay or premium pay sports or premium pay TV non-sports channels.

(298) An input foreclosure strategy would not likely be profitable for NENT if the lost profit in the upstream market from such a strategy, that is to say carriage fees and advertising revenues[218] of the NENT's TV channels, is smaller than the profit gain from being able to expand sales or raise prices in the downstream market for the retail supply of AV services through the JV.

(299) First, the Commission notes that before the Transaction NENT was already a vertically integrated operator active on the one side on the wholesale supply of TV channels and, on the other side, on the retail supply of AV services through its OTT service, Viaplay with approximately […] subscribers in 2018, and its IPTV/DTH service, Viasat with approximately […] subscribers in 2018. Before the Transaction, even though NENT was vertically integrated, NENT distributed its channels widely in the market. This was confirmed by respondents to the market investigation.[219] Moreover, NENT was supplying its channels for DTH distribution to Canal Digital.[220]

(300) Second, the merger specific change of the Transaction relates to the increase of NENT's position in the downstream market by acquiring a 50% stake in the JV where Viasat's DTH activities are combined with the Canal Digital's one, and its approximately […] subscribers and by losing 50% control on Viasat's business and its approximately […] subscribers. As indicated in Section 6.3.3, the Commission considers that the combination of Viasat and Canal Digital's DTH businesses in the retail AV market, or any plausible segmentation, does not raise serious doubts as its compatibility with the internal market. In particular, both Viasat and Canal Digital are experiencing a decline in their customer basis

[217] Responses to questionnaire Q3 to retail suppliers of AV services in Sweden, questions E.6, E.7, E.6.1.1-3, and E.7.1-3.

[218] TV broadcasters generate revenues from the wholesale supply of TV channels mainly from (i) carriage fees obtained from retail AV distributors and, (ii) advertising revenues generated from the sale of advertising space on those channels.

[219] Responses to questionnaire Q3 to retail suppliers of AV services in Sweden, question E.1.

[220] Form CO, Annex 55.

showing the difficulties they have in attracting new customers compared to competing providers of retail AV services relying on fibre for distribution.

(301) As shown in Figure 5 below, Canal Digital lost around […] subscribers – a decrease of approximately […]% – in Sweden between January 2016 and April 2019. Over the same time period, Viasat's DTH subscriber base in Sweden decreased by almost […]%, or around […] subscribers.

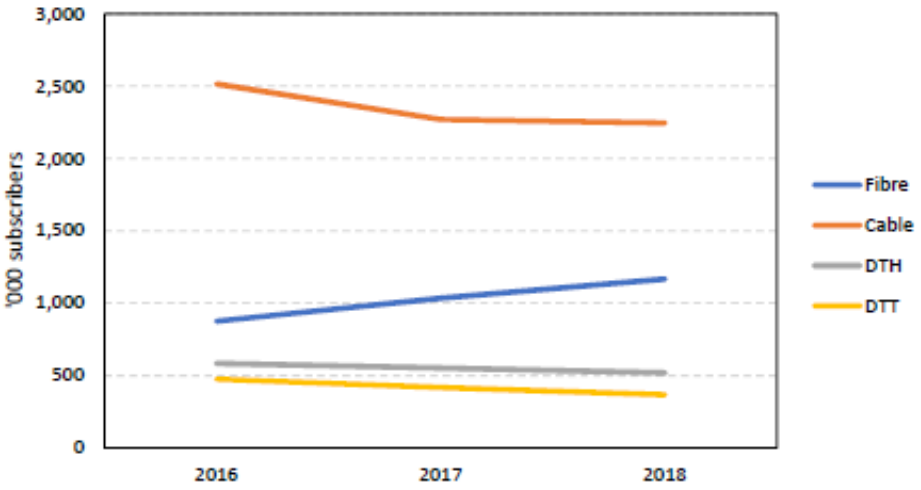
Figure 5: Canal Digital and Viasat DTH subscribers

[Subscriber numbers and reductions in parties' subscriber numbers]

Source: Form CO, Figure 24

(302) As shown in Figure 6, the loss of DTH subscribers seems driven by customers switching to TV services distributed over fibre networks. The number of subscribers receiving TV via fibre in Sweden increased by approximately 300 000 between 2016 and 2018 – an increase of 33%. Over the same time period, the number of subscribers receiving TV via cable, DTH and DTT in Sweden decreased by 10%, 11% and 23%, respectively. Moreover, the switch to fibre and IPTV is also a trend within Viasat's customer base. In 2016, […]% of Viasat's […] customers were using DTH technology while in beginning of 2019, only […]% of its […] customers access the service through DTH.

Figure 6: Subscribers to TV services via fibre, cable, DTH and DTT



Source: Form CO, Figure 19

(303) The trend of switching to fiber-based technology seems also driven by the ability of providers of retail AV services through fiber to combine their service with telecommunications services. In Sweden, all main providers of retail AV services, namely Telia, Tele2, Telenor are also providers of retail mobile telecommunications and fixed internet access services.[221] Moreover, […]% of Telenor's cable and IPTV TV subscribers (i.e., subscribers of Telenor's retail AV services not contributed to the JV) are also customers of Telenor fixed internet

[221] Form CO, paragraphs from 592 to 614.

access services.[222] While Viasat is also providing fixed internet access services, Canal Digital is exclusively active in the retail supply of AV services.

(304) Third, the Commission considers that the number of consumers switching to the JV in case NENT would no longer provide access to its channels would not be significant. NENT's incentive to foreclose depends on the number of customers and cancelling their subscription with their current provider of retail AV services ("cord-cutting") and switching to the JV's offering. In Sweden in 2019, approximately 25% subscribers of linear retail AV services bundle their service with fixed internet access services.[223] In case of a blackout of exclusively NENT's TV channels through fiber distribution, customers would have the possibility to keep their current fixed internet access service and retail AV service subscription and continue watching NENT's TV channels, either basic or premium pay, on NENT's OTT service, Viaplay, which would be supplied independently in the market ('cord-shaving"). Based on the above, the Commission notes that switching to the JV's retail AV service would be further constrained by the current market trend in Sweden of customers subscribing to fibre based retail AV services and fixed internet access services.

(305) Fourth, the Commission considers that the refusal to supply NENT's TV channels, irrespective of any plausible segmentation, to third-party distributors would greatly reduce NENT's revenue from the sale of advertising airtime on its channels and carriage fees charged to third party distributors. To this end, the Notifying Parties have provided an analysis prepared by an external economic consultant [confidential information about NENT's distributors and sales strategy].[224] [Confidential information about NENT's distributors and sales strategy].[225] [Confidential information about NENT's distributors and sales strategy][226] [confidential information about NENT's distributors and sales strategy].

(306) The Commission further notes that it may be unlikely for NENT to recoup any losses from advertising and distribution revenue by expanding revenues from the downstream activities of the JV. In 2018, NENT generated approximately SEK […] as advertising revenue and SEK […] as revenue from carriage fee. The JV's profit margin per user per month is approximately SEK […]. In order to recoup NENT's losses, the JV would need to acquire [] subscribers in one year. However, since NENT will be entitled only to half of the JV's profit, the amount of subscribers should be double for the strategy to be profitable which means almost […] subscribers corresponding to approximately […]% of subscribers of competing providers of retail AV services. This number of additional subscribers to the JV seems unrealistic in light of the structural decline of the JV's main distribution technology DTH.

(307) Finally, the Commission has assessed whether NENT would have the incentive to engage in a selective input foreclosure vis-à-vis Tele2 in certain areas where DTT

222 Telenor's reply to RFI 14, question 2.

223 Statistik.pts.se, Table 31.

224 Form CO, Annex 40.

225 RFI 8, Annex 2 and 4.

226 As indicated in Section 6.3.3, Telenor is active in the retail supply of AV services in Sweden via DTH through its wholly owned subsidiary, Canal Digital (which will be contributed to the JV) and via cable and IPTV through the Telenor brand (which will not be contributed to the JV).

and DTH are the main distribution technology available (approximately 15% of the households in Sweden) and, therefore Tele2 and the JV would be the only alternative.[227] First, the Commission notes that [confidential information about NENT's distributors and sales strategy].[228] Therefore, NENT could in any event not engage in a potential foreclosure strategy before the expiry of the agreement. Second, Tele2 is active nationwide and not only in the areas where DTT and DTH are the main distribution technology. Tele2 is also the leading providers of retail AV services in Sweden with approximately […] subscribers, of which approximately [subscriber number] through DTT, and a market share of [40-50]% in the market for the retail supply of linear AV services. Therefore, NENT would not likely have the incentive to lose carriage fees and advertising revenues [confidential information about NENT's distributors and sales strategy]. In addition, in other areas of Sweden, customers switching from Tele2 could not only move to the JV but also to other competing providers of retail AV services, further reducing any incentive to engage in such practice.

(308) Third, the Commission notes that fibre and cable coverage is rapidly increasing in Sweden and, therefore, in the next two to three years a reduction of areas reachable exclusively by DTT and DTH is expected. Fibre coverage is significantly increasing reaching a household coverage of 77% in the end of 2018, a significant increase from a coverage from 60% in 2014. The Swedish Post and Telecom Authority, PTS, indicated in its report how fibre and high broadband coverage is responsible for growth in fixed broadband subscriptions. In particular, PTS notes that *"Fibre is responsible for all growth in fixed broadband subscriptions. In total, this market increased by three percent in 2018, while the number of fibre subscriptions increased by 11 percent and amounted to 2.7 million subscriptions. Broadband subscriptions via the copper network (xDSL) were, for the first time, lower than the subscriptions for broadband via cable TV networks, 0.6 and 0.7 million subscriptions, respectively*".[229] The increase of fibre coverage is not limited to urban areas. As shown in Figure 7 below, 81% of households in urban areas and 41% of households in urban areas had access to fibre in the end of 2018. This constitutes an increase of more than 20 percentage points and 27 percentage points, respectively, since 2014.

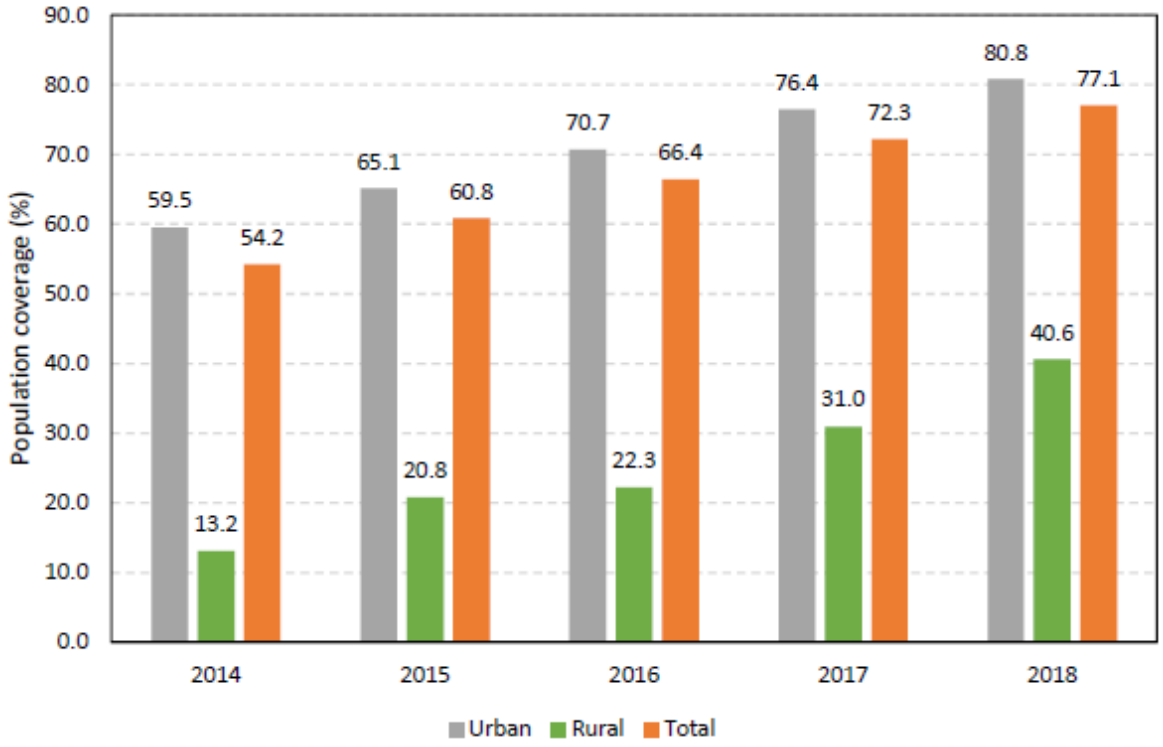
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227 In particular, in such areas, the retail provision of AV services through cable and IPTV would not be available. Moreover, broadband speed would be limited and it would not enable the provision of retail AV services through OTT distribution.

228 [Confidential information regarding NENTs business plans].

229 See https://pts.se/sv/nyheter/pressmeddelanden/2019/tre-av-fyra-fasta-bredbandsabonnemang-har-over-100-mbits/.Translated from the Swedish: "Fiber står för all tillväxt inom fasta bredbandsabonnemang. Totalt ökade denna marknad med tre procent under 2018, medan antalet fiberabonnemang ökade med 11 procent och uppgick till 2,7 miljoner abonnemang.Bredbandsabonnemangen via kopparnätet (xDSL) var för första gången färre än abonnemangen på bredband via kabel-tv-nät 0,6 respektive 0,7 miljoner abonnemang."

Figure 7: Estimated fibre coverage in urban and rural areas, Sweden



Source: PTS, PTS mobiltäcknings- och bredbandskartläggning 2018 (March 2019).

(309) Moreover, the Commission considers that the Transaction does not significantly change NENT's incentive to engage into partial foreclosure. While any TV broadcaster would have the incentive to obtain a higher remuneration for the TV channels it is supplying to TV distributors, the increase in the JV's downstream market position does not significantly increase NENT's bargaining position. In particular, NENT would still need to get access to the customer base of competing providers of retail AV services to preserve the advertising revenue from the supply of its channels which accounts for more than […]% of its revenues.[230]

(310) Finally, the Commission considers that it would not be relevant to assess whether NENT would have the incentive to refuse to supply OTT rights to NENT's TV channels. NENT would remain active independently in the market for the retail supply of AV services through its OTT service, Viaplay. The JV would combine the Canal Digital's DTH business and Viasat's DTH and IPTV activities. Therefore, the Commission considers that the Transaction does not significantly change NENT's incentive to licence OTT rights to competing providers of retail AV services. The Commission has assessed whether the Transaction would change NENT's incentive to engage into partnership related to its OTT services with the JV's competing providers of retail AV services in Section 6.4.4.2.

(311) In light of the above, the Commission considers that NENT will not likely have the incentive to engage in total or partial input foreclosure of its TV channels in Sweden, irrespective of any plausible segmentation of the product market in basic pay or premium pay sports or premium pay TV non-sports channels.

230 Commission's calculation based on Annex 44, Form CO.

c. Impact on effective competition and conclusion

(312) The Commission considers that due to the lack of ability for premium pay TV non-sports channels and a lack of incentive for all these types of channels, it is not needed to assess whether any foreclosure strategy would have a negative impact on effective competition.

(313) In light of the foregoing, the Commission concludes that the Transaction would not raise serious doubts as to its compatibility with the internal market resulting from total or partial input foreclosure of NENT's TV channels, irrespective of any plausible segmentation[231], in Sweden

6.4.2.3. Finland

(314) In Finland, the JV will be active in the retail supply of AV services by combining Canal Digital's DTH business and Viasat's DTH activities. NENT will remain active in the wholesale supply of premium pay TV sports channels and premium pay TV non-sports channels.[232] NENT would also remain active as retail supplier of AV services through its OTT applications, Viaplay. Telenor would remain active in the retail supply of AV services via cable, IPTV and OTT through its wholly owned subsidiary, DNA (which will not be contributed to the JV).

(315) The merger specific change is the addition of Canal Digital's downstream activities to NENT's DTH and IPTV service, Viasat.

(316) The Commission has assessed the risk that NENT would post-Transaction engage in input foreclosure strategies in Finland by either: (i) total input foreclosure of rival providers of retail AV services through the denial of access to NENT's channels; and (ii) partial input foreclosure of rival providers of retail AV services through an increase of carriage fees paid by rival providers to NENT or by significantly degrading the quality of channels licensed to rival providers of AV services (for example, by removing significant content or ancillary rights).

(317) The Commission has assessed the two abovementioned types of input foreclosure strategies for all the types of TV channels, which NENT licenses to retail providers of AV services in Finland, namely: (i) premium pay TV sports channels, and (ii) premium pay TV non-sports channels.

(318) For the purpose of its assessment, the Commission has considered, as the more likely potential targets of an input foreclosure strategy, the JV's largest competitors in the retail supply of AV services, irrespective of any potential market segmentation. On the basis of the market shares presented in Section 6.2.1.3.(B), in relation to the market for the retail supply of AV services, the main targets of a potential foreclosure strategy are the other main TV distributors, namely Elisa and Telia.

(319) The Commission has conducted its assessment on the basis of all possible downstream market definitions. The question as to whether NENT would have

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231 NENT's basic pay TV channels include all different genres of basic pay TV channels supplied by NENT in the market. NENT's premium pay sports TV channels include all sports channels supplied by NENT in the market. NENT's premium pay non-sports TV channels include film & series channels supplied by NENT in the market.

232 NENT does not supply FTA and Basic pay TV channels in Finland.

the ability to undertake a total or partial input foreclosure strategy has therefore been undertaken in light of the importance of those channels to TV distributors active in the potential markets for which basic pay TV channels and premium pay TV channels are acquired.[233] The Commission's assessment of the impact of a total or partial foreclosure strategy also applies in respect of the above mentioned possible markets for which TV channels are an important input. Since the importance of NENT's TV channels and the likely impact of foreclosure to those channels as inputs, is at least as significant on the narrower relevant markets as it is on the broader market for the retail provision of AV services, the Commission hereafter, in this section, refers to the 'retail supply of AV services' or 'retail AV services' as shorthand for all possible markets comprising the retail supply of (i) AV services (ii) linear pay AV services, (iii) linear premium pay AV services, (iv) all possible markets (i) to (iii) segmented into MDU and SDU.

(A) The Notifying Parties' view

(320) The Notifying Parties argue that the Transaction will not give NENT the ability and incentive to engage in input foreclosure in Finland. Pre-Transaction, NENT is already vertically integrated as a supplier and distributor of TV channels. Post-Transaction, NENT will remain active as a supplier of TV channels but NENT's vertical integration will be reduced with the transfer of its 100% owned entity, Viasat Consumer, into a joint venture 50% co-owned with Telenor.

(321) With respect to NENT's ability to undertake an input foreclosure strategy, the Notifying Parties consider that NENT [confidential information about NENT's distributors and sales strategy].

(322) Even if NENT would have the ability and incentive to engage in an input foreclosure strategy, the Notifying Parties submit that such strategy would not have any significant detrimental effect on effective competition. […].[234] […].

(B) The Commission's assessment

(323) The Commission's assessment of anticompetitive input foreclosure, in light of the results of the market investigation, is set out in the following paragraphs. For this purpose, consistent with paragraph 32 of the Non-Horizontal Merger Guidelines, in relation to each of these practices, the Commission examines, (i) whether the merged entity would have, post-merger, the ability to foreclose access to inputs, (ii) whether it would have the incentive to do so, and (iii) whether a foreclosure strategy would have a significant detrimental effect on competition in the downstream markets.

a. Ability to engage in input foreclosure

(324) For the reasons set out below, first, the Commission cannot exclude that NENT may have the ability to engage in total or partial input foreclosure of its premium

[233] Premium pay TV channels are acquired as an input for the markets for the retail supply of (i) AV services (ii) linear pay AV services, (iii) linear premium pay AV services (iv) all possible markets (i) to (iii) segmented into MDU and SDU.

[234] M.9064 – Telia / Bonnier Broadcasting Holding, interim text of the non-confidential version of the commitments, available at: https://ec.europa.eu/competition/mergers/cases/additional_data/m9064_3342_3.pdf.

pay TV sports channels in Finland; second, the Commission considers that NENT will not have the ability to engage in total or partial input foreclosure of its premium non-sports pay TV channels in Finland.

(325) First, the Commission assesses whether NENT would have a significant degree of market power in the upstream market for the wholesale supply of TV channels, including all possible sub-segments and whether NENT's TV channels can be considered an important input within the meaning of the Non-Horizontal Merger Guidelines.[235]

(326) Table 35 reproduced below, shows the market shares of NENT and its main competitors in the market for the wholesale supply of TV channels in Finland in 2018 by share of viewing. NENT's market share in 2018 was respectively lower than [0-5]% for the wholesale supply of combined FTA/pay TV channels, and lower than]10-20]% for the wholesale supply of pay TV channels , and lower than [30-40]% for the wholesale supply of premium pay TV channels, and lower than [30-40]% for the wholesale supply of premium pay TV sports channels.

Table 35: Market shares in 2018
in the market for the wholesale supply of pay TV channels by share of viewing

	Wholesale supply of FTA and pay-TV channels	Wholesale supply of pay-TV channels	Wholesale supply of FTA and basic pay-TV channels	Wholesale supply of basic pay-TV channels	Wholesale supply of premium pay-TV channels	Wholesale supply of premium sports pay-TV channels	Wholesale supply of premium non-sports pay-TV channels
NENT	**[0-5]**	**[10-20]**	**-**	**n/a**	**[30-40]**	**[30-40]**	**n/a**
Yle	[40-50]	-	-	n/a	-	-	n/a
Telia	[20-30]	[20-30]	-	n/a	[50-60]	[50-60]	n/a
Discovery	[5-10]	[0-5]	-	n/a	-	-	n/a
Others	[20-30]	[60-70]	-	n/a	[10-20]	[10-20]	n/a

Source: Form CO, Annex 68.

(327) Table 36 reproduced below, shows the market shares of NENT and its main competitors in the market for the wholesale supply of TV channels in Finland in 2018 by value. NENT's market share in 2018 was respectively [30-40]% for the wholesale supply of premium pay TV channels, and [30-40]% for the wholesale supply of premium pay TV sports channels, and [30-40]% for the wholesale supply of premium pay TV non-sports channels.

Table 36: Market shares in 2018
in the market for the wholesale supply of TV channels by value

	Wholesale supply of pay-TV channels	Wholesale supply of basic pay-TV channels	Wholesale supply of premium pay-TV channels	Wholesale supply of premium sports pay-TV channels	Wholesale supply of premium non-sports pay-TV channels
NENT	**n/a**	**n/a**	**[30-40]**	**[30-40]**	**[30-40]**
Telia	n/a	n/a	[50-60]	[50-60]	[60-70]
Discovery	n/a	n/a	-	-	-
Others	n/a	n/a	[10-20]	[10-20]	-

Source: Form CO, Annex 68.

[235] See footnote 176.

(328) With reference to NENT's premium pay TV sports channels, the Commission considers that, based on the above market shares, there is an indication that NENT has a significant market position in market for the wholesale supply of premium pay TV sports channels in Finland. The only other broadcaster that comes anywhere close to the position of the merged entity is Telia.

(329) With reference to NENT's premium pay TV non-sports channels, the Commission considers that, based on the above market shares, there is an indication that NENT has a significant market position in market for the wholesale supply of premium pay TV non-sports channels in Finland. The only other broadcaster that comes anywhere close to the position of the merged entity is Telia.

(330) Second, the Commission has analysed the views of market participants on the importance of NENT's pay TV channels for retail suppliers of AV services since all competing providers of linear retail AV services are acquiring channels from NENT.[236]

(331) With reference to NENT's premium pay TV sports channels, respondents consider the channels NENT's TV channels as important to compete in the retail market.[237] Those channels carry unique sport content, such as football content as the English Premier League and hockey content as NHL , which respondents consider as relevant from a viewer's perspective. With reference to NENT's premium pay TV non-sports channels, while respondents consider such channels as important, they also consider that OTT players such as Netflix, are a competitive constraint on NENT.[238] Respondents' indicated that Telia's channels and Netflix's non-linear premium films&series are closely competing with NENT's premium pay non-sports TV channels.[239]

(332) Third, with reference to the technical ability to implement any foreclosure strategy, respondents to the market investigation provided a mixed reply on whether NENT would stop licensing its channels or license them at worst terms and conditions.[240] One respondent considers that NENT could limit the distribution of certain channels (for example, premium channels) or certain rights (for example, OTT rights) in future negotiations. Another considers that it is unlikely that NENT would engage in foreclosing strategies due to the focus of the JV in the provision of DTH services.

(333) In addition, with reference to the Notifying Parties' view that possible contractual limitations may reduce NENT's ability to engage in total or partial input foreclosure, the Commission notes that NENT's agreements with the JV's competing TV *distributors*, Telenor, Telia, and Elisa, are expiring respectively in

236 Responses to questionnaire Q5 to retail suppliers of AV services in Finland, question E.1.

237 Responses to questionnaire Q5 to retail suppliers of AV services in Finland, question E.4.

238 Responses to questionnaire Q5 to retail suppliers of AV services in Finland, questions E.4 and E.5.

239 Responses to questionnaires Q5 to retail suppliers of AV services in Finland and Q6 to TV broadcasters in Finland, question E.5.

240 Responses to questionnaire Q5 to retail suppliers of AV services in Finland, questions E.6 and E.7 and H.2.

[…], […] and […].[241] [Confidential information about NENTs business plans and strategic decisions].

(334) With reference to potential counter-strategies that could be implemented by the JV's downstream competitor, the market investigation provided mixed replies on whether alternative broadcasters from which it would be possible to license TV channels would remain available. Most respondents noted that alternative broadcasters or content providers would be available for content on which premium pay TV non-sports channels are based on but it would not be possible to fully replicate the premium sport content supplied by NENT.[242] The Commission however notes that, Telia, is the both other major supplier of premium pay sports TV channels and retail supplier of AV services. If Telia would be denied OTT rights from NENT, it could also deny OTT rights to its premium pay TV sports channels to NENT as counter strategy. In light of the above, the Commission considers that there would not likely be effective and timely counter-strategies for certain rivals to overcome the effects of total or partial input foreclosure of premium pay TV sports channels by NENT post-Transaction. The Commission considers that there would be effective and timely counter-strategies for rivals to overcome the effects of total or partial input foreclosure of premium pay TV non-sports channels by NENT post-Transaction.

(335) In light of the above, first, the Commission cannot exclude that NENT may have the ability to engage in total or partial input foreclosure of its premium pay TV sports channels in Finland; second, the Commission considers that NENT will not have the ability to engage in total or partial input foreclosure of its premium non-sports pay TV channels in Finland

b. Incentive to engage in input foreclosure

(336) Respondents to the market investigation provided a mixed reply on whether NENT NENT would either stop licensing all of its channels or certain of its channels to competing TV distributors or reduce the terms and conditions at which it licenses such channels.[243] One respondent considers that NENT could limit the distribution of certain channels (for example, premium channels) or certain rights (for example, OTT rights) in future negotiations. Another considers that it is unlikely that NENT would engage in foreclosing strategies due to the focus of the JV in the provision of DTH services.

(337) For the reasons set out below the Commission considers that NENT will not likely have the incentive to engage in total or partial input foreclosure of its TV channels in Finland, irrespective of any plausible segmentation of the product market in basic pay or premium pay sports or premium pay TV non-sports channels.

(338) An input foreclosure strategy would not likely be profitable for NENT if the lost profit in the upstream market from such a strategy, that is to say carriage fees and

241 Form CO, Annex 55.

242 Responses to questionnaire Q5 to retail suppliers of AV services in Finland, question E.9.

243 Responses to questionnaire Q5 to retail suppliers of AV services in Finland, questions E.6, E.7 and H.2.

advertising revenues[244] of the NENT's TV channels, is smaller than the profit gain from being able to expand sales or raise prices in the downstream market for the retail supply of AV services through the JV.

(339) First, the Commission notes that before the Transaction NENT was already a vertically integrated operator active on the one side on the wholesale supply of TV channels and, on the other side, on the retail supply of AV services through its OTT service, Viaplay with approximately […] subscribers in 2018, and its IPTV/DTH service, Viasat with approximately […] subscribers in 2018. Before the Transaction, even though NENT was vertically integrated, NENT distributed its channels widely in the market. This was confirmed by respondents to the market investigation.[245] Moreover, NENT was supplying its channels for DTH distribution to Canal Digital.[246]

(340) Second, the merger specific change of the Transaction relates to the increase of NENT's position in the downstream market by acquiring a 50% stake in the JV where Viasat's DTH activities are combined with the Canal Digital's one, and its approximately […] subscribers and by losing 50% control on Viasat's business and its approximately […] subscribers. As indicated in Section 6.3.4, the Commission considers that the combination of Viasat and Canal Digital's DTH businesses in the retail AV market, or any plausible segmentation, does not raise serious doubts as its compatibility with the internal market. In particular, both Viasat and Canal Digital are experiencing a decline in their customer basis showing the difficulties they have in attracting new customers compared to competing providers of retail AV services relying on fibre for distribution. The JV will have a combined customer base of […] subscribers in 2018. This is significantly more limited compared to Telia, Telenor and Elisa with customers bases if respectively […], […] and […].

(341) Third, the Commission considers that the number of consumers switching to the JV in case NENT would no longer provide access to its channels would not be significant. NENT's incentive to foreclose depends on the number of customers and cancelling their subscription with their current provider of retail AV services ("cord-cutting") and switching to the JV's offering. In Finland, the main providers of retail AV services, such as Telenor, Telia and Elisa are all offering also fixed internet access service and mobile telecommunications services. In case of a blackout of exclusively NENT's TV channels, customers would have the possibility to keep their current fixed internet access service and retail AV service subscription and continue watching NENT's TV channels, either basic or premium pay, on NENT's OTT service, Viaplay, which would be supplied independently in the market ('cord-shaving"). Based on the above, the Commission notes that switching to the JV's retail AV service would be further constrained by the current market trend in Finland of customers subscribing to fibre based retail AV services and fixed internet access services.

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244 TV broadcasters generate revenues from the wholesale supply of TV channels mainly from (i) carriage fees obtained from retail AV distributors and, (ii) advertising revenues generated from the sale of advertising space on those channels.

245 Responses to questionnaire Q5 to retail suppliers of AV services in Finland, question E.1.

246 Form CO, Annex 55.

(342) Moreover, the Commission considers that the Transaction does not significantly change NENT's incentive to engage into partial foreclosure. While any TV broadcaster would have the incentive to obtain a higher remuneration for the TV channels it is supplying to TV distributors, the increase in the JV's downstream market position does not significantly increase NENT's bargaining position. In particular, NENT would still need to get access to the customer base of competing providers of retail AV services to preserve the advertising revenue from the supply of its channels.

(343) Finally, the Commission considers that it would not be relevant to assess whether NENT would have the incentive to refuse to supply OTT rights to NENT's TV channels. NENT would remain active independently in the market for the retail supply of AV services through its OTT service, Viaplay. The JV would combine the Parties' DTH businesses. Therefore, the Commission considers that the Transaction does not significantly change NENT's incentive to licence OTT rights to competing providers of retail AV services. The Commission has assessed whether the Transaction would change NENT's incentive to engage into partnership related to its OTT services with the JV's competing providers of retail AV services in Section 6.4.4.3.

(344) In light of the above, the Commission considers that NENT will not likely have the incentive to engage in total or partial input foreclosure of its TV channels in Finland, irrespective of any plausible segmentation of the product market in basic pay or premium pay sports or premium pay TV non-sports channels.

c. Impact on effective competition and conclusion

(345) The Commission considers that due to the lack of incentive for all these types of channels, it is not needed to assess whether any foreclosure strategy would have a negative impact on effective competition.

(346) In light of the foregoing, the Commission concludes that the Transaction would not raise serious doubts as to its compatibility with the internal market resulting from total or partial input foreclosure of NENT's TV channels, irrespective of any plausible segmentation[247], in Finland.

6.4.2.4. Denmark

(347) In Denmark, the JV will be active in the retail supply of AV services by combining Canal Digital's DTH business and Viasat's DTH activities. NENT will remain active in the wholesale supply of basic pay TV channels, baisc pay TV sports channels and premium pay TV non-sports channels. NENT would also remain active as retail supplier of AV services through its OTT applications, Viaplay. The merger specific change is the addition of Canal Digital's downstream activities to NENT's DTH service, Viasat.

(348) The Commission has assessed the risk that NENT would post-Transaction engage in input foreclosure strategies in Denmark by either: (i) total input foreclosure of

[247] NENT's basic pay TV channels include all different genres of basic pay TV channels supplied by NENT in the market. NENT's premium pay sports TV channels include all sports channels supplied by NENT in the market. NENT's premium pay non-sports TV channels include film & series channels supplied by NENT in the market.

rival providers of retail AV services through the denial of access to NENT's channels; and (ii) partial input foreclosure of rival providers of retail AV services through an increase of carriage fees paid by rival providers to NENT or by significantly degrading the quality of channels licensed to rival providers of AV services (for example, by removing significant content or ancillary rights).

(349) The Commission has assessed the two abovementioned types of input foreclosure strategies for all the types of TV channels, which NENT licenses to retail providers of AV services in Denmark, namely: (i) basic pay-TV channels[248], (ii) baisc pay TV sports channels, and (iii) premium pay TV non-sports channels.

(350) For the purpose of its assessment, the Commission has considered, as the more likely potential targets of an input foreclosure strategy, the JV's largest competitors in the retail supply of AV services, irrespective of any potential market segmentation. On the basis of the market shares presented in Section 6.2.1.4.(B), in relation to the market for the retail supply of AV services, the main targets of a potential foreclosure strategy are the other main TV distributors, namely TDC, Stofa, Waoo! and Telia.

(351) The Commission has conducted its assessment on the basis of all possible downstream market definitions. The question as to whether NENT would have the ability to undertake a total or partial input foreclosure strategy has therefore been undertaken in light of the importance of those channels to TV distributors active in the potential markets for which basic pay TV channels and premium pay TV channels are acquired.[249] The Commission's assessment of the impact of a total or partial foreclosure strategy also applies in respect of the above mentioned possible markets for which TV channels are an important input. Since the importance of NENT's FTA and basic TV channels and the likely impact of foreclosure to those channels as inputs, is at least as significant on the narrower relevant markets as it is on the broader market for the retail provision of AV services, the Commission hereafter, in this section, refers to the 'retail supply of AV services' or 'retail AV services' as shorthand for all possible markets comprising the retail supply of (i) AV services (ii) linear pay AV services, (iii) linear basic pay AV services (iv) linear premium pay AV services, (v) all possible markets (i) to (iv) segmented into MDU and SDU.

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248 NENT supplies its basic pay TV channels as a package. This conclusion is based on demand and supply side factors, which support the view that NENT basic pay TV channels should be treated as a package product. On the demand side, TV distributors purchase a package of NENT's basic pay TV channels in Denmark. [Confidential information regarding NENTs sales policy and strategy]. See Annex 55, Form CO. On the supply side, NENT's basic pay TV channels are sold by TV distributors to end-customers as packages including, not only TV3 but also other basic pay TV channels. Accordingly, the demand and supply side analysis of the purchase and supply of NENT's basic pay TV channels shows that NENT's channels constitute a package product. The Commission has therefore made its assessment of anticompetitive input foreclosure considering NENT's basic pay TV channels as a package therefore including all different genres of basic pay TV channels, excluding sport, supplied by NENT in the market.

249 Basic pay TV channels are acquired as an input for the markets for the retail supply of (i) AV services (ii) linear pay AV services, (iii) linear basic pay AV services (iv) all possible markets (i) to (iii) segmented into MDU and SDU. Premium pay TV channels are acquired as an input for the markets for the retail supply of (i) AV services (ii) linear pay AV services, (iii) linear premium pay AV services (iv) all possible markets (i) to (iii) segmented into MDU and SDU.

(A) The Notifying Parties' view

(352) The Notifying Parties argue that the Transaction will not give NENT the ability and incentive to engage in input foreclosure in Denmark. Pre-Transaction, NENT is already vertically integrated as a supplier and distributor of TV channels. Post-Transaction, NENT will remain active as a supplier of TV channels but NENT's vertical integration will be reduced with the transfer of its 100% owned entity, Viasat Consumer, into a joint venture 50% co-owned with Telenor.

(353) With respect to NENT's ability to undertake an input foreclosure strategy, the Notifying Parties consider that NENT [confidential information about NENT's distributors and sales strategy].

(354) Even if NENT would have the ability and incentive to engage in an input foreclosure strategy, the Notifying Parties submit that such strategy would not have any significant detrimental effect on effective competition. […].

(B) The Commission's assessment

(355) The Commission's assessment of anticompetitive input foreclosure, in light of the results of the market investigation, is set out in the following paragraphs. For this purpose, consistent with paragraph 32 of the Non-Horizontal Merger Guidelines, in relation to each of these practices, the Commission examines, (i) whether the merged entity would have, post-merger, the ability to foreclose access to inputs, (ii) whether it would have the incentive to do so, and (iii) whether a foreclosure strategy would have a significant detrimental effect on competition in the downstream markets.

a. Ability to engage in input foreclosure

(356) For the reasons set out below, first, the Commission cannot exclude that NENT may have the ability to engage in total or partial input foreclosure of its basic pay TV channels in Denmark; second, the Commission cannot exclude that NENT may have the ability to engage in total or partial input foreclosure of its basic pay TV sports channels in Denmark; third, the Commission considers that NENT will not have the ability to engage in total or partial input foreclosure of its premium non-sports pay TV channels in Denmark.

(357) First, the Commission assesses whether NENT would have a significant degree of market power in the upstream market for the wholesale supply of TV channels, including all possible sub-segments and whether NENT's TV channels can be considered an important input within the meaning of the Non-Horizontal Merger Guidelines.[250]

(358) Table 37 reproduced below, shows the market shares of NENT and its main competitors in the market for the wholesale supply of TV channels in Denmark in 2018 by share of viewing. NENT's market share in 2018 was respectively [10-20]% for the wholesale supply of combined FTA/pay TV channels, and [10-20]% for the wholesale supply of pay TV channels and [10-20]% for the wholesale supply of basic pay TV channels, and [20-30]% for the wholesale supply of basic pay TV sports channels.

[250] See footnote 172.

Table 37: Market shares in 2018
in the market for the wholesale supply of pay TV channels by share of viewing

	Wholesale supply of FTA and pay-TV channels	Wholesale supply of pay-TV channels	Wholesale supply of FTA and basic pay-TV channels	Wholesale supply of basic pay-TV channels	Wholesale supply of basic sports pay-TV channels	Wholesale supply of premium pay-TV channels	Wholesale supply of premium non-sports pay-TV channels
NENT	**[10-20]**	**[10-20]**	**[10-20]**	**[10-20]**	**[20-30]**	**n/a**	**n/a**
DR[251]	[30-40]	-	[30-40]	-	[50-60]	n/a	n/a
TV2 Denmark	[30-40]	[60-70]	[30-40]	[60-70]	n/a	n/a	n/a
Discovery	[10-20]	[10-20]	[5-10]	[10-20]	[20-30]	n/a	n/a
Others	[0-5]	[5-10]	[0-5]	[5-10]	n/a	n/a	n/a

Source: Form CO, Annex 68.

(359) Table 38 reproduced below, shows the market shares of NENT and its main competitors in the market for the wholesale supply of TV channels in Denmark in 2018 by value. NENT's market share in 2018 was respectively [30-40]% for the wholesale supply of pay TV channels and [30-40]% for the wholesale supply of basic pay TV channels, and [50-60]% for the wholesale supply of basic pay TV sports channels, and [40-50]% for the wholesale supply of premium pay TV non-sports channels.

Table 38: Market shares in 2018
in the market for the wholesale supply of TV channels by value

	Wholesale supply of pay-TV channels	Wholesale supply of basic pay-TV channels	Wholesale supply of premium pay-TV channels	Wholesale supply of basic sports pay-TV channels	Wholesale supply of premium pay-TV channels	Wholesale supply of premium non-sports pay-TV channels
NENT	**[30-40]**	**[30-40]**	**[40-50]**	**[50-60]**	**[40-50]**	**[40-50]**
TV2 Denmark	[30-40]	[30-40]	-	[10-20]	-	-
Discovery	[10-20]	[10-20]	-	[20-30]	-	-
Telia	[0-5]	-	[50-60]	-	[50-60]	[50-60]
Others	[5-10]	[5-10]	-	[0-5]	-	-

Source: Form CO, Annex 68.

(360) With reference to NENT's basic pay TV channels, the Commission notes that NENT is the largest broadcaster by revenue and the second by volume in the market for the wholesale supply of basic pay TV channels with a market share of [10-20]% by volume and [30-40]% by value in 2018. The main other providers are TV2 Denmark and Discovery with market shares by value of [30-40]% and [10-20]% and by volume of [60-70]% and [10-20]%.

(361) With reference to NENT's basic pay TV sports channels, the Commission considers that, based on the above market shares, there is an indication that NENT has a significant market position in market for the wholesale supply of premium pay TV sports channels in Denmark. The only other broadcaster that

[251] DR is the national public provider of TV channels in Denmark, broadcasting both TV services, radio and other online services, and DR is the biggest provider of public service in the Danish media market.

comes anywhere close to the position of the merged entity is Discovery with a market share of [20-30]% in 2018.

(362) With reference to NENT's premium pay TV non-sports channels, the Commission considers that, based on the above market shares, there is an indication that NENT has a significant market position in market for the wholesale supply of premium pay TV non-sports channels in Denmark. The only other broadcaster that comes anywhere close to the position of the merged entity is Telia with a market share by value of [50-60]% in 2018.

(363) Second, the Commission has analysed the views of market participants and the Notifying Parties' internal documents on the importance of NENT's pay TV channels for retail suppliers of AV services since all the main competing providers of linear retail AV services, TDC, Stofa, Waoo! And Boxer are acquiring channels from NENT.[252]

(364) With reference to NENT's basic pay TV channels, respondents to the market investigation consider the channels TV3, TV3+, TV3 Max and TV3 Sport as important to compete in the retail market.[253] In particular, NENT's basic pay sports TV channels carry unique sport content such as Champions League, English Premier League and Formula1, which respondents consider as relevant from a viewer's perspective. With reference to NENT's premium pay TV non-sports channels, respondents consider that also non-linear AV services, such as Netflix and Amazon Prime, are a competitive constraint to NENT's offering.[254] Respondents' indicated that TV2 Denmark's channels for basic TV channels and Netflix's non-linear premium films&series and Dplay's from Discovery for sports pay TV channels are NENT's closest competitors.[255] In particular, TV2 Denmark is the most viewed TV channel followed by DR. Among OTT services, the leading services are Netflix and HBO.

(365) Third, with reference to the technical ability to implement any foreclosure strategy, most respondents to the market investigation indicate that NENT post-Transaction would not stop licensing certain of its TV channels or degrade the terms and conditions at which it licenses its TV channels.[256] Only two respondents have indicated that NENT may limit and/or reduce the terms and conditions at which it licenses such channels. One respondent stated that NENT may leverage its "must have" exclusive basic sports rights to extract higher prices from competing distributors. Such alleged foreclosure practice would impact current retail practice only for TV distributors that were already licensing NENT's TV channels before the Transaction.[257] Another respondent indicates that NENT may limit distribution of its OTT rights in future negotiations.

(366) In addition, with reference to the Notifying Parties' view that possible contractual limitations may reduce NENT's ability to engage in total or partial input

252 Form CO, Annex 55

253 Responses to questionnaires Q7 to retail suppliers of AV services in Denmark and Q8 to TV broadcasters in Denmark, question E.4.

254 Responses to questionnaire Q7 to retail suppliers of AV services in Denmark, questions E.4 and E.5.

255 Responses to questionnaires Q7 to retail suppliers of AV services in Denmark and Q8 to TV broadcasters in Denmark, question E.5.

256 Responses to questionnaire Q7 to retail suppliers of AV services in Denmark, questions E.6 and E.7.

257 Responses to questionnaire Q7 to retail suppliers of AV services in Denmark, question E.1.

foreclosure, the Commission notes that NENT's agreements with the JV's competing TV *distributors*, TDC, Stofa, Waoo! and Boxer, are expiring respectively in [confidential information regarding NENTs business plans and strategic decisions].[258]

(367) In light of the above, first, the Commission cannot exclude that NENT may have the ability to engage in total or partial input foreclosure of its basic pay TV channels in Denmark; second, the Commission cannot exclude that NENT may have the ability to engage in total or partial input foreclosure of its basic pay TV sports channels in Denmark; third, the Commission considers that NENT will not have the ability to engage in total or partial input foreclosure of its premium non-sports pay TV channels in Denmark.

b. Incentive to engage in input foreclosure

(368) Most of the respondents to the market investigation have indicated that they consider it unlikely that NENT would either stop licensing all of its channels or certain of its channels to competing TV distributors or reduce the terms and conditions at which it licenses such channels.[259] Only two respondents have indicated that NENT may limit and/or reduce the terms and conditions at which it licenses such channelsOne respondent stated that NENT may leverage its "must have" exclusive basic sports rights to extract higher prices from competing distributors. Such alleged foreclosure practice would impact current retail practice only for TV distributors that were already licensing NENT's TV channels before the Transaction.[260] Another respondent indicates that NENT may limit distribution of its OTT rights in future negotiations.

(369) For the reasons set out below the Commission considers that NENT will not likely have the incentive to engage in total or partial input foreclosure of its TV channels in Denmark, irrespective of any plausible segmentation of the product market in basic pay or premium pay sports or premium pay TV non-sports channels.

(370) An input foreclosure strategy would not likely be profitable for NENT if the lost profit in the upstream market from such a strategy, that is to say carriage fees and advertising revenues[261] of the NENT's TV channels, is smaller than the profit gain from being able to expand sales or raise prices in the downstream market for the retail supply of AV services through the JV.

(371) First, the Commission notes that before the Transaction NENT was already a vertically integrated operator active on the one side on the wholesale supply of TV channels and, on the other side, on the retail supply of AV services through its OTT service, Viaplay with approximately […] subscribers in 2018, and its IPTV/DTH service, Viasat with approximately […] subscribers in 2018. Before the Transaction, even though NENT was vertically integrated, NENT distributed its channels widely in the market. This was confirmed by respondents to the

258 Form CO, Annex 55.

259 Responses to questionnaire Q7 to retail suppliers of AV services in Denmark, questions E.6 and E.7.

260 Responses to questionnaire Q7 to retail suppliers of AV services in Denmark, question E.1.

261 TV broadcasters generate revenues from the wholesale supply of TV channels mainly from (i) carriage fees obtained from retail AV distributors and, (ii) advertising revenues generated from the sale of advertising space on those channels.

market investigation.[262] Moreover, NENT was supplying its channels for DTH distribution to Canal Digital.[263]

(372) Second, the merger specific change of the Transaction relates to the increase of NENT's position in the downstream market by acquiring a 50% stake in the JV where Viasat's DTH activities are combined with the Canal Digital's one, and its approximately […] subscribers and by losing 50% control on Viasat's business and its approximately […] subscribers. Based on market shares presented in Section 6.2.1.4.(B), the Commission considers that the combined market shares of Viasat and Canal Digital's DTH businesses in the retail AV market, or any plausible segmentation, would be limited and alternatives would remain available. In particular, both Viasat and Canal Digital are experiencing a decline in their customer basis showing the difficulties they have in attracting new customers compared to competing providers of retail AV services relying on fibre for distribution.[264] The JV will have a combined customer base of […] subscribers in 2018. This is significantly more limited compared to TDC, Stofa and Waoo! with customers bases if respectively […], […] and […]. This is significantly more limited even compared to NENT's Viaplay customer base of […] subscribers.

(373) Fourth, the Commission considers that the number of consumers switching to the JV in case NENT would no longer provide access to its channels would not be significant. NENT's incentive to foreclose depends on the number of customers and cancelling their subscription with their current provider of retail AV services ("cord-cutting") and switching to the JV's offering. In Denmark, the main providers of retail AV services, TDC is offering also fixed internet access service and mobile telecommunications services. Telia is also active in such markets. Moreover, respondents to the market investigation indicate that the almost 97% of households in Denmark receive broadband signal of over 100 Mbps and therefore are capable of transmitting AV services.[265] In case of a blackout of exclusively NENT's TV channels, customers would have the possibility to keep their current fixed internet access service and retail AV service subscription and continue watching NENT's TV channels, either basic or premium pay, on NENT's OTT service, Viaplay, which would be supplied independently in the market ('cord-shaving"). Based on the above, the Commission notes that switching to the JV's retail AV service would be further constrained by the current market trend in Denmark of customers subscribing to fibre based retail AV services and fixed internet access services.

(374) Moreover, the Commission considers that the Transaction does not significantly change NENT's incentive to engage into partial foreclosure. While any TV broadcaster would have the incentive to obtain a higher remuneration for the TV channels it is supplying to TV distributors, the increase in the JV's downstream market position does not significantly increase NENT's bargaining position. In particular, NENT would still need to get access to the customer base of competing

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262 Responses to questionnaire Q7 to retail suppliers of AV services in Denmark, question E.1.

263 Form CO, Annex 55.

264 In 2016, Canal Digital had approximately […] subscribers and Viasat […] subscribers. Their combined customer base decreased from […] to […] in only two years.

265 Responses to questionnaire Q7 to retail suppliers of AV services in Denmark, question F.1.
Responses to questionnaire Q7 to retail suppliers of AV services in Denmark, question F.1 and questionnaire Q8 to TV broadcasters in Denmark, question F.4.

providers of retail AV services to preserve the advertising revenue from the supply of its channels.

(375) Finally, the Commission considers that it would not be relevant to assess whether NENT would have the incentive to refuse to supply OTT rights to NENT's TV channels. NENT would remain active independently in the market for the retail supply of AV services through its OTT service, Viaplay. The JV would combine the Parties' DTH businesses. Therefore, the Commission considers that the Transaction does not significantly change NENT's incentive to licence OTT rights to competing providers of retail AV services. The Commission has assessed whether the Transaction would change NENT's incentive to engage into partnership related to its OTT services with the JV's competing providers of retail AV services in Section 6.4.4.4.

(376) In light of the above, the Commission considers that NENT will not likely have the incentive to engage in total or partial input foreclosure of its TV channels in Denmark, irrespective of any plausible segmentation of the product market in basic pay or premium pay sports or premium pay TV non-sports channels.

c. Impact on effective competition and conclusion

(377) The Commission considers that due to the lack of incentive for all these types of channels, it is not needed to assess whether any foreclosure strategy would have a negative impact on effective competition.

(378) In light of the foregoing, the Commission concludes that the Transaction would not raise serious doubts as to its compatibility with the internal market resulting from total or partial input foreclosure of NENT's TV channels, irrespective of any plausible segmentation[266], in Denmark.

6.4.3. Possible foreclosure of competing wholesale suppliers of TV channels from distributing to the JV's retail AV services (customer foreclosure)

(379) In this Section, the Commission has assessed potential concerns regarding the foreclosure of competing wholesale suppliers of pay TV channels in Norway, Sweden and Finland where the JV will be active in the downstream market for the retail supply of AV services, and any plausible sub-segment, with a combined market share above 30%.

(380) While, the JV will be also active in the market for the retail supply of AV services in Denmark, the Commission notes that the JV's market share in the Danish market for the retail supply of AV services is below 30%[267], under any narrower possible market segmentation, and that the downstream market is therefore not a vertically affected market.

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266 NENT's basic pay TV channels include all different genres of basic pay TV channels supplied by NENT in the market. NENT's premium pay sports TV channels include all sports channels supplied by NENT in the market. NENT's premium pay non-sports TV channels include film & series channels supplied by NENT in the market.

267 See market shares Section 6.2.1.4.(B).

6.4.3.1. Norway

(381) In Norway, the JV will be active in the retail supply of AV services by combining Canal Digital's DTH business and Viasat's DTH and IPTV activities. NENT will remain active in the wholesale supply of FTA and basic pay TV channels, premium pay TV sports channels and premium pay TV non-sports channels. NENT would also remain active as retail supplier of AV services through its OTT applications[268], Viaplay. Telenor would also remain active in the retail supply of AV services via cable and IPTV through the Telenor brand (which will not be contributed to the JV).[269] The merger specific change is the addition of Canal Digital's downstream activities to NENT's DTH and IPTV service, Viasat.[270]

(382) The Commission notes that the JV's market share in the Norwegian market for the retail supply of AV services is below 30%. Nevertheless, given the JV's higher market share in the narrow market segment for the supply of premium pay-TV retail AV services, excluding non-linear OTT providers ([30-40]% in 2018) and the market for the retail supply of premium AV services for SDUs, excluding non-linear OTT players([40-50]% in 2018), the Commission has assessed the risk of customer foreclosure strategies in Norway.

(383) In particular, the Commission has assessed the risk of the following two types of customer foreclosure strategies: (i) total foreclosure of rival TV broadcasters through the JV's refusal to carry competing TV channels on its downstream distribution platform; and (ii) partial foreclosure of rival TV broadcasters through, for instance, a degradation of the quality of the viewers' experience for competing TV channels on the JV's distribution platform, or through a reduction in carriage fees.

(384) The Commission has assessed the two abovementioned types of customer foreclosure strategies for all the types of TV channels, which Viasat and Canal Digital were purchasing in Norway, namely: (i) basic pay-TV channels[271],

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268 [Confidential information regarding NENTs sales strategy and policy]. Form CO, paragraph 1294. Therefore, its market share in the market for the retail supply of AV services is not taken into account for the purpose of the assessment of customer foreclosure.

269 Telenor does not offer a standalone OTT service in Norway, but Telenor subscribers have access to a TVE service ("T-We"). Paragraph 250, Form CO.

270 Since NENT and Telenor would remain independently active in the relevant markets post-Transaction, the relationship between them is not assessed in the current Section but in Section 6.5. Furthermore, the Commission notes that the Transaction does not change Telenor's incentive to distribute channels via its own retail AV service platform (not contributed to the JV). In particular, a strategy of foreclosing third-party channels from Telenor's retail AV service platform (not contributed to the JV) platforms in order to divert viewers and advertising revenues to NENT's channels would harm Telenor's ability to attract subscribers who expect to have access to a wider range of content. For this reason, a customer foreclosure strategy, although potentially beneficial to NENT's channels, would be detrimental to Telenor. Since NENT has no influence over Telenor's decision making in relation to Telenor's retail AV service platform (not contributed to the JV), the Commission considers the foreclosure of third party TV channels from Telenor's retail AV service platform (not contributed to the JV) as unlikely.

271 NENT supplies its basic pay TV channels as a package. This conclusion is based on demand and supply side factors, which support the view that NENT basic pay TV channels should be treated as a package product. On the demand side, TV distributors purchase a package of NENT's basic pay TV channels in Norway. [Confidential information regarding NENTs sales strategy and policy.]. See Annex 55, Form CO. On the supply side, NENT's basic pay TV channels are sold by TV distributors to end-customers as packages including, not only TV3 but also other basic pay TV channels. Accordingly, the demand and supply side analysis of the purchase and supply of NENT's basic pay TV channels shows that NENT's channels constitute a package product. The Commission has therefore made its assessment of

(ii) premium pay TV sports channels, and (iii) premium pay TV non-sports channels.

(385) For the purposes of its assessment, the Commission has considered, in particular, as the more likely potential targets of a customer foreclosure strategy, the channels with the highest market shares. On the basis of the market shares presented in Section 6.2.1.1.(A), the main targets of potential foreclosure in Norway are likely to be the other two main commercial broadcasters, TV2 Norge and Discovery.[272]

(386) The question as to whether the JV would have the ability or the incentive to undertake a partial or total customer foreclosure strategy has been assessed in all possible market segments where basic pay TV channels and premium pay TV channels are acquired. The Commission has conducted its assessment of the impact of a total or partial foreclosure strategy in respect of the possible markets for which TV channels are an important input.[273]

(387) In Section 6.1.1., the Commission considered that the question whether Telenor and NRK belong to the same economic unit or whether they make up separate economic units with an independent power of decision can be left open as the Transaction does not raise serious doubts as to its compatibility with the internal market regardless of the answer to this question. In particular, as regard to a potential vertical relationship between NRK and the JV, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market from total or partial customer foreclosure to the detriment of third parties' TV channels, irrespective of any plausible segmentation, for the following reason. In order to benefit NRK, a hypothetical customer foreclosure strategy would be aimed at limiting the JV's acquisition of TV channels from third parties in order to increase NRK's viewership and strengthen the market position of NRK. As indicated in Section 6.4.2.1, NRK, however, is not a commercial broadcaster and it is not funded through advertising revenues. Therefore, any customer foreclosure strategy to increase NRK's viewership would not bring any economic benefit to any of NRK, the JV or the Parties.

(A) The Notifying Parties' view

(388) The Notifying Parties argue that the Transaction will not give to the JV the ability and incentive to engage in customer foreclosure in Norway. Pre-Transaction, NENT is vertically integrated as a supplier and distributor of TV channels. Post-Transaction, NENT will remain active as a supplier of TV channels but NENT's

anticompetitive input foreclosure considering NENT's basic pay TV channels as a package therefore including all different genres of basic pay TV channels supplied by NENT in the market.

272 The Commission has not considered NRK as a potential target of foreclosure strategy since NRK is a FTA subject to "must-carry" obligations. NENT is not offering any FTA channel on the market.

273 Basic pay TV channels are acquired as an input for the markets for the retail supply of (i) AV services (ii) linear pay AV services, (iii) linear basic pay AV services (iv) all possible markets (i) to (iii) segmented into MDU and SDU. Premium pay TV channels are acquired as an input for the markets for the retail supply of (i) AV services (ii) linear pay AV services, (iii) linear premium pay AV services (iv) all possible markets (i) to (iii) segmented into MDU and SDU. The Commission hereafter, in this section, refers to the 'retail supply of AV services' or 'retail AV services' as shorthand for all possible markets comprising the retail supply of (i) AV services (ii) linear pay AV services, (iii) linear basic pay AV services (iv) linear premium pay AV services, (v) all possible markets (i) to (iv) segmented into MDU and SDU.

vertical integration will be reduced with the transfer of its 100% owned entity, Viasat Consumer, into a joint venture 50% co-owned with Telenor.

(389) With respect to the JV's ability to undertake a customer foreclosure strategy, the Notifying Parties consider that, first, the contractual agreement currently in place between TV broadcasters and each of Viasat and Canal Digital would limit the JV's ability to engage in such practices. Second, the JV does not have the required market power, in particular due to the structural decline of Viasat and Canal Digital's DTH offering.

(390) Even if the JV had the ability to engage in a customer foreclosure strategy by preventing rival TV broadcasters from distributing its TV channels to their customers, the Notifying Parties submit that the Transaction does not increase incentives to engage into customer foreclosure strategies. First, the Notifying Parties consider that NENT's and Telenor's incentives are not aligned. In particular, a customer foreclosure strategy would be beneficial exclusively to NENT which would expand its advertising revenue. Therefore, Telenor would try to oppose such strategy. Second, NENT has a limited market position in the market for the wholesale supply of TV channels. Therefore, any selective customer foreclosure strategy would firstly benefit other broadcasters, such as TV2 Norge and Discovery, with a higher market position. [Confidential information regarding NENTs sales strategy and policy].

(391) Even if the JV would have the ability and incentive to engage in a customer foreclosure strategy, the Notifying Parties, particularly in light of the JV's limited importance as a customer due to its limited position in the downstream market, consider it unlikely that any such conduct would result in the foreclosure or marginalisation of channels competing with NENT's TV channels to such an extent that competition would be negatively affected.

(B) The Commission's assessment

(392) The Commission's assessment of potential concerns regarding the foreclosure of competing wholesale suppliers of pay TV channels, in light of the results of the market investigation, is set out in the following paragraphs. For this purpose, in line with paragraph 59 of the Non-Horizontal Merger Guidelines, the Commission examines: (i) whether the JV would have the ability to foreclose competing wholesale supplier of TV channels; (ii) whether it would have the economic incentive to do so; and (iii) whether a foreclosure strategy would have a significant detrimental effect on competition downstream.

a. Ability to engage in customer foreclosure

(393) When considering whether the JV would have the ability to foreclose access to downstream markets, the Commission examines whether there are sufficient economic alternatives in the downstream market for upstream rivals to sell their output.

(394) The Commission considers that the JV would lack the ability to engage in either total or partial customer foreclosure strategies of third parties' pay TV channels since it does not have a sufficient degree of market power in the market for the

retail supply of AV services, irrespective of any possible segmentation, for the following reasons.

(395) First, most of the respondents to the market investigation do not expect that the JV post-Transaction will implement a customer foreclosure strategy by either stopping to source TV channels or degrade the terms and conditions at which it does so.[274] Only one respondent indicated that the JV may engage in partial customer foreclosure strategies by worsening the terms and conditions at which it purchases channels from third parties. The respondent specified that its concern is more generic and it relates to the general retail consolidation trend in the market and it does not have a view on whether this specific Transaction is likely to raise concerns.

(396) Second, the JV will have a limited market position in the market for the retail supply of AV services, and any possible sub-segment. The JV will hold a market share of [10-20]% by value in the Norwegian market for the retail supply of AV services (based on 2018 data) and below 30% in all market segments except for the market for the supply of premium pay-TV retail AV services, excluding non-linear OTT providers and the market for the retail supply of premium AV services for SDUs, excluding non-linear OTT players.[275]

Table 39: Market shares in 2018 in the market for the retail supply of AV services by revenue

	Pay-TV	**Pay-TV (excluding non-linear OTT providers)**	**Basic pay-TV**	**Basic pay-TV (excluding non-linear OTT providers)**	**Premium pay-TV**	**Premium pay-TV (excluding non-linear OTT providers)**	**Pay-TV for MDUs**	**Pay-TV for SDUs**	**Pay-TV for MDUs (excluding non-linear OTT providers)**	**Pay-TV for SDUs (excluding non-linear OTT)**
Canal Digital	[10-20]	[10-20]	[10-20]	[10-20]	[10-20]	[20-30]	[10-20]	[10-20]	[10-20]	[20-30]
Viasat	[0-5]	[0-5]	[0-5]	[0-5]	[5-10]	[10-20]	[0-5]	[0-5]	[0-5]	[5-10]
JV	***[10-20]***	***[20-30]***	***[10-20]***	***[10-20]***	***[20-30]***	***[30-40]***	***[10-20]***	***[20-30]***	***[10-20]***	***[20-30]***
Telenor	[10-20]	[20-30]	[20-30]	[20-30]	[5-10]	[10-20]	[20-30]	[10-20]	[30-40]	[10-20]
Viaplay	[0-5]	-	[0-5]	-	[0-5]	-	[0-5]	[0-5]	-	-
Parties	**[40-50]**	**[40-50]**	**[40-50]**	**[40-50]**	**[30-40]**	**[40-50]**	**[40-50]**	**[40-50]**	**[40-50]**	**[40-50]**
Telia	[10-20]	[10-20]	[10-20]	[10-20]	[5-10]	[5-10]	[10-20]	[10-20]	[20-30]	[10-20]
RiksTV	[10-20]	[10-20]	[10-20]	[10-20]	[0-5]	[5-10]	[5-10]	[10-20]	[5-10]	[10-20]
Non-linear OTT (excluding Viaplay)	[10-20]	-	[0-5]	-	[30-40]	-	[10-20]	[10-20]	-	-
Others	[20-30]	[20-30]	[20-30]	[20-30]	[20-30]	[30-40]	[10-20]	[20-30]	[20-30]	[20-30]

Source: Form CO, Annex 12.

(397) Table 40, reproduced below, shows the market shares of the JV and its main competitors in the market for the retail supply of AV services and possible sub-segments by subscribers. The JV would have an even more limited market position in the overall market for the retail supply of AV services with a market share of approximately [10-20]%.

274 Responses to questionnaire Q2 to TV broadcasters in Norway, questions G.1 and G.2.

275 See market shares available in Section 6.2.1.1.(B).

Table 40: Market shares in 2018
in the market for the retail supply of AV services by subscribers

	Overall market	**Overall market (excluding non-linear OTT providers)**	**Pay-TV**	**Pay-TV (excluding non-linear OTT providers)**	**Basic pay-TV**	**Basic pay-TV (excluding non-linear OTT providers)**
Canal Digital	[5-10]	[10-20]	[5-10]	[10-20]	[10-20]	[10-20]
Viasat	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]
JV	***[10-20]***	***[10-20]***	***[10-20]***	***[10-20]***	***[10-20]***	***[10-20]***
Telenor	[10-20]	[10-20]	[10-20]	[20-30]	[20-30]	[20-30]
Viaplay	*[5-10]*	-	*[5-10]*	-	*[10-20]*	-
Parties	**[20-30]**	**[30-40]**	**[20-30]**	**[30-40]**	**[40-50]**	**[40-50]**
Telia	[10-20]	[10-20]	[10-20]	[10-20]	[10-20]	[10-20]
RiksTV	[5-10]	[5-10]	[5-10]	[5-10]	[10-20]	[10-20]
Non-linear OTT (excluding Viaplay)	[30-40]	-	[30-40]	-	[0-5]	-
Others	[20-30]	[40-50]	[20-30]	[30-40]	[20-30]	[20-30]

Source: Form CO, Annex 12.

(398) The JV's market position would not significantly differ in a market segment for the retail supply of premium pay AV services where it will have a combined market share of approximately [10-20]% in the premium pay market segment excluding non-linear OTT services, such as Netflix.

Table 41: Market shares in 2018
in the market for the retail supply of AV services by subscribers

	Premium pay-TV	**Premium pay-TV (excluding non-linear OTT providers)**	**Pay-TV for MDUs**	**Pay-TV for SDUs**	**Pay-TV for MDUs (excluding non-linear OTT providers)**	**Pay-TV for SDUs (excluding non-linear OTT)**
Canal Digital	[0-5]	[10-20]	[0-5]	[10-20]	[5-10]	[20-30]
Viasat	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]
JV	***[5-10]***	***[10-20]***	***[0-5]***	***[10-20]***	***[5-10]***	***[20-30]***
Telenor	[0-5]	[5-10]	[10-20]	[5-10]	[30-40]	[10-20]
Viaplay	*[0-5]*	-	*[5-10]*	*[5-10]*	-	-
Parties	**[10-20]**	**[20-30]**	**[20-30]**	**[20-30]**	**[30-40]**	**[30-40]**
Telia	[5-10]	[5-10]	[10-20]	[5-10]	[20-30]	[10-20]
RiksTV	[0-5]	[0-5]	[0-5]	[5-10]	[0-5]	[10-20]
Non-linear OTT (excluding Viaplay)	[50-60]	-	[30-40]	[30-40]	-	-
Others	[20-30]	[60-70]	[20-30]	[20-30]	[30-40]	[30-40]

Source: Form CO, Annex 12.

(399) Third, several alternative providers of linear retail AV services would remain available in the market for the retail supply of AV services, excluding non-linear, where TV channels are used as an input. In particular, Telenor, Telia, Altibox and RiksTV will remain active with market shares by revenue of respectively

[10-20]%, [10-20]%, [10-20]% and [10-20]% and market shares by subscribers of respectively [10-20]%, [10-20]%, [5-10]% and [5-10]%.

(400) Moreover, as shown in Figure 2, in Norway there is a trend of customers switching to TV services distributed over fibre networks which would likely continue post-Transaction. NENT's competing broadcasters would continue to have the ability to distribute their channels through fiber based providers of retail AV services.

(401) Finally, with reference to possible contractual limitations that may reduce the JV's ability to perform such conduct, the Commission notes that Canal Digital's agreements with the competing TV broadcasters TV2 Norge, Disney and Discovery, expire respectively on […], […] and […][276] and that Viasat's agreements with the competing TV broadcasters TV2 Norge, Disney, Viacom and Discovery, expire respectively on […], […], […] and […][277]. Therefore, an ability on the part of the JV to totally or partially foreclose competing broadcasters cannot be held to arise in the near future in light of the applicable contractual provisions.

(402) In light of the above, the Commission considers that the JV will not have the ability to engage in total or partial customer foreclosure of its strategies of third parties' pay TV channels in Norway since it does not have a sufficient degree of market power in the market for the retail supply of AV services, irrespective of any possible segmentation.

b. Incentive to engage in customer foreclosure

(403) Given the lack of ability to foreclose, it is not necessary to conclude as to whether the JV will have the incentive to engage in total or partial customer foreclosure strategies of third parties' pay TV channels.

(404) Nevertheless, the Commission has assessed the JV's incentives, and considers that the JV would lack the incentive to engage in total or partial customer foreclosure strategies of third parties' pay TV channels for the following reasons.

(405) First, most of the respondents to the market investigation do not expect that the JV post-Transaction will implement a customer foreclosure strategy by either stopping to source TV channels or degrading the terms and conditions at which it does so.[278] Only one respondent indicated that the JV may engage in partial customer foreclosure strategies by worsening the terms and conditions at which it purchases channels from third parties. The respondent specified that its concern is more generic and it relates to the general retail consolidation trend in the market and it does not have a view on whether this specific Transaction is likely to raise concerns.

276 Telenor's reply to RFI 14, Annex 3.

277 NENT's reply to RFI 14, Annex 4.

278 Responses to questionnaire Q2 to TV broadcasters in Norway, questions G.1 and G.2.

(406) Second, the Commission notes that a customer foreclosure strategy whereby the JV would not broadcast channels of competing TV broadcasters could have a detrimental impact on the retail AV offering of the JV. One document submitted by Telenor, for examples, shows that [confidential strategic views of Telenor in the market for the wholesale acquisition of TV channels].[279] In the same document, Telenor describes [confidential strategic views of Telenor in the market for the wholesale acquisition of TV channels] Moreover, the Notifying Parties have provided an analysis prepared by an external economic consultant showing that the JV would not have an incentive to engage in such foreclosing strategy.[280]

(407) Third, the Commission considers that linear retail suppliers of AV services need a large and diverse portfolio of attractive TV channels of different genres for their retail packages. In particular, the main competing providers of retail AV services, namely Telia, Altibox and RiksTV are all offering channels offered by TV2 Norge and Discovery.[281] Therefore, a foreclosure of competing TV broadcasters would be detrimental to the retail provider of AV services which would offer a product of inferior quality vis-à-vis its competitors.

(408) Fourth, the Commission notes that there is already another similar vertically integrated player, RiksTV, active in Norway. RiksTV is jointly owned by NRK and TV2 Norge, the leading wholesale supplier of pay TV channels in Norway. Even if owned at 50% by TV2 Norge, RiksTV is sourcing TV channels broadly in the market and its offering to its […] subscribers include also NENT and Discovery's channels. The Commission considers that, similarly to RiksTV, the JV would have limited incentives to engage in total customer foreclosure strategies.

(409) Moreover, the, Commission notes that a strategy of foreclosing third-party channels from the JV's platforms in order to divert viewers and advertising revenues to NENT's channels would harm the JV's ability to attract subscribers who expect to have access to a wider range of content. For this reason, a customer foreclosure strategy, although potentially beneficial to NENT's channels, would be detrimental to Telenor, which could therefore be expected to use its influence over the JV to block it. Thus, the divergence between NENT's and Telenor's commercial interests is likely to prevent the JV from engaging in customer foreclosure to the benefit of NENT's channels business.

(410) Finally, the Commission considers that the Transaction does not significantly change the JV's incentive to engage into partial foreclosure. While any TV distributor could be considered to have the incentive, if possible, to reduce the cost for licensing TV channels from third parties TV broadcasters, the increase in the JV's downstream market position does not significantly increase the JV's bargaining position towards wholesale suppliers of TV channels (compared to NENT's or Canal Digital's pre-Transaction positions). First, the JV would still need to get access to a broad range of content from competing TV channels in order to offer an attractive package to its customers. Second, the JV will not be on

279 Form CO, Annex 51(d)(i).
280 Form CO, Annex 39.
281 Form CO, paragraphs 479-502.

a preferential position compared to competing providers of retail AV services, such as Telia and Altibox.

(411) In light of the above, the Commission concludes that the JV would not have the incentive to engage in total or partial customer foreclosure of third parties' pay TV channels.

c. Impact on effective competition and conclusion

(412) Given the lack of ability and incentive to foreclose, it is not necessary to conclude as to whether total or partial customer foreclosure strategies of third parties' pay TV channels would have a negative impact on effective competition.

(413) Nevertheless, the Commission has assessed the potential impact of such strategies and considers that it is unlikely that any customer foreclosure strategies of third parties' TV channels considered above would have a significant negative impact on consumers and effective competition in Norway, for the following reasons.

(414) First, as noted in section 6.3.2, the JV would not hold a significant market position as a customer in the downstream market for the retail supply of AV services, irrespective of any possible segmentation of the market for the retail supply of AV services. The JV will have a limited market share of [10-20]% by revenue in the national market for the retail supply of AV services.[282]

(415) Second, while the results of the market investigation indicated that such foreclosure strategy may have a negative impact on their ability to compete,[283] the Commission considers that rival TV broadcasters are also able to develop new strategies to reach viewers. In the first place, the Commission notes that both Discovery and TV2 Norge have launched their own OTT services in order to reach viewers directly. As of December 2018, TV2 Norge's OTT service, TV2 Norge Sumo had approximately […] subscribers while Discovery's OTT services, Dplay and Eurosport player, had respectively […] and […] subscribers.

(416) Moreover, in the event that the JV sought to cease carrying third party TV channels on its platform competing broadcasters would still be able to expand their activities with other retail suppliers of AV services. In particular, Telenor, Telia, Altibox and RiksTV will remain active with market shares by revenue of respectively [10-20]%, [10-20]%, [10-20]% and [10-20]% and market shares by subscribers of respectively [10-20]%, [10-20]%, [5-10]% and [5-10]%.

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[282] The JV and the Parties' market shares have been presented in Section 6.4.3.2.(B).a above. The JV will hold a market share below 30% in all market segments except for the market for the supply of premium pay-TV retail AV services, excluding non-linear OTT providers and the market for the retail supply of premium AV services for SDUs, excluding non-linear OTT players. Moreover, the Commission notes that [confidential information regarding NENTs sales strategy and policy]. Form CO, paragraph 1294. Therefore, its market share in the market for the retail supply of AV services is not taken into account for the purpose of the assessment of customer foreclosure.

[283] Responses to questionnaire Q2 to TV broadcasters in Norway, question G.4.

(417) Finally, as also indicated above, the agreements in place between the JV and wholesale suppliers of TV channels afford protection in relation to carriage fees and potential partial foreclosure strategy. In particular, Canal Digital's agreements with the competing TV broadcasters TV2 Norge, Disney and Discovery, expire respectively on […], […] and […][284] and that Viasat's agreements with the competing TV broadcasters TV2 Norge, Disney, Viacom and Discovery, expire respectively on […], […], […] and […][285].

(418) In light of the foregoing, the Commission concludes that the Transaction would not raise serious doubts as to its compatibility with the internal market resulting from total or partial customer foreclosure of third parties' TV channels, irrespective of any plausible segmentation[286], in Norway.

6.4.3.2. Sweden

(419) In Sweden, the JV will be active in the retail supply of AV services by combining Canal Digital's DTH business and Viasat's DTH and IPTV activities. NENT will remain active in the wholesale supply of FTA and basic pay TV channels, premium pay TV sports channels and premium pay TV non-sports channels. NENT would also remain active as retail supplier of AV services through its OTT applications[287], Viaplay. Telenor would remain active in the retail supply of AV services via cable and IPTV through the Telenor brand (which will not be contributed to the JV).[288] The merger specific change is the addition of Canal Digital's downstream activities to NENT's DTH and IPTV service, Viasat.[289]

(420) The Commission notes that the JV's market share in the Swedish market for the retail supply of AV services is below 30%. Nevertheless, given the JV's higher market share in the narrow market segments for the supply of pay-TV retail AV services, excluding non-linear OTT providers, ([30-40]% in 2018), the supply of premium pay-TV retail AV services, excluding non-linear OTT providers, ([30-40]% in 2018), the supply of pay-TV retail AV services for SDUs, excluding non-linear OTT providers, ([30-40]% in 2018), the supply of pay-TV retail

284 Telenor's reply to RFI 14, Annex 3.

285 NENT's reply to RFI 14, Annex 4.

286 NENT's basic pay TV channels include all different genres of basic pay TV channels supplied by NENT in the market. NENT's premium pay sports TV channels include all sports channels supplied by NENT in the market. NENT's premium pay non-sports TV channels include film & series channels supplied by NENT in the market.

287 [Confidential information regarding NENTs sales strategy and policy]. Form CO, paragraph 1294. Therefore, its market share in the market for the retail supply of AV services is not taken into account for the purpose of the assessment of customer foreclosure.

288 Telenor does not offer a standalone OTT service in Sweden, but Telenor subscribers have access to a TVE service ("Telenor Stream"). Paragraph 593, Form CO.

289 Since NENT and Telenor would remain independently active in the relevant markets post-Transaction, the relationship between them is not assessed in the current Section but in Section 6.5. Furthermore, the Commission notes that the Transaction does not change Telenor's incentive to distribute channels via its own retail AV service platform (not contributed to the JV). In particular, a strategy of foreclosing third-party channels from the Telenor's retail AV service platform (not contributed to the JV) platforms in order to divert viewers and advertising revenues to NENT's channels would harm Telenor's ability to attract subscribers who expect to have access to a wider range of content. For this reason, a customer foreclosure strategy, although potentially beneficial to NENT's channels, would be detrimental to Telenor. Since NENT has no influence over Telenor's decision making in relation to Telenor's retail AV service platform (not contributed to the JV), the Commission considers the foreclosure of third party TV channels from Telenor's retail AV service platform (not contributed to the JV) as unlikely.

premium AV services for SDUs, excluding non-linear OTT providers, ([30-40]% in 2018), the Commission has assessed the risk of customer foreclosure strategies in Sweden.

(421) In particular, the Commission has assessed the risk of the following two types of customer foreclosure strategies: (i) total foreclosure of rival TV broadcasters through the JV's refusal to carry competing TV channels on its downstream distribution platform; and (ii) partial foreclosure of rival TV broadcasters through, for instance, a degradation of the quality of the viewers' experience for competing TV channels on the JV's distribution platform, or through a reduction in carriage fees.

(422) The Commission has assessed the two abovementioned types of customer foreclosure strategies for all the types of TV channels, which Viasat and Canal Digital were purchasing in Sweden, namely: (i) FTA and basic pay-TV channels[290], (ii) premium pay TV sports channels, and (iii) premium pay TV non-sports channels.

(423) For the purposes of its assessment, the Commission has considered, in particular, as the more likely potential targets of a customer foreclosure strategy, the channels with the highest market shares. On the basis of the market shares presented in Section 6.2.1.2.(A), the main targets of potential foreclosure in Sweden are likely to be the other two main commercial broadcasters, Telia and Discovery.

(424) The question as to whether the JV would have the ability or the incentive to undertake a partial or total customer foreclosure strategy has been assessed in all possible market segments where basic pay TV channels and premium pay TV channels are acquired. The Commission has conducted its assessment of the impact of a total or partial foreclosure strategy in respect of the possible markets for which TV channels are an important input.[291]

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290 NENT supplies its FTA and basic pay TV channels as a package. This conclusion is based on demand and supply side factors, which support the view that NENT FTA and basic pay TV channels should be treated as a package product. On the demand side, TV distributors purchase a package of NENT's FTA and basic pay TV channels in Sweden. [Confidential information regarding NENTs sales strategy and policy]. See Annex 55, Form CO. On the supply side, NENT's FTA and basic pay TV channels are sold by TV distributors to end-customers as packages including, not only TV3 but also other basic pay TV channels. Accordingly, the demand and supply side analysis of the purchase and supply of NENT's FTA and basic pay TV channels shows that NENT's channels constitute a package product. The Commission has therefore made its assessment of anticompetitive input foreclosure considering NENT's FTA and basic pay TV channels as a package therefore including all different genres of FTA and basic pay TV channels supplied by NENT in the market.

291 Basic pay TV channels are acquired as an input for the markets for the retail supply of (i) AV services (ii) linear pay AV services, (iii) linear basic pay AV services (iv) all possible markets (i) to (iii) segmented into MDU and SDU. Premium pay TV channels are acquired as an input for the markets for the retail supply of (i) AV services (ii) linear pay AV services, (iii) linear premium pay AV services (iv) all possible markets (i) to (iii) segmented into MDU and SDU. The Commission hereafter, in this section, refers to the 'retail supply of AV services' or 'retail AV services' as shorthand for all possible markets comprising the retail supply of (i) AV services (ii) linear pay AV services, (iii) linear basic pay AV services (iv) linear premium pay AV services, (v) all possible markets (i) to (iv) segmented into MDU and SDU.

(A) The Notifying Parties' view

(425) The Notifying Parties argue that the Transaction will not give to the JV the ability and incentive to engage in customer foreclosure in Sweden. Pre-Transaction, NENT is vertically integrated as a supplier and distributor of TV channels. Post-Transaction, NENT will remain active as a supplier of TV channels but NENT's vertical integration will be reduced with the transfer of its 100% owned entity, Viasat Consumer, into a joint venture 50% co-owned with Telenor.

(426) With respect to the JV's ability to undertake a customer foreclosure strategy, the Notifying Parties consider that, first, the contractual agreement currently in place would limit the JV's ability to engage in such practices. Second, the JV does not have the required market power, in particular due to the structural decline of Viasat and Canal Digital's DTH offering.

(427) Even if the JV had the ability to engage in a customer foreclosure strategy by preventing rival TV broadcasters from distributing its TV channels to their customers, the Notifying Parties submit that the Transaction does not increase incentives to engage into customer foreclosure strategies. First, the Notifying Parties consider that NENT's and Telenor's incentives are not aligned. In particular, a customer foreclosure strategy would be beneficial exclusively to NENT which would expand its advertising revenue. Therefore, Telenor would try to oppose such strategy. Second, NENT has a limited market position in the market for the wholesale supply of TV channels. Therefore, any selective customer foreclosure strategy would firstly benefit other broadcasters, such as Telia and Discovery, with a higher market position. Third, any profit of NENT from additional advertising revenue would not compensate for the loss from the number of subscribers switching away from the JV's retail AV service.

(428) Even if the JV would have the ability and incentive to engage in an customer foreclosure strategy, the Notifying Parties, particularly in light of the JV's limited importance as a customer due to its limited position in the downstream market, consider it unlikely that any such conduct would result in the foreclosure or marginalisation of channels competing with NENT's TV channels to such an extent that competition would be negatively affected.

(B) The Commission's assessment

(429) The Commission's assessment of potential concerns regarding the foreclosure of competing wholesale suppliers of pay TV channels, in light of the results of the market investigation, is set out in the following paragraphs. For this purpose, in line with paragraph 59 of the Non-Horizontal Merger Guidelines, the Commission examines: (i) whether the JV would have the ability to foreclose competing wholesale supplier of TV channels; (ii) whether it would have the economic incentive to do so; and (iii) whether a foreclosure strategy would have a significant detrimental effect on competition downstream.

a. Ability to engage in customer foreclosure

(430) When considering whether the JV would have the ability to foreclose access to downstream markets, the Commission examines whether there are sufficient economic alternatives in the downstream market for upstream rivals to sell their output.

(431) The Commission considers that the JV would lack the ability to engage in either total or partial customer foreclosure strategies of third parties' pay TV channels since it does not have a sufficient degree of market power in the market for the retail supply of AV services, irrespective of any possible segmentation, for the following reasons.

(432) First, none of the respondents to the market investigation consider that the JV would stop sourcing channels from NENT's competitors[292] but, some believe that it could engage in partial foreclosure strategies degrading terms and conditions for the acquisition of certain channels or stop carrying only certain channels.[293] One respondent notes that the JV may have the incentive not to carry third party channels for which the customers' willingness to pay is very limited and that these channels could be removed to reduce costs. Another respondent considers that a service relying exclusively on NENT's channels would not be competitive. However, the same respondent indicated that the JV may engage in partial customer foreclosure strategies by worsening the terms and conditions at which it purchases channels from third parties. The respondent specified that its concern is more generic and relates to the general retail consolidation trend in the market and it does not have a view on whether this specific Transaction is likely to raise concerns.

(433) Second, as represented in Table 42 below, the JV will hold a market share of [20-30]% by value in the Swedish market for the retail supply of AV services (based on 2018 data) and below 30% in all market segments except for the market for the supply of premium pay-TV retail AV services, excluding non-linear OTT providers as well as market for the supply of pay-TV retail AV service, excluding non-linear OTT providers, as well as the market for the supply of pay-TV retail AV service for SDUs, excluding non-linear OTT providers as well as the supply of pay-TV retail premium AV services for SDUs, excluding non-linear OTT providers.[294]

[292] Responses to questionnaires Q3 to retail suppliers of AV services in Sweden and Q4 to TV broadcasters in Sweden, question G.1.

[293] Responses to questionnaires Q3 to retail suppliers of AV services in Sweden and Q4 to TV broadcasters in Sweden, question G.2.

[294] See market shares available in Section 6.2.1.1.(B).

Table 42: Market shares in 2018
in the market for the retail supply of AV services by revenue

	Pay-TV	**Pay-TV (excluding non-linear OTT providers)**	**Basic pay-TV**	**Basic pay-TV (excluding non-linear OTT providers)**	**Premium pay-TV sector**	**Premium pay-TV (excluding non-linear OTT providers)**	**Pay-TV for MDUs**	**Pay-TV for SDUs**	**Pay-TV for MDUs (excluding non-linear OTT providers)**	**Pay-TV for SDUs (excluding non-linear OTT)**
Canal Digital	[10-20]	[10-20]	[10-20]	[10-20]	[5-10]	[10-20]	[10-20]	[5-10]	[10-20]	[10-20]
Viasat	[10-20]	[10-20]	[5-10]	[10-20]	[10-20]	[20-30]	[0-5]	[10-20]	[0-5]	[10-20]
JV	***[20-30]***	***[30-40]***	***[20-30]***	***[20-30]***	***[20-30]***	***[30-40]***	***[10-20]***	***[20-30]***	***[10-20]***	***[30-40]***
Telenor	[5-10]	[5-10]	[10-20]	[10-20]	[0-5]	[5-10]	[10-20]	[5-10]	[10-20]	[5-10]
Viaplay	[0-5]	-	[5-10]	-	[0-5]	-	-	[5-10]	-	-
Parties	**[30-40]**	**[30-40]**	**[30-40]**	**[30-40]**	**[20-30]**	**[30-40]**	**[20-30]**	**[30-40]**	**[20-30]**	**[40-50]**
Tele2/ ComHem	[20-30]	[30-40]	[30-40]	[40-50]	[20-30]	[30-40]	[40-50]	[20-30]	[40-50]	[30-40]
Telia	[10-20]	[10-20]	[10-20]	[10-20]	[10-20]	[10-20]	[10-20]	[10-20]	[10-20]	[10-20]
Non-linear OTT (excluding Viaplay)	[20-30]	-	[0-5]	-	[20-30]	-	-	[20-30]	-	-
Others	[5-10]	[5-10]	[0-5]	[5-10]	[5-10]	[5-10]	[10-20]	[0-5]	[10-20]	[5-10]

Source: Form CO, Annex 12.

(434) Table 43, reproduced below, shows the market shares of the JV and its main competitors in the market for the retail supply of AV services and possible sub-segments by subscribers. The JV would have an even more limited market position with a market share of approximately [5-10]% in the overall market for the retail supply of AV services.

Table 43: Market shares in 2018
in the market for the retail supply of AV services by subscribers

	Overall market	**Overall market (excluding non-linear OTT providers)**	**Pay-TV**	**Pay-TV (excluding non-linear OTT providers)**	**Basic pay-TV**	**Basic pay-TV (excluding non-linear OTT providers)**
Canal Digital	[0-5]	[5-10]	[0-5]	[5-10]	[0-5]	[5-10]
Viasat	[0-5]	[5-10]	[0-5]	[5-10]	[0-5]	[0-5]
JV	***[5-10]***	***[10-20]***	***[5-10]***	***[10-20]***	***[5-10]***	***[5-10]***
Telenor	[5-10]	[5-10]	[5-10]	[5-10]	[10-20]	[10-20]
Viaplay	*[0-5]*	-	*[0-5]*	-	*[5-10]*	-
Parties	**[10-20]**	**[20-30]**	**[10-20]**	**[20-30]**	**[20-30]**	**[20-30]**
Tele2/ ComHem	[20-30]	[40-50]	[20-30]	[40-50]	[40-50]	[40-50]
Telia	[10-20]	[20-30]	[10-20]	[20-30]	[10-20]	[10-20]
Non-linear OTT (excluding Viaplay)	[30-40]	-	[30-40]	-	[5-10]	-
Others	[10-20]	[10-20]	[5-10]	[10-20]	[5-10]	[10-20]

Source: Form CO, Annex 12.

(435) The JV's market position would not significantly differ in a market segment for the retail supply of premium pay AV services where it will have a combined market share of approximately [10-20]% in the premium pay market segment excluding non-linear OTT services, such as Netflix.

Table 44: Market shares in 2018
in the market for the retail supply of AV services by subscribers

	Premium pay-TV	**Premium pay-TV (excluding non-linear OTT providers)**	**Pay-TV for MDUs**	**Pay-TV for SDUs**	**Pay-TV for MDUs (excluding non-linear OTT providers)**	**Pay-TV for SDUs (excluding non-linear OTT)**
Canal Digital	[0-5]	[5-10]	[0-5]	[0-5]	[0-5]	[5-10]
Viasat	[0-5]	[10-20]	[0-5]	[5-10]	[0-5]	[10-20]
JV	***[5-10]***	***[10-20]***	***[0-5]***	***[10-20]***	***[0-5]***	***[20-30]***
Telenor	[0-5]	[0-5]	[10-20]	[0-5]	[10-20]	[5-10]
Viaplay	*[0-5]*	-	-	*[5-10]*	-	-
Parties	**[10-20]**	**[20-30]**	**[10-20]**	**[10-20]**	**[10-20]**	**[20-30]**
Telia	[10-20]	[30-40]	[50-60]	[10-20]	[50-60]	[30-40]
RiksTV	[10-20]	[20-30]	[10-20]	[5-10]	[10-20]	[20-30]
Non-linear OTT (excluding Viaplay)	[50-60]	-	-	[40-50]	-	-
Others	[10-20]	[20-30]	[10-20]	[5-10]	[10-20]	[10-20]

Source: Form CO, Annex 12.

(436) Third, several alternative providers of linear retail AV services would remain available in the market for the retail supply of AV services, excluding non-linear, where TV channels are used as an input. In particular, Telenor, Telia and Tele2 will remain active with market shares by revenue of respectively [5-10]%, [20-30]%, [40-50]% and [0-5]% and market shares by subscribers of respectively [5-10]%, [10-20]% and [40-50]%.

(437) Moreover, as shown in Figure 4, in Sweden there is a trend of customers switching to TV services distributed over fibre networks which would likely continue post-Transaction. NENT's competing broadcasters would continue to have the ability to distribute their channels through fiber based providers of retail AV services.

(438) Finally, with reference to possible contractual limitations that may reduce the JV's ability to perform such conduct, the Commission notes that Canal Digital's agreements with the competing TV broadcaster Telia, Disney and Discovery, expire respectively on […], […] and […][295] and that Viasat's agreements with the competing TV broadcasters Telia, Disney, NGC and Discovery, expire respectively on […], […], […] and […][296]. Therefore, an ability on the part of the JV to totally or partially foreclose competing broadcasters cannot be held to arise in the near future in light of the applicable contractual provisions.

295 Telenor's reply to RFI 14, Annex 3.
296 NENT's reply to RFI 14, Annex 4.

(439) In light of the above, the Commission considers that the JV will not have the ability to engage in total or partial customer foreclosure of its strategies of third parties' pay TV channels in Sweden since it does not have a sufficient degree of market power in the market for the retail supply of AV services, irrespective of any possible segmentation.

b. Incentive to engage in customer foreclosure

(440) Given the lack of ability to foreclose, it is not necessary to conclude as to whether the JV will have the incentive to engage in total or partial customer foreclosure strategies of third parties' pay TV channels.

(441) Nevertheless, the Commission has assessed the JV's incentives, and considers that the JV would lack the incentive to engage in total or partial customer foreclosure strategies of third parties' pay TV channels for the following reasons.

(442) First, none of the respondents to the market investigation consider that the JV would stop sourcing channels from NENT's competitors[297] but, some believe that it could engage in partial foreclosure strategies degrading terms and conditions for the acquisition of certain channels or stop carrying only certain channels.[298] One respondent notes that the JV may have the incentive not to carry third party channels for which the customers' willingness to pay is very limited and they could be removed to reduce costs. Another respondent considers that a service relying exclusively on NENT's channels would not be competitive. However, the same respondent indicated that the JV may engage in partial customer foreclosure strategies by worsening the terms and conditions at which it purchases channels from third parties. The respondent specified that its concern is more generic and it relates to the general retail consolidation trend in the market and it does not have a view on whether this specific Transaction is likely to raise concerns.

(443) Second, the Commission notes that a customer foreclosure strategy whereby the JV would not broadcast channels of competing TV broadcasters could have a detrimental impact on the retail AV offering of the JV. One document submitted by Telenor, for examples, shows that [confidential strategic views of Telenor in the market for the wholesale acquisition of TV channels].[299] The Notifying Parties have also provided an analysis prepared by an external economic consultant showing that the JV would not have an incentive to engage in such foreclosing strategy.[300]

(444) Third, the Commission considers that linear retail suppliers of AV services need a large and diverse portfolio of attractive TV channels of different genres for their retail packages. In particular, the main competing providers of retail AV services, namely Telia, Altibox and RiksTV are all offering channels offered by TV2 Norge and Discovery.[301] Therefore, a foreclosure of competing TV broadcasters

297 Responses to questionnaires Q3 to retail suppliers of AV services in Sweden and Q4 to TV broadcasters in Sweden, question G.1.

298 Responses to questionnaires Q3 to retail suppliers of AV services in Sweden and Q4 to TV broadcasters in Sweden, question G.2.

299 Form CO, Annex 51(c)(ii).

300 Form CO, Annex 40.

301 Form CO, from paragraphs 479 to 502.

would be detrimental to the retail provider of AV services which would offer a product of inferior quality vis-à-vis its competitors.

(445) Fourth, the Commission notes that there is already another similar vertically integrated player, Telia, active in Sweden. Telia is active both in the market for the wholesale supply of TV channels and in the market for the retail supply of AV services. Telia is sourcing TV channels broadly in the market and its offering to its subscribers include also NENT and Discovery's channels. The Commission considers that, similarly to Telia, the JV would have limited incentives to engage in total customer foreclosure strategies.

(446) Moreover, the Commission notes that a strategy of foreclosing third-party channels from the JV's platforms in order to divert viewers and advertising revenues to NENT's channels would harm the JV's ability to attract subscribers who expect to have access to a wider range of content. For this reason, a customer foreclosure strategy, although potentially beneficial to NENT's channels, would be detrimental to Telenor, which could therefore be expected to use its influence over the JV to block it. Thus, the divergence between NENT's and Telenor's commercial interests is likely to prevent the JV from engaging in customer foreclosure to the benefit of NENT's channels business.

(447) Finally, the Commission considers that the Transaction does not significantly change the JV's incentive to engage into partial foreclosure. While any TV distributor could be considered to have the incentive, if possible, to reduce the cost for licensing TV channels from third parties TV broadcasters, the increase in the JV's downstream market position does not significantly increase the JV's bargaining position towards wholesale suppliers of TV channels (compared to NENT's or Canal Digital's pre-Transaction positions). First, the JV would still need to get access to a broad range of content from competing TV channels in order to offer an attractive package to its customers. Second, the JV will not be on a preferential position compared to competing providers of retail AV services, such as Telia and Tele2.

(448) In light of the above, the Commission concludes that the JV would not have the incentive to engage in total or partial customer foreclosure of third parties' pay TV channels.

c. Impact on effective competition and conclusion

(449) Given the lack of ability and incentive to foreclose, it is not necessary to conclude as to whether total or partial customer foreclosure strategies of third parties' pay TV channels would have a negative impact on effective competition.

(450) Nevertheless, the Commission has assessed the potential impact of such strategies and considers that it is unlikely that any customer foreclosure strategies of third parties' TV channels considered above would have a significant negative impact on consumers and effective competition in Sweden, for the following reasons.

(451) First, as noted in section 6.3.3, the JV would not hold a significant market position as a customer in the downstream market for the retail supply of AV services, irrespective of any possible segmentation of the market for the retail supply of AV services. The JV will have a market share of approximately

[30-40]% by revenue and [10-20]% by volume in the national market for the retail supply of AV services, excluding non-linear, where TV channels are supplied as an input.[302]

(452) Second, while the results of the market investigation indicated that such foreclosure strategy may have a negative impact on their ability to compete,[303] the Commission considers that rival TV broadcasters are also able to develop new strategies to reach viewers. In the first place, the Commission notes that both Discovery and Telia have launched their own OTT services in order to reach viewers directly. As of December 2018, Discovery's OTT services, Dplay and Eurosport player, had respectively […] and […] subscribers.

(453) Moreover, in the event that the JV sought to cease carrying third party TV channels on its platform competing broadcasters would still be able to expand their activities with other retail suppliers of AV services. In particular, Telenor, Telia and Tele2 will remain active with market shares by revenue of respectively [5-10]%, [20-30]%, [40-50]% and [0-5]% and market shares by subscribers of respectively [5-10]%, [10-20]% and [40-50]%.

(454) Finally, as also indicated above, the agreements in place between the JV and wholesale suppliers of TV channels afford protection in relation to carriage fees and potential partial foreclosure strategy. In particular, Canal Digital's agreements with the competing TV broadcasters Telia, Disney and Discovery, expire respectively on […], […] and […][304] and that Viasat's agreements with the competing TV broadcasters Telia, Disney, NGC and Discovery, expire respectively on […], […], […] and […][305].

(455) In light of the foregoing, the Commission concludes that the Transaction would not raise serious doubts as to its compatibility with the internal market resulting from total or partial customer foreclosure of third parties' TV channels, irrespective of any plausible segmentation[306], in Sweden.

6.4.3.3. Finland

(456) In Finland, the JV will be active in the retail supply of AV services by combining Canal Digital's DTH business and Viasat's DTH activities. NENT will remain active in the wholesale supply of TV channels. NENT would also remain active

302 The JV and the Parties' market shares have been presented in Section 6.4.3.2.(B).a above. The JV will hold a market share below 30% in all market segments except for the market for the supply of premium pay-TV retail AV services, excluding non-linear OTT providers as well as market for the supply of pay-TV retail AV service, excluding non-linear OTT providers, as well as the market for the supply of pay-TV retail AV service for SDUs, excluding non-linear OTT providers as well as the supply of pay-TV retail premium AV services for SDUs, excluding non-linear OTT providers. Moreover, the Commission notes that [confidential information regarding NENTs sales strategy and policy]. Form CO, paragraph 1294. Therefore, its market share in the market for the retail supply of AV services is not taken into account for the purpose of the assessment of customer foreclosure.

303 Responses to questionnaire Q4 to TV broadcasters in Sweden, question G.4.

304 Telenor's reply to RFI 14, Annex 3.

305 NENT's reply to RFI 14, Annex 4.

306 NENT's basic pay TV channels include all different genres of basic pay TV channels supplied by NENT in the market. NENT's premium pay sports TV channels include all sports channels supplied by NENT in the market. NENT's premium pay non-sports TV channels include film & series channels supplied by NENT in the market.

as retail supplier of AV services through its OTT applications, Viaplay. The merger specific change is the addition of Canal Digital's downstream activities to NENT's DTH service, Viasat.[307]

(457) The Commission notes that the JV's market share in the Finnish market for the retail supply of AV services is below 30%. Nevertheless, given the JV's higher market share in the narrow market segment for the supply of pay-TV retail AV services for SDUs, excluding non-linear OTT providers, ([30-40]% in 2018), for the retail supply of basic AV services for SDUs ([30-40]% in 2018) and for the retail supply of basic AV services for SDUs, excluding non-linear OTT ([40-50]% in 2018).[308], the Commission has assessed the risk of customer foreclosure strategies in Finland.

(458) In particular, the Commission has assessed the risk of the following two types of customer foreclosure strategies: (i) total foreclosure of rival TV broadcasters through the JV's refusal to carry competing TV channels on its downstream distribution platform; and (ii) partial foreclosure of rival TV broadcasters through, for instance, a degradation of the quality of the viewers' experience for competing TV channels on the JV's distribution platform, or through a reduction in carriage fees.

(459) The Commission has assessed the two abovementioned types of customer foreclosure strategies for all the types of TV channels, which Viasat and Canal Digital were purchasing in Finland, namely: (i) premium pay TV sports channels, and (ii) premium pay TV non-sports channels.

(460) For the purposes of its assessment, the Commission has considered, in particular, as the more likely potential targets of a customer foreclosure strategy, the channels with the highest market shares. On the basis of the market shares presented in Section 6.2.1.3.(A), the main targets of potential foreclosure in Finland is likely to be the other main commercial broadcaster, Telia.[309]

(461) The question as to whether the JV would have the ability or the incentive to undertake a partial or total customer foreclosure strategy has been assessed in all possible market segments where basic pay TV channels and premium pay TV channels are acquired. The Commission has conducted its assessment of the

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307 Since NENT and Telenor would remain independently active in the relevant markets post-Transaction, the relationship between them is not assessed in the current Section but in Section 6.5. Furthermore, the Commission notes that the Transaction does not change Telenor's incentive to distribute channels via its own retail AV service platform (not contributed to the JV). In particular, a strategy of foreclosing third-party channels from the Telenor's retail AV service platform (not contributed to the JV) platforms in order to divert viewers and advertising revenues to NENT's channels would harm Telenor's ability to attract subscribers who expect to have access to a wider range of content. For this reason, a customer foreclosure strategy, although potentially beneficial to NENT's channels, would be detrimental to Telenor. Since NENT has no influence over Telenor's decision making in relation to Telenor's retail AV service platform (not contributed to the JV), the Commission considers the foreclosure of third party TV channels from Telenor's retail AV service platform (not contributed to the JV) as unlikely.

308 Based on the market shares available in Section 6.2.1.1.(B).

309 The Commission has not considered NRK as a potential target of foreclosure strategy since NRK is a FTA subject to "must-carry" obligations. NENT is not offering any FTA channel on the market.

impact of a total or partial foreclosure strategy in respect of the possible markets for which TV channels are an important input.[310]

(A) The Notifying Parties' view

(462) The Notifying Parties argue that the Transaction will not give to the JV the ability and incentive to engage in customer foreclosure in Finland. Pre-Transaction, NENT is vertically integrated as a supplier and distributor of TV channels. Post-Transaction, NENT will remain active as a supplier of TV channels but NENT's vertical integration will be reduced with the transfer of its 100% owned entity, Viasat Consumer, into a joint venture 50% co-owned with Telenor.

(463) With respect to the JV's ability to undertake a customer foreclosure strategy, the Notifying Parties consider that, first, the contractual agreement currently in place would limit the JV's ability to engage in such practices. Second, the JV does not have the required market power, in particular due to the structural decline of Viasat and Canal Digital's DTH offering.

(464) Even if the JV had the ability to engage in a customer foreclosure strategy by preventing rival TV broadcasters from distributing its TV channels to their customers, the Notifying Parties submit that the Transaction does not increase incentives to engage into customer foreclosure strategies. First, the Notifying Parties consider that NENT's and Telenor's incentives are not aligned. In particular, a customer foreclosure strategy would be beneficial exclusively to NENT which would expand its advertising revenue. Therefore, Telenor would try to oppose such strategy. Second, NENT has a limited market position in the market for the wholesale supply of TV channels. Therefore, any selective customer foreclosure strategy would firstly benefit other broadcasters, such as Telia, with a higher market position. Third, any profit of NENT from additional advertising revenue would not compensate for the loss from the number of subscribers switching away from the JV's retail AV service.

(465) Even if the JV would have the ability and incentive to engage in an customer foreclosure strategy, the Notifying Parties, particularly in light of the JV's limited importance as a customer due to its limited position in the downstream market, consider it unlikely that any such conduct would result in the foreclosure or marginalisation of channels competing with NENT's TV channels to such an extent that competition would be negatively affected.

[310] Basic pay TV channels are acquired as an input for the markets for the retail supply of (i) AV services (ii) linear pay AV services, (iii) linear basic pay AV services (iv) all possible markets (i) to (iii) segmented into MDU and SDU. Premium pay TV channels are acquired as an input for the markets for the retail supply of (i) AV services (ii) linear pay AV services, (iii) linear premium pay AV services (iv) all possible markets (i) to (iii) segmented into MDU and SDU. The Commission hereafter, in this section, refers to the 'retail supply of AV services' or 'retail AV services' as shorthand for all possible markets comprising the retail supply of (i) AV services (ii) linear pay AV services, (iii) linear basic pay AV services (iv) linear premium pay AV services, (v) all possible markets (i) to (iv) segmented into MDU and SDU.

(B) The Commission's assessment

(466) The Commission's assessment of potential concerns regarding the foreclosure of competing wholesale suppliers of pay TV channels, in light of the results of the market investigation, is set out in the following paragraphs. For this purpose, in line with paragraph 59 of the Non-Horizontal Merger Guidelines, the Commission examines: (i) whether the JV would have the ability to foreclose competing wholesale supplier of TV channels; (ii) whether it would have the economic incentive to do so; and (iii) whether a foreclosure strategy would have a significant detrimental effect on competition downstream.

a. Ability to engage in customer foreclosure

(467) When considering whether the JV would have the ability to foreclose access to downstream markets, the Commission examines whether there are sufficient economic alternatives in the downstream market for upstream rivals to sell their output.

(468) The Commission considers that the JV would lack the ability to engage in either total or partial customer foreclosure strategies of third parties' pay TV channels since it does not have a sufficient degree of market power in the market for the retail supply of AV services, irrespective of any possible segmentation, for the following reasons.

(469) First, some respondents to the market investigation consider that the JV would stop sourcing channels from NENT's competitors[311] and that it could engage in partial foreclosure strategies degrading terms and conditions for the acquisition of certain channels or stop carrying only certain channels.[312] For example, the JV could use the increased bargaining power to degrade the terms and conditions at which it sources its channels. Another respondent considers that the general retail consolidation trend in the market between TV distributors and TV broadcasters may be detrimental. However, it does not have a view on whether this specific Transaction is likely to raise concerns.

(470) Second, as represented in Table 45 below, the JV will hold a market share of [5-10]% by value in the Finnish market for the retail supply of AV services (based on 2018 data) and below 30% in all market segments except for the market for the supply of pay-TV for SDU, excluding non-linear OTT providers. .[313]

311 Responses to questionnaires Q6 to TV broadcasters in Finland, question G.1.

312 Responses to questionnaires Q6 to TV broadcasters in Finland, question G.2.

313 See market shares available in Section 6.2.1.3.(B). Even considering NENT's market shares, the combined position of NENT and the JV will not be above 30% under any other possible market segments.

Table 45: Market shares in 2018
in the market for the retail supply of AV services by revenue

	Pay-TV	Pay-TV (excluding non-linear OTT providers)	Basic pay-TV	Basic pay-TV (excluding non-linear OTT providers)	Premium pay-TV	Premium pay-TV (excluding non-linear OTT providers)	Pay-TV for MDUs	Pay-TV for SDUs	Pay-TV for MDUs (excluding non-linear OTT providers)	Pay-TV for SDUs (excluding non-linear OTT)
Canal Digital	[5-10]	[5-10]	[5-10]	[5-10]	[5-10]	[10-20]	[0-5]	[10-20]	[0-5]	[20-30]
Viasat	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]
JV	***[5-10]***	***[10-20]***	***[5-10]***	***[5-10]***	***[5-10]***	***[10-20]***	***[0-5]***	***[10-20]***	***[0-5]***	***[30-40]***
Telenor	[10-20]	[10-20]	[20-30]	[20-30]	[0-5]	[5-10]	[10-20]	[0-5]	[20-30]	[0-5]
Viaplay	[5-10]	-	[5-10]	-	[5-10]	-	[5-10]	[5-10]	-	-
Parties	**[20-30]**	**[20-30]**	**[30-40]**	**[30-40]**	**[10-20]**	**[10-20]**	**[20-30]**	**[30-40]**	**[20-30]**	**[30-40]**
Telia	[10-20]	[20-30]	[20-30]	[20-30]	[10-20]	[20-30]	[20-30]	[5-10]	[30-40]	[10-20]
Elisa	[10-20]	[20-30]	[20-30]	[20-30]	[5-10]	[10-20]	[20-30]	[5-10]	[20-30]	[5-10]
Non-linear OTT (excluding Viaplay)	[20-30]	-	[0-5]	-	[40-50]	-	[10-20]	[30-40]	-	-
Others	[30-40]	[20-30]	[5-10]	[5-10]	[60-70]	[40-50]	[30-40]	[50-60]	[10-20]	[40-50]

Source: Form CO, Annex 12.

(471) Table 46, reproduced below, shows the market shares of the JV and its main competitors in the market for the retail supply of AV services and possible sub-segments by subscribers. The JV would have even a more limited market position with a market share of approximately [0-5]%.

Table 46: Market shares in 2018
in the market for the retail supply of AV services by subscribers

	Overall market	Overall market (excluding non-linear OTT providers)	Pay-TV	Pay-TV (excluding non-linear OTT providers)	Basic pay-TV	Basic pay-TV (excluding non-linear OTT providers)
Canal Digital	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]
Viasat	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]
JV	***[0-5]***	***[0-5]***	***[0-5]***	***[0-5]***	***[0-5]***	***[0-5]***
Telenor	[10-20]	[10-20]	[10-20]	[20-30]	[30-40]	[30-40]
Viaplay	*[0-5]*	-	*[0-5]*	-	*[5-10]*	-
Parties	**[10-20]**	**[20-30]**	**[20-30]**	**[20-30]**	**[30-40]**	**[30-40]**
Telia	[10-20]	[20-30]	[20-30]	[30-40]	[20-30]	[30-40]
Elisa	[10-20]	[10-20]	[10-20]	[20-30]	[20-30]	[20-30]
Non-linear OTT (excluding Viaplay)	[20-30]	-	[20-30]	-	[0-5]	-
Others	[50-60]	[30-40]	[30-40]	[10-20]	[5-10]	[5-10]

Source: Form CO, Annex 12.

(472) The JV's market position would not significantly differ in a market segment for the retail supply of premium pay AV services where it will have a combined market share of approximately [0-5]% in the premium pay market segment excluding non-linear OTT services, such as Netflix.

Table 47: Market shares in 2018
in the market for the retail supply of AV services by subscribers

	Premium pay-TV	**Premium pay-TV (excluding non-linear OTT providers)**	**Pay-TV for MDUs**	**Pay-TV for SDUs**	**Pay-TV for MDUs (excluding non-linear OTT providers)**	**Pay-TV for SDUs (excluding non-linear OTT)**
Canal Digital	[0-5]	[0-5]	[0-5]	[5-10]	[0-5]	[10-20]
Viasat	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]
JV	***[0-5]***	***[0-5]***	***[0-5]***	***[5-10]***	***[0-5]***	***[10-20]***
Telenor	[0-5]	[5-10]	[20-30]	[0-5]	[30-40]	[5-10]
Viaplay	*[0-5]*	-	*[0-5]*	*[5-10]*	-	-
Parties	**[5-10]**	**[10-20]**	**[20-30]**	**[10-20]**	**[30-40]**	**[10-20]**
Telia	[10-20]	[30-40]	[20-30]	[10-20]	[30-40]	[20-30]
Elisa	[5-10]	[10-20]	[10-20]	[5-10]	[20-30]	[10-20]
Non-linear OTT (excluding Viaplay)	[50-60]	-	[20-30]	[40-50]	-	-
Others	[70-80]	[30-40]	[30-40]	[60-70]	[10-20]	[40-50]

Source: Form CO, Annex 12.

(473) Third, several alternative providers of linear retail AV services would remain available in the market for the retail supply of AV services, excluding non-linear, where TV channels are used as an input. In particular, Telenor, Telia and Elisa will remain active with market shares by revenue of respectively [10-20]%, [20-30]%, and [20-30]% and market shares by subscribers of respectively [10-20]%, [20-30]% and [10-20]% in the overall market for the retail supply of AV services, excluding non-linear providers.

(474) Fourth, the merger specific change brought by the Transaction corresponds to an increase of market shares of maximum [0-5]% by revenue and [0-5]% by subscribers. Therefore, the merger specific change in the ability to engage in customer foreclosure is limited.

(475) In light of the above, the Commission considers that the JV will not have the ability to engage in total or partial customer foreclosure of its strategies of third parties' pay TV channels in Finland since it does not have a sufficient degree of market power in the market for the retail supply of AV services, irrespective of any possible segmentation.

b. Incentive to engage in customer foreclosure

(476) Given the lack of ability to foreclose, it is not necessary to conclude as to whether the JV will have the incentive to engage in total or partial customer foreclosure strategies of third parties' pay TV channels.

(477) Nevertheless, the Commission has assessed the JV's incentives, and considers that the JV would lack the incentive to engage in total or partial customer foreclosure strategies of third parties' pay TV channels for the following reasons.

(478) First, the Commission notes that a customer foreclosure strategy whereby the JV would not broadcast channels of competing TV broadcasters could have a detrimental impact on the retail AV offering of the JV. The Commission considers that the JV's incentives in Finland would be similar to the ones in Norway and Sweden discussed in sections 6.4.3.1 and 6.4.3.2.

(479) Second, the Commission considers that linear retail suppliers of AV services need a large and diverse portfolio of attractive TV channels of different genres for their retail packages. In particular, the main competing providers of retail AV services, namely Telia, Elisa and Telenor are all offering channels offered by NENT[314] and Telia.[315] Therefore, a foreclosure of competing TV broadcasters would be detrimental to the retail provider of AV services which would offer a product of inferior quality vis-à-vis its competitors.

(480) Third, the Commission notes that there is already another similar vertically integrated player, Telia, active in Finland. Telia is active both in the market for the wholesale supply of TV channels and in the market for the retail supply of AV services. Telia is sourcing TV channels broadly in the market and its offering to its subscribers include also NENT and Discovery's channels. The Commission considers that, similarly to Telia, the JV would have limited incentives to engage in total customer foreclosure strategies.

(481) Fourth, the Commission notes that, before the Transaction, Canal Digital was not engaging in either total or partial foreclosure strategy. The Commission considers that the […] subscribers brought by Viasat to the JV would not materially change the incentive to engage in such strategy.

(482) Moreover, the Commission notes that a strategy of foreclosing third-party channels from the JV's platforms in order to divert viewers and advertising revenues to NENT's channels would harm the JV's ability to attract subscribers who expect to have access to a wider range of content. For this reason, a customer foreclosure strategy, although potentially beneficial to NENT's channels, would be detrimental to Telenor, which could therefore be expected to use its influence over the JV to block it. Thus, the divergence between NENT's and Telenor's commercial interests is likely to prevent the JV from engaging in customer foreclosure to the benefit of NENT's channels business.

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314 NENT's reply to RFI 14, Annex 1.

315 Telia has committed to offer its premium sports pay TV channels to third parties distributors in Finland. See M.9064 – *Telia / Bonnier Broadcasting Holding*, interim text of the non-confidential version of the commitments, available at: https://ec.europa.eu/competition/mergers/cases/additional_data/m9064_3342_3.pdf.

(483) Finally, the Commission considers that the Transaction does not significantly change the JV's incentive to engage into partial foreclosure. While any TV distributor could be considered to have the incentive, if possible, to reduce the cost for licensing TV channels from third parties TV broadcasters, the increase in the JV's downstream market position does not significantly increase the JV's bargaining position towards wholesale suppliers of TV channels (compared to NENT's or Canal Digital's pre-Transaction positions). First, the JV would still need to get access to a broad range of content from competing TV channels in order to offer an attractive package to its customers. Second, the JV will not be on a preferential position compared to competing providers of retail AV services, such as Telia and Elisa.

(484) In light of the above, the Commission concludes that the JV would not have the incentive to engage in total or partial customer foreclosure of third parties' pay TV channels.

c. Impact on effective competition and conclusion

(485) Given the lack of ability and incentive to foreclose, it is not necessary to conclude as to whether total or partial customer foreclosure strategies of third parties' pay TV channels would have a negative impact on effective competition.

(486) Nevertheless, the Commission has assessed the potential impact of such strategies and considers that it is unlikely that any customer foreclosure strategies of third parties' TV channels considered above would have a significant negative impact on consumers and effective competition in Finland, for the following reasons.

(487) First, as noted in section 6.3.4, the JV would not hold a significant market position as a customer in the downstream market for the retail supply of AV services, irrespective of any possible segmentation of the market for the retail supply of AV services. The JV will hold a market share of [5-10]% by value in the Finnish market for the retail supply of AV services (based on 2018 data) and below 30% in all market segments except for the market for the supply of pay-TV for SDU, excluding non-linear OTT providers.[316] In particular, the JV would provide access to a limited customer base of approximately […] subscribers, [0-5]% of the overall market for the retail supply of linear pay AV services.

(488) Second, while the results of the market investigation indicated that such foreclosure strategy may have a negative impact on their ability to compete,[317] the Commission considers that rival TV broadcaster is also able to develop new strategies to reach viewers. In the first place, the Commission notes that Telia has launched its own OTT services in order to reach viewers directly. In the second place, in the event that the JV sought to cease carrying third party TV channels on its platform competing broadcasters would still be able to expand their activities with other retail suppliers of AV services. In particular, Telenor, Telia and Elisa will remain active with market shares by revenue of respectively [10-20]%, [20-30]% and [20-30]% and market shares by subscribers of respectively [10-20]%, [20-30]% and [10-20]% in the overall market for the retail supply of AV services, excluding non-linear providers.

316 The JV and the Parties' market shares have been presented in Section 6.4.3.3.(B).a above.

317 Responses to questionnaire Q6 to TV broadcasters in Finland, question G.4.

(489) In light of the foregoing, the Commission concludes that the Transaction would not raise serious doubts as to its compatibility with the internal market resulting from total or partial customer foreclosure of third parties' TV channels, irrespective of any plausible segmentation[318], in Finland.

6.4.4. Conglomerate non-coordinated effects relating to the JV's activities in the retail supply of linear AV services and NENT's activities in the retail supply of non-linear AV services

(490) The Non-Horizontal Guidelines[319] indicate that competition concerns can arise in circumstances where a merger involves companies that are active in closely related markets. While in the majority of circumstances conglomerate mergers will not lead to any competition problems, in certain circumstances they can lead to anticompetitive effects. One such example is when the combination of products in related markets would give the merged entity or the Parties the ability and incentive to leverage a strong market position in one of the markets to the other market by means of tying or bundling. Where tying or bundling is likely to lead to a reduction in actual or potential rivals' ability or incentive to compete it may reduce competitive pressure on the merged entity, allowing it to increase prices.

6.4.4.1. Norway

(491) In Norway, Viasat and Canal Digital are active on the market for the retail supply of AV services. Post-Transaction, the JV will therefore be active in the market for the retail supply of AV services.

(492) NENT is active in the market for the retail supply of AV services, non-linearly through its OTT services, Viaplay. Telenor is active in the retail supply of AV services[320] and telecommunications services, such as retail mobile and fixed internet access services.[321]

(493) Multiple play services can comprise a mixture of two or more of AV services (in particular OTT services such as AVOD and SVOD), fixed telephony, mobile telecommunications and fixed internet services.

(494) Some providers of linear retail AV services indicated that, if post-Transaction NENT were to offer its OTT premium retail services (e.g. Viaplay) exclusively in conjunction with the JV's other retail AV services, or vice-versa, they would not be able to replicate as attractive multiple play packages as the one of the JV.[322]

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318 NENT's basic pay TV channels include all different genres of basic pay TV channels supplied by NENT in the market. NENT's premium pay sports TV channels include all sports channels supplied by NENT in the market. NENT's premium pay non-sports TV channels include film & series channels supplied by NENT in the market.

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

320 Telenor does not offer a standalone OTT service in Norway, but Telenor subscribers have access to a TVE service ("T-We"). Paragraph 250, Form CO.

321 Since NENT and Telenor would remain independently active in the relevant markets post-Transaction. The relationship between NENT and Telenor would not be assessed in the current Section.

322 Responses to questionnaire Q1 to retail suppliers of AV services in Norway, question H.3. Respondents to the market investigation have not expressed any concerns related to conglomerate relations between Telenor's and the JV's activities. Furthermore, the Commission notes that, in relation to potential relations between Telenor as provider of retail fixed and mobile telecommunications services and the JV's activities

(495) The Commission has therefore assessed the risk of the following types of foreclosure strategies in Norway: (i) foreclosure of the JV's rival providers of linear retail AV services, under any possible market segmentation by tying or bundling NENT's OTT AV service with the JV's linear retail AV service[323], and (ii) foreclosure of rival retail suppliers of OTT AV services by tying or bundling NENT's OTT AV service with the JV's linear retail AV services.[324]

(496) Therefore, in the present case, the Commission analyses whether the JV would have the ability and incentive to foreclose rival suppliers of OTT AV services and whether NENT would have the ability and incentive to foreclose rival suppliers of non-linear and linear retail AV services.

(497) The Commission then assesses whether each of these foreclosure strategies would likely result in a significant detriment to effective competition in the markets for the retail supply of retail AV services (and its relevant plausible segments).

(A) The Notifying Parties' view

(498) The Notifying Parties consider that the Transaction does not give rise to any negative competitive effect on the market for the retail supply of AV services, where the JV and NENT are active. First, the JV has no market power in for the retail supply of linear AV services, and any possible segmentations. Second, NENT has no market power in the market for the retail supply of non-linear AV services, and any possible segmentations. Third, several alternative providers of linear retail AV services and non-linear retail AV services will continue to remain active.

(B) The Commission's assessment

a. Foreclosure of rival providers of OTT services

(499) The Commission considers that the JV would lack the ability and the incentive to foreclose competing providers of OTT AV services by tying or bundling NENT's OTT AV service with the JV's retail linear AV services.

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as provider of retail AV services, the Transaction does not materially change Telenor and NENT's incentive to engage in a potential tying strategy. The Commission notes that a strategy of preventing customers of third-party linear retail AV services from subscribing to Telenor's fixed and mobile telecommunications services unless they also subscribe to the JV's linear retail AV service would likely affect Telenor's ability to attract subscribers of fixed and mobile telecommunications services who are not interested in buying telecommunications and linear retail AV services jointly. Similarly, a strategy of preventing customers of third-party providers of retail fixed and mobile telecommunications services from subscribing to the JV's retail AV services unless they also subscribe to Telenor's fixed and mobile telecommunications services would likely affect the JV's ability to attract subscribers of retail AV services who are not interested to buy telecommunications and linear retail AV services jointly. Moreover, other providers would remain available to offer similar services . For example, Telia offers both fixed and mobile telecommunications services and linear retail AV services and Altibox offers both fixed telecommunications services and linear retail AV services. Moreover, Ice offers mobile telecommunications services.

323 Before the Transaction, customers of competing providers of linear retail AV services can subscribe also to NENT's retail non-linear AV services.

324 Before the Transaction, customers of competing providers of OTT AV services can provide their services to customers of the JV's linear retail AV service.

(500) First, as shown in Section 6.2.1.1.B the JV will have a limited market position in the market for the retail supply of AV services, and any possible sub-segment. The JV will hold a market share of [20-30]% by value and [10-20]% by volume in the overall market for the retail supply of AV services (excluding non-linear OTT providers).

(501) Second, several alternative providers would remain active in such market and any possible sub-segments. In particular, Telenor, Telia, Altibox and RiksTV will remain active with market shares by revenue of respectively [20-30]%, [10-20]%, [10-20]% and [10-20]% and market shares by subscribers of respectively [10-20]%, [10-20]%, [5-10]% and [5-10]% in the market for the retail supply of AV services, excluding non-linear.

(502) Third, the Commission notes that NENT, through Viasat, did not engage in such foreclosing practice pre-Transaction and it considers that the Transaction does not significantly change the JV's incentive, compared to NENT's incentive pre-Transaction. In particular, the Commission notes that a strategy of foreclosing third-party OTT service from the JV's platforms in order to divert viewers to NENT's OTT service would harm the JV's ability to attract subscribers who expect to have access to a wider range of content. For this reason, a foreclosure strategy, although potentially beneficial to NENT's channels, would be detrimental to Telenor, which could therefore be expected to use its influence over the JV to block it. Thus, the divergence between NENT's and Telenor's commercial interests is likely to prevent the JV from engaging in customer foreclosure to the benefit of NENT's channels business.

(503) Finally, several single-component rivals would remain available in the relevant markets, namely Telenor, Telia, Altibox and RiksTV in the market for the retail supply of linear AV services. NENT's competing providers of retail AV OTT services, such as Telia and Netflix, could partner with such providers in order to expand their sales, if needed.

b. Foreclosure of rival providers of linear retail AV services

(504) The Commission considers that the NENT would lack the ability and the incentive to foreclose competing providers of retail linear AV services by tying or bundling NENT's OTT AV service with the JV's retail linear AV services.

(505) First, the Commission notes that NENT has a market share below 30%, i.e., of approximately [10-20]% by volume and [20-30]% by value in the market for the retail supply of non-linear AV services (based on 2018 data).[325]

(506) Second, alternative providers of non-linear AV services would remain available in the market. In particular, these providers include Netflix with almost […] subscribers and HBO Nordic with approximately […] subscribers in Norway (based on 2018 data).

[325] Commission's calculations based on Form CO, Annex 12.

(507) Third, respondents to the market investigation further support the view that several subscription non-linear retail AV services would remain available or will be soon available in Norway such as Amazon Prime Video, Apple TV+ and Disney+ (not yet launched in Norway but expected to launch this year).[326]

(508) Fourth, [confidential information regarding NENT's business plans and strategic decisions].

(509) In the first place, as shown in Figure 8 below, NENT considers [confidential information regarding NENT's business plans and strategic decisions]. [327]

Figure 8: NENT's core strategy on Viaplay

[Confidential information regarding NENT's business plans and strategic decisions]

Source: Form CO, Annex 46.

(510) In the second place, pre-Transaction, [confidential information regarding NENTs sales strategy and policy].[328] [Confidential information regarding NENTs sales strategy and policy].[329]

(511) In the third place, the Commission notes that, before the Transaction[330], NENT did not engage in any type of foreclosure strategy in order to limit access to Viaplay to Viasat's competing providers of linear retail AV service.

(512) Finally, NENT's ability to undertake a foreclosure strategy, would be limited by contractual agreements currently in place. NENT's agreements with the JV's competing TV *distributors*, Telenor, Telia, Altibox and RiksTV, are expiring respectively in […], […], […] and […].[331]

c. Conclusion

(513) In light of the foregoing, the Commission concludes that the Transaction would not raise serious doubts as to its compatibility with the internal market as a result of the conglomerate relationships between the JV's activities as provider of linear retail AV services and NENT's activities as retail supplier of OTT AV services.

6.4.4.2. Sweden

(514) In Sweden, Viasat and Canal Digital are active on the market for the retail supply of AV services. Viasat is also active on the market for the retail supply of fixed internet access. Post-Transaction, the JV will therefore be active both in the market for the retail supply of AV services[332] and supply of fixed internet access services. NENT is active in the market for the retail supply of AV services, non-

326 Responses to questionnaires Q1 to retail suppliers of AV services in Norway and Q2 to TV broadcasters in Norway, question E.4.

327 Form CO, Annex 46.

328 Form CO, Annex 55.

329 [Confidential information regarding NENTs sales strategy and policy].

330 Before the Transaction, NENT fully owned both Viasat, providing fixed internet access service and linear retail AV service, and, Viaplay, providing non-linear retail AV services,

331 Form CO, Annex 55. [Confidential information regarding NENTs sales strategy and policy].

332 Telenor does not offer a standalone OTT service in Sweden, but Telenor subscribers have access to a TVE service ("Telenor Stream"). Paragraph 593, Form CO.

linearly through its OTT services, Viaplay and Viafree. Telenor is active in the retail supply of AV services and telecommunications services, such as retail mobile and fixed internet access services.[333] Viasat is only active in the retail supply of fixed internet access services and the retail supply of AV services.

(515) Multiple play services can comprise a mixture of two or more of AV services (in particular OTT services such as AVOD and SVOD), fixed telephony, mobile telecommunications and fixed internet services.

(516) Some providers of linear retail AV services indicated that, if post-Transaction NENT were to offer its OTT premium retail services (e.g. Viaplay) exclusively in conjunction with the JV's other retail AV services, or vice-versa, they would not be able to replicate as attractive multiple play packages as the one of the JV.[334]

(517) The Commission has therefore assessed the risk of the following types of foreclosure strategies in Sweden: (i) foreclosure of the JV's rival providers of fixed internet access or linear retail AV services, under any possible market segmentation by tying or bundling NENT's OTT AV service with the JV's retail AV service or fixed internet access services[335], and (ii) foreclosure of rival retail suppliers of OTT AV services by tying or bundling NENT's OTT AV service with the JV's fixed internet access or linear retail AV services.[336]

(518) Therefore, in the present case, the Commission analyses whether the JV would have the ability and incentive to foreclose rival suppliers of OTT AV services and whether NENT would have the ability and incentive to foreclose rival suppliers of fixed internet access services, non-linear and linear retail AV services.

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333 Since NENT and Telenor would remain independently active in the relevant markets post-Transaction. The relationship between NENT and Telenor would not be assessed in the current Section.

334 Responses to questionnaire Q3 to retail suppliers of AV services in Sweden, question H.3. Respondents to the market investigation have not expressed any concerns related to conglomerate relations between Telenor's and the JV's activities. Furthermore, the Commission notes that, in relation to potential relations between Telenor as provider of retail fixed and mobile telecommunications services and the JV's activities as provider of retail AV services, the Transaction does not materially change Telenor and NENT's incentive to engage in a potential tying strategy. The Commission notes that a strategy of preventing customers of third-party linear retail AV services from subscribing to Telenor's fixed and mobile telecommunications services unless they also subscribe to the JV's linear retail AV service would likely affect Telenor's ability to attract subscribers of fixed and mobile telecommunications services who are not interested in buying telecommunications and linear retail AV services jointly. Similarly, a strategy of preventing customers of third-party providers of retail fixed and mobile telecommunications services from subscribing to the JV's retail AV services unless they also subscribe to Telenor's fixed and mobile telecommunications services would likely affect the JV's ability to attract subscribers of retail AV services who are not interested to buy telecommunications and linear retail AV services jointly. Moreover, other providers would remain available to offer similar services. For example, Telia and Tele2 offer both fixed and mobile telecommunications services and linear retail AV services and Sappa offers both fixed telecommunications services and linear retail AV services. Moreover, Tre offers mobile telecommunications services.

335 Before the Transaction, customers of competing providers of fixed internet access services can access NENT's OTT AV service and customers of competing providers of linear retail AV services can subscribe also to NENT's retail non-linear AV services.

336 Before the Transaction, customers of competing providers of OTT AV services can access the JV's fixed internet access services and provide their services to customers of the JV's fixed internet access or linear retail AV services.

(519) The Commission then assesses whether each of these foreclosure strategies would likely result in a significant detriment to effective competition in the markets for the retail supply of fixed internet access services, retail AV services (and its relevant plausible segments) and mixed multiple play packages.

(A) The Notifying Parties' view

(520) The Notifying Parties consider that the Transaction does not give rise to any negative competitive effect on either the market for the retail supply of AV services, where the JV and NENT are active, nor the market for the supply of fixed internet access services, where the JV is active due to the non-horizontal relationship between the activities of the JV and NENT. First, the JV has no market power in the market for the retail supply of fixed internet access service or the market for the retail supply of linear AV services, and any possible segmentations. Second, NENT has no market power in the market for the retail supply of non-linear AV services, and any possible segmentations. Second, several alternative providers of linear retail AV services, non-linear retail AV services and retail fixed internet access services will continue to remain active.

(B) The Commission's assessment

a .Foreclosure of rival providers of OTT services

(521) The Commission considers that the JV would lack the ability and the incentive to foreclose competing providers of OTT AV services by tying or bundling NENT's OTT AV service with the JV's retail linear AV services or fixed internet access services or by significantly degrading their service offerings on the JV's fixed networks.

(522) First, the JV will have a limited position in the market for the retail supply of fixed internet access services with a market share of approximately [0-5]% (based on 2018 data) corresponding to […] customers in a market of approximately 4 million subscribers.

(523) Second, several alternative providers would remain active such as Telia, Tele2, Telenor with market shares of respectively [30-40]%, [20-30]% and [10-20]% (based on 2018 data) in the market for the retail supply of fixed internet access.

(524) Third, as shown in Section 6.2.1.2.B the JV will have a limited market position in the market for the retail supply of AV services, and any possible sub-segment. Based on 2018 data, the JV will hold a market share of [30-40]% by value and [10-20]% by volume in the overall market for the retail supply of AV services (excluding non-linear OTT providers). Several alternative providers would remain active in such market and any possible sub-segments. In particular, Telenor, Telia and Tele2 will remain active with market shares by revenue of respectively [5-10]%, [10-20]% and [30-40]% and market shares by subscribers of respectively [5-10]%, [20-30]% and [40-50]% .

(525) Moreover, the Commission notes that NENT, through Viasat, did not engage in such foreclosing practice pre-Transaction and it considers that the Transaction does not significantly change the JV's incentive, compared to NENT's incentive pre-Transaction. In particular, the Commission notes that a strategy of

foreclosing third-party OTT service from the JV's platforms in order to divert viewers to NENT's OTT service would harm the JV's ability to attract subscribers who expect to have access to a wider range of content. For this reason, a foreclosure strategy, although potentially beneficial to NENT's channels, would be detrimental to Telenor, which could therefore be expected to use its influence over the JV to block it. Thus, the divergence between NENT's and Telenor's commercial interests is likely to prevent the JV from engaging in customer foreclosure to the benefit of NENT's channels business.

(526) Finally, several single-component rivals would remain available in the relevant markets, namely Telia, Tele2, Telenor, Sappa in the market for the retail supply of linear AV services. NENT's competing providers of retail AV OTT services, such as Telia and Netflix, could partner with such providers in order to expand their sales, if needed.

b. Foreclosure of rival providers of fixed internet access services and linear retail AV services

(527) The Commission considers that NENT would lack the ability and the incentive to foreclose competing providers of retail linear AV services or fixed internet access services by tying or bundling NENT's OTT AV service with the JV's retail linear AV services or fixed internet access services or by significantly degrading their service offerings on the JV's fixed networks.

(528) First, the Commission notes that NENT has a market share below 30% of approximately [10-20]% by volume and [10-20]% by value in the market for the retail supply of non-linear AV services (based on 2018 data).[337]

(529) Second, alternative providers of non-linear AV services would remain available in the market. In particular, these providers include Netflix with almost […] subscribers and HBO Nordic with approximately […] subscribers in Sweden (based on 2018 data).

(530) Third, respondents to the market investigation further support the view that several subscription non-linear retail AV services would remain available or will be soon available in Sweden such as Amazon Prime Video, Apple TV+ and Disney+ (not yet launched in Sweden but expected to launch this year).[338]

(531) Fourth, NENT's strategy is based on [confidential information regarding NENT's business plans and strategic decisions to increase numbers of subscribers].

(532) In the first place, as shown in Figure 8 above in Section 6.4.4.1, NENT considers [confidential information regarding NENT's business plans and strategic decisions to increase numbers of subscribers].[339]

337 Commission's calculations based on Form CO, Annex 12.

338 Responses to questionnaires Q2 and Q4 to TV broadcasters in Norway and Sweden, question E.4.

339 Form CO, Annex 46.

(533) In the second place, pre-Transaction, NENT had SVOD partnerships for the distribution of its OTT service with all the major providers of fixed internet access services and linear retail AV services, namely Telia, Tele2 and Telenor.[340] [Confidential information regarding NENT's business plans and strategic decisions to increase numbers of subscribers].[341]

(534) In the third place, the Commission notes that, before the Transaction[342], NENT did not engage in any type of foreclosure strategy in order to limit access to Viaplay by providers of fixed internet access service and linear retail AV service competing with Viasat.

(535) Finally, NENT's ability to undertake a foreclosure strategy, would be limited by contractual agreements currently in place. NENT's agreements with Telia and Telenor are expiring in […]. Moreover, [confidential information regarding NENT's business plans and strategic decisions].[343]

c. Conclusion

(536) In light of the foregoing, the Commission concludes that the Transaction would not raise serious doubts as to its compatibility with the internal market as a result of the conglomerate relationships between the JV's activities as provider of linear retail AV or fixed internet access services and NENT's activities as retail supplier of OTT AV services.

6.4.4.3. Finland

(537) In Finland, Viasat and Canal Digital are active on the market for the retail supply of AV services. Post-Transaction, the JV will therefore be active in the market for the retail supply of AV services. NENT is active in the market for the retail supply of AV services, non-linearly through its OTT services, Viaplay. Telenor is active in the retail supply of AV services and telecommunications services, such as retail mobile and fixed internet access services.[344]

(538) Multiple play services can comprise a mixture of two or more of AV services (in particular OTT services such as AVOD and SVOD), fixed telephony, mobile telecommunications and fixed internet services.

(539) Some providers of linear retail AV services indicated that, if post-Transaction NENT were to offer its OTT premium retail services (e.g. Viaplay) exclusively in conjunction with the JV's other retail AV services, or vice-versa, they would not be able to replicate as attractive multiple play packages as the one of the JV.[345]

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340 Form CO, Annex 55.

341 [Confidential information regarding NENTs sales strategy and policy].

342 Before the Transaction, NENT fully owned both Viasat, providing fixed internet access service and linear retail AV service, and, Viaplay, providing non-linear retail AV services,

343 Form CO, Annex 55.

344 Since NENT and Telenor would remain independently active in the relevant markets post-Transaction. The relationship between NENT and Telenor would not be assessed in the current Section.

345 Responses to questionnaire Q5 to retail suppliers of AV services in Finland, question H.3. Respondents to the market investigation have not expressed any concerns related to conglomerate relations between Telenor's and the JV's activities. Furthermore, the Commission notes that, in relation to potential relations between Telenor as provider of retail fixed and mobile telecommunications services and the JV's activities

(540) The Commission has therefore assessed the risk of the following types of foreclosure strategies in Finland: (i) foreclosure of the JV's rival providers of linear retail AV services, under any possible market segmentation by tying or bundling NENT's OTT AV service with the JV's linear retail AV service[346], and (ii) foreclosure of rival retail suppliers of OTT AV services by tying or bundling NENT's OTT AV service with the JV's linear retail AV services.[347]

(541) Therefore, in the present case, the Commission analyses whether the JV would have the ability and incentive to foreclose rival suppliers of OTT AV services and whether NENT would have the ability and incentive to foreclose rival suppliers of non-linear and linear retail AV services.

(542) The Commission then assesses whether each of these foreclosure strategies would likely result in a significant detriment to effective competition in the markets for the retail supply of retail AV services (and its relevant plausible segments).

(A) The Notifying Parties' view

(543) The Notifying Parties consider that the Transaction does not give rise to any negative competitive effect on either the market for the retail supply of AV services, where the JV and NENT are active. First, the JV has no market power in for the retail supply of linear AV services, and any possible segmentations. Second, NENT has no market power in the market for the retail supply of non-linear AV services, and any possible segmentations. Second, several alternative providers of linear retail AV services and non-linear retail AV services will continue to remain active.

(B) The Commission's assessment

a. Foreclosure of rival providers of OTT services

(544) The Commission considers that the JV would lack the ability and the incentive to foreclose competing providers of OTT AV services by tying or bundling NENT's OTT AV service with the JV's retail linear AV services.

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as provider of retail AV services, the Transaction does not materially change Telenor and NENT's incentive to engage in a potential tying strategy. The Commission notes that a strategy of preventing customers of third-party linear retail AV services from subscribing to Telenor's fixed and mobile telecommunications services unless they also subscribe to the JV's linear retail AV service would likely affect Telenor's ability to attract subscribers of fixed and mobile telecommunications services who are not interested in buying telecommunications and linear retail AV services jointly. Similarly, a strategy of preventing customers of third-party providers of retail fixed and mobile telecommunications services from subscribing to the JV's retail AV services unless they also subscribe to Telenor's fixed and mobile telecommunications services would likely affect the JV's ability to attract subscribers of retail AV services who are not interested to buy telecommunications and linear retail AV services jointly. Moreover, other providers would remain available to offer similar services. For example, Telia and Elisa offer both fixed and mobile telecommunications services and linear retail AV services.

346 Before the Transaction, customers of competing providers of linear retail AV services can subscribe also to NENT's retail non-linear AV services.

347 Before the Transaction, customers of competing providers of OTT AV services can provide their services to customers of the JV's linear retail AV service.

(545) First, as shown in Section 6.2.1.3.B the JV will have a limited market position in the market for the retail supply of AV services, and any possible sub-segment. The JV will hold a market share of [10-20]% by value and [0-5]% by volume in the overall market for the retail supply of AV services (excluding non-linear OTT providers).

(546) Second, several alternative providers would remain active in such market and any possible sub-segments. In particular, Telenor, Telia, and Elisa will remain active with market shares by revenue of respectively [10-20]%, [20-30]%, and [20-30]% and market shares by subscribers of respectively [10-20]%, [20-30]%, and [10-20]% in the market for the retail supply of AV services, excluding non-linear.

(547) Third, the Commission notes that NENT, through Viasat, did not engage in such foreclosing practice pre-Transaction and it considers that the Transaction does not significantly change the JV's incentive, compared to NENT's incentive pre-Transaction. In particular, the Commission notes that a strategy of foreclosing third-party OTT service from the JV's platforms in order to divert viewers to NENT's OTT service would harm the JV's ability to attract subscribers who expect to have access to a wider range of content. For this reason, a foreclosure strategy, although potentially beneficial to NENT's channels, would be detrimental to Telenor, which could therefore be expected to use its influence over the JV to block it. Thus, the divergence between NENT's and Telenor's commercial interests is likely to prevent the JV from engaging in customer foreclosure to the benefit of NENT's channels business.

(548) Finally, several single-component rivals would remain available in the relevant markets, namely Telenor, Telia and Elisa in the market for the retail supply of linear AV services. NENT's competing providers of retail AV OTT services, such as Telia and Netflix, could partner with such providers in order to expand their sales, if needed.

b. Foreclosure of rival providers of linear retail AV services

(549) The Commission considers that NENT would lack the ability and the incentive to foreclose competing providers of retail linear AV services by tying or bundling NENT's OTT AV service with the JV's retail linear AV services.

(550) First, the Commission notes that NENT has a market share below 30% of approximately [10-20]% by volume and [20-30]% by value in the market for the retail supply of non-linear AV services (based on 2018 data).[348]

(551) Second, alternative providers of non-linear AV services would remain available in the market. In particular, these providers include Netflix with almost […] subscribers and HBO Nordic with approximately […] subscribers in Finland (based on 2018 data).

(552) Third, NENT's strategy is based on further [confidential information regarding NENTs sales strategy and policy]. In the first place, as shown in Figure 8 above in Section 6.4.4.1, NENT considers [confidential information regarding NENTs sales strategy and policy] one of [confidential information regarding NENTs sales

348 Commission's calculations based on Form CO, Annex 12.

strategy and policy] themes for Viaplay's grow.[349] In the second place, pre-Transaction, NENT [confidential information regarding NENTs sales strategy and policy].[350] In the third place, the Commission notes that, before the Transaction[351], NENT did not engage in any type of foreclosure strategy in order to limit access to Viaplay to Viasat's competing providers of linear retail AV service.

(553) Finally, NENT's ability to undertake a foreclosure strategy, would be limited by contractual agreements currently in place. NENT's agreements with the JV's competing TV *distributors*, Telenor, Telia, and Elisa, are expiring respectively in […], […] and […].[352]

c. Conclusion

(554) In light of the foregoing, the Commission concludes that the Transaction would not raise serious doubts as to its compatibility with the internal market as a result of the conglomerate relationships between the JV's activities as provider of linear retail AV services and NENT's activities as retail supplier of OTT AV services.

6.4.4.4. Denmark

(555) In Denmark, Viasat and Canal Digital are active on the market for the retail supply of AV services. Post-Transaction, the JV will therefore be active in the market for the retail supply of AV services. NENT is active in the market for the retail supply of AV services, non-linearly through its OTT services, Viaplay.

(556) Multiple play services can comprise a mixture of two or more of AV services (in particular OTT services such as AVOD and SVOD), fixed telephony, mobile telecommunications and fixed internet services.

(557) Some providers of linear retail AV services indicated that, if post-Transaction NENT were to offer its OTT premium retail services (e.g. Viaplay) exclusively in conjunction with the JV's other retail AV services, or vice-versa, they would not be able to replicate as attractive multiple play packages as the one of the JV.[353]

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349 Form CO, Annex 46.

350 Form CO, Annex 55.

351 Before the Transaction, NENT fully owned both Viasat, providing fixed internet access service and linear retail AV service, and, Viaplay, providing non-linear retail AV services,

352 Form CO, Annex 55.

353 Responses to questionnaire Q7 to retail suppliers of AV services in Denmark, question H.3. Respondents to the market investigation have not expressed any concerns related to conglomerate relations between Telenor's and the JV's activities. Furthermore, the Commission notes that, in relation to potential relations between Telenor as provider of retail fixed and mobile telecommunications services and the JV's activities as provider of retail AV services, the Transaction does not materially change Telenor and NENT's incentive to engage in a potential tying strategy. The Commission notes that a strategy of preventing customers of third-party linear retail AV services from subscribing to Telenor's fixed and mobile telecommunications services unless they also subscribe to the JV's linear retail AV service would likely affect Telenor's ability to attract subscribers of fixed and mobile telecommunications services who are not interested in buying telecommunications and linear retail AV services jointly. Similarly, a strategy of preventing customers of third-party providers of retail fixed and mobile telecommunications services from subscribing to the JV's retail AV services unless they also subscribe to Telenor's fixed and mobile telecommunications services would likely affect the JV's ability to attract subscribers of retail AV services who are not interested to buy telecommunications and linear retail AV services jointly.

(558) The Commission has therefore assessed the risk of the following types of foreclosure strategies in Denmark: (i) foreclosure of the JV's rival providers of linear retail AV services, under any possible market segmentation by tying or bundling NENT's OTT AV service with the JV's linear retail AV service[354], and (ii) foreclosure of rival retail suppliers of OTT AV services by tying or bundling NENT's OTT AV service with the JV's linear retail AV services.[355]

(559) Therefore, in the present case, the Commission analyses whether the JV would have the ability and incentive to foreclose rival suppliers of OTT AV services and whether NENT would have the ability and incentive to foreclose rival suppliers of non-linear and linear retail AV services.

(560) The Commission then assesses whether each of these foreclosure strategies would likely result in a significant detriment to effective competition in the markets for the retail supply of retail AV services (and its relevant plausible segments).

(A) The Notifying Parties' view

(561) The Notifying Parties consider that the Transaction does not give rise to any negative competitive effect on either the market for the retail supply of AV services, where the JV and NENT are active. First, the JV has no market power in for the retail supply of linear AV services, and any possible segmentations. Second, NENT has no market power in the market for the retail supply of non-linear AV services, and any possible segmentations. Second, several alternative providers of linear retail AV services and non-linear retail AV services will continue to remain active.

(B) The Commission's assessment

a. Foreclosure of rival providers of OTT services

(562) The Commission considers that the JV would lack the ability and the incentive to foreclose competing providers of OTT AV services by tying or bundling NENT's OTT AV service with the JV's retail linear AV services.

(563) First, as shown in Section 6.2.1.4.B the JV will have a limited market position in the market for the retail supply of AV services, and any possible sub-segment. The JV will hold a market share of [10-20]% by value and [0-5]% by volume in the overall market for the retail supply of AV services (excluding non-linear OTT providers).

(564) Second, several alternative providers would remain active in such market and any possible sub-segments. In particular, TDC, Stofa and Waoo! will remain active with market shares by subscribers of respectively [40-50]%, [10-20]%, and [5-10]% in the market for the retail supply of AV services, excluding non-linear.

Moreover, other providers would remain available to offer similar services. For example, TDC offers both fixed and mobile telecommunications services and linear retail AV services. Moreover, Telia and Tre offer mobile telecommunications services. SE Kommunikation and Dansk Kabel offer fixed internet access services.

354 Before the Transaction, customers of competing providers of linear retail AV services can subscribe also to NENT's retail non-linear AV services.

355 Before the Transaction, customers of competing providers of OTT AV services can provide their services to customers of the JV's linear retail AV service.

(565) Third, the Commission notes that NENT, through Viasat, did not engage in such foreclosing practice pre-Transaction and it considers that the Transaction does not significantly change the JV's incentive, compared to NENT's incentive pre-Transaction. In particular, the Commission notes that a strategy of foreclosing third-party OTT service from the JV's platforms in order to divert viewers to NENT's OTT service would harm the JV's ability to attract subscribers who expect to have access to a wider range of content. For this reason, a foreclosure strategy, although potentially beneficial to NENT's channels, would be detrimental to Telenor, which could therefore be expected to use its influence over the JV to block it. Thus, the divergence between NENT's and Telenor's commercial interests is likely to prevent the JV from engaging in customer foreclosure to the benefit of NENT's channels business.

(566) Finally, several single-component rivals would remain available in the relevant markets, namely TDC, Telia, Stofa and Waoo! in the market for the retail supply of linear AV services. NENT's competing providers of retail AV OTT services, such as Telia and Netflix, could partner with such providers in order to expand their sales, if needed.

b. Foreclosure of rival providers of linear retail AV services

(567) The Commission considers that NENT would lack the ability and the incentive to foreclose competing providers of retail linear AV services by tying or bundling NENT's OTT AV service with the JV's retail linear AV services.

(568) First, the Commission notes that NENT has a market share below 30% of approximately [10-20]% by volume and [20-30]% by value in the market for the retail supply of non-linear AV services (based on 2018 data).[356]

(569) Second, alternative providers of non-linear AV services would remain available in the market. In particular, these providers include Netflix with almost […] subscribers and HBO Nordic with approximately […] subscribers in Denmark (based on 2018 data).

(570) Third, NENT's strategy is based on further [confidential information regarding NENT's business plans and strategic decisions]. In the first place, as shown in Figure 8 above in Section 6.4.4.1, NENT considers [confidential information regarding NENT's business plans and strategic decisions] as one of [confidential information regarding NENT's business plans and strategic decisions] themes for Viaplay's grow.[357] In the second place, pre-Transaction, [confidential information regarding NENT's business plans and strategic decisions].[358] [Confidential information regarding NENT's business plans and strategic decisions].

(571) Finally, NENT's ability to undertake a foreclosure strategy, would be limited by contractual agreements currently in place. NENT's agreements with the JV's competing TV *distributors*, TDC, Stofa, Waoo! and Boxer, are expiring respectively in […], […], […], […].[359]

356 Commission's calculations based on Form CO, Annex 12.

357 Form CO, Annex 46.

358 Form CO, Annex 55.

359 Form CO, Annex 55.

c. Conclusion

(572) In light of the foregoing, the Commission concludes that the Transaction would not raise serious doubts as to its compatibility with the internal market as a result of the conglomerate relationships between the JV's activities as provider of linear retail AV services and NENT's activities as retail supplier of OTT AV services.

6.4.5. Possible foreclosure of competing providers of satellite transponder capacity (customer foreclosure)

(573) TS and SES are the only two competing providers of satellite transponder capacity in the Nordic region. Pre-Transaction, Viasat has been sourcing satellite transponder capacity services from SES, while post-Transaction it will switch to TS, which is a subsidiary of Telenor and the current supplier of Canal Digital. By doing so, the JV eliminates the cost duplication from sourcing satellite capacity from two suppliers.

(574) This section assesses the risk that the loss of Viasat as a customer creates any customer foreclosure concerns with regard to SES.

6.4.5.1. The Notifying Parties' view

(575) The Notifying Parties submit that there is no risk of customer foreclosure with regard to SES.

(576) First, the Notifying Parties consider that the relevant product market can be defined as being the provision of satellite transponder capacity for broadcasting on 1°W. TS would be the only competitor active in such a market. Accordingly, customer foreclosure with regard to SES would not be a relevant theory of harm. Nonetheless, the Notifying Parties also provide arguments on the basis of a broader market definition.

(577) Second, as regards the Notifying Parties' ability to foreclose SES in an overall market for satellite transponder capacity from both 1°W and 5°E, the loss of Viasat as a customer would not fundamentally affect the viability of SES' satellite business at the 5°E orbital position. In particular, SES could continue to develop its business in the CEE region, the Middle East and Sub-Saharan Africa with regard to both broadcasting and telecommunication services. The Notifying Parties point out that SES itself stated in an investors' call that it would further develop the 5°E neighbourhood.

(578) Third, the Notifying Parties explain that SES will in any case continue its operations until, at least, the end of the service life of its satellites at the 5°E orbital position. As the launch of satellites would involve large sunk costs, operators are unlikely to decommission a satellite before the end of its lifetime. SES' two satellites at the 5°E would significantly exceed their service life expiry based on the latest health reports.[360] The end of Astra 4A and SES-5's end of

[360] The service life expiry date is the designed lifetime of a satellite. It is driven by reliability specifications of the various satellite manufacturers for their geostationary satellites, with 15 years of expected operation as the industry standard. The service life is not an absolute life expectancy; rather, it means that there is a high probability that the satellite will be fully functional after 15 years.

propellant life would be estimated to be no earlier than end of […], respectively.[361]

(579) Fourth, the revenue loss in the Nordic countries would not affect SES Group. SES Group is the world's largest satellite operator with over 70 satellites[362], generating about EUR 2 billion of annual turnover.

(580) Finally, the Notifying Parties submit that any hypothetical weakening of SES' position at the 5°E orbital position would not have a significant detrimental effect on competition in the downstream market for the retail supply of AV services in each of the Nordic countries. On the one hand, none of the competing TV distributors, besides the JV itself, would supply its services via satellite. On the other hand, TS would continue to provide satellite capacity to (the few) broadcasters that wish to purchase capacity directly from TS (instead of via wholesale carriage agreements, see section 6.4.3). In particular, TS would have no incentive to foreclose access as its satellite transponder capacity is not fully utilised. In any event, broadcasters would have ample alternative ways to distribute their channels in the Nordic region including through other TV distributors and their own OTT service.

6.4.5.2. The Commission's assessment

(581) As explained in paragraph (573), the JV has concrete plans to migrate Viasat's customers from SES' to TS' orbital position because of the substantial cost savings resulting from eliminating duplication of the supply of satellite transponder capacity. According to the Notifying Parties, these cost savings are one major element of the rationale for the Transaction.[363] While Viasat currently contracts [confidential strategic information relating to parties' satellite business] transponders from SES, TS will only have to deploy [confidential strategic information relating to parties' satellite business] additional transponders to accommodate Viasat's customers given the large share of common TV content.[364]

(582) Based on [confidential information regarding business plans and strategic decisions] agreement with SES, NENT can terminate the agreement, which would otherwise run until […][365] [confidential information regarding business plans and strategic decisions].[366] Hence, as [confidential information regarding business plans and strategic decisions] and [confidential information regarding business plans and strategic decisions] such as the proposed Transaction, happening.

(583) The Notifying Parties expect that the migration of Viasat's customers will take up to […] from […].[367] For the migration, the JV will have to update the software on Viasat's customers' set-top boxes and, most importantly, send technicians to customers' premises to carry out the satellite dish turn from the 5°E (SES) to the 1°W (TS) orbital position.

361 Form CO, footnote 532 and Annex 84.

362 Of the 70 satellites, 50 satellites are GEO satellites in geostationary orbit, comparable to those at 5°E, and 20 satellites are MEO satellites in medium earth orbit.

363 Form CO, paragraph 1950.

364 Form CO, paragraph 1913.

365 [Confidential information regarding business plans and strategic decisions].

366 Form CO, footnote 532 and Annex 84.

367 Form CO, footnote 547.

(584) Given this background, the Commission will not assess whether the JV would have the economic incentive to engage in a customer foreclosure strategy. While the JV's planned migration of Viasat's customers from SES to TS is economically sound[368], motivated by the elimination of a duplication of costs and does not lead to any "*costs associated with the not procuring products from upstream rivals*"[369], it corresponds to the kind of conduct which the JV would undertake in a customer foreclosure strategy. Therefore, for the sake of the assessment, the Commission assumes that the JV will have the incentive to engage in a customer foreclosure strategy. The Commission's assessment focusses on (i) whether the JV, by migrating Viasat's customers from SES to TS, would have the ability to foreclose SES; and (ii) whether a foreclosure strategy would have a significant detrimental effect on competition.

(585) In the present case, SES submitted that the loss of Viasat as a customer would harm SES' ability to effectively compete in the market for the provision of satellite transponder capacity via its 5°E orbital position. First, Viasat would currently represent a significant share of SES' total annual 5°E revenues. Second, the planned satellite dish turn would deprive the 5°E orbital position of any user reach in the Nordics. Consequently, SES would also lose its other Nordic broadcasting customers. i.e. a few, small Nordic broadcasters, which would no longer have an incentive to be transmitted via SES once Viasat's customers have redirected their dishes towards 1°W. Third, the loss of Viasat as a customer could render the replacement of Astra 4A (one of SES' two satellites located at 5°E), which is planned for the medium term at the end of this satellite's lifetime[370], […]. This would affect customers in the Nordic countries as well as in Estonia, Latvia, Lithuania and Ukraine, to which SES also currently distributes TV content from 5°E. Post-Transaction, the affected customers would either face higher prices, if SES tried to sustain the business, or lose the option of using the Astra 4A satellite should SES decide against a replacement.[371]

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368 In comparable transactions, the same approach was followed. For instance, Slovak Telekom moved its customers from 4°W to 1°W after it acquired Digi TV in Slovakia in 2013, which had been operating its business using capacity from 1°W. Or, following the merger between Canal+ and Movistar TV, owned by Telefónica, in 2014 (approved in 2015), Telefónica, decided to migrate the Movistar TV customer base from a Hispasat position to 19°E (SES' position). The migration was completed at the end of 2017. Notifying Parties' reply to RFI 9, questions 1-2.

369 Non-Horizontal Merger Guidelines, paragraph 68.

370 According to SES, the end of a satellite's life time is not only linked to the propellant life time, but is also based on the contractual design life, the overall health of the satellite and other preliminary assumptions on when replacement is required for continuation of service (SES' non-confidential reply to RFI 2, question 6(b)). The Notifying Parties also confirmed that the life-limiting factor of a satellite is often propellant life (fuel), but can also relate to failures of components (Notifying Parties' reply to RFI 12, question 5(c)). SES did not provide any clear evidence suggesting that, based on current information, a replacement of Astra 4A or SES-5 would be technically required before the end of their propellant life in […], respectively. However, it cannot be excluded that a replacement would be required several years before the end of their propellant life. In any case, any investment decision and replacement would take place beyond the time period normally taken into account in merger investigations.

371 SES' responses to questionnaire Q9 to satellite customers and competitors, question E.1; non-confidential version of the meeting slides and minutes of 11 February 2020; non-confidential version of SES' submission of 17 March 2020; SES' non-confidential reply to RFI 1, question 7.

(586) For the reasons set out below, and after careful consideration of SES' arguments, the Commission considers that the Transaction is not likely to lead to the risk of customer foreclosure with regard to SES' operations at the 5°E orbital position as Viasat and the other Nordic TV broadcaster customers do not represent a sufficiently large share of SES' current and potential customer base. First, the Commission considers that SES is likely to continue to effectively compete at the 5°E orbital position in the short and medium term until at least the end of the lifetime of its current satellites (see section (A)). Second, even assuming that SES would not continue its operations from the 5°E orbital position, there would be no significant detrimental effect on competition (see section (B)).

(A) Ability to engage in customer foreclosure

(587) When considering whether the JV would have the ability to foreclose access to downstream markets, the Commission examines whether there are sufficient economic alternatives in the downstream market for upstream rivals to sell their output. In its assessment, the Commission may take into account the existence of different markets corresponding to different uses for the input.[372] The latter point is particularly relevant for the assessment in the present case as the scope of the affected upstream and downstream markets differ significantly. In terms of the product market definition, the supply of satellite transponder capacity at the 1°W and 5°E orbital positions[373] is used for the provision of broadcasting and telecommunication services. While broadcasting and telecommunication services may constitute distinct product markets, both end uses contribute to satellite operators' revenue streams from the 1°W and 5°E orbital positions given that TS' and SES' satellites carry both Ku-bands for broadcasting and telecommunication services as well as dedicated Ka- and C-bands for telecommunication services. In contrast, the relevant downstream market is the retail supply of AV services including all distribution technologies (i.e. satellite, terrestrial, cable, IPTV and OTT). In terms of the geographic market definition, the market for the supply of satellite transponder capacity and its possible sub-segments is regional in scope, while the market for the retail supply of AV services is national in scope.

(588) The Commission considers that the JV will not have the ability to engage in customer foreclosure for the following reasons.

(589) First, Viasat's demand does not represent a significant share of SES' current satellite transponder capacity. While SES has a total number of 120 transponders at 5°E, Viasat currently uses […] transponders.[374] Indeed, SES is also likely to lose its few other Nordic TV broadcaster customers as, post-Transaction, there will not be a significant number of satellite dishes pointing to 5°E in the Nordics and as such there is no target audience at 5°E for TV broadcasters. SES has direct agreements[375] with a few small, niche broadcasters offering religious oriented channels (Kanal 10, Vision Norway/Sweden, TBN Nordic and God TV).[376] The

372 Non-Horizontal Merger Guidelines, paragraph 66.

373 The Commission focusses on the overall market for satellite transponder capacity from both the 1°W and 5° E orbital positions. Indeed, if the two orbital positions were distinct markets, no vertical relationship would arise with regard to SES' activities.

374 Form CO, paragraph 1941.

375 These channels are distributed as unencrypted feeds and are available to Viasat's customers as free channels.

376 Form CO, paragraph 1885.

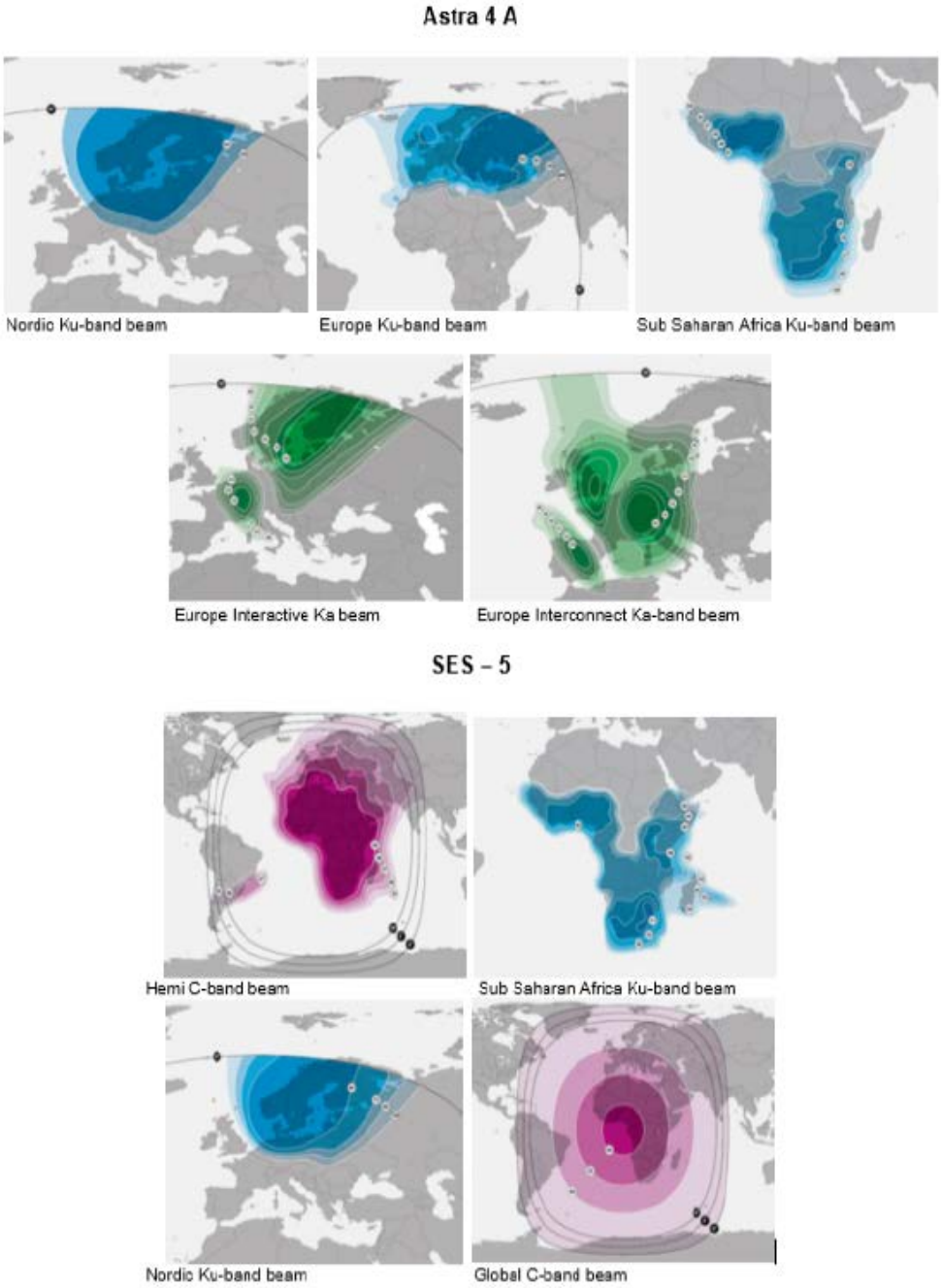
Notifying Parties estimate that these Nordic TV broadcasters together require […].[377] Hence, all of SES' Nordic broadcasting customers taken together currently contract […] transponders from SES, i.e. about [10-20]% of SES' total number of transponders at the 5°E orbital position. In terms of revenues, it can be expected that SES' Nordic broadcasting customers represent a slightly higher share as satellite transponder capacity for broadcasting is priced higher than for telecommunication services and SES' satellites at the 5°E orbital position have a capacity utilisation below 100%.[378] The Notifying Parties estimate that the Nordic broadcasting customers represent about [20-30]% of SES' 5°E revenues.[379]

(590) SES' other revenues streams at 5°E are the following: SES supplies TV distributors in Estonia, Latvia, Lithuania (TVPlay Home3[380]) and Ukraine (Viasat[381]) in the CEE region and in Sub-Saharan Africa (e.g. StarTimes[382], Zuku TV[383]). In addition, SES has agreements with individual TV broadcasters for distribution outside the Nordics, such as with Discovery.[384] Finally, SES provides telecommunication services in a large number of countries to both end customers and resellers.[385]

(591) Second, the frequencies licensed to SES at 5°E are highly attractive and valuable because of the vast geographic area covered by satellites stationed at that orbital position and hence there is a large base of potential customers which SES could compete for in order to replace its Nordic broadcasting customers. To illustrate that the loss of its Nordic broadcasting customers does not fundamentally affect the viability of SES' satellite position at 5°E, Figure 9 provides a coverage map for both of SES' satellites at the 5°E orbital position. Post-Transaction, SES will retain the ability to further develop its business from the 5°E orbital position in Europe (CEE region), Middle East and Sub-Saharan Africa with regard to both broadcasting (Ku-band) and telecommunication services (Ku-, Ka- and C-bands).

377 Form CO, Table 214.
378 Form CO, Table 227; Notifying Parties' reply to RFI 15, question 5.
379 Notifying Parties' reply to RFI 15, question 2.
380 Owned by All Media Baltics, now rebranded to TV3 Group, formerly owned by NENT's predecessor and branded as Viasat.
381 Owned by 1+1 Media Group (a third party unrelated to NENT), formerly owned by NENT's predecessor.
382 See e.g. https://www.broadbandtvnews.com/2015/06/02/startimes-adds-capacity-on-ses-5-for-africa/.
383 See e.g. https://www.broadbandtvnews.com/2013/07/23/zuku-tv-migrates-to-ses-5/.
384 Notifying Parties' reply to RFI 15, question 2.
385 Form CO, paragraphs 1900 and 1945.

Figure 9: Astra 4A and SES-5 coverage maps



Source: Form CO, Figure 34.

(592) The coverage of Sub-Saharan Africa is particularly relevant in this context. While DTH distribution is in decline in the Nordics (as explained in Section 6.3), it is a growth area elsewhere such as in Africa.[386] For instance, StarTimes, an African TV distributor served by SES, is expected to grow significantly until 2025, including with respect to its satellite operations. In addition, the provision of

386 See e.g. https://www.broadbandtvnews.com/2020/01/06/africa-to-witness-subscriber-growth-of-17m/.

internet connectivity and mobile backhaul via satellite may play a role in remote areas of Africa going forward.[387]

(593) It is also worth noting that the provision of telecommunication services via satellite does not have the "lock-in" effect of DTH TV distribution with many residential fixed antenna installations pointing at one specific orbital position. Many purchasers of satellite capacity for telecommunication services, e.g. aeronautical and maritime customers, have movable antennas which steer themselves to point towards a satellite at all times during the movement of a vessel or airplane. They can move on short notice from one satellite position to another and hence such customers can enter into short-term agreements with any satellite operator covering the desired geographic area.[388] Figure 10 illustrates that 5°E has visibility over very attractive areas for these so-called mobility services supplied to vessels or airplanes. The Notifying Parties estimate that more than a third of the world's maritime services demand in terms of revenue are in view from 5°E in addition to the dense European air traffic.[389]

Figure 10: Visibility of the earth from 5°E



Source: Notifying Parties' reply to RFI 9, question 13.

(594) Third, according to SES' own statements made during the presentation of Q3 2019 results on 25 October 2019, SES had been expecting the Transaction and announced that it would nevertheless continue to work with its existing customer base at 5°E and would further develop its business at 5°E:[390]

(a) *"[On] the announced or the intended merger between NENT and Canal Digital in the Nordics, first of all, my comment is this:* ***it's the only market where consolidation between pay TV operators has not yet taken place. So, it was a matter of time, and sooner or later this was to happen.*** *We… for the*

[387] See e.g. https://www.worldbank.org/en/topic/digitaldevelopment/publication/connecting-africa-to-broadband-a-roadmap-for-inclusive-growth, https://www.gsma.com/spectrum/wp-content/uploads/2019/02/Mobile-Backhaul-Options-InfoG.pdf, http://satellitemarkets.com/news-analysis/african-satellite-market.

[388] Notifying Party' reply to RFI 9, questions 4 and 9 and to RFI 12, question 9(c).

[389] Notifying Party's reply to RFI 9, question 13.

[390] Form CO, paragraph 1943 (Recording at: https://www.ses.com/sites/default/files/2019-10/6652274MP3 mp3).

time being, our understanding is that – and we are of course in discussions with the colleagues from NENT – there will be no impact on our revenues during the next two and three years. And then depending on how the migration will be executed, of course, there will be an impact, a negative impact, after this period." (emphasis added)

(b) "*On the merger between NENT and Canal Digital, yes, the pay TV operator is an important player on the 5 East neighbourhood, but what I should mention is that, NENT being the successor of MTG, which has been historically our customer on this orbital position, MTG reorganised part of the activities already many years ago by selling the* ***Ukrainian activities to Ukrainian operator (and these continue to be on 5 East), by selling the Baltic operations to a Baltic operator (and these continue to be on 5 East).*** *And of course now, with the consolidation, very probably, to 1 West, because the shareholder of Canal Digital is operating its own satellites,* ***we of course have to further develop the 5 East neighbourhood. And of course, we are doing this with the remaining customers we have, and we will continue to have, on this orbital position.***" (emphasis added)

(595) Fourth, as explained by the Notifying Parties, if SES were to cease offering satellite capacity at 5°E, it risks to lose its rights to the frequencies at 5°E after three years.[391] Given that 5°E has a satellite footprint which covers densely populated areas in Europe and Africa and offers ample revenues opportunities (as described in paragraphs (591) to (593)), it is highly unlikely that SES would give up these rights.

(596) Fifth, the launch of a satellite involves large sunk costs, which means that operators are unlikely to decommission a satellite which continues to generate substantial revenue.[392] For instance, for Thor 7, TS' newest satellite launched in 2015, total capital expenditures until launch (for satellite equipment, launch, insurance and ground system) amounted to roughly EUR […]. Since the launch, annual capital expenditures have amounted to about EUR […] and annual operating expenditures (personnel and platform support) to below EUR […].[393] The Notifying Parties estimate that SES' annual expenditures would be even lower compared to TS, as SES belongs to global leading satellite operator SES Group.[394] It is economically rational to continue the operation of satellites until

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391 Satellite operators submit frequency filings via their national regulators. Filings have to be brought into use with a real satellite system no later than seven or eight years after their initial submission, otherwise they will expire. Operators are free to submit as many filings as they wish (each filing being a ticket in the queue), and whoever holds the most senior filing at a given orbital location has the right to use the frequency ("first come, first served"). When an operator manages to bring a filing into use, it will be recorded in the Master International Frequency Register ("MIFR") supervised by the International Telecommunications Union. When this happens, the filing will not expire and the operator gains the right to use the frequency band at the filed orbital location as long as they have a satellite asset in place using the filed frequencies. Should the satellite asset be removed or stop working, the operator has the option to suspend the filing, then the operator maintains the most senior rights at the orbital location for three years. Failing to bring a satellite asset to the orbital location within three years after suspension implies that the frequency rights will be removed from the MIFR and will be available to another operator that has a filing covering the frequency band at that orbital location and are able to bring the frequencies into use ("use it or lose it"). Form CO, paragraph 1948; Notifying Parties' reply to RFI 16, question 5.

392 Form CO, paragraph 1946.

393 Notifying Parties' reply to RFI 12, question 1.

394 Notifying Parties' reply to RFI 19, question 13.

the end of their lifetime as long as they continue to generate revenues [confidential strategic information relating to parties' satellite business] annual expenses, which is the case for SES' satellites at the 5°E orbital position. In fact, SES submitted that its net worldwide turnover related to the two satellites at the 5ºE orbital position was EUR […] in 2018.[395] Without the estimated EUR […] from Nordic broadcasting customers[396], SES will still earn about EUR […] per satellite at the 5°E orbital position. Therefore, from a margin perspective, SES is likely to continue to operate from its 5°E orbital position.

(597) Sixth, it is worth noting that the mentioned operating expenses are largely fixed costs due to the high degree of digitisation and automation. […].[397] […].[398] This is also confirmed by SES' description of its own pricing policy, […]: […][399]

(598) Seventh, the results of the market investigation confirmed that satellite customers and competitors do not expect that SES' ability to effectively compete from the 5°E orbital position outside the Nordics would be affected in the two to three years following the Transaction.[400]

(599) In line with arguments presented in paragraphs (589) to (597), SES' submissions do not focus on its current operations.[401] Instead, SES emphasises that the loss of its Nordic broadcasting customers may render the replacement of Astra 4A, the elder of SES' two satellites, […].[402] SES has not submitted sufficient evidence in order for the Commission to carry out a comprehensive assessment of SES' business cases for the Astra 4A replacement absent the Transaction and post-Transaction.[403] Nevertheless, the Commission has four specific remarks in relation to SES' investment decision.

(600) As a first remark, the number of transponders used by Viasat [confidential strategic information relating to NENT's satellite business].[404] Viasat has reduced

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395 SES' responses to questionnaire Q9 to satellite customers and competitors, question A.2.

396 Notifying Parties' reply to RFI 12, question 12 (The EUR […] estimate consists of the actual value for Viasat and a mark-up for the other Nordic broadcasting customers).

397 Notifying Parties' reply to RFI 12, question 1.

398 Form CO, paragraph 1968.

399 SES' non-confidential reply to RFI 2, question 2(e).

400 Responses to questionnaire Q9 to satellite customers and competitors, question D.3; Responses to questionnaires Q2, Q4, Q6 and Q8 to TV broadcasters in Norway, Sweden, Finland and Denmark, question J.3.

401 SES' argument which concerns its current operations relates to a possible alteration of its agreement with Teracom for the provision of ground services (in particular uplink services) from a site in Sweden (SES' non-confidential reply to RFI 3 and RFI 4). As a large part of the services provided by Teracom currently relate to Viasat, SES fears that Teracom would possibly want to alter the agreement which could increase SES' costs or hinder SES from reaching the 5°E orbital position. The Commission does not consider that a possible alteration of SES' agreement with Teracom would harm SES' ability and incentive to effectively compete from the 5°E orbital position. If an alteration of the agreement would increase SES' costs, this would not have a significant impact as ground services account for a small proportion of the cost of supply of satellite transponder capacity only. SES could also evaluate alternative independent teleport companies active in Europe and alternative sites in Sweden in order to switch to a different provider and/or site for the provision of ground services (Notifying Parties' replies to RFI 11 and RFI 13). In any case, the assessment of effects in section (B) also covers the scenario that SES would immediately stop its operation from the 5°E orbital position.

402 SES' responses to questionnaire Q9 to satellite customers and competitors, question D.3.

403 See e.g. SES' reply to RFI 1, question 6, which does not go into sufficient detail.

404 Notifying Parties' reply to RFI 9, question 12.

its transponder use from […] transponders in 2015 to […] in Q1 2020. Besides the divestment of All Media Baltics (accounting for a reduction by approximately […] transponders[405]), such reduction is a result of usual course of business changes in the operation of Viasat. On the one hand, the reduction is due to Viasat's commercial decision to [confidential strategic information relating to NENT's satellite business]. On the other hand, the reduction was possible due to a number of technical developments, such as [confidential strategic information relating to NENT's satellite business].

(601) In […], SES and Viasat concluded a new transmission agreement that provides for an option for Viasat [confidential strategic information relating to NENT's satellite business], the end of the contract. Post […], NENT assumes that the transition from distribution via satellite to distribution via the internet will [confidential strategic information relating to NENT's satellite business]. In fact, NENT estimates that Viasat would most likely [confidential strategic information relating to NENT's satellite business]. It follows that while Viasat's demand for capacity is one of several factors, it is a factor of [confidential strategic information relating to NENT's satellite business] when SES decides on the replacement of Astra 4A.

(602) As a second remark, SES's decision to replace Astra 4A depends on several factors making it difficult to establish a direct causal link between the Transaction and the investment decision. In particular, such decision would also depend on the future viability of the DTH industry in the CEE region, the Middle East and Africa, consumer uptake of IPTV and online services, the growth of data communications over satellite, and SES' overall satellite asset and orbital position strategy. SES derives revenue from non-broadcasting services at 5°E and the demand for satellite capacity in Africa is projected to increase significantly. Viasat's demand for capacity is only one of many factors which SES would take into account.

(603) As a third remark, SES Group, as the leading global satellite operator, will have a number of ways of optimising the use of its assets at 5°E and satisfying the needs of its current and future customers, while keeping the ratio between investment and expected future income at a relatively low level. As explained by the Notifying Parties, SES could consider any of the following options:[406]

(a) Co-investment with another satellite operator for a replacement. Each co-investor can configure the satellite based on its requirement for broadcasting, data and other capacity, use of frequency bands (Ku-, Ka-, C-band) and fixed/adjustable transponders. This provides considerable flexibility and lower investment costs and is practically feasible as shown by TS' and Intelsat's co-investment at 1°W.

(b) SES could move SES satellites from other orbital positions to 5°E. The cost of such a move would relate to: (i) the use of fuel on the satellite to move it (which depends on the current position of the satellite, i.e. the distance to new position), and whether the commercial value of the satellite would be reduced by the move (remaining fuel vs. lifespan of the on-board technology)) and

405 Notifying Parties' reply to RFI 12, question 7(a).

406 Notifying Parties' reply to RFI 9, question 14.

(ii) the commercial value of the satellite on current location vs. commercial value on new position. The cost of moving a satellite would not be prohibitive for SES and could be done in a timely way.

(c) Launch of a micro satellite at favourable investment costs of about EUR […], but with a more limited payload.

(d) Combination with a public sector payload, i.e. reserving parts of a satellite for specific use defined by a governmental body.

(604) Each of these options would result in substantially lower investment cost, than the cost of approximately EUR […] to replace Astra 4A with a similar satellite. In addition, SES could adjust the carried transponders to the estimated future demand, e.g. it could launch a large data services satellite with a small broadcasting payload as a co-passenger.

(605) As a fourth remark, the Commission notes that SES' decision to replace Astra 4A is too far away from the Transaction for the Commission to consider it as part of the investigation and establish a causal link. Importantly, the Notifying Parties provided evidence that Astra 4A could technically operate until [confidential strategic information relating to parties' satellite businesses].[407] Even assuming that SES would decide to replace Astra 4A with a more modern satellite slightly earlier and would take such investment decision three to four years before the expected launch, such investment decision would still take place beyond the time period normally taken into account in merger investigations.

(B) Effects on competition

(606) The Commission does not need to come to a final view on the question whether the Transaction would affect SES' investment decision. Even assuming that SES would stop its operations at the 5°E orbital position immediately post-Transaction (or would later decide not to replace its Astra 4A satellite[408]), there would be no significant detrimental effect on competition in any of the downstream markets concerned by SES' potential exit from the market for the supply of satellite transponder capacity at the 5°E orbital position.

(607) With regard to TV distributors in the Nordics, the Commission notes that, besides the JV, no TV distributor uses satellite capacity as an input in the retail provision of AV services in the Nordics. Canal Digital and Viasat are the only TV distributors which rely on this input. SES' potential exit from 5°E would therefore have no impact on the ability of downstream competitors to compete. Given that downstream competitors do not rely on DTH, TS does not have the ability to refuse to supply satellite transponder capacity for broadcasting, restrict the supply of such capacity, or offer it at worse conditions.

407 Form CO, footnote 532 and Annex 84.

408 Under this scenario, SES' existing customers on SES-5 would continue to be served. In addition, the loss of Viasat will have freed up capacity on SES-5, which could be used to move existing customers from Astra 4A to SES-5.

(608) It is worth noting that there is a large number of downstream competitors which have their own infrastructure:

(a) Norway: Altibox (fibre); Telia (fibre, cable, mobile); RiksTV (DTT);

(b) Sweden: Tele2/Com Hem (fibre, cable, mobile, DTT); Telia (fibre, cable, mobile); Sappa (fibre, cable);

(c) Denmark: TDC (fibre, cable, mobile); Telia (mobile); Stofa/Boxer (fibre, cable, DTT); Waoo! (fibre, cable);

(d) Finland: Digita (DTT); Elisa (fibre, cable, mobile); Telia/Bonnier (fibre, cable, mobile).[409]

(609) Entry of any competitors on the downstream retail market that would rely on satellite transponder capacity for broadcasting is highly unlikely going forward in the Nordics. TV distribution over DTH is in significant structural decline. Entry has not taken place over the past 20 years. The Notifying Parties have [confidential strategic information relating to parties' TV businesses].[410]

(610) With regard to TV broadcasters (with direct agreements for satellite capacity) in the Nordics, the Commission notes that the Transaction and SES' potential exit from 5°E would neither harm this customer group nor end customers, i.e. TV viewers. In particular, it would not give TS the ability or the incentive to foreclose TV broadcasters that wish to purchase satellite transponder capacity directly from satellite operators.

(611) As preliminary remark, Nordic broadcasters do not to any significant extent purchase satellite capacity directly from satellite operators. Nordic TV broadcasters normally enter into wholesale carriage agreements pursuant to which DTH TV distributors (pre-Transaction, Canal Digital and Viasat; post-Transaction, the JV) undertake to transmit and distribute the broadcasters' TV signals to their subscribers (this relationship is discussed in Section 6.4.3). By way of illustration, TS transmits […] TV channels to the Nordics, of which […] are transmitted for Canal Digital and only […] are transmitted based on direct agreements with TV broadcasters.[411] The trend over recent years goes towards including satellite transmission for even more channels in the wholesale carriage agreements. TS lost almost [confidential strategic information relating to Telenor's satellite business] of its revenues from 2016 to 2020 from TV broadcasters that purchase satellite capacity. Therefore, it is not expected that demand from channel providers for direct agreements will increase going forward. In other words, there is and will be no significant demand other than from DTH TV distributors for satellite capacity for broadcasting in the Nordics.

(612) Post-Transaction, there will not be a significant number of satellite dishes pointing to 5°E in the Nordics and as such there is no target audience at 5°E for TV broadcasters. It is therefore irrelevant to TV broadcasters currently present in or seeking to enter the Nordics whether SES offers satellite capacity at 5°E. While some broadcasters will no longer be able to choose between the 1°W and 5°E

409 Form CO, paragraph 1954.
410 Form CO, paragraph 1880.
411 Form CO, paragraph 1882.

orbital positions, the dish turn from 5°E to 1°W may have a positive effect on TV broadcasters who currently purchase satellite capacity from both TS at 1°W and SES at 5°E. Post-Transaction, these TV broadcasters will reach all Nordic DTH households based on one supply agreement, which will reduce their costs while keeping the same advertising income (for news channels) or donor income (for religious channels).[412] This is the case for three out of the five channels with direct agreements with SES as [confidential strategic information relating to parties' satellite business] and [confidential strategic information relating to parties' satellite business] currently purchase capacity from both SES and TS.[413]

(613) The Transaction will also not harm TV broadcasters that currently purchase satellite capacity from either TS or SES.[414]

(614) In the first place, TV broadcasters and end customers, i.e. TV viewers, would not be affected by SES' potential exit as in addition to retail AV services from the JV they have several different platforms on which to, respectively, distribute and receive AV services (i.e terrestrial, cable, IPTV and OTT). This was confirmed by respondents to the market investigation, including TS' TV broadcaster customers who stated that they could rely on other means of distribution than satellite.[415]

(615) In the second place, TS will have a strong incentive to supply capacity to any TV broadcaster customers post-Transaction because TS has a significant amount of available capacity. In the […] years[416] following the Transaction, TS will have at least […] free transponders, which could be used by new broadcasting customers in the Nordic and CEE region. If the expected volume reduction by the JV materialises, the number of free transponders will increase to up to […]. Moreover, [confidential strategic information relating to Telenor's satellite business].[417]

(616) In the third place, it is also worth noting that satellite operator Intelsat owns […] transponders on Thor 6 and leases capacity on […] transponders on Thor 5 and Thor 7 from TS. […] transponders on Thor 5 and […] transponders on Thor 7 can be used for broadcasting in the Nordics. Intelsat could offer satellite capacity to some individual TV broadcasters, if they were unable to come to an agreement with TS.[418]

(617) With regard to TV distributors and TV broadcasters in the CEE region[419], the Commission notes that there are a number of satellite operators which cover this

412 Notifying Parties' reply to RFI 9, question 15.

413 Form CO, Table 209.

414 TS has direct agreements for the distribution in the Nordics (or wider) with [confidential strategic information relating to Telenor's satellite business]. These channels may still be distributed on the other orbital position based on wholesale carriage agreements with Viasat and Canal Digital, respectively.

415 Responses to questionnaire Q9 to satellite customers and competitors, question D.5; Responses to questionnaires Q2, Q4, Q6 and Q8 to TV broadcasters in Norway, Sweden, Finland and Denmark, question J.5.

416 After […], free capacity will depend on TS' decision on a replacement of satellite Thor 5 during […] and of satellite Thor 6 during […].

417 Notifying Parties' reply to RFI 9, questions 8 and 15.

418 Notifying Parties' reply to RFI 9, question 7.

419 The Notifying Parties confirm that any other regions covered by SES' 5°E orbital position, in particular the Middle East and Africa, are also served by a number of other satellite operators and other satellite positions operated by SES Group (Notifying Parties' reply to RFI 9, question 11).

region for broadcasting, as presented in Table 48. Besides SES' multiple orbital positions, other satellite operators covering the CEE region (or parts of this region) include TS, Eutelsat, Intelsat, Hellas Sat and Amos.[420]

Table 48: Satellite capacity for broadcasting in the CEE region

2018	EUR (million)	%
1°W	[…]	[10-20]
TS	[…]	[0-5]
Intelsat	[…]	[5-10]
SES (5°E)	[…]	[0-5]
SES (19.2°E)	[…]	[10-20]
SES (23.5°)	[…]	[5-10]
SES (31.5°)	[…]	[0-5]
Eutelsat (13°)	[…]	[10-20]
Eutelsat (16°E)	[…]	[10-20]
Eutelsat (36.0°)	[…]	[10-20]
Intelsat (45.1°E)	[…]	[0-5]
Intelsat (85°E)	[…]	[5-10]
Hellas Sat (39.0°E)	[…]	[5-10]
Amos (4°W)	[…]	[0-5]
Total	**[…]**	**100**

Source: Notifying Parties' reply to RFI 9, question 11.

(618) TS currently supplies customers in Czechia, Slovakia, Romania and Hungary. From its other orbital positions, SES currently supplies customers in Austria, Germany and Switzerland (19.2°E), Czechia and Slovakia (23.5°E) and Romania (31.5°E). Eutelsat currently supplies customers in Poland (13°E), various Balkan states (16.0°E) and Russia (36.0°E). Intelsat currently supplies customers in Czechia, Slovakia, Romania and Hungary from 1°W, in Bulgaria from 45.1°E and in Russia from 85°E. Hellas Sat's current customers are situated in Bulgaria and Romania and Amos' current customers are located in Hungary and Ukraine.[421] All listed orbital positions cover the Baltic states and Ukraine, where SES' current 5°E customers are located, besides Hellas Sat's orbital position (covering neither Baltic states nor Ukraine) and SES' 23.5°E, Intelsat's 45.1°E and Eutelsat's 16°E orbital positions (not covering Ukraine). The Notifying Parties estimate that several of the listed satellite operators would likely have free capacity available for additional broadcasting customers.[422]

(619) Therefore, in case SES terminated its operations via the 5°E orbital position, TV distributors and TV broadcasters in the CEE region would continue to be able to choose from and switch between different satellite operators. This also includes the possibility that SES' current customers could stay with SES and switch to one of SES' other orbital positions covering the CEE region.

(620) As explained in paragraph (74), while switching of the orbital position does create switching costs, switching is possible as shown by several past switching examples. Moreover, the new satellite operator may offer migration cost support.

420 Notifying Parties' reply to RFI 9, question 10(e).
421 Notifying Parties' reply to RFI 9, question 10(a).
422 Notifying Parties' reply to RFI 16, question 6.

(621) With regard to customers of satellite telecommunication services, the Commission notes that, as explained in paragraph (593), the majority of these customers are business customers with movable satellite antennas. Such customers do not depend on a specific orbital position and can easily move antennas to any of the many other orbital positions which offer the same type of services.

(622) The Notifying Parties explain that the provision of satellite capacity for data services is highly competitive, with a large number of resellers (Marlink, Speedcast, Maritime, Navarino and many small local resellers) competing for contracts with ship owners, airlines and offshore installations etc. These resellers run competitive processes among the various satellite operators to supply required satellite capacity. There is a constant deal flow to and from TS and contract periods for data services typically vary from […] to […] years. As an example, [confidential strategic information relating to Telenor's satellite business]. Telenor Satellite has [confidential strategic information relating to Telenor's satellite business] in respect of [confidential strategic information relating to Telenor's satellite business] as its coverage area is limited to one orbital position, which [confidential strategic information relating to Telenor's satellite business].[423]

6.4.5.3. Conclusion

(623) In light of the above considerations and based on the results of the market investigation, the Commission considers that the Transaction does not give rise to serious doubts as to its compatibility with the internal market as a result of customer foreclosure in the market for satellite transponder capacity.

6.4.6. Possible foreclosure of competing acquirers of satellite transponder capacity from accessing Telenor Satellite's transponder capacity (input foreclosure)

(624) The Transaction gives rise to vertically affected markets as a result of TS' activities in the upstream market for the provision of satellite transponder capacity and the JV's activities in the downstream markets for the retail supply of AV services in the Nordic countries.

(625) There are two customer groups which purchase satellite transponder capacity directly from satellite operators in order to compete in the retail supply of AV services in the Nordic countries: DTH TV distributors and some individual TV broadcasters. As already explained in detail in Section 6.4.5.2(B) on the effects of potential customer foreclosure to the detriment of TS' competitor SES, TS would not have the ability and incentive to foreclose downstream competitors of the JV.

(626) TV distributors: Besides the JV, no TV distributor uses satellite capacity as an input in the retail provision of AV services in the Nordics. In addition, it is highly unlikely that there would be entry in light of the decline of DTH TV distribution in the Nordics. Therefore, given that none of the JV's downstream competitors relies on DTH distribution, TS does not have the ability to refuse to supply satellite transponder capacity for broadcasting, restrict the supply of such capacity, or offer it at worse conditions.

[423] Notifying Parties' reply to RFI 9, question 15.

(627) TV broadcasters: Nordic broadcasters do not to any significant extent purchase satellite capacity directly from satellite operators. Nordic TV broadcasters normally enter into wholesale carriage agreements pursuant to which DTH TV distributors (pre-Transaction, Canal Digital and Viasat; post-Transaction, the JV) undertake to transmit and distribute the broadcasters' TV signals to their subscribers (this relationship is discussed in Section 6.4.3). The Transaction will also not harm TV broadcasters which purchase satellite capacity directly from a satellite operator in the Nordics.[424] First, TV broadcasters and end customers, i.e. TV viewers, have several different platforms on which to, respectively, distribute and receive AV services (i.e terrestrial, cable, IPTV and OTT). Second, TS will have a strong incentive to supply capacity to any TV broadcaster customers post-Transaction, in particular, because TS has a significant amount of available capacity (see paragraph (615)).

(628) Therefore, in light of the above considerations and based on the results of the market investigation, the Commission considers that the Transaction does not give rise to serious doubts as to its compatibility with the internal market as a result of input foreclosure in relation to the market for satellite transponder capacity.

6.5. Cooperative effects

6.5.1. Introduction

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

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

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

(632) Telenor and NENT will both remain independently active in a number of the same markets as the JV, namely the retail supply of AV services in Norway,

[424] TS has direct agreements for the distribution in the Nordics (or wider) with [confidential strategic information relating to Telenor's satellite business]. SES distributes [confidential strategic information relating to Telenor's satellite business]. These channels may still be distributed on the other orbital position based on wholesale carriage agreements with Viasat and Canal Digital, respectively.

Sweden and Finland.[425] The Notifying Parties and the JV will also be active post-Transaction in the acquisition of TV channels in Finland, which is an input to the retail supply of AV services. In the scenario where Telenor and the Norwegian State are considered part of the same economic unit, the Norwegian State and NENT would be active post-Transaction in the retail supply of AV services and in the wholesale supply of TV channels in Norway.

6.5.2. The Notifying Parties' view

(633) The Notifying Parties argue that the creation of the JV does not have the object or effect of – and will not lead to – coordination between the Notifying Parties in the markets for the retail supply of AV services in Norway, Sweden or Finland, or the market for wholesale acquisition of TV channels in Finland because the market conditions are not conducive to tacit coordination, the Notifying Parties will continue to have different commercial interests and the JV will form a small part of the Notifying Parties' overall businesses.

6.5.3. The Commission's assessment

(634) The Commission considers that the Transaction does not give rise to serious doubts as to its compatibility with the internal market as a result of cooperative effects in the markets for the retail supply of AV services in Norway, Sweden and Finland (or on the market for the wholesale supply of TV channels in Norway, in the case that Telenor and the Norwegian State are considered part of the same economic unit) for the reasons set out below. Moreover, the Transaction will not lead to cooperative effects with respect to channel acquisition in Finland for the same reason as discussed below for their overall role on the market for the retail supply of AV services.

(635) First, the Commission observes that the markets for the supply of retail AV services in Norway, Sweden and Finland are not conducive to coordinated effects. The markets are characterised by asymmetric shares and several competitors would remain post-Transaction, which would be likely to disrupt any attempts of the Notifying Parties to coordinate their activities on the relevant markets.

(636) In Norway, post-Transaction, the Parties will continue to face competitive constraints from a number of strong market players and suppliers of traditional and OTT AV services. Telenor will have a share of [10-20]% and NENT (via Viaplay) a share of [5-10]% in the overall market for the retail supply of AV services. Other established non-linear OTT providers such as Netflix ([20-30]%), HBO Nordic ([5-10]%) and linear OTT provider TV2 Sumo ([5-10]%) will continue to compete with the Notifying Parties, and in particular constrain NENT's OTT service Viaplay. Competition from other cable/IPTV service

[425] In the above sections assessing the horizontal overlaps, the combined market shares of the Parties and a list of each affected market segment have been presented. In the overall market for the retail supply of AV services, the market shares including NENT's OTT service and Telenor's retail AV services in 2018 are: (i) in Norway, [20-30]% by subscribers (JV: [10-20]%, Telenor: [10-20]%, NENT: [5-10]%) and [40-50]% by revenue (JV: [10-20]%, Telenor: [10-20]%, NENT: [0-5]%); (ii) in Sweden, by subscribers (JV: [5-10]%, Telenor: [5-10]%, NENT: [0-5]%) and [30-40]% by revenue (JV: [20-30]%, Telenor: [5-10]%, NENT: [0-5]%); (iii) in Finland, [10-20]% by subscribers (JV: [0-5]%, Telenor: [10-20]%, NENT: [0-5]%) and [20-30]% by revenue (JV: [5-10]%, Telenor: [10-20]%, NENT: [5-10]%); and (iv) in Denmark, by subscribers (JV: [0-5]%, NENT: [0-5]%) and [10-20]% by revenue (JV: [5-10]%, NENT: [0-5]%).

operators such as Telia/GET ([10-20]%) and RiksTV ([5-10]%)[426] will likely make any efforts at coordination difficult to sustain. Riks TV has already approximately […] subscribers and is considered by the Notifying Parties, [confidential information regarding business plans and strategic decisions.].[427] Any attempts to coordinate behaviour on the retail market would likely be undermined by any number of competitors.[428]

(637) In Sweden, the Parties' activities are relatively small (Telenor [5-10]%, Viaplay [0-5]% and JV [5-10]%) and will face constraints by large integrated players such as Tele2/Com Hem ([20-30]%) and Telia ([10-20]%) in addition to smaller traditional distributors such as Sappa. Again, OTT providers will also exercise a constraint including Netflix ([20-30]%) and HBO ([5-10]%). Even excluding non-linear OTT providers, the Notifying Parties will face a strong constraint in particular from large players Tele2/Com Hem ([40-50]%) and Telia ([20-30]%).[429] Moreover, given the small combined presence of the Notifying Parties and the larger presence of competitors, in particular Tele2/Com Hem and Telia, it is unlikely that these rivals' incentives would align with those of the Notifying Parties, required to sustain any coordination.

(638) In Finland, together the Notifying Parties' retained activities will represent below 20% of the market for the retail supply of AV services, with Telenor's share of [10-20]% five times larger than NENT's share of [0-5]%. Post-Transaction, the Notifying Parties will continue to face constraints from numerous TV distributors across all market segmentations: including, Digita ([20-30]%), Telia ([10-20]%), Elisa ([10-20]%) as well as OTT providers, Netflix ([10-20]%) and linear OTT service Ruutu+ ([0-5]%).[430]

(639) Second, information barriers in place post-Transaction will make it difficult for the Notifying Parties to coordinate their behaviour. Information barriers will be in place between NENT and Telenor on the one hand and the JV on the other hand, and between NENT and Telenor. These information barriers will prevent information flows that could otherwise help to coordinate the retained activities of the Notifying Parties. More specifically, the information barriers will ensure that confidential information will not be available to any representative from Telenor and/or NENT directly involved in competing market-facing activities. They will also ensure that personnel is kept separate by preventing an overlap of directors of the board, management and employees of the JV with board members, management and employees in Telenor and NENT who have direct operational responsibility for day-to-day marketing of products and services relating to the retail supply of AV services in Norway, Sweden and Finland. In short, the information barriers will ensure that confidential information relating to the retail supply of AV services, including the terms of distribution agreements, will not be

426 Form CO, Table 5.

427 Form CO, paragraph 518-520, Annex 22.

428 The Commission notes the transmission agreement in place between Norges Televisjjion AS ("NTV") and Norking, a wholly owned subsidiary of Telenor, under which Norking provides access to high quality DTT infrastructure to NRK. The term of the agreement is […] to […]. The agreement is unrelated to the activities of the JV in the retail supply of TV services in Norway and as such the Transaction does not change the incentives of the JV vis-à-vis access to DTT infrastructure for NTV. In any case, the term of the transmission agreement runs until […].

429 Form CO, Tables 32 and 33.

430 Form CO, Table 62.

shared by the JV with either of its parents (and vice versa) and will not be shared between the JV's parents.

(640) Third, the growth in OTT viewing and the increasing competitiveness of OTT players will likely undermine attempts at coordination. The Commission considers that the trend towards an increasing importance in OTT viewing is likely to result in increased competitive pressure from rival OTT providers in the future. In Norway, this would mean from players like TV2 (through its OTT offering "TV2 Sumo"), Discovery ("DPlay" and "Eurosport Player"), Telia ("C More"); in Sweden, Telia ("C More") and Discovery ("Dplay and Eurosport Player") and in Finland Sanoma/Nelonen's "Ruutu+"; in addition, there will be competitive pressure from international players like Netflix and HBO.

(641) Fourth, the barriers to entry in particular as regards the OTT provision of retail AV services are not so high so to make entry impracticable. Evidence of entry suggests that any efforts to coordinate behaviour could, in future, be disrupted by further entry into the OTT space. Several new players have entered with new OTT services in the recent past. For example, in Norway and Sweden, Amazon launched "Amazon Prime Video" (2016)[431], Apple launched "Apple TV+" (2019) and Disney is expected to launch Disney+ in Norway and Sweden later this year. In addition, existing AV retailers have expanded their offering to include OTT services, with RiksTV launching "Strim" (2018) and sports agency IMG launching "Strive" (2019) in Norway.

(642) Fifth, in light of differences in the Notifying Parties' retained businesses, it is unlikely that their incentives would be aligned. NENT will be solely active in the retail provision of AV services outside the JV through its OTT offering Viaplay, whereas Telenor will continue to service customers via its cable/IPTV service. The different focus of the Notifying Parties' retained activities makes it less likely that they would coordinate their behaviour and the existence of strong competitors, both in the traditional and OTT spheres, makes it unlikely that any attempts to coordinate their behaviour would be sustainable. Moreover, while the JV represents a large proportion of the activities of one parent (NENT) the significantly larger size of Telenor and the small size of the JV relative to Telenor group's activities[432]makes it unlikely that Telenor would have any incentive to coordinate its competitive behaviour.[433]

(643) Sixth, structural differences in the Notifying Parties' businesses also makes it difficult to foresee how they would align incentives to cooperate in the retail supply of AV services. Whereas Telenor owns mobile and fixed telecommunications assets and infrastructure in Norway, Sweden and Finland, NENT owns no mobile or fixed telecommunications assets or infrastructure. Telenor will continue to provide fixed and mobile telecommunications services in the Nordics as well as Asia and NENT will remain active at the retail level through Viaplay and at the wholesale level through the sale of its TV channels

[431] Though not currently actively marketing itself in Norway and Sweden, it is expected to expand in the near future as the roll out of fibre networks continues Form CO, paragraph 530, 868, 875,

[432] Based on figures provided by the parties the JV's activities represent approx. EUR […] (NOK […] for Canal Digital plus SEK […] for Viasat); NENT's group revenue is approx. EUR 1,420 million (SEK 14,568 million); and Telenor's group revenue is approx. EUR 11,437 million (NOK 109,771). Therefore, the JV represents […]% of NENT group's revenue and […]% of Telenor group's revenue.

[433] See also Case COMP/M.2851 Intracom/Siemens/STI.

and advertising, as well as content produced by NENT. Accordingly, their costs base are likely to differ making coordination on price difficult.

(644) Seventh, considering the modest combined share of the Notifying Parties' activities in the market for the retail supply of AV services in Norway ([10-20]%), Sweden ([5-10]%) and Finland ([10-20]%) even if the parents of the JV were to coordinate their activities it would likely not lead to an appreciable restriction on the relevant markets.

(645) Eighth, the market investigation shows that the majority of respondents do not consider that the Transaction will likely give rise to cooperative effects or have no specific view in that regard. Those respondents who did consider that cooperative effects were likely, did not substantiate their claim.[434]

(646) Moreover, in relation to a potential input foreclosure strategy to the detriment of suppliers of retail AV services competing with Telenor (whereby NENT would only license its channels to the JV and Telenor or, alternatively, do it on more beneficial terms), the Commission notes that the Transaction does not change NENT's incentive and that NENT will continue to have the incentive to license its channels to competing providers of retail AV services, as discussed in Section 6.4.2. In particular, first, NENT's agreements with Telenor have similar termination compared to other agreements NENT has with other suppliers in the market.[435] Second, in an input foreclosure strategy, a company may have the incentive to engage in such strategy reducing its revenue in the upstream market in order to expand revenues in the downstream market. In such a scenario, a foreclosing strategy would be beneficial exclusively to Telenor's downstream retail activities and it would likely be detrimental to NENT, with a reduction of carriage fee and advertising revenue. Since Telenor has no influence over NENT's decision making in relation to NENT's wholesale supply of its TV channels, the Commission considers the foreclosure of third party suppliers of retail AV services from accessing NENT's TV channels (not contributed to the JV) as unlikely to take place as a result of the Transaction.

(647) Finally, in relation to a potential customer foreclosure strategy to the detriment of wholesale suppliers of TV channels competing with NENT (whereby Telenor would only license NENT's channels, or alternatively, offer NENT more

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434 In Sweden, a broadcaster referred to an increased risk of coordination due to consolidation in the market for the retail supply of AV services, without further elaborating on the characteristics of the market that would make coordination likely: Q4 – TV broadcaster in Sweden, question I.1.2.1. A TV retailer considers that cooperative effects are likely but in explaining why referred to input foreclosure effects that would likely result from the Transaction: Q1 – Retail suppliers of AV services in Norway, question I.1.2.1; Q3 – Retail suppliers of AV services in Sweden, question I.1.2.1; Q5 – Retail suppliers of AV services in Finland, question G.1.2.1; Q6 – TV broadcasters in Finland, question I.1.1.1. In Norway, two TV retailers consider that the Notifying Parties could align their interests given NENT's position in content and Telenor's position in distribution but did not elaborate how this vertical relationship would lead to coordination on the market for the retail supply of AV services: Q1 – Retail suppliers of AV services in Norway, question I.1.2.1. In Finland, a TV distributors considers that as a result of the Transaction Telenor's other platforms will enjoy more favourable wholesale terms and lower retail prices without elaborating on whether such terms would be the result of tacit coordination between the Notifying Parties: Q5 – Retail suppliers of AV services in Finland, question G.1.2.1.

435 See Annex 1, RFI 14. In Norway and Sweden. [Confidential terms of commercial agreements between NENT and Telenor]. In Denmark, [confidential terms of commercial agreements between NENT and Telenor].

beneficial terms), the Commission notes that the Transaction does not change Telenor's incentive to distribute channels via its own retail AV service platform (which will not be contributed to the JV). In particular, a strategy of foreclosing third-party channels from Telenor's retail AV service platform (not contributed to the JV) platforms in order to divert viewers and advertising revenues to NENT's channels would harm Telenor's ability to attract subscribers of retail AV services, who expect to have access to a wider range of content. For this reason, a customer foreclosure strategy, although potentially beneficial to NENT's channels, would be likely to be detrimental to Telenor. Since NENT has no influence over Telenor's decision making in relation to Telenor's retail AV service platform (not contributed to the JV), the Commission considers the foreclosure of third party TV channels from Telenor's retail AV service platform (not contributed to the JV) as unlikely to take place as a result of the Transaction.

(648) In the alternative scenario that Telenor and NRK are considered to be controlled by the Norwegian State (see Section 6.1.1.), the Transaction would still not give rise to cooperative effects in the market for retail supply of AV services or any market vertically related in Norway (i.e., the markets for the wholesale supply of TV channels in which both the Norwegian State and NENT would be active post-Transaction).

(649) The ability for the Norwegian State and NENT to coordinate their behaviour is low in light of the market characteristics for the retail supply of AV services described above at paragraphs 635-636 and 640-641. As regards the markets for the wholesale supply of TV channels, conditions are also not conducive to coordination. Negotiations are [confidential information regarding NENTs sales strategy and policy], can take [confidential information regarding NENTs sales strategy and policy] to be finalised, and are of [confidential information regarding NENTs sales strategy and policy] lengths of duration ([…] to […] years), so that it is unlikely that [confidential information regarding NENTs sales strategy and policy.]. These characteristics contribute to the lack of transparency in the market and make it unlikely that coordination between the Norwegian State and NENT would be plausible in the case that the former is considered to be part of the same economic unit as Telenor.

(650) It is also notable that the market position of the Norwegian State and NENT is largely asymmetric – NENT will have a share in the retail supply of AV services of [5-10]%[436] and the Norwegian State will have a share of approximately [20-30]%[437] – and in the market for the wholesale supply of TV channels NENT's share will be [5-10]% whereas the Norwegian State's share will be [30-40]%.[438] These asymmetric market positions further limit the ability of NENT and the Norwegian State to coordinate their behaviour.

(651) The information barriers that will be in place post-Transaction, described above at paragraph 639, will mean that there will be a lack of necessary transparency on the relevant markets, making it more difficult for NENT and the Norwegian State to coordinate their behaviour. The information barriers would prevent the flow of commercially sensitive information between Telenor and NENT and the JV. The

436 Form CO, Table 5.
437 Form CO, Annex 91.
438 Form CO, Table 111.

prospect that such sensitive information would fall within the reach of the Norwegian State is unlikely given that it is active in the JV via Telenor who will itself be subject to confidentiality obligations under the information barriers.

(652) The Norwegian State and NENT would have no incentive to coordinate their behaviour on the markets for the retail supply of AV services and the wholesale supply of TV channels in Norway. The Norwegian State's overall commercial interests and strategies vary greatly from those of NENT, which is singularly a media and entertainment company. Moreover, unlike the Norwegian State, NENT does not own any mobile or fixed telecommunications assets in Norway. In addition, the JV constitutes an insignificant, proportion of the Norwegian State's activities making it even less likely that the Norwegian State would have an incentive to coordinate their activity on the market for the retail supply of AV services or the market for the wholesale supply of TV channels.

(653) The existence of a transmission agreement between Norges Televisjon AS ("NTV") and Norking, a wholly owned subsidiary of Telenor, under which Norking provides access to high quality DTT infrastructure to NRK,[439] does not change the assessment that the Norwegian State will not have the ability or incentive to coordinate its behaviour with NENT on the markets for the retail or wholesale distribution of AV services. The transmission agreement is unrelated to the JV's retail supply of TV services, which prevents the Norwegian State and NENT from using the transmission agreement to coordinate their behaviour. Moreover, NTV is jointly controlled by TV2 and NRK and there is no indication that TV2's incentives would be aligned with that of NRK if it were to pursue a strategy to coordinate its behaviour with Telenor/Norking in a way that would disadvantage either NRK or RiksTV. As the joint owners of RiksTV, it is unlikely that the NRK or TV2 would do anything to disadvantage RiksTV.

6.5.4. Conclusion

(654) In conclusion, in light of the above considerations and based on the results of the market investigation, the Commission considers that the Transaction does not give rise to serious doubts as to the compatibility with the internal market as a result of cooperative effects on the markets for the retail supply of AV services in Norway, Sweden and Finland (or on the markets for the retail supply of AV services and wholesale supply of TV channels in Norway, in the case that Telenor and the Norwegian State are considered part of the same economic unit).

[439] NTV in turn leases broadcast capacity to its two customers: NRK and Riks TV.

7. CONCLUSION

(655) 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